

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 86/2

10261 HOUSE JUDICIARY

106

1 (5) final approval.

2 * Sec. 5. AS 18.56.300(b) is amended to read:

3 (b) As a condition of a commitment to purchase or approve a loan under this
4 section for residential housing the construction of which begins after June 30, 1992,
5 the corporation shall require inspection of the unit of residential housing that is the
6 subject of the loan. The inspection must be performed by a municipal building
7 inspector, [BY A PERSON WHO IS APPROVED OR CERTIFIED TO PERFORM
8 RESIDENTIAL INSPECTIONS BY THE INTERNATIONAL CONFERENCE OF
9 BUILDING OFFICIALS OR THE INTERNATIONAL ASSOCIATION OF
10 ELECTRICAL INSPECTORS,] by an individual who is licensed or registered under
11 AS 08.57.050 to perform home inspections, by an architect licensed under AS 08.48,
12 by an engineer licensed under AS 08.48, or by another person approved by the
13 corporation. When the unit of residential housing is located in a rural area, the person
14 who makes the inspection may use methods other than a personal physical inspection
15 to make the inspection if the method is approved by the corporation, and variations
16 from the applicable code may be accepted at the corporation's discretion, if the person
17 authorized to inspect the unit under this subsection satisfies the corporation that the
18 variation does not adversely affect the structural integrity of the unit or the health and
19 safety of the residents. The person who makes the inspection shall determine whether
20 the construction conforms to relevant provisions of the construction codes of the
21 municipality or of the state building code, as applicable, at each of the following
22 stages of construction:

- 23 (1) plan approval;
24 (2) completion of footings and foundations;
25 (3) completion of electrical installation, plumbing, and framing;
26 (4) completion of installation of insulation;
27 (5) final approval.

28 * Sec. 6. AS 44.62.330(a) is amended by adding a new paragraph to read:

29 (60) Board of Home Inspectors.

30 * Sec. 7. AS 45.50.471(b) is amended by adding a new paragraph to read:

31 (43) violating AS 08.57.220, 08.57.230, or 08.57.900.

1 * **Sec. 8.** AS 18.56.300(c) is repealed.

2 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 **APPLICABILITY.** The change made by sec. 8 of this Act applies to causes of action
5 that accrue on or after July 1, 2003.

6 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 **REGULATIONS.** The Board of Home Inspectors may proceed to adopt regulations to
9 implement this Act. A regulation adopted under this section takes effect under AS 44.62
10 (Administrative Procedure Act) but not before the effective date of the law implemented by
11 the regulation.

12 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **TRANSITIONAL BOARD PROVISIONS.** Notwithstanding AS 08.57.010, added by
15 sec. 1 of this Act, the three home inspectors appointed to the initial Board of Home Inspectors
16 are not required to be licensed as home inspectors before appointment but must be licensed as
17 home inspectors in order to be appointed or reappointed after expiration of their first term in
18 office.

19 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **TRANSITIONAL LICENSING PROVISIONS.** (a) Notwithstanding AS 08.57,
22 added by sec. 1 of this Act, the Board of Home Inspectors shall issue a joint license that is
23 valid until January 1, 2004, to an individual who submits to the board satisfactory evidence of
24 being in the business of home inspection in the state at the time of application for a license
25 under this subsection and of having

26 (1) been in the business of home inspection in the state on October 1, 2000;
27 and

28 (2) passed the building inspector examination or property maintenance and
29 housing inspector examination given by the International Conference of Building Officials.

30 (b) Notwithstanding AS 08.57, added by sec. 1 of this Act, the Board of Home
31 Inspectors shall issue a license to practice home inspection of previously occupied residences

1 that is valid until January 1, 2004, to an individual who submits to the board satisfactory
2 evidence of being in the business of home inspection in the state at the time of application for
3 a license under this subsection and of having passed

4 (1) the national home inspector examination given by the American Society of
5 Home Inspectors; or

6 (2) the examination of the Examination Board of Professional Home
7 Inspectors.

