

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10111 SENATE LABOR & COMMERCE

**Household income**

Under \$6,000.....	2.2%
\$6,000-\$14,999.....	10.0%
\$15,000-\$23,999.....	25.2%
\$24,000-\$35,999.....	20.8%
\$36,000-\$49,999.....	18.9%
\$50,000-\$74,999.....	18.1%
\$75,000 and up.....	3.7%

**Ethnic Background**

Caucasian.....	74.78%
African-American.....	21.88%
Hispanic.....	2.47%
Asian/Oriental.....	0.49%

**Education**

High school graduate.....	45.12%
Some college.....	28.18%
College graduate.....	18.05%
Graduate school.....	2.22%
Less than high school.....	6.18%



Phone (972) 801-1100 • Fax (972) 943-0112 • (800) 252-696

F  
lease  
purchase

Rent-A-Center, Inc.  
5700 Tennyson Parkway  
Third Floor  
Plano, TX 75024

March 11, 1999

Representative Lisa Murkowski  
House of Representatives  
State Capitol, Room 426  
Juneau, Alaska 99801

Dear Representative Murkowski:

I want to thank you personally and on behalf of Rent-A-Center and the lease-purchase industry for sponsoring H.B. 128. Although the industry in Alaska is relatively small, Alaska consumers deserve the same rights and protections that are provided in most other states. H.B. 128 provides those protections and sets the ground rules for how lease-purchase dealers must operate and how the transaction is treated under the law.

Beginning in 1984, forty-four states have enacted lease-purchase laws similar to H.B. 128. Those laws have very successfully regulated the industry, defined the transaction, and protected consumers. We believe it is the right time for Alaska to enact lease-purchase legislation and look forward to working with you. I have attached an information sheet that provides a description of the transaction, the industry and H.B. 128. If you need anything further, please contact me.

Again, thank you. I know that there are many other important issues to be addressed in Alaska and we appreciate your efforts on this issue. We believe it will be time well spent.

Sincerely,

A handwritten signature in cursive script that reads "Bradley W. Denison".

Bradley W. Denison  
Senior VP & General Counsel

BWD:glj

Enclosure

**HB**

**130**

FISCAL NOTE

Bill. Version: HB 130

(H) Publish Date: 2/9/00

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Revision Date: 9 Feb 2000

Title: Architects/Engineers/land Surveyors

Dept. Affected DCED

BRU Occupational Licensing

Component same

Sponsor: L+C

Requester:

Component Serial No. 2366

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES [ ]						
------------------------	--	--	--	--	--	--

FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: \_\_\_\_\_

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by CONOR SULLIVAN  
HOUSE RULES COMMITTEE AIDE

Phone 465-6848

Phone \_\_\_\_\_

Date 9 Feb 2000



Official Business

# Alaska State Legislature

## SENATE LABOR & COMMERCE COMMITTEE

State Capitol  
Juneau, AK 99801-1111

(907)465-3844

April 7, 2000

### MEMORANDUM

To: Committee Members

From: Senator Mackie, Chair  
Senate Labor and Commerce Committee

Re: HB 130, Architects, Engineers, and Land Surveyors.

The Board of Architects, Engineers, etc have requested statutory language to correct an uncertainty that has developed regarding when plan or project review, inspection, or approval requires a licensed engineer, architect, etc. The Dept. of Public Safety has also requested a similar change for the fire marshal's office. Finally, I have received some interest from municipal building inspectors.

I have drafted a committee CS (attached) for HB 130 that includes language to correct the problem. This is located in subsection (13) on page 9. The Division of Occupational Licensing and the Fire Marshal Office support this addition. My office has circulated the change with all other entities expressing interest and found agreement.

Tony Knowles, Governor



**Division of Occupational Licensing**

P.O. Box 110806, Juneau, AK 99811-0806

Telephone: (907) 465-2534 • Fax: (907) 465-2974 • Text Telephone: (907) 465-5437

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March 31, 2000

The Honorable Jerry Mackie  
State Senate  
State Capitol  
Juneau, AK 99801

Dear Senator Mackie:

The Division of Occupational Licensing supports the proposed amendment to HB 130 exempting state and municipal building code plan review from architect and engineer licensing requirements.

I believe the amendment addresses the concerns of the Board of Registration of Architects, Engineers and Land Surveyors as well as municipal building officials. Without the amendment, state law may include plan review in the definitions of architecture and engineering, thereby requiring plan reviewers to be licensed architects and engineers. It is not feasible for municipalities to employ engineers and architects in all code review positions. The board and municipal representatives worked together to resolve the issue and proposed language similar to the amendment as the solution.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine Reardon", written in a cursive style.

Catherine Reardon, Director

1-LS0419V  
Bannister  
3/20/00

**SENATE CS FOR HOUSE BILL NO. 130(L&C)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIRST LEGISLATURE - SECOND SESSION**  
**BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST**

Offered:  
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act adding limited liability companies and limited liability partnerships to the  
2 organizations that can be authorized to practice architecture, engineering, land  
3 surveying, and landscape architecture; relating to the review of drawings and  
4 specifications for compliance with building codes; and relating to state and  
5 municipal contracts for architectural, engineering, land surveying, and landscape  
6 architectural services."

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

8 \* Section 1. AS 08.48.101(a) is amended to read:

9 (a) The board may adopt regulations to carry out the purpose of this chapter,  
10 including [, BUT NOT LIMITED TO]

- 11 (1) describing the contents of an examination;
- 12 (2) establishing the conduct of an examination;
- 13 (3) establishing a minimum score for passing an examination;

1 (4) establishing bylaws governing its meetings and activities;

2 (5) publishing a code of ethics or professional conduct for those  
3 persons regulated by this chapter, including corporations, limited liability companies,  
4 and limited liability partnerships under AS 08.48.241.

5 \* Sec. 2. AS 08.48.111 is amended to read:

6 Sec. 08.48.111. Power to revoke, suspend, or reissue certificate. The board  
7 may suspend, refuse to renew, or revoke the certificate of or reprimand a registrant,  
8 [OR] corporation, limited liability company, or limited liability partnership who is  
9 found guilty of (1) fraud or deceit in obtaining a certificate; (2) gross negligence,  
10 incompetence, or misconduct in the practice of architecture, engineering, land  
11 surveying, or landscape architecture; or (3) a violation of this chapter, a regulation  
12 adopted under this chapter, or the code of ethics or professional conduct as adopted  
13 by the board. The code of ethics or professional conduct shall be distributed in writing  
14 to every registrant and applicant for registration under this chapter. This publication  
15 and distribution of the code of ethics or professional conduct constitutes due notice to  
16 all registrants. The board may revise and amend its code and, upon doing so, shall  
17 immediately notify each registrant in writing of the revisions or amendments. The  
18 board may, upon petition of the registrant, [OR] corporation, limited liability  
19 company, or limited liability partnership, reissue a certificate if a majority of the  
20 members of the board vote in favor of the reissuance.

21 \* Sec. 3. AS 08.48.231(a) is amended to read:

22 (a) To remain valid, certificates shall be renewed in accordance with  
23 AS 08.01.100. Notice of renewal dates, given under AS 08.01.050(a)(11), shall be  
24 mailed to the registrant, [OR] corporation, limited liability company, or limited  
25 liability partnership at the registrant's, [OR] corporation's, limited liability  
26 company's, or limited liability partnership's last known address at least one month  
27 in advance of the date of the expiration of the certificate. If the certificate has been  
28 suspended or revoked, the board may take action independent of this section.

29 \* Sec. 4. AS 08.48.241 is amended to read:

30 Sec. 08.48.241. Corporations, limited liability companies, and limited  
31 liability partnerships. (a) This chapter does not prevent a corporation, limited

1 liability company, or limited liability partnership from offering architectural,  
2 engineering, land surveying, or landscape architectural services; however, the  
3 corporation, limited liability company, or limited liability partnership shall file with  
4 the board

5 (1) an application for a certificate of authorization upon a form to be  
6 prescribed by the board and containing information required to enable the board to  
7 determine whether the corporation, limited liability company, or limited liability  
8 partnership is qualified in accordance with the provisions of this chapter to offer to  
9 practice architecture, engineering, land surveying, or landscape architecture in this  
10 state;

11 (2) a certified copy of a resolution of the board of directors of the  
12 corporation, the managing members or manager of the limited liability company,  
13 or the general partners of a limited liability partnership designating persons  
14 holding certificates of registration under this chapter as responsible for the practice of  
15 architecture, engineering, land surveying, or landscape architecture by the corporation,  
16 limited liability company, or limited liability partnership in this state and providing  
17 that full authority to make all final architectural, engineering, land surveying, or  
18 landscape architectural decisions on behalf of the corporation, limited liability  
19 company, or limited liability partnership with respect to work performed by the  
20 corporation, limited liability company, or limited liability partnership in this state  
21 is granted by the board of directors of the corporation, the managing members or  
22 manager of the limited liability company, or the general partners of the limited  
23 liability partnership to the persons designated in the resolution; however, the filing  
24 of this resolution does not relieve the corporation, limited liability company, or  
25 limited liability partnership of any responsibility or liability imposed upon it by law  
26 or by contract;

27 (3) a designation in writing setting out the name of one or more  
28 persons holding certificates of registration under this chapter who are in responsible  
29 charge of each major branch of the architectural, engineering, land surveying, or  
30 landscape architectural activities in which the corporation, limited liability company,  
31 or limited liability partnership specializes in this state; if a change is made in the

1 person in responsible charge of a major branch of the architectural, engineering, land  
2 surveying, or landscape architectural activities, the change shall be designated in  
3 writing and filed with the board within 30 days after the effective date of the change.

4 (b) Upon filing with the board the application for certificate of authorization,  
5 certified copy of resolution, affidavit, and designation of persons specified in this  
6 section, the board shall, subject to (c) of this section, issue to the corporation, limited  
7 liability company, or limited liability partnership a certificate of authorization to  
8 practice architecture, engineering, land surveying, or landscape architecture in this state  
9 upon a determination by the board that

10 (1) the bylaws of the corporation, the articles of organization or  
11 operating agreement of the limited liability company, or the partnership  
12 agreement of the limited liability partnership contain provisions that all  
13 architectural, engineering, land surveying, or landscape architectural decisions  
14 pertaining to architectural, engineering, land surveying, or landscape architectural  
15 activities in this state will be made by the specified architect, engineer, land surveyor,  
16 or landscape architect in responsible charge, or other registered architects, engineers,  
17 land surveyors, or landscape architects under the direction or supervision of the  
18 architect, engineer, land surveyor, or landscape architect in responsible charge;

19 (2) the application for certificate of authorization states the type of  
20 architecture, engineering, land surveying, or landscape architecture practiced or to be  
21 practiced by the corporation, limited liability company, or limited liability  
22 partnership;

23 (3) the applicant corporation, limited liability company, or limited  
24 liability partnership has the ability to provide architectural, engineering, land  
25 surveying, or landscape architectural services;

26 (4) the application for certificate of authorization states the professional  
27 records of the designated person who is in responsible charge of each major branch of  
28 architectural, engineering, land surveying, or landscape architectural activities in which  
29 the corporation, limited liability company, or limited liability partnership  
30 specializes;

31 (5) the application for certificate of authorization states the experience,

1 if any, of the corporation, limited liability company, or limited liability partnership  
2 [, IF ANY,] in furnishing architectural, engineering, land surveying, or landscape  
3 architectural services during the preceding five-year period;

4 (6) the applicant corporation, limited liability company, or limited  
5 liability partnership meets other requirements related to professional competence in  
6 the furnishing of architectural, engineering, land surveying, or landscape architectural  
7 services as may be adopted by the board in furtherance of the objectives and  
8 provisions of this chapter.

9 (c) The board may, in the exercise of its discretion, refuse to issue, or may  
10 suspend or revoke a certificate of authorization to a corporation, limited liability  
11 company, or limited liability partnership if the board finds that any of the  
12 corporation's officers, directors, or incorporators, any of [OR] the stockholders  
13 holding a majority of the stock of the corporation, any of the limited liability  
14 company's organizers, managers, or managing members, or any of the limited  
15 liability partnership's general partners has committed misconduct or malpractice,  
16 or has been found personally responsible for misconduct or malpractice under the  
17 provisions of this chapter.

