

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10085 SENATE JUDICIARY

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

LABOR & COMMERCE COMMITTEE, CHAIRMAN
JUDICIARY COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON UTILITY RESTRUCTURING, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us



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SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

SECTIONAL ANALYSIS CSHB 69 (FIN) am RELATING TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Prepared by Rep. Norman Rokeberg from March 16, 1999 Sectional on CSHB 69 (L&C)
prepared by Mike Ford of Legislative Legal Services

Section 1: Allows the ABC board to adopt regulations regarding reports from limited liability organizations licensed under Title 4.

Section 2: Expands peace officer powers granted by the Commissioner of Department of Public Safety to certain ABC employees to include investigation of violations of laws against prostitution and promoting prostitution, gambling, promoting gambling, and related offenses.

Section 3: Provides that a person cannot receive or transfer controlling interest in a license issued to a limited liability organization, except with the approval of the ABC Board.

Section 4: Requires a limited liability organization to report to the board when 10 percent or more of the ownership of the organization is transferred.

Section 5: Makes changes to the authority of a holder of a brewpub license, regarding sale of manufactured beer.

Section 6: Allows certain brewpub licensees to manufacture beer on premises other than the premises licensed under the beverage dispensary license.

Section 7: Technical amendment.

Section 8: Authorizes a package store licensee to deliver wine or champagne to a cruise ship or hotel guest. Allows a florist or gift basket establishment to purchase wine or champagne for delivery to a cruise ship passenger or hotel guest. Imposes certain record keeping, delivery, and permit requirements. Allows a package store licensee to deliver alcoholic beverages to a responsible adult at a wedding or wedding reception or other social event defined by regulation of the board.

Section 9: Deletes reference to residency requirements when filing an application with the ABC Board.

Section 10: Requires a limited liability organization to report certain ownership information to the ABC Board.

Section 11: Deletes reference to residency requirements.

Section 12: Imposes requirements when issuing a liquor license to a limited liability organization.

Section 13: Prohibits leasing a liquor license to a limited liability organizations.

Section 14: Provides that a local governing body may recommend that a license be issued, renewed, relocated, or transferred with conditions. The Board shall impose those conditions unless it finds them arbitrary, capricious, or unreasonable. The local governing body is responsible for monitoring compliance with the conditions except as otherwise provided by the Board.

Provides that a local governing body may notify the Board that it has determined a licensee has violated a provision of law or condition imposed on the license. Unless the Board finds the local governing body to be acting in an arbitrary, capricious, or unreasonable manner, the Board shall prepare the determination as an accusation against the licensee and proceed in the manner described in law.

Section 15: Allows a person to bring their own wine to a restaurant, with the permission of the licensee. Allows the licensee to charge a corkage fee.

Section 16: Provides that a license held by a limited liability organization does not relieve the licensee of obligations or liability imposed under Title 4, solely because the license is held by a limited liability organization.

Section 17: Definitions.

Section 18: Extends the sunset date of the ABC Board to June 30, 2003.

Section 19: Repeals AS 04.11.390 (residency requirements).

Section 20: Effective date for Section 18.

Section 21: Effective date for all sections but sec. 18.

ALASKA STATE LEGISLATURE

House of Representatives

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SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER

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Representative Norman Rokeberg

HISTORICAL INFORMATION REGARDING CERTAIN ABC LICENSE CHANGES:

By: Rep. Norman Rokeberg

03/16/99

04.11.130 = Brewery License. First put in statute in 1980.

04.11.135 = Brewpub License. First put in statute in 1988. This license is not transferable. Requires licensee to also hold a beverage dispensary license.

04.11.450 = Prohibited Financial Interest. First put in statute in 1980.

CSSB 276 (FIN), Chapter 111, SLA 1988, "An Act relating to brewpub, brewery, and beverage dispensary liquor licenses; and to prohibited financial interests in a licensed liquor business; and providing for an effective date."

Added AS 04.11.135 adds new section (brewpub license).

HCS CSSB 87 (JUD), Chapter 101, SLA 1995, "Relating to the membership of the Alcoholic Beverage Control Board; relating to community local options for control of alcoholic beverages; relating to the control of alcoholic beverages; prohibiting persons from being on premises involving alcoholic beverages under certain circumstances; relating to the definition of 'alcoholic beverage'; relating to purchase and sale of alcoholic beverages; relating to alcohol server education courses; and providing for an effective date."

Changed AS 04.11.100: Added new subsection: Exempt license provision reduced the menu and percentage of sales restriction in this category of license thereby creating a "tavern" license.

Changed 04.11.135(a) concerning a brewpub license to authorize the holder of a beverage dispensary license to manufacture 75,000 gallons of beer in a calendar year (previous amount was 16,000 gallons). (Section 6)

SCS CSHB 372 (JUD) am S, Chapter 136, SLA 1996, effective October 1, 1996.

Changed 04.11.100(f) to grandfather in exempt licenses (Moose's Tooth Letter). (Section 1)

Changed AS 04.11.135(a) to add two new subsections (3) and (4) concerning sale of licensee's manufactured beer in quantities of not more than 5 gallons per day to individual present on premises; and provide small sample free of charge. (Section 3).

Changed 04.11.450(b) [prohibited financial interest]. Inserted "a restaurant or eating place license" in this subsection which then prevented anyone who was a representative or owner of a wholesale business, brewery, winery, bottling works or distillery for getting a beverage dispensary license, package store license, or a restaurant or eating place license. Grandfathered in those who already had a combination of licenses. (Section 4).

CSHB 69 (L&C) - "An Act requiring certain reports or information from alcoholic beverage licensees that are also limited liability organizations; relating to regulation of alcoholic beverage licenses issued to limited liability organizations; relating to brewpub licenses; relating to package store licenses; relating to consumption of alcoholic beverage on licensed premises; relating to the liability of a member of a limited liability organization who also holds an alcoholic beverage license; extending the termination date of the Alcoholic Beverage Control Board to June 30, 2003; and providing for an effective date."

Section 4, page 3, line 23: Amends AS 04.11.135(a): Allows sale of licensee's manufactured beer on ***other licensed premises*** of licensee.

Section 4, page 3, line 29: Amends AS 04.11.135 (a): Allows sale of licensee's manufactured beer to wholesale.

Section 5, page 4, lines 1-16: Adds new subsection to AS 04.11.135(d) to exempt from (a) the holder of a brewpub license who under (b) formerly held a brewery license and a restaurant or eating place "exempt" license and who, under the former brewery license, manufactured beer at a location other than the premises licensed under the former restaurant or eating place license may (1) manufacture up to 75,000 gallons of beer in calendar year on *premises other than premises licensed under beverage dispensary license*; provide small sample free of charge; sell beer on premises licensed or other licensed premises, to wholesaler, or to individual present on premises in amount of not more than five gallons per day.

*Alaska Cabaret, Hotel,
Restaurant & Retailers Association*



3400 Spennard Road, Suite 7 • Anchorage, Alaska 99503
(907) 272-8133 • Fax: (907) 272-8620
Toll Free In Alaska: (800) 478-2427

26 March 1999

MAR 31 1999

Representative Norman Rokeberg
Chairman, House Labor & Commerce Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

REF: CSHB No. 69

Honorable Representative Rokeberg,

The Board of Directors of the Cabaret, Hotel, Restaurant and Retailers Association, Inc. CHARR, supports all the provisions in CSHB No. 69.

Along with your support and concern CHARR will be following this bill through the legislative process until it becomes law.

Thank you, again, for your time and effort in providing a good piece of legislation.

I remain at your service,

A handwritten signature in cursive script, which appears to read "L. Hackenmiller".

Larry J. "Hack" Hackenmiller
President, CHARR

FAX

COVER SHEET

MAR 29 1999

DATE: 29 March 1999

TO: Representative Norman Rokcherg
FAX 465.2040

COVER SHEET PLUS _____ PAGES

From: Larry J. "Hack" Hackenmiller FAX # 907-457-1328
PRESIDENT, CHARR PHONE: 907-457-1327

Please find enclosed my letter dated 26 March regarding our support for CSNM No. 69. This letter was written BEFORE the proposed amendment by Rep. Croft.

On first review I am not happy about the Croft amendment. I believe this circumvents the authority of the ABC Board and allows witch hunting by local governing bodies.

Unless I missed something I believe this amendment should include a fiscal note for the additional time the ABC Board and Attorney Generals office will be using on litigation AND we should throw in a few bucks for cord wood for those local communities to burn their witches.

I will consult with the Board of Directors and our legislative personnel regarding the Croft amendment. There is plenty of legal options available to local communities in existing Title IV law to maintain the local control the Croft amendment seems to imply is necessary.

L. J. Hackenmiller, President.

L.J. "HACK" HACKENMILLER, 518 FARMERS LOOP ROAD, FAIRBANKS, ALASKA 99712

MAR 12 1999

Moose's Tooth Brewing Co

Phone: 278-4999

Fax: 258-4999

Email: mtbrcw@aq1.com

Plant address:
2021 Spar Ave.
Anchorage, AK 99501

Mailing address:
PO Box 202549
Anchorage, AK 99520

March 12, 1999

To Whom It May Concern:

In 1995, we began planning to open a brewpub in Anchorage and applied for a brewery license and a restaurant and eating place license. We were granted these licenses in June and July of 1996 and on October 1, 1996 AS 04.11.450(b) was amended to prohibit the ownership of both a restaurant and eating place license and a brewery license. Although our licenses are currently protected by grandfather rights we are interested in opening a second location but cannot.

Recently Chris Anderson of the Glacier Brewhouse proposed amendments to AS 04.11.135(a) that would allow the original five restaurant/brewery licensees to convert their restaurant and brewery licenses into a brewpub license by purchasing a beverage dispensary license. Although it can be financially difficult for brewpubs that serve only beer and wine to afford a beverage dispensary license we understand the need to address the concerns of CHARR/ARBA, alcohol wholesalers and other beverage dispensary license owners.

Additionally, Section 5 was added to the proposed amendment to insure that all of the five original restaurant/brewery licensees were given equal opportunity to become brewpubs. Unlike the other four restaurant/brewery combinations, the Moose's Tooth Pub and Pizzeria and the Moose's Tooth Brewing Company are not co-located in the same building. The existing language of AS 04.11.135(a) only allows a brewpub to manufacture beer on the premises licensed under the beverage dispensary license. In other words the brewing and dining areas of the brewpub must be adjacent to one another. Section 5 treats all brewery/restaurant combinations licenses before October 1, 1996 alike, whether or not they are co-located and gives all five of the brewery/restaurant licensees the option to become a brewpub.

At present, a grandfathered brewery restaurant license (G.B.R.) can:

- 1) produce an unlimited amount of beer
- 2) sell this beer at the licensee's own restaurant or to other license holders
- 3) never open a second location
- 4) never sell its license because of its grandfathered status

If House Bill 69 passes, a G.B.R. can:

- 1) elect to remain as a G.B.R. and continue to abide by #s 1-4 above, OR
- 2) elect to purchase a beverage dispensary license (market price is currently \$125-150K) and with the purchase of a brewpub license to become a brewpub (which requires the G.B.R. holder to permanently relinquish their brewery license)

If House Bill 69 passes and a G.B.R. elects to become a brewpub, the brewpub licensee can

- 1) produce a limited quantity of beer per year (4838.7 kegs per year)
- 2) purchase other restaurant and eating place licenses in order to open additional locations
- 3) distribute its own beer to other licenses owned by the licensee
- 4) (must) use a wholesaler (a.k.a. a distributor) to sell any beer beyond that consumed at its own locations
- 5) sell its license

Although this bill is not a perfect solution to this problem, we believe that it is the most realistic solution. House Bill 69 allows a G.B.R. to elect to expand (or to remain a G.B.R.) while addressing the concerns of CHARR/ARBA, local wholesalers and existing beverage dispensary licensees.

Sincerely,



- Matt Jones

SUMMARY:

A grandfathered restaurant/brewery (G.B.R.) combination can:

Present

- no beer production cap
- sell beer at own restaurant
- sell beer to other licenses other than its own
- use distributor or self-distribute
- never open a second location
- never sell license as package b/c of grandfather status

After House Bill 69

- G.B.R. can continue & operate as at present OR
- elect to purchase beverage dispensary license & become brewpub

If after House Bill 69, G.B.R. elects to become brewpub

- must relinquish brewery license
- accept 4838.7 keg/year production cap
- can purchase other restaurant licenses & open subsequent locations
- can self-distribute to other license owned by beverage dispensary owner
- must use a distributor to distribute product to any license not owned by bev dispensary owner
- can sell its license as package

2356 Sonstrom Drive
Anchorage, Alaska 99517
Ph: 907-243-0644

April 16, 1999

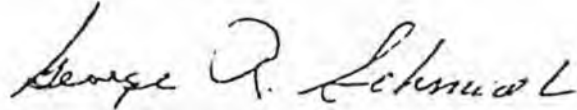
Representative Norman Rokeberg
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

I am writing to request expedited action on CSHB69 (L&C). I am particularly interested in the proposal amendments to AS 04.11.135(a), and AS 04.16.120(b). The former proposal would allow a brew pub owner to own more than one establishment, and would allow him to sell to a wholesaler. The latter would let him allow a customer to take wine of his choice to a restaurant at which he is eating. Both of those amendments would make dining more enjoyable for the public, and would bring Alaska's laws more in line with what the generally American public is used to and expects.