8 (c) Notwithstanding AS 08.57, added by sec. 1 of this Act, the Board of Home
9 Inspectors shall issue a license to practice home inspection of new construction that is valid
10 until January 1, 2004, to an individual who submits to the board satisfactory evidence of being
11 in the business of home inspection in the state at the time of application for a license under
12 this subsection and of having passed the combination inspector examination or the
13 combination dwelling inspector examination given by the International Conference of
14 Building Officials.

15 (d) Notwithstanding AS 08.57, added by sec. 1 of this Act, the Board of Home
16 Inspectors shall grant registration as an associate home inspector that is valid until January 1,
17 2004, to an individual who submits to the board satisfactory evidence of being employed by
18 an individual who is in the business of home inspection and is licensed under this section or
19 under AS 08.57.

20 (e) A license or registration issued under this section may not be renewed or
21 extended.

22 (f) Except as provided in (e) of this section, a license or registration issued under this
23 section is considered to be a license or registration issued under AS 08.57, added by sec. 1 of
24 this Act.

25 (g) In this section, "joint license" has the meaning given in AS 08.57.990, added by
26 sec. 1 of this Act.

27 * **Sec. 13.** AS 08.57.050, 08.57.200 - 08.57.230, 08.57.330, 08.57.800 - 08.57.810, enacted
28 by sec. 1 of this Act, and the amendment of AS 18.56.300(b), made by sec. 4 of this Act, take
29 effect July 1, 2002.

30 * **Sec. 14.** Section 5 of this Act takes effect January 1, 2004.

31 * **Sec. 15.** Sections 8 and 9 of this Act take effect July 1, 2003.

1 * **Sec. 16.** Except as provided in secs. 13 - 15 of this Act, this Act takes effect immediately
2 under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 27 (JUD)
() Publish Date: _____

Revision Date/Time (Note if correction): 02/21/2001 5:20p.m. Dept. Affected: DCED
Title: An Act relating to the licensure and registration BRU: Occupational Licensing
of individuals who perform home inspections..... Component: Occupational Licensing
Sponsor: Representative Rokeberg
Requester: House Judiciary Component Number: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	51.5	51.5	51.5	51.5	51.5	51.5
Travel	6.3	6.3	6.3	6.3	6.3	6.3
Contractual	6.0	6.0	6.0	6.0	6.0	6.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	70.8	64.8	64.8	64.8	64.8	64.8

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

CHANGE IN REVENUES ()	135.6	0.0	129.6	0.0	129.6	0.0
-------------------------------	--------------	------------	--------------	------------	--------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other - 1156 RSS	70.8	64.8	64.8	64.8	64.8	64.8
TOTAL	70.8	64.8	64.8	64.8	64.8	64.8

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 27 (L&C) creates a Board of Home Inspectors. This fiscal note is based on the board holding at least two meetings each year. The revenue collection shown every other year is the result of the biennial licensing cycle. An explanation of the costs shown above is attached.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
Division: Occupational Licensing Date/Time 2/21/2001 5:20 p.m.
Approved by: Commissioner Deborah B. Sedwick Date 2/21/2001
Agency: Department of Community and Economic Development

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

CSHB 27 (L&C): An Act relating to the licensure and registration of individuals who perform home inspections;....

Page 2 of 2

Occupational Licensing Examiner I position, PPT, Range 12.

It is possible that in the first year of licensure additional staff time will be required to initiate the program by preparing application forms, notify potential licensees, writing regulations, etc., \$20.7

- 1/2 Investigator III position, Range 18A, \$30.8

PERSONAL SERVICES: \$51.5

Assuming the Board consists of 5 voting members from the following towns: (2-Anchorage; 2-Juneau; 1-Fairbanks) and meetings are held each year in the following locations:

Anchorage Meeting (including 2 staff from Juneau), \$3.9

Juneau Meeting, \$2.4

TRAVEL: \$6.3

-30 hours of AG legal time for regulations and license appeals, \$3.0

-Printing, postage, communication, and advertising costs, \$3.0

The contractual services total does not include any expenditures for purchase of a license examination.

This fiscal note assumes applicants will pay the testing service directly for the examination.

CONTRACTUAL SERVICES: \$6.0

To fund daily operating supplies of the program.

SUPPLIES: \$1.0

Office equipment and workstation set-up for three support position.