18 (d) The certificate of authorization must [SHALL] specify the major branches  
19 of architecture, engineering, land surveying, or landscape architecture of which the  
20 corporation, limited liability company, or limited liability partnership has  
21 designated a person in responsible charge as provided in this section. The certificate  
22 of authorization shall be conspicuously displayed in the place of business of the  
23 corporation, limited liability company, or limited liability partnership, together with  
24 the names of persons designated as being in responsible charge of the professional  
25 activities.

26 (e) If a corporation, limited liability company, or limited liability  
27 partnership that is organized solely by either a group of architects, a group of  
28 engineers, a group of land surveyors, or a group of landscape architects, each holding  
29 a certificate of registration under this chapter, applies for a certificate of authorization,  
30 the board may, in its discretion, grant a certificate of authorization to the corporation,  
31 limited liability company, or limited liability partnership based on a review of the

1 professional records of the incorporators of the corporation, organizers of the limited  
2 liability company, or partners who formed the limited liability partnership [,] in  
3 place of the required qualifications set out in this section. If the ownership of the  
4 corporation is altered, the membership of the limited liability company is altered,  
5 or the partners of the limited liability partnership change, the corporation, limited  
6 liability company, or limited liability partnership shall apply for a revised certificate  
7 of authorization, based upon the professional records of the owners of the  
8 corporation, the members of the limited liability company, or the partners of the  
9 limited liability partnership, if exclusively architects, engineers, land surveyors, or  
10 landscape architects, or otherwise under the qualifications required by (b)(1) - (4) of  
11 this section.

12 (f) A corporation, limited liability company, or a limited liability  
13 partnership authorized to offer architectural, engineering, land surveying, or landscape  
14 architectural services under this chapter, together with its directors, [AND] officers,  
15 managing members, manager, and partners for their own individual acts, is  
16 responsible to the same degree as the designated individual registered architect,  
17 engineer, land surveyor, or landscape architect, and shall conduct its business without  
18 misconduct or malpractice in the practice of architecture, engineering, land surveying,  
19 or landscape architecture as defined in this chapter.

20 (g) If the board, after a proper hearing, finds that a corporation, limited  
21 liability company, or limited liability partnership holding a certificate of  
22 authorization has committed misconduct or malpractice, the board shall suspend or  
23 revoke the certificate of authorization. The board shall also suspend or revoke the  
24 certificate of registration of any registered individual architect, engineer, land surveyor,  
25 or landscape architect who, after a proper hearing, is found by the board to have  
26 participated in committing the misconduct or malpractice.

27 (h) Drawings, specifications, designs, and reports, when issued in connection  
28 with work performed by a corporation, limited liability company, or limited liability  
29 partnership under its certificate of authorization, shall be prepared by or under the  
30 responsible charge of and shall be signed by and [SHALL BE] stamped with the  
31 official seal of a person holding a certificate of registration under this chapter.

1 (i) [Repealed].

2 \* Sec. 5. AS 08.48.241 is amended by adding a new subsection to read:

3 (j) In this section,

4 (1) "manager" has the meaning given in AS 10.50.990;

5 (2) "managing member" has the meaning given in AS 10.50.990.

6 \* Sec. 6. AS 08.48.251 is amended to read:

7 **Sec. 08.48.251. Certain partnerships [PARTNERSHIPS].** This chapter does  
8 not prevent the practice of architecture, engineering, land surveying, or landscape  
9 architecture by a partnership if all of the members of the partnership are architects,  
10 engineers, land surveyors, or landscape architects legally registered under this chapter.

11 **In this section. "partnership" does not include a limited liability partnership.**

12 \* Sec. 7. AS 08.48.281(a) is amended to read:

13 (a) A person may not practice or offer to practice the profession of  
14 architecture, engineering, land surveying, or landscape architecture in the state, or use  
15 in connection with the person's name or otherwise assume or advertise a title or  
16 description tending to convey the impression that the person is an architect, an  
17 engineer, a land surveyor, or a landscape architect, unless the person has been  
18 registered under the provisions of this chapter or is a person to whom these provisions  
19 do not apply, or, in the case of a corporation, **limited liability company, or limited**  
20 **liability partnership**, unless it has been authorized under this chapter.

21 \* Sec. 8. AS 08.48.331(a) is amended to read:

22 (a) This chapter does not apply to

23 (1) a contractor performing work designed by a professional architect,  
24 engineer, or landscape architect or the supervision of the construction of the work as  
25 a supervisor or superintendent for a contractor;

26 (2) workers in building trades crafts, earthwork, grounds keeping, or  
27 nursery operations, and superintendents, supervisors, or inspectors in the performance  
28 of their customary duties;

29 (3) an officer or employee of the United States government practicing  
30 architecture, engineering, land surveying, or landscape architecture as required by the  
31 person's official capacity;

1 (4) an employee or a subordinate of a person registered under this  
2 chapter if the work or service is done under the direct supervision of a person  
3 registered under this chapter;

4 (5) associates, consultants, or specialists retained by a registered  
5 individual, a partnership of registered individuals, [OR] a corporation, a limited  
6 liability company, or a limited liability partnership authorized to practice  
7 architecture, engineering, land surveying, or landscape architecture under this chapter,  
8 in the performance of professional services if responsible charge of the work remains  
9 with the individual, the partnership, or a designated representative of the corporation,  
10 limited liability company, or limited liability partnership;

11 (6) a person preparing drawings or specifications for

12 (A) a building for the person's own use and occupancy as a  
13 single family residence and related site work for that building;

14 (B) farm or ranch buildings and their grounds [,] unless the  
15 public health, safety, or welfare is involved;

16 (C) a building that is intended to be used only as a residence  
17 by not more than four families and that is not more than two stories high and  
18 the grounds of the building;

19 (D) a garage, workshop, or similar building that contains less  
20 than 2,000 square feet of floor space to be used for a private noncommercial  
21 purpose and the grounds of the building;

22 (7) a specialty contractor licensed under AS 08.18 while engaged in the  
23 business of construction contracting or designing systems for work within the specialty  
24 to be performed or supervised by the specialty contractor, or a contractor preparing  
25 shop or field drawings for work that the specialty contractor has contracted to perform;

26 (8) a person furnishing drawings, specifications, instruments of service,  
27 or other data for alterations or repairs to a building or its grounds that do not change  
28 or affect the structural system or the safety of the building, or that do not affect the  
29 public health, safety, or welfare;

30 (9) a person who is employed by a postsecondary educational  
31 institution to teach engineering, architectural, or landscape architectural courses; in this

1 paragraph, "postsecondary educational institution" has the meaning given in  
2 AS 14.48.210;

3 (10) an officer or employee of an individual, firm, partnership,  
4 association, utility, [OR] corporation, limited liability company, or limited liability  
5 partnership, who practices engineering involved in the operation of the employer's  
6 business only, and further provided that neither the employee nor the employer offers  
7 engineering services to the public; exclusions under this paragraph do not apply to  
8 buildings or structures whose primary use is public occupancy;

9 (11) a person while involved in revegetation, restoration, reclamation,  
10 rehabilitation, or erosion control for disturbed land;

11 (12) a person while maintaining or directing the placement of plant  
12 material;

13 (13) an employee, officer, or agent of a regulatory agency of the  
14 state or a municipality when reviewing drawings and specifications for compliance  
15 with the building codes of the state or a municipality if the drawings and  
16 specifications have been signed and sealed by a professional architect or  
17 professional engineer or the preparation of the drawings and specifications is  
18 exempt under this section from the requirements of this chapter; in this  
19 paragraph, "building codes" includes codes relating<sup>ed</sup> to building, mechanical,  
20 plumbing, electrical, and fire standards.

21 \* Sec. 9. AS 08.48.341(4) is amended to read:

22 (4) "certificate of authorization" means a certificate issued by the board  
23 authorizing a corporation, a limited liability company, or a limited liability  
24 partnership to provide professional services in architecture, engineering, land  
25 surveying, or landscape architecture through individuals legally registered by the board;

26 \* Sec. 10. AS 08.48.341 is amended by adding new paragraphs to read:

27 (19) "limited liability company" means an organization organized under  
28 AS 10.50 or a foreign limited liability company; in this paragraph, "foreign limited  
29 liability company" has the meaning given in AS 10.50.990;

30 (20) "limited liability partnership" means an organization registered  
31 under AS 32.05.415 or a foreign limited liability partnership; in this paragraph,

1 "foreign limited liability partnership" has the meaning given in AS 32.05.990.

2 \* Sec. 11. AS 36.90.100 is amended to read:

3 Sec. 36.90.100. Contracts for architectural, engineering, [OR] land  
4 surveying, or landscape architectural services. The state or a municipality may not  
5 award a contract for architectural, engineering, [OR] land surveying, or landscape  
6 architectural services to

7 (1) an individual who is not registered under AS 08.48 to perform the  
8 architectural, engineering, [OR] land surveying, or landscape architectural services  
9 required by the contract;

10 (2) a partnership, except as provided by (3) of this section, that is not  
11 qualified under AS 08.48.251 to provide the architectural, engineering, [OR] land  
12 surveying, or landscape architectural services required by the contract; or

13 (3) a corporation, limited liability company, or limited liability  
14 partnership that is not authorized under AS 08.48.241 to offer the architectural,  
15 engineering, [OR] land surveying, or landscape architectural services required by the  
16 contract.

# ALASKA STATE LEGISLATURE

## HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman  
Representative Andrew Halero, Vice-Chairman  
Representative John Harris  
Representative Lisa Murkowski  
Representative Jerry Sanders  
Representative Tom Brice  
Representative Sharon Cissna



State Capitol  
Juneau, AK 99801-1182  
Telephone: (907) 465-4954  
Fax: (907) 465-2040

### SPONSOR STATEMENT HOUSE BILL 130

**An Act adding limited liability companies and limited liability partnerships to the organizations that can be authorized to practice architecture, engineering, land surveying, and landscape architecture; and relating to state and municipal contracts for architectural, engineering, land surveying, and landscape architectural services.**

The State Board of Registration for Architects, Engineers and Land Surveyors (AELS) has the duty of licensing architects, engineers, land surveyors or landscape architects under the provisions of AS 08.48.011. In addition to individual licenses, the Board has requirements for certain business entities (corporations) to register with the AELS and these entities must receive a license to practice.

During the last several years, the Legislature has authorized limited liability companies and limited liability partnerships. The Department of Law has advised the Department of Commerce and Economic Development that *these new entities are not covered under the AELS licensing laws.*

Limited liability companies (LLCs) are covered in AS 10.50. Alaska's law was adopted in 1994. The entity is a hybrid form of business structure that combines the tax advantages of a partnership and the liability safeguards of a corporation. Limited liability partnerships (LLPs) are covered in AS 32.05 and were adopted in Alaska in 1996. LLPs are a type of general partnership and provide a flexible form of organization for small businesses.

HB 130 would allow the Board to register LLCs or LLPs in a similar manner as corporations with the designation of an Alaskan licensee as the responsible licensee in charge of such entity. Such registration would continue to provide consumer protection and licensee accountability for the people of Alaska using the services of these professionals.

Section 11 of the bill was added at the request of the Board. When the name and purview of the AELS Board were changed, a corresponding change (adding "landscape architectural" in the list of services) was not made in AS 36.90.100. Section 11 would rectify this oversight and make the necessary corresponding changes concerning LLCs and LLPs.

We would appreciate your support of this legislation.

ED2:01/12/00

# ALASKA STATE LEGISLATURE

## HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman  
Representative Andrew Halcro, Vice-Chairman  
Representative John Harris  
Representative Lisa Murkowski  
Representative Jerry Sanders  
Representative Tom Brice  
Representative Sharon Cissna



State Capitol  
Juneau, AK 99801-1182  
Telephone: (907) 465-4954  
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### SECTIONAL ANALYSIS HOUSE BILL 130

**An Act adding limited liability companies and limited liability partnerships to the organizations that can be authorized to practice architecture, engineering, land surveying, and landscape architecture; and relating to state and municipal contracts for architectural, engineering, land surveying, and landscape architectural services.**

Prepared by Rep. Norman Rokeberg

The following sections contain language adding limited liability companies and limited liability partnerships to the current 08.48 statutes:

Sections 1, 2, 3, 4, 7, 8, and 9

- Section 5:** Definitions added for "manager" and "managing member".
- Section 6:** Indicates that the term "partnership" does not include a limited liability partnership. Note: LLPs are covered elsewhere in the legislation. This section refers to traditional partnerships.
- Section 10:** Definitions added for "limited liability company" and "limited liability partnership".
- Section 11:** Adds "landscape architectural" services to 36.90.100. Adds language concerning LLCs and LLPs.