I have no interest in any brew pub or other alcohol dispensing establishment, and, except as a customer, never have. Thank you.

Sincerely yours,


George R. Schmidt

APR 19 1999



Silver Gulch Brewing and Bottling, Inc.
PO Box 82125
Fairbanks, Alaska 99708

Tel (907) 452-2739 Fax (907) 452-2774

e-mail : gbrady@polarnet.com

May 7, 1999

Alaska State Legislature

Attention: Sen. Robin Taylor

Reference: House Bill 69

Dear Senator Taylor :

I am writing you to voice my concern over a portion of the wording in House Bill 69 that is currently in the Senate Judiciary Committee. The section in question is as follows:

Section 5. AS 04.11.135 (a)(5) "...sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as a wholesaler under AS 04.11.160."

While this wording may seem insignificant, it could have a significant, adverse effect on our business operations. Specifically, under the current Alcoholic Beverage Control Board regulations, a Brewery License (Title 4, Sec. 04.11.130) is not allowed to sell beer for consumption on the licensed premises (brewery), but may sell to to "... a person licensed under this title, or in another state or country.". What this means is that as a Brewery License holder, the only channel for sales of our product in volume larger than 5 gallons is to the holder of a dispensary license or a licensed wholesaler.

State law currently also allows for the operation of "Brewpub licenses" (AS 04.11.135), where the holder of a beverage dispensary license who is also the holder of a brewpub license to sell their beer on premises.

The revised Section 5 (see above) would allow the holder of a Brewpub License to operate their business in direct competition with the holder of a Brewery License, while prohibiting the holder of a Brewery License from exercising the same opportunity. If this passage is not deleted from HB 69, it will create an unfair advantage to a very small group of Brewpub license holders by affording them privileges that are not available to Breweries.

In the interest of maintaining the currently "level playing field", I would strongly recommend that the aforementioned passage be removed from HB 69.

Thank you again for your time and consideration. I would be glad to talk to you on this or any other related matter. I would also be glad to give you a personal tour of our facilities the next time you are in Fairbanks.

Sincerely,

Glenn Brady
President, Silver Gulch Brewing and Bottling, Inc.

AMERICA'S MOST NORTHERN BREWERY

7329 Arctic Boulevard • Anchorage, Alaska 99518
Brewhouse & Office (907) 344-1179 • Fax (907) 344-6656



Alaska State Legislature
Senator Robin Taylor
State Capitol
Juneau, AK 99801-1182

May 7, 1999

Dear Senator Taylor,

I am in charge of beer sales at Midnight Sun Brewing Company. On behalf of myself and my company I would like to voice my opposition to a piece of legislation that would have a negative impact on my brewery license. This legislation would also have a negative impact on other breweries throughout the state of Alaska.

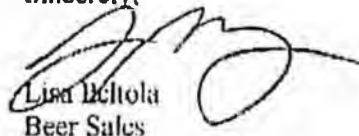
The Micro-breweries and Brewpubs in Alaska are currently working on forming a Brewer's Guild for the State of Alaska. The Guild's purpose is to meet regularly and try to bring logic and fairness to our laws. This bill is neither logical or fair. House Bill 69 (Senate Judiciary Committee) has a section in it that will allow a hard liquor license holder to act like a brewery. If brewery license holders can not sell hard liquor, then why should a liquor license holder be able to wholesale beer? The section that should be deleted from the bill is:

Section 5. AS 04.11.135(a)(5) "sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as a wholesaler under AS 04.11.160."

The Guild attempted to compromise with the special interests groups that would like to see this bill pass, but there was no desire to budge in the interest of fairness or logic. Please do not let this bill pass through this committee or the Senate without removal of this section.

Thank you for your time and please feel free to contact me or Mark Staples (President) regarding this bill.

Sincerely,


Lisa DeTola
Beer Sales

Find these Wild Alaska Ales and Lagers on draft and in 22-oz bottles...
Fireweed Honey Wheat Beer • Wolf Spirit Sparkling Ale
Kodiak Brown Ale • Mammoth Extra Stout • Old Whiskers Hefeweizen



FAX TRANSMISSION: May 7, 1999

Alaska State Legislature
Senator Robin Taylor
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Taylor,

I am President and majority owner of The Borealis Brewery in Anchorage. There is a piece of legislation that affects the environment in which I do business that I would like to see amended. The goals of any legislation governing a new industry such as ours should require responsible behavior, encourage economic development and growth, and create a level playing field for all businesses to compete. House Bill 69, now in the Senate Judiciary Committee, fails to accomplish any of these three goals.

The section of house bill 69 which governs brew pub licensing includes amendments which would allow two specific businesses to expand. There is no doubt that both businesses would benefit from a change in the law, however the way House Bill 69 now reads it would allow their growth in a way that gives them an unfair advantage over other breweries in Alaska.

Specifically, section 5, which reads:

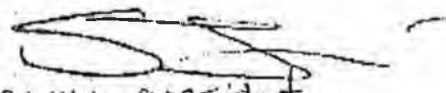
"Section 5. AS 04.11.135(a)(5) "sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as a wholesaler under AS 04.11.160."
creates a class of beverage dispensary license holders that can wholesale beer, while beer wholesalers are prohibited from selling liquor.

This seems a minor point, however it has the potential to be devastating to a business like mine. I compete with the other producers of beer in Alaska every day, and to grant one or two businesses a right that the rest of us are denied is using legislation to advance the competitive interests of an individual instead of the collective interests of an industry or the State.

Brewery legislation has been a highly contentious issue, and this is not the last you will be hearing from me on the subject. We have newly formed a Brewers' Guild and intend to tackle brewery legislation in a way that creates a fair playing field for all businesses in our industry.

Again, please Delete the portion of House Bill 69 referenced above. It will help bring fairness to an extremely competitive fledgling industry.

Sincerely,



S.J. Klein, President

Good Beer.

Brewed by Alaskans. for Alaskans.

The Borealis Brewery, 349 E. Ship Creek Avenue, Anchorage, Alaska 99501,
(907) 278-5480. Fax: 278-4195.



Finance Office
3401 Denali St., 202-A
Anchorage, Alaska
99503

Gary J. Klopfer,
Member Manager/Owner
Phone: (907) 561-2274
Fax: (907) 563-9354

May 7, 1999

Alaska State Legislature
Senator Robin L. Taylor
State Capitol
Juneau, AK 99801-1182

Dear Senator Taylor:

I own the Snow Goose Restaurant and the Sleeping Lady Brewing Company. I would like to bring your attention to a piece of legislation that impacts my brewery license in a negative way. It also impacts all the other brewery license holders in the State in a negative way. We are in the middle of forming a Brewers Guild for the State of Alaska to try and bring logic and fairness to our laws. This bill does not do that. House Bill 69 (Senate Judiciary Committee) has a section in it that will allow a hard liquor license holder to act like a brewery. If brewery license holders can not sell hard liquor, then why should a liquor license holder be able to wholesale beer? The section that should be deleted from this bill is:

Section 5. AS 04.11.135(a)(5) "sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as a wholesaler under AS 04.11.160."

We tried to compromise with the *special interests* that want this bill and section passed, but they had no interest in fairness or logic for the industry or for the State. Their only interest is in what they could get for themselves!

Please do not let this bill pass through this committee or the Senate without having this section removed for the betterment of the industry. I firmly believe in fairness and a level playing field for all industry in this Great State of Alaska.

Thank you for your time and I would be glad to talk to you about this subject at any time.

Sincerely;

A handwritten signature in cursive script that reads 'Gary J. Klopfer'.

Gary J. Klopfer

SLEEPING LADY BREWING COMPANY
717 West 3rd Ave., Anchorage, Alaska 99501
(907) 277-7727

HB

79

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 79

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ. Dev.
 Title Uniform Commercial Code: Letters of Credit BRU Banking, Securities and Corporations
 Component Banking, Securities and Corporations
 Sponsor House Labor and Commerce by request
 Requester _____ Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	2.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by Franklin T. Elder, Director Phone 465-2521
 Division Banking, Securities and Corporations Date/Time 2/26/99 11:49 AM
 Approved by Commissioner Deborah B. Sedwick Date 2/26/99
 Agency Commerce and Economic Development

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**SPONSOR STATEMENT FOR
BILL REVISING UNIFORM COMMERCIAL CODE, ARTICLE 5
(LETTERS OF CREDIT)**

House Labor and Commerce Committee

The basic purpose of the revision of Article 5 of the Uniform Commercial Code is to update the law governing the \$200 billion U.S. letter-of-credit industry. All 50 states and Puerto Rico, Guam, and the District of Columbia have adopted the UCC, including Article 5. It is now necessary for Article 5 to be revised, to recognize changes in technology and in commercial practices, so as to avoid litigation over the increasing number of issues that are no longer adequately dealt with in the decades-old current law. One of the main features of this revision is the simplification of Article 5. Another is its recognition of the Uniform Customs and Practices for Documentary Credits, a body of material that is used in conjunction with most international letters of credit.

Letters of credit are used to obtain payment as a backup to other kinds of credit extension; they are very important in international trade. Prior ambiguities in the law dealing with the concept of fraud in the transaction are clarified. Article 5 becomes much simpler and less detailed because of the explicit reliance upon standards of practice. It continues to provide rules that can be waived or modified by agreement between the parties.

This revision of Article 5, promulgated by the National Conference of Commissioners on Uniform State Laws in 1995, has already been enacted in 39 jurisdictions and, as of January 15 of this year, is pending in the legislature of an additional jurisdiction. It is necessary for Alaska to enact this bill in order to keep up with developments in the commercial law area, and avoid becoming a commercial backwater.

Thank you.

SPONSOR STATEMENT FOR BILL REVISING COMMERCIAL CODE ARTICLE 5
of the Uniform Commercial Code

Sponsor Statement

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 17, 1999

SUBJECT: Sectional summary of HB 79 relating to letters of credit (Work Order No. 21-LS0375\ND)

TO: Representative Norman Rokeberg, Chair
House Labor and Commerce Committee
Attn: Janet Seltz

FROM: *JB*
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill. The introductory remarks and the other descriptions of the sections necessarily contain some generalizations and simplifications. As a result, please keep in mind that the bill itself is the best statement of its contents.

Basic description; definitions used in summary. In general, a letter of credit is an agreement by a bank or other person made at the request of a customer that the bank or other person will honor demands for payment (or a demand for delivery of an item of value) when the conditions in the letter of credit are met. As an example, a letter of credit may be used when a bank customer wants to buy some merchandise, but the manufacturer won't ship without assurance of payment. The bank issues a letter of credit and is the "issuer." The customer requesting the letter of credit is the "applicant." The manufacturer (or other person who will be paid) is the "beneficiary."

To obtain the payment or delivery, the beneficiary must present the required documents. This is referred to as a "presentation" of the documents or "presenting" the documents. When the bank pays or delivers the item to the manufacturer, the bank "honors" the letter of credit. If the bank doesn't pay or deliver upon presentation of the documents, the bank "dishonors" the letter of credit.

If the bank authorizes another person to make the payment or deliver under a letter of credit, that person is a "nominated person." If the nominated person also undertakes to honor a letter of credit, that person is a "confirmer."

An "adviser" is a person who notifies the beneficiary (or another "adviser" who will notify the beneficiary) that a letter of credit has been issued, confirmed, or amended.

Representative Norman Rokeberg, Chair
House Labor and Commerce Committee
February 18, 1999
Page 2

This bill revises the rules that set up how letters of credit work and the relationships between all of the various parties involved.

Section 1. AS 09.30.070(b). Makes an amendment conforming this subsection to proposed AS 45.05.111(d). This bill section deals with interest on a court judgment and establishes when interest starts accruing before the judgment is handed down. Under AS 45.05.111(d), interest on money owed for a liability found under AS 45.05.111(a) - (c) starts when the letter of credit is wrongfully dishonored or on another appropriate date.

Section 2. AS 45.01.105(b). Makes an amendment conforming this subsection to the proposed AS 45.05 changes. AS 45.01.105 identifies which state or nation's law governs in certain cases involving more than one state or nation. The amendment states that AS 45.05.116 establishes what law governs for letters of credit.

