

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10112 SENATE LABOR & COMMERCE

Tony Knowles, Governor

Alaska **Department of Community
and Economic Development**

Division of Banking, Securities, and Corporations

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March 2, 2000

The Honorable Jerry Mackie
Chair, Senate Labor & Commerce Committee
Alaska Senate
State Capitol Room 427
Juneau, AK 99801-1182

Dear Chairman Mackie:

RE: CSHB 190(JUD)

We respectfully request that you schedule a hearing on the referenced bill which is currently in your committee. The bill establishes a regulatory framework for the viatical settlement contract industry that is important for the protection of people who sell their life insurance policies, insurance companies that insure them, and investors who purchase interests in these policies.

We consider this bill to be a significant investor protection bill. While we have long considered viatical settlements to be investment contracts already covered by the Alaska Securities Act, our position is subject to challenge. One viatical settlement company sold \$1.5 million in interests to Alaskans without our knowledge. When we intervened, they filed a suit against us to block us. We eventually settled, but the State is now in a position where people who sell these interests to Alaska investors can increase our enforcement costs substantially by making us argue in court whether these are securities. This bill will settle that by adding viatical settlement interests to the definition of a security.

This industry is relatively young, and its unclear regulatory situation has allowed many cases of fraud to occur over the years. It is important for us to protect Alaska investors and keep that fraud out of this state. We would be more than happy to meet with you and/or your staff at your

convenience to discuss this further and answer any questions you might have. We are confident you will agree with us that this bill will protect investors and reduce enforcement costs to the State. Thank you.

Yours truly,

A handwritten signature in cursive script, appearing to read "Franklin T. Elder".

Franklin T. Elder
Director

cc: The Honorable Norman Rokeberg
Mr. Bob Lohr, Division of Insurance
Ms. Sally Sadler, DCED

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Senator Jerry Mackie
Senator Majority Leader
Alaska Capitol Rm. 427
Juneau, AK. 99801

Re: C.S.H.B.190; "An Act Relating to Viatical Settlement Contracts."

Dear Senator Mackie:

I am writing to you in my capacity as chair of The Viatical and Life Settlement Association of America's (formerly the Viatical Association of America - "VAA") committee dealing with securities laws and purchaser regulations. The Viatical and Life Settlement Association of America has worked with the Division of Banking, Securities and Corporations to draft regulations and has reached agreement on a supportable bill which will fairly and effectively regulate the sale of viaticals in Alaska. The Division of Insurance is prepared to regulate sales of viaticals by insureds and we feel the Alaska approach can be supported by the Industry. There is a need, however, to pass C.S.H.B.190 in order to tie the package together.

Please give me a call at your earliest opportunity if you have any questions or would like to discuss this further.

Very truly yours,



Michael J. McNerney
Chair, VAA Purchaser Regulation Committee

HB

201

FISCAL NOTE

No. 1.

Bill Version: CSHB 201 (L&C)

(H) Publish Date: 4/22/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction): _____
 Title: Overtime Compensation
 Computation: _____
 Sponsor: (H) L&C
 Requester: (H) L&C

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: Wage and Hour
 COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
CHANGE IN REVENUE FUND SOURCE #	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This bill codifies longstanding state policy and practice regarding how daily hours worked are counted when computing weekly overtime.

Prepared by: Alan W. Dwyer, Director *Alan Dwyer* Phone: 465-4855
 Division: Labor Standards & Safety Date/Time: 4/19/99 8:06 AM
 Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
 Agency: Department of Labor Date: 4/19/99

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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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MEMORANDUM

TO: The Honorable Jerry Mackie, Chairman
Senate Labor & Commerce Committee

FROM: Rep. Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: April 28, 1999

RE: CSHB 201 (FIN) am
Computation of Overtime

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

Please schedule CSHB 201 (FIN) am for a hearing before your committee. The bill passed the House yesterday on a vote of 39-1.

Attached are the following:

1. CSHB 201 (FIN) am
2. Fiscal Note
3. Sponsor Statement
4. Sectional Analysis
5. Memorandum and Order: Hallam v. Holland America Lines, Inc. d/b/a Westours Motor Coaches, Inc.
6. Affidavit of Tom Cashen
7. April 25, 1997 letter from Department of Labor to Robert Blasco
8. Support letters:
 - a. National Federation of Independent Business
 - b. Lynden
 - c. Alaska Laundry, Inc.
 - d. Greater Ketchikan Chamber of Commerce

Thank you for your consideration of this request. If you have any questions, please do not hesitate to contact me.

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SPONSOR STATEMENT CSHB 201 (FIN) am

An Act relating to the computation of overtime; and providing for an effective date.

House Bill 201 would clarify a recent court decision that rules that overtime hours are to be calculated differently than they have historically been under AS 23.10.060(b). AS 23.10.060(b) currently states:

If an employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid.

The court's decision is contrary to the interpretation always used by Alaska's Department of Labor and to the understanding of Alaska's employers. The court's decision has ignored the historical application by Labor and all employers in the State.

The best way to bring the problem to the forefront is to give an example of what will happen under the court's decision:

Assume Employee worked the following schedule for a total of 43 hours:

Monday	11 hours	Thursday	8 hours
Tuesday	8 hours	Friday	8 hours
Wednesday	8 hours		

As to Monday, everyone agrees that Employee is entitled to 3 hours of overtime. The issue is as to Friday. Under the Department's interpretation and the interpretation of employers, no overtime would be due as to Friday since Employee worked 43 hours during the week and has already been paid for 3 hours overtime. *Under the Court's ruling, Employee would receive overtime for 3 hours on Friday because in computing the 40 hours under the statute, one must include the 3 overtime hours worked on Monday. Consequently, Employee received 6 hours of overtime pay for the week even though he/she only worked 43 hours. Such a system as the court's interpretation would allow is referred to as "pyramiding".*

CSHB 201 (FIN) am would clarify that the Employee above would only receive pay for the 3 hours of overtime worked. This would statutorily clarify the law and its interpretation for all involved, including the courts. Failure to correct the court's interpretation will have significant impacts on all Alaskan businesses.

During consideration of this legislation by House committees, the Department of Labor expressed its strong support for this legislation.

We urge your support of this legislation.

ED4:04/28/99

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

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SECTIONAL ANALYSIS CSHB 201 (FIN) am

An Act relating to the computation of overtime; and providing for an effective date

- Section 1:** Legislative Findings. Discusses the historical interpretation of AS 23.10.060(b) regarding overtime compensation and indicates that due to some court decisions the Legislature finds it necessary to eliminate any doubt about how the law is to be construed. Mentions in (2) the actual court decision involved.
- Section 2:** Amends AS 23.10.060(b) to make it clear that overtime compensation will be paid if an employee works in excess of eight hours a day or in excess of 40 hours a week without regard to hours that are worked in excess of eight hours a day.
- Section 3:** Act is retroactive to April 1, 1997.
- Section 4:** Effective date: Immediate

ED3:04/28/99

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

STUART HALLAM,)
)
 Plaintiff,)
)
 vs.)
)
 HOLLAND AMERICA LINE, INC.,)
 d/b/a WESTOURS MOTOR)
 COACHES, INC.,)
)
 Defendant.)
)
 _____)

FILED IN CHAMBERS
STATE OF ALASKA
FIRST JUDICIAL DISTRICT
AT JUNEAU

4:00 pm
BY: mm

Case No. 1JU-96-1734 CI

MEMORANDUM AND ORDER

This case comes before the court on appeal. The following matters are at issue:

1. Whether the court properly denied class certification or "conditional" class certification.
2. Whether summary judgment was proper dismissing plaintiff's first, second, and forth claims for relief.
3. Whether summary judgment was proper dismissing plaintiff's third and fifth claims for relief.
4. Whether it was an abuse of discretion to deny plaintiff's motions to amend his complaint.
5. Whether attorney fees and costs should be upheld.

I. Factual Background

Hallam was employed as a seasonal employee with Holland America Line as a bus driver during the 1994 summer tour season. His hourly salary was \$8.00. The last week of Hallam's employment was August 15-20, 1994. During this time he worked 41.25 hours and was paid overtime for 5.5 of those hours. Each of the overtime hours paid was for hours worked over 8 hours a day. Hallam was not paid overtime wages for his last day of employment even though the cumulative total of hours surpassed the 40-hour workweek. Hallam was paid as follows:

Date	Regular Hours	Overtime Hours	Total Hours
8/15/94	8.0	0	8.0
8/16/94	8.0	1.5	9.5
8/17/94	8.0	1.0	9.0
8/18/94	0	0	0
8/19/94	8.0	3.0	11.0
8/20/94	4.25	0	4.25
TOTALS	36.25	5.5	41.75

Hallam's last day of employment was August 20, 1994. He was paid, via automatic bank deposit. Holland America contends that the funds were paid August 28, 1994 and Hallam argues that the funds were not available to him until September 1, 1994. In any event, it was not paid within the statutorily mandated three days.

II. Class Certification

On July 16, 1997 Hallam filed a motion to certify class. Judge Carpeneti denied this on October 21, 1997 because Hallam, acting *pro se* could not adequately represent the interests of the class. The case was then transferred to district court because Hallam's individual claims could not meet the jurisdictional requirements of Superior Court. A motion to reconsider was filed by Hallam and it was denied. Subsequently, Hallam has requested "conditional class certification" pending finding counsel to represent the class.

As indicated in Carpeneti's opinion denying class certification, the Supreme Court of Alaska has held that a *pro se* plaintiff cannot represent a class under Civil Rule 23(a).¹ While Hallam may adequately represent his own interests *pro se* he cannot adequately represent the interests of others without an attorney. Carpeneti rejected Hallam's argument that AS 23.10.110(b) permitted *pro se* representation of a class. "It merely provides that a class action may be brought for violation of the wage and hour laws, and that an aggrieved plaintiff may be the class representative."² Carpeneti further explained his rejection of this argument in his order denying reconsideration.³

¹ Hertz v. Cleary, 935 P.2d 439, 442, n.3 (Alaska 1992).

² Carpeneti Order Denying Class Certification, 10/21/97.

³ Order dated 11/19/97.

There is no rule providing for "conditional" class certification. Hallam has had sufficient opportunity to obtain counsel to represent the interests of the potential class and has failed to do so. The order denying class certification is AFFIRMED.

III. Motion for Leave to Amend Complaint

The last day to file motions to amend pleadings was March 4, 1997. On March 4, 1997 Hallam filed an amended complaint without the required accompanying motion. On March 14, 1997 Holland America filed a notice with the Superior Court advising the Court that it had received Hallam's amended complaint but would not answer until the proper Motion for Leave to Amend was filed. On April 25, 1997 Hallam filed a Motion for Leave to Amend, which was a one-sentence request to amend. The Superior Court denied this motion on June 10, 1997. Judge Carpeneti denied the motion because he found that these claims were not substantially related to the overtime claims asserted in the original complaint. The court found that the claims were time-barred because they do not relate back. On June 23 Hallam filed a motion for reconsideration, which was denied by Judge Carpeneti on July 1, 1997.

The amended complaint would have added four claims: liability for requiring plaintiffs to purchase uniforms, liability for interference with future employment and business opportunities, libel

and slander, and failure to pay Hallam his "tips." Hallam argues that he did not know that he was supposed to file a motion with his amended complaint. Even though he did not file the accompanying motion for leave to amend until a month and a half after he filed the amended complaint, the motion was considered by the court. The motion was denied for substantive reasons, not for lack of timeliness.

The standard of review is abuse of discretion.⁴ Judge Carpeneti found that the new claims "have little relationship to the claims now before the court." Judge Carpeneti found that the new claims do not relate back (so that granting the motion would require the defendant to defend claims upon which the statute of limitations had run), and that the defendant would be prejudiced by granting the motion. The claims before the court are claims of overtime pay, incentive pay, and failure to pay within three days. While the new claims relate generally to Hallam's employment, they are substantively different requiring new discovery and evidence.

The court must assess whether the nonmoving party will be prejudiced. Prejudice can result from the opposing party "being put to an added expense, a more burdensome and lengthy trial, or if the issues being raised in the amendment are remote from the scope of

⁴ Bauman v. Day, 942 P.2d 1130, 1132 (Alaska 1997) (citing Betz v. Chena Hot Springs Group, 742 P.2d 1346, 1348 (Alaska 1987)).

the original case."⁵ It is not an abuse of discretion to find that the issues raised in the amended complaint are remote from the original scope of the complaint, that additional expenses would be incurred by Holland America for discovery, or that the trial would become considerably more lengthy and burdensome. The order denying the motion for leave to amend is AFFIRMED.