ED1:05/03/99

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

TONY KNOWLES, GOVERNOR

P.O. BOX 110806  
JUNEAU, ALASKA 99811-0806  
PHONE: (907) 465-2534  
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E-mail address:  
License@commerce.state.ak.us

March 1, 1999

MAR 04 1999

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

Dear Representative Rokeberg:

The architect, engineer, land surveyor, and landscape architect statutes currently recognize the following forms of business entity practicing architecture, engineering, land surveying, or landscape architecture:

### **Sole Proprietorship**

Business entities that are sole proprietorships are not required to be registered with the board. However, an individual practicing as a sole proprietor must hold the appropriate professional license.

### **Partnerships**

Under AS 08.48.251, partnership entities that advertise and offer engineering, architecture, land surveying, or landscape architecture are not required to be registered with the board, however, all members of the partnership must be legally registered to practice the profession offered.

### **Corporations**

Under AS 08.48.241, corporations are required to be registered with the AELS board, and must receive an Authorization to Practice. To be authorized, corporations must complete the application process which includes providing the name and Alaska license number of the person in "responsible charge" for each profession for which the corporation offers services.

### **Limited Liability Company's and Limited Liability Partnership's**

In the mid 1990's, Limited Liability Companies (LLC) and Limited Liability Partnerships (LLP) became recognized forms of business under AS 10.50 and AS 32.05, respectively. Inquiries have been received by the board regarding the abilities of LLC's and LLP's to advertise and offer architecture, engineering, land surveying, or landscape architecture services. Recently, the Department of Law has determined that LLC entities are prohibited from practice under the current authorities of AS 08.48. However, since there is no ability for a LLC to obtain authorization from the board, enforcement of the prohibition would be difficult. LLC's would have an "impossibility defense" as it is currently impossible for them to become registered with the board. While the question of whether LLP's may advertise and offer services has not been researched to the same degree as LLC's, we believe they also may be prohibited from advertising and offering services.

March 1, 1999

Legislation that provides for registration and issuance of an authorization to practice as an LLC or LLP when providing architecture, engineering, land surveying, or landscape architect services would address the issue. As LLC's and LLP's are recognized forms of business in the state of Alaska, there is no known benefit in prohibiting formation of these types of entities for the architect, engineer, land surveyor, or landscape architect professionals.

The proposed legislation, as outlined in your work draft, would allow the board to register LLC's in a similar manner as corporations. An important aspect for this registration is the designation of an Alaska licensee in "responsible charge." We believe adding LLP's to your draft legislation would cover the concerns that arise with LLP's offering services. Similarly, LLP's could be required to designate a licensee in responsible charge in order to receive an authorization from the board.

During the February 11-12, 1999, board meeting, the board voiced support of adding LLC's and LLP's to the category of business entities, which may be authorized by the board. On the work draft, they also noted the need for an amendment on page 8 under Sec. 36.90.100, to add Landscape Architecture to the professions listed.

Sincerely,



Catherine A. Reardon  
Director

CAR/BG/go4958  
030199a



Alaska Professional Design Council  
Box 10-3115, Anchorage, Alaska 99510-3115

APR 28 1999

April 27, 1999

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

Dear Representative Rokeberg,

On behalf of the Alaska Professional Design Council, I would like to thank you for sponsoring HB 130. This bill will protect the public's safety while allowing design professionals to respond to changing times.

Today's business climate has offered opportunities for professional enterprises to evolve. Several of our members have chosen Limited Liability Company or Limited Liability Partnership (LLC/LLP) forms of conducting business and we expect this to be a trend that continues. Unfortunately, the current state statute does not recognize LLC/LLP as a form of business over which the Architect/Engineer/Land Surveyor/Landscape Architect Board (AELSLA) has authority. This void allows these forms of businesses to operate without allowing the AELSLA Board oversight for protection of the public that state statute requires. And to the contrary, businesses that operate within the authority of the AELSLA Board are not afforded the opportunity to take advantage of business forms that virtually all other professional entities are allowed.

HB 130 would protect the public safety and afford the opportunity for design professionals to choose from the full range of today's business practices. The bill would ensure that LLC/LLP forms of business would be recognized business entities by the AELSLA Board, the same as sole proprietorships, partnerships, and corporations. Also, HB 130 would allow design professionals the flexibility to choose a business form suited to their enterprise. This provides a true win-win situation by ensuring that government recognizes changing times and, at the same time, continues to protect the public's safety.

Thank you for sponsoring this important piece of legislation.

Sincerely,

Wm. Dwayne Adams, Jr., FASLA  
President, Alaska Professional Design Council

**HB**

**143**

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. CSHB 143(L&C)

Revision Date/Time (Note if correction)		Dept. Affected	Commerco & Econ Dev.
Title	An Act relating to the executive officer employed	BRU	Occupational Licensing
for the Real Estate Commission, ...		Component	Occupational Licensing
Sponsor	Representative Rokeberg	Component Serial No.	2360
Requestor	House Labor & Commerce		

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

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.

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

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

**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						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.

Estimate of any current year (FY00) cost: 263.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

FY 2000 expenses from the Real Estate Surety Fund are documented in the department's operating budget submission CSHB 143(L&C) authorizes an appropriation to be made from the fund to pay for claims, hearing and legal expenses directly related to fund operations, and for educational purposes.

Prepared by	Jennifer Strickler, Administrative Manager	Phone	465-2144
Division	Occupational Licensing	Date/Time	4/19/99 5:45 PM
Approved by Commissioner	Deborah B. Sedwick	Date	4/14/99
Agency	Commerce & Economic Development		

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# 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



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ALASKA STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 465-1968  
FAX: (907) 465-2040

e-mail: Representative\_Norman\_Rokeberg@legis.state.ak.us

## Representative Norman Rokeberg

### SECTIONAL ANALYSIS

#### CSHB 143 (L&C)

**An Act relating to the executive officer employed for the Real Estate Commission, to the Real Estate Surety Fund, and to employees paid from money in the real estate surety fund.**

**Prepared by Rep. Norman Rokeberg**

**Section 1:** Permits the "Executive Secretary" to use the title "Executive Administrator". This codifies current practice.

**Section 2:** Provides that the Real Estate Surety Fund ("Fund") is composed of payments made by licensees, filing fees, income earned on investment of the Fund, and reimbursement funds (see Section 3 (c) below). Earnings on the surety fund balance accrue to the Fund. Mandates that funds in the Fund do not lapse. States that the Fund may be used for claims against the fund, hearing and legal expenses related to Fund operations and claims, and real estate educational purposes.

**Section 3:** (b) Mandates that the Department of Commerce & Economic Development is to provide the Real Estate Commission ("Commission") with a quarterly statement of activities of and balances in the Fund.

(c) States that if money from the Fund is used to pay for an item or a service and there is a charge for that item, that the money collected is to be deposited in the Fund. Defines "an item or a service".

**Section 4:** Establishes the two-year licensing cycle as the time period to use when determining the fee paid by licensees to the Fund. The average balance of the Fund over that two-year period shall be taken into account. The Fund should be maintained at not less than \$250,000 nor more than \$500,000.

**Section 5:** Changes language in 08.88.472(a) to reflect that hearing and legal expenses related to the Fund operations and claims may be charged to the Fund by the Commission.

**Section 6:** (c) Provides that the Commission may contract out, under the State Procurement Code, for the hearing and legal services with regard to a claim or claims against a real estate licensee.

(d) States that if an employee is paid entirely or partially out of the Fund that the employee may perform administrative duties for the Commission in addition to the duties associated with the Fund.

ED2:04/13/99

# 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

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## Representative Norman Rokeberg

### SPONSOR STATEMENT CSHB 143 (L&C)

**An Act relating to the executive officer employed for the Real Estate Commission, to the real estate surety fund, and to employees paid from money in the real estate surety fund.**

CSHB 143 (L&C) specifically addresses the \$500,000.00 Real Estate Surety Fund ("Fund"), its calculation and use and results from concerns expressed by a number of real estate licensees.

The purpose of the bill is to make changes in the way the Fund is administered. In addition to the biennial licensing fee, a real estate license also pays a fee to the Fund in lieu of obtaining a corporate surety bond. This fee may not exceed \$125 per biennium but is adjusted as the balance of the Fund varies before setting the fee. The primary purpose of the Fund is to provide payments of up to \$10,000 when a complaint against a real estate licensee is found to be justified. Expenditures from the Fund may also be made for real estate education purposes, staff to carry out those associated duties, and other associated costs.

CSHB 143 (L&C) addresses a number of concerns that the 2,000+ real estate licensees have regarding the Fund. The bill proposes to permit income on the Fund to be returned to the Fund. Money appropriated to the Fund would not lapse. The Fund may be appropriated for claims against the Fund, for hearing and legal expenses directly related to Fund operations and claims, and for real estate educational purposes. The additional language of CSHB 143 (L&C) makes it clear just what the Fund is to be used for and thus addresses licensee's concerns for accountability.

Additionally, the legislation provides that the Fund balance to be used for setting the surety fund fee will be an average balance during the two-year licensing cycle. This is important because currently, the fee is set based on the balance of the Fund at a certain time. Since the Fund balance fluctuates with the licensing cycle, a fee set on the Fund balance at a point in time would not reflect the true need of the Fund or a true fee for licensees. The Fund balance's floor and maximum levels will not change from the current \$250,000 and \$500,000. An important addition in this legislation is the requirement that the Department of Commerce and Economic

Development provide the Real Estate Commission (Commission) with a quarterly report on the Fund's income, expenses, and balance.

Another important item that concerns licensees is the return to the Fund of money expended for certain items. For example, the Fund currently spends some \$4,000 to \$6,000 every two years publishing and updating the Landlord/Tenant Handbook. The Commission charges \$1 for each Handbook but this money, which came out of the Fund, does not return to the Fund but instead goes to the General Fund. This is also true of any receipts from education seminars and instructor development courses sponsored by the Commission. A provision of this legislation indicates that when the Fund pays for something that it is reimbursed for, those moneys are returned to the Fund.

Currently one employee is 100% paid from the Fund. This employee can only perform Fund-related duties and is prohibited from assisting the Commission and its Executive Secretary in administrative activities. The Commission staff is small (3 individuals) and is currently experiencing a great turnover (the Executive Secretary is retiring, the publications specialist (paid for from the Fund) position has been vacant for some time, and the licensing examiner has transferred to another position. With the change in this legislation, the staff position paid for from the Fund could assist in other duties of Commission staff.

It is important to note that even with the changes in this bill, the Legislature retains the ultimate reins on Fund expenditures because the Legislature will still have to authorize the overall budget of the Commission and the Fund.

I would appreciate your support of this measure.

ED 2:04/10/99

**HB**

**146**

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO.                      HB 146

Revision Date		Dept. Affected	<u>Alaska Court System</u>
Title	<u>Civil liability for commercial recreational activities</u>	BRU	<u>Alaska Court System</u>
Sponsor	<u>Rep. Pete Kott</u>	Component	<u>Trial Courts</u>
Requester	<u>House Labor and 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY99) cost:           None          

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

No fiscal impact anticipated.

Prepared by: Doug Wooliver, Administrative Attorney  
Agency: Alaska Court System

Phone: 264-8265  
Date/Time: 4/8/99 3:08 PM

Approved by: Stephanie J. Cole, Administrative Director  
Agency: Alaska Court System

Date: 4/8/99

## **Sponsor Statement**

### **HB 146 - An Act relating to civil liability for commercial recreational activities**

One of Alaska's major draws is outdoor adventure and recreation which carries some level of inherent risk for participants. Many businesses, the majority of which are small, offer commercial recreational activities to the public such as river rafting, guided hiking, kayaking, snowboarding and sport fishing, to name a few. HB 146 has been introduced to establish the responsibilities of commercial recreation businesses and the responsibilities of persons who elect to participate in recreational activities. It addresses specific guidelines operators and participants must follow to minimize the possibility of accidents. Commercial businesses are still responsible for meeting safety standards and providing trained and competent personnel, as outlined in Section 05.50.040.

