

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10114 SENATE LABOR & COMMERCE

CS for HB 291 you have before you today makes four basic changes to the notice section of the Administrative Procedure Act (AS 44.62.190):

- 1. HB 291 standardizes the language describing the notice delivery throughout the section by using the word “furnish” instead of the traditional delivery method by “mail”. This would free agencies to use methods such as email, rather than being chained to 20th century delivery methods.**

[“Mail” generally means post office, whereas furnish allows email. Since legislators ONLY receive mailed copies of notice now, we can only assume that agencies interpret “mail” as NOT email. The Dept. of Law drafting manual speaks primarily to post office mailing.]

- 2. HB 291 requires that state agencies provide notices to legislators by electronic format if the agency has the technological capability.** There is some question whether absolutely ALL state agencies have email so we’ve provided for an alternative if they do not. [Hard to believe, but not absolute when it perhaps comes to some State-sponsored boards, etc.]

During consideration in House State Affairs, the bill was amended to remove the added requirements of agencies to provide additional notices of regulations to:

- Legislative standing committees (Subsection 7) and
- The Administrative Regulation Review Committee (Subsection 8)

All 60 legislators would get one electronic notice. As is now the case, legislators could follow up to get a full copy of the proposed regulations. In many cases, the full regulations would be readily available through an email link directly to an agency's website.

3. HB291 recognizes and lets stand **other statutes that may govern state agency notices** and prescribe another method of delivery.

4. HB 291 preserves a **person's ability to receive a notice by mail** if they request this method of delivery. [In reality, agencies probably have some sort of updated list of people or organizations who want to receive the agency's regulatory notices. CSHB 291 just says a person can still get a mailed copy if they want.]

Benefits of CSHB 291:

- HB291 will simplify the production, handling, delivery and review of notices – at both the Executive and Legislative ends of the process.

- Legislators will receive regulatory notices faster by email.

- Emails won't get misplaced or delayed between session and interim physical addresses.

- HB 291 frees up staff time for other tasks – at both ends, especially the clerical staff stuffing, postaging, and sorting 60 letters each time.
- HB 291 facilitates agencies' use of email to other parties, and helps regulatory notices be timely across the state.

FISCAL NOTE (2/7/00):

Zero.

OMB does note that CSHB 291 will improve the efficiency of notice process by reducing agency staff time now required for delivering paper copies of regulatory notices.

CLOSING COMMENT

As the Legislature scrutinizes agency budgets year after year, it is incumbent on us to look for efficiencies on how agencies interact with us. We need to make statutory changes, such as CSHB 291, to streamline government.

CS FOR HOUSE BILL NO. 291(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 2/9/00
Referred: Finance

Sponsor(s): REPRESENTATIVES KERTTULA, Smalley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the giving of certain state agency notices."

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

3 * Section 1. AS 44.62.190 is amended to read:

4 Sec. 44.62.190. Notice of proposed action. (a) At least 30 days before the
5 adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

6 (1) published in the newspaper of general circulation or trade or
7 industry publication that the state agency prescribes and in the Alaska Administrative
8 Journal; in the discretion of the state agency giving the notice, the requirement of
9 publication in a newspaper or trade or industry publication may be satisfied by using
10 a combination of publication and broadcasting; when broadcasting the notice, an
11 agency may use an abbreviated form of the notice if the broadcast provides the name
12 and date of the newspaper or trade or industry journal where the full text of the notice
13 can be found;

14 (2) furnished [MAILED] to every person who has filed a request for
15 notice of proposed action with the state agency;

1 (3) if the agency is within a department, furnished [MAILED OR
2 DELIVERED] to the commissioner of the department;

3 (4) when appropriate in the judgment of the agency,

4 (A) furnished [MAILED] to a person or group of persons
5 whom the agency believes is interested in the proposed action; and

6 (B) published in the additional form and manner the state
7 agency prescribes;

8 (5) furnished to the Department of Law together with a copy of the
9 proposed regulation, amendment, or order of repeal for the department's use in
10 preparing the opinion required after adoption and before filing by AS 44.62.060;

11 (6) furnished by electronic format, if the state agency has the
12 technological capability, to all incumbent State of Alaska legislators, and furnished
13 to the Legislative Affairs Agency; if the state agency does not have the
14 technological capability to furnish the notice by electronic format to the
15 legislators, the state agency shall furnish the notice to the legislators by other
16 means

17 [(7) FURNISHED TO THE STANDING COMMITTEE OF EACH
18 HOUSE OF THE LEGISLATURE HAVING LEGISLATIVE JURISDICTION OVER
19 THE SUBJECT MATTER TREATED BY THE REGULATION UNDER THE
20 UNIFORM RULES OF THE ALASKA STATE LEGISLATURE, TOGETHER WITH
21 A COPY OF THE PROPOSED REGULATION, AMENDMENT, OR ORDER OF
22 REPEAL FOR THE COMMITTEE'S USE IN CONDUCTING THE REVIEW
23 AUTHORIZED BY AS 24.05.182;

24 (8) FURNISHED TO THE STAFF OF THE ADMINISTRATIVE
25 REGULATION REVIEW COMMITTEE, TOGETHER WITH A COPY OF THE
26 PROPOSED REGULATION, AMENDMENT, OR ORDER OF REPEAL AND, IF
27 PREPARATION OF AN APPROPRIATION INCREASE ESTIMATE IS REQUIRED
28 BY AS 44.62.195, A COPY OF THE ESTIMATE].

29 (b) If the form or manner of notice is prescribed by statute, in addition to the
30 requirements of filing and furnishing [MAILING] notice under AS 44.62.010 -
31 44.62.300, or in addition to the requirements of filing and mailing notice under

1 other sections of this chapter, the notice shall be published, posted, mailed, filed, or
2 otherwise publicized as prescribed by the statute.

3 (c) The failure to furnish [MAIL] notice to a person as provided in this
4 section does not invalidate an action taken by an agency under AS 44.62.180 -
5 44.62.290.

6 (d) Along with a notice furnished under (a)(2), (4)(A), or (6) [, (7), OR (8)]
7 of this section, the state agency shall include the reason for the proposed action, the
8 initial cost to the state agency of implementation, the estimated annual costs to the
9 state agency of implementation, the name of the contact person for the state agency,
10 and the origin of the proposed action.

11 * Sec. 2. AS 44.62.190 is amended by adding a new subsection to read:

12 (e) Notwithstanding (a) of this section, if a person who is to receive a notice
13 under (a) of this section requests that the state agency mail the notice, the state agency
14 shall furnish the notice to the person by mail.

HB

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB296

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Econ. Dev.
 Title Uniform Partnership Act BRU Banking, Securities, and Corporations
 Component Banking, Securities, and Corporations
 Sponsor Judiciary
 Requester House Labor and Commerce Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY00) cost: _____

POSITIONS

Full-time					
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

Prepared by Franklin T. Elder, Director Phone 465-2521
 Division Banking, Securities and Corporations Date/Time 1/31/00 8:16 AM
 Approved by Commissioner Deborah B. Sedwick Date 1/31/00
 Agency Community and Economic Development

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SPONSOR STATEMENT
for
HB 296, UNIFORM PARTNERSHIP ACT

1/31/2000

Alaska currently has the 1914 version of the Uniform Partnership Act promulgated by the National Conference of Commissioners on Uniform State Laws. HB 296 updates that law.

The bill proposes enactment of the NCCUSL's 1994 comprehensive revision, and picks up its 1996 provisions on limited liability partnerships, along with a 1997 amendment by the NCCUSL. Making minor adjustments to accommodate Alaska drafting style requirements, HB 296 closely tracks the national version.

The changes reflect modern business practices and more than eight decades of court decisions and scholarship.

A fundamental aspect of the revision is the recognition of a partnership as a separate legal entity (the "entity" concept), and not merely as an aggregate of individuals (the "aggregate" concept). (Current law is a confusing blend of the two.) This principle is reflected in many provisions.

HB 296 recognizes the primacy of the partnership agreement over statutory rules, except for certain rules protecting specific partner interests in the partnership. It

addresses the fiduciary obligations of loyalty, due care, and good faith. It allows partners control and flexibility to meet their business needs, but defines "partnership" as a distinct entity. This bill also allows for the continuity of life of the partnership so that the partnership no longer dissolves every time a partner leaves. It also provides new rules for conversion and merger so that partnerships may convert to a limited partnership and vice versa, or may merge with another partnership or limited partnership.

The 1996 amendments on limited liability partnerships provide limited liability for general partners of a registered limited liability partnership. They provide greater protection to partners against personal liability than is the case under most of the existing state limited liability partnership statutes. Limited liability partnerships can be created simply by filing a registration statement. However, individual partners are personally liable for any injury they cause, and their personal assets are available to satisfy a judgment against them.

The bill integrates the nationally uniform version of the limited liability partnership law into the nationally uniform version of the regular partnership law, thus significantly improving upon Alaska's 1996 enactment on limited liability partnerships and facilitating the use of Alaska partnership law. It helps bring Alaska into the modern business world.

* * * * *

LEGAL SERVICES

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

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 23, 2000

SUBJECT: Sectional Summary of CSHB 296(L&C) relating to partnerships
(Work Order No. 21-LS1208\G)

TO: Representative Pete Kott
Chair, Judiciary Committee
Attn: Pat Harman

FROM: *EB*
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Conforming amendment.

Section 2. Conforming amendment.

Section 3. Conforming amendment.

Section 4. Conforming amendment.

Section 5. Conforming amendments.

Section 6. Establishes AS 32.06, a new chapter relating to partnerships and limited liability partnerships. As part of this subject, the chapter also addresses conversion of a partnership to a limited partnership, conversion of a limited partnership to a partnership, and merger of a partnership with limited partnerships.

Article 1(nature of partnership): secs. 32.06.201 - 32.06.204.

Sec. 32.06.201 (partnership as entity). Subsection (a) states that a partnership is an entity distinct from its partners. Subsection (b) states that a limited liability partnership is the same entity that existed before it filed the statement of qualification required for it to become a limited liability partnership.

Sec. 32.06.202 (formation of partnership). Subsection (a) provides that generally a partnership is formed when two or more persons associate as co-owners of a business for

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profit. Subsection (b) states that an association is not a partnership under this chapter unless it is formed under this chapter, a predecessor statute, or a comparable statute of another jurisdiction. Subsection (c) lists several rules for determining whether a partnership is formed.

Sec. 32.06.203 (partnership property). Provides that property acquired by a partnership is the partnership's property, not the property of the individual partners.

Sec. 32.06.204 (when property is partnership property). Subsection (a) establishes the conditions for when the acquisition of property is considered to be the acquisition of property by a partnership. Subsection (b) establishes when property is considered to have been acquired in the name of the partnership. Subsection (c) establishes a presumption that property is partnership property if acquired with partnership assets, even if certain other conditions are not met. Subsection (d) establishes a presumption that property is the separate property of a partner under certain conditions.

Article 2 (relations of partners to persons dealing with partnership): secs. 32.06.301-32.06.308.

Sec. 32.06.301 (partner as agent of partnership). Establishes when a partner is considered to be an agent, or acting as an agent, of the partnership.

Sec. 32.06.302 (transfer of partnership property). Subsection (a) establishes that in general a transfer instrument signed by a partner in the partnership's name is sufficient to transfer partnership property held in the name of the partnership. Subsection (b) establishes that a transfer instrument signed by a partner is effective to transfer partnership property that is held in the name of the partner but not in the name of the partnership. Subsection (c) establishes that an instrument signed by the persons named on the title is sufficient to transfer partnership property held in the persons' names when the title does not indicate their partnership capacity or the existence of the partnership. Subsection (d) enables a partnership to recover partnership property from a transferee if certain conditions are met. Subsection (e) prohibits a partnership from recovering partnership property from a subsequent transferee if it could not recover the property from an earlier transferee under (d). Subsection (f) states that a person who holds all partnership interests in the partnership owns all of the partnership property; authorizes the person to sign a document in the name of the partnership to show this.

Sec. 32.06.303 (statement of partnership authority). Subsection (a) authorizes a partnership to file a statement of partnership authority; states what information the statement must include and what information the statement may include. Subsection (b) requires any agent named in the statement to maintain a list of the names and mailing addresses of the partners and make it available to any person for good cause shown. Subsection (c) provides that an incomplete filed statement operates with regard to certain persons. Subsection (d) states how a filed statement supplements the authority of a partner to enter into partnership transactions. Subsection (e) states that limits on a partner's authority to transfer real property (held in the

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name of the partnership) that are recorded are considered to be known by other persons who are not partners. Subsection (f) provides that, with certain exceptions, a non-partner will not be considered to know of a limitation on a partner's authority just because the limitation is contained in a filed statement. Subsection (g) cancels a filed statement five years after the statement, or an amendment to it, is filed, unless canceled earlier.

Sec. 32.06.304 (statement of denial). Allows a person named as a partner in a filed statement of partnership authority or on an agent's mailing list to file a statement denying a fact, e.g. status as a partner; provides that the statement is a limitation on authority under certain provisions of this chapter.

Sec. 32.06.305 (partnership liable for partner's actionable conduct). Subsection (a) states that a partnership is liable for loss, injury, or penalty resulting from the actionable conduct of a partner acting on partnership business or with partnership authority. Subsection (b) holds the partnership liable for misapplication of certain money or property by a partner acting on partnership business or with partnership authority.