Section 3. AS 45.02.512(a). Makes an amendment conforming this subsection to proposed AS 45.05.109(b). Excuses a buyer from making payment, even if the contract requires payment before inspection and the required documents are tendered, if the circumstances would justify an injunction under AS 45.05.109(b).

Section 4. AS 45.05.102. Defines the terms used in the revised chapter on letters of credit (AS 45.05). See the introductory comments to this memo for more simple definitions of the most important terms.

Section 5. AS 45.05.103. Defines the scope of AS 45.05.

AS 45.05.103(a). States that the chapter applies to letters of credit and transactions involving letters of credit.

AS 45.05.103(b). States that this chapter, by itself, does not govern how to treat another situation or person not covered by this chapter.

AS 45.05.103(c). States that you can change the provisions of this chapter by an agreement, except as provided by certain listed statutes. States that a general provision to excuse liability or limit remedies won't work to change the obligations imposed by this chapter.

AS 45.05.103(d). States that the rights and obligations of an issuer to a beneficiary, or to a nominated person, are independent of the contracts and arrangements underlying the letter of credit. In other words, the existence, performance, and nonperformance of the underlying contract or arrangement don't affect the rights and obligations under the letter of credit. Includes under this subsection contracts between the issuer and the applicant and between the applicant and the beneficiary.

Section 6. AS 45.05.104. Sets out just what a letter of credit and certain related documents must consist of. They must be in a form that can provide a record and must be authenticated

by a signature or authenticated as required under the parties' agreement or by the standard practice referred to in AS 45.05.108(e).

Section 7. AS 45.05.105. States that you don't need consideration (something of value to be received by a party) in order to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation. Contracts usually require that each party receive something as consideration (not necessarily money or other property, but something of value to the party).

Section 8. AS 45.05.106(a). States that a letter of credit becomes enforceable against the issuer when the issuer sends it to the beneficiary or adviser. States that you can't revoke a letter of credit unless the letter says so.

AS 45.05.106(b). States that an amendment or cancellation of a letter of credit does not affect the rights and obligations of certain listed persons (e.g., beneficiary and applicant) unless they consent to the amendment or cancellation, or unless the letter of credit says it is revocable or that the issuer can amend or cancel it without the consent.

AS 45.05.106(c). States when a letter of credit expires if it does not state the date or does not have a provision that determines when it expires. The letter of credit expires one year after its stated date of issuance or, if not stated, one year after the date it is issued.

AS 45.05.106(d). States that a perpetual letter of credit expires five years after its stated date of issuance or, if not stated, five years after the date it is issued.

Section 9. AS 45.05.107(a). States that a confirmer is directly obligated on the letter of credit and has the rights and obligations of the issuer (as far as the letter of confirmation says it does). Also states that the confirmer has rights against, and obligations to, the issuer as if the issuer were the applicant and the confirmer had issued the letter of credit at the request of the issuer.

AS 45.05.107(b). States that a nominated person does not have to honor or give value when the necessary documents are presented to collect under a letter of credit, unless the person is also a confirmer.

AS 45.05.107(c). States that a person requested to advise may decline to act as an adviser. States that an adviser is not required to honor or give value when the necessary documents are presented to collect under a letter of credit, unless the adviser is also a confirmer. States that an adviser's job is to advise accurately about the terms of the letter of credit and related documents, and, with regard to the beneficiary, to check if the request to advise is authentic. States that a letter of credit, confirmation, or amendment is enforceable as issued even if the advice is not accurate.

AS 45.05.107(d). States that a person who notifies a transferee beneficiary (a person to whom the beneficiary has transferred the beneficiary's interest under the letter of credit)

about the terms of a letter of credit or related document has the rights and obligations of an adviser under (c) of this section. States that the terms of the notice to the transferee beneficiary and transferor beneficiary (the beneficiary who transferred the interest in the letter of credit) may be different, as allowed by the letter of credit or related document that is received by the person who notifies the transferee beneficiary.

Section 10. AS 45.05.108(a). Except as provided in the section on fraud and forgery, requires an issuer to honor a presentation that appears on its face to comply strictly with the letter of credit. The standard practice of financial institutions determines whether the presentation complies as required. Requires an issuer to dishonor a presentation that does not appear to comply, except as provided in AS 45.05.113 and otherwise agreed with the applicant.

AS 45.05.108(b). States that upon presentation an issuer has a reasonable time to perform certain acts. The reasonable time may not exceed seven business days after the day of receipt. These acts are to honor the presentation, to notify the presenter that there are problems, or, if the letter of credit provides for honor after seven business days after presentation, to accept a draft (check) or incur a deferred obligation.

AS 45.05.108(c). States that in two situations an issuer is prevented from asserting that a problem causes the issuer to dishonor the letter of credit. The first situation is when the issuer does not give timely notice of the problem. The second situation is if the issuer gives notice but the problem is not stated in the notice. This subsection is subject to the fraud, forgery, and expiration assertions under (d).

AS 45.05.108(d). States that an issuer can still assert that there has been fraud or forgery (under AS 45.05.109(a)) or that the letter of credit has expired before presentation in order to dishonor a presentation, even if the issuer failed to give the required notice or to mention the fraud, forgery, or expiration in the notice.

AS 45.05.108(e). Requires an issuer of a letter of credit to comply with the standard practice of financial institutions that regularly issue letters of credit when the issuer handles letters of credit. States that a court is the determiner of whether the issuer has complied with the standard practice. Directs a court to allow the parties to present evidence of what is the standard practice.

AS 45.05.108(f). States what an issuer is not responsible for. An issuer is not responsible for the performance or nonperformance of the contract, arrangement, or transaction underlying the letter of credit. An issuer is not responsible for another person's acts or omissions. An issuer is not responsible for knowing the usage of a particular trade, except for the standard practice of financial institutions issuing letters of credit.

AS 45.05.108(g). Directs an issuer to ignore certain nondocumentary conditions contained in a letter of credit.

AS 45.05.108(h). Requires an issuer who does not honor a presentation under a letter of credit to return the documents presented, or to hold them for the presenter and notify the presenter.

AS 45.05.108(i). Establishes certain rights and limitations for an issuer when the issuer honors a presentation under a letter of credit. The issuer is entitled to be reimbursed by the applicant; the reimbursement must be made in funds that are available immediately to the issuer not later than the date of payment. The issuer takes the documents presented without any claims by the beneficiary or presenter. The issuer may not claim a right of recourse under AS 45.03.414 - 45.03.415 on a draft (check). Except as provided in two other sections, the issuer may not get the money or another valuable back if there was a mistake, if the mistake involves obvious problems in the documents or tender that are apparent on the face of the presentation. The issuer is discharged unless a required signature of the beneficiary was forged.

Section 11. AS 45.05.109(a). Gives an issuer directions on what to do if presentation documents appear to meet the requirements of the letter of credit, but a document is either forged or materially fraudulent, and honoring the documents would result in a material fraud by the beneficiary on the issuer or applicant.

Directs the issuer to honor the presentation of the documents if honor is demanded by certain persons under certain circumstances. The first is a nominated person that has given value in good faith and without notice of the forgery or fraud. The second is a confirmer that has honored its confirmation in good faith. The third is a holder in due course of a draft (check) that was drawn up under the letter of credit and taken by the holder in due course after acceptance by the issuer or nominated person. The fourth is the person who has had the issuer's or nominated person's deferred (doesn't have to be paid immediately) obligation transferred (assigned) to the person, if before the obligation was incurred by the issuer or nominated person, the person gave value to get the assignment and did not have notice of the forgery or fraud.

Allows the issuer to honor or dishonor the request for payment if the issuer acts in good faith and if the situation does not fall under categories (1) - (4) above.

AS 45.05.109(b). Authorizes a court to enjoin an issuer from honoring a request for payment (or grant similar relief against the issuer or other persons) when an applicant claims forgery or fraud, but only if four listed conditions are met. The first is that the relief must not be prohibited under the law governing drafts that have been accepted by the issuer, or governing a deferred obligation incurred by the issuer. The second is that a beneficiary, issuer, or nominated person who may be adversely affected must be adequately protected against loss resulting from the court giving the relief. The third is that all of the conditions for obtaining the court relief in this state must be satisfied. The fourth is that applicant is likely to succeed on the claim of forgery or fraud and the person demanding that the presentation be honored does not qualify for protection under (a)(1).

Section 12. AS 45.05.110(a). Establishes certain things that the beneficiary warrants when the presentation is honored. The beneficiary warrants to the issuer, to another person to whom the presentation is made, and to the applicant that there is no fraud or forgery as those terms are described in AS 45.05.109(a). The beneficiary warrants to the applicant that the payment (or transfer of value) does not violate an agreement between the beneficiary and the applicant or another agreement connected to the letter of credit.

AS 45.05.110(b). States that the warranties in (a) are in addition to other warranties under AS 45.03 (UCC: negotiable instruments), AS 45.04 (UCC: bank deposits and collections), AS 45.07 (UCC: warehouse receipts, bills of lading, and other documents of title), and AS 45.08 (UCC: investment securities) that are related to the presentation or transfer of the documents.

Section 13. AS 45.05.111(a). Allows a beneficiary, successor beneficiary, or a nominated person to recover from the issuer of a letter of credit the amount in dispute if the issuer wrongfully dishonors or states that the issuer will not honor its obligation. If the issuer's obligation is not to pay money, this subsection allows the claimant to make the issuer perform what the issuer was supposed to perform, or, if the claimant elects, to recover an amount of money that equals the value of the performance. Allows the claimant to also recover damages that flow directly and immediately from the dishonor but not more remote damages. States that the claimant does not have to take action to avoid the damages that might result. However, reduces the awarded damages to the extent the claimant does avoid the damages. Requires the issuer to prove the amount of the damages that the claimant avoided. If the claim is based on the issuer repudiating the obligation before presentation of the documents, states that the claimant does not have to present the documents normally required to require the issuer to pay or deliver the value required.

AS 45.05.111(b). Allows the applicant to recover damages from the issuer if the issuer wrongfully dishonors a draft or demand presented under a letter of credit, or if the issuer wrongfully honors a draft or demand under the letter of credit. Allows the claimant to recover damages that flow directly and immediately from the wrongful act, but not the more remote "consequential" damages. Reduces the amount of awarded damages by any amount saved due to the wrongful act.

AS 45.05.111(c). Allows a person to recover from an adviser or nominated person, other than a confirmer, the person's damages resulting from the adviser's or nominated person's breach of an obligation under this chapter or from an issuer's breach of an obligation not covered by (a) or (b). Allows the person to recover only damages that flow directly and immediately from the breach, but not the more remote consequential damages, less any amount the person saves due to the breach. States that a confirmer has the liability of an issuer under (a), (b), and this subsection, to the extent of the confirmation.

AS 45.05.111(d). States that an issuer, a nominated person, or an adviser who is liable under (a) - (c) must pay interest on the amount owed from the date of the wrongful dishonor, or from another appropriate date.

AS 45.05.111(e). Directs the court to award attorney fees and costs to the party who wins a court action for a remedy under this chapter.

AS 45.05.111(f). Allows parties to establish ahead of time by agreement the amount of damages that would result from a breach of an obligation under this chapter. However, the amount or formula for calculating the amount must be reasonable.

Section 14. AS 45.05.112(a). Prohibits transferring the right of a beneficiary to payment or performance under a letter of credit, except when the transfer occurs by operation of law as provided under AS 45.05.113, or unless the letter of credit says the right is transferable.

AS 45.05.112(b). Allows in two circumstances an issuer to refuse to carry out or recognize a transfer, even if allowed under the letter of credit. The first circumstance is that the transfer would violate the law that applies to the situation. The second circumstance is that the transferor or the transferee has failed to comply with the letter of credit, or with another requirement that relates to the transfer, and that is within the standard practice of financial institutions regularly dealing with letters of credit or that is otherwise reasonable under the circumstances.

Section 15. AS 45.05.113(a). Allows a person who succeeds another person as the beneficiary under a letter of credit to perform certain listed acts without having to disclose that it is a successor of the beneficiary. The successor may consent to amendments. The successor may sign and present documents. The successor may receive payment or other items of value in the name of the beneficiary.

AS 45.05.113(b). Allows the successor of a beneficiary to perform certain listed acts in its own name as the disclosed successor to the beneficiary. The disclosed successor may consent to amendments. The disclosed successor may sign and present documents. The disclosed successor may receive payment or other items of value. Except as provided by (c), directs an issuer to recognize a person who is disclosed to be a successor beneficiary as a full beneficiary if the successor beneficiary complies with the standard practice for financial institutions regularly dealing in letters of credit, or, in the absence of the standard practice, with other reasonable procedures that will protect the issuer.