IV. First, Second & Fourth Claims for Relief

The first and second claims allege that the defendant failed to pay overtime to plaintiff in accordance to the Alaska Wage & Hour Act. The fourth claim alleges that defendant failed to pay overtime in accordance to the employment contract. The relevant contractual clause states:

I agree, by signing this contract, to work for Westours for the basic wage of \$8.00 an hour. This wage is for straight time for the first eight (8) hours of each day, the first forty (40) hours of each week. I understand that my assignments may result in my working more or less than eight (8) hours per day or forty (40) hours per week. I will only be paid for actual hours worked. For any hours in excess of eight (8) hours in a day or forty (40) hours in a week, overtime compensation will be paid at 1.5 times the basic rate which will be \$12.00 an hour.

A motion for partial summary judgment of the first, second, and fourth claims for relief was first filed April 7, 1997. That motion was originally denied but reconsideration was granted. Before the motion was decided, District Court took over jurisdiction of the

⁵ Rutledge v. Alyeska Pipeline Service Co., 727 P.2d 1050, 1054 (Alaska 1986) (quoting

case. On December 19, 1997 Judge Froelich granted the motion for partial summary judgment and dismissed the first, second, and fourth claims for relief. A Motion for Reconsideration filed by Hallam was denied March 23, 1998.

A. Statute of Limitations

AS 09.10.070(3) provides for a 2-year statute of limitations "upon a liability created by statute." Hallam was terminated on August 20, 1994. Under AS 23.05.140(b) Holland America had until August 24, 1994, three working days after employment ended to pay him his due compensation. If Holland America failed to do so, it became liable upon the statute, and Hallam would have two years, until August 24, 1996 to bring suit upon wages due. It was not until 3 days after the last date of employment that the employer's duty arises to pay all wages and other compensation for services due.⁶ Hallam's suit is not barred by the statute of limitations.

B. "Pyramiding" Overtime Calculations

Hallam argues that he is entitled to all hours worked over 8 hours a day at overtime and all hours worked over forty hours a week (an additional 1.25 hours). The Department of Labor wrote a letter that Holland America submitted as Exhibit G to Appellee's Brief. It

Estate of Thompson v. Mercedes-Benz, 514 P.2d 1269, 1271 (Alaska 1973).

See Davhoff v. Temsco Helicopters, 772 P.2d 1035, 1037 (Alaska 1989) (holding statute of limitation for AS 23.05.140(b) does not start to run until violation occurs 3 days after termination) and Reed v. Municipality of Anchorage, 741 P.2d 1191, 1195 (Alaska 1987) (holding that employee's claims for unpaid overtime wages does not start to run until 3

states:

The daily overtime is straightforward. Any hours in excess of eight in a single workday are overtime. Weekly overtime is similar; an employee may work up to 40 straight-time hours in the workweek before any overtime is due.

The Department of Labor has interpreted the overtime requirements of the Alaska Wage & Hour act to mean that forty straight-time hours must accrue before the obligation of paying all additional hours at an overtime wage. The Department of Labor excludes all hours worked over eight hours in a day towards the forty hour requirement. This is the standard method for calculating overtime by the Department of Labor. An employer such as Holland America, who calculates overtime in this manner, is doing so in good faith.

Hallam argues that both regular and overtime hours should be included in the forty hours for the purposes of calculating overtime. AS 23.10.060(b) states:

If an employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid.

Holland America's employment contract states:

This wage for straight time is for the first eight hours of each day, the first forty hours of each week.... For any hours in excess of eight hours in a day or forty hours in a week, overtime compensation will be paid....

days following the termination, when the employer's duty arises).

Hallam argues that the current method used should be struck down because the statute clearly and unambiguously requires the payment of overtime wages for all hours worked over eight in a day and forty in a workweek.

The applicable standard under which this court should review the Department of Labor's interpretation of AS 23.10.060 is the independent judgment standard.⁷ While it appears that Holland America calculated overtime wages in accordance with the methods and procedures currently used by the Department of Labor, the clear and unambiguous language of the statute indicates that all hours are to be included in determining the forty-hour workweek. There is no exemption excluding hours worked over eight in a day towards the cumulative workweek total. Summary Judgment is REVERSED AND REMANDED. The District Court is instructed to enter an order in favor of Hallam in the amount of \$21.00 in gross earnings for 1.25 hours of overtime worked in excess of 40 hours a week plus interest at the statutory rate.

V. Third and Fifth Claims for Relief

Plaintiff's third claim for relief alleges liability for failure to pay plaintiff within three days of termination of his employment. The fifth claim for relief alleges liability for failing to pay incentive compensation as agreed in the contract. The

District Court entered summary judgment in favor of Holland America on August 3, 1998. Hallam moved for reconsideration and the District Court declined to address the motion.

A. Failure to Pay within 3 Days of Termination from Employment

Hallam's original complaint was based on his last paycheck received in 1994 at the close of the regular tourist season. His last day of employment was August 20, 1994 and therefore he argues he should have been paid by August 23, 1994. Hallam signed paperwork indicating he wanted automatic deposit to his bank account. The parties dispute whether the automatic deposit was made August 28, 1994 (as Holland America argues) or September 1, 1994 (as Hallam argues). Either way, there is no genuine issue of material fact as to whether Holland America was timely, they were not.⁴ In the worst case scenario, Holland America was six work days late in the automatic deposit.

A violation of AS 23.05.140(d)⁵ does not require a penalty. The award of a penalty under this section is within the sound

³ See Tesoro Alaska Petro. v. Kenai Pipe Line, 746 P.2d 896 (Alaska 1987).

⁴ Hallam now argues that his incentive bonus payment was due within three days of termination in spite of a contractual provision that it was to be paid by October 31, 1994. This argument is without merit. In addition, Hallam argues that his "last payment" for the purposes of this statute was not received until April 1997. This occurred after an audit of his employment records revealed some errors in calculations. Holland America issued a check including the "double-the wage" per statute in the amount of \$80.16. The only appropriate inquiry is Hallam's last regular paycheck received approximately nine business days after his termination.

⁵ AS 23.05.140(d) states: "...the employer may be required to pay the employee a penalty in the amount of the employee's regular wage, salary, or other compensation from the time of demand to the time of payment, or for 90 working days, whichever is the lesser amount."

discretion of the trial court.¹⁰ Holland America argues that the record supports a finding that the District Court was not clearly erroneous in the exercise of its discretion not to impose a penalty and that the District Court did not abuse its discretion in declining to impose a penalty. Holland America argued that it did not intentionally deprive Hallam of his pay and that following the normal course of automatic deposits, it was deposited. While Holland America does not explain why they do not issue an automatic deposit upon termination of employment within three days, Judge Carpeneti's decision not to impose a penalty is not an abuse of discretion. The summary judgment for the third claim for relief is AFFIRMED.

B. Failure to Pay Incentive Pay as Contracted

As part of his compensation package, the contract provides for an "incentive program." It states:

III. INCENTIVE PROGRAM

I may be entitled to incentive compensation based on a percentage of my Base Wages, as follows:

1. Accidents/Damage- Up to four percent (4.0%) of my base wages for safety. To qualify for this incentive compensation:
 - (a) I must have no preventable accidents during the period of my employment, as determined by the Westours Safety Department; and
 - (b) no damage can have occurred to equipment and/or properties owned by Westours while under my control due to negligence or any other act determined preventable

¹⁰ Klondike Indus. Corp. v. Gibson, 741 P.2ds 1161 (Alaska 1987).

by the Safety Department...

2. Job Performance- Up to three percent (3.0%) of my base wages for job performance'. I understand that this award will be paid if have no infractions or written warnings in my file relating to performance at the end of my employment. Each performance related (non-accident) infraction during my employment will result in one and a half (1.5) percentage point deduction (i.e. two infractions would eliminate my Job Performance incentive compensation), and each written warning will result in a deduction of one half (.5) percentage point.
3. Customer Service- Up to five percent (5.0%) of my base wages for customer service based on customer ratings of my tours as evidenced by comment cards actually received by Westours Seattle office. Incentive compensation, if any, under this paragraph is computed by taking the arithmetic average of the ratings for safety, courtesy, narration, and grooming on all comment cards... and per the following schedule:

Percentage of base Wages	Average Rating
5%	3.95 or better
4%	3.90-3.94
3%	3.85-3.89
2%	3.80-3.84
1%	3.70-3.79
0%	below 3.70

Holland America argues that the plain and unambiguous language of the contract indicates that the incentive pay is "discretionary." Holland America argues that the word "may" is discretionary in the interpretation of contracts, as opposed to "shall" that is mandatory. Holland America did pay Hallam a bonus, but Hallam contests the amount of the bonus. Holland America argues in its original motion for summary judgment: "The agreement plainly states that the payment of any bonus is discretionary and, if a bonus is

paid, the payment of that bonus follows a schedule set out in the contract."

Holland America elected to pay a bonus to Hallam and therefore obligates itself to follow the contract provisions. It appears that Holland America correctly calculated the bonus for no accidents as he received the full bonus possible. Holland America appears to have correctly calculated the "customer service" bonus as that is set forth in a schedule. Holland America has provided the basis for those calculations and they appear to be valid. The only questionable calculations are in the area for "job performance." Hallam received no bonus in this area. Hallam had one infraction and one written warning. The contract clause specifies deductions for these occurrences.

Each performance related (non-accident) infraction during my employment will result in a 1.5 percentage point deduction... and each written warning will result in a deduction of .5 percentage point.

Since Hallam received one of each, his contractual 3% bonus should have been reduced to 1%. Holland America determined that although Hallam was "eligible" for a 1% bonus for job performance, the Division Manager used his discretion not to award one (Affidavit of Chuck Acker, April 20, 1998).¹¹ Holland America's argument that

¹¹ "It appears that, in the estimation of the Division Manager, the infraction was significant enough that he determined Mr. Hallam would not receive the remaining discretionary 1%." Affidavit of Chuck Acker.

the Division Manager used his discretion not to award the "eligible" one-percent bonus conflicts with its earlier argument that once the bonus is given, it must adhere to the contract provisions.

Based on the mandatory language of the contract terms, the incentive pay is conditional upon certain performance, but is not discretionary if the performance is made. If an employee meets the performance aspects of the contract, Holland America is under a contractual obligation to pay the full bonus that one is eligible for. Hallam is entitled to the remaining 1% bonus in the amount of \$68.53. The summary judgment for the fifth claim for relief is REVERSED AND REMANDED. The District Court is instructed to enter judgment in the amount of \$68.53 plus the statutory interest rate.

VI. Attorney Fees & Costs Awarded

Upon disposition of all claims, the District Court indicated that attorney fees and costs would be awarded upon motion by the defendants. This order was entered on August 3, 1998. On August 14, 1998, Holland America filed the motion for attorney fees and costs. They moved for attorney fees in the amount of \$32,220 and costs in the amount of \$2,797.17. Hallam opposed the motion arguing that it was untimely. The court's final order was entered on August 3, 1998 and distributed by courtbox the same date. The motion was filed August 14, 1998. As Rule 82 states:

"The motion must be filed within 10 days after the date shown in the clerk's certificate of distribution on the judgment.... Failure to move for attorney's fees within 10 days, or such additional time as the court may allow, shall be construed as a waiver..."

It is within the court's discretion to allow for a one-day late motion. The court will not reverse the attorney fees and costs award based on timeliness.

The court entered judgment requiring Hallam to pay \$2,797.17 in costs and \$6,444 in attorney fees. Hallam argues that Grimes v. Kinney Shoe Corp, 938 P.2d 997 (Alaska 1997) provides that Rules 79 and 82 do not apply to wage and hour cases. Hallam's argument fails. Holland America points out that Grimes interpreted the old AS 23.10.110(c). That statute was amended in part to specifically allow costs and attorneys fees to defendants. Awards of attorney fees are reviewed on an abuse of discretion standard. There was no abuse in discretion in awarding 20% of actual attorney fees in this case pursuant to the Rules of Civil Procedure.

Finally, the court now addresses whether the reversal of summary judgment on the issues of calculation of overtime wages or payment of incentive pay pursuant to contract, changes the prevailing party for the purposes of the award of attorney fees and costs. Hallam's claims for relief as granted above total \$89.53 plus interest. When the court questioned Hallam about the prospect

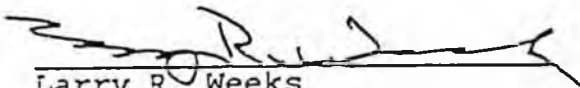
of settling his individual claims, Hallam stressed to the court that he felt that settling his individual claims would leave other members of the potential class without recourse. In so doing, the court understands Hallam's main goal in the vigorous pursuit of this action was to benefit an entire class of workers. However, as discussed above, Hallam's class certification has been denied and that denial has been affirmed. "A litigant who successfully defeats a claim of great liability may be the prevailing party, even though the other side is successful in receiving an affirmative recovery."¹² Holland America was successful in defeating Hallam's class certification, which was a potentially large liability for them. Holland America is the prevailing party for the purposes of attorney fees and costs. The award of attorney fees and costs is AFFIRMED.