Sec. 32.06.306 (partner's liability). Subsection (a) provides that, with some exceptions, all partners are liable jointly and severally for the obligations of the partnership. Subsection (b) limits a partner's liability for partnership obligations to obligations incurred after the person becomes a partner. Subsection (c) limits the liability on an obligation of a limited liability partnership to the partnership and holds that a partner is not personally liable.

Sec. 32.06.307 (actions by and against partnership and partners). Subsection (a) allows a partnership to sue and be sued in its name. Subsection (b) allows a partnership and its partners to be sued in the same or separate actions. Subsection (c) states that a judgment against a partnership is not a judgment against a partner; prohibits using a partner's assets to satisfy a judgment solely against a partnership. Subsection (d) prohibits the judgment creditor of a partner from executing against the partner's assets to satisfy a judgment against the partnership unless certain conditions are met. Subsection (e) applies this section to any partnership liability or obligation that results from a representation of a partner or purported partner.

Sec. 32.06.308 (liability of purported partner). Subsection (a) establishes when a person is held liable as if the person were a partner. Subsection (b) establishes when a person purported to be a partner is considered to be an agent who can bind other persons. Subsection (c) states that a person will not be held liable as a partner solely on the basis of being named by another person in a statement of partnership authority. Subsection (d) states that a person does not continue to be liable as a partner solely because the person fails to file a statement of dissociation or to amend a statement of partnership authority to indicate the dissociation. Subsection (e) states that in general persons who are not each other's partners are not liable as partners to other persons.

Article 3 (relations of partners to each other and to partnership): sec. 32.06.401- 32.06.406.

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Sec. 32.06.401 (partner's rights and duties). Subsection (a) describes the amounts that are credited or charged to a partner's account in the partnership. Subsection (b) states that a partner is entitled to an equal share of the partnership profits and chargeable with a share of partnership losses that is proportionate to the partner's share of the profits. Subsection (c) requires a partnership to reimburse and indemnify a partner for certain liabilities incurred by the partner. Subsection (d) requires the partnership to reimburse a partner for certain advances made by the partner to the partnership beyond the partner's agreed contribution. Subsection (e) characterizes as a loan to the partnership certain payments and advances made by a partner that result in a partnership obligation. Subsection (f) gives each partner equal management rights. Subsection (g) limits a partner's use and possession of partnership property to use and possession on behalf of the partnership. Subsection (h) states that a partner is generally not entitled to remuneration for services performed for the partnership. Subsection (i) allows a person to become a partner only with the consent of all partners. Subsection (j) provides for the settling of differences by majority decision; allows certain acts and an amendment to the partnership agreement to be undertaken only if all partners consent. Subsection (k) states that this section does not affect the obligations of a partnership to other persons under sec. 32.06.301 (partner as agent of partnership).

Sec. 32.06.402 (distributions in kind). States that a partner is not entitled to demand, or required to accept, distributions in kind.

Sec. 32.06.403 (partner's rights and duties with respect to information). Subsection (a) requires a partnership to keep any records at its chief executive office. Subsection (b) addresses what records a partner, including a former partner, has access to. Subsection (c) requires each partner and the partnership to furnish partners with certain information.

Sec. 32.06.404 (general standards of partner's conduct). Subsection (a) identifies the fiduciary duties a partner owes to the partnership and other partners. Subsection (b) describes a partner's duty of loyalty. Subsection (c) describes a partner's duty of care. Subsection (d) generally imposes on a partner the obligation of good faith and fair dealing with regard to partners and the partnership. Subsection (e) states that a partner does not violate a duty or obligation under this chapter or the partnership agreement just because the partner's conduct furthers the interest of the partner. Subsection (f) allows a partner to lend money to and transact business with the partnership. Subsection (g) applies this section to a person who is winding up the partnership business as the representative of the last surviving partner.

Sec. 32.06.405 (actions by partnership and partners). Subsection (a) allows a partnership to maintain a court action against a partner for breaches of the partnership agreement or violations of a partnership duty if the partnership is harmed. Subsection (b) allows a partner to maintain a court action against the partnership or another partner to enforce certain rights or to protect certain interests. Subsection (c) states that the accrual of a court action are governed by other law and that a right to an accounting at dissolution does not revive a claim barred by law.

Sec. 32.06.406 (continuation of partnership beyond definite term or particular undertaking). Subsection (a) describes the rights and duties of partners when a partnership is continued after a definite term or a particular undertaking. Subsection (b) establishes a presumption that the partners have agreed to continue a partnership if they continue the partnership business after a definite term or a particular undertaking without a settlement or liquidation.

Article 4 (transferees and creditors of partners): secs. 32.06.501 - 32.06.504.

Sec. 32.06.501 (partner not co-owner of partnership property). States that a partner does not own partnership property. States that a partner does not have a transferable interest in partnership property.

Sec. 32.06.502 (partner's transferable interest in partnership). States that the only interest in a partnership that a partner can transfer is the partner's share of the profits and losses and the right to receive distributions. This interest is personal property.

Sec. 32.06.503 (transfer of partner's transferable interest). Subsection (a) allows a partner to transfer the partner's transferable interest in the partnership; states that a transfer is not sufficient by itself to remove the partner from the partnership or to dissolve the partnership; states that a transfer does not entitle the transferee to certain specified partner rights. Subsection (b) lists the partnership rights of a person to whom a partner's interest is transferred. Subsection (c) indicates the accounting period that a person to whom a partner's interest is transferred is entitled. Subsection (d) states that the transferring partner retains all partner rights and duties other than the transferred interest in distributions. Subsection (e) relieves a partnership of the requirement to recognize a transferee's rights until the partnership receives notice of the transfer. Subsection (f) provides that a transfer that violates the partnership agreement is ineffective against a person with notice of the violation.

Sec. 32.06.504 (partner's transferable interest subject to charging order). Subsection (a) allows a judgment creditor of a partner (or the partner's transferee) to obtain a court order to charge the debtor partner's transferable interest in the partnership to satisfy the judgment. Subsection (b) describes a charging order as a lien on the debtor's transferable interest in the partnership; allows foreclosure of the interest. Subsection (c) provides for the redemption before foreclosure of an interest subject to a charging order. Subsection (d) states that this chapter does not remove an exemption the debtor might claim under property exemption laws. Subsection (e) makes the judgment creditor's remedy under this section the creditor's exclusive remedy against a debtor's transferable interest in a partnership.

Article 5 (partner's dissociation): secs. 32.06.601 - 32.06.603.

Sec. 32.06.601 (events causing partner's dissociation). Lists the events that cause a partner to be dissociated from a partnership.

Sec. 32.06.602 (partner's power to dissociate; wrongful dissociation). Subsection (a) allows a partner to dissociate at any time (under sec. 32.06.601(1)) by express will. Subsection (b)

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identifies the situations when the dissociation of a partner is wrongful. Subsection (c) holds a partner who wrongfully dissociates from the partnership liable to the partnership and the other partners for damages.

Sec. 32.06.603 (effect of partner's dissociation). Subsection (a) identifies which sections of this chapter apply when a partner's dissociation results in a dissolution of the partnership. Subsection (b) describes the effect of a partner's dissociation on the partner's rights and duties.

Article 6 (partner's dissociation when business not wound up): secs. 32.06.701 - 32.06.705.

Sec. 32.06.701 (purchase of dissociated partner's interest). Subsection (a) requires purchase by a partnership of a dissociated partner's interest under certain circumstances. Subsection (b) establishes how to calculate the buy-out price of a dissociated partner's interest. Subsection (c) requires damages for wrongful dissociation (and other owed amounts) to be offset against the buy-out price. Subsection (d) requires a partnership to indemnify a dissociated partner against most partnership liabilities. Subsection (e) requires the partnership, if an agreement is not reached within a certain time, to pay the dissociated partner in cash the estimated buy-out price and accrued interest, as reduced under (c) of this section. Subsection (f) authorizes the partnership to tender a written offer if deferred payment is authorized. Subsection (g) requires a payment or tender under (e) or (f) to be accompanied by certain information. Subsection (h) provides some guidelines regarding the entitlement to buy-out price payments by partners who wrongfully dissociate under certain circumstances. Subsection (i) allows a dissociated partner to maintain an action against the partnership to determine the buy-out price.

Sec. 32.06.702 (dissociated partner's power to bind and liability to partnership). Subsection (a) states that under certain circumstances the partnership is bound by the dissociated partner's acts for two years after a partner dissociates. Subsection (b) holds a dissociated partner liable to the partnership for damage caused by certain obligations incurred by the partner after dissociation.

Sec. 32.06.703 (dissociated partner's liability to other persons). Subsection (a) provides that dissociation does not by itself discharge the liability of the partner for obligations incurred before dissociation; provides that the partner is generally not liable for obligations incurred after the dissociation. Subsection (b) holds a dissociating partner liable as a partner to a third party for partnership obligations incurred within two years after dissociation under certain conditions. Subsection (c) allows creditors and partners to release a dissociated partner from liability for a partnership obligation. Subsection (d) releases a dissociated partner from liability for a partnership obligation if a partnership creditor, under certain conditions, agrees to certain material alterations of the obligation.

Sec. 32.06.704 (statement of dissociation). Subsection (a) allows a dissociated partner or the partnership to file statement of dissociation. Subsection (b) establishes that a statement of dissociation limits the authority of a dissociated partner under sec. 32.06.303(d) and (e).

Subsection (c) treats certain nonpartners as having received notice of a dissociation 90 days after the statement of dissociation is filed.

Sec. 32.06.705 (continued use of partnership name). Provides that continued use of the partnership name, including using the dissociated partner's name in it, does not by itself make the dissociated partner liable for obligations.

Article 7 (winding up partnership business): secs. 32.06.801 - 32.06.807.

Sec. 32.06.801 (events causing dissolution and winding up of partnership business). Lists the events that cause dissolution of a partnership and require winding up of the business.

Sec. 32.06.802 (partnership continuation after dissolution). Subsection (a) provides that a partnership only continues after dissolution in order to wind up its business and terminates when it has been wound up. Subsection (b) allows (after dissolution and before completion of winding up) the partners to waive the right to wind up and terminate the partnership and describes what happens to the partnership and third party rights in that event.

Sec. 32.06.803 (right to wind up partnership business). Subsection (a) allows a partner to participate in the winding up; also provides for the superior court to order judicial supervision of the winding up. Subsection (b) allows the legal representative of the last surviving partner to wind up a partnership's business. Subsection (b) identifies what actions a person may take who is winding up a partnership's business.

Sec. 32.06.804 (partner's power to bind partnership after dissolution). Identifies when a partnership is bound by a partner's act after dissolution.

Sec. 32.06.805 (statement of dissolution). Subsection (a) allows a partner who has not wrongfully dissociated to file a statement of dissolution. Subsection (b) provides that a statement of dissolution cancels a filed statement of partnership authority for certain purposes and limits authority under sec. 32.06.303(e). Subsection (c) considers that a nonpartner has notice of the dissolution and limit on partners' authority 90 days after the statement of dissolution is filed. Subsection (d) allows a dissolved partnership to file and record a statement of partnership authority that will operate with respect to a nonpartner.

Sec. 32.06.806 (partner's liability to other partners after dissolution). Subsection (a) generally holds a partner liable to other partners for the partner's share of partnership liability. Subsection (b) holds a partner liable to the partnership for damages resulting from the partner's incurring certain partnership liabilities after the dissolution.

Sec. 32.06.807 (settlement of accounts and contributions among partners). Subsection (a) requires that the partnership assets be applied to its debts when the partnership is winding up its business. Subsection (b) makes each partner entitled to a settlement of partnership accounts when the partnership is being wound up and provides some rules for the settlement. Subsection (c) requires the other partners to contribute the amount not paid by a partner and

allows a partner to recover from the other partners any excess paid by the partner. Subsection (d) requires each partner to contribute to satisfy partnership obligations that are discovered after the settlement accounts, if the partner is personally liable under AS 32.06.306. Subsection (e) holds the estate of a deceased partner liable for the partner's obligation to contribute to the partnership. Subsection (f) allows certain other persons to enforce a partner's obligations to contribute to the partnership.

Article 8 (conversion of partnership to limited partnership): secs. 32.06.902 - 32.06.909.

Sec. 32.06.902 (conversion of partnership to limited partnership). Subsection (a) allows a partnership to be converted to a limited partnership under this section. Subsection (b) establish the approval requirements for the conversion terms and conditions. Subsection (c) requires the partnership to file a certificate of limited partnership with the department and to include certain listed items. Subsection (d) makes the conversion effective when the certificate is filed or on a later date stated in the certificate. Subsection (e) establishes the liability (for partnership obligations) of a general partner who becomes a limited partner after the conversion.

Sec. 32.06.903 (conversion of limited partnership to partnership). Subsection (a) allows a limited partnership to be converted to a partnership under this section. Subsection (b) establishes the approval requirement for the conversion. Subsection (c) requires the limited partnership to cancel its certificate of limited partnership. Subsection (d) makes the conversion effective when the certificate of limited partnership is canceled. Subsection (e) addresses the liability of a limited partner who becomes a general partner (as a result of the conversion) for partnership obligations incurred before and after the conversion.