EQUIPMENT (one-time costs): \$6.0

TOTAL FISCAL NOTE: \$70.8

REVENUE & FUND SOURCE: Revenue will be generated by licensing fees sufficient to cover direct and indirect program costs.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 27(L&C)
(H) Publish Date: 2/14/01

Revision Date/Time (Note if correction): 1/30/2001 5:30p.m. Dept. Affected: DCED
Title: An Act relating to the licensure and registration of individuals who perform home inspections;.... BRU: Occupational Licensing
Sponsor: Representative Rokeberg Component: Occupational Licensing
Requester: House Labor and Commerce Component Number: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	51.5	51.5	51.5	51.5	51.5	51.5
Travel	6.3	6.3	6.3	6.3	6.3	6.3
Contractual	6.0	6.0	6.0	6.0	6.0	6.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	70.8	64.8	64.8	64.8	64.8	64.8

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

CHANGE IN REVENUES ()	135.6	0.0	129.6	0.0	129.6	0.0
-------------------------------	--------------	------------	--------------	------------	--------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 RSS	70.8	64.8	64.8	64.8	64.8	64.8
TOTAL	70.8	64.8	64.8	64.8	64.8	64.8

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time	2	2	2	2	2	2
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
HB 27 creates a five member Board of Home Inspectors. This fiscal note is based on the board holding at least two meetings each year. An explanation of the costs shown above is attached.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
Division: Occupational Licensing Date/Time 1/30/2001 5:30p.m.
Approved by: Commissioner Deborah B. Sedwick Date 1/30/2001
Agency: Dept. of Community and Economic Development

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

HB 27: An Act relating to the licensure and registration of individuals who perform home inspections;....

Page 2 of 2

- Occupational Licensing Examiner I position, PPT, Range 12.

It is possible that in the first year of licensure additional staff time will be required to initiate the program by preparing application forms, notify potential licensees, writing regulations, etc., \$20.7

- 1/2 Investigator III position, Range 18A, \$30.8

PERSONAL SERVICES: \$51.5

Assuming the Board consists of 5 members (2-Anchorage; 2-Juneau; 1-Fairbanks) and meetings are held each year in the following locations:

Anchorage Meeting (including 2 staff from Juneau), \$3.9

Juneau Meeting, \$2.4

TRAVEL: \$6.3

-30 hours of AG legal time for regulations and license appeals, \$3.0

-Printing, postage, communication, and advertising costs, \$3.0

The contractual services total does not include any expenditures for purchase of a license examination.

This fiscal note assumes applicants will pay the testing service directly for the examination.

CONTRACTUAL SERVICES: \$6.0

To fund daily operating supplies of the program.

SUPPLIES: \$1.0

Office equipment and workstation set-up for the support position.

EQUIPMENT (one-time costs): \$6.0

TOTAL FISCAL NOTE: \$70.8

REVENUE & FUND SOURCE: Revenue will be generated by licensing fees sufficient to cover program costs. Licensing fees must cover direct costs (\$135,600.00) plus approximately \$100 per licensee for division/department indirect costs for the two-year period. Based on 100 licensees, licensing fees will be \$1,456.00 for the first biennium. If evidence indicates that 200 people will be licensed, the license fee will be \$778.00.

After the first license period, fees will be adjusted to reflect actual costs based on timekeeping and cost accounting.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 27(L&C)
 (H) Publish Date: 2/14/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title: License Home Inspectors BRU: Alaska Housing Finance
 Component: Operations
 Sponsor: Rep. Rokeberg
 Requester: House Labor & Commerce Component Number: 110

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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 (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 Sections 4 and 5 amend AS 18.56.300 to qualify state-licensed home inspectors to approve the construction of homes for mortgage purchases by the Alaska Housing Finance Corporation. The current construction standard of inspection by individuals approved by the International Conference of Building Officials (ICBO) is also deleted on January 1, 2003.

 Costs envisioned would relate to education and outreach across the state to modify the home inspection process for mortgages purchased by AHFC. For example, homebuyers, realtors, homebuilders and mortgage lenders will need to be informed of the change in law to ensure minimal disruptions in closing home mortgage transactions. These activities can be adequately covered through regular annual budget authorizations.