VII. CONCLUSION

This case is REMANDED to District Court for a finding and judgment consistent with this order.

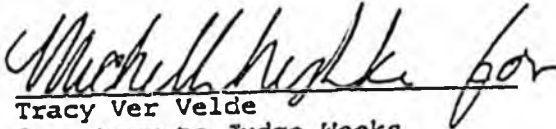
IT IS SO ORDERED.

Dated April 7, 1999.


Larry R. Weeks
Superior Court Judge

¹² Alaska Placer Co. v. Lee, 553 P.2 54, 63 (Alaska 1976).

I certify that on the 29th day of April 1999, I served the above order to Stuart Hallam (by U.S. Mail) and Robert Blasco (by courtbox).


Tracy Ver Velde
Secretary to Judge Weeks

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 STUART HALLAM, Individually)
4 and as class representative,)

5 Plaintiff,)

6 v.)

7)
8 HOLLAND AMERICA LINE, INC.)
9 d/b/a WESTOURS MOTOR COACHES)
10 INC.,)

11 Defendant.)

Case No. 1JU-96-1734 Civil

12 AFFIDAVIT OF TOM CASHEN

13 I, Tom Cashen, being first duly sworn, state as follows:

14 1. I am the Commissioner of the Department of Labor for the State of
15 Alaska. I have served as the Commissioner for three years.

16 2. I have 29 years experience in the field of labor relations, including
17 negotiating labor agreements, drafting legislation, and drafting regulations.

18 3. It is my understanding that the plaintiff in this case claims he is entitled
19 to overtime in accordance with what is commonly referred to as "pyramiding" of overtime.
20 "Pyramiding" means that the claimant wants to count his overtime hours twice—once if he
21 works in excess of 8 hours in one day and a second time if his hours for the week exceed 40
22 hours.
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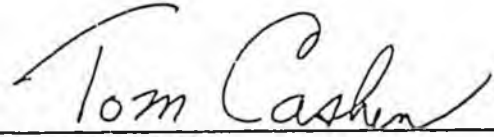
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4. I have read the letter of Randy Carr, which is attached to this affidavit as Exhibit A. Mr. Carr's letter accurately expresses the interpretation of AS 23.10.060 (b) followed by the Department of Labor with respect to overtime claims. This has been the consistent interpretation as long as I have been Commissioner and, in my experience, since the enactment of the legislation.

5. I have not reviewed the actual hours worked or claimed by this plaintiff. It is my understanding that the plaintiff did not submit a wage and hour claim to the Department of Labor. If he had submitted a claim for overtime, and the overtime claimed was calculated based on "pyramiding", the Department of Labor would have disallowed the claim.

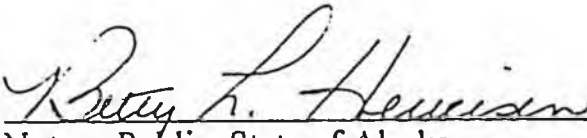
FURTHER YOUR AFFLIANT SAYETH NOT.

DATED this 26th day of February, 1998.



TOM CASHEN

SUBSCRIBED AND SWORN TO before me this 26th day of February, 1998.



Notary Public, State of Alaska
My commission expires: 2/12/95

GLOBE BELT PLACE, SUITE 300
801 WEST 10TH STREET
P.O. BOX 21211, JUNEAU, ALASKA 99802
PHONE: (907) 586-3340

DEPARTMENT OF LABOR

WAGE AND HOUR ADMINISTRATION
LABOR STANDARDS & SAFETY DIVISION3301 Eagle Street, Suite 301
P.O. Box 107021
Anchorage, Alaska 99510-7021
Phone: (907) 269-4800
Fax: (907) 269-4815April 25, 1997
Dictated: 4/24/97RECEIVED
APR 27 1997

WHOL #120

Mr. Robert Blasco
Robertson, Monagle & Eastaugh
801 W. 10th, Suite 300
Juneau, AK 99801Robertson, Monagle & Eastaugh
801 W. 10th, Suite 300
Juneau, Alaska 99801

Dear Mr. Blasco:

You have asked for clarification of the overtime requirements of the *Alaska Wage and Hour Act*. As you know, the Act requires that overtime be paid for hours of work that exceed eight in a single day or 40 in a week. A question has arisen as to how those overtime hours are counted.

The daily overtime is straightforward. Any hours in excess of eight in a single workday are overtime. Weekly overtime is similar; an employee may work up to 40 straight-time hours in the workweek before any overtime is due.

There has been some confusion as to how to count the hours when both daily and weekly overtime is worked in the same workweek. Overtime hours are only counted once. If an employee works, for example, ten hours in one day, a daily audit would show that the employee has two hours of overtime coming.

If in that week the employee worked the 10-hour day and four 8-hour days, the employee would have worked 42 hours total. Auditing on a weekly basis, the worker should be paid 40 hours of straight-time and two hours of overtime. If the employer has paid the two hours of overtime for the daily occurrence, they would also have paid the employee correctly under the weekly standard.

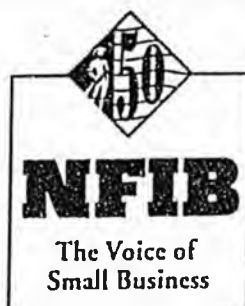
I hope this information is helpful. If you have any further questions, do not hesitate to contact our office.

Sincerely,


J. R. (Randy) Carr
Chief
Labor StandardsJRC:cah
blasco

P 1 Editt G

NFIB Alaska



National Federation of Independent Business

Statement of Support

of HB 201

Computation of Overtime

April 22, 1999

On April 7th, 1999 Judge Larry Weeks made a Superior Court ruling that will significantly increase the cost of doing business in the State of Alaska.

Here is an example of how this might impact a small business that employs 8 people, 5 days a week, 10 hours a day at a rate of \$10 per hour. Under the recent court ruling, not only would the employees receive two hours a day of overtime at a rate of \$15 per hour, they would also receive an additional 10 hours of overtime at \$15 per hour for the hours worked over 40 hours.

Under the traditional interpretation of the wage and hour laws, each employee would receive 40 hours of regular time pay and 10 hours of overtime for a total of \$550 per week. The additional 10 hours of overtime required by the recent court decision would cost the employer another \$150 per week, per employee. Multiply this by the 8 employees and the cost is \$1,200 per week or \$4,800 per month! In this example, the employer would have a 27% increase in their cost of labor. Few small businesses have the ability to survive with this type of increase in labor cost.

HB 201 fixes this problem and returns us to the long-standing interpretation of the overtime law.

NFIB/Alaska urges support for HB 201

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

APR 21 1999



April 20, 1999

6141 South Airport Place
Anchorage, Alaska 99502-1809
(907) 245-1544
Fax: (907) 245-1744

Representative Norm Rokeberg
Chairman, House Labor and Commerce Committee
Pouch V
Juneau, AK 99801

RE: House Bill 201

Dear Mr. Chairman,

We support House Bill 201. This bill clarifies the intent of Alaska Law that requires overtime pay after 40 hours per week.

Recent challenges to this law will create confusion and complexities that will make the lawyers rich and the employees and employers poor.

We appreciate your support.

Sincerely,

LYNDEN, INC.

A handwritten signature in cursive script that reads "Jim Jansen".

Jim Jansen
President & CEO

JJ:lmg

Alaska Laundry Inc.
1114 Glacier Ave.
Juneau, Alaska 99801

Representative Norm Rokeberg
Alaska State Legislature

APR 22 1999

April 22, 1999

Re: HB201

Dear Representative Rokeberg,


The recent decision by Judge Larry Weeks regarding calculation and payment of overtime will be a hardship on our company. Depending upon individual work schedules and overtime situations this decision will add significantly to our labor cost with no offsetting increase in efficiency.

From my understanding of the decision it appears that we will have to pay for overtime on a significant amount of regular time. This decision will also effect the State and Local government's hourly employees as well as the calculallons that determine the pay of salaried employees. This decision will bring a whole new approach to all employee pay with consequences and costs that few can forsee.

Beyond the increase in costs there is the calculation burden imposed by this decision. We have invested in computerized systems to record and calculate the time for all hourly employees saving a significant amount of time for our company. Our programs will not support this kind of calculation without extensive and expensive reprogramming. Now every time card must be recalculated manually to the dictates of the Weeks decision effectively making our investment in this technology wasted.

HB 201 solves the problems created by the Weeks decision and I thank you for introducing this urgently needed legislation.

Sincerely,



E. Neil MacKinnon
President



Greater Ketchikan Chamber of Commerce

P.O. Box 5957, Ketchikan, Alaska 99901

(907) 225-3184 • FAX: (907) 225-3187

Representative Norman Rokeberg
Labor & Commerce Committee Chair
State Capitol
Juneau, Alaska 99801-1182

April 27, 1999

Dear Representative Rokeberg,

On behalf of the Greater Ketchikan Chamber of Commerce and its approximately 400 members, I am writing to you as sponsor of House Bill 201. Our Chamber members are overwhelmingly in support of HB 201 which would clarify any further misinterpretations of AS 23.10.060(b) regarding the calculation of overtime hours worked by Alaska's employees. The original intent of the law was to assure that employees would receive overtime pay for the hours they had worked over 8 hours in one day, or the total hours worked over 40 hours in a one week period. Apparently some confusion has resulted in the court awarding overtime at the rate of twice the number of hours that an employee is entitled to by law.

Keeping an eye on the costs of doing business is part of what makes that business successful. During difficult economic times, such as those we are experiencing in the Greater Ketchikan area, keeping an eye on the costs of doing business is critical to the survival of every business. We urge you to do all in your power to ensure the passage of HB 201 for all businesses in our area as well as throughout Alaska.

The Greater Ketchikan Chamber of Commerce is confident that our legislators will see the wisdom in this bill and trust that HB 201 will eliminate the risk of further misinterpretations of the law.

Sincerely,

Renée R. Woodell
Executive Director


cc: Senator Robin Taylor
Representative Bill Williams
Representative Eldon Mulder
Representative Gene Theriault
Alaska State Chamber of Commerce

APR 27 1999

25'8 71101

LAW OFFICES OF PATRICK J. MCKAY
705 Christensen Drive
Anchorage, Alaska 99501
Phone: (907) 276-5541 * Fax: (907) 258-6682

M E M O R A N D U M

TO: Senator Dave Donley 
FROM: Patrick J. McKay, Esq.
DATE: May 12, 1999
SUBJECT: CHSB201 (FIN) am
AS 23.10.060(b) CLARIFICATION LEGISLATION

I have been requested to provide an independent opinion as to the meaning and interpretation of the new text added to AS 23.10.060(b), referred to above and as amended on 04/27/99.

The new text of AS 23.10.060(b), as amended, will clearly set the legislative findings and intent by requiring overtime compensation for hours worked in excess of 8 hours per day, by further requiring overtime compensation for hours worked in excess of 40 hours weekly, but eliminating the "pyramiding" effect of allowing previously compensated overtime hours to be counted as additional compensable hours for the purpose of determining a 40 hour week. The text clearly requires overtime compensation for any time worked in excess of 8 hours per day or 40 hours per week.

The legislation, as amended, cannot reasonably be interpreted in a manner which would exclude payment of overtime compensation for hours worked in excess of 8 hours per day, along with any hours worked in excess of 40 hours per week - it only defines the 40 hour work week as straight time compensated hours.

If I can be of any further assistance, please do not hesitate to contact me.

PJM/ms

SENT BY:ROMCA

: 5-12-99 : 16:30 : ROBERTSON, MONAGLE +

4652784:# 2/ 2

ANCHORAGE OFFICE

1480 WEST BROADWAY BLVD., SUITE 313
ANCHORAGE, ALASKA 99501
PHONE: (907) 577-8800
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STEVEN W. SILVER
CARL W. WINGER
CRAWLEY D. ORMAN

ROBERTSON, MONAGLE & EASTAUGH

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
JUNEAU, ALASKA 99802

May 12, 1999

HAND DELIVERED

JUNEAU OFFICE

FOUR CORNER PLACE, SUITE 200
801 WEST 10TH STREET
JUNEAU, ALASKA 99801
PHONE: (907) 205-5000
FACSIMILE: (907) 205-0110

DOUGLAS BROWN (1972-1919)
W. E. MONAGLE (1998-1999)
P.O. EASTAUGH (1913-1990)

JAUCE E. CLARK
PAUL M. HOFFMAN
ROBERT P. BLASCO
TERRY L. FISHER
DEAN J. GORDON
RUTH R. HAMILTON
MARY G. GURTON

ADDRESS IN WASHINGTON, D.C.
AND VIRGINIA

WASHINGTON, D.C. AND VIRGINIA

ALL 8 1/2" SIZES AS LISTED
IN ALASKA

The Honorable Dave Donley
Alaska State Senate
State Capitol, Rm. 508
Juneau, AK 99801-1182

Dear Senator Donley:

This letter is in response to your request yesterday, May 11, 1999, for a written opinion that CSHB 201 does not prevent someone from being paid overtime for more than eight (8) hours in a day, or more than 40 hours in a week. In our opinion, it does not.