Sec. 32.06.904 (effect of conversion; entity unchanged). Subsection (a) states that a partnership that is converted under this article is the same entity that existed before the conversion. Subsection (b) lists the effects of a conversion on the property and obligations of the converting partnership or limited partnership, and any actions or other proceedings against the partnership or limited partnership.

Sec. 32.06.905 (merger of partnerships). Subsection (a) provides for the merger of a partnership with another partnership or a limited partnership under a plan of merger. Subsection (b) lists what the plan of merger must include. Subsection (c) establishes the approval requirements for the plan of merger. Subsection (d) allows for the amendment or abandonment of a plan of merger. Subsection (e) establishes when the merger takes effect.

Sec. 32.06.906 (effect of merger). Subsection (a) describes certain effects of a merger on partnership existence, partnership property, partnership obligations, and actions and proceedings against the partnerships. Subsection (b) establishes the commissioner as the agent for service of process for a surviving foreign partnership or limited partnership for certain obligations of the other parties to the merger. Subsection (c) lists what obligations a partner of the surviving partnership is liable for. Subsection (d) requires certain

contributions from certain partners to satisfy obligations of a merging partnership that are not satisfied out of the property of the surviving partnership. Subsection (e) establishes that a partner of a party of a merger who does not become a partner of the surviving partnership is dissociated and establishes certain rules governing this situation.

Sec. 32.06.907 (statement of merger). Subsection (a) allows a surviving partnership in a merger to file a statement that one or more partnerships have merged into the surviving entity. Subsection (b) lists what must be included in the statement of merger. Subsection (c) establishes that, except as provided in (d), property of the surviving party held by other parties to the merger is the property of the surviving party after filing the statement of merger. Subsection (d) provides that real property of the surviving party to the merger that is held by other parties to the merger is the property of the surviving party when a certified copy of the statement of merger is recorded. Subsection (e) establishes how a filed, and, if appropriate, recorded statement of merger that does not contain certain information required by (c) operates with respect to the named partnerships.

Sec. 32.06.908 (nonexclusivity). States that partnerships may be converted or merged in any manner provided by this article or by other law.

Sec. 32.06.909 (definitions). Defines certain terms for the article.

Article 9 (limited liability partnerships): secs. 32.06.911 - 32.06.925.

Sec. 32.06.911. Subsection (a) allows a partnership to become a limited liability partnership under this section. Subsection (b) establishes the approval requirements for becoming a limited liability partnership. Subsection (c) requires the filing of a statement of qualification and lists the items that must be included in the statement. Subsection (d) establishes the requirements that the agent of the limited liability partnership must meet. Subsection (e) establishes when the status as a limited liability partnership is effective and how long it remains effective. Subsection (f) provides that errors or later changes in the information in the statement of qualification do not affect the status as a limited liability partnership and the liability of the partners. Subsection (g) states that the filing of the statement of qualification establishes that the partnership has satisfied all necessary conditions for being a limited liability partnership. Subsection (h) establishes when an amendment or cancellation of a statement of qualification becomes effective.

Sec. 32.06.912 (name). Requires that the name of a limited liability partnership contain certain words or abbreviations.

Sec. 32.06.913 (biennial report; revocation of qualification). Subsection (a) requires a limited liability partnership and a foreign limited liability partnership authorized to transact business in this state to file with the department a biennial report that contains certain listed information. Subsection (b) establishes when biennial reports are due. Subsection (c) authorizes the department to revoke the statement of qualification of a partnership that fails to file a biennial report when due or pay the required filing fee; establishes how the

Representative Pete Kott

February 23, 2000

Page 10

department must proceed. Subsection (d) limits the effect of a revocation of a statement of qualification to the partnership's status as a limited liability partnership. Subsection (e) allows a partnership whose statement of qualification has been revoked to apply to the department for reinstatement within two years; identifies what the application must state. Subsection (f) states that a reinstatement relates back to the effective date of the revocation.

Sec. 32.06.921 (law governing foreign limited liability partnerships). Subsection (a) provides that the law under which a foreign limited liability partnership is formed governs the partners' relationships, the partners' relationship with the partnership, and the liability of the partners. Subsection (b) states that a foreign limited liability partnership may not be denied a statement of foreign qualification because the law where it was formed differs from the law of this state. Subsection (c) provides that a statement of foreign qualification does not give a partnership powers that a limited liability partnership does not have in this state.

Sec. 32.06.922 (statement of foreign qualification). Subsection (a) requires a foreign limited liability partnership to file a statement of foreign qualification before transacting business in this state and indicates what the statement must contain. Subsection (b) establishes the requirements for being an agent for service of process for a foreign limited liability company. Subsection (c) establishes when the status of a partnership as a foreign limited liability partnership becomes effective and how long the status remains effective. Subsection (d) indicates when an amendment or cancellation of a statement of foreign qualification becomes effective.

Sec. 32.06.923 (effect of failure to qualify). Subsection (a) prohibits a foreign limited liability partnership transacting business in this state from maintaining an action or other proceeding in this state unless it has a statement of foreign qualification in effect. Subsection (b) clarifies that the failure to have the statement in effect does not impair contracts or acts of the partnership or prevent it from defending an action or other proceeding in this state. Subsection (c) states that failure to have the statement in effect does not by itself waive a partner's limited liability. Subsection (d) establishes the commissioner as the agent for service of process for a partnership that fails to file the statement.

Sec. 32.06.924 (activities not constituting transacting business). Subsection (a) lists some of the activities of a foreign limited liability partnership that do not constitute transacting business. Subsection (b) establishes that ownership in this state of income-producing property, except as provided in (a), constitutes transacting business in this state. Subsection (c) states that this section does not apply to determine the activities that may subject the partnership to service, taxation, or regulation under another law of this state.

Sec. 32.06.925 (action by attorney general). Allows the attorney general to maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this article.

Article 10 (miscellaneous provisions): secs. 32.06.955 - 32.06.985.

Sec. 32.06.955 (knowledge and notice). Subsection (a) establishes when a person is considered to know a fact. Subsection (b) establishes when a person is considered to have notice of a fact. Subsection (c) establishes the criteria for how a person is to notify another person. Subsection (d) indicates when a person is considered to have received a notification. Subsection (e) establishes that a person other than an individual knows, has notice, or receives notification of a fact for a particular transaction when the individual conducting the transaction knows, has notice of, or receives notification of the fact, except in certain situations. Subsection (f) establishes that a partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately for the partnership, except in certain cases of fraud.

Sec. 32.06.960 (effect of partnership agreement; nonwaivable provisions). Subsection (a) provides that the relations between and among partners and between the partners and the partnership are generally governed by the partnership agreement, or by this chapter to the extent the agreement does not provide otherwise. Subsection (b) lists what a partnership agreement may not provide.

Sec. 32.06.965 (supplemental principles of law). Subsection (a) provides that the principles of law and equity supplement this chapter unless a particular provision of this chapter changes those principles. Subsection (b) establishes a rate of interest under this chapter for those situations where the interest rate is not otherwise specified.

Sec. 32.06.970 (execution, filing, and recording of statements). Subsection (a) provides for the filing of the statements required by this chapter with the department, allows the filing of certified copies of statements from other states, and indicates the effect of the filing. Subsection (b) provides that certified copies of statements that are filed with the department and recorded in the recording office for real property have the effect provided for recorded documents in this chapter. Subsection (c) establishes the execution requirements for filed statements. Subsection (d) allows a filed statement to be amended or canceled. Subsection (e) requires a person who files a statement to send a copy to nonfiling partners and persons listed as partners in the statement. Subsection (f) authorizes the department to collect a fee for filing or providing a certified copy of a statement.

Sec. 32.06.975 (governing law). Subsection (a) provides that, except as provided in (b), the law of the jurisdiction where a partnership has its chief executive office governs the relationships between and among the partners and partnerships. Subsection (b) provides that this state's law governs relations between and among partners and partnerships and the liability of partners for an obligation of a limited liability partnership.

Sec. 32.06.985 (partnership subject to amendment or repeal of chapter). States that a partnership governed by this chapter is subject to the amendment or repeal of this chapter.

Article 11 (general provisions): secs. 32.06.990 - 32.06.997.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 9, 2000

FEB 09 2000

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

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

The Honorable Pete Kott
Chair
House Judiciary Committee
State Capitol
Juneau, AK 99801 - 1182

Re: CSHB 296(L&C) (relating to partnerships)

Dear Representative Kott:

CSHB 296(L&C) has been referred to the House Judiciary Committee.

Alaska Uniform Law Commissioners request an early hearing on CSHB 296(L&C), relating to partnership. The bill updates our statutes to conform to amendments recommended by the National Conference of Commissioners on Uniform State Laws. Uniform laws are especially important to keep Alaska as an attractive market for interstate commerce.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Deborah E. Behr
Assistant Attorney General

DEB:jf

cc: All Uniform Law Commissioners
Chrystal Smith, Legislative Contact, Dept. of Law
Pat Pourchot, Legislative Director, Office of the Governor

National Conference of Commissioners on Uniform State Laws
211 East Ontario, Suite 1300, Chicago, Illinois 60611-312/915-0195-Facsimile 312/915-0187

John M. McCabe
Legislative Director / Legal Counsel
jmmccabe@nccusl.org

Memo to: Arthur H. Peterson

From: John M. McCabe

Date: February 4, 2000

Subject: Comparison of Limited Liability Partnerships Under Current Alaska Law and The Revised Uniform Partnership Act.

As per your request please find attached a chart comparing key provisions of current Alaska Law with regard to limited liability partnerships and how they differ from the Revised Uniform Partnership Act (RUPA).

There are differences, some major and some minor:

- Alaska's current liability shield is limited to tortious actions and does not cover ordinary commercial transactions of the partnership
- Both Alaska's current law and RUPA require registration to become a limited liability partnership. Alaska, however, requires a more detailed filing, requires a distinguishable name, and requires that the name of the partnership be registered.
- Existing Alaska law requires that a limited liability partnership carry a set amount of liability insurance or have qualified assets of a certain amount.
- Both Alaska and RUPA require a periodic filing however Alaska requires reports be filed biennially while RUPA provides for annual filing.



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Paralegal
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Ann Wilkerson

The Ebner Building
350 North Franklin Street
Juneau, Alaska 99801
Telephone (907) 586-4000
Facsimile (907) 586-3777
E-mail: dilfin@ptialaska.net
February 1, 2000

ANCHORAGE

Ray R. Brown
Maori Long
Kristen D. Pettemen
Paralegal
M. Bernita Raymond

510 L Street, Suite 603
Anchorage, Alaska 99501
Telephone (907) 277-5400
Facsimile (907) 277-9896

Robert H. Hume, Jr., Co-chair
Alaska Bar's Business Law Section
c/o Copeland, Landye, Bennett & Wolf, LLP
701 W. 8th Avenue, Suite 1200
Anchorage, Alaska 99501

Krista S. Stearns, Co-chair
Alaska Bar's Business Law Section
Hicks, Boyd, Chandler & Falconer
825 W. 8th Avenue, Suite 200
Anchorage, Alaska 99501

Re: HB 296, Uniform Partnership Act
(last legislature's SB 198)

Dear Mr. Hume and Ms. Stearns:

HB 296 proposes enactment of the Revised Uniform Partnership Act in Alaska. It was promulgated by the National Conference of Commissioners on Uniform State Laws in 1994, and significantly amended by the NCCUSL (i.e., by adding the limited liability partnership provisions) in 1996. A 1997 amendment was also added by the NCCUSL. Alaska has the 1914 version of the Act!

In 1992, Alaska enacted the revision of the Uniform Limited Partnership Act (repealing the old AS 32.10 and enacting AS 32.11); in 1994, we enacted AS 10.50, on limited-liability companies; and ch. 52, SLA 1996 enacted a set of amendments (primarily, AS 32.05.405 -- 32.05.760) on limited liability partnerships. In one way or another, those enactments are related to, but do not do the job of, HB 296.

The bill consists of two basic parts:

1. the 1994 comprehensive revision of the 1914 UPA, a key feature of which is statutorily establishing the "entity" concept of partnerships; and

2. the 1996 amendments of the 1994 version, presenting the limited liability partnership provisions, integrating them into the official revision of the UPA, itself.

Robert Hume & Krista Stearns
Uniform Partnership Act revision
February 1, 2000

Page 2

I am enclosing for each of you an information packet prepared by the NCCUSL. It includes the official text of the Act and commentary, along with a fact sheet, summaries, and other helpful material. A copy of HB 296 is also in there.

January 3, 1997, I sent such a packet to John Tindall, your predecessor in the section, but I suspect that his copy is so dog-eared by this time that he probably has not passed it along to you.

We need to have an updated, nationally consistent UPA, with the properly integrated limited liability partnership provisions in it. There should be general support for such an Act. I trust that you and your colleagues in the section will endorse it.