Prepared by: John Bitney, Legislative Liaison Phone 330-8445
 Division: Alaska Housing Finance Corporation Date/Time 1/26/01 1:34 PM
 Approved by: Larry Persily, Deputy Commissioner Date Jan. 27, 2001
 Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

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

website: <http://www.akrepublicans.org/Rokeberg.htm>



INTERIM:
716 WEST 4TH AVENUE, SUITE 350
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

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

Representative Norman Rokeberg

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

MEMORANDUM

TO: House Judiciary Committee

FROM: Rep. Norman Rokeberg *Norman/jp*

DATE: February 16, 2001

RE: CSHB 27 (L&C)

Attached are:

1. CSHB 27 (L&C)
2. Sponsor Statement
3. Sectional Analysis
4. AS 18.56.300
5. "State Home Inspector Licensing/Regulation" as of October 27, 2000, obtained from the American Society of Home Inspectors web site, <http://www.ashi.com>
6. "Should We Care Who the Buyer Chooses to Do a Home Inspection" by Rick Jarvis, from Realtor® News, September 1998.
7. "Home-inspection bill would help buyers" by Clair Ramsey, from the Anchorage Daily News, June 27, 1999
8. "Expert home inspections useful for buyer and seller" by Clair Ramsey, from the Anchorage Daily News, July 25, 1999
9. "Inspect the Inspector: Choosing the Right One Can Help Avoid Costly Mistakes" by Karen Crawford of HouseMaster, from Realtor® News, November 1999
10. "Anxiety Continues Over FHA Appraisal Reform" by Judy Kemplen of Alaska Mortgage Bankers Association, from Realtor® News, November 1999 [This is the issue I discussed in committee about HUD then wanting appraisers to do home inspectors].
11. Letters of Support:
 - a. Alaska Association of REALTORS®, INC.
 - b. Anchorage Board of REALTORS®, Inc.
 - c. Lessmeir & Winters

CS FOR HOUSE BILL NO. 27(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 2/14/01
Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the licensure and registration of individuals who perform home
2 inspections; relating to home inspection requirements for residential loans purchased or
3 approved by the Alaska Housing Finance Corporation; relating to civil actions by and
4 against home inspectors; and providing for an effective date."

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

6 * Section 1. AS 08 is amended by adding a new chapter to read:

7 **Chapter 57. Home Inspectors.**

8 **Article 1. Board of Home Inspectors.**

9 **Sec. 08.57.010. Creation and membership of board; expenses.** (a) There is
10 created the Board of Home Inspectors consisting of five voting members and one
11 nonvoting member. Three voting members shall be licensed under this chapter and
12 shall have been engaged in the practice of home inspection in the state for three years
13 immediately preceding appointment, one voting member shall be a licensed real estate
14 broker, associate broker, or certified real estate appraiser, and one voting member shall

1 be a public member. The executive director employed by the Alaska Housing Finance
2 Corporation under AS 18.56.052, or a designee of the executive director, shall serve
3 ex officio as a nonvoting member of the board.

4 (b) The transportation expenses and per diem to which the nonvoting member
5 is entitled under AS 08.01.040 are the responsibility of the Alaska Housing Finance
6 Corporation and are not a regulatory cost of the board or the department under
7 AS 08.01.065(c).

8 **Sec. 08.57.020. General duties; powers.** (a) The board shall

- 9 (1) administer and enforce this chapter;
10 (2) regulate the practice of home inspection;
11 (3) establish education and experience requirements that must be met
12 for licensure under this chapter; the requirements established by the board must
13 include education or experience in Arctic construction or building;
14 (4) establish standards for continuing education of licensed home
15 inspectors;
16 (5) adopt a code of ethics for licensed home inspectors; and
17 (6) in addition to the meeting required under AS 08.01.070(2), meet
18 when requested by a majority of the voting members of the board.

19 (b) The board may adopt regulations to implement this chapter.

20 **Sec. 08.57.030. Meetings; quorum.** The board may meet by teleconference.
21 Three voting members constitute a quorum of the board.