AS 45.05.113(c). States that an issuer does not need to determine whether a person alleging to be a successor beneficiary is actually such a beneficiary or whether the purported successor's signature is genuine or authorized.

AS 45.05.113(d) States that honoring a purported successor's presentation under (a) or (b) that appears to be in compliance has the consequences identified in AS 45.05.108(i) even if

the person is not really the successor of the beneficiary. States that documents signed in the name of the beneficiary or a disclosed successor by a person who is not really the beneficiary or the successor beneficiary are considered to be forged documents when applying AS 45.05.109.

AS 45.05.113(e). Allows an issuer (if the issuer's rights of reimbursement are not covered by (d) or by similar law), any confirmer, and any nominated person to decline a presentation as provided in (b).

AS 45.05.113(f). States that if a beneficiary changes its name after a letter of credit is issued, the beneficiary has the same rights and obligations as a successor beneficiary under this section.

Section 16. AS 45.05.114(a). Defines "proceeds of a letter of credit" for the section.

AS 45.05.114(b). Allows a beneficiary to assign (transfer to another person) its right to the proceeds of a letter of credit. Allows the beneficiary to do this before presentation, by assigning the right to receive proceeds when the conditions are satisfied in the letter of credit.

AS 45.05.114(c). Allows the issuer or nominated person to refuse to recognize an assignment of the proceeds of a letter of credit until the issuer or nominated person agrees to the assignment.

AS 45.05.114(d). States that an issuer or nominated person is not required to give or withhold its consent to an assignment (transfer to another person) of the proceeds of a letter of credit. Prohibits the issuer or nominated person from withholding the consent unreasonably if the assignee has and shows the letter of credit and if presentation of the letter of credit is required before honor.

AS 45.05.114(e). States that the rights of a transferee beneficiary (a subsequent beneficiary to whom a beneficiary's rights have been transferred) or of a nominated person do not depend on the beneficiary's assignment (transfer) of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

AS 45.05.114(f). States that the rights under this section between an assignee and an issuer, a transferee beneficiary, or a nominated person, and the issuer's or nominated person's payment of proceeds to an assignee or a third person, do not affect the rights between the assignee and a person other than the issuer, transferee beneficiary, or nominated person. States that the creation and perfecting (making effective) of a security interest (an interest taken to secure a payment) in (or granting) a beneficiary's rights to proceeds, and assignment of (transferring) those rights, are governed by AS 45.09 (UCC: secured transactions) or other law. States that the rights and obligations arising on the creation and perfection of a security interest or arising on another assignment (transfer) of a beneficiary's rights to

proceeds, are governed by AS 45.09 or other law, as against a person other than the issuer, transferee beneficiary, or nominated person.

Section 17. AS 45.05.115. Limits how long a person has to bring an action in court to enforce a right or obligation under this chapter. Limits the time to the later of (1) one year after the expiration date of the letter of credit, or (2) one year after the basis for the action occurs. States that a basis for the action arises when there is a breach (of an obligation) under this chapter, even if the injured party does not know about the breach.

Section 18. AS 45.05.116(a). States that the liability of an issuer, a nominated person, or an adviser is governed by the jurisdiction that the parties choose by agreement if the agreement is in the form of a record signed or otherwise shown to be authentic by the parties under AS 45.05.104 or by a provision in the letter of credit, confirmation, or other undertaking. States that the selected jurisdiction is not required to be related to the transaction involved.

AS 45.05.116(b). States which jurisdiction governs the liability of certain listed persons for their acts or failure to act, unless (a) applies. States that the jurisdiction is the jurisdiction where the person is located. Considers the person to be located at the address stated in the person's promise. States that if more than one address is indicated, the person is considered to be located at the address from which the promise of the person was issued. When dealing with jurisdiction, selection of whose law to apply, and recognition of letters of credit between bank branches, but not a court judgment, the branches of a bank are considered to be separate juridical entities, and a bank is considered to be located where the bank's branch that is related to the matter is considered to be located under this subsection.

AS 45.05.116(c). States that, except as provided otherwise in this subsection, the liability of certain listed persons is governed by rules of custom or practice that the parties expressly select for the letter of credit or confirmation, or undertaking. Gives as an example the Uniform Customs and Practice for Documentary Credits. States that if both this chapter and the rules of custom or practice apply to the liability, the rules govern, unless they conflict with a provision of this chapter that cannot be changed (see AS 45.05.103(c)).

AS 45.05.116(d). States that this chapter governs if a conflict occurs between this chapter and AS 45.03 (UCC: negotiable instruments), AS 45.04 (UCC: bank deposits and collections), AS 45.09 (UCC: secured transactions), and AS 45.14 (UCC: funds transfers).

AS 45.05.116(e). States that the location for settling disputes under this chapter may be chosen in the same manner as the governing law is chosen under (a), and that the selection has the same binding effect.

Section 19. AS 45.05.117(a). States that an issuer who honors a letter of credit is subrogated to the rights of (is substituted for and can claim the rights of) certain listed

Representative Norman Rokeberg, Chair
House Labor and Commerce Committee
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persons. The first person is the beneficiary, and the substitution is the same as if the issuer were a back-up debtor on the underlying obligation owed to the beneficiary. The second person is the person who requested the issuer to issue a letter of credit and the subrogation is to the same extent as if the issuer were the back-up debtor on the obligation owed to the applicant.

AS 45.05.117(b). States that an applicant that reimburses an issuer is subrogated to the rights of (is substituted for and can claim the rights of) certain listed persons. The subrogation is to the same extent as if the applicant were the secondary debtor on the obligation owed to the issuer, and the applicant has the subrogation rights of the issuer to the rights of the beneficiary stated in (a).

AS 45.05.117(c). States that a nominated person who pays or gives value against a draft (check) or demand presented under a letter of credit is subrogated to the rights of (is substituted for and can claim the rights of) certain listed parties.

AS 45.05.117(d). States that the right of subrogation in (a) and (b) don't arise until the issuer honors the letter of credit or otherwise pays under the letter of credit. States that the rights of subrogation in (c) don't arise until the nominated person pays or otherwise gives value under the letter of credit. These provisions apply even if there is an agreement that states otherwise. Until the events occur, the persons do not obtain under this section any present or future rights that would form the basis for a claim, defense, or excuse.

Section 20. AS 45.09.103(a). This amendment adds "rights to proceeds of written letters of credit" to the items that are covered by this subsection. The subsection deals with determining which jurisdiction's law applies when perfecting (making effective) secured transactions (agreements where one party transfers an interest in property to secure a contract), and what happens when collateral that is subject to a perfected security interest in another jurisdiction is brought into and kept in this state.

Section 21. AS 45.09.104. States that AS 45.09 (UCC: secured transactions) does not apply to the transfer of an interest in a letter of credit, except for the rights to proceeds of a written letter of credit.

Section 22. AS 45.09.105(c). Adds two definitions to the definitions that apply in AS 45.09 (UCC: secured transactions): "letter of credit" and "proceeds of a letter of credit."

Section 23. AS 45.09.106. Adds "rights to proceeds of written letters of credit" to the definition of "general intangibles" that is used in AS 45.09 (UCC: secured transactions).

Section 24. AS 45.09.304(a). States that to perfect (make effective) a security interest (interest given to a person to secure performance of a contract) in the rights to proceeds of a written letter of credit, the party that is secured must take possession of the letter of credit.

Representative Norman Rokeberg, Chair
House Labor and Commerce Committee
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Section 25. AS 45.09.305. Allows a person to obtain an interest that secures performance of an obligation in the "rights to proceeds of a written letter of credit" by taking possession of the letter of credit.

Section 26. Subsection (a) states that this Act applies to a letter of credit that is issued on or after the effective date of this Act. States that this Act does not apply to a transaction, event, obligation, or duty that is associated with a letter of credit issued before the effective date of this Act.

Subsection (b) states that a transaction associated with a letter of credit issued before the effective date of this Act, and the accompanying rights, obligations, and interests are governed by current law as if this Act had not occurred.

Section 27. Makes the Act effective January 1, 2000.

TLB:glc
99-066.glc

A Few Facts About UCC ARTICLE 5 - LETTERS OF CREDIT

PURPOSE: Letters of Credit are used to obtain payment as a backup to other kinds of credit extension; they are very important in international trade. In the revisions there is explicit recognition of standards of practice, so that standards such as the Uniform Customs and Practices for Documentary Credits can govern many of the particulars of letters of credit. Prior ambiguities with the concept of fraud in the transaction are clarified. Damages for a dishonored or repudiated letter of credit are limited to amount of the document plus incidental damages. Consequential damages are not permitted. Article 5 becomes much simpler and less detailed because of the explicit reliance upon standards of practice. Article 5 continues to provide rules that can be waived or modified by agreement between the parties.

ORIGIN: Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1995.

ENDORSED BY: American Bar Association

STATE ADOPTIONS:	Alabama	Mississippi
	Arizona	Missouri
	Arkansas	Montana
	California	Nebraska
	Colorado	Nevada
	Connecticut	New Hampshire
	Delaware	New Jersey
	District of Columbia	New Mexico
	Hawaii	North Dakota
	Idaho	Ohio
	Illinois	Oklahoma
	Indiana	Oregon
	Iowa	South Dakota
	Kansas	Tennessee
	Maine	Utah
	Maryland	Vermont
	Massachusetts	Virginia
	Michigan	Washington
	Minnesota	West Virginia
		Wyoming

1999
INTRODUCTIONS: Texas

For any further information about UCC Article 5, Letters of Credit, please contact John McCabe or Katie Robinson at 312-915-0195.

(1/15/99)

(Please note: This information can also be found on our Web Site at www.nccusl.org)

UCC ARTICLE 5

UCC ARTICLE 5 - LETTERS OF CREDIT

- NCCUSL

WHAT: Modernizes and clarifies our country's principal law dealing with letters of credit.

WHY: Our present law was drafted almost 40 years ago. It is outmoded and no longer reflects commercial practice.

New legal issues have developed which are resolved by the new law.

Revised Article 5 also conforms our law with international law and practice, which facilitates international trade.

Finally, the use of letters of credit has expanded enormously in the past decade or two. They are now used in many large domestic commercial transactions.

WHEN: Now.

Revised Article 5 has been approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

American Bar Association approval is anticipated in due course.

The final text of revised Article 5 is available now.

HOW: Introduction is anticipated this year or next year in about 20 states, including major money center states such as New York, California and Illinois.

States which do not adopt revised Article 5 will find themselves behind the rest of the country and the rest of the world.

WHO: Drafted ^{by the NCCUSL} with the active participation of advisors from national and international businesses, banks, bar associations and government agencies.

Professor James J. White, co-author of the White & Summers treatise on the Uniform Commercial Code, was the reporter.

WHY STATES SHOULD ADOPT UCC ARTICLE 5 – LETTERS OF CREDIT

—NCCUSL

The revision to Article 5 of the Uniform Commercial Code – Letters of Credit – updates the law governing the \$200 billion U.S. letter of credit industry. Banks, and occasionally other persons, issue letters of credit to better assure payment to a third party by a customer up to a stated amount, for a stated period of time. Half of all exports outside the U.S. are financed by letters of credit.

Since the 1950s when this article was originally promulgated, the practices and technologies employed with letters of credit have changed substantially, including the use of electronic and computer technology. Litigation has increased as the volume of credits and the uncertainties of the law have stimulated controversies. Thus revision to UCC5 is both appropriate and timely.

There are a number of reasons why every state should adopt revised UCC Article 5:

- **LETTERS OF CREDIT ARE IMPORTANT** – Letters of credit are very important in international trade. It has become a common method of guaranteeing and obtaining payment. The use of letters of credit has increased in recent years as foreign trade has expanded and increased. The law which regulates letters of credit – UCC Article 5 – is obviously an important component to expansion of foreign trade.
- **UCC5 RECOGNIZES THE UCP 500** – UCC5 recognizes the Uniform Customs and Practices for Documentary Credits (UCP 500), which is used in most international letters of credit. The UCP 500 was promulgated by the International Chamber of Commerce and provides operational rules and standards that have international acceptance.
- **STANDARDS OF PRACTICE ARE RECOGNIZED** – Revised UCC5 specifically includes the most commonly used standards of practice. The revision coordinates with current standards of practice by including: deferred payment obligations, reasonable time to examine documents, preclusion, and the return of documents.

• UCCS IS MODERNIZED – Original UCCS in many ways is out of touch with current practice and major gaps cause unnecessary litigation. The revised UCCS authorizes the use of electronic technology; expressly permits deferred payment letters of credit and two-party letters of credit; provides rules for unstated expiration dates and "perpetual" letters of credit; and conforms to existing practice for assignment of proceeds.