Hope to hear from you soon. Thanks.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

Enclosure

cc w/o enc.: Rest of Alaska's ULC Delegation:

Jay A. Rabinowitz
W. Grant Callow
Tamara Brandt Cook
L. S. Kurtz, Jr.
Deborah E. Behr

UNIFORM PARTNERSHIP ACT - QUICK CHRONOLOGY

- 1914 - Original Uniform Partnership Act
 - 1992 - Promulgation of Uniform Partnership Act (1992) by Uniform Law Commissioners
 - 1993 - Amendments to Uniform Partnership Act (1992)
Becomes Uniform Partnership Act (1993)
 - 1994 - Amendments to Uniform Partnership Act (1993)
Becomes Uniform Partnership Act (1994)
-
- 1996 - Amendments to Uniform Partnership Act (1994)
Adds Limited Liability Partnership. Becomes Uniform Partnership Act (1996)
 - 1997 - Amendment to Uniform Partnership Act (1996), Section 801
Becomes Uniform Partnership Act (1997)

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195

A Few Facts About
THE UNIFORM PARTNERSHIP ACT (1994)(1996)(1997)

PURPOSE: This act revises the Uniform Partnership Act of 1914. The 1994 act establishes a partnership as a separate legal entity, and not merely as an aggregate of partners. It recognizes the primacy of the partnership agreement over statutory rules, except for specific rules protecting specific partner interests in the partnership. The 1994 act explicitly addresses the fiduciary responsibilities of partners to each other, providing for express obligations of loyalty, due care, and good faith. The act was amended in 1996 and 1997 to provide limited liability for partners in a limited liability partnership.

ORIGIN: Completed by the Uniform Law Commissioners in 1994, and amended in 1996 and 1997.

APPROVED BY: American Bar Association

**ADOPTIONS OF
UPA (1992)(1994):**

Connecticut
Florida

West Virginia
Wyoming

**ADOPTIONS OF
UPA WITH 1996 and 1997
AMENDMENTS:**

Alabama
Arizona **
Arkansas *
California **
Colorado
Delaware
District of Columbia
Hawaii
Idaho
Iowa
Kansas
Maryland

Minnesota
Montana
Nebraska
New Mexico
North Dakota
Oklahoma
Oregon
Puerto Rico **
US Virgin Islands
Vermont
Virginia **
Washington

2000
INTRODUCTIONS:

For any further information regarding the Uniform Partnership Act (1994)(1996)(1997), please contact John McCabe or Katie Robinson at 312-915-0195.

** *Limited Liability Partnership Equivalent*

(1/1/00)

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

Uniform Partnership Act (1997)

- A Summary of Summaries -

RECEIVED

JAN 31 2000

D'ELLOW & FOWLEY

Because of the complex chronology of the Uniform Partnership Act since its initial revision in 1992, this short summary does two things, 1) it provides a short history of the revision process, and 2) it provides a short summary of the 1997 Amendment. An initial revision of the 1914 Uniform Partnership Act was promulgated in 1992. It was officially amended in both 1993 and 1994. In 1996, the Limited Liability Partnership Amendments to the Uniform Partnership Act were promulgated. In 1997, a short amendment was added to Section 801. **This progression through revision and amendment is now all together in one final act called the Uniform Partnership Act (1997).**

A summary of both the Uniform Partnership Act (1994) and the Limited Liability Partnership Amendments to the Uniform Partnership Act were prepared as separate documents. Both of these summaries are part of the materials explaining the Uniform Partnership Act (1997), and should accompany this document. If you do not find the two summaries accompanying this document, call the ULC national office at 312 915 0195 or FAX it at 312 915 0187 or send an e-mail to nccusl@nccusl.org. Any of these modes of communication will get you the full array of summaries.

The 1997 amendment to Section 801 of the Uniform Partnership Act reflects the changes in tax policy unveiled by the Internal Revenue Service in late 1996. Section 801 is the basic section in the Uniform Partnership Act governing dissolution of the partnership. The Uniform Partnership Act (1994) provided a safe harbor for a term or particular purpose partnership from dissolution when a partner dissociated. A majority in interest of the remaining partners could agree to continue the partnership within 90 days after the dissociation. This agreement saved the partnership from dissolution and winding up. In 1994, this was considered the most that could be done for the continuation of the partnership under the tax rules at that time.

Under the 1997 amendment, a partner's dissociation in a term or particular purpose partnership no longer triggers a dissolution and winding up, unless a majority in interest of partners agree to continue. The partnership continues under the 1997 amendment unless at least half the remaining partners move by express will to dissolve the partnership within 90 days after the initial dissociation. Only then is there a dissolution and winding up. The new rule favors the continuity of the partnership more than the old rule does. The new tax rules have simply eliminated the old concern for continuity of life as a corporate characteristic, making the new rule favoring continuity of a partnership feasible.

HB

303

FISCAL NOTE

Bill Version: HB 303

(H) Publish Date: 1/21/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Economic Developm
 Title An Act relating to the method of payment of fees and BRU Insurance
 adoption of regulations under AS 21-Insurance cleanup bill Component Insurance
 Sponsor Rules Committee
 Requester Governor Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact

Prepared by: Robert A. Loh Phone 269-7900
 Division Insurance Date/Time 12-29-99 8:50 AM
 Approved by Commissioner Deborah B. Sedwick Date 12/29/99
 Agency Community & Economic Development

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HB 303



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(907) 465-3500
Fax (907) 465-3532
www.gov.state.ak.us

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 20, 2000

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

Dear Speaker Porter:

I am transmitting a bill relating to financial regulation of insurance companies and amending the state's 1997 insurance act to comply with federal requirements for health care insurance involving individuals, groups, and small employers.

The bill would amend the insurance code with respect to the accounting standards followed by insurers when reporting annually on their financial condition to the director of the division of insurance. Under the bill, certain statutes related to the reporting of insurance company assets and liabilities are amended to eliminate provisions that are obsolete or that conflict with new accounting standards adopted by the National Association of Insurance Commissioners (NAIC). Existing law requires insurers doing business in this state to adhere to such standards. This also ensures Alaska will maintain its accreditation as a state with effective insurer solvency regulation.

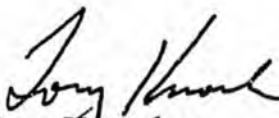
With respect to health care insurance, the bill puts Alaska in compliance with the federal Health Insurance Portability and Accountability Act of 1996 requiring guaranteed renewal of individual policies. Although the legislature three years ago passed amendments to the insurance code to conform to this federal law, that legislation relied on covering the market through the existing high-risk pool. But that did not take into consideration those who do not participate in the pool. This bill corrects that omission. In addition, this bill incorporates a 1998 federal mandate under the Women's Health and Cancer Rights Act requiring insurers to cover reconstructive surgery following mastectomies.

The Honorable Brian Porter
January 20, 2000
Page 2

This bill also includes several "clean-up" items to correct inadvertent errors and omissions and clarify changes made in the 1997 state law.

I urge your prompt and favorable action on this measure.

Sincerely,



Tony Knowles
Governor

LEGAL SERVICES

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

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 19, 2000

SUBJECT: SCS CSHB 303(L&C) (Work Order No. 21-LSGH2017D)

TO: Senator Jerry Mackie, Chair
Senate Labor & Commerce Committee
Attn: Dave Gray

FROM: Jack Chenoweth
Assistant Revisor of Statutes

The bill title is amended by substitution of the term "late enrollee" (singular) for "late enrollees" (plural) in line 4 to conform the reference to the term that appears at page 8 of the bill. This is a technical title change that does not require a concurrent resolution to suspend the rules to allow consideration of the bill with an amended title.

Because this is a governor's bill and there was no CS produced in the House, this is the first time we have reviewed this bill. You may want to ask the Department of Law whether sec. 9, amending AS 21.21.050 to limit allowed investments, is adequately described in the title? If it is not we can make a technical title change since the title change is not caused by any change made in the second house.

JBC:glc
00-193.glc

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

1031 WEST 5TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-3100
FAX: (907)276-3697

April 19, 2000

VIA FACSIMILE

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

Re: HB 303

Dear Senator Mackie:


I have reviewed Jack Chenoweth's memo to you that raises a question regarding the descriptive title for HB 303. In particular, he questioned whether sec. 9 amending AS 21.21.050, which limits allowed investments that may be made by insurance companies, is adequately described in the title. Sec. 9 as well as sections 4, 5, 6, 7, 8, and 20, in my opinion, are appropriately described in the title under the generic heading of "accounting standards for insurance companies." The changes in these sections relate to new accounting standards adopted by the National Association of Insurance Commissioners that insurers are required to follow under existing law.

The Alaska Supreme Court broadly construes descriptive titles, see, e.g., State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982). To our knowledge, the court has not struck down a bill because of its title. In my opinion, the title to HB 303 sufficiently describes its subject matter in conformance with Alaska's Constitution and case law.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


Signe P. Andersen
Assistant Attorney General

SPA:jcm

cc: Robert Lohr, Director
Deborah Behr

HB

310

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 310

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Economic Development
 Title An Act relating to the Alaska Insurance Guaranty BRU Insurance
Association; and amending Rule 24, Alaska Rules of Civil Procedure. Component Insurance
 Sponsor H L&C
 Requester H L&C Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

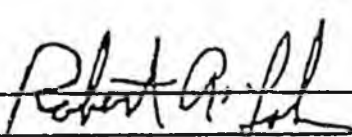
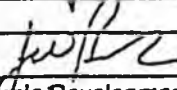
Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr  Phone 269-7900
 Division Insurance Date/Time 2-18-00 1:59 PM
 Approved by Commissioner Deborah B. Sedwick  Date 2-18-00
 Agency Community & Economic Development

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SPONSOR STATEMENT FOR CSHB 310

This bill amends the Alaska Insurance Guaranty Association Act, AS 21.80.010 *et seq.* The Act provides a mechanism to protect policyholders and claimants in the event of the insolvency of a property and liability insurer licensed to sell policies in Alaska. The current statutory scheme was enacted in 1970 and was based on the 1969 National Association of Insurance Commissioners' (NAIC) State Post-Assessment Insurance Guaranty Association Model Bill. The NAIC model act has undergone a series of amendments to reflect lessons learned at a nationwide level from application of the model act to actual insolvencies during the ensuing years. CSHB 310 updates the Alaska Act to bring it into conformance with the 1996 NAIC Post-Assessment Property and Liability Insurance Guaranty Association Model Act. In so doing, the Act becomes better suited to meet its intended purpose of protecting Alaska policyholders and claimants. Updating the Act to comply with the model act provides the added benefit of uniformity among the states in terms of this type of legislation. The Alaska Division of Insurance and the Alaska Insurance Guaranty Association support CSHB 310.

Submitted by: Alaska Guaranty Association
February 2, 2000

SECTION-BY-SECTION ANALYSIS OF CSHB 310

As used herein, "the Alaska Act" or "Act" refers to the Alaska Insurance Guaranty Association Act, AS 21.80.010 *et seq.*

As used herein, "the Model Act" refers to the National Association of Insurance Commissioners' 1996 Post-Assessment Property and Liability Insurance Guaranty Association Model Act.

As used herein, "the AIGA" refers to the Alaska Insurance Guaranty Association created by AS 21.80.040.

Section 1.

Amends AS 21.80.010, "Purpose," to bring into conformance with Section 2 of the Model Act. The primary change is to specify an intent to minimize, consistent with the limitations contained in the Act, a claimant's or policyholder's financial loss related to an insolvency. Prior national litigation experience under the existing language ("avoid financial loss") showed insureds were trying to argue that the language should be read to avoid *any* financial loss, despite limitations within the Act. The phrase regarding detection and prevention of insolvencies is being deleted consistent with changes to AS 21.80.110, whereby the AIGA's role in that regard is reduced.

Section 2.

Repeals and reenacts AS 21.80.020, "Applicability," to bring into conformance with Section 3 of the Model Act. Experience has shown the existing language is not definite enough in specifying what types of insurance are not covered by the Act. The amendment expands on the categories of insurance and other indemnity agreements not covered by the Act. As explained by the NAIC's comment to Section 3:

This bill focuses on property and liability kinds of insurance and therefore exempts those kinds of insurance deemed to present problems quite distinct from those of property and liability insurance. The bill further precludes from its scope certain types of insurance that provide protection for investment and financial risks.

The Alaska Life and Health Insurance Guaranty Insurance Association Act, AS 21.79.010 *et seq.*, provides coverage for some of the lines excluded by this provision. Unlike the Model Act, the amendment preserves existing coverage under the Alaska Act for ocean marine insurance, and preserves an existing exclusion for a risk retention group formed under 15 U.S.C. 3901-3906. Subsection (10) adds an exclusion not found in the Model Act. It is adopted from an Idaho statute, and indicates that for policy reasons, there is no coverage for any type of insurance written on a retroactive basis to cover known losses which existed when the insurance was bound.

Section 3.

Amends AS 21.80.030, "Construction," to bring into conformance with Section 4 of the Model Act. The amendment deletes the word "liberally." Prior national litigation experience showed courts were using the presence of this word to justify the extension of coverage under similar acts in such a manner as to disrupt the balance between reducing the financial loss of claimants/policyholders of an insolvent insurer and increasing the expense of insurance coverage to the purchasers of insurance generally.

Section 4.

Amends AS 21.80.040, "Creation of association," to simply rename "board of directors" to "board of governors," which is consistent with the appellation used in the Alaska Life and Health Insurance Guaranty Insurance Association Act. It also avoids confusion with references within the Act to the Director of Insurance. This change is also seen in subsequent sections where the board members are presently referred to as "directors."