The legislation will decrease uncertainties regarding the legal responsibilities for injuries and encourage the continued viability of responsible businesses that offer commercial recreational activities to the public. Existing legal uncertainties have resulted in high liability insurance costs which are prohibitive, especially for smaller businesses. This bill will help avoid unfair and unreasonable claims that make it increasingly difficult to provide recreational and outdoor activities that are synonymous with Alaska lifestyles and visitor expectations.

# Alaska State Legislature



## House of Representatives

HB 146

### SECTIONAL ANALYSIS

**Section 1:** This establishes the purpose of the bill, which is to decrease legal uncertainty regarding liability for injuries that result from participation in commercial recreational activities.

It is also the purpose of this act to encourage the continued availability of businesses that offer commercial recreational activities to the public.

**Section 2:** This section amends a chapter to AS 05 which sets forth guidelines which include acceptance of inherent risks, contributory negligence, responsibilities of participants, responsibilities of operators of commercial recreational activities, interactions with other laws and lastly, the definitions for certain terms in all of the above.

**Section 3:** This section defines the act as applicable to acts or omissions that occur after the effective date of this act.

**Section 4:** This is the enabling portion of the bill.

1-LS0701AH  
Ford  
5/4/99

SENATE CS FOR CS FOR HOUSE BILL NO. 146( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for commercial recreational activities; and  
2 providing for an effective date."

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

4 \* Section 1. PURPOSE. It is the purpose of this Act to establish the responsibilities of  
5 persons who operate commercial recreational activities and persons who participate in those  
6 recreational activities and to decrease uncertainty regarding the legal responsibility for injuries  
7 that result from participation in commercial recreational activities. It is also the purpose of  
8 this Act to encourage the continued availability of businesses that offer commercial  
9 recreational activities to the public.

10 \* Sec. 2. AS 05 is amended by adding a new chapter to read:

11 Chapter 50. Civil Liability for Commercial  
12 Recreational Activities.

13 Sec. 05.50.010. Acceptance of inherent risks. Participation in a commercial  
14 recreational activity constitutes acceptance of the inherent risks of the commercial

1 recreational activity that are or should be apparent to an ordinarily prudent person.

2 **Sec. 05.50.020. Contributory negligence.** (a) A person who accepts an  
3 inherent risk of a commercial recreational activity as described in AS 05.50.010 is  
4 contributorily negligent to the extent that the inherent risk causes injury, death, or  
5 property damage.

6 (b) In an action seeking to recover damages for injury or death to a person or  
7 harm to property resulting from an inherent risk of a commercial recreational activity,  
8 compensatory damages shall be reduced for contributory negligence as provided under  
9 AS 09.17.060.

10 **Sec. 05.50.030. Responsibilities of participants.** A participant in a  
11 commercial recreational activity has the responsibility to

12 (1) learn about and expressly accept the risks of the activities;

13 (2) act within the limits of the person's abilities and as allowed by the  
14 person's health;

15 (3) heed all warnings regarding participation in the commercial  
16 recreational activity;

17 (4) maintain control of the participant's person, a minor under the  
18 control of the participant, and any equipment, devices, or animals the participant is  
19 using or that are under the control of the participant;

20 (5) refrain from acting in a manner that may cause or contribute to  
21 injury of the participant or another person.

22 **Sec. 05.50.040. Responsibilities of operators of commercial recreational**  
23 **activities.** A person who operates a business that offers a commercial recreational  
24 activity shall

25 (1) explain to a participant

26 (A) the fundamental inherent risks of the commercial  
27 recreational activity; and

28 (B) the skills and equipment required to participate in the  
29 commercial recreational activity that are not apparent to an inexperienced  
30 participant;

31 (2) require that employees who are responsible for assisting participants

1 in the actual performance of a commercial recreational activity have training in basic  
2 first aid and cardiopulmonary resuscitation and explain to those employees how to use  
3 emergency medical services available in the area;

4 (3) maintain recreational equipment and facilities in good repair;

5 (4) provide trained and competent personnel; and

6 (5) act in a reasonably safe and competent manner.

7 **Sec. 05.50.050. Interaction with other laws.** This chapter does not affect the  
8 immunity of an owner of unimproved land under AS 09.65.200 or of a ski area  
9 operator under AS 05.45.

10 **Sec. 05.50.060. Effect of violations.** A person who operates a business that  
11 offers a commercial recreational activity and who violates AS 05.50.040 is negligent  
12 and civilly liable to the extent the violation causes injury to a person or damage to  
13 property.

14 **Sec. 05.50.100. Definitions.** In this chapter,

15 (1) "commercial recreational activity" means a recreational activity for  
16 which the participants pay compensation;

17 (2) "recreational activity" means an outdoor activity undertaken for the  
18 purpose of exercise, education, relaxation, pleasure, sport, or as a hobby.

19 \* **Sec. 3.** This Act applies to acts or omissions that occur on or after the effective date of  
20 this Act.

21 \* **Sec. 4.** This Act takes effect July 1, 1999.

HB 146



**Alaska Action Trust**

P.O. Box 102323 • Anchorage, Alaska 99510  
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501  
(907) 258-4040 • FAX (907) 276-7185

**FAX MEMORANDUM**

**Date:** May 5, 1999  
**To:** Senator Mackie, Senator Kelly, Senator Donley, Senator Leman, Senator Hoffman  
**From:** Jan Bouch, Executive Director  
**Re:** HB 146  
**# of pages:** 4

To follow is an AAT position paper on HB 146, scheduled for hearing on Thursday, May 6, 1999 at 1:30 p.m. The position is to provide information to you regarding HB 146 and its impact. Thank you.



## Alaska Action Trust

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Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501  
(907) 258-4040 • FAX (907) 276-7185

### Position Paper on House Bill 146

Prepared by Russell L. Winner  
April 12, 1999

This bill would limit the liability of an operator of a commercial recreational activity if one of its customers is injured or dies. The customer would be deemed contributorily negligent, and his damages would be reduced, to the extent that the inherent risks of that activity were or should have apparent to him.

The bill is unwarranted special interest legislation. It is poorly drafted and will raise more questions than it answers. The bill is unnecessary and should not be enacted into law. What follows is a section-by-section analysis of the bill.

**Purpose.** The stated purpose of the bill is to establish responsibilities of operators and consumers of commercial recreational activities, to decrease the uncertainty regarding legal responsibilities for injuries, and to encourage the continued availability of businesses in this area. The existing tort law of Alaska, however, already governs liability in this area. Under existing law, an operator of a commercial recreational activity is liable only for its percentage of fault in causing the injury or death. To the extent that injury or death was caused by the inherent risks of the activity, and not by the fault of the operator, the operator is not liable under existing law.

Further, the tort law of Alaska was recently amended by enactment of a comprehensive bill. It places caps on non-economic damages and punitive damages. It allows fault to be allocated to non-parties. It shortens the statute of limitation for suits for breach of express or implied contract. And it requires minors, or their representatives, to bring suit sooner than was required under prior law. There is no need for further restrictions on the liability of commercial recreational operators. In fact, such legislation would be subject to challenge as unconstitutional special interest litigation. Turner Construction Company, Inc. v. Scales, 752 P.2d 467 (Alaska 1988)

The proposed legislation is not necessary to encourage the continued availability of businesses that offer commercial recreational activities to the public. We are not aware that operators are being driven out of business as a result of litigation over injuries or death. In fact, there is very little litigation in this area. In the event of injury or death, however, the most prudent protection for an operator is insurance. Such insurance has not become unavailable or significantly more expensive. Further, enactment of this bill would have no effect on premium rates. Most insurance companies set their rates on a regional basis, not on a state-by-state basis. Finally, if the legislature wishes to encourage commercial recreational businesses in Alaska, it seems counterproductive to

tell members of the public that they are contributorily negligent just by choosing to be a customer of such a business.

**Acceptance of inherent risks.** The bill states that participation in a commercial recreational activity constitutes acceptance of the inherent risks of the activity that are or should be apparent to an ordinarily prudent person. This, however, is unnecessary, as it would be the case under the existing tort law.

**Contributory negligence.** The bill states that customer's participation in a commercial recreational activity will be deemed contributory negligent to the extent that his injuries or death were caused by the inherent risks of that activity. It is, however, inappropriate to say this constitutes contributory negligence on the part of the customer. Instead, as is true under the existing tort law, the inherent risks of the activity should be taken into account when allocating fault to all persons, including the customer. Again, does Alaska really want to be known as the State where tourists are statutorily defined as being contributorily negligent merely by participating in commercial recreational activity in the State.

**Responsibilities of participants.** The bill sets out five responsibilities of consumers of commercial recreational activities. Items 2 through 5 are unnecessary, as they would be considered anyway under the existing tort law in allocating fault. Item 1 is confusing: It requires the consumer to "learn about and expressly accept the risks of the activities." From whom is she to learn about this? From the operator? What if the operator doesn't tell her? What other source is she supposed to consult? What if she doesn't learn about these risks from another source? How is she to expressly accept these risks? In writing? What if she does not? And what risks are we talking about, anyway? The inherent risk which should be apparent to an ordinarily prudent person, or other non-obvious risks?

**Responsibilities of operators of commercial recreational activities.** The bill also sets out certain responsibilities of operators. One is to explain to participants the "fundamental inherent risks of the commercial recreational activity." Again, this is confusing. Does the operator also have to explain the non-obvious risks? Are these the same risks the customer is required to learn about? What if the operator does not explain the risks that give rise to an injury or death? Must these be explained in writing? If not, how does the operator prove it explained these risks? What if the customer disputes that the operator explained the risks? What if the customer has died? Does the fact or adequacy of the operator's explanation affect the contributory negligence of the customer in participating in the activity?

This section also requires that the operator ensure the proper training of its employees, that its equipment and facilities are in good repair, and that it acts in a reasonably safe and competent manner. This is unnecessary as these factors would be taken into account in allocating fault under the existing tort law. Again, what is the effect under the proposed legislation if the operator does not do these things? Does it affect the contributory fault of the customer?

It is instructive to compare this bill with the Alaska statutes dealing with the liability of ski operators, AS 05.45. There, a ski operator is entitled to the statutory shield of liability only if it complies with the specific, detailed, mandatory duties set out in that statute. In contrast, an operator's duties under this proposed legislation are only generally worded and the bill is silent on the consequences of the operator's failure to comply with those duties.

**Definitions.** The bill defines recreational activity as "an outdoor activity undertaken for the purpose of exercise, education, relaxation, pleasure, or sport or as a hobby." This definition is so broad and ambiguous as to invite litigation over its meaning.

What is not defined is "inherent risk of a commercial recreational activity." When will it be defined? When the customer engages the operator? During litigation? Who defines it? What if the operator tries to define it too broadly, say in a consent form signed by the customer? For example, the inherent risks of white-water rafting should not include drowning in cold water if the proximate cause of the death is the negligent maintenance or operation of the raft by the operator. Yet, if the operator defines the inherent risk of white-water rafting to include simply "drowning in cold water, the victim of a negligent operator may have no remedy.

For the above reasons, HB 146 should not become the law of Alaska.

# Alaska State Legislature

## House of Representatives

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



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

SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801

### Memorandum

TO: Senator Jerry Mackie, Chairman  
Senate Labor and Commerce Committee

FROM: Representative Pete Kott *Pete*

SUBJECT: Request for Hearing, HB 146

DATE: May 3, 1999

I request that HB146, An Act relating to civil liability for commercial recreational activities; and providing for an effective date, be heard as soon as possible. Enclosed with this request is the following:

- Current version of the bill
- Sponsor statement
- Sectional Analysis
- Zero fiscal note from the Alaska Court System



### 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



**CS FOR HOUSE BILL NO. 146(JUD)**

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

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

Offered: 4/20/99

Referred: Rules

Sponsor(s): REPRESENTATIVES KOTT, Dyson

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to civil liability for commercial recreational activities; and  
2 providing for an effective date."

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

4 \* **Section 1. PURPOSE.** It is the purpose of this Act to establish the responsibilities of  
5 persons who operate commercial recreational activities and persons who participate in those  
6 recreational activities and to decrease uncertainty regarding the legal responsibility for injuries  
7 that result from participation in commercial recreational activities. It is also the purpose of  
8 this Act to encourage the continued availability of businesses that offer commercial  
9 recreational activities to the public.