• UNIFORMITY – It is important that U.S. law regarding letters of credit be in accord with international rules and practices, but since letters of credit are a major instrument in domestic transactions as well, both international and domestic trade requires uniformity of law. These rules should be consistent within the United States.

• CONCLUSION – The revised UCC Article 5 is a significant improvement over current provisions, and will lessen litigation, clarify matters which had been disputed, and encourage sound practices, promoting international trade. For all of these reasons, UCCS should be adopted by all states as soon as possible.

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January 27, 1999

JAN 27 1999

The Honorable Norman Rokeberg, Chair
House Labor and Commerce Committee
Alaska State Legislature
Room 24, State Capitol
Juneau, Alaska 99801-1182

HAND DELIVERED

Re: Uniform Commercial Code, Revision of Article 5 -- Letters of Credit
(Last Legislature's HB 178)

Dear Representative Rokeberg:

As I discussed with your assistant, Janet Seitz, yesterday, last legislature's HB 178 appears ready for re-introduction this session. At her request, you will find attached a "sponsor statement" for the bill. I will not go into the bill here, other than to say that it is basically an update of the law governing the \$200 billion U.S. letter-of-credit industry.

Also attached are three information sheets (one of which is two-sided) provided by the NCCUSL. As usual, I would be happy to provide any additional information that you may need. As you know, however, in Alaska's Uniform Laws delegation, Jerry Kurtz is the one with the most expertise in this area. He can be reached in Anchorage at 276-6100.

Since the bill passed the House unanimously last year, and, despite the lack of opposition, inexplicably got stuck in the Senate Judiciary Committee, I trust that it will pass this year. Thanks again for your support and your work on it.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

The Honorable Norman Rokeberg, Chair
January 27, 1999

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AHP:dv

Enclosures (4)

cc w/encl: Rest of Alaska's ULC Delegation:
Honorable Jay A. Rabinowitz
W. Grant Callow, Esq.
Tamara Brandt Cook, Esq.
L. S. Kurtz, Jr., Esq.
Deborah E. Behr, Esq.

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February 22, 1999

Hon. Norman Rokeberg, Chair
House Labor & Commerce Committee
Alaska State Legislature
ATTN: Janet Seitz
Room 24, State Capitol
Juneau, Alaska 99801-1182

HAND-DELIVERED

Re: HB 79, Revision of UCC, Article 5 (Letters of Credit)
-- support

Dear Rep. Rokeberg:


I understand that HB 79 is scheduled for a hearing before your committee this Friday, February 26. Unfortunately, I will be in Anchorage on business that day and cannot attend your hearing.

However, I wanted to repeat my strong SUPPORT for this bill, and I urge your committee to act on it favorably, with a "Do Pass" recommendation.

This bill presents a necessary piece in the ongoing efforts of the National Conference of Commissioners on Uniform State Laws to keep the Uniform Commercial Code up to date. It resolves issues pertaining to modern technology, current business practices, and the interpretation of the decades-old existing law. It is described more specifically in the sponsor statement and attached materials that I provided you with my January 27, 1999 letter.

Thank you.

Yours truly,


Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Rest of Alaska's ULC Delegation:
Jay A. Rabinowitz
W. Grant Callow
Tamara Brandt Cook
L. S. (Jerry) Kurtz, Jr.
Deborah E. Behr

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 19, 1999

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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P.O. BOX 110300-DIAMOND COURT HI
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-6735

Honorable Norman Rokeberg
Chair
House Labor & Commerce Committee
State Capitol, Rm 24
Juneau, AK 99801-1182

FEB 19 1999

Re: HB 79 - UCC: Letters of Credit

Dear Representative Rokeberg:

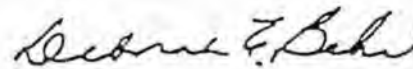
HB 79 (UCC: Letters of Credit) is presently before the House Labor and Commerce Committee. The bill was developed by the National Conference of Commissioners on Uniform State Laws after many years of study and consideration. The bill is important to provide a good business climate for interstate business transactions concerning letters of credit.

If you have questions, please contact me at 465-2122.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Deborah E. Behr
Assistant Attorney General

DEB:jf

cc: Pat Pourchot, Legislative Dir.
Office of the Governor

Chrystal Smith, Legislative Contact
Dept. of Law

All Alaska Uniform Law Commissioners

Vince Usara
Mary Ellen Beardsley
Assistant Attorneys General
Juneau/Anchorage

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Facsimile (907) 277-9896

April 26, 1999

Rep. Joe Green
Alaska House of Representatives
Room 214, State Capitol
Juneau, Alaska 99801-11182

Re: HB 79 (Uniform Commercial Code, art. 5 - letters of credit)

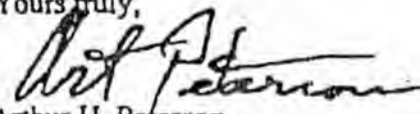
Dear Rep. Green:

With regard to your question about New York and Texas at the April 12 House Judiciary Committee hearing on this bill, you will find attached a copy of the April 21, 1999 Fact Sheet from the National Conference of Commissioners on Uniform State Laws and the April 23, 1999 e-mail message from NCCUSL Legislative Director and Legal counsel John McCabo to me.

The former shows 40 enactments (including Texas, about which you asked) and four pending introductions (including Alaska). The latter explains the New York approach, and shows that that state will be coming along soon.

I trust that this information helps with your support of the bill.

Yours truly,


Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc w/cncs.: Rep. Norman Rokeberg, Chair, Hse. Labor & Commerce Com.
Rep. Pete Kott, Chair, Hse. Judiciary Committee
Rep. Lisa Murkowski
Rep. Eric Croft
Rep. Beth Kerttula
Rest of Alaska's Uniform Laws Delegation

A Few Facts About
UCC ARTICLE 5 - LETTERS OF CREDIT

PURPOSE: Letters of Credit are used to obtain payment as a backup to other kinds of credit extension; they are very important in international trade. In the revisions there is explicit recognition of standards of practice, so that standards such as the Uniform Customs and Practices for Documentary Credits can govern many of the particulars of letters of credit. Prior ambiguities with the concept of fraud in the transaction are clarified. Damages for a dishonored or repudiated letter of credit are limited to amount of the document plus incidental damages. Consequential damages are not permitted. Article 5 becomes much simpler and less detailed because of the explicit reliance upon standards of practice. Article 5 continues to provide rules that can be waived or modified by agreement between the parties.

ORIGIN: Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1995.

ENDORSED BY: American Bar Association

STATE ADOPTIONS:

Alabama	Mississippi
Arizona	Missouri
Arkansas	Montana
California	Nebraska
Colorado	Nevada
Connecticut	New Hampshire
Delaware	New Jersey
District of Columbia	New Mexico
Hawaii	North Dakota
Idaho	Ohio
Illinois	Oklahoma
Indiana	Oregon
Iowa	South Dakota
Kansas	Tennessee
Maine	Texas *
Maryland	Utah
Massachusetts	Vermont
Michigan	Virginia
Minnesota	Washington
	West Virginia
	Wyoming

40

1999 INTRODUCTIONS:

Alaska	North Carolina
Florida	Pennsylvania

For any further information about UCC Article 5, Letters of Credit, please contact John McCabe or Katie Robinson at 312-913-0195.

* 1990 Amendment

(421-99)

(Please note: This information can also be found on our Web Site at www.nccu.edu)

Art Peterson 586-4000

From: John M. McCabe
Sent: Friday, April 23, 1998 6:50 AM
To: art@dillonfindley.com
Subject: Article 5 in New York

Dear Art:

Uniform Commercial Code Article 5 is slowly moving towards consideration in the New York Legislature. The Legislature requires a report from the New York Law Revision Commission. That report is done, and is very favorable. In the past, the New York Legislature has refused to handle more than one UCC bill in any legislative year. New York has not adopted Revised Article 3 and the Article 4 Amendments, and that may have to precede consideration of Article 5. However, the New York Department of State is now managing the UCC bills, and is trying to establish an improved schedule for legislative consideration of UCC revisions. This bodes well for all the UCC revisions, including Article 5, because it is the first time that the executive branch in New York has taken a serious interest in the UCC. But it is not clear that putting these bills on the Governor's agenda will accelerate consideration of Article 5 that much.

The New York Law Revision report is very favorable, as I indicated. The New York State Bar Association just voted to support Article 5 a couple of weeks ago. We are very certain of City Bar of New York support. The banks support Article 5. I am told that New York banks are making letters of credit subject to the law of states with Revised Article 5, a practice that is causing some embarrassment in Albany. I know of no opposition in New York. The bill will get favorable consideration, given all of these factors. It is just a matter of clearing all of the procedural requirements that the Legislature imposes on UCC bills.

Thanks for your kind attention.

John M. McCabe
Legal Counsel/Legislative Director
NCCUSL

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 3, 1999

Honorable Jerry Mackie
Chair
Senate Labor and Commerce Committee
State Capitol, Rm 427
Juneau, AK 99801-1182

MAY 03 1999

Re: HB 79 - UCC: Letters of Credit

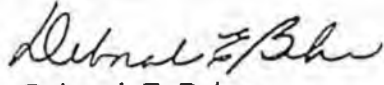
Dear Senator Mackie:

HB 79 (UCC: Letters of Credit) is presently before the Senate Labor and Commerce Committee. The bill was developed by the National Conference of Commissioners on Uniform State Laws after many years of study and consideration. The bill is important to provide a good business climate for interstate business transactions concerning letters of credit.

If you have questions, please contact me at 465-2122.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:jf

cc: Hon. Norman Rokeberg, Chair
House Labor & Commerce Committee

Pat Pourchot, Legislative Dir.
Office of the Governor

Chrystal Smith, Legislative Contact
Dept. of Law

All Alaska Uniform Law Commissioners

Vince Usera
Mary Ellen Beardsley
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TONY KNOWLES, GOVERNOR

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JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

HB

82

*Removes all P.I.
deletes Mediator*

1-LS0398N
Ford
5/13/99

*adopted
modified
amended*

SENATE CS FOR CS FOR HOUSE BILL NO. 82()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG, Dyson, Halcro, Harris

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain claims arising out of or in connection with the year
2 2000 date change; amending Rule 23, Alaska Rules of Civil Procedure; and
3 providing for an effective date."

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

5 * Section 1. FINDINGS AND INTENT. (a) The legislature finds that

6 (1) the majority of responsible business enterprises in Alaska are committed
7 to working in cooperation with their contracting partners towards the timely and cost-effective
8 resolution of the many technological, business, and legal issues associated with the year 2000
9 date change;

10 (2) it is important to encourage businesses to concentrate their attention and
11 resources in the short time remaining before January 1, 2000, on addressing, assessing,
12 remediating, and testing their year 2000 date change problems, and to minimize any possible
13 business disruptions associated with year 2000 date change issues;

14 (3) it is appropriate for the legislature to enact legislation to ensure that year

1 2000 date change problems do not unnecessarily disrupt state commerce or create unnecessary
2 caseloads in the courts and to provide initiatives to help businesses prepare and be in a
3 position to withstand the potentially devastating economic affect of the year 2000 date change;

4 (4) year 2000 date change issues potentially affect practically all business
5 enterprises to at least some degree, possibly giving rise to a large number of disputes;

6 (5) resorting to the legal system for resolution of year 2000 date change
7 problems is not feasible for many businesses, particularly small businesses, because of the
8 complexity and expense of pursuing resolution through the legal system;

9 (6) the delays, expense, uncertainties, loss of control, adverse publicity, and
10 animosities that frequently accompany litigation of business disputes can only exacerbate the
11 difficulties associated with the year 2000 date change and work against the successful
12 resolution of those difficulties.

13 (b) It is the intent of the legislature that

14 (1) this Act encourage businesses to approach their year 2000 date change
15 disputes responsibly and to avoid unnecessary, time-consuming, and costly litigation about
16 year 2000 date change related failures, particularly those that are not material;

17 (2) good faith negotiations occur between parties when there is a dispute over
18 a year 2000 date change problem;

19 (3) in resolving year 2000 date change related disputes, the parties rely on a
20 valid and enforceable contract, and that the provisions of this Act are inapplicable when a
21 provision would supersede, intervene, or change a contractual obligation or provision;

22 (4) if a party is unsuccessful in asserting the year 2000 date change defenses
23 created in this Act, nothing in this Act would preclude a court or jury from awarding
24 compensatory or punitive damages as provided by law;

25 (5) if a party to a contract uses reasonable care to prevent or remedy year 2000
26 date change damages, the party not be liable for most civil damages resulting from the year
27 2000 date change.