CSHB 201 makes clear that overtime hours are not to be counted twice in calculating 40 hours. This bill does not prevent payment of overtime when someone works more than eight hours in a day. This bill does not prevent payment of overtime when someone works more than 40 hours of straight time in a week.

Please call if you have any questions.

Sincerely,

ROBERTSON, MONAGLE & EASTAUGH

Robert F. Blasco

RPB/yd

cc: Dwight Perkins
Al Parish

LABORERS' INTERNATIONAL UNION of NORTH AMERICA LOCAL 341

2501 Commercial Drive
Anchorage, Alaska 99501
PHONE (907) 272-4571
FAX (907) 274-0570



MANO FREY
BUSINESS MANAGER
SECRETARY-TREASURER
ANDREW J. PIKARSKI
PRESIDENT
VICE PRESIDENT
MIKE GALLAGHER

FIELD REPRESENTATIVES:
ANDREW J. PIKARSKI
MIKE GALLAGHER
BLAKE JOHNSON

May 12, 1999

Senator Dave Donley
Alaska Legislature
Juneau, Alaska
[By Facsimile]

Re: CS HOUSE BILL 201

Dear Senator Donley:

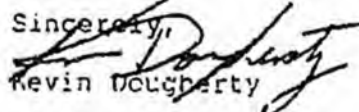
I have been asked to give an immediate legal review of HB 201 to determine whether the draft proposed would still assure that hours worked in excess of 8 hours in a day, and in excess of 40 hours in a workweek will be paid at the Overtime rate.

The second paragraph of the Bill is the most important provision and clearest statement, in my opinion, in narrowing the specifically intent of the Bill to only reverse the superior court Hallam decision, and to continue the 8 and 40 overtime provision.

It is also my opinion that the reenacted provision, "Section 2. A.S. 21.10.060 (b)" would continue to require the payment of Overtime for over 8 or 40 hours, since it repeats it in clear terms.

Finally, the Legislative history of Committee testimony and discussion of the Bill will provide a legal guide to the intent of the Bill in the event of future litigation. Therefore it will be especially important to assure that the sponsors and testimony all reiterate that the Bill indeed requires overtime for over 8 a day and 40 hours in a workweek as our Alaska law has required for decades.

Thank you for your attention and concern on this matter.

Sincerely,

Kevin Dougherty



U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE-ALASKA REGION

NEWS

Tongass National Forest, Ketchikan Area, Federal Building, Ketchikan, Alaska 99901

Contact: Ellen Davis
Phone: (907) 228-6289
Date: May 12, 1999

Direction Issued for Implementing the 1999 Forest Plan Record of Decision

Ketchikan, AK -- Acting Forest Supervisor James W. Bartelme today issued direction for implementing the 1999 Record of Decision (ROD) for the Tongass Land Management Plan signed by Deputy Under Secretary of Agriculture James Lyons. The Forest Service is now looking to put the plan into effect.

"We need to focus our energies on how to best use our resources to implement the modified Plan," said Bartelme. "I am excited that we have a final decision and now can get down to full focus on implementing the Forest Plan."

The direction issued by the Acting Forest Supervisor covered the following areas:

Land Use Designation (LUD) Changes - The 1999 Record of Decision changed the Land Use Designation for 18 areas from development to mostly natural. These changes will affect the following timber sale projects to varying degrees: Lab Bay, Shamrock, Port Houghton, Douglass, Three Mile, Port Stewart, Keete, Finger Mountain, Dry Straight and Vixen.

200 Year Rotation - The 1999 Record of Decision placed 42 Wildlife Analysis Area's (WAA's) on a 200 year timber harvest rotation rather than on a 100 year rotation. The direction issued by James Bartelme places a limit of 28,000 acres of timber harvest forest wide over the next ten years from these 200 year rotation lands. The direction to implement this standard and guideline will allow project level decisions to protect site specific deer habitat while providing a sustainable volume of timber for existing small operators. It will also give the Tongass an opportunity to provide a ten year sale program which approximates an amount at or near the estimated economically viable (NIC I) 153 MMBF level. Finally, the direction will provide some flexibility in the rate of entry into old growth on existing roadless areas. Timber sale projects currently in the planning process within the 200 year rotations will be continued.

Road Density - The 1999 Record of Decision modified the road density standard and guideline to provide additional protection for the Alexander Archipelago Wolf. The direction issued by the Acting Forest Supervisor

specifies that the appropriate scale over which to apply this standard and guideline is the size of a wolf pack's home range. It also clarifies what steps must be completed prior to implementing this standard and guideline.

NIC I and NIC II Recalculation - The 1999 Record of Decision retained the roughly 80% to 20% split between the NIC I (economically viable) and NIC II (economically marginal) components of the allowable sale quantity (ASQ). The direction issued to the District Rangers instructs them to continue to update this information during project level planning.

For further information please contact Dave Arrasmith, Planning Staff Officer (907) 228-6304.

END



United States
Department of
Agriculture

Forest
Service

Alaska Region
Tongass National Forest

648 Mission Street
Ketchikan, Alaska
99901
907-225-3101
FAX 907-228-6215

File Code: 1920
Route To: 1950

Date: May 11, 1999

Subject: Implementation of Tongass Land Management Plan

To: Tongass Assistant Forest Supervisors and District Rangers

On April 13, 1999 the Deputy Under Secretary of Agriculture, James Lyons, signed a new Record of Decision (ROD) for the Tongass Land Management Plan. This ROD contained modifications to the 1997 Forest Plan. The purpose of modifying the 1997 Forest Plan decision was to put an end to the appeals and move forward with consistency and stability in our management of the Tongass National Forest resources. By my direction, over the past two weeks Dave Arrasmith, Forrest Cole, and Gene Dcgayner have been developing methodology to ensure these changes received a consistent implementation approach across the Tongass. Based on their work, the following is my initial direction for implementing their recommendations. Further direction for implementation may follow at a later date after a thorough review of the planning record from the Washington Office and annual monitoring and evaluation.

LUD Changes - The 1999 TLMP Record Of Decision (ROD) changed the Land Use Designation from development to mostly natural for 18 areas, totaling approximately 500,000 acres. These become additional acres assigned to particular specified Land Use designations in the Forest Plan. These acres will be managed in accordance with the standards and guidelines, and other management direction and provisions specified in the Plan. These adjustments are described in detail in the ROD and are displayed in Appendix B. The enclosed 1999 Forest Plan map depicts these changes precisely as specified within the ROD. To implement these changes in LUD's the following projects will be modified as specified:

- Lab Bay EIS - There are two units in the newly created natural setting LUD's currently being advertised as part of the 163 MMBF re-offered timber sales.
- Shamrock EIS - A portion of the Shamrock EIS (Clover timber sale) was offered and unsold during FY98. The Forest Service has re-offered this sale as originally advertised in FY98. If the re-offered Clover timber sale is purchased, the sale will be implemented as directed. If the sale is unsold prior to October 1, 1999 then the portion of the project modified by LUD changes from development prescriptions to non-development prescriptions will be deleted. The remaining portions of the Clover project as well as the remaining portions of the Shamrock EIS may proceed.
- Port Houghton - Delete the units in non-development LUD's from the selected alternative. The remainder of the project may proceed. The District Ranger should give careful consideration to alternatives which do not require construction of roads through non-development LUD's to access the timber.



- Douglass - The portion of the project in non-development LUD's is deleted. The District needs to evaluate the remaining portion of the project's viability following the bid openings of the FY98 Re-offer of the Clover timber sale.
- Three Mile - VCU 419 remains in the suitable timber base. The District Ranger needs to conduct an analysis on this portion of the project area to determine if there is a viable timber sale remaining.
- Port Stewart EIS - Drop entire project.
- Keete EIS - Drop entire project.
- Finger Mountain EIS - The District Ranger is directed to analyze this project to determine if a viable sale offering still exists.
- Dry Straight EA - The District Ranger is directed to analyze this project to determine if a viable sale offering still exists.
- Vixen EIS - Drop the entire project.

All other projects on the current five year sale schedule may proceed as planned. Specific questions have arisen regarding the Emerald Bay timber sale. While this project is on Cleveland Peninsula, it is not within the 18 areas specified within the Appendix B of the 1999 ROD. The District Ranger is directed to continue the project through the planning process recognizing and incorporating the new ROD.

200 Year Rotation - The record of decision includes a new Standard & Guideline which states;

"C. To emphasize deer habitat capability in project level planning decisions, select timber harvest rotations of 200 years or greater within the "development" Land Use Designations (LUD's) within the following 42 Wildlife Analysis Areas (WAA's): 101, 510, 1003, 1211, 1214, 1315, 1317, 1318, 1319, 1332, 1420, 1421, 1422, 1525, 1527, 1529, 1530, 1531, 1605, 1904, 1905, 1906, 2007, 2306, 3001, 3002, 3003, 3308, 3312, 3313, 3314, 3524, 3525, 3526, 3627, 4252, 5012, 5018, 5132, 5135, 5136, and 5138."

To implement this standard and guideline the suitable timber base will be divided into two additional non-interchangeable components, one for 200 year rotations and one for 100 year rotations. The 100 year rotations will emphasize more rapid timber harvest, while the 200 year rotations will conserve old growth for a longer period of time while still meeting the objectives of the Land Use Designations where they are located.

In the 200 year rotations, no second growth will receive even-aged harvest prescriptions until it reaches a minimum age of 200 years. The remaining old growth suitable for timber harvest will have its harvest metered out, as evenly as possible, over time until the second growth becomes available for intermediate treatments. Since approximately 84% of the Tongass' second growth now resides in 200 year rotation WAA's, a decadal even flow of old growth acres is not possible. The result is a decadal ceiling which will be placed on the amount of acres which can be harvested from these lands forest-wide. I have calculated this ceiling to be approximately 28,000 acres for the first decade of implementation. A question will be added to the TLMP Monitoring

Plan to annually measure how close we are to this decadal ceiling. The ten year timber sale schedule will be adjusted to implement this direction.

The current ongoing projects for the first five years of the ten year sale schedule, would affect a total of 12,862 acres within the 200 year rotations. This is well under the decadal ceiling of 28,000 acres imposed by the new ROD. Therefore, projects currently in the NEPA process within the 200 year rotations will continue through the planning process. We will review the last five years of the ten year timber sale schedule and revise it as necessary to stay under the 28,000 acre decadal limit. Continuing with these ongoing timber sale planning efforts will provide economic benefits and stability to the small timber sale operators (primarily located on Prince of Wales Island) along existing road systems. It will also protect the substantial financial investment the government has already made in these projects through force account as well as service contracts. The following factors were the primary ones I considered in selecting this methodology for implementing the 200 year rotation standard and guideline.

- **Deer Habitat** - Implementing the standard and guideline as specified above will allow project level decisions to protect site specific deer habitat. Protection is expected to be achieved through better identification of deer habitat, deferring timber harvest activities for longer periods of time, and utilizing silvicultural prescriptions consistent with deer habitat objectives. The longer rotation and metering out of old growth in association with a forest wide ceiling will allow project decisions to protect key deer winter range (high volume, low elevation, south facing slopes), maintain corridors for connectivity, and address site specific issues. Implementation of the standard and guideline in this fashion also maintains more acres of old growth in the 200 year rotations for longer periods of time. Approximately 130,000 more acres of old growth will exist in the 200 year rotations at the year 2060 than would exist under a 100 year rotation methodology.
- **Small Timber Operators** - A key objective of mine for the Tongass timber sale program is to provide a sustainable volume of timber for our existing small operators. These operators typically operate off existing road systems. This method of implementing the 200 year rotation will provide the volume necessary to achieve this objective as well as contribute to the small scale value added timber industry. This method also maintains our most efficient salvage operations and means of maintaining road systems with limited resources.
- **10 Year Sale Program** - The 1999 ROD establishes an ASQ of 187 MMBF (NIC I and II). The method for implementing the new standard and guideline as specified above will give the Tongass an opportunity to provide a ten year sale program which approximates an amount at or near the estimated NIC I (153 MMBF) level. Therefore if adequate funding is provided, it is possible for us to accomplish the NIC I level of the 187 ASQ with a modified sale program.
- **Roadless Areas** - This method of implementing the standard and guideline provides some additional flexibility in the rate of entry into old growth on existing roadless areas. By allowing some harvest in roaded areas with existing infrastructure, roadless areas can be entered at a slower rate. Therefore the Forest will have more flexibility in timing of entry into roadless areas to address specific public issues associated with these areas.