10 \* **Sec. 2.** AS 05 is amended by adding a new chapter to read:

11 **Chapter 50. Civil Liability for Commercial**  
12 **Recreational Activities.**

13 **Sec. 05.50.010. Acceptance of inherent risks.** Participation in a commercial  
14 recreational activity constitutes acceptance of the inherent risks of the commercial

1 recreational activity that are or should be apparent to an ordinarily prudent person.

2 **Sec. 05.50.020. Contributory negligence.** (a) A person who accepts an  
3 inherent risk of a commercial recreational activity as described in AS 05.50.010 is  
4 contributorily negligent to the extent that the inherent risk causes injury, death, or  
5 property damage.

6 (b) In an action seeking to recover damages for injury or death to a person or  
7 harm to property resulting from an inherent risk of a commercial recreational activity,  
8 compensatory damages shall be reduced for contributory negligence as provided under  
9 AS 09.17.060.

10 **Sec. 05.50.030. Responsibilities of participants.** A participant in a  
11 commercial recreational activity has the responsibility to

12 (1) learn about and expressly accept the risks of the activities;

13 (2) act within the limits of the person's abilities and as allowed by the  
14 person's health;

15 (3) heed all warnings regarding participation in the commercial  
16 recreational activity;

17 (4) maintain control of the participant's person, a minor under the  
18 <sup>children</sup> control of the participant, and any equipment, devices, or animals the participant is  
19 using or that are under the control of the participant;

20 (5) refrain from acting in a manner that may cause or contribute to  
21 injury of the participant or another person.

22 **Sec. 05.50.040. Responsibilities of operators of commercial recreational**  
23 **activities.** A person who operates a business that offers a commercial recreational  
24 activity shall

25 (1) explain to a participant

26 (A) the fundamental inherent risks of the commercial  
27 recreational activity; and

28 (B) the skills and equipment required to participate in the  
29 commercial recreational activity that are not apparent to an inexperienced  
30 participant;

31 (2) require that employees who are responsible for assisting participants

1 in the actual performance of a commercial recreational activity have training in basic  
 2 first aid and cardiopulmonary resuscitation and explain to those employees how to use  
 3 emergency medical services available in the area;

4 (3) maintain recreational equipment and facilities in good repair;

5 (4) provide trained and competent personnel; and

6 (5) act in a reasonably safe and competent manner.

7 **Sec. 05.50.050. Interaction with other laws.** This chapter does not affect the  
 8 immunity of an owner of unimproved land under AS 09.65.200 or of a ski area  
 9 operator under AS 05.45.

10 **Sec. 05.50.060. Effect of violations.** A person who operates a business that  
 11 offers a commercial recreational activity and who violates <sup>05 05.</sup> a requirement of this chapter  
 12 is negligent and civilly liable to the extent the violation causes injury to a person or  
 13 damage to property.

14 **Sec. 05.50.100. Definitions.** In this chapter,  
 15 (1) "children"

16 (1) "commercial recreational activity" means a recreational activity for  
 17 which the participants pay compensation;

18 (2) "recreational activity" means an outdoor activity undertaken for the  
 19 purpose of exercise, education, relaxation, pleasure, sport, or as a hobby.

20 \* **Sec. 3.** This Act applies to acts or omissions that occur on or after the effective date of  
 this Act.

21 \* **Sec. 4.** This Act takes effect July 1, 1999.

## Sponsor Statement

### **HB 146 - An Act relating to civil liability for commercial recreational activities**

One of Alaska's major draws is outdoor adventure and recreation which carries some level of inherent risk for participants. Many businesses, the majority of which are small, offer commercial recreational activities to the public such as river rafting, guided hiking, kayaking, snowboarding and sport fishing, to name a few. HB 146 has been introduced to establish the responsibilities of commercial recreation businesses and the responsibilities of persons who elect to participate in recreational activities. It addresses specific guidelines operators and participants must follow to minimize the possibility of accidents. Commercial businesses are still responsible for meeting safety standards and providing trained and competent personnel, as outlined in Section 05.50.040.

The legislation will decrease uncertainties regarding the legal responsibilities for injuries and encourage the continued viability of responsible businesses that offer commercial recreational activities to the public. Existing legal uncertainties have resulted in high liability insurance costs which are prohibitive, especially for smaller businesses. This bill will help avoid unfair and unreasonable claims that make it increasingly difficult to provide recreational and outdoor activities that are synonymous with Alaska lifestyles and visitor expectations.

# Alaska State Legislature



## House of Representatives

HB 146

### SECTIONAL ANALYSIS

**Section 1:** This establishes the purpose of the bill, which is to decrease legal uncertainty regarding liability for injuries that result from participation in commercial recreational activities.

It is also the purpose of this act to encourage the continued availability of businesses that offer commercial recreational activities to the public.

**Section 2:** This section amends a chapter to AS 05 which sets forth guidelines which include acceptance of inherent risks, contributory negligence, responsibilities of participants, responsibilities of operators of commercial recreational activities, interactions with other laws and lastly, the definitions for certain terms in all of the above.

**Section 3:** This section defines the act as applicable to acts or omissions that occur after the effective date of this act.

**Section 4:** This is the enabling portion of the bill.

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO.                      HB 146

Revision Date		Dept. Affected	<u>Alaska Court System</u>
Title	<u>Civil liability for commercial recreational activities</u>	BRU	<u>Alaska Court System</u>
Sponsor	<u>Rep. Pete Kott</u>	Component	<u>Trial Courts</u>
Requester	<u>House Labor and 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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

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)						
<b>TOTAL</b>	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 anticipated.

Prepared by:	<u>Doug Wooliver, Administrative Attorney</u>	Phone:	<u>264-8265</u>
Agency	<u>Alaska Court System</u>	Date/Time:	<u>4/8/99 3:08 PM</u>
Approved by:	<u>Stephanie J. Cole, Administrative Director</u>	Date	<u>4/8/99</u>
Agency	<u>Alaska Court System</u>		

**LESSMEIER & WINTERS**

ATTORNEYS AT LAW

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Juneau, Alaska 99801

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Telefax: (907) 463-3020

**TELEFAX TRANSMITTAL SHEET**

**To:** Sam Kito **Telefax No:** 463-3275  
**From:** Michael L. Lessmeier **Date:** May 4, 1999  
**Re:** CSHB146 **Our File No:** n/a

**Number of pages transmitted (including cover sheet):** 2

**Instructions/Comments:**

Please call if you have any question. Original WILL NOT follow by mail.

Dear Glenn:

I apologize its taken so long, but I hope this still may be of some use.

Mike

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please call Wanda at (907) 586-5912.**

**CSHB146 [JUD]**

The primary purpose of this bill is to provide for an allocation of fault to a person who accepts an inherent risk of a commercial recreational activity to the extent that inherent risk causes injury, death or property damage. In this regard, it is important that sections 05.50.020 and sections 05.50.060 be read together. In other words, any damages caused by an accepted inherent risk of a commercial recreational activity should be allocated to the participant, whereas any damages caused by the negligence of a commercial recreational operator should be allocated to that operator. To the extent that the negligence of a commercial recreational operator and an inherent risk accepted by a party both cause the injury, death, or property damage, it is up the jury to allocate to the participant the extent of his or her responsibility and to the commercial recreational operator the extent of its responsibility.

**CSHB146 (JUD)**

I recommend removal of Section 05.50.060 because the effect of this Section is unclear and the inclusion of this Section will unnecessarily inject uncertainty into what this bill seeks to accomplish. One of the primary purposes of this bill is to provide for an allocation of fault to a person who accepts an inherent risk of a commercial recreational activity to the extent that inherent risk causes injury, death or property damage. It is unclear as to whether the allocation of inherent risk is to be applied at all under Section 05.50.060. In other words, it can be argued that under Section 05.50.060, if a commercial recreational operator is negligent, the accepted inherent risk is not to be considered at all in the allocation of fault. Because the meaning and application of Section 05.50.060 is unclear, I recommend it be removed.

I recommend Section 05.50.060 be removed for another reason, as I believe the provision is unnecessary. To the extent the responsibilities of a commercial recreational operator are specifically described in Section 05.50.040, it is likely that those specific requirements set the standard of care for purposes of civil liability. To the extent there is a violation of a specific standard of care set forth in Section 05.50.040, in all probability there would be civil liability for damages caused by that violation. The extent of that civil liability would be determined by allocating, among other things, the responsibility for the accepted inherent risk and any damage so caused to the participant and then allocating responsibility to the commercial recreational operator for the damage caused by violation of any specific standard of care. This is the balance of responsibility that I believe was intended by this legislation at the outset.

Therefore, because the effect of Section 05.50.060 is unclear and in any event is unnecessary, I recommend removal of that Section.

**HB**

**158**

# 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



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

## Representative Norman Rokeberg

### SECTIONAL ANALYSIS CSHB 158 (L&C)

### AN ACT RELATING TO THE ANNUAL REPORT OF THE DIRECTOR OF THE DIVISION OF INSURANCE AND TO NOTICE OF CANCELLATION OF PERSONAL INSURANCE

Prepared by Rep. Norman Rokeberg

- Section 1:** Adds to AS 21.06.100 concerning the Director [of Insurance] annual report. Permits gathering of statistical information regarding health insurance, including the number of individual and group policies sold in Alaska.
- Section 2:** Adds a new subsection (2) to AS 1.36.220(a) concerning notification of cancellation of a personal insurance policy (e.g., automobile, homeowners) if that notice is to an Alaska 70 years or older. Permits an Alaskan 70 years or older to give a written request that mailing also be made to a designated party in addition to the insured. Requires the insurance company to notify policyholders of this option.

ED2:04/15/99

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. HB 158

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Commerce & Economic Development  
 Title An Act relating to the annual report of the director BRU Insurance  
of insurance and to the notice of cancellation of personal insurance Component Insurance  
 Sponsor Rokeburg  
 Requester \_\_\_\_\_ Component Serial No. 354

**Expenditures/Revenues**

(Thousands of Dollars)

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

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

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

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill has no fiscal impact on this component.

Prepared by Marianne K. Burke, Director Phone 465-2215  
 Division Insurance Date/Time 4/6/99 2:32 PM  
 Approved by Commissioner Deborah B. Sedwick Date 4.6.99  
 Agency Commerce & Economic Development

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From: Commissioner  
on Aging

NUMBER OF BENEFICIARIES

For the purposes of this report, national prevalence data is used to determine the estimated number of people with ADRD in Alaska. The data is based on a study that is described in the article Estimated Prevalence of Alzheimer's Disease in the United States, Evans et al (1990). This study is generally accepted as a reliable indicator for determining ADRD population estimates. This study determined that within the group of people 65 years of age and older, the proportion of individuals with ADRD rises sharply with increasing age. This data estimates that among those 65 to 74 years old, 4% are estimated to have ADRD; for those 75 to 84 years old, this prevalence rises to 16%; and among those 85 years of age and older to 48%. These startling statistics are compounded by the fact that the 85+ group is the fastest growing segment of the total population, both nationally and in Alaska. When these statistics are overlaid with the explosion of the senior population in the next fifteen years, particularly the 85+ group, the demand for services for the ADRD population will be overwhelming.

The following chart lays out the projected growth of the ADRD population using Department of Labor senior population statistics and the national prevalence data estimates for ADRD. It is significant to note that these numbers are based on low series population projections. If the prevalence rates were applied to medium or high series projections, the estimated prevalence of ADRD would be substantially higher.

ESTIMATED PREVALENCE OF ADRD  
AND PROJECTED GROWTH

AGE GROUP	1995 SENIOR POPULATION	1995 ESTIMATED PREVALENCE OF ADRD	2010 PROJECTED SENIOR POPULATION	2010 ESTIMATED PREVALENCE OF ADRD	% INCREASE PROJECTED FOR ADRD POPULATION
65-74	18,941	757	28,650	1,146	51%
75-84	7,405	1,184	14,390	2,302	94%
85+	1,750	840	5,373	2,579	207%
total 65	28,096	2,781	48,413	6,027	116%

4/9/99  
Jill Sandlevan  
Commissioner  
465-4793



ESTIMATED PREVALENCE OF ADRD IN 2000

AGE GROUP	2000 SENIOR POPULATION	2000 ESTIMATED PREVALENCE OF ADRD
65-74	21,438	836
75-84	11,401	1,870
85+	2,404	1,143
Total 65+	35,243	3,849

Alaska Department of Labor, Administrative Services, Research and Analysis,  
Demographics Unit. Alaska Total Population Projections by Age, Race, and Sex, July  
2000-Zero Series.