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

29 **Sec. 09.65.260. Claims against persons engaged in business arising out of**
30 **or in connection with the year 2000 date change.** (a) In a civil action based on a
31 contract, a business or a member of the board of directors of a business is not liable

Compliance Program

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for damages arising from the year 2000 date change and caused directly or indirectly by a failure of an electronic computing device used in the business if the business shows by a preponderance of the evidence that

(1) the business made substantial efforts to avoid the damages claimed in the civil action, such as

(A) inventorying the electronic computing devices used by the business that may experience year 2000 date change failures;

(B) identifying critical electronic computing devices necessary to conduct the operations of the business;

(C) identifying the potential for year 2000 date change failures associated with electronic computing devices used by the business;

(D) preparing a plan to reprogram, fix, repair, replace, or otherwise remedy the electronic computing devices necessary to avert failure resulting from the year 2000 date change;

(E) complying with generally accepted practices of a business sector related to the year 2000 date change, including testing information systems for compliance with the year 2000 date change; and

(F) developing contingency plans in the event of an electronic computing device failure; or

(2) the business used reasonable care to prevent or remedy damages arising from the year 2000 date change and caused directly or indirectly by a failure of an electronic computing device.

(b) The defense in (a) of this section may not be asserted by a business that develops or manufactures software, firmware, microcode, hardware, or embedded microchips that create, read, write, calculate, compare, sequence, or otherwise process data that consists of dates, times, or both dates and time if the business represented that the software, firmware, microcode, hardware, or microchips were year 2000 date change compliant. This subsection does not apply to a business that only sells, rents, or leases software, firmware, microcode, or hardware that is developed or manufactured by another person.

(c) In a civil action based on a contract against a business, or member of the

1 board of directors of a business, for damages arising from the year 2000 date change
 2 and caused directly or indirectly by a failure of an electronic computing device used
 3 in the business may not be brought as a class action unless ~~each~~ member of the class
 4 has a claim for economic loss ~~that~~ exceeds \$25,000 ~~(150,000)~~.

5 (d) In a civil action based on a contract against a business, or member of the
 6 board of directors of a business, for damages arising from the year 2000 date change
 7 and caused directly or indirectly by a failure of an electronic computing device used
 8 in the business,

9 (1) damages may not be awarded for noneconomic losses if the party
 10 bringing the claim is unable to prove by a preponderance of the evidence that the party
 11 defending the claim knew, or should have known, that the failure of the electronic
 12 computing device would cause the damages claimed in the civil action;

13 (2) the civil action may not proceed to trial until the person bringing
 14 the action *if appropriate: if able to do so*

15 (A) provides ~~written~~ *mechanism which contains an* notice to the business that describes the
 16 failure of the electronic computing device arising from the year 2000 date
 17 change; and

18 (B) gives the business the opportunity to fix the problem,
 19 including reasonable access to electronic computing devices or software
 20 affected by the failure described under (A) of this paragraph;

21 (3) ~~a~~ *provision* of this section that conflicts with ~~a~~ *provision* contained
 22 in a valid and enforceable contract between the parties to the civil action may not be
 23 applied in that civil action.

24 (e) This section does not apply to a civil action against a business, or a
 25 member of the board of directors of a business, for damages for personal injury or
 26 wrongful death arising from the year 2000 date change and caused directly or
 27 indirectly by a failure of an electronic computing device.

28 (f) In this section,

29 (1) "business" means a person or a for profit or a nonprofit entity
 30 engaged in a trade, service, profession, or activity with the goal of receiving a financial
 31 benefit in exchange for the provision of services, goods, or other property;

1 (2) "electronic computing device" includes any computer hardware or
2 software, a computer chip, an embedded chip, process control equipment, or other
3 information system that is used to capture, store, manipulate, or process data;

4 (3) "year 2000 date change" includes processing date or time data from,
5 into, and between the Twentieth and Twenty-First Centuries, and leap-year
6 calculations; in this paragraph, "processing" includes calculating, comparing,
7 sequencing, displaying, and storing.

8 * Sec. 3. AS 09.65.260 is repealed January 1, 2006.

9 * Sec. 4. AS 09.65.260(c), enacted by sec. 2 of this Act, has the effect of amending
10 Rule 23, Alaska Rules of Civil Procedure, by requiring, in a class action relating to the year
11 2000 date change, that ^{the aggregate claim of all} ~~each~~ members of the class ~~have a claim~~ for economic loss ~~that~~ exceeds
12 \$25,000. (150,000.)

13 * Sec. 5. APPLICABILITY. This Act applies to a cause of action arising from any failure
14 described in AS 09.65.260, enacted by sec. 2 of this Act, that accrues on or after the effective
15 date of this Act but before January 1, 2006.

16 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

*Ellis: Aggregate Claim
concern w/ court Rule*

*Junder Kitty Asap
est. 1000 mesdow (joil)*

FISCAL NOTE

No: 1

Bill Version: CSHB 82(L&C)

(H) Publish Date: 3/5/99

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date _____	Dept. Affected <u>Alaska Court System</u>
Title <u>Immunity from Y2K Claims</u>	BRU <u>Alaska Court System</u>
Sponsor <u>Rep. Rokeberg</u>	Component <u>Trial Courts</u>
Requester <u>House Labor & Commerce</u>	Component Serial No. <u>769</u>

Expenditures/Revenues (Thousands of Dollars)

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: None

POSITIONS

Full-time						
Part-time						
Temporary						

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

No fiscal impact

Prepared by: <u>Doug Wooliver, Administrative Attorney</u>	Phone: <u>264-8265</u>
Agency: <u>Alaska Court System</u>	Date/Time: <u>2/8/99 8:58 AM</u>
Approved by: <u>Stephanie J. Cole, Administrative Director</u>	Date: <u>2/8/99</u>
Agency: <u>Alaska Court System</u>	

FISCAL NOTE

Bill Version: CSHB 82 (L&C)

(H) Publish Date: 3/5/99

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title " ... relating to immunity for certain claims arising out of or in connection with the year 2000 date change; ..."	BRU	Civil Division
Sponsor Representative Rokeberg	Component	Governmental Affairs
Requester House Labor and Commerce Committee	Component Serial No.	2207/2214

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 82 provides immunity for claims against persons engaged in business arising out of or in connection with the year 2000 date change.

Enactment of this legislation will have no fiscal impact on the Department of Law.

Prepared by Joan M. Kassort *[Signature]*
 Division Attorney General's Office
 Approved by Commissioner Royce M. Boehlke, Attorney General *[Signature]*
 Agency Department of Law

Phone 465-5370
 Date/Time 2/11/99, 9:20 AM
 Date 2/11/99

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ALASKA STATE LEGISLATURE

House of Representatives

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JUDICIARY COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON UTILITY RESTRUCTURING, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER



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FAX: (907) 269-0119

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

SPONSOR STATEMENT

CSHB 82 (JUD) am

An Act relating to immunity for certain claims arising out of or in connection with the year 2000 date change; amending Rule 23, Alaska Rules of Civil Procedure; and providing for an effective date.

CSHB 82 (JUD) am provides immunity for Alaskan businesses for certain claims arising out of or in connection with the year 2000 date change if such businesses made good faith efforts to correct the problem before it occurred.

The Year 2000 date change (commonly referred to as "Y2K" or "Millenium Bug") could have a tremendous impact on businesses in Alaska. A number of states have adopted or are considering laws in this arena. Governor Knowles has introduced legislation (HB 57) for consideration by the Alaska Legislature to provide immunity for claims arising out of Y2K situations for state and local governments. Other states and the US Congress are considering such measures, as well as measures protecting businesses. CSHB 82 (JUD) am would provide limited immunity for Alaskan businesses.

Across the United States and the world, businesses are facing exposure to lawsuits resulting from possible Y2K claims. Businesses in Alaska are no exception. There have been estimates that it will cost small businesses as much as \$450-600 per affected computer program to address the Y2K problem. Many businesses are making good faith efforts to address the problem but may not be able to fully solve the problem, particularly the issue of embedded chips.

Under CSHB 82 (JUD) am, a business would have the right to cure the Y2K problem before a lawsuit could be initiated. Additionally, the business would have to show by a preponderance of evidence that the business used good faith efforts to avoid the damages claimed in the civil act.

By offering this immunity, CS HB 82 (JUD) am will assist in encouraging small businesses to continue or begin to address the Y2K situation faced by that particular business.

Your support would be appreciated.

ED4:04/19/99

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

LABOR & COMMERCE COMMITTEE, CHAIRMAN
JUDICIARY COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON UTILITY RESTRUCTURING, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us



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FAX: (907) 269-0119

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 485-4988
FAX: (907) 485-2040

Representative Norman Rokeberg

SECTIONAL ANALYSIS

CSHB 82 (JUD) am

An Act relating to immunity for certain claims arising out of or in connection with the year 2000 date change, amending Rule 23, Alaska Rules of Civil Procedure; and providing for an effective date.

Prepared by: Representative Norman Rokeberg

Section 1: States the Findings and Intent of the Legislature with regard to Y2K, its potential impact on Alaska, and its potential impact on Alaskans and Alaskan businesses.

Section 2: 09.65.260 Adds new section concerning claims against persons engaged in business arising out of or in connection with the year 2000 date change.

- (a) Indicates that a business or member of board of director is not liable for damages arising from Y2K and caused by failure of an electronic computing device if the business shows by a preponderance of evidence that it made substantial efforts to avoid damages claimed in a civil action. The business must have used reasonable care to prevent or remedy damages.
- (b) Indicates that the defense in (a) cannot be asserted by a business that develops or manufacturers certain computer items but does not apply to a business that only sells, rents or leases software, firmware, microcode, or hardware developed by another person.
- (c) Provides that class actions may not be brought unless each member of the class has a claim for economic loss exceeding \$25,000.
- (d) Provides that in civil actions against business or board of directors (1) damages may not be awarded for noneconomic losses if the party defending can prove by a preponderance of evidence that it acted in good faith and took reasonable measures or the party bringing the claim is unable to prove by

- (e) clear and convincing evidence that the party defending the claim, knew or should have known that the failure of the electronic computing device would cause damages.

Further provides that a civil action may not proceed until the person bringing the action notifies the business, in writing, and give the business an opportunity to fix the problem.

Requires mediation unless all parties agree to waive medication.

If a provision of this law is contrary to one obtained in a valid and enforceable contract, the contract language prevails.

- (l) Definitions section.

Section 3: Repeals this statute effective January 1, 2006.

Section 4: States that the class action limitations in the bill would change Rule 23, Alaska Rules of Civil Procedure.

Section 5: Applicability.

Section 6: Effective Date: Immediate.

ED4:04/19/99

NFIB Alaska



National Federation of Independent Business

Statement of Support

of HB 82

**An Act relating to immunity for certain claims arising out of the year
2000 date change**

February 10, 1999

The Alaska Chapter of the National Federation of Independent Business has 3,000 members, making it the largest small-business advocacy group in the state.

The legislative agenda of NFIB is determined by ballot. The October 1998 national member ballot included a question on limiting liability in law suits against small business over Y2K problems. Seventy-three percent of the members voted in favor of liability protection.

Other Alaska legislation has been introduced that provides immunity for the state and municipalities for failures caused directly or indirectly by the year 2000 date change. HB 82 extends that immunity to private business as well.

The Y2K problem is very real and everyone must work together in its solution. NFIB believes that public and private entities that make legitimate efforts to address the Year 2000 problem should be removed from any legal liability that may arise from unintended Y2K failures.

NFIB/Alaska urges support for HB 82.

Submitted by Thyas Shaub on behalf of NFIB/Alaska.

LETTERS OF SUPPORT

National Federation of Independent Business

217 Second Street, Suite 206 • Juneau, AK 99801 • 907-463-5118 • Fax 907-463-5128



ALASKA STATE CHAMBER OF COMMERCE

Position 99 - 23

Year 2000 Legal Liability Protection

FEB 08 1999

ASCC urges the Legislature to adopt legislation limiting the liability of businesses and state and local government entities that make good faith efforts to be Year 2000 compliant.

Rationale:

As the millennium rapidly approaches, all business and government entities should be devoting great effort and time to ascertain that their computer systems achieve Year 2000 compliance. Although if a major supplier or customer is not Y2K compliant, a business may still be in serious trouble on January 1, 2000. The American Bar Association has predicted that there could be up to \$1 trillion in lawsuits over Y2K compliance and an incorrect date being produced or calculated by a computer.

Several other states already have or are in the process of introducing legislation providing for the legal protection of business and government entities, which make good faith efforts to be Y2K compliant. Federal law (S2392) was passed in 1998 to encourage businesses to voluntarily share information, strategies, solutions and tools, but provides only a limited safe harbor from lawsuits for certain "Year 2000 Readiness Disclosures. Additional protection is needed.