Section 5.

Amends AS 21.80.040, "Creation of association," by adding a new subsection. The language comes from the definition of "member insurer" in Section 5.H(2) of the Model Act. The language is placed here to avoid putting substantive law in a definition section. It makes clear when a member insurer is no longer liable for assessments as to new insolvencies, and when it remains liable even though its license has expired or been terminated. The intent is to eliminate certain objections by members as to their liability for assessments.

Section 6.

Amends AS 21.80.050, "Board of governors," to bring into conformance with Section 7 of the Model Act. The primary change is to allow for up to two public members to be appointed to the board at the discretion of the Director of Insurance. Limitations on who can serve as a public member are given. There are related changes on how vacancies on the board are to be filled, with the board filling vacancies of member insurers, and the Director filling public member vacancies. The existing language provides that the board consists of between five and nine members. This amendment adds a requirement for the plan of operation to establish the exact number of members currently comprising the board within that range. This will allow the Director of Insurance to know whether vacancies exist on the board. "Persons" is changed to "members" to reflect the actual practice that AIGA members, and not individual persons, serve as board members.

Section 7.

Amends AS 21.80.060, "Powers and duties of the association," to bring into general conformance with Section 8 of the Model Act. Subsection (a)(1) removes past ambiguity by providing a bright line test for when the AIGA becomes obligated, i.e., when an order of

liquidation is entered. A policy decision regarding the allocation of the AIGA's limited resources is reflected by removal of the requirement for a claim to exceed \$100 to be covered, and the addition of a limitation that a claim for unearned premiums may not exceed \$10,000 per policy. A deadline, or bar date, is also added for when a claim must be filed with the AIGA to be covered. This prevents a situation the AIGA has faced in the past where a claim is made against it after the time when the AIGA can make a subrogation claim against the insolvent estate for reimbursement. A bar date is found in virtually every other state's insurance guaranty acts.

Subsection (a)(3) deletes existing language referencing AS 21.80.110 because it is superfluous. An existing ambiguity is also cured by specifying that the applicable "preceding year" to be used in calculating assessments is the calendar year "preceding the assessment." This also reflects the AIGA's actual practice. Language allowing a financially-troubled member to be "exempt" from an assessment is deleted as unnecessary given the fact assessments in Alaska are passed through directly to insureds, and thus, an assessment would not impair the financial position of the member. Language is also added to make clear the AIGA is empowered to decide in what order claims are paid. This reduces the risk of suits stemming from dissatisfaction with the order chosen. New language also addresses the AIGA's ability to collect on assessments that had been deferred because of a member insurer's financial condition, and how other member insurers who have to cover a deferred assessment can later recoup the excess assessment they may have paid. An assessment should not be paid where it would drive an insurer closer to insolvency, and a member who has to pay extra because of some other member's inability to do so should be able to get paid back when the deferment ends.

Subsection (a)(5) deletes certain existing language given a corresponding deletion to AS 21.80.080. The deleted language is replaced with new language recognizing the right of the AIGA to control the defense of a covered claim. If the AIGA is the one paying the claim, it should be allowed to control the direction of the defense of the claim, including identity of defense counsel. This reflects the AIGA's existing practice.

Subsection (b)(7) is deleted. It has never been part of the Model Act, and it is uncertain what it adds beyond what would be authorized under subsection (b)(3).

Section 8.

Amends AS 21.80.070(c), "Plan of operation," to bring into conformance with Section 9 of the Model Act. Requires the plan of operation to establish procedures for handling assets received from the estate of an insolvent insurer, and to require board members to designate an individual as their representative on the board, as well as the alternate or substitute representative for the appointed person. Such requirements place reasonable bounds on the discretion of the board in its operations.

Section 9.

Amends AS 21.80.080, "Duties and powers of the director," to bring into conformance with Section 10 of the Model Act. In so doing, the former requirement for the AIGA to notify insureds

of insolvent insurers of the insolvency and their rights under the Act is deleted. This role has historically been accomplished by the Division of Insurance itself, or through the receiver for the estate of the insolvent insurer.

Section 10.

Amends AS 21.80.090(a), "Effect of paid claims," to bring into conformance with Section 11.A of the Model Act. The changes are limited to stylistic clarifications and cross-referencing changes in the next section.

Section 11.

Amends AS 21.80.090(b), "Effect of paid claims," to bring into conformance with Section 11.C of the Model Act. Adds language recognizing the AIGA's status as a claimant in the estate of the insolvent insurer as to amounts paid out by the AIGA to satisfy covered claims against the insolvent insurer, and also grants the AIGA the right to receive distributions under applicable liquidation statutes with a priority equal to what the claimant would have been entitled. Such rights allow the AIGA to recoup some or all of the amounts it pays to satisfy covered claims, and thus not overburden the system or Alaska insureds. A clarification is made that although a receiver is bound by the AIGA's determinations or settlements which release the AIGA's liability to a claimant, this does not extend to claim amounts alleged to exceed the AIGA's statutory limit. This primarily comes up when there is a dispute as to the amount of the AIGA's statutory limit as to certain claims. If the receiver contends the AIGA paid more than its statutory limit, the amendment makes clear the receiver may seek review of the issue by the court, and is not automatically bound by the amount of the AIGA's payment.

Section 12.

Creates new section AS21.80.095, "Prohibited claims." The language comes from the Model Act's definition of "covered claim," and is also present in existing AS 21.80.180(3). The language is placed in a separate section to avoid putting substantive law in a definition section.

Section 13.

Amends AS 21.80.100(a), "Nonduplication of recovery," to bring into conformance with Section 12.A of the Model Act. Makes clear that the obligation of a claimant to exhaust other available insurance coverage before seeking a recovery from the AIGA extends to insurance available from insurers other than those who are members of the AIGA.

Section 14.

Repeals and reenacts AS 21.80.110, "Prevention and detection of insolvencies," to bring into conformance with Section 13 of the Model Act. Makes the AIGA's role in advising the Director on insurer insolvency and reporting discretionary. The changes reflect actual practice and avoid the appearance of any conspiracy by the board against an impaired member.

Section 15.

Amends AS 21.80.120, "Examination of the association," to change the due date for the AIGA to file its certified financial report. The report is prepared by an outside auditing firm. By not having it due until after April 15, the AIGA obtains the report at a cheaper price. The due date also coincides with the board's annual meeting, when the report is provided to the Director.

Section 16.

Amends AS 21.80.150, "Immunity," to bring into conformance with Section 17 of the Model Act. Clarifies that immunity is provided not only for action taken, but for any failure to act. Also expressly extends immunity to an alternate or substitute representative of a board governor.

Section 17.

Amends AS 21.80.160, "Stay of proceedings and reopening of default judgments," to bring into general conformance with Section 18 of the Model Act, except it was felt a 90-day stay, rather than the six months specified in the Model Act, would be sufficient as the remaining language would allow extensions to be sought. Also gives the AIGA the right to waive a stay of proceedings. Under this section, a stay of proceedings is automatic. The waiver option provides a quick and easy way to allow a suit to continue where the AIGA sees that to be advantageous.

Sec 18.

Repeals and reenacts AS 21.80.180, "Definitions," to bring into conformance with Section 5 of the Model Act. Adds definitions for "affiliate," "claimant," "control," and "resident." These terms are contained within language being added to the Act under previous sections.

Section 19.

This section provides a transitional provision regarding how the amendments will affect the existing terms of the board of governors.

ALASKA INSURANCE GUARANTY ASSOCIATION
HB 310

The AIGA is a statutory association of insurance companies (carriers) who are licensed (or "admitted") to write property and casualty insurance, including Workers Compensation, in the state of Alaska. Some classes of insurance are excluded. All licensed insurance companies are required to be members under the Act.

The AIGA functions through a Board of Directors. The Board has contracted with a third party to administer the day-to-day operation of the AIGA under a written Plan of Operations.

In general, the AIGA provides a mechanism to pay certain covered claims of those insurance carriers who have been declared insolvent by a court. An amount is assessed to each member of the Association and the collected assessment is used to pay the claims of the insolvent carrier. The assessment is based on the amount of premium a company collects on Alaskan insurance policies.

A receiver is generally appointed by the Court in the insolvent carrier's state of domicile. The receiver, similar to an executor, of the estate of the insolvent company attempts to sell off the assets of the carrier and gather liquid assets from all possible sources. The receiver also sets a date after which he/she will not allow any additional claims against the estate. This date is referred to as the *bar date*. The deadline is typically less than a year.

By comparison, no deadline exists for insureds or claimants to file a claim against the AIGA. In the past the lack of a deadline, or "bar date," has resulted in situations where the AIGA was still receiving and paying claims after the deadline for filing claims for recovery against the estate of the insolvent insurer had passed. In such situations, the cost of these old claims is borne solely by subsequent purchasers of insurance through premium surcharges

After paying expenses and claims of the estate, the receiver distributes funds to the AIGA to reimburse for claims and administrative expenses paid. A receiver will review each claim submitted by the AIGA for reimbursement and denies recovery on claims filed with the AIGA after the bar date established by the receiver. This is necessary to allow a fixed date on which to calculate the prorata amounts to be distributed to each creditor of the estate.

When collected assessments and recovered funds from the receiver exceed the amount needed to pay claims and administrative expenses of the AIGA for that particular insolvency, then the excess funds are refunded to the membership in proportion to the amount originally assessed.

The act allows members to recoup the assessments they pay through surcharges on insurance premiums charged policyholders. Historically, the AIGA has recovered millions of dollars from liquidators/receivers of insolvent members. The recovery is rarely 100% on the dollar. Thus, recovery of assets from the estate of insolvent insurers plays a direct role in reducing the cost of property and casualty insurance to Alaska policyholders.

HB

337

FISCAL NOTE

No: _____
 Bill Version: CSHB 337 (STA)
 (H) Publish Date: 2/23/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction)	Dept. Affected	Revenue
Title: <u>Claims Against Permanent Fund Dividends</u>	BRU	Revenue Operations
	Component	Permanent Fund Dividend
Sponsor: <u>Rules</u>		
Requester: <u>House State Affairs</u>	Component Serial No.	<u>981</u>

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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 current year (FY2000) cost: 0.0

POSITIONS

POSITIONS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill allows state agencies to file claims against Permanent Fund Dividends of individuals with unpaid debts owed to state agencies. Section 2 of this bill allows the Permanent Fund Dividend Division to collect an administrative fee to cover costs associated with processing these claims. This existing fee of \$2 per claim (as set out in regulation) is based on state agencies using electronic media to transmit any and all claims to the dividend division. The division may have to increase the fee to a particular agency if that agency is unable to transmit its claims electronically and instead creates additional paperwork and manual processing for the dividend division.

Prepared by	<u>Nanci A. Jones, Director</u>	
Division	<u>Permanent Fund Dividend</u>	Phone <u>465-2323</u>
Approved by		Date/Time <u>February 8, 2000</u>
Commissioner		Date <u>February 8, 2000</u>
Agency	<u>Department of Revenue</u>	

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FISCAL NOTE

No: 1

Bill Vers: HB 337
 (H) Publish Date: 2/4/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction): _____
 Title: An Act relating to ... Admin collection
of Perm. Fund Div. ... for amounts owed to State
 Sponsor: Rules Committee
 Requestor: Governor

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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	377.1	569.8	385.4	385.4	385.4	385.4
FUND SOURCE #	1004	1004	1004	1004	1004	1004

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 (FY00) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary)

(See Attached)

Prepared by: Rebecca Gamez, Director Phone: 465-2711
 Division: Employment Security Division Date/Time: 1/12/00 11:36 AM

Approved by Commissioner: Ed Flanagan, Commissioner
 Agency: Department of Labor and Workforce Development Date: 1/12/2000

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Fiscal Note for Governor's Bill .."Administrative Collection of Permanent Fund Dividends...for amounts owed to state."

The Alaska Department of Labor and Workforce Development, Employment Security Division, Benefit Payment Control Unit, is responsible for recovery of overpaid unemployment insurance (UI) benefits and fraud penalties. The current outstanding debt owed to the state for overpayments is a little over 9 million dollars; comprised of \$4,900,000 paid erroneously due to a fraudulent act committed by the claimant; \$1,500,000 paid due to error, most often the claimant's; and \$3,000,000 in statutory penalty applied for receipt of benefits through fraudulent acts.

In order to obtain federal administrative funding from the U.S. Department of Labor, our division must continue to improve the percentage of overpayments we recover. Currently, the only way to attach a Permanent Fund Dividend is by voluntary assignment, a judgment through small claims action, or through a criminal prosecution judgment. The latter two actions are lengthy and time consuming and are used in less than 5% of the cases. Authority to attach Permanent Fund Dividends through administrative action would simplify the process and increase the Department's recovery of improperly received payments and penalties.

Attachment of Permanent Fund Dividends would only be used after proper notice of liability has been given and appeal rights have expired or been exhausted. It would only be used on past due accounts.

No fiscal impact to the operational costs of the Unemployment Insurance program is anticipated. The costs related to the legislation will be replaced by efficiencies and related savings realized by a reduction in the number of judgments required through small claims action, or through a criminal prosecution.