22 **Article 2. Licensure.**

23 **Sec. 08.57.050. Licensure required.** (a) Unless exempt under AS 08.57.920
24 or serving lawfully as an associate home inspector under (b) of this section, an
25 individual may not perform a home inspection

26 (1) for new construction unless that individual is licensed as a home
27 inspector for new construction under this chapter;

28 (2) for previously occupied construction unless that individual is
29 licensed as a home inspector for previously occupied construction under this chapter.

30 (b) Notwithstanding (a) of this section, an individual who is not licensed under
31 this chapter may perform a home inspection as an associate home inspector if the

1 individual

2 (1) is employed by a licensed home inspector who supervises the
3 associate's work and the inspection is of the type that the supervising individual is
4 authorized to perform; and

5 (2) is registered with the board as an associate home inspector.

6 (c) A licensed home inspector who employs an associate home inspector
7 under (b) of this section is liable for the work done by the associate home inspector.

8 (d) An individual who holds a joint license is considered to be licensed as both
9 a home inspector for new construction and a home inspector for previously occupied
10 construction.

11 **Sec. 08.57.060. Qualifications.** (a) The board shall authorize the department
12 to issue a home inspector license for new construction, previously occupied
13 construction, or both, as appropriate, to an individual who

14 (1) passes the appropriate home inspection examination; the
15 examination must include a written portion; the examination may, as determined by
16 the board,

17 (A) use testing methodologies in addition to the written
18 portion;

19 (B) test for competency in relation to Alaska construction
20 techniques and other matters;

21 (C) be based on a recognized national examination or other
22 methodology;

23 (2) meets the educational and experience requirements adopted by the
24 board in regulations for the type of license applied for;

25 (3) submits a complete application for licensure within one year after
26 passing the examination required under (1) of this subsection;

27 (4) within the seven years preceding the date of application, has not
28 been under a sentence for an offense related to forgery, theft in the first or second
29 degree, extortion, or defrauding creditors or for a felony involving dishonesty;

30 (5) has not had the authority to perform home inspections revoked in
31 this state or in another jurisdiction;

1 (6) is not the subject of an unresolved complaint or disciplinary action
2 before a regulatory authority in this state or in another jurisdiction; and

3 (7) pays the appropriate fees.

4 (b) A person may register with the board as an associate home inspector upon
5 application, payment of the required fee, and determination by the board that the
6 person

7 (1) within the seven years preceding the date of application, has not
8 been under a sentence for an offense related to forgery, theft in the first or second
9 degree, extortion, or defrauding creditors or for a felony involving dishonesty;

10 (2) has not had the authority to perform home inspections revoked in
11 this state or in another jurisdiction; and

12 (3) is not the subject of an unresolved complaint or disciplinary action
13 before a regulatory authority in this state or in another jurisdiction.

14 **Sec. 08.57.070. License renewal; continued competency.** (a) A license
15 issued under this chapter may not be renewed unless the applicant submits proof of
16 continued competency relating to home inspecting that satisfies the board.

17 (b) A lapsed license may be reinstated within two years after the lapse upon
18 proof of continued competency, payment of a renewal fee for the period for which the
19 reinstated license will be valid, and payment of any penalty fee established under
20 AS 08.01.100(b). If the license has been lapsed for more than two years, the license
21 may not be reinstated until the individual also passes the appropriate home inspection
22 examination described in AS 08.57.060. A license may not be reinstated if the license
23 has been lapsed for more than five years.

24 (c) The license of an applicant whose license has been suspended or against
25 whom a fine has been imposed under this chapter may not be renewed until the period
26 of suspension has expired and any fine has been paid. A license that has been
27 suspended expires at the end of the period for which the license was issued, regardless
28 of whether the period of suspension has expired.

29 **Sec. 08.57.080. Fees.** (a) The department shall set fees under AS 08.01.065
30 for

31 (1) licensure and renewal of licensure for a home inspector qualified to

1 inspect new construction;

2 (2) licensure and renewal of licensure for a home inspector qualified to
3 inspect previously occupied construction;

4 joint licenses and renewal of joint licenses;

5 (4) registration and renewal of registration as an associate home
6 inspector;

7 (5) examinations; and

8 (6) board and departmental publications and seminars related to this
9 chapter.

10 (b) An individual who fails a home inspector examination shall pay the
11 examination fee set by the department if the individual applies to retake an
12 examination.