The results of this method for implementing the 200 year rotation fully meets the intent specified in the 1999 ROD for protecting deer habitat as well as providing harvest levels that meet the revised ASQ as specified in the ROD.

Road Density - The 1999 Record of Decision modified the Forest-wide Standard and Guide within the Alexander Archipelago Wolf section to now state:

"Open road densities of 0.7 miles or less per square mile are necessary to reduce mortality to sustainable levels."

The language in the ROD did not specify over what scale to apply this S&G. However, the issue of scale for the Alexander Archipelago Wolf S&G was already clarified by the interagency Tongass Plan Implementation Team and the Forest Supervisor. That clarification is still valid. That clarification states in part *"Wolves tend to have home ranges that cross several Wildlife Analysis Areas (WAA's). Therefore the appropriate scale over which to use the model should be combinations of WAA's or the biogeographic province. Using the model at the watershed or VCU scale is too fine a resolution for using the model. Conversely, the Forest or Area is too large or coarse of a scale to provide meaningful analysis."* Therefore, the appropriate scale at which to apply this standard and guideline is combinations of WAA's or the biogeographic province.

The wording in the modified Standard and Guideline was also changed from *"may be necessary"* to *"are necessary"*. However, this change must be viewed within the overall context of the entire section. The Standard and Guideline contains a series of sequential steps to be taken prior to applying this specific section.

Step 1 is specified in the beginning of the Standard and Guide where it states: *"Where wolf mortality concerns have been identified, develop and implement a Wolf Habitat Management Program."* This Program is to look at harvest levels as well as road access management. The Standard and Guide states further *"To assist in managing wolf mortality rates to within sustainable levels, integrate the Wolf Habitat Management Program (including road access management) with season and harvest limit proposals submitted to Federal and State Boards."*

Step 2 is to determine the cause of wolf mortality. The Standard and Guide further goes on to state; *"Where road access has been determined, through the analysis, to significantly contribute to wolf mortality, implement effective road closures to reduce mortality."*

Therefore while the Standard and Guideline as modified is now a "standard", it applies after all the preceding steps have been completed.

NIC I and NIC II Recalculation - The 1999 Record of decision retains the roughly 80% to 20% split between the current NIC I and NIC II components as estimated in the 1997 Plan. However, the ROD also recognizes that these are merely estimates and need to be updated as part of project level planning. The District Rangers need to continue to update this NIC I to NIC II recalculation as part of the normal ongoing timber sale planning process. Individual projects will then be summarized in the annual TLMP monitoring report and any changes to the Forest Plan needed will be analyzed in that document.

Summary - Critics of the modified Plan decision have brought forth a challenge of the process. We need to remember that decisions of this magnitude usually receive review from our Washington Office legal advisors. And, as Chief Dombeck has pointed out, the Bureau of Land

Management as well as other agencies use similar processes. We need to move beyond this dialogic and focus our energies on how to best use our resources to implement the modified Plan.

Many thanks to everyone who has worked so hard to bring us to this point. I am excited that we have a final decision and can now get down to full focus on implementing the Forest Plan.

1st James W. Bartelme
JAMES W. BARTELME
Acting Forest Supervisor

**LABORERS' INTERNATIONAL UNION
of NORTH AMERICA
LOCAL 341**

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Anchorage, Alaska 99501
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ANDREW J. PIEKARSKI
MIKE GALLAGHER
BLAKE JOHNSON

May 12, 1999

Senator Dave Donley
Alaska Legislature
Juneau, Alaska
[By Facsimile]

Re: CS HOUSE BILL 201

Dear Senator Donley:

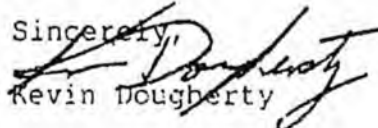
I have been asked to give an immediate legal review of HB 201 to determine whether the draft proposed would still assure that hours worked in excess of 8 hours in a day, and in excess of 40 hours in a workweek will be paid at the Overtime rate.

The second paragraph of the Bill is the most important provision and clearest statement, in my opinion, in narrowing the specifically intent of the Bill to only reverse the superior court Hallam decision, and to continue the 8 and 40 overtime provision.

It is also my opinion that the reenacted provision, "Section 2. A.S. 23.10.060 (b)" would continue to require the payment of Overtime for over 8 or 40 hours, since it repeats it in clear terms.

Finally, the Legislative history of Committee testimony and discussion of the Bill will provide a legal guide to the intent of the Bill in the event of future litigation. Therefore it will be especially important to assure that the sponsors and testimony all reiterate that the Bill indeed requires overtime for over 8 a day and 40 hours in a workweek as our Alaska law has required for decades.

Thank you for your attention and concern on this matter.

Sincerely,

Kevin Dougherty

Headquarters:
217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323 FAX 463-5515



May 7, 1999

Senator Jerry Mackie
Chair, Labor and Commerce Committee
Alaska State Senate

Re: HB 201, Overtime Compensation Computation

Dear Senator Mackie:

Alaska's statute regarding compensation for overtime work received a different interpretation in a recent Superior Court decision than either the Alaska Department of Labor or Alaska's employers have ever understood it to be. If let stand, the Court's decision could have a devastating impact on many Alaskan employers, especially since the ruling applies retroactively. HB 201 is intended to clarify the statute to reflect the intent and understanding of the law that Alaskans have functioned under for the past several decades.

Under the new interpretation of the law, in some instances employers are required to compensate employees twice for the same overtime hours worked; in effect, paying triple time rather than time and a half as has been the practice until now. This was never the intention of the law, and it is imperative that the situation be rectified as soon as possible.

HB 201 does no more than clarify in law a practice that has been the accepted understanding between Alaskan employers and Alaska's labor force of what is fair compensation for overtime work. We urge your support of HB 201.

Sincerely,

A handwritten signature in cursive script that reads "Pamela La Bolle".

Pamela La Bolle
President

CS FOR HOUSE BILL NO. 201(FIN) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/27/99
Offered: 4/23/99

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the computation of overtime; and providing for an effective
2 date."

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

4 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

5 (1) some courts in the state have misinterpreted the intent of AS 23.10.060(b)
6 as it read before the effective date of this Act in a manner that may result in employers being
7 obligated to pay excessive overtime compensation; in particular, these courts have interpreted
8 AS 23.10.060(b) so that hours worked in excess of eight hours in a day are counted in order
9 to determine whether overtime is due under the statute's provision requiring payment of
10 overtime for hours worked in excess of 40 hours a week; the courts' interpretation has the
11 unintended result of requiring employers to pay overtime under the statute's provision
12 requiring payment of overtime for hours worked in excess of 40 hours a week under
13 circumstances in which the employee has not yet worked 40 hours at the employee's regular
14 rate of pay;

1 (2) the intent of this bill is to override the superior court's decision in Hallam
2 v. Holland America Line, Inc., d/b/a Westours Motor Coaches, Inc., 1JU-96-1734 CI,
3 concerning the calculation of overtime wages; the court in that case misinterpreted the intent
4 of AS 23.10.060(b);

5 (3) AS 23.10.060(b) as it read before the effective date of this Act was not
6 intended to require employers to pay at the overtime rate under the statute's provision
7 requiring payment of overtime for hours worked in excess of 40 hours a week unless and until
8 employees had first worked 40 hours at the regular rate of pay; and

9 (4) although the legislature believes that AS 23.10.060(b) should not have been
10 interpreted by the courts in a manner inconsistent with the finding in (3) of this section, the
11 legislature further finds that it is necessary to amend AS 23.10.060(b) in order to eliminate
12 any doubt on this subject.

13 * Sec. 2. AS 23.10.060(b) is repealed and reenacted to read:

14 (b) If an employer finds it necessary to employ an employee for hours in
15 excess of the limits set in this subsection, overtime compensation for the overtime at
16 the rate of one and one-half times the regular rate of pay shall be paid. An employee
17 is entitled to overtime compensation for hours worked in excess of eight hours a day.
18 An employee is also entitled to overtime compensation for hours worked in excess of
19 40 hours a week; in determining whether an employee has worked more than 40 hours
20 a week, the number of hours worked shall be determined without including hours that
21 are worked in excess of eight hours in a day because the employee has or will be
22 separately awarded overtime compensation based on those hours.

23 * Sec. 3. RETROSPECTIVE EFFECT. This Act is retroactive to April 1, 1997.

24 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

HB

2008

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 208

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ Dev.
 Title An Act relating to professional counselors; and BRU Occupational Licensing
 providing for an effective date. _____ Component Occupational Licensing
 Sponsor Representative Murkowski
 Requester House HESS 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 HB 208 amends requirements for licensing of professional counselors. New funds are not required to implement this bill.

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

Phone 465-2144
 Date/Time 4/23/99 5:21 PM
 Date 4/26/99

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

MEMORANDUM

April 20, 1999

SUBJECT: Sectional Summary of Work Order No. 21-LS0828\A. (Professional Counselors)

TO: Representative Lisa Murkowski
Attn: Anne

FROM: Terri Lauterbach
Legislative Counsel *T Lauterbach*

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

As a preliminary matter, please 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.

You have not asked any questions about the legal effects of the bill, so this summary is very brief. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, let me know.

Section 1. Adds counselors to the list of persons who are required to use appropriate letters or a title after the person's name to represent the person's field of practice.

Section 2. Clarifies the board's power to adopt regulations and enforce AS 08.29.

Section 3. Amends the qualifications for counselor licensing.

Section 4. Expands the list of persons who would be suitable supervisors.

Section 5. Changes provisions relating to transitional licensing.

Section 6. Applicability section.

Section 7. Special immediate effective date for sections 2 - 6. Section 1 will take effect 90 days after the bill becomes law.

TML:glc
99-197.glc

ALASKA STATE LEGISLATURE

Chair:
MILITARY AND VETERANS AFFAIRS

Member:
JUDICIARY
COMMUNITY AND REGIONAL AFFAIRS
LABOR AND COMMERCE



REPRESENTATIVE LISA MURKOWSKI
Government Hill • Elmendorf • East Anchorage

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Interim:
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ANCHORAGE, AK 99501-2133
PHONE: (907) 269-0174
FAX: (907) 269-0177

MEMORANDUM

TO: Senator Jerry Mackie
FM: Representative Lisa Murkowski *LM/wig*
DATE: 5 May, 1999
RE: HB 208

On May 3rd, HB 208 was unanimously by passed the House. Attached are several amendments which have since been added to the bill. These amendments serve to further strengthen consumer protection measures for Alaskans seeking the services of licensed professional counselors.

Specifically, the amendments:

1. Prohibit anyone who has ever had a licensed revoked in the practice of counseling, psychology, marital and family therapy, or social work in Alaska or any other jurisdiction from applying for a licensed professional counselor license in the State of Alaska;
2. Establish criteria for licensing foreign-educated counselors; and
3. Establish criteria for denying a license and imposing a disciplinary sanction.

Thank you for your consideration.

This amendment is in
SCS HB 208 (L&C)
D.C.

I-LS0828\A.1
Lauterbach ✓
5/3/99

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE MURKOWSKI

TO: HB 208

1 Page 2, line 30, following "(3)":

2 Insert "has not had a license related to the practice of counseling, psychology,
3 marital and family therapy, or social work in this or another jurisdiction suspended,
4 revoked, ~~limited~~, or surrendered in lieu of discipline unless the license has been fully
5 reinstated in that jurisdiction:

6 (4)"

7 Page 3, line 2:

8 Delete "(4)"

9 Insert "(5) [(4)]"

10 Page 3, line 11:

11 Delete "(5)"

12 Insert "(6) [(5)]"

13 Delete "(4)(A)"

14 Insert "(5)(A)"

15 Page 3, following line 18:

16 Insert a new bill section to read:

17 "* Sec. 4. AS 08.29.130 is amended to read:

18 Sec. 08.29.130. Licensure of foreign-educated applicants. The board may
19 issue a license under this chapter to a person who

20 (1) has completed a doctorate or master's degree educational program
21 in counseling or a related professional field in a foreign college or university approved
22 by the board;

1 (2) meets the requirements of AS 08.29.110 except for
2 AS 08.29.110(a)(5) [AS 08.29.110(a)(4)]; and

3 (3) demonstrates to the satisfaction of the board that the applicant's
4 experience, command of the English language, and completed academic program meet
5 the standards of a relevant academic program of an accredited educational institution
6 in the United States."