Alaska statute 23.20.390 (a) requires that the over paid UI payment when recovered is to be returned to the UI trust fund. Since unemployment insurance benefits are primarily paid through taxes from Alaska's employers, the recovery of these overpaid benefits has a positive impact on employer tax rates. Alaska statute 23.20.390 (f) requires that any penalty recovered will be deposited into the state general fund.

After all other administrative remedies are exercised, the department anticipates levies on permanent fund dividend funds will result in recovery of overpaid UI payments and penalties as follows:

<u>First Calendar Year of Implementation effective January 1, 2001</u>	
Fraud overpays	\$1,148,200
Non-fraud overpays	\$362,600
Total Returned to UI Trust Fund	\$1,510,800
Penalties Recovered for GF deposit	\$754,200 (a)
<u>Second & Subsequents Calendar Years</u>	
Fraud overpays	\$638,300
Non-fraud overpays	\$128,900
Total Returned to UI Trust Fund	\$767,200
Penalties Recovered for GF deposit	\$385,400 (a)

In the first calendar year of implementation of the permanent fund levy, the UI overpay and penalty calculations represent the backlog which is greater than what would typically be expected on an ongoing annual basis. The second and subsequent year calculations is what we expect annually after the backlog is recovered.

FOOTNOTE:

(a) the state fiscal year distribution (see fiscal note form) of penalties recovered for deposit to the state general fund due to the 1/1/2001 effective date is as follows:

*FY2001 = \$377,100 (50% of 1st calendar year penalties)

*FY2002 = \$377,100 (50% of 1st calendar year penalties)

*FY2002 = \$192,700 (50% of 2nd calendar year penalties)

*FY2003 & subsequent fiscal years = \$385,400

TONY KNOWLES
GOVERNOR
governor@state.ak.us

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 11060
Juneau, Alaska 99801-0000
907-465-3530
Fax 907-465-3532
www.gov.state.ak.us

February 2, 2000

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

Dear Speaker Porter:

Some state agencies are currently allowed to seek from individuals overdue payments of money due the state through a simple administrative collection of permanent fund dividends. But most state agencies still need to use a time consuming and costly court action to attach an individual's permanent fund dividend. It makes sense for all our state agencies to have access to this "fast track" method of collecting from a person who receives a permanent fund dividend while in arrears with payments lawfully due to the state. This bill I transmit today accomplishes this change in law.

Examples of agencies now able to attach permanent fund dividends with a simple administrative action include the Department of Health and Social Services, for reimbursement of certain court-ordered treatment, and the Alaska Commission on Postsecondary Education for student loans in default.

But the Department of Labor and Workforce Development, for example, must file a small claims court action or seek criminal prosecution to recover overpaid unemployment insurance benefits and fraud penalties. Partly as a result of this cumbersome method, the department estimates the state is owed \$4.5 million in outstanding benefits received by fraudulent means, \$3.6 million in statutory penalties, and \$1.6 million for overpaid benefits. Not only will this bill increase recovery rates, but because these owed benefits are paid by employer taxes, it will reduce employer tax rates within the state.

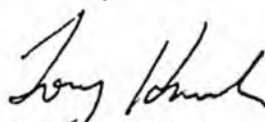
A state agency would not be required to use these new procedures for collection. Any agency that elects to use the new procedures would be required to notify the individual of the claim with a fair opportunity for a hearing at which the individual could contest the

The Honorable Brian Porter
February 2, 2000
Page 2

agency's claim to the permanent fund dividend. If a hearing is not requested or the claim is resolved in favor of the state agency, the agency may collect the money from the individual's permanent fund dividend without filing a court action.

Passage of this measure gives state agencies an additional tool to recover money that is lawfully owed to the state under existing state laws.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Knowles". The signature is written in a cursive style with a large initial "T".

Tony Knowles
Governor

From: DOL
[Signature]

**HB 337
TALKING POINTS**

- The Employment Security Division (ESD) of the Department of Labor and Workforce Development administers the Unemployment Insurance Program.
- That entails the collection of taxes from Alaska's employers and the paying out of benefits to Alaskans who are temporarily out of work. Last year over \$129 million was paid out in benefits.
- Inherent in the responsibility of administering the program is the protection of the UI Trust Fund.
- By protection, I mean the detection, prevention, and the collection of improperly paid benefits.
- As of 12/31/99 the overpayment balances were as follows:

Fraud	\$4,912,384
Non-Fraud	\$1,516,888
Penalty	\$3,145,620 (Statutory penalty for fraud)

- This bill would speed the recovery of overpaid UI benefits that are a debt to the state.
- The overpaid benefits would be returned to the Trust Fund. This would have a beneficial effect on the employers' UI tax rates.
- The Penalty amount would be deposited in the General Fund.
- With the passage of this bill we estimate in the first year we could return over \$1.5 million to the Trust Fund, and over \$750 thousand to the General Fund.
- Every year thereafter, it is estimated between \$700 - \$800 thousand would be returned to the Trust Fund and between \$400 - \$500 thousand would be deposited in the General Fund.
- The passage of this bill is good for the UI Trust Fund, its good for the General Fund, and its good for Alaska's employers.

HB

339

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB339

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Econ. Dev.
 Title CFAB Loans For Tourism & Nat Resources BRU Banking, Securities, and Corporations
 Component Banking, Securities, and Corporations
 Sponsor Rep(s) Mulder, Hudson, Austerman
 Requester H L&C Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY00) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The division does not anticipate any fiscal impact with this proposed legislation.

The bill would have little to no effect on the department's requirement to examine CFAB. It could take some additional time to analyze the new policies associated with the new types of lending and to analyze the new loans put on the books, but the additional time is not expected to be significant.

Franklin T. Elder

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

Phone 465-2521
 Date/Time 2/24/00 9:25 AM
 Date 2/24/00

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SENATE LABOR & COMMERCE COMMITTEE

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(907)465-3844

AGENDA

- ✓ Confirmation Hearing on Governor's Appointees
- ✓ HB 265, Alaska Regional Economic Assist. Program *melone*
Chiff Stone
for Rep. Austermaier
- ✓ HB 310, Alaska Insurance Guaranty Association
- ✓ HB 337, Claims Against Perm. Fund Dividend
- ✓ HB 339, CFAB Loans for Tourism & Nat. Resources.
- ✓ HB 398, Life and Health Insurance Guaranty Assoc.
- HB 422, Workers' Compensation: Drugs & Alcohol

P.O. Box 100600

Alaska Bankers Association
Anchorage, Alaska 99510-0600

(907) 265-2920

April 14, 2000

Chairman Jerry Mackie
Senate Labor & Commerce Committee
Alaska State Legislature
State Capital
Juneau Alaska 99801-1182
Via Fax (907) 465-35-17

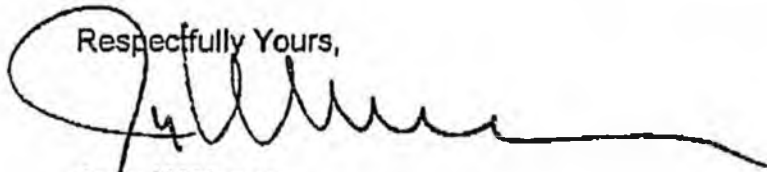
Re: CS for HB339 "An Act relating to the Alaska Commercial Fishing and
Agriculture Bank"

Dear Senator Mackie:

The Alaska Bankers Association is opposed to CS 339 which would expand the lending powers of CFAB. The testimony we have heard to date is that CFAB will start making tourism and natural resource loans which the Alaska Banking industry is unable to make. We do not see how making loans to weak borrowers can in anyway strengthen or diversify CFAB. There is already competition in the financial service industry for all reasonable quality loans in these industries.

The Alaska Bankers Association urges your committee to vote NO and hold CS 339.

Respectfully Yours,



Jerry K Weaver
Secretary



REPRESENTATIVE ELDON MULDER

DISTRICT 23 - MULDOON & FORT RICHARDSON
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
"PROUD TO BE A MULDOONER"



SPONSOR STATEMENT

House Bill 339

"An Act relating to the Alaska Commercial Fishing and Agriculture Bank."

HOUSE BILL 339 expands the lending authority of the Commercial Fishing and Agriculture Bank (CFAB) and enables it to make loans to Alaskan small business enterprises involved in natural resource development and tourism. Presently, CFAB may make loans to Alaska residents engaged only in commercial agriculture or fishing. The bank seeks expanded authority to provide financing opportunities to small Alaskan business entrepreneurs who generally have trouble obtaining commercial loans because of their relative small size and lack of financial experience.

The Alaska State Legislature created CFAB in AS 44.81 in 1980. This statute governs CFAB's operation and provides for its accountability to the Legislature and Administration. Because CFAB is incorporated under this unique and specific statute, it requires legislative approval for any changes in operational authority.

Twenty years ago, limited access to commercial financing by resident Alaska commercial seafood harvesters, processors and farmers stimulated the need for of CFAB as a private cooperative. The State of Alaska responded by providing CFAB's initial capital through the purchase of \$32.0 million of Special Preferred Stock in 1980. CFAB began making monthly payments in 1991 to the State of Alaska, repurchasing increments of the stock. In September of 1998, the stock repurchase agreement was completed as specified in statute and today CFAB is owned solely by its past and present borrowing members.

In 1986, The Alaska Supreme Court identified CFAB as a private entity. AS44.81 states it is not subject to the Alaska Cooperative Corporation Code or the Alaska Banking Code. It pays federal and state corporate income tax, state auditing fees and is subject to legislative audits. In short, CFAB is now a private lender operating within the free enterprise system with limited ties to the State of Alaska.

CFAB's auditors, from both the public and private sector, give the bank favorable reviews but consistently note the concentration in agricultural and fishing industry loans results in an unusual level of risk exposure and vulnerability to the ups and downs of these industries.

House Bill 339 recognizes these underlying concerns and resolves the issue by allowing CFAB to go beyond the present restrictions found in AS 44.81.215 and expand its customer base to other Alaskan industries needing loan assistance.

LEGAL SERVICES

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

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

MEMORANDUM

February 8, 2000

SUBJECT: Sectional Summary of HB 339; An Act authorizing the Alaska Commercial Fishing and Agriculture Bank to make loans relating to tourism and development or exploitation of natural resources. (HB 339)

TO: Representative Eldon Mulder
Attn: Dale Anderson

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of HB 339; An Act authorizing the Alaska Commercial Fishing and Agriculture Bank to make loans relating to tourism and development or exploitation of natural resources.

A sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 44.81.010(a) to make a technical conforming amendment made necessary by the renumbering of the paragraphs of AS 44.81.215 by sec. 2 of the bill.

Section 2 of the bill amends AS 44.81.215 by adding new paragraphs which authorize the Alaska Commercial Fishing and Agriculture Bank to make loans relating to tourism and to development or exploitation of natural resources within the state.

Section 3 of the bill amends AS 44.81.350 by adding definitions for key terms that are added to AS 44.81 by this bill: natural resources, coal, gas, geothermal system, oil, other minerals, tourism, and water.

GU:jdr:glc
00-068.jdr



2550 Denali Street, Suite 1201
 Anchorage, Alaska 99503-2737
 (907) 276-2007 Fax (907) 279-7913

January 2000

21,470 Returned

NO ONLY	2.9%	
NO w/COMMENT	11.8	14.7
AMBIGUOUS w/COMMENT		3.7

YES ONLY	42.6
YES w/COMMENTS	39.0

81.6
 100%

A SPECIAL MESSAGE – AND OPPORTUNITY – FOR ACTIVE CFAB MEMBERS

Your CFAB Board of Directors consists of seven persons – five elected by the CFAB membership and two appointed by the Governor of Alaska – who are charged with the overall governance and direction of the institution and who are granted broad authorities, by both the “CFAB law” and CFAB’s Bylaws, to aid in meeting those responsibilities.

The direction and oversight of CFAB’s basic and day-to-day operations, making loans, is rather straightforward. It consists of assuring that sound and rational credit policies are in place, that the staff possesses a high level of competence and expertise, that lending decisions are equitable, and that there is adequate accounting capacity, etc.

However, there are sometimes more challenging issues, such as establishing overall financial strategies, administering various aspects of CFAB’s equities programs, and determining fundamental directions. These are often made difficult because CFAB represents several different (but not necessarily competing) interests. For example, there are many members who once borrowed from CFAB but do not do so today; they continue to own Class B Preferred Stock and retained patronage. They expect the values of those equities to be protected and to one day be paid to them. There are also those members who are today’s borrowers; while they hold CFAB equities also they tend to be more focused on the effectiveness of CFAB’s operations today in order to enjoy the lowest possible costs of borrowing. And there are tomorrow’s members, the resident Alaska fishermen and farmers who will borrow in the 21st century. We cannot identify them – they cannot identify themselves – but we know we must strive to assure that CFAB exists, that it is strong, and that it is stable, when it is needed.

Quite likely, each past and present borrower/stockholder holds his or her own view as to CFAB's effectiveness. There is no doubt in our collective mind within CFAB itself that the institution's very existence has resulted in meaningful benefits to every resident Alaska farmer or seafood harvester who has borrowed from any source during the past 20 years; CFAB sets a standard for costs and services which other lenders must equal or exceed in order to attract discerning borrowers.