13 **Article 3. Insurance Requirement.**

14 **Sec. 08.57.200. Type of insurance.** Each applicant for licensure, at the time
15 of applying for licensure or for renewal of licensure, shall file with the board
16 satisfactory evidence that there is in effect for the applicant public liability and
17 property damage insurance covering the applicant's home inspecting operations in this
18 state in the sum of not less than \$20,000 for damage to property, \$50,000 for injury,
19 including death, to any one person, and \$100,000 for injury, including death, to more
20 than one person.

21 **Sec. 08.57.210. Suspension of license.** If insurance required in AS 08.57.200
22 ceases to be in effect, the license of the home inspector shall immediately be
23 suspended until the insurance has been reinstated.

24 **Article 4. Activities of Home Inspectors.**

25 **Sec. 08.57.300. Identification requirements.** (a) Except as provided
26 otherwise by law, an individual who is licensed or registered under this chapter by one
27 name may not act in the capacity of a home inspector or associate home inspector
28 under any other name.

29 (b) All advertising and business cards prepared by a licensed home inspector
30 or associate home inspector for the home inspection business must show the
31 inspector's name, mailing address, and license or registration number.

1 (c) Individual licensed home inspectors and partners, associates, agents,
2 salespeople, solicitors, officers, and employees of licensed home inspectors shall use
3 their true names and addresses and the true name of the home inspecting firm at all
4 times while acting in the capacity of a licensed home inspector or performing related
5 activities.

6 (d) Regardless of whether they are exempt from licensure and registration
7 under AS 08.57.920, persons who perform home inspections may not hold themselves
8 out to be licensed home inspectors or use words or titles that may reasonably be
9 confused with the title of "licensed home inspector" unless they are licensed under this
10 chapter.

11 **Sec. 08.57.310. Pre-inspection document required.** Before performing a
12 home inspection, a licensee or an associate home inspector shall provide to the person
13 on whose behalf a home is inspected a written document specifying

14 (1) the scope of intended inspection; the scope of the intended
15 inspection may include systems and components that are not listed in
16 AS 08.57.990(3); and

17 (2) that the inspector will notify in writing the person on whose behalf
18 the inspection is being made of defects noted during the inspection along with a
19 recommendation, if any, that experts be retained to conduct further evaluation through
20 examination and analysis by a qualified professional, tradesperson, or service
21 technician beyond that provided by the home inspection to determine the extent of
22 defects and corrective action necessary to address the defects.

23 **Sec. 08.57.320. Conflict of interest must be disclosed.** (a) A licensed home
24 inspector who has a conflict of interest relating to a home inspection shall disclose that
25 conflict of interest at the time of initial substantive contact with the person requesting
26 the home inspection and confirm the conflict of interest in writing to the person
27 requesting the home inspection as soon as possible after the initial substantive contact.

28 (b) The failure of a licensee to disclose a conflict of interest as required under
29 this section does not give rise to a cause of action by a private person. However,

30 (1) the board may, under AS 08.57.400, impose a disciplinary sanction
31 for violation of this section; and

1 (2) nothing in this subsection may be construed to deprive a private
 2 person of a cause of action if a violation of this section constitutes fraud, deceit, or
 3 misrepresentation and the person suffered a loss as a result of the violation.

4 (c) In this section, "conflict of interest" is when

5 (1) a relative of the licensee or a person with whom the licensee has a
 6 financial relationship has a present financial interest in the property being inspected or
 7 considered for inspection; or

8 (2) the licensee receives compensation from someone other than a
 9 party to the home inspection contract or another party having a financial interest in the
 10 outcome of the home inspection.

11 **Sec. 08.57.330. Inspection report required.** After performance of a home
 12 inspection, a licensed home inspector shall give a written home inspection report to
 13 the person requesting the inspection. The written report must include a review of the
 14 condition of each system and component identified as being within the scope of the
 15 intended inspection under AS 08.57.310(1). In addition to the written inspection
 16 report required under this section, an oral inspection report may be given by the home
 17 inspector during or after the inspection.