Alaska State law should provide for the free flow of information regarding Y2K readiness by protecting information generated for self examination. This bill could exclude individuals or businesses who knowingly provide information or solutions that are material and are false and misleading. This law should restrict Y2K class action suits after January 1, 2000 unless each member of a class has suffered at least \$50,000 in damages. It should require privacy of contract, so that only parties to a contract can sue. It should provide for damage award limitations for non-economic losses and no damages for emotional "pain and suffering" Y2K injuries. Moreover, under this new law directors of a corporation could not be individually sued over Y2K, and the loser of a Y2K suit would have to pay all costs.

One does not have to be a large business or a state government to be concerned with Year 2000 compliance. Many small businesses and local governments may find some of their important computer software rendered useless as the year 2000 begins. The high risk of Y2K lawsuits for cases not involving personal injury or serious physical damages makes preparing for the Millennium more difficult. An Alaska State law should provide a clear understanding of potential liability and reasonable limitations on Y2K lawsuits.

ADOPTED

December 4, 1998

BY Pamela LaBolle
Pamela La Bolle
President

BY Peter Leathard
Peter Leathard
Chairman



Anchorage • Star of the North
Chamber of Commerce

In Support of State of Alaska Limiting Y2K Liability
Resolution 98/99-11

WHEREAS, the Year 2000 deadline is fixed and immovable; and
WHEREAS, much effort is underway to minimize, mitigate, or make contingency plans for the impact of Year 2000 date related problems in computer systems and electronic equipment; and

WHEREAS, despite due diligence in preparing for the year 2000, it is impossible to predict and plan for every possible problem; and

WHEREAS, legal specialists are preparing for and predicting a substantial amount of litigation from post Year 2000 rollover failures and related activities; and

WHEREAS, insurance companies are excluding Year 2000 liability coverage from insurance policies, because it is an unknown and unquantifiable risk; and

WHEREAS, businesses need to focus on remediating and preparing for Year 2000 problems, rather than working out how to defend against Year 2000 litigation;

NOW THEREFORE BE IT RESOLVED that the Anchorage Chamber of Commerce urges the Legislature to take all actions necessary to provide a framework of legal protection against excessive and unnecessary lawsuits relating to the Year 2000 issue; and

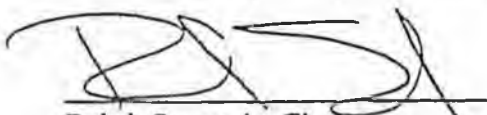
BE IT FURTHER RESOLVED that the Anchorage Chamber of Commerce supports legislation which will limit the liability of a business for damages arising from the Year 2000 date change, provided that the business can demonstrate due diligence in addressing the date change issue; and

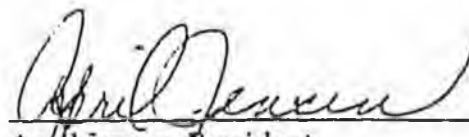
BE IT FURTHER RESOLVED that this resolution by the Anchorage Chamber of Commerce supports legislation which limits Year 2000 liability and contains specific definitions of what a business needs to do in order to demonstrate due diligence in preparation for the Year 2000. This would greatly simplify any legal determination of due diligence; and

BE IT FURTHER RESOLVED that this resolution by the Anchorage Chamber of Commerce supports legislation which limits Year 2000 liability and contains wording to insure that businesses will not use this legislation as a means of circumventing their legal obligations under contract law; and

BE IT FURTHER RESOLVED that copies of this resolution be forwarded to the Governor, the State Chamber of Commerce, and each Legislative member.

Approved this 2nd day of April 1999.


Ralph Samuels, Chair


April Jensen, President

Subject: Support for HB 82

Date: Wed, 24 Mar 1999 09:55:23 -0900

From: Jim Rogers <jrogers@resdat.com>

To: "Representative_Norman_Rokeberg@legis.state.ak.us" <Representative_Norman_Rokeberg@le

Hello,

I would like to express my support for House Bill 82 to limit the litigation which will follow regarding Year 2000 issues. As an owner of an Alaskan software development company, I have had great concern about this, and we have even limited our involvement in helping firms resolve their year 2000 issues due to potential liability.

With a law like this in place, we would be more willing to work with firms to solve problems in areas where the potential for major problems exists, which is actually where our help is needed the most.

Jim Rogers
President, Resource Data, Inc.

jrogers@resdat.com

Resource Data Inc.

1205 E. Intl. Airport Road
Anchorage, AK 99518-1409

Phone: (907) 563-8100 x17
Fax: (907) 561-0159

<http://www.resdat.com>



March 24, 1999

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

MAR 24 1999

Dear Representative Rokeberg:

I am writing to you to let you know I am in favor of moving HB 82 through the legislative process and into law. I am the president of Network Business Systems (NBS), which is one of Alaska's largest computer networking firms. I testified in favor of the bill during a hearing Representative Rokeberg held recently. I believe HB 82 is important to Alaskan businesses and the Alaskan economy.

Insurance people I have spoken with say there is going to be very limited insurance coverage for this situation if there is any at all. This is because this event is unprecedented and it is difficult or conceivably impossible to do a risk assessment, which can then be used to create insurance products. My insurance agent has told me that it is impossible for me to get any Errors and Omissions insurance to cover NBS for Year 2000 (Y2K) problems.

People in my industry estimate that the cost to mitigate the Y2K problems in the US is somewhere around \$600 million. The latest estimates for litigating this issue are running at over a \$one trillion. My company is involved in fixing the Y2K problem. I feel like I have a target on my back simply because I am doing my level best to help our customers get through this dilemma by working to solve their Y2K problems.

If there is anything I can do to help you become more educated on this issue or if you need any testimony supporting the bill, please let me know so I can help and support you as the bill moves through your committee.

In addition to the information on my letterhead, you can reach me via email at the following address:
scott@nbsys.com

Sincerely,

A handwritten signature in black ink, appearing to read "S. Thorson".

Scott Thorson
President

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CONTENTS

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Updated: Wednesday, Jan. 20, 1999 at 10:00 CST

Another Y2K pest: Lawsuits

By Aaron Zitner

c.1999 The Boston Globe

WASHINGTON -- Businesses are spending billions of dollars to fix the so-called Y2K bug. Now comes another threat that might be equally expensive: Y2K lawsuits.

Accusing trial lawyers of gearing up to sue over computer failures next year, business lobbyists say one of their top priorities this year is to persuade Congress to block some of those lawsuits.

The heavily hyped Y2K computer bug could cause deliveries to be late, accounting systems to go awry, assembly lines to stall, payments to be misdirected, and any number of other problems, which in turn might lead to lawsuits between companies or by shareholders.

More than 20 cases have already been filed, including one in Massachusetts, according to a tally by the Information Technology Association of America, a trade group based in Arlington, Va. Trial lawyers have already conducted seminars on how to file Y2K lawsuits, said Thomas Donohue, president of the US Chamber of Commerce.

Now, the chamber and its allies are seeking legislation that would limit punitive damages in Y2K cases and require Y2K-related disputes to go to arbitration or to special courts.

Republican Senators John McCain of Arizona and Slade Gorton of Washington last week said they intended to introduce legislation to curb "unnecessary litigation" resulting from Y2K computer glitches. The senators said they were still working on the details of their proposal.

The Y2K bug, also known as the year 2000 bug or the millennium bug, arises from the longstanding practice by software writers of referring to a year by only its last two digits. That has not been a problem when software used "87," for example, to refer to 1987. But unless modified, much software now in use may interpret the digits 00 to mean 1900 instead of the year 2000.

American corporations have been spending heavily to make sure their computers will keep operating come Jan. 1, 2000, and most experts say widespread disruptions are unlikely. But sporadic problems are inevitable, experts add, and that's where the potential for litigation arises.

The effort to head off Y2K lawsuits will likely set businesses against trial lawyers. The two sides have often clashed as business groups promote limits on "frivolous" shareholder lawsuits and various versions of tort reform, such as limits on lawsuits over defective products.

Leaders of the trial lawyers' bar have called some Y2K bills a form of tort reform that will unfairly deny plaintiffs their rights to sue. Others have said the estimates of damages to be sought in Y2K lawsuits are as

overblown as the scenarios of massive computer failure that will supposedly cripple the nation next year.

Business lobbyists and their allies are promoting Y2K liability limits by taking aim at the trial bar, saying that lawyers are preparing frivolous lawsuits even against businesses that make good-faith efforts to prepare for the year 2000.

"Without legislation, innocent people may be hurt by aggressive trial lawyers who use the Y2K situation not to help the public, but to enrich their own pockets," McCain said in a statement.

The trial bar is preparing to file lawsuits seeking between \$1 trillion and \$3 trillion, said Donohue of the US Chamber of Commerce. If his figures are right, lawyers will seek more money in damages than businesses will likely spend on fixing Y2K problems.

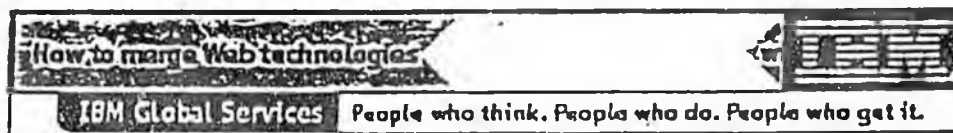
In the Massachusetts case, consulting giant Andersen Consulting sued retailer J. Baker Inc. of Canton in state court in August. The suit was an attempt by Andersen to show that it had met all of its contractual obligations when it installed a computer system in the early 1990s that might have been susceptible to Y2K problems.

At the time, Andersen said it took legal action after learning J. Baker had hired a law firm to seek reimbursement for the cost of the system. The case was settled in December following a nonbinding review by a mediator, with Andersen making no payment to J. Baker.

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Judicial group wants Y2K cases in state courts

By [Reuters](#)

Staff, CNET News.com

March 18, 1999, 9:30 a.m. PT

URL: http://www.news.com/News/Item/0_4_33955_00.html

The policy-making body for the federal judiciary voted to oppose legislation in Congress that would require federal judges to decide most of the lawsuits dealing with liability for Year 2000 computer problems.

The 27-member group specifically opposed provisions of bills in the House and Senate that would expand federal court jurisdiction over Y2K class-action lawsuits.

The group, chaired by Chief Justice William Rehnquist of the Supreme Court, warned in a news release that shifting the Y2K cases from state courts "holds the potential for overwhelming the federal courts, resulting in substantial costs and delays."

After concluding its biannual meeting, the judicial group added: "The proposed Y2K amendments are inconsistent with the objective of preserving the federal courts as tribunals of limited jurisdiction."

The group said the legislation would "deprive" the nation's judicial system of the contributions that state courts could make in handling Y2K litigation.

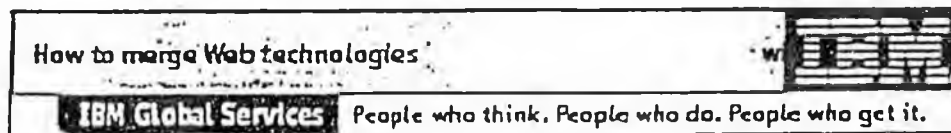
The millennium problem may occur because until recently most computers and their software only allocated two digits for the year in a date.

Unless computers are repaired or replaced, the year 2000 may be read as 1900, causing mistakes, or systems to crash, and prompting a flood of lawsuits seeking damages.

Big business has urged Congress to pass a bill that would limit the amount of damages anyone could collect because of a Y2K glitch. Other bills would limit the amount of money attorneys could collect in any lawsuits stemming from the millennium bug.

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HB

99

FISCAL NOTE

No: 1

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: HB 99
(H) Publish Date: 2/19/99

Revision Date: 2/3/99
Title: "An Act relating to sexual assault ..."

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

Sponsor: Rules
Requestor: Governor

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The bill creates a new class C felony and class A misdemeanor if a person employed in a correctional facility or prisoner placement or a legal guardian of a person in DHSS custody engages in sexual conduct with a person subject to that authority. Fiscal impact should be zero as predicted cases are few and public defender financial eligibility is unlikely.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Robert Poe Jr.
Agency: Department of Administration

Date: 2/3/99

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FISCAL NOTE

No: 2

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: HB 99

(H) Publish Date: 2/19/99

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to sexual assault and the BRU Administration and Operations
 definitions of 'sexual penetration' and 'legal guardian' is AS 11 Component All
 Sponsor Rules Committee
 Requester Governor Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

A zero fiscal note is provided as these types of assault are extremely rare.