7 Renumber the following bill sections accordingly.

8 Page 3, line 23:

9 Delete "licensed psychiatrist,"

10 Page 4, following line 1:

11 Insert a new bill section to read:

12 **"* Sec. 6.** AS 08.29.400 is amended to read:

13 **Sec. 08.29.400. Grounds for denial of license or for disciplinary sanctions.**

14 The board may impose a disciplinary sanction under AS 08.01.075 on a person
15 licensed under this chapter or deny a license to a person when the board finds that the
16 person

17 (1) has an addiction to, or severe dependency on, alcohol or other
18 drugs that impairs the person's ability to engage safely in the practice of professional
19 counseling;

20 (2) has been convicted of a felony and has not been sufficiently
21 rehabilitated to merit the public trust;

22 (3) used fraud, deception, misrepresentation, or bribery in securing a
23 license under this chapter or in obtaining permission to take an examination required
24 under this chapter;

25 (4) is incompetent or has committed misconduct, fraud,
26 misrepresentation, or dishonesty in the performance of the functions of a licensed
27 professional counselor;

28 (5) violated, or assisted another individual to violate, a provision of
29 this chapter or a regulation adopted under this chapter;

- 1 (6) impersonated a person who holds a license under this chapter;
- 2 (7) has had a license related to the practice of counseling,
- 3 psychology, marital and family therapy, or social work [REVOKED OR
- 4 SUSPENDED] in this or another jurisdiction revoked, suspended, limited, or
- 5 surrendered in lieu of discipline upon grounds for which a [THE] license issued
- 6 under this chapter could be revoked, [OR] suspended, limited, or surrendered in lieu
- 7 of discipline; this paragraph does not apply to license actions [REVOCATIONS OR
- 8 SUSPENSIONS] for failure to pay a renewal fee [IN ANOTHER JURISDICTION];
- 9 (8) assisted another person who is not licensed under this chapter in
- 10 an attempt to represent the person to the public as a licensed professional counselor;
- 11 (9) was issued a license based on a material mistake of fact;
- 12 (10) used an advertisement or solicitation that is false, misleading, or
- 13 deceptive to the general public or the person to whom the advertisement was primarily
- 14 directed; or
- 15 (11) failed to respond within 30 days to a written communication from
- 16 the board concerning an investigation by the board or failed to make available to the
- 17 board a relevant record with respect to an investigation about the licensee's conduct
- 18 or background."

19 Renumber the following bill sections accordingly.

20 Page 4, line 14:

21 Delete "AS 08.29.110(a)(1) and (2), enacted by sec. 1 of this Act"

22 Insert "AS 08.29.110(a)(1) - (3) [AS 08.29.110(a)(1) AND (2), ENACTED BY SEC.

23 1 OF THIS ACT]"

24 Page 4, following line 19:

25 Insert a new bill section to read:

26 "* Sec. 8. INTENT. It is the intent of the legislature that the reference to

27 AS 08.29.110(a)(3), used in the amendment to sec. 6, ch. 75, SLA 1998, made under sec. 7

28 of this Act, be read as referring to AS 08.29.110(a)(3), enacted by sec. 3 of this Act."

1 Renumber the following bill sections accordingly.

2

3 Renumber internal references to bill sections in accordance with this amendment. Below are
4 all internal bill section references in this bill:

5 Page 4, lines 20, 21, 22, 23, and 24

1-LS0828D
Lauterbach
5/5/99

SENATE CS FOR HOUSE BILL NO. 208(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MURKOWSKI, Smalley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to professional counselors; and providing for an effective date."

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

3 * Section 1. AS 08.02.010(a) is amended to read:

4 (a) An acupuncturist licensed under AS 08.06, an audiologist licensed under
5 AS 08.11, a person licensed in the state as a chiropractor under AS 08.20, a
6 professional counselor licensed under AS 08.29, a dentist under AS 08.36, a marital
7 and family therapist licensed under AS 08.63, a medical practitioner or osteopath under
8 AS 08.64, a direct-entry midwife certified under AS 08.65, a registered nurse under
9 AS 08.68, an optometrist under AS 08.72, a licensed pharmacist under AS 08.80, a
10 physical therapist or occupational therapist licensed under AS 08.84, a psychologist
11 under AS 08.86, or a clinical social worker licensed under AS 08.95, shall use as
12 professional identification appropriate letters or a title after that person's name which
13 represents that person's specific field of practice. The letters or title shall appear on
14 all signs, stationery, or other advertising in which the person offers or displays
15 personal professional services to the public. In addition, a person engaged in the

1 practice of medicine or osteopathy as defined in AS 08.64.380, or a person engaged
2 in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons
3 in relation to human health or disease and uses the letters "M.D." or the title "doctor"
4 or "physician" or another title that tends to show that the person is willing or qualified
5 to diagnose, treat, test, or counsel another person, shall clarify the letters or title by
6 adding the appropriate specialist designation, if any, such as "dermatologist",
7 "radiologist", "audiologist", "naturopath", or the like.

8 * Sec. 2. AS 08.29.020(a) is amended to read:

9 (a) In addition to the duties specified in AS 08.01, the board shall

10 (1) license professional counselors, establish criteria for supervisor
11 certification, and certify approved counselor supervisors under this chapter; the board
12 may provide for licensure in areas of counseling specialization;

13 (2) establish continuing education requirements for the renewal of a
14 license under this chapter;

15 (3) adopt, by regulation, a code of ethics that must be observed by
16 persons licensed under this chapter;

17 (4) establish education and training requirements that must be met
18 before a professional counselor can administer and use assessment instruments
19 described in AS 08.29.490(1)(C); and

20 (5) enforce the provisions of this chapter and adopt regulations
21 necessary to carry out the board's duties under this chapter.

22 * Sec. 3. AS 08.29.110(a) is amended to read:

23 (a) The board shall issue a professional counselor license to a person who
24 applies for the license, submits the required fee, submits two letters of recommendation
25 from professional counselors who are familiar with the applicant's practice of
26 professional counseling, and presents evidence satisfactory to the board that the person

27 (1) is at least 18 years of age;

28 (2) is not under investigation in this or another jurisdiction for an act
29 that would constitute a violation of this chapter;

30 (3) has not had a license related to the practice of counseling,
31 psychology, marital and family therapy, or social work in this or another

1 jurisdiction suspended, revoked, ~~expired~~, or surrendered in lieu of discipline unless
 2 the license has been fully reinstated in that jurisdiction;

3 (4) has passed a written examination as required by the board; the
 4 board may provide that passing a nationally recognized examination for professional
 5 counselors is sufficient to meet the examination requirement of this paragraph;

6 (5) [(4)] has successfully completed either

7 (A) an earned doctoral degree in counseling or a related
 8 professional field from a regionally accredited institution of higher education
 9 approved by the board; or

10 (B) an earned master's degree in counseling or a related
 11 professional field, from a regionally ^{OR NATIONAL} accredited institution of higher
 12 education approved by the board, consisting of at least 48 semester hours
 13 and at least 12 other graduate semester hours in counseling during or after
 14 earning the master's degree, for a total of at least 60 hours; and

15 (6) [(5)] has, after completing the requirement of either (5)(A) or
 16 (B) of this subsection, had at least 3,000 hours of supervised experience in the
 17 practice of professional counseling performed over a period of at least two years under
 18 the supervision of a supervisor approved under AS 08.29.210, with at least 1,000 hours
 19 of direct counseling with individuals, couples, families, or groups and at least 100
 20 hours of face-to-face supervision by a supervisor approved under AS 08.29.210 unless,
 21 under regulations of the board, the board allows the supervision to be by telephonic
 22 or electronic means because of the remote location of the counselor.

23 * Sec. 4. AS 08.29.130 is amended to read:

24 **Sec. 08.29.130. Licensure of foreign-educated applicants.** The board may
 25 issue a license under this chapter to a person who

26 (1) has completed a doctorate or master's degree educational program
 27 in counseling or a related professional field in a foreign college or university approved
 28 by the board;

29 (2) meets the requirements of AS 08.29.110 except for
 30 AS 08.29.110(a)(5) [AS 08.29.110(a)(4)]; and

31 (3) demonstrates to the satisfaction of the board that the applicant's

1 experience, command of the English language, and completed academic program meet
2 the standards of a relevant academic program of an accredited educational institution
3 in the United States.

4 * Sec. 5. AS 08.29.210(a) is amended to read:

5 (a) The board shall approve and certify a person as an approved counselor
6 supervisor for the purposes of this chapter if the person

7 (1) is licensed under this chapter as a professional counselor or is a
8 licensed physician, licensed advanced nurse practitioner who is certified to provide
9 psychiatric or mental health services, licensed clinical social worker, licensed marital
10 and family therapist, licensed psychologist, or licensed psychological associate;

11 (2) submits an application for certification and the appropriate fee;

12 (3) has five years of counseling experience;

13 (4) provides to the board for its approval or disapproval a statement
14 that details the person's supervision philosophy, orientation, and experience; and

15 (5) meets other criteria that may be established by the board in
16 regulations.

17 * Sec. 6. AS 08.29.400 is amended to read:

18 **Sec. 08.29.400. Grounds for denial of license or for disciplinary sanctions.**

19 The board may impose a disciplinary sanction under AS 08.01.075 on a person
20 licensed under this chapter or deny a license to a person when the board finds that the
21 person

22 (1) has an addiction to, or severe dependency on, alcohol or other drugs
23 that impairs the person's ability to engage safely in the practice of professional
24 counseling;

25 (2) has been convicted of a felony and has not been sufficiently
26 rehabilitated to merit the public trust;

27 (3) used fraud, deception, misrepresentation, or bribery in securing a
28 license under this chapter or in obtaining permission to take an examination required
29 under this chapter;

30 (4) is incompetent or has committed misconduct, fraud,
31 misrepresentation, or dishonesty in the performance of the functions of a licensed

1 professional counselor;

2 (5) violated, or assisted another individual to violate, a provision of this
3 chapter or a regulation adopted under this chapter;

4 (6) impersonated a person who holds a license under this chapter;

5 (7) has had a license related to the practice of counseling, psychology,
6 marital and family therapy, or social work [REVOKED OR SUSPENDED] in this
7 or another jurisdiction revoked, suspended, limited, or surrendered in lieu of
8 discipline upon grounds for which a [THE] license issued under this chapter could be
9 revoked, [OR] suspended, limited, or surrendered in lieu of discipline; this paragraph
10 does not apply to license actions [REVOCATIONS OR SUSPENSIONS] for failure
11 to pay a renewal fee [IN ANOTHER JURISDICTION];

12 (8) assisted another person who is not licensed under this chapter in an
13 attempt to represent the person to the public as a licensed professional counselor;

14 (9) was issued a license based on a material mistake of fact;

15 (10) used an advertisement or solicitation that is false, misleading, or
16 deceptive to the general public or the person to whom the advertisement was primarily
17 directed; or

18 (11) failed to respond within 30 days to a written communication from
19 the board concerning an investigation by the board or failed to make available to the
20 board a relevant record with respect to an investigation about the licensee's conduct
21 or background.

22 * Sec. 7. Section 6, ch. 75, SLA 1998, is amended to read:

23 TRANSITIONAL PROVISION. Notwithstanding this Act, the Board of
24 Professional Counselors shall issue a license under AS 08.29, enacted by sec. 1 of this
25 Act, to an applicant who

26 (1) applies by June 30, 2000 [DECEMBER 31, 1999];

27 (2) submits documentation that the applicant holds a master's or
28 doctorate degree in counseling or a related professional field;

29 (3) submits, on a form provided by the department, documentation from
30 an employer, a supervisor, or a professional peer that, after graduating with a
31 master's or doctoral degree in counseling or a related field, the applicant has

1 practiced professional counseling in the state for at least 24 months during the five
2 years immediately preceding the date of application;

3 (4) meets the requirements of AS 08.29.110(a)(1) - (3)
4 [AS 08.29.110(a)(1) AND (2), ENACTED BY SEC. 1 OF THIS ACT], and is not
5 subject to denial of a license under AS 08.29.400, enacted by sec. 1 of this Act;

6 (5) submits two letters of recommendation from professional counselors
7 who are familiar with the applicant's work; and

8 (6) pays the required fee.

9 * Sec. 8. INTENT. It is the intent of the legislature that the reference to
10 AS 08.29.110(a)(3), used in the amendment to sec. 6, ch. 75, SLA 1998, made under sec. 7
11 of this Act, be read as referring to AS 08.29.110(a)(3), enacted by sec. 3 of this Act.

12 * Sec. 9. APPLICABILITY. AS 08.29.110(a), as amended by sec. 3 of this Act, and
13 sec. 6(3), ch. 75, SLA 1998, as amended by sec. 7 of this Act, apply to applications pending
14 or filed with the Board of Professional Counselors on or after the effective date of secs. 2 -
15 8 of this Act.