Evans, D. et. al., Estimated Prevalence of Alzheimer's Disease in the United States, The  
Milbank Quarterly, 68, 2, 1990, 273, 274

Post-It® Fax Note	7671	Date	4-9	# of pages	1
To	JANET	From	Jill Candlerben		
Company	Rep. Rakeberg's office	Co.	ACOA		
Phone #		Phone #	-4793		
Fax #	2040	Fax #	-4716		

PD6R144P  
DATE: 01/27/99

VALID LICENSED DRIVERS AS OF  
JANUARY 27, 1999

PAGE: 4  
19:44:01.6

CLASS	AGE	FEMALE	MALE	UNKNOWN	TOTAL
<b>D</b>					
	14				
	15	1			1
	16	1,709	1,945		3,654
	17	2,696	3,073		5,769
	18	3,360	3,711		7,071
	19	3,604	4,035		7,639
	20	3,772	4,149		7,921
	21	3,834	4,149		7,983
	22	3,698	3,943		7,641
	23	3,936	3,895		7,831
	24	4,129	4,301		8,432
	25 - 29	22,609	21,651		44,260
	30 - 34	23,778	21,262		45,040
	35 - 39	27,953	24,155		52,108
	40 - 44	28,000	23,478		51,478
	45 - 49	23,579	21,778		45,357
	50 - 54	17,096	17,250		34,346
	55 - 59	11,355	12,185		23,540
	60 - 64	7,211	6,052		13,263
	65 - 69	5,124	6,075		11,199
	70 - 74	3,645	4,539		8,184
	75 +	3,851	4,668		8,519
<b>SUB TOTALS:</b>		<b>205,000</b>	<b>198,304</b>		<b>403,304</b>
<b>D/M1</b>					
	14				
	15				
	16	1	19		20
	17	3	42		45
	18		59		59
	19	0	86		86
	20	9	125		134
	21	9	130		139
	22	8	179		187
	23	13	199		212
	24	34	226		260
	25 - 29	163	1,819		1,982
	30 - 34	263	2,439		2,702
	35 - 39	495	3,287		3,782
	40 - 44	611	3,527		4,138
	45 - 49	469	3,175		3,644
	50 - 54	297	2,604		2,901
	55 - 59	145	1,128		1,273
	60 - 64	69	550		619
	65 - 69	23	276		299
	70 - 74	26	166		192
	75 +	14	110		124
<b>SUB TOTALS:</b>		<b>2,659</b>	<b>19,526</b>		<b>22,185</b>

02/18/98 09:47 FAX 19072696084 MID-TOWN LUNAR OFFICE

# 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



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e-mail: Representative\_Norman\_Rokeberg@legis.state.ak.us

## Representative Norman Rokeberg

### SPONSOR STATEMENT

CSHB 158 (L&C)

### NOTICE OF INSURANCE CANCELLATION TO ELDERLY

CSHB 158 (L&C) would accomplish two things: 1) permit the Division of Insurance to gather more in-depth statistical information regarding health insurance policies and 2) would permit a person 70 or older to request that notices be mailed not only to the insured but to a designated party.

One section of the bill deals with notices of cancellation on personal insurance policies. An 83-year old constituent thought he was insured and had paid his premium. He was in an accident, went to file a claim and was told that he didn't have coverage. He is out \$80,000. This constituent was carrying for an invalid spouse, dealing with finding a new live-in caregiver, and does not remember receiving any premium notices from his insurance company.

This legislation would leave the current system in place for Alaskans under age 70. If an Alaskan is 70 or over, the legislation offers a chance to have notices mailed not only to the insured but to a person designated by the insured. The insurance company would notify the policyholders of this option and upon written request would then mail all notices to two people: the insured and the designated party. This extra step will provide older Alaskans with a trusted extra pair of eyes looking at the notice. The legislation covers "personal insurance" which is property casualty (auto and homeowners) but does not include annuity contracts, life insurance, and health insurance or title insurance.

Another section of the legislation addresses a question that many in the Legislature have been struggling with for years: How many Alaskans are covered by individual and group health insurance policies? This bill permits the Division to gather such information in connection with the preparation of the Director's annual report. As the Legislature deals with many health insurance related issues, it is important to know how many Alaskans will be impacted by our decisions. We are particularly concerned about the impact on non-ERISA plans which are covered by legislative mandates and ERISA plans which are exempt from legislative mandates. There are many guestimates floating around but nothing concrete. This provision should not put an undue burden on the health insurance industry as each company should already know how many individual or group health policies they write in Alaska and how many people are covered by those policies.

Your support of this legislation would be appreciated.

ED2:04/15/99

**HB**

**167**

# FISCAL NOTE

No: 1

Bill Version: CSHB 167(L&C)  
 (H) Publish Date: 4/28/99

**STATE OF ALASKA  
 1999 LEGISLATIVE SESSION**

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

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

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

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

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

<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 New funds are not required to implement this bill.

Prepared by Jennifer Strickler, Administrative Manager Phone 465-2144  
 Division Occupational Licensing Date/Time 4/18/99 10:28 AM  
 Approved by Commissioner Deborah B. Sedwick Date 4/16/99  
 Agency Commerce & Economic Development

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## REPRESENTATIVE JOHN J. COWDERY

### Sponsor Statement for House Bill 167(L&C)

House Bill 167 (L&C) repeals the statutes requiring mobile home dealers to be licensed and bonded in the State of Alaska. House Bill 167 as originally drafted simply removed used dealers from the licensure and bonding requirements under existing law. Since used mobile homes are sold as-is where-is with no warranty expressed or implied, it seemed prudent to allow used dealer to operate unimpeded by bonding requirements.

In testimony before the House Labor and Commerce Committee, it became clear that removing used dealers would leave so few licensees in the program that it would be inefficient to administer and would no longer serve a meaningful public purpose. Furthermore, testimony was heard that the existing bonding and licensing fees (in excess of \$2000) are a significant burden on small businesses and have an anti-competitive effect on the marketplace. Upon discovering that no claims have ever been made against a licensee and hearing no request for protection from any consumer groups or members of the public, the Labor and Commerce Committee decided to simply repeal the existing licensure scheme and relieve private business of costs of bonding and licensing fees.

I support the action of the Labor and Commerce Committee and believe that this is one area where we can remove government interference from the private sector with no significant ill-effects.

License Type	Name	Address	City	State	Zip
8	M BELARDI, RUDY E. INLAND PASSAGE MANUFACTURED HOME SALES	PO BOX 339	GUSTAVUS	AK	99826
8	M BELARDI, LOIS A. INLAND PASSAGE MANUFACTURED HOME SALES	PO BOX 339	GUSTAVUS	AK	99826
5	M CAREY HOMES, INC. CAREY HOMES, INC.	3317 NT. VIEW DRIVE	ANCHORAGE	AK	99501
10	M COHEN, KATHRYN A. KODZOFF ACRES, LLC.	BOX 020570	JUNEAU	AK	99802
10	M COHEN, CHARLES W. KODZOFF ACRES, LLC.	BOX 020670	JUNEAU	AK	99802
1	M FALLIS, THOMAS R. THUNDER MOUNTAIN MOBILE PARK & SALES	8479 THUNDER MOUNTAIN ROAD	JUNEAU	AK	99801
7	M IMEX, LTD. DYNAMIC PROPERTIES	3111 'C' STREET	ANCHORAGE	AK	99503
12	M MALDEC ENTERPRISES, INC. MAYFLOWER HOME SALES	5208 STAEDEM DRIVE	ANCHORAGE	AK	99504-1628
11	M MULDOON PROPERTY, LLC MULDOON PROPERTY, LLC	C/O 705 MULDOON ROAD	ANCHORAGE	AK	99504
9	M NORTHERN LIGHTS, LLC SOUTHWOOD HOMES	3000 TOWN CENTER SUITE # 540	SOUTHFIELD	MI	48075
4	M PENLAND HOMES, INC. PENLAND HOMES, INC.	1827 E 5TH AVENUE	ANCHORAGE	AK	99501
3	M RUSSELL, LESTER LEROY NORTHWEST MANUFACTURED HOMES	P O BOX 9024	KODIAK	AK	99615
2	M TRIAD SALES CO., INC. TRIAD SALES COMPANY, INC.	P O BOX 90779	ANCHORAGE	AK	99509
6	M WRIGHT SERVICES, INC. SOUTHEAST ALASKA MANUFACTURED HOMES	5454 SHAUNE DRIVE	JUNEAU	AK	99801-9539

Total Licenses: 14

**HB**

**1900**

# FISCAL NOTE

No: 1

Bill Version: CSHB 190 (L&C)

(H) Publish Date: 1/26/00

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) \_\_\_\_\_  
Title Viatical Settlements

Dept. Affected Community & Econ. Dev.  
BRU Banking, Securities, and Corporations  
Component Banking, Securities, and Corporations

Sponsor House Labor & Commerce  
Requester House Labor & Commerce

Component Serial No. 1233

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

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

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

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

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

Viatical settlements involve the purchase by an investor of an insurance policy covering the life of an individual diagnosed with a terminal illness. The purchase is usually for a fraction of the face value of the policy, thus the terminally ill person receives money now to cover expenses and other considerations while the investor receives the right to the face amount of the policy on the viator's death. A life settlement is functionally the same, only the insured is not burdened with a terminal illness, thus these investments are contemplated for a considerably longer time period. Sales of these investments have been tainted with considerable fraud in the past and the public requires protections that only the state can implement. The division contemplates regulations and required disclosures, together with mandatory rescission periods, will adequately protect the average investor. Since the added regulation will likely keep most bad actors out of the state, and the division currently handles these as investment contracts, the additional supervision is not expected to impose any additional significant fiscal impact.

Prepared by Franklin T. Elder, Director  
Division Banking, Securities and Corporations  
Approved by Commissioner Deborah B. Sedwick  
Agency Community and Economic Development

Phone 465-2521  
Date/Time 12/30/99 11:30 AM  
Date 1/9/00

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# FISCAL

No: 2

Bill Version: CSHB 190 (L&C)

(H) Publish Date: 1/26/00

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: An Act relating to viatical settlement contracts

Department Affected: Community & Economic Development  
BRU: Insurance

Sponsor: Labor & Commerce  
Requestor: Labor & Commerce

Component: Insurance

COMPONENT SERIAL NO: 354

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

OPERATING	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER FUND SOURCE						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

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

Estimate of current year impact: \_\_\_\_\_

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

It is unknown how many registrations will be received and processed. Fees collected will cover expenses. Zero fiscal impact.

Prepared By: Janet S. Seitz, Committee Assistant *Janet S. Seitz* Phone: 465-4954  
Division: House Labor & Commerce Committee Date: 1/24/00

Approved By: Rep. Norman Rokeberg, Chairman, House Labor & Commerce Committee  
Agency: \_\_\_\_\_ *Norman Rokeberg* Date: 1/24/00

# ALASKA STATE LEGISLATURE

## HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman  
Representative Andrew Halcro, Vice-Chairman  
Representative John Harris  
Representative Lisa Murkowski  
Representative Jerry Sanders  
Representative Tom Brice  
Representative Sharon Cissna



State Capitol  
Juneau, AK 99801-1182  
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### SPONSOR STATEMENT

#### COMMITTEE SUBSTITUTE FOR HOUSE BILL 190 (JUD)

An Act relating to viatical settlement contracts

Viatical settlement contracts, essentially, are agreements by investors to purchase at a discount a life insurance policy. The viatical industry has grown rapidly in the last decade and was originally limited to policyholders that had terminal or life-threatening illnesses. The industry has now expanded to include those who are not ill but just want to sell their life insurance policy. Purchase of these policies provides an investment alternative for investors. Much of the early growth of the industry was fueled by the AIDS health crisis. As medical advances prolonged the life expectancies of viators (or insured individuals), policies did not "mature" as expected, and returns were sometimes less than expected or were even negative. Sales abuses began to surface. It appears that investors often had little idea of the risks along with the potential rewards of these investments. Good public policy requires that we take a proactive position to protect Alaska investors from sales abuses that have appeared elsewhere in the country.