The aspect of CFAB's long-term performance of which we are perhaps the most proud – but which seems almost impossible to “sell” to prospective borrowers – can be illustrated by recounting a discussion which occurred recently at Fish Expo. A Washington State fisherman approached CFAB staff to ask if there were any way he could be eligible to apply to refinance the commercial bank loan on his vessel. Although the answer was “no,” and remained so, he went on to say, “I’ve got two buddies with CFAB loans who each got into financial trouble at times in the past. I watched how CFAB worked with them and made it possible for them to recover. I don’t believe any other lender would have done what CFAB did, and I guess I never know when I might have trouble, so I’d really feel comfortable with a CFAB loan!”

It is clear that the concept and the actuality of a focused and specialized institution provides benefits and advantages to its constituents. There is a darker side to that thought, however. The concentration of risk renders CFAB vulnerable in a manner which could result in failure at a time when it is most needed by resident Alaskans. Its level of risk concentration cannot be found in more conventional lenders. Any deposit-based and/or regulated institution would be sanctioned by its authorities, perhaps harshly, before any risk concentration reached a small fraction of that borne by CFAB. No proprietary or profit-oriented commercial lender would expose itself to such dangers!

Those dangers, of course, manifest themselves in loan portfolio performance. CFAB makes a careful analysis of the discrete risk inherent to any individual loan which it makes. In doing so, it recognizes that the uncertainties of commercial fishing will result in stress and/or temporary non-performance by some unforeseeable number of those individual borrowers. That does indeed happen; at any point in time over the past years, 15% to 25% of CFAB's borrowers have been in a delinquent or “non-performing” status. Usually these

is a stratum of small and/or entrepreneurial operators in Alaska resource-related industries other than commercial fishing and agriculture (and other than those forest products activities that CFAB's statute defines as "agriculture") which does not have reliable access to adequate commercial credit. For the purposes of legislation, CFAB views "resource-related" industries to include timber, minerals, oil and gas, water, etc., and tourism.

Complimenting those thoughts is the reality that it is extremely difficult for CFAB to fully utilize the capacities of its existing resources – in particular, the credit expertise personified by its staff – within the constraints of lending only to commercial fishing and agriculture. Generally, there are intense but relatively brief periods of new loan activity during the Winter and Spring, and a time of collection efforts in the late Fall. The remainder of the year is committed to routine servicing and maintenance. This under-utilization of resources results in an incalculable but meaningful "extra" burden which is reflected in borrowers' interest costs.

Neither CFAB's Board of Directors nor its member-owners have the authority to make fundamental changes to CFAB's lending activities. CFAB's mandate is derived from Alaska Statute 44.81. CFAB's Directors and Management have had discussions with legislators, and anticipates further such discussions, concerning the potential for legislation in the 2000 session which would permit CFAB to diversify into the areas mentioned.

We are aware that some of CFAB's existing members, or other commercial seafood harvesters, may perceive that financing tourism-based enterprises implies – at least to some degree – support of interests in conflict with their own. However, it is from CFAB's own membership that the greatest number of actual loan requests for such purposes are received, i.e., from commercial harvesters seeking financing to diversify themselves into charterboat operations, bed and breakfasts, outfitting or guiding, etc.

CFAB's Directors (six of whom are commercial harvesters) have discussed and considered the matter and believe that both the appearance and the fact of conflict can be minimized. It is not particularly difficult to establish policies and practices to assure that "sensitive" loans are never more than a small fraction of CFAB's total loan portfolio (the final page of this paper is an excerpt from the proposed statutory amendment, showing the

March 1, 1999

ORIGINS/BACKGROUND

Alaska Commercial Fishing and Agriculture Bank (CFAB) was created through actions of the State Legislature in 1978, 1979, and 1980. It is incorporated under, and is the sole subject of, a specific statute (today AS 44.81). Although that statute has been amended several times since 1980, its most fundamental provisions remain intact.

Documented history, and the recollections of involved legislators and others, consistently attest that CFAB was created to address limitations to the access to credit facilities by resident Alaska commercial seafood harvesters and processors, and farmers. The effort was, effectively, to establish an "Alaskanized" replication of agricultural production financing entities which had operated for many years as parts of the Federal Farm Credit System, and to make CFAB a private cooperative which could funnel previously unavailable capital to Alaska enterprises.

In addition to being incorporated under AS 44.81, rather than under one of the state's several other business organization statutes, CFAB embodies a number of anomalies which combine to make it a unique entity. For example, despite the name bestowed upon it by the legislature, CFAB is not subject to the Alaska Banking Code, is not authorized to offer or perform any banking functions other than to make loans, and does not meet any known statutory or regulatory definition of a "bank" (which places it at a significant disadvantage with respect to Federal income taxes). Also, although CFAB is mandated by AS 44.81 to be structured and to operate as a cooperative, it is not subject to the Alaska Cooperative Corporation Code. And, as a final example, although the State of Alaska has been CFAB's largest single stockholder for most of its 19-year history, it is a private entity (there have been two formal opinions addressing this point – one by the State Ombudsman in 1985, and one by the Alaska Supreme Court in 1986).

March 1, 1999

term loans, mostly to harvesters, totaling slightly over \$47.0 million in those eight years. (This excludes seasonal loan advances to processors, estimated to total another \$12.0/\$16.0 million.) Net loan losses have been negligible. Net margins, or "profits," have totaled about \$5.1 million after income taxes; \$4.7 million of that has been applied directly to the accounts of borrowing members, while the remainder has been retained for general purposes. During the years 1991 through 1998, CFAB has paid \$1.4 million of Federal income tax and \$179,000 of State income taxes.

AS 44.81 provides for CFAB's accountability to the State Legislature and the Administration. The Governor appoints two of CFAB's seven directors. CFAB is required to submit its Annual Report, including its audited financial statements, to the Governor and the Legislature. The State's bank examiners perform an annual qualitative examination and evaluation of CFAB; their report is also submitted to the Governor and the Legislature. Finally, the Legislative Auditor may be directed to perform a complete or limited audit of CFAB, an authority which has been exercised a number of times.

PROBLEMS/DANGERS

Although CFAB's specialization provides some obvious operational advantages to the institution and its constituents, the concentration of risk renders it vulnerable in a manner which could result in failure at a time when it is most needed by resident Alaskans. Its level of risk concentration cannot be found in more conventional lenders. Any deposit-based and/or regulated institution would be sanctioned by its authorities, perhaps harshly, before any risk concentration reached a small fraction of that borne by CFAB. No proprietary or profit-oriented commercial lender would expose itself to such dangers!

Similarly, the State of Alaska's bank examiners noted in their May 31, 1998, examination report:

"... The bank's narrow mission to provide financing for Alaska's fishing and agricultural industry has left it vulnerable to the ups and downs of the industry ... This lack of diversification subjects the bank to greater risk of loss during poor fishing harvests ..."

The examiners have made generally similar, but less explicit, comments in previous examination reports.

RESPONSE

As suggested earlier, lending does not allow a "quick fix" approach to this matter. Furthermore, CFAB is neither financially positioned nor competent to pursue a course of diversification generally, even were it authorized to do so.

However, observations over time have led CFAB's Board of Directors and management to the conclusion that within Alaska's business infrastructure and economy there is a stratum of small and/or entrepreneurial operators in Alaska resource-related industries other than commercial fishing and agriculture (and other than those forest products activities that CFAB's statute defines as "agriculture") which does not have reliable access to adequate commercial credit. For the purposes of this exercise, and subject to more comprehensive definition for the purpose of legislation, CFAB views "resource-related" industries to include timber, minerals, oil and gas, water, etc., and tourism.

March 1, 1999

ARDORs in Alaska will be supportive; CFAB commits to the effort to organize such support.

OPPOSITION

There are two conceivable sources of potential opposition, albeit limited.

First, it is possible that some commercial lenders may argue that a broadening of CFAB's authority may introduce inappropriate competition to "their" markets. There is available a considerable body of factual rebuttal to that argument.

Second, it is possible that some of CFAB's existing borrowers, or other commercial seafood harvesters, may perceive that financing tourism-based enterprises implies - at least to some degree - support of interests inimical to their own. However, it is from CFAB's own membership that the greatest number of actual loan requests for such purposes are received, i.e., from commercial harvesters seeking financing to diversify themselves into charterboat operations, bed and breakfasts, outfitting or guiding, etc. CFAB's Directors (six of whom are commercial harvesters) have discussed the issue and seem to believe that both the appearance and the fact of conflict can be minimized. Finally, it is important to recognize and emphasize that CFAB's continuing ability to adequately serve the credit needs of its basic constituencies may very well rely on some form of constructive diversification over time.

MEMORANDUM


STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

TO: **HOUSE FINANCE
COMMITTEE**

DATE: April 3, 2000

PHONE: (907) 789-6160 VOICE
(907) 789-6170 FAX

Representative Eldon Mulder, Co-Chair
Representative Gene Therriault, Co-Chair
Representative Con Bunde, Vice-Chair
Representative Gary Davis
Representative Gail Phillips
Representative Alan Austerman
Representative Bill Williams
Representative Richard Foster
Representative John Davies
Representative Ben Grussendorf
Representative Carl Moses

FROM: Commercial Fisheries Entry Commission

Marlene Johnson, Commissioner
Mary McDowell, Commissioner
Bruce Twomley, Chairman

SUBJECT: HB339; the special nature of Alaska
limited commercial fishing
privileges and the Commercial
Fishing and Agriculture Bank
(CFAB)

As requested by the office of Co-Chairman Mulder, we are providing this memorandum to the House Finance Committee as background on the nature of limited entry permits in Alaska and the special role of the Commercial Fishing and Agriculture Bank (CFAB) under Alaska law.

The Alaska legislature created Alaska's limited entry program and CFAB in order to meet special needs of the State of Alaska and its fishing industry.

Attached is an excerpt¹ from the commission's Carle decision (which refused an IRS attempt to force the transfer of an entry permit) including (pps. 15-20) relevant legislative history of Alaska's limited entry program. In part, the Alaska legislature has declared:

Under AS 16.43.140, no commercial fisherman may operate fishing gear in a limited fishery without an entry permit The Entry permit is the crucial element of the system and, to an Alaskan fisherman, an entry permit is a legally required tool of his trade.

* * *

The legislature recognized that, for the purpose of conservation, the State needed to retain control of its fishery resources. Looking ahead, the legislature wished to ensure that privileges extended through an entry permit could be revoked or modified as necessary and without compensation. Furthermore, to ensure compliance with laws and

¹ We would be happy to provide copies of the full decision. Please note it is well over 60-pages long.

regulations governing its fisheries, privileges extended must be conditioned upon compliance with those requirements.

* * *

While recognizing the importance of limiting and controlling fishing privileges, the legislature also intended to provide individual fishermen with a sufficient stake in their fisheries that they would be more likely to have a personal commitment to conservation and enhancement of those fisheries. In recognition of the fact that fishermen, their families, and, in many cases, entire communities, depended upon access to their fisheries for their basic welfare, the legislature believed that any privileges extended should be protected from forced and intemperate transfers.

* * *

The legislature declared that an entry permit and the privileges it carried would not be the property of its holder. AS 16.43.150(e) provides that an entry permit is merely:

a use privilege which may be modified or revoked by the legislature without compensation.

An entry permit must be renewed annually, and is subject to forfeiture if not renewed for two years.

* * *

Although permits do not constitute property belonging to their holders, the legislature, subject to control and approval by CFEC, authorized holders to transfer their permits. Doing so advanced several of the State's objectives. Among other considerations, by not interrupting a holder's use of his entry permit and further authorizing the fisherman to transfer his permit, the fisherman and those dependent upon him held the means to continue their access to the fishery and their livelihood. Additionally, by not cutting off the fisherman's interest (as would have been the case through a lottery or reversion and reissue system) the holder was granted a sufficiently long-term privilege in the fishery so as to be encouraged to both conserve and enhance the fishery resource . . .

Consistent with its grant of only a privilege, the State through CFEC, retained control over all transfers. A permit holder may transfer his permit only upon approval by CFEC. AS 16.43.170. To ensure against intemperate transfers, the legislature requires a 60-day waiting period before a permit may be transferred

Generally, AS 16.43.150(g) prohibits involuntary transfer requiring that an entry permit may not be "attached, distrained, or sold on execution of judgement or under any other process or order of any court." Additionally, a fisherman may not pledge his entry permit as security for a debt. (The legislature recognized that the absence of a property right might impair a fisherman's ability to obtain financing for the purchase of a permit and his

fishing operation, and, therefore, established two State authorized loan programs. [CFAB and the Commercial Fishing Revolving Loan Fund] AS 16.10.333-16.10.377; 44.81.271; and 44.81.230-44.81.250.) Just as a fisherman could not, contrary to State law, create a security interest in his fishing privilege, neither can a creditor.

The legislature recognized that a fisherman's earnings were seasonal and subject to many variables from year-to-year beyond control (for example, weather, predation, and interception). If creditors with short term objectives were allowed to treat an entry permit as a fungible item of property and to seize and force its sale, a fisherman without other means of earning a living, together with those dependent upon him, could well be left destitute. In Alaska, where many communities in remote areas of the State depend upon commercial fishing as the primary basis for their cash economy, this is a very real possibility. [The legislature notes that the Social Security Administration has acknowledged the wisdom of Alaska's approach by recognizing that an entry permit is essential to self-support, and, therefore, by not considering the market value of a permit as an alternative resource in determining an individual's eligibility for Supplemental Security Income benefits. 50 Fed. Reg. 42683, 42685 (1985).