16 * Sec. 10. Sections 2 - 9 of this Act take effect immediately under AS 01.10.070(c).

Interim
716 W. 4th Avenue
Anchorage, AK 99501
Phone: 907-269-0174
Fax: 907-269-0177



Session
State Capitol Bldg., Suite 406
Juneau, AK 99801
Phone: 907-465-3783
Fax: 907-465-2293

REPRESENTATIVE LISA MURKOWSKI
GOVERNMENT HILL • ELMENDORF • EAST ANCHORAGE

Sponsor Statement
House Bill 208

"An act relating to professional counselors."

In 1998, the 20th Legislature created statutes establishing a board and license for professional counselors in Alaska. The intent of the statutes was essentially twofold: 1. To create a Board which would oversee activities relating to professional counselors; and 2. To create a requirement of appropriate, quality education and experience for professional counselors seeking licensure. However, key language defining both the authority of the Board and "appropriate, quality education and experience" for professional counselors was inadvertently left out of the original statutes.

In addition to addressing the above omissions, HB 208 also allows for three other housekeeping provisions. Specifically it:

- adds to the list of health professionals allowed to supervise professional counselors;
- adds professional counselors to the Centralized Licensing Statutes section regarding the use of the letters "LPC" after a licensed professional's name; and
- extends the deadline by six months for current, eligible professional counselors to be "grandfathered" in without having to undergo the supervisory and testing requirements currently required for new entrants into the profession.

This bill strengthens the original statutes for both the public and the profession, and consequently enjoys the support of the Board of Licensed Professional Counselors and the American Counseling Association of Alaska.



Working for
Alaska's
Mental
Health

APR 28 1999

Mental Health Association In Alaska

aka Alaska Mental Health Association

4045 Lake Otis Parkway, Suite 209 • Anchorage, Alaska 99508 (907) 563-0880
• Fax (907) 563-0861 • Email <mhea@alaska.net>
Website <<http://www.alaska.net/~mhea/>>

April 27, 1999

Members of the HOUSE LABOR & COMMERCE COMMITTEE

Re: House Bill 208

Dear Representatives

Rokeberg, Halcro, Harris, Murkowski, Sanders, Brice & Cissna:

I am writing on behalf of the Alaska Mental Health Association to express our strong support for House Bill 208. This bill most certainly support's the Mental Health Association's efforts to secure licensure for professional counselors in Alaska.

Although the major issue of creating a mechanism for licensing professional counselors has been successfully completed in the last legislative session, House Bill 208 is essential in finishing that process. There is broad support for licensing professional counselors. Please move positively on House Bill 208 and lets finish the fine work that has already been completed on this issue.

Sincerely;

Janet McGillivary, M.Ed.
President & CEO

cc: Reading File



LLOYD H. CARY, Ph.D.

265 Binkley Street
PO Box 957
Soldotna, Alaska 99669

Telephone: (907) 262-0608

April 27, 1999

Lisa Murkowski

Attn. Ann Gore

I am writing to you to thank you for your support of HB 208. I believe this is a crucial bill for the advancement of the counseling profession. I am a Clinical Pastoral Counselor licensed by the National Christian Counseling Association. I am not able to get a State of Alaska license. I have been in private practice since July of 1993. I have a Ph.D. in Pastoral Counseling. Not having a state of Alaska license hinders my effectiveness in many areas but primarily with testimony in the court system and in getting third party payments which are an important aspect of support for private practitioners.

I encourage you to strongly continue support of this bill and do all you can to move it along the legislative process. It is primarily a housekeeping bill, with no known opponents. It basically repairs some simple problems.

It also extends the original statutes drive toward consumer protection, by requiring tighter standards for licensees. If it does not pass this session, it simply prolongs the possibility of unqualified counselors continuing to practice unhindered.

If I can assist in any way please contact me.

Sincerely,

Lloyd H. Cary Ph.D
Clinical Pastoral Counselor



Homer High School

Kenai Peninsula Borough School District
Richard Patton, Principal
Keith Gebhardt, Assistant Principal
David Cloud, Athletic Director

COUNSELING FAX COVERSHEET

DATE: 4/26/99

TO: Lisa Munkowski

FAX # 415 2293
FROM: Jamie Ballentine

SUBJECT: HB 208

NUMBER OF PAGES INCLUDING COVER 1

COMMENTS: I am very in favor of
HB 208 we need this legislation
to help counseling in the state

* COUNSELING FAX NUMBER (907) 235-4604 *

600 E. Fairview Avenue, Homer, AK 99603-7661 Phone: (907) 235-8186 Fax: (907) 235-8933
Web Site: www2.kpbsd.k12.ak.us/schools/hhs/main/main.htm



Homer High School

Kenai Peninsula Borough School District
Richard Patton, Principal
Keith Gebhardt, Assistant Principal
David Cloud, Athletic Director

COUNSELING FAX COVERSHEET

DATE: 4/26/99

TO: Lisa Muskowski

FAX # 465-~~3783~~ 2293
FROM: Shawnie Olson

SUBJECT: HB208

NUMBER OF PAGES INCLUDING COVER 1

COMMENTS: I am a counselor very in favor
of HB208. We need people in this state who
are trained to deal with emotional illness in a
counseling capacity.

* **COUNSELING FAX NUMBER (907) 235-4604** *

600 E. Fairview Avenue, Homer, AK 99603-7661 Phone:(907)235-8186 Fax:(907)235-8933
Web Site: www2.kpbsd.k12.ak.us/schools/hhs/main/main.htm



of ALASKA

A Branch of the American Counseling Association

Pamela Watts
3290 Nowell Avenue
Juneau, Alaska 99801
W: (907) 463-7095

April 26, 1999

Representative Lisa Murkowski
Alaska State Capital Building
Juneau, Alaska 99801

Dear Rep. Murkowski:

As Past-President of the American Counseling Association of Alaska, I am writing to ask your support of House Bill 208. Our organization was instrumental in the passage of the Licensed Professional Counselor bill.

- Our intention was that applicants for licensure have two years post-graduate counseling experience to be eligible for licensure,
- Graduate from a regionally accredited university, and
- Have a one-year timeframe within which they could apply for grandparenting licensure.

Since the LPC Board was not appointed by the date originally anticipated, unless the deadline is extended to June 30, 2000 many potential applicants will not be eligible for licensure. In some other states, the grandparenting-in phases spans two or more years.

I believe licensure of professional counselors is critical for consumers of counseling services so they can be assured that a Licensed Professional Counselor has met at least minimum requirements in order to practice. This provides a degree of consumer protection, in addition to having a board that accepts grievances and has the power to revoke licenses if licensees fail to adhere to licensing and ethical standards. As a Clinical Supervisor and Administrator of a program employing counselors, I can assure you that establishing and maintaining high standards for those who practice in the field of counseling is good for Alaskans. I encourage you to give this legislation high priority and your full support. Thank you for your efforts.

Sincerely,

A handwritten signature in cursive script that reads 'Pamela L. Watts'.

Pamela L. Watts, M.Coun., M.A.C., N.C.C.
Past-President, American Counseling Assn. Of Alaska

**NORTON SOUND****HEALTH CORPORATION**P.O. BOX 966
NOME, ALASKA 99762
(907) 443-3311

4/27/99

Representative Lisa Murkowski

Dear Rep. Murkowski,

This is to let you know that I support HB 208.I am a Counselor in Nome and feel strongly that
this bill needs to be passed for many reasons —Consumer protection, greater availability of behavioral health
services in remote regions, reduced licensure costs to
qualified applicants — and there's no fiscal note attached.

Please support HB 208, a basic housekeeping bill.

Thank you,

Joni Chestman, MS, LPC, NCC

P.O. Box 1802

Nome, AK 99762

(907) 443-3354

ANNE L. HENRY, M.A., C.H.T.
5750 Glacier Hwy., Bldg. D, Rm. 12, Box 10
Juneau, AK 99801
Telephone: (907) 780-6345

April 26, 1999

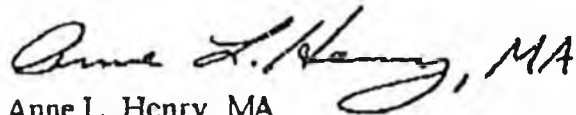
Dear Representative Murkowski:

At the March 25-26, 1999 meeting of the regulatory Board of Licensed Professional Counselors necessary changes to the statutes were discussed. These necessary changes deal with the powers of the Board, the original intent of the statutes to license well qualified professional counselors, and the protection of Alaskan consumers. HB 208 addresses these concerns by making changes to the statutes regarding the Board, and Licensed Professional Counselors.

The Board of Licensed Professional Counselors urges passage of HB 208.

Thank you for your assistance in the passage of this bill.

Sincerely,



Anne L. Henry, MA
LPC Board Chair

Subject: HB 208

Date: Tue, 27 Apr 1999 10:26:46 -0900

From: ffaam1@aurora.uaf.edu (Allan Morotti)

To: Anne_Gore@legis.state.ak.us

Dear Anne,

I understand that you are assisting ACA of Alaska and the current LPC Board with rectifying some minor oversights in the original LPC Act. As a member of the LPC Board and a counselor educator (Guidance & Counseling Program--UAF), I strongly support the proposed amendments. Protection of the public is a critical factor when seeking mental health services, these amendments spell out more clearly the original intent of the LPC legislation which was to identify and license appropriately trained counseling professionals in providing mental health services to the Alaska public.

I want to thank you for your work on this issue and Rep. Murkowski for her sponsorship of HB 208. Please contact me at your convenience if I can be of any assistance to you in seeing this matter to fruition.

Sincerely,
Allan Morotti, Ph.D.
LPC Board Member

Subject: HB 208

Date: Tue, 27 Apr 1999 06:40:40 +0000

From: fganger@servcom.com (Frank Ganger, Jr.)

To: Anne_Gore@legis.state.ak.us

The Honorable Rep. Lisa Murkowski,

Please give your support to HB 208, it is a no cost (to the State) bill that will help consumers of counseling services.

Thank you,

Frank Ganger Jr.

Southcentral Counseling Center

Anchorage, AK

562-7900

Subject: RE: ????

Date: Tue, 27 Apr 1999 08:01:29 -0800

From: Florence Pearson <flo@alaska.net>

To: "Anne_Gore@legis.state.ak.us" <Anne_Gore@legis.state.ak.us>

Good Morning,

I am a counselor and support HB208. I was a counselor for 9 years in the Anchorage School District and now have my own consulting/counseling business. I would like to see this bill passed. Thank you. Flo Pearson

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

From: winktas [SMTP:winktas@alaska.net]