This bill adds viatical settlements as items covered under state law by the Division of Insurance before a contract of sale is signed and to Division of Banking, Securities, and Corporations (DBSC) at the time a viatical settlement provider begins to market this investment to others. Currently these settlements are not specifically mentioned in law but are considered to be a security for the purpose of Alaska's DBSC. The industry, however, has no way of knowing this unless they ask the Department. This means that unregistered securities sales may unintentionally take place in Alaska. This legislation makes the status of these items explicit, and provides for an exemption mechanism that is relatively easy for the industry to meet, while also increasing the protection of Alaska investors from sales abuses that have appeared in other parts of the country.

The financial press in recent months has published articles describing marketing abuses in the sale of viatical settlement contracts to investors. The abuses often center on inadequate risk disclosure. Investors are lead to believe the investment is a "sure thing." Then they discover these investments, under certain circumstances,

may be illiquid and may even result in losses. One investor's story described how he invested his IRA in a viatical settlement contract. When the viator did not die, the contract became illiquid. Since the investor was reaching the age of 70 and one-half, the IRS required him to make mandatory distributions from the IRA or suffer a large penalty. But, he could not make the distributions due to the illiquid investment.

In the face of these abuses, regulatory agencies across the country have begun to take action. In February 1999, the State of California issued an order against three viatical settlement providers for viatical sales without registration under the California securities act. In April 1999, the State of Oklahoma took an enforcement action against two viatical settlement providers for selling viatical settlement contracts without registration and without making proper risk disclosures to investors. Finally, in 1998, the SEC for the first time achieved full injunctive and monetary relief in a viatical settlement case when a company agreed to pay \$950,000 to settle charges that viatical settlement contracts were sold to investors without proper disclosures.

The dual nature (having two divisions involved) of this bill is not unique. Other states have a similar regulatory scheme where the "insurance" aspect is regulated under insurance and the "investment/securities" aspect is regulated by a securities regulatory office. Additionally, both Insurance and DBSC also regulate other occupations. For example, a financial planner could be regulated by both as to sales of insurance and sales of securities.

In 1998, over \$1.5 million of viatical contracts were sold in Alaska.

This fast growing area of investment needs to be overseen so that Alaskan consumers can have the full benefit of disclosure, rescission rights, and a regulatory body to complain to when things do not go as planned. The DBSC has been working with industry representatives and others on developing draft regulations.

This legislation also offers the viator protection by mandating that the name of the viator or insured may not be disclosed unless the viator permits, in writing, the disclosure of such information. Additionally, the bill requires that the investor be provided with "information that is sufficient to make an informed investment decision". That information includes the issuer's most recent audited income and expense statement and balance sheet, statement of risks, and disclosure of any significant negative factor that may affect the outcome of the investment.

We urge your support of this legislation.

ED3:02/10/00

# ALASKA STATE LEGISLATURE

## HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman  
Representative Andrew Halcro, Vice-Chairman  
Representative John Harris  
Representative Lisa Murkowski  
Representative Jerry Sanders  
Representative Tom Brice  
Representative Sharon Cissna



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### ADDITIONS TO SECTIONAL ANALYSIS PREPARED BY TERRY BANNISTER, LEGAL SERVICES, LAA BY REP. NORMAN ROKEBERG

- Section 1:** Remains same as in Bannister 1/26/2000 memo
- Section 2:** Remains same as in Bannister 1/26/2000 with the addition of requirement that viator's name not be disclosed unless the viator agrees, in writing, to such disclosure.
- Section 3:** New. Provides that certain procedures must take place before a viatical settlement interest is sold. For example, the issuer must provide "information that is sufficient to make an informed investment decision." Such information may include the issuer's most recent audited income and expense statement and balance sheet, a statement of risks, and disclosure of any significant negative factor that may impact the outcome of the investment. This section also indicates that the issuer of a viatical settlement interest may not disclose the viator's name unless the viator has waived, in writing, this prohibition.
- Section 4:** See old Section 3 comments in Bannister 1/26/200 memo.
- Section 5:** See old Section 4 comments in Bannister 1/26/2000 memo.
- Section 6:** See old Section 5 comments in Bannister 1/26/2000 memo
- Section 7:** Immediate effective date.

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
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Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

January 26, 2000

**SUBJECT:** Sectional Summary of CSHB 190(L&C) (Work Order No. 21-LS0576M)

**TO:** Representative Norman Rokeberg  
Attn: Janet

**FROM:** <sup>TB</sup> 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 and the bill itself is the best statement of its contents.

Section 1. Prohibits a person from violating AS 21.89.110 or the regulations adopted under that statute.

Section 2. Sec. 21.89.110(a) requires the Director of the Division of Insurance to regulate the transaction of viatical settlement contracts. Further describes the authority of the director. States that the authority of the commissioner of community and economic development extends to the regulation of viatical settlement investments as provided under AS 45.55.905(c).

Sec. 21.89.110(b) requires a viatical settlement provider, representative, or broker to apply for a license, submit required information, and pay required fees. Prohibits a person from acting as or representing to be a viatical settlement provider, representative, or broker relative to a subject resident, located, or to be performed in this state unless the person is licensed.

Sec. 21.89.110(c) requires viatical settlement providers, representatives, and brokers to file contract forms, disclosure statements, and advertising materials with the director, and that the documents be approved by the director.

Sec. 21.89.110(d) allows the director to examine a licensed viatical settlement provider, representative, or broker, or an applicant for these occupations. Requires the examined person to pay the cost of the examination.

Sec. 21.89.110(e) authorizes the director to adopt regulations to implement this section, and identifies certain standards for which regulations may be adopted.

JAN 26 2000

Representative Norman Rokeberg

January 26, 2000

Page 2

Sec. 21.89.110(f) states that a violation of this section, or of a regulation adopted under this section, is an unfair trade practice and subject to penalty under AS 21.36.

Sec. 21.89.110(g) defines certain terms for the section.

Section 3. Authorizes the administrator (the commissioner of commerce and community development) to regulate transactions between a viatical settlement provider (or an agent of a provider) and a subsequent investor. States that the authority of the Director of the Division of Insurance extends to the regulation of viatical settlement contracts under AS 21.89.110.

Section 4. Expands the definition of "security" in the Alaska Securities Act to include viatical settlement interests.

Section 5. Defines "viatical settlement interest" and "viator" for the Alaska Securities Act.

Section 6. Gives the Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:glc  
00-031.glc

ALASKA DIVISION OF BANKING, SECURITIES, AND CORPORATIONS  
POLICY STATEMENT ON VIATICAL SETTLEMENT CONTRACTS

There have been some inquiries and questions from investors and the industry generally regarding viatical settlement contracts and their treatment under the Alaska Securities Act (AS 45.55). Briefly, a viatical settlement involves the purchase by an investor of an insurance policy covering the life of an individual, usually but not always, having been diagnosed with a terminal illness. The purchase is usually for a fraction of the face value of the policy, thus the insured person receives money now to cover expenses and other considerations while the investor receives the right to the face amount of the policy on the viator's death. The social value of this arrangement is not at issue; as an investment vehicle, it is. We are aware of instances in which viatical settlements have been advertised to the public as 100% secure with rates of "guaranteed return" as high as 40% and more. These investments have not been registered with the Alaska securities division as required, and those selling them have not been registered as broker-dealers, agents, investment advisers, or their representatives.

The securities division has the statutory mandate to safeguard the investing public by enforcing the Alaska Securities Act. This statute governs the issuance, sale, and other transactions involving securities and requires that securities and those who sell them register with the securities division. Our mission is to warn Alaskan investors of any security that might run afoul of our Act's prohibition against engaging in "an act, practice, or course of business that operates or would operate as a fraud or deceit upon a person." Toward that end, following careful consideration of the applicable provisions of the Act, the regulations adopted under the Act, and

relevant legal authority, the division has concluded, for the reasons laid out in this statement, that viatical settlements are investment contracts and subject to the provisions of the Act.

#### **VIATICAL SETTLEMENTS ARE INVESTMENT CONTRACTS**

The viatical settlement is governed by a written agreement between a company facilitating the transaction, an investor, and the person covered by an insurance contract. The insured or the owner of the policy agrees to sell the ownership interest in the insurance policy and the right to name a beneficiary and receive the face amount of the policy on the insured's death. The premise behind viatical settlements is 1) to give those faced with a terminal illness the monetary means to live and to pay medical expenses when, in all likelihood, the person is at a stage when continued employment may not be possible; 2) to give those who no longer need life insurance for whatever reason a means of cashing in on the policy. The policy is sold at a discount based on life expectancy of the insured, current interest rates, the premium terms due, and profit requirements of the investor and the viatical settlement company. Typically, the viatical company is named irrevocable owner of the policy and may or may not take on the obligation to make any necessary premium payments. Alternatively, the viatical company may simply match an insured with an investor who then takes over as direct owner and beneficiary, though this scenario is not usual. The point to remember is that the investor always ends up making the premium payments. The premiums can be collected up front and paid out over the life of the insured; they can be deducted from the investor's share of the profits; or some mix of the two.

The usual situation calls for the viatical company to own the policy and intervene in the activities surrounding the transaction, thus giving the insured some measure of privacy. Upon the death of the insured, the company would be notified and would collect the proceeds of insurance and pass them on to the investor, first deducting administrative costs and expenses, including premiums paid, if any, and a commission to the viatical company.

The question of whether or not this arrangement is characterized as a security is answered by referring to long-standing principles of statutory interpretation. The statutory definition of "security" is found at AS 45.55.990(12). A very comprehensive Alaska definition is virtually identical to that used in most states and the federal Securities Act of 1933, and it includes the term "investment contract." The United States Supreme Court first undertook to define an investment contract in the seminal case of *Securities & Exch. Comm'n v. C.M. Joiner Leasing Corp.*, 320 U.S. 344 (1943). Building on the *Joiner* decision, the Supreme Court, in *Securities & Exch. Comm'n v. W. J. Howey Co.*, 328 U.S. 293, 299, 66 S.Ct. 1100, 1103 (1946), the Court laid out a simple, tripartite test for determining the presence of an investment contract:

a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party[.]

This definition has been articulated many times since as controlling, in Alaska, e.g., in *Hentzner v. State*, 613 P.2d 821, 823 (Alaska 1980), and in federal court in *Securities & Exch. Comm'n v. Life Partners, Inc.*, 898 F.Supp. 14, 19 (D.D.C. 1995). The United States Supreme Court said

This test, in shorthand form, embodies the essential attributes that run through all of the Court's decisions defining a security. The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. By profits, the Court has meant either capital appreciation resulting from the development of the original investment . . . or a *participation in earnings resulting from the use of investors' funds* . . . . In such cases the investor is "attracted solely by the prospect of a return" on his investment.

*United Housing Found., Inc. v. Forman*, 421 U.S. 837, 852, 95 S.Ct. 2051, 2060 (1975) (emphasis added) (citations omitted) (quoted in *Hentzner, supra* at 824).

THE DIVISION'S INTERPRETATION IS  
NOTWITHSTANDING *LIFE PARTNERS*

The division is mindful of the decision in *Life Partners*, in which the D.C. Circuit held that the viatical settlement contract at issue in the case was not an investment contract. *Securities & Exch. Comm'n v. Life Partners, Inc.*, 87 F.3d 536, 543 (D.C. Cir. 1996). While the SEC won at the district court level, the Court of Appeals found that not every element of the *Howey* test was met. The appeals court concluded that the investors' return depended not on the efforts of the viatical company, but rather from the length of time the insurance remained alive, saying

In this case it is the length of the insured's life that is the overwhelming importance to the value of the viatical settlements[.]

87 F.3d at 548. The decision in that case is almost universally viewed by state securities administrators as flawed. The court seems to have been influenced by its perception of the social utility of the viatical settlement and the court's sympathetic view of terminal AIDS patients, who make up the vast majority of viators. Alaska does not agree with the D.C. Circuit in either outcome or rationale. We believe every part of the *Howey* test is met and that social utility alone should not be the motive

driving a court's decision. Furthermore, we believe there is little support for drawing the bright-line distinction between "pre-investment" and "post-investment" managerial efforts which the *Life Partners* court attempted to draw.

#### HOWEY TEST MUST BE APPLIED FLEXIBLY

The *Hentzner* court indicated that the *Howey* test should not be applied rigidly or inflexibly, but that substance must take primacy over form. In other words, when one considers applying the elements of the investment contract decisions to a viatical settlement, they cannot be applied mechanically, but must be applied with common sense. The Ninth Circuit found that the securities acts of the various states, and federal legislation as well, were meant to be broadly interpreted. The protections afforded by these laws were aimed at curbing the abuses that had crept into the field prior to the Great Depression and those curbs could best be effected by liberal interpretations of the term "securities." *Securities & Exch. Comm'n v. Glenn W. Turner Enter, Inc.*, 474 F.2d 476, 481 (9th Cir. 1973).