Prepared by Bruce Richards Phone 465-3307
 Division Commissioner's Office Date/Time 2/16/99 5:01 PM
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date 2/16/99
 Agency Department of Corrections

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FISCAL NOTE

No: 3

STATE OF ALASKA
1999 LEGISLATIVE SESSION

B... Version: HB 99

(H) Publish Date: 2/19/99

Revision Date/Time (Note if correction): _____
 Title: Relating to Sexual conduct with a prisoner
or juvenile offender.
 Sponsor: Rules Committee by Request of the Governor
 Requestor: Governor

Dept. Affected: Health and Social Services
 BRU: Youth Corrections
 Component: Probation Services
 COMPONENT SERIAL NO. 2134
 See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

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

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY1999) cost: \$0.0

POSITIONS:

FULL-TIME	0				
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

This bill would have no fiscal impact on the department. Violations under this bill would be processed through the adult criminal system. Although department employees may need to be called as witnesses in an adult prosecution under this bill, this need is viewed as being extremely limited and rare. Any such occurrence would be met through the normal course of business and would not justify a separate budgetary allocation.

2/10/99
 Prepared by: George Buhite
 Division: Family & Youth Services
 Approved by Commissioner: Karen Perdue, Commissioner
 Agency: Department of Health & Social Services

Phone: 465-2212
 Date/Time: 2/10/99 11:27 AM

Date: 2/10/99

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FISCAL NOTE

No: 4

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: HB 99
(H) Publish Date: 2/19/99

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title "An Act relating to sexual assault and the definitions of 'sexual contact,' 'sexual penetration,' and ..."	BRU	Criminal Division
Sponsor Rules Committee	Component	1st-4th Judicial Districts: Special Prosecutions/Appeals
Requester Governor	Component Serial No.	2198/99/2261/79/01/03

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill makes it a crime for a person employed in a correctional facility or other placement for prisoners to engage in sexual conduct with a prisoner. The bill also makes it a crime for a legal guardian of a person 18 or 19 years of age who is in the custody of the Department of Health and Social Services to engage in sexual conduct with that person. The criminalization of this conduct is premised on the offender's abuse of authority over others.

This bill is not anticipated to have a fiscal impact on the Department of Law.

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner Kathleen *Kathleen* Attorney General
 Agency Department of Law

Phone 465-5370
 Date/Time 2/16/99, 12:16 PM
 Date 2/16/99

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FISCAL NOTE

Bill Version: HB 99

(H) Publish Date: 2/19/99

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date/ Title: Sex with Inmates
Dept. Affected: Public Safety
BRU
Component
Sponsor: Rules Committee
Requester: Governor
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Sandy Perry-Provost, Special Assistant
 Division: Office of the Commissioner
 Phone: 465 4322
 Date/Time: 2/17/99 11:53 AM
 Approved by: Commissioner Ronald L. Otte
 Agency: Department of Public Safety
 Date: 2-17-99

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TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB99
P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

February 18, 1998-1999

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

Dear Speaker ^{Brian} Porter:

I am transmitting today a bill making it a crime for a person employed in a correctional facility or other placement for prisoners to engage in sexual conduct with a prisoner. The bill also makes it a crime for a legal guardian of a person 18 or 19 years of age, who is in the custody of the Department of Health and Social Services (DHSS), to engage in sexual conduct with that person.

Alaska law currently prohibits persons in specific authoritative positions from engaging in sexual conduct with other persons subject to that authority. For example, employees who work in licensed care facilities are prohibited from engaging in sexual conduct with clients who are mentally incapable, incapacitated, or unaware a sexual act is being committed. The criminalization of this conduct is premised on the offender's abuse of authority over others. Those employed in correctional facilities or other placements designated by the commissioner of the Department of Corrections (DOC), and those who are a legal guardian of an 18- or 19-year old in the custody of the DHSS, have a similar position of authority over persons committed to the state's custody, and should not abuse their position by engaging in sexual conduct with the persons subject to that authority.

The bill provides that it is a class C felony for these persons in authority to engage in sexual penetration, and a class A misdemeanor to engage in sexual contact with a person subject to that authority. A defendant convicted of either offense would be required to register as a sex offender.

The Honorable Brian Porter

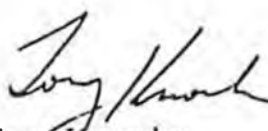
February 18, 1999

Page 2

The bill does not address conduct involving juveniles under the age of 18 who are committed to the legal custody of the DHSS, because that conduct is already illegal under Alaska law.

I urge your prompt and favorable consideration of this proposal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tony Knowles".

Tony Knowles
Governor

TONY KNOWLES, GOVERNOR

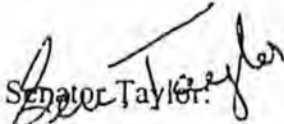
REPLY TO:

PO BOX 112000
JUNEAU, ALASKA 99811-2000
PHONE (907) 465-3376

DEPARTMENT OF CORRECTIONS

April 4, 2000

The Honorable Robin Taylor
Senate Judiciary Chairman
State Capitol
Juneau, Alaska 99801

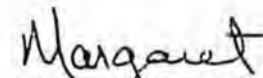
Dear  Senator Taylor:

I am respectfully requesting that House Bill 99 "An Act relating to sexual assault and the definitions of 'sexual contact,' 'sexual penetration,' and 'legal guardian' in AS 11" be scheduled for a hearing in the Senate Judiciary Committee.

House Bill 99 was passed from the House floor on April 4, 2000 and referred to Senate Judiciary on April 5, 2000. It has five zero fiscal notes.

If you have any questions, please feel free to give me a call.

Sincerely,



Margaret M. Pugh

Commissioner of Corrections

HB

135

FISCAL NOTE

No: 1

Bill Version: CSHE 135 (JUD)
 (H) Publish Date: 5/3/99

STATE OF ALASKA
 1999 LEGISLATIVE SESSION

Revision Date: 4/21/99
 Title: Police Use of Eavesdropping
 Sponsor: Representative Kott
 Requester: _____

Dept. Affected: Judiciary Committee
 BRU: _____
 Component: _____
 Component Serial No.: _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES []						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by Cory W. Winchell, Judiciary Committee Phone 465-4990

Phone _____

Date 4/21/99

SENATE COMMITTEE REPORT

DATE: 5/10/99

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 135(JUD) am

"An Act relating to use of eavesdropping and recording devices by peace officers."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>Keith Halford</i>	✓		
		<i>J. Ellis</i>	✓		
CHAIR: <i>Adrian T. Taylor</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

May 19, 1999

SUBJECT: Senate Action in Passing CSHB 135 (JUD) am

TO: Senator Robin Taylor
Attn: Sue

FROM: Gerald P. Luckhaupt *GPL*
Legislative Counsel

On May 18th, 1999, the Senate passed CSHB 135(JUD)am and returned the bill to the House. I have been informed that the Senate Judiciary Committee adopted an amendment to this bill; but the Committee inadvertently failed to request a SCS(JUD) to incorporate this amendment and the SCS(JUD) apparently was not read across on the Senate floor. The Senate subsequently passed the House CS(JUD) without anyone noticing that the House version of the bill had not been amended by the Senate. If the Senate now wishes to amend the bill to incorporate the amendment adopted by the Senate Judiciary Committee, the Senate must request the House to return CSHB 135(JUD)am to the Senate. If the House returns the bill to the Senate, the Senate would then be able to rescind their action in approving CSHB 135(JUD)am, return to second reading, and adopt the amendment that was offered before and adopted by the Senate Judiciary Committee.¹ The Senate would then pass the Senate amended bill out and return it to the House for concurrence in the Senate amendment.

If you have any questions, please contact me at your convenience.

GPL:lmb
99-090.lmb

¹Considering the lateness of hour, I recommend just adopting the amendment on the floor instead of trying to produce a SCS(JUD), having that read across, and then having the SCS(JUD) adopted on the floor.

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 135(JUD) am

1 Page 3, lines 22 - 23:

2 Delete "A peace officer monitoring a receiving unit under (a) of this section or any
3 other person intercepting an oral communication transmitted under (a) of this section,"

4 Insert "A peace officer, or other person, who receives by any means the transmission
5 of an oral communication that has been transmitted under (a) of this section"

6 Page 3, line 25:

7 Delete "intercepted"

8 Insert "transmitted"

*sect. amend. to correct Kerstula
amend in House.*

Sponsor Statement

HB 135 - An act relating to use of eavesdropping and recording devices by peace officers.

The initial contact in an undercover police investigation often does not qualify for a warrant to record the conversation for evidentiary purposes. Peace Officers now use hand signals or other visual communications to call in the backup officers when they believe their safety is at risk. Often the conversations are conducted out of sight of the backup officers and the safety of the undercover officer is compromised.

It is the intent of HB 135 to allow monitoring of undercover operations by the backup officer(s) for safety reasons, and protect the rights of the suspect. HB 135 would allow monitoring of the conversation with the following restrictions.

- The conversation must occur during an investigation or an arrest.
- It must be for the safety of the officer
- The conversation can not be recorded
- The backup officer(s) may not testify in a criminal proceeding involving a party to the oral communication about the contents of the conversation that was monitored.

HB 135 will improve peace officer safety and protect the rights of potential suspects. I urge your support for this legislation.

Alaska State Legislature

House of Representatives

COMMITTEES
JUDICIARY COMMITTEE, CHAIR
RULES
MILITARY & VETERANS AFFAIRS
UTILITY RESTRUCTURING
ETHICS



INTERIM:
10928 EAGLE RIVER RD., SUITE 141
EAGLE RIVER, AK 99577

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801

Memorandum

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

FROM: Representative Pete Kott

SUBJECT: Request for Hearing, HB 135

DATE: May 10, 1999

I request that HB 135, "An Act relating to use of eavesdropping and recording devices by peace officers", be heard. Enclosed with this request is the following:

- Current version of the bill
- Sponsor statement
- Sectional Analysis

Additional information will be provided prior to the hearing. Teleconference requirements are not known at this time, but Anchorage has been a requirement at all previous hearings.

If there are any additional information is need contact Pat Harman x6841.

Representative Pete Kott

JUNEAU OFFICE (907) 465-3777 TOLL FREE 1-800-861-KOTT(5688) FAX (907) 465-2819
EAGLE RIVER OFFICE (907) 694-8944 FAX (907) 694-8945 E-MAIL: representative_pete_kott@legis.state.ak.us



Sectional Analysis
HB 135

Section 1. Allows an undercover peace officer and to wear a wire and to have their conversation monitored during an investigation without a warrant in the following conditions. The monitoring occurs during an investigation or arrest. The monitoring occurs for the safety of the peace officer. The conversation may not be recorded.

Section 2. When a peace officer monitors a conversation without a warrant, they may not testify in a criminal proceeding involving a party to the conversation.

Section 3. Holds harmless a series of circumstances and individuals that inadvertently monitor the conversation from the wire.

Sergeant David Hoffman

10235 Silvertip Cr.
Eager River, Alaska 99577
Home Phone 694-5758
Email pamdave@alaska.net

December 30, 1998

Representative Pete Kott
10928 Eagle River Road
Eagle Center Suite 141
Eagle River, Alaska 99577

Representative Kott,

Law Enforcement is in need of new legislation to further protect the safety of our officers. This legislation would impact law enforcement agencies of every size throughout the state. This legislation would focus exclusively on those officers that are engaged in undercover operations. I am seeking your help to allow undercover officers to be allowed to monitor their conversations for purposes of officer rescue. I know you have a law enforcement background but please allow me to provide a brief synopsis of why this legislation is needed.

In 1978, the Alaska Supreme Court handed down a decision (State of Alaska v. Theodore Glass) which mandated that private conversations could not be recorded for evidentiary purposes without first obtaining a warrant. Our State Constitution holds us to a higher standard and discounts the more common one party consent rule. As a result of this ruling undercover officers have to participate in un-monitored operations to be able to obtain probable cause to then apply for the Glass warrant.

I'm sure you'll agree that the dangers associated with law enforcement have changed since the Glass ruling twenty years ago. The availability of low cost drugs coupled with the willingness of criminals to resort to violence mandates we provide law enforcement with every possible tool to do their jobs safely.

I'm asking that you sponsor legislation that will allow law enforcement to monitor their conversations for officer safety concerns. It is important that you recognize the distinction between this request and the current standard set forth under Alaska v. Glass. I am not proposing anything that in any way tampers with the standard for recording for evidentiary purposes. I just want the option to be able to monitor, not record, for purposes of officer safety.

I have the full support of my Chief, Duane Udland. I also have a verbal commitment from Rep. Brian Porter that he will act as a co-sponsor. I have made contacts in the District Attorney's office and have received favorable feedback. This project is important to me and I hope you will allow me to participate in the process should you find it acceptable.

While researching this project I found that the State of New Hampshire has previously addressed this issue and found that monitoring for purposes of officer rescue was not equivalent to monitoring for the purpose of introduction as evidence at trial. I have provided your aid with this information as requested by him.

Thank you for your time and I hope we can meet soon to discuss this much needed legislation.

Sincerely,

David Hoffman