Sent: Monday, April 26, 1999 9:03 AM

To: plotsaas@alaska.net; melbob@alaska.net; ffaaml@aurora.alaska.edu; counselor@wytbear.com; aflwk@uaa.alaska.edu; ddonalds@ptialaska.net; wintyr@ptialaska.net; nemo@alaska.net; taffy_wells@cfec.state.ak.us; Mary.Miller@ccsjuneau.com; lgooding@polarnet.com; lmattiso@health.state.ak.us; dihle@jsd.k12.ak.us; ljhelgeson@aol.com; borealblis@aol.com; kmunson@lifequest.org; neel_julye@msmail.asd.k12.ak.us; JocelynWard@ccsjuneau.com; cclaak@arctic.net; fganger@servcom.com; aman@servcom.com; solso@kpbsd.k12.ak.us; CathrynMFS@aol.com; drichard@rocketmail.com; plwatts@alaska.net; winktas@alaska.net; schindlm@jsd.k12.ak.us; hammaker@mtaonline.net; gorrell@health.state.ak.us; gary_clement@mail.ci.juneau.ak.us; mebozone@juno.com; stabach@alaska.net; jholman@kodiak.alaska.edu; CClarkeAK@aol.com; Karen_Backlund@ajcn.state.ak.us; Rock_Bronyraur@labor.state.ak.us; counsel@polarnet.com; franks@nshcorp.org; FourRiversMH@prodigy.com; lhcpd@ptialaska.net; mallard1@mtaonline.net; chrestman@nshcorp.org; rbutts@teller.bssd.schoolzone.net; afpms@uaa.alaska.edu; karac_bronyraur@labor.state.ak.us; franks@nshcorp.org; janowiec@ptialaska.net; mhaa@alaska.net; 4Bears@alaska.net; mblinsenmeyer@hotmail.com; mccaslak@jsd.k12.ak.us; randi@alaska.net; shellyws@ptialaska.net; lvorachek@kodiak.alaska.edu; lamp@mtaonline.net; taylor@servcom.com; cflegel@hsmail.hbsd.k12.ak.us; mmaxson@stikheen.alaska.ihs.gov; tschenck@ptialaska.net; mcmullen@alaska.net; burbridge_mike@msmail.asd.k12.ak.us; bnrll@aurora.alaska.edu; lillevik@alaska.net; jsimpson@northstar.k12.ak.us; oesting_susan@msmail.asd.k12.ak.us; vprichard@arctic.nsbds.k12.ak.us; cdanitz@educ.state.ak.us; churchl@seapac.net; jensen@seattleu.edu; eat7@alaska.net; pat_knopf@labor.state.ak.us; dona@alaska.net; sandra_mironov@mail.ykhc.org; amoma@customcpu.com; mmaxson@stikheen.alsaka.ihs.gov; tomanos@ptialaska.net; Book@ptialaska.net; dmeans@kodiak.alaska.edu; jvrg@sinbad.net; shellyws@ptialaska.net; randi@alaska.net; mommaluna@yahoo.com; carey@alaskasarctic.com; beachrd@wytbear.com; dunegan@hotmail.com; vademming@mosquitonet.com; counsel@polarnet.com; lgarcia57@hotmail.com; fskrb@uaf.edu; rroberts@brevig.bssd.schoolzone.net; taylor@servcom.com; cenglish@alaska.net; dish@alaska.net; tomanos@ptialaska.net; hartley_robert@msmail.asd.k12.ak.us; annep@alaska.net; cenglish@alaska.net; ALSmith@comregaf.state.ak.us; ipray4u@alaska.net; lomelina@mtaonline.net; cardc@alaska.net; alexander_jennifer@msmail.asd.k12.ak.us; burbridge_mike@msmail.asd.k12.ak.us; comeau_car; fawcet_jenny@msmail.asd.k12.ak.us; hubble_teresa@msmail.asd.k12.ak.us; kent_brandy@msmail.asd.k12.ak.us; morgan_betty@msmail.asd.k12.ak.us; ortiz_kathleen@msmail.asd.k12.ak.us; solano_dolores@msmail.asd.k12.ak.us; thorson_gloria@msmail.asd.k12.ak.us; wilson_allison@msmail.asd.k12.ak.us; Zimmer#u#James@msmail.asd.k12.ak.us; mhaa@alaska.net; semerson@health.state.ak.us; flo@alaska.net

Subject: ????

Did anyone send an e-mail or fax to Lisa Murkowski's office? I just talked to her and she has not received anything from anyone but me. So, please send her something right away.

Anne_Gore@legis.state.ak.us
FAX 465-3783

Subject: In favor of HB208

Date: Tue, 27 Apr 1999 08:33:51 -0800

From: Toni Chrestman <chrestinan@nshcorp.org>

To: Anne_Gore@legis.state.ak.us

Anne, I am a professional counselor in the "bush" and am asking that you pass along to Lisa Murkowski my support of HB208. This is mainly a housekeeping bill, without fiscal note, and would help insure consumer protection by requiring tighter standards for counselor licensees. The cost of the license would be reduced for those who qualify, as well. Let's get it through and get on with getting qualified licensees working to provide much-needed services.

Please pass on this note of STRONG support for HB208. Thank you.

Toni Chrestman, MS, LPC, NCC
Behavioral Health Clinician
Norton Sound Health Corporation
Nome, Alaska 99762
(907) 443-3356

Subject: HB208

Date: Mon, 26 Apr 1999 15:09:48 -0900

From: Lynnette Dihle <dihlel@jsd.k12.ak.us>

To: Anne_Gore@legis.state.ak.us

Dear Anne Gore,

I am a mental health professional/school counselor and I strongly support HB208. Thank you for your work in regard to this bill.

Sincerely,

Lynnette Dihle

Subject: HB208

Date: Mon, 26 Apr 1999 18:16:27 EDT

From: CathrynMFS@aol.com

To: Anne_Gore@legis.state.ak.us

April 26, 1999

Dear Representative Murkowski:

I am a professional counselor writing in support of HB208. It is very important for Alaskans to have a working counselor licensure bill. The initial legislation for this, as you know, was passed last year. But some important details need to be addressed before Alaska's Licensure bill meets the standards set by the rest of the nation. HB208 will fill in the missing peices so that licensure can proceed in a timely and professional manner. Please support this bill and speed its progress through the legislature. I appreciate your time and energy in attending to this.

Sincerely,

Cathryn Simon, N.C.C.
12320 Tracy Rd., Apt. A
Anchorage, AK 99516

Subject: Yes on HB208 "LPC"

Date: Mon, 26 Apr 1999 14:16 -0900

From: "Gary Clement" <Gary_Clement@mail.ci.juneau.ak.us>

To: "Anne_Gore@legis.state.ak.us" <Anne_Gore@legis.state.ak.us>

I am a counselor at CBJ mental health. Passing HB208 will help several of the mental health clinicians here to continue our professional practice and give better service to this agency and its customers.

Thank you for supporting HB208 (Licensed professional counselor).

Gary D. Clement MS, MPA, NCC, CCDC, CRC
Mental Health Clinician
463-7053 work

Subject: HB 208

Date: Mon, 26 Apr 1999 10:56:39 -0800

From: "Debra Lighthart" <Lamp@mtaonline.net>

Reply-To: "Debra Lighthart" <Lamp@pop.mtaonline.net>

To: <Anne_Gore@legis.state.ak.us>

Anne, I am a counselor in Wasilla Ak who was trained specifically for Licensed Professional Counselor. I send you this email in support of HB208. We have been having trouble with our email server. It took me 4 tries to connect today. Again I am in support of HB208. Debra Lighthart, PhD.

Subject: HB 208

Date: Mon, 26 Apr 1999 09:17:18 -0800

From: "Emerson, Steve E" <Steve_Emerson@health.state.ak.us>

To: Anne_Gore@legis.state.ak.us

Hello... this is to voice my support for HB208. As Regional Coordinator for Community Mental Health Services in the Northern Region I witness on a daily basis the shortage of licensed therapists to whom people can turn for services. By approving the passage of HB 208, and ensuring the subsequent LPC licensure for those qualified individuals applying, the State of Alaska would greatly increase the availability of professional therapists and counselors for it's citizens. This would really be of great benefit to those Alaskans living in remote sites, as well as to those in the urban centers. Please consider this bill as a hugely positive step for the state, and for the mental health of it's citizenry. Thanks, Steve Emerson

Subject: HB208

Date: 26 Apr 1999 10:09:28 -0800

From: "Kent_Brandy" <kent_brandy@msmail.asd.k12.ak.us>

To: "Anne Gore" <Anne_Gore@legis.state.ak.us>

Hi Anne,

My name is Brandy Kent. I'm an elementary school counselor in the Anchorage School District. I just want to take the time to let you know I support HB208 and appreciate all your efforts in getting this bill approved. I believe the benefits would be enourmous.

Thank you. Brandy

Subject: HB 208

Date: Mon, 26 Apr 1999 10:34:11 -0900

From: sojourner <cenglish@alaska.net>

To: Lisa Murkowski <Anne_Gore@legis.state.ak.us>

I am a clinician at Southcentral Counseling Center. I am writing to express my support of HB208. Thank you for supporting this important bill that will help to ensure quality mental health services for the state of Alaska.

Christopher English

3500 E 66th Ave.

Anchorage, AK 99507

ALASKA STATE LEGISLATURE

Chair:
MILITARY AND VETERANS AFFAIRS

Member:
JUDICIARY
COMMUNITY AND REGIONAL AFFAIRS
LABOR AND COMMERCE



REPRESENTATIVE LISA MURKOWSKI

Government Hill • Elmendorf • East Anchorage

Session:
ALASKA STATE CAPITOL
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FAX: (907) 465-2293
TOLL FREE: (877) 460-3783

Interim:
716 WEST 4TH AVENUE
ANCHORAGE, AK 99501-2133
PHONE: (907) 269-0174
FAX: (907) 269-0177

MEMORANDUM

TO: Senator Jerry Mackie
FM: Representative Lisa Murkowski *LM/avg*
DATE: 5 May, 1999
RE: HB 208

On May 3rd, HB 208 was unanimously by passed the House. Attached are several amendments which have since been added to the bill. These amendments serve to further strengthen consumer protection measures for Alaskans seeking the services of licensed professional counselors.

Specifically, the amendments:

1. Prohibit anyone who has ever had a licensed revoked in the practice of counseling, psychology, marital and family therapy, or social work in Alaska or any other jurisdiction from applying for a licensed professional counselor license in the State of Alaska;
2. Establish criteria for licensing foreign-educated counselors; and
3. Establish criteria for denying a license and imposing a disciplinary sanction.

Thank you for your consideration.

1 treatments, and therapeutic services to individuals and groups for the purpose
2 of treating the emotional and mental disorders;

3 (B) an applied understanding of the dynamics of the individual
4 and of group interactions, along with the application of therapeutic and
5 counseling techniques for the purpose of resolving intrapersonal and
6 interpersonal conflict and changing perceptions, attitudes, and behaviors in the
7 area of human relationships; and

8 (C) consistent with regulations adopted by the board under
9 AS 08.29.020(a)(4), administration and use of appropriate assessment
10 instruments that measure or diagnose problems or dysfunctions within the
11 course of human growth and development as part of a counseling process or
12 in the development of a treatment plan;

13 (2) "supervision" means supervision in which the supervisor is available
14 to provide clinical oversight to the supervisee either in person or by a communication
15 device.

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

17 (35) Board of Professional Counselors (AS 08.29.010).

18 * Sec. 3. AS 08.01.050(d) is amended to read:

19 (d) At the request of one of the following boards, the department may contract
20 with public agencies and private professional organizations to provide assistance and
21 treatment to persons licensed by the board who abuse alcohol, other drugs, or other
22 substances:

- 23 (1) Board of Clinical Social Work Examiners;
- 24 (2) Board of Dental Examiners;
- 25 (3) Board of Dispensing Opticians;
- 26 (4) State Medical Board;
- 27 (5) Board of Nursing;
- 28 (6) Board of Examiners in Optometry;
- 29 (7) Board of Pharmacy;
- 30 (8) State Physical Therapy and Occupational Therapy Board;
- 31 (9) Board of Professional Counselors;

1 ~~(10)~~ Board of Psychologist and Psychological Associate Examiners; and

2 ~~(11)~~ {110} Board of Veterinary Examiners.

3 * Sec. 4. AS 08.03.010(c) is amended by adding a new paragraph to read:

4 (21) Board of Professional Counselors (AS 08.29.010) -- June 30, 2002.

5 * Sec. 5. Rule 504(a)(3), Alaska Rules of Evidence, is amended to read:

6 (3) A psychotherapist is (A) a person authorized to practice medicine
7 in any state or nation, or reasonably believed by the patient to be so, while engaged
8 in the diagnosis or treatment of a mental or emotional condition, including alcohol or
9 drug addiction, (B) a person licensed or certified as a psychologist or psychological
10 examiner under the laws of any state or nation or reasonably believed by the patient
11 so to be, while similarly engaged, [OR] (C) a person licensed as a marital or family
12 therapist under the laws of a state or nation or reasonably believed by the patient so
13 to be, while similarly engaged, or (D) a person licensed as a professional counselor
14 under the laws of a state or nation, or reasonably believed by the patient so to be,
15 while similarly engaged.

16 * Sec. 6. TRANSITIONAL PROVISION. Notwithstanding this Act, the Board of
17 Professional Counselors shall issue a license under AS 08.29, enacted by sec. 1 of this Act,
18 to an applicant who

19 (1) applies by December 31, 1999;

20 (2) submits documentation that the applicant holds a master's or doctorate
21 degree in counseling or a related professional field;

22 (3) submits, on a form provided by the department, documentation from an
23 employer, a supervisor, or a professional peer that the applicant has practiced professional
24 counseling in the state for at least 24 months during the five years immediately preceding the
25 date of application;

26 (4) meets the requirements of AS 08.29.110(a)(1) and (2), enacted by sec. 1
27 of this Act, and is not subject to denial of a license under AS 08.29.100, enacted by sec. 1 of
28 this Act;

29 (5) submits two letters of recommendation from professional counselors who
30 are familiar with the applicant's work; and

31 (6) pays the required fee.

ALASKA STATE LEGISLATURE

Chair:
MILITARY AND VETERANS AFFAIRS

Member:
JUDICIARY
COMMUNITY AND REGIONAL AFFAIRS
LABOR AND COMMERCE



REPRESENTATIVE LISA MURKOWSKI

Government Hill • Elmendorf • East Anchorage

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MEMORANDUM

TO: Senator Jerry Mackle
FM: Representative Lisa Murkowski *LM/mur*
DATE: 5 May, 1999
RE: HB 208

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Thank you for your consideration.