#### INVESTMENT OF MONEY

There is little dispute that money is invested, therefore satisfying element one of the *Howey* definition for the viatical settlement situation.<sup>1</sup> Even *Life Partners* did not dispute that money was being invested. "The parties . . . do not contest that the buyers of viatical settlements are investing money." *Securities & Exch. Comm'n v. Life Partners, Inc.*, 898 F. Supp. 14, 19 (D.D.C. 1995). Moreover, the sales literature of almost all viatical companies speaks in terms of "investment" and "investors."

---

<sup>1</sup> Money may not always be the medium of consideration. "Free stock" and other things having value also constitute "valuable consideration."

#### EXPECTATION OF A PROFIT

The third element of the *Howey* test, the expectation of a profit from the investment in a viatical settlement, is also easily disposed of. The buyer of a viatical settlement does so with the expectation of a profit, regardless of the motives of any other person involved in the transaction. In *Life Partners*, the Court of Appeals concluded:

The asset acquired by an LPI investor is a claim on future death benefits. The buyer is obviously purchasing not for consumption—unmatured claims cannot be currently consumed—but rather for the prospect of a return on his investment. As we read the *Forman* gloss on *Howey*, that is enough to satisfy the requirement that the investment be made in the expectation of profits.

*Securities & Exch. Comm'n v. Life Partners, Inc.*, 87 F.3d 536, 543 (D.C. Cir. 1996).

#### COMMON ENTERPRISE

There are two forms of common enterprise, horizontal and vertical. In most viatical settlement situations, there are a number of investors pooling resources to buy fractional interests in the insurance policy. There is difficulty in finding persons to invest the full amount needed to purchase a policy, and most often smaller investors put out \$5,000 or more to purchase a share in the policy. This meets the horizontal test. This test requires that the funds of a number of investors be pooled and the profits and losses from the pooled investments be shared. The sale of fractional interests in life insurance policies necessarily means that the profits and losses are shared with other investors. The viatical settlement marketing materials the division has reviewed lead to the conclusion that fractional interests are being sold. Even if certain viatical companies, however, deal only in one-on-one investments in viaticals, this is not true of all viatical settlement companies and the

vertical form of common enterprise is present. Moreover, only one form of common enterprise test need be met to find an investment contract. See 12A JOSEPH C. LONG, BLUE SKY LAW § 2A.02[2][c] (1998).

The vertical test requires that the marketer join with the investor to make the profit. If the viatical company is acting as an agent for purchasers, the test is fulfilled. Regardless of whether they actually are agents of the purchasers or not, the broad vertical test is met. The common enterprise is created by the viatical company in first finding and evaluating the insurance policies that it will market. The investor is entirely passive: the viatical company must exercise skill and care in selecting the contracts it will purchase and market. Albeit that many companies have third parties that afford the necessary post-purchase services, the venture is still initiated and put together by the viatical company. Thus, there is a passive investor and an active enterprise, exactly the sort of thing the securities laws were enacted to protect.

#### POST-PURCHASE EFFORTS

Some viatical companies have advanced the rather disingenuous argument that the company itself performs no significant post-purchase activities. This because they arrange for third parties to render such services as taking ownership of the insurance policy in trust and keeping tabs on the viator and notifying investors when the viator dies. This argument seems to ignore that, in most cases, the investor *needs* those services and cannot perform them for him- or herself. The standard is *someone* must perform those post-purchase functions. Following this logic, a viatical company would argue that, since the broker who procured stock in AT&T for a customer performs no post-purchase services, has no control over AT&T,

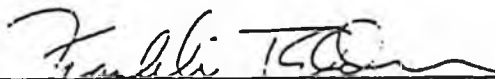
nor has any effect on the value of the stock, no security was the subject of the broker's efforts. This is patently specious. That others perform the service does not negate an investment contract.

Without the viatical company selecting the policies, arranging for post-purchase services, and bringing the investor into the mix, there would be no investment. There is definitely a situation where profits are made through the efforts of another.

**ALASKA'S POSITION IS CONSISTENT  
WITH OTHER JURISDICTIONS**

The position that the Alaska securities division has taken is consistent with that taken by any number of other state securities administrators. Alabama, Ohio, Washington, Wyoming, and Kansas are among those who have announced policies in keeping with Alaska's policy. The division looks with disfavor on viatical settlements because so much fraud has been associated with their sale. The division will not blanket deny these investment vehicles to Alaska residents, however, companies that market these investment contracts will have to register themselves and their product with the division at a minimum.

Adopted at Juneau, Alaska this 24<sup>th</sup> day of August, 1999.

  
\_\_\_\_\_  
Franklin T. Elder  
Administrator of Securities

**THIS DISCLOSURE IS MANDATED BY THE STATE OF ALASKA TO BE PROVIDED TO AN INVESTOR BEFORE A SALE IS CONSUMMATED**

**Viatical Settlement Disclosure Document Part A**

**READ IMMEDIATELY UPON RECEIPT AND BEFORE YOU PURCHASE**

We are offering to sell you an investment called a **viatical settlement contract**. A **viatical settlement contract** is an agreement for the purchase of the death benefit of a life insurance policy insuring the life of an individual who has been diagnosed with a life expectancy of short duration because of illness. The individual who owns a life insurance policy is being sold is called the viator. Often, the viator and the insured are the same.

When the insured dies the investor receives a specific dollar amount that will be greater than the amount paid for the contract.

Some companies sell entire policies to investors, and others sell partial interests in policies. If you purchase a partial interest, the remaining interests in the policy will be sold to other investors.

**INVESTING IN A VIATICAL SETTLEMENT CONTRACT IS RISKY. BE AWARE THAT THIS TYPE OF INVESTMENT MAY INVOLVE RISKS IN ADDITION TO THOSE EXPLAINED BELOW.**

**RISKS**

The rate of return on your investment cannot be calculated before the insured dies. The longer the insured lives, the lower the annual rate of return on your investment will be.

No one can accurately predict the actual life expectancy of an insured. Some factors that may affect the accuracy of a prediction are:

- ◆ The experience and qualifications of the medical personnel making the life expectancy prediction.
- ◆ The nature of the insured's illness.
- ◆ Future breakthrough treatments and cures.
- ◆ If the insured has AIDS, the definition of AIDS used by the viatical company.

You may have to pay money in addition to your initial investment.

The insurance company will cancel the policy in which you have invested if periodic premium payments are not made to keep the policy in force. The insurance company will not pay the death benefit if the policy is not in force.

Some of the money you invest probably will be set aside to pay premiums. However, if the insured lives longer than expected, you may be required to pay additional premiums to keep the policy in force.

**Being a beneficiary of a policy and not also an owner carries special risks.**

A person who buys life insurance is the owner of the policy and decides who the beneficiaries of the policy will be – that is, who will receive the death benefit when the owner dies. When the policy is sold as a viatical settlement contract, investors become the new beneficiaries and therefore are entitled to receive the death benefit when the owner (usually the insured) dies.

The new owner of the policy may be either the investors themselves or the viatical company. Only an owner of a policy, not a beneficiary, has the right to make premium payments directly to the insurance company so that the policy will remain in force.

If the funds that have been set aside to pay premiums run out, you will be dependent on the viatical company to collect additional premium money from investors and to pay premiums promptly. If that company goes out of business or otherwise fails to collect premiums from investors, you may not be able to pay the premiums yourself if you are only a beneficiary.

**Term insurance policies carry special risks.**

A term policy is issued for a specific time period. The insurance company will not pay the death benefit if the insured outlives that time period. If you purchase a term policy, you will be dependent on the viatical company to renew the policy when the term expires.

**Contestable policies carry special risks.**

The insurance company may "contest" a policy for a two-year period after its issuance if the company finds a reason to cancel the policy. The insurance company will not pay the death benefit if:

- ◆ the insured dies within the contestability period, and
- ◆ the insurance company has a reason to cancel the policy.

One example of a reason that an insurance company might cancel a policy is that the insured did not truthfully answer a question on the policy application.

The policy may also be cancelled if the insured commits suicide within the two-year contestability period.

**Group policies carry special risks.**

A group policy insures the members of a specific group of people, usually the employees of an employer. The biggest risk for someone who invests in a group policy

is that the policy can be terminated by the employer or the insurance company. Although the policy will contain a provision allowing your interest to be converted to an individual policy, there may be limits or restrictions on the right to convert.

Also, the insurance company may charge additional premiums once the policy is converted.

**Investing IRA money in a viatical settlement contract carries special risks.**

Internal Revenue Code section 408(a)(3) requires that "no part of trust [IRA] funds will be invested in life insurance contracts." This means that the Internal Revenue Service may not allow you the tax benefits of an IRA if you invest in a viatical settlement contract.

Even if such an investment is allowed, you should carefully consider your age, the life expectancy of the insured, and the difficulty in predicting life expectancy before investing IRA funds in a viatical settlement contract. Since death benefits are not paid until the insured dies, you may encounter a problem taking annual distributions from your IRA that are mandatory beginning at age 70½. If the funds are not available to take the mandatory distribution, you will be penalized by the IRS.

An investment in a viatical settlement contract is not a liquid investment.

The death benefit on a viatical settlement contract will not be paid until the insured dies, and there is no established secondary market for viatical settlement contracts. This means that you will probably not be able to sell your contract in an emergency to raise money for your immediate needs.

**Check any promises of guarantees carefully.**

The viatical company from which you purchase your viatical settlement contract may provide a performance or fidelity bond, or another similar instrument with your purchase. The purpose of these instruments is to "guarantee," or "insure," your investment. Ask exactly what is being guaranteed. Also ask the salesperson for a copy of the guarantee instrument.

If the company issuing the "guarantee" does not have the necessary financial resources to make payments under the "guarantee," you will not receive any benefit from the "guarantee."

You should do a background check on the company issuing the guarantee instrument. Contact the appropriate regulator to verify that the company exists and is in good standing. Obtain a copy of the company's most recent financial statements.

The terms of the contract between the company issuing the "guarantee" and the viatical company may also affect how valuable, or useful, the "guarantee" is to you. Ask for a copy of this agreement.

You could lose some of the death benefit you have purchased if the insurance company that issued the life insurance policy goes out of business.

Insurance companies are rated based on their financial safety and soundness. A lower rating means that the company is more likely to go out of business.

Each state maintains an insurance guarantee fund for the benefit of policyholders of insurance companies that have gone out of business. The guarantee fund may impose a limit on the amount that can be recovered on each policy.

Also, the payment on your viatical settlement contract would be delayed if you needed to seek funds from this guarantee fund or from the receivership of the insurance company. This delay would reduce the annual rate of return on your investment.

You should seek legal advice to help you understand the nature of this investment, the terms and conditions of any contract you are asked to sign, and the tax consequences of your decision to invest.

#### Right to Rescind

Under Alaska law, you have the right to rescind—that is, cancel—the purchase of this investment by giving written notice of your intention to rescind. To be effective, your written notice of rescission must be postmarked no later than 10 business days following the later of the date on which you executed and the seller accepted the purchase agreement. You will also be offered a chance to cancel the transaction if an acceptable, suitable policy is not closed by the 60<sup>th</sup> day after you make the purchase.

**You may rescind this transaction by sending notice of your intention to rescind no later than \_\_\_\_\_ to:**

Name:  
Address:

The viatical company  will pay interest at the rate of \_\_\_\_\_ % APR on the money you give them until the transaction closes.

No interest will be paid on the money you give the viatical company to purchase a viatical settlement.

The Alaska Securities Division is the agency of state government responsible for the licensing of brokerage firms, investment advisers and their employees, the registration of investment products, and enforcement of the State's securities laws. Anyone with questions or concerns about viaticals or other investments may call the Alaska Securities Division at (907) 465-2521. We may be reached by mail at Alaska Securities Division, P.O. Box 110807, Juneau, Alaska 99811-0807, and E-Mail at [dbsc@dced.state.ak.us](mailto:dbsc@dced.state.ak.us)

You can also visit our website at [www.dced.state.ak.us/hsc.htm](http://www.dced.state.ak.us/hsc.htm).