Although the State of Alaska could not countenance a system that inexorably would sever fishermen from the source of their livelihood, nonetheless, as a privilege, the legislature has made clear that an entry permit is subject to forfeiture, if its holder fails to abide by the applicable laws. See, for example, AS 16.05.480; 16.05.665; 16.05.710; 16.43.960; 16.43.970. Ultimately, because it has granted to fishermen only a revocable privilege, the State retains the dominion and control necessary to protect and manage its fishery resources.

In conclusion, compelling State interests were served, when the legislature rejected the idea that an entry permit represent a property right belonging to the permit holder. Instead, the legislature chose to establish an entry permit as a mere privilege, subject to State control, and revocable at the will of the State without compensation.

CFAB is one of the two state created loan programs referred to in this legislative history. In turn, CFEC has a special relationship with CFAB. By statute, we provide monthly estimated values of entry permits based on our information from actual transfers. Additionally, we help CFAB perfect its security interests in Alaska limited fishing privileges.

We are often told outside fishers have an advantage over Alaska fishers in obtaining loans because they have access to more sources of financing. CFAB is one of the state's means to meet this challenge by financing the purchase of Alaska's limited fishing privileges by Alaska residents.

At the same time, limiting the ability to take security interests in permits as collateral to the two state created loan programs provides Alaskans an advantage in obtaining financing that nonresidents do not have. Additionally, this restriction serves the purposes expressed by the Alaska Legislature.

Particularly in these times of dramatically fluctuating world markets and variations in run strength, there are hungry creditors who would be delighted to seize and force the sale of limited entry permits. If Alaska law were struck down or changed to authorize doing so, it would be a relatively easy way for any creditor to collect debts. However, such an event would put the livelihood of many Alaska fishers at risk and reverse important state policy grounded in Alaska's conservation needs.

Finally, as reflected in the attached excerpt from the Carle decision, the IRS asserts the right to seize and force the sale of entry permits. Additionally, the Entry Commission is currently in litigation with an out-of-state bankruptcy trustee, who is attempting to seize and force the sale of an Alaska limited entry permit. The special status of Alaska limited entry fishing privileges held by a fisher but tightly regulated by the state is an important element of the state's defense against these claims.

In conclusion, as a special state created lending institution, CFAB is vital to the Alaska commercial fishing industry and the state's interest in its fisheries.

HB339 – Supporters of CFAB bill

Associations

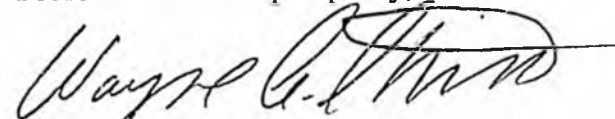
Kodiak Chamber of Commerce	Wayne Stevens
Alaska Visitors Association	William Fedlar
Alaska Hotel & Motel Association	Amy Armachain
Alaska Restaurant & Beverage Association	Mary Green
Alaska Hospitality Alliance	Karen Rogina
Alaska Travel Industry Association	Ann Campbell
Cordova District Fishermen United	Jerry McCune
City of Seldovia	Dave Choquette
Seldovia Chamber of Commerce	Dave Choquette
Tok Chamber of Commerce	Dale Young, Jr.
Southeast Conference	Frank Homan
Bristol Bay Native Corporation	Trefon Angasan
Shuyak, Inc.	Lois Stover
Alaska Miners Association	Albert Clough

Individuals and Businesses

Susan Springer	Herring Bay Mercantile	Seldovia
Dave Nanney	Eagle Bed & Breakfast	Haines
Cindy Cashen	Cashen Quarters	Juneau
Craig Weidner	Pullen Creek RV Park	Skagway
Bob Dindinger	Alaska Travel Adventures	Juneau
Neil MacKinnon	Hyak Mining Co.	Juneau
Daniel Farren	CFAB Member	
John Engle	CFAB Member	Ketchikan
Snooks Moore	CFAB member	Homer
Alan Otness	CFAB Member	Petersburg
Clinton Mullins	CFAB Member	Cordova
John Winther	Petersburg Energy LLC	Petersburg
Karl Klupar	Historic Skagway Inn	Skagway
Rosemary Libert	Lynch & Kennedy Dry Goods	Skagway
Frank Rose	Alaska Lodging Mgt.	Fairbanks
Helene Keso	Ridge Way B&B	Juneau
Justin Ripley	Alaska Travel Network	Anchorage
Kirk Hoessle	Alaska Wildland Adventures	Girdwood
David Polushkin		Willow
Michael Gordon	Chilkoot Charlie's	Anchorage
Maurice MacDonald	O'Brady's	Anchorage
Shane Horton	Eagle's Nest Motel	Haines

The Board of Directors of the Kodiak Chamber of Commerce encourage the legislature to move this bill forward and allow CFAB to assist the tourism and mining industries as capably as the have served both fishing and agriculture.

Yours in economic prosperity,

A handwritten signature in cursive script, appearing to read "Wayne A. Stevens". The signature is written in dark ink and is positioned above the printed name.

Wayne A. Stevens
Executive Director

Cc: Representative Alan Austerman
Senator Jerry Mackie
Ed Crane, President, CFAB

CORRECTION

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



Rev. 6/98

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

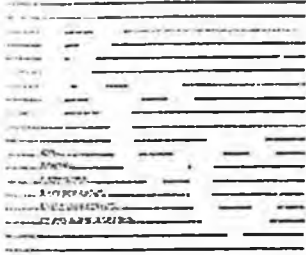
HB339 – Supporters of CFAB bill

Associations

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Alaska Visitors Association	William Pedlar
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Alan Otness	CFAB Member	Petersburg
Clinton Mullins	CFAB Member	Cordova
John Winther	Petersburg Energy LLC	Petersburg
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David Polushkin		Willow
Michael Gordon	Chilkoot Charlie's	Anchorage
Maurice MacDonald	O'Brady's	Anchorage
Shane Horton	Eagle's Nest Motel	Haines



**KODIAK
CHAMBER
OF COMMERCE**

P.O. Box 1485, Kodiak, Alaska 99615

(907) 486-5557

FAX: (907) 486-7605

Representative Eldon Mulder
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

FAX 907-465-3518

Representative Mulder,

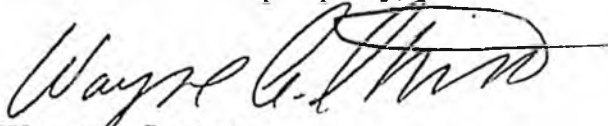
The Board of Directors of the Kodiak Chamber of Commerce has voted to support House Bill 339. HB339 would authorize the Alaska Commercial Fishing and Agricultural Bank (CFAB) to expand its authority by adding to its charter the ability to make loans relating to tourism and development or exploitation of natural resources. The Board of Directors believes that there exists a need for this expanded authority. The tourism industry is very seasonal. As such, it is often difficult for a start up operation to have access to working capital and to the funds necessary to potentially expand their business operations.

CFAB is a private lending cooperative, incorporated under specific state statutes to provide financing to the Alaska commercial seafood and agriculture industries. A task they have successfully accomplished for more than twenty years. CFAB has played a vital role in the fishing industry in Kodiak over the past twenty years. This institution has in numerous instances, been the only lender available to many in the fishing or agricultural industries. It is our belief that this bill will open doors to financing for the small entrepreneurs in the visitor and mining industries.

The tourism industry in Kodiak has been cautiously expanding over the past fifteen years. We are confident that given this opportunity for new financing options, this expanding vital industry in Kodiak will continue to grow, thrive and prosper. Economic diversification is critical to the future success of our community. We believe that this same need for diversity will be important to the future success of CFAB as well.

The Board of Directors of the Kodiak Chamber of Commerce encourage the legislature to move this bill forward and allow CFAB to assist the tourism and mining industries as capably as the have served both fishing and agriculture.

Yours in economic prosperity,

A handwritten signature in cursive script, appearing to read "Wayne A. Stevens". The signature is written in dark ink and is positioned above the printed name.

Wayne A. Stevens
Executive Director

Cc: Representative Alan Austerman
Senator Jerry Mackie
Ed Crane, President, CFAB



ALASKA VISITORS ASSOCIATION

2525 C Street, Suite 400 • Anchorage, Alaska 99503

Phone: (907) 561-5733 • Fax: (907) 561-5727

E-mail: avanet.org • www.visitalaska.org

1999-2000

Executive Officers

President

Bill Pedlar

Holland America Line
Seattle, Washington

1st Vice President

Ann Campbell

Aurora Consulting
Anchorage, Alaska

2nd Vice President

Justin Ripley

Alaska Tour and Travel
Anchorage, Alaska

VP Government Relations

Bob Dindinger

Alaska Travel Adventures
Juneau, Alaska

Secretary

Brett Carlson

Northern Alaska Tour Company
Fairbanks, Alaska

Treasurer

Toni Walker

Logistics, LLC
Anchorage, Alaska

Past President

Ken Dole

Waterfall Resort/Seabone Aviation
Ketchikan, Alaska

Board of Directors

Bob Berto

Southeast Stevedoring

John Binkley

Alaska Riverboat Discovery/
El Dorado Gold Mine

Dennis Brandon

Cook Inlet Region, Inc.

Dean Brown

Princess Tours

Bill Elander

Anchorage Convention &
Visitors Bureau

Bob Engelbrecht

NorthStar Trekking

John Fox

Royal Caribbean Cruises Ltd.

Laurie Herman

Alaska Railroad

John Mazor

Juneau Convention &
Visitors Bureau

Margaret Nelson

Alaska Native Heritage Center

Gary Odle

Alaska Travel Adventures

Arne Olsson

Hotel Halsingland

Brad Phillips

Phillips Cruises & Tours

Frank Rose

Alaska Lodging Management/
Denali Bluffs Hotel

Kathy Tarr

Kenai Visitors &
Convention Bureau

Tom Tougas

Kenai Fjords Tours

Chris von Imhof

Alyeska Resort

Brad Walker

Alaska Airlines

Tina Lindgren

Executive Director

March 2, 2000

Representative Eldon Mulder
House Finance Committee Co-Chair
State Capitol Room 507
Juneau, AK 99801

Dear Representative Mulder,

I am writing to express the Alaska Visitors Association's support for two bills in the Legislature.

AVA recently voted to support HB 339, which would expand the abilities of the Commercial Fishing and Agriculture Bank to allow loans to small tourism businesses. This new loan option would greatly benefit small tourism businesses and start-up enterprises that might otherwise have difficulty obtaining a regular commercial loan.

AVA also supports House Bill 42, which would discourage frivolous lawsuits by assigning financial penalties for false suits. Many small Alaskan tourism businesses cannot afford the legal fees incurred in such lawsuits, and in some cases the expense of fighting unmerited claims can put an operator out of business. Tourism is the fastest growing industry in the state and the second largest private-sector employer with more and more small Alaskan businesses starting up each year. In order to continue this small business growth, owners need a fighting chance to get their businesses off the ground without the hassle of frivolous litigation.

AVA is a private, non-profit statewide trade association representing all facets of the tourism industry. With more than 500 member businesses, AVA is the largest, statewide visitor industry association representing the full spectrum of visitor industry business interests from small localized rafting operators and wilderness guides to large air and cruise lines. Since 90% of our members are small businesses with fewer than 10 employees, we see that a majority of them would benefit from protection against frivolous lawsuits and increased access to small business loans.

Sincerely,

Anne Adasiak-Andrew

Acting Executive Director

cc: Representative Hudson
Representative Austerman
Representative Rokeberg

SOUTHEAST CONFERENCE

Working for strong economies, healthy communities, and a quality environment in Southeast Alaska

February 20, 2000

Representative Eldon Mulder
Room 507
State Capitol Bldg
Juneau, AK 99801-1182

Dear Representative Mulder:

The Southeast Conference appreciates your efforts in providing opportunities for Alaska business expansion and development. The Southeast Conference supports HB 339 "An Act authorizing the Alaska Commercial Fishing and Agriculture Bank to make loans to tourism and development or exploitation of natural resources." The availability of financing is one of the most important considerations in any business development and at this time Alaska needs assistance to diversify its economy. The decline of oil production, timber production and low prices for our salmon production are indicators that Alaska must seek to diversify in order to replace lost jobs and to provide jobs for young Alaskans about to enter the workforce.

The Alaska Commercial Fishing and Agriculture Bank is capable of taking on this expanded ability to help Alaska businesses. It has been in existence for more than twenty year and has been successful in providing financing to two of Alaska's significant economic sectors namely fishing and agriculture. The experience gained in those areas will be a major benefit in designing a program to assist Alaska tourism and natural resource development projects.

Thank you for introducing HB 339. Please do not hesitate to call on me if you have any questions.

Sincerely,



Frank Homan
Executive Director

Rep. Eldon Mulder
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Ak 99801
FAX # 907-465-3518

Greetings,
We support Bill 339 (HB339)

Sincerely,
Lois Stover, President
Shuyak Inc
Box 727 Kodiak Ak 99615

FAX 907-486-5097

Dated 2-15-00