18 **Article 5. Disciplinary Actions; Other Enforcement Mechanisms.**

19 **Sec. 08.57.400. Grounds for disciplinary sanctions or other license**
 20 **decisions.** The board may take disciplinary action authorized under AS 08.01.075 or
 21 refuse to grant or renew a license or registration under this chapter on a finding that

22 (1) the application is fraudulent or misleading;

23 (2) the individual has knowingly violated this chapter or a lawful order
 24 or regulation of the department or the board;

25 (3) the individual is incompetent;

26 (4) the individual has engaged in fraudulent practices relating to home
 27 inspection; or

28 (5) the individual has been under sentence in the preceding seven years
 29 for an offense described in AS 08.57.060(a)(4) or (b)(1).

30 **Sec. 08.57.410. Administrative Procedure Act applicable.** The adoption of
 31 regulations and proceedings under this chapter are governed by AS 44.62

1 (Administrative Procedure Act).

2 **Sec. 08.57.420. Injunction.** In addition to the powers granted under
3 AS 08.01.087(b), the board or the department may institute an action in the superior
4 court requesting the court to enjoin an individual from performing a home inspection
5 in violation of this chapter. In addition to other relief, the court may impose a civil
6 penalty of not more than \$500 for each violation. Each day that an unlawful act
7 continues constitutes a separate violation.

8 **Sec. 08.57.430. Violations.** (a) An individual who knowingly violates
9 AS 08.57.050 is guilty of a class B misdemeanor. A person who violates another
10 provision of this chapter is guilty of a violation punishable under AS 12.

11 (b) Criminal prosecution for a violation of this chapter does not preclude the
12 board or the department from seeking available civil remedies.

13 **Article 6. Miscellaneous Provisions.**

14 **Sec. 08.57.800. Legal actions by home inspector.** An individual may not
15 bring an action in a court of this state for the collection of compensation for the
16 performance of a home inspection or for breach of a contract for which a license or
17 registration is required under this chapter without proving that the individual was a
18 licensed home inspector or registered associate home inspector at the time of
19 contracting for the performance of the work.

20 **Sec. 08.57.810. Legal actions against home inspector.** A person may not
21 bring an action against an individual licensed or registered under this chapter based on
22 a written home inspection report prepared by the inspector if the report is more than
23 180 days old or was unlawfully disclosed to the person bringing the action.

24 **Article 7. General Provisions.**

25 **Sec. 08.57.900. Prohibited acts.** (a) An individual licensed or registered
26 under this chapter may not

27 (1) perform or offer to perform, for an additional fee, repairs to a
28 subject property on which the home inspector or the home inspector's company has
29 prepared a home inspection report in the past 12 months;

30 (2) inspect for a fee any property in which the home inspector or the
31 home inspector's company has a financial interest or an interest in the transfer of the

1 property;

2 (3) offer or deliver compensation, an inducement, or a reward to the
3 owner of the inspected property, the broker, or the agent, for the referral of business to
4 the home inspector or the home inspector's company;

5 (4) without the written consent of the home inspection client or the
6 client's legal representative, disclose information from a home inspection report
7 prepared by the home inspector or the home inspector's company unless the disclosure
8 is made

9 (A) more than 180 days after the date of the report;

10 (B) to a subsequent client who requests a home inspection of
11 the same premises; or

12 (C) by the home inspector in an administrative or judicial
13 proceeding in which disclosure of the home inspection report is relevant to
14 resolution of the legal issues in the proceeding;

15 (5) without the written consent of all interested parties, accept
16 compensation from more than one interested party for the same services;

17 (6) accept from a person who has other dealings with a home
18 inspection client a commission or allowance, directly or indirectly, for work for which
19 the home inspector or the home inspector's company is responsible;

20 (7) accept an engagement to make an inspection or to prepare a report
21 in which the employment itself or the fee payable for the inspection is contingent upon
22 the conclusions in the report, preestablished findings, or the close of escrow.

23 (b) Contractual provisions that purport to limit the liability of a home
24 inspector to the cost of the home inspection report are contrary to public policy and
25 void.

26 **Sec. 08.57.910. Limitation on activities.** A license or registration issued
27 under this chapter does not authorize the holder to perform an activity for which a
28 license is required under provisions of this title that are outside of this chapter.

29 **Sec. 08.57.920. Exemptions.** Notwithstanding other provisions of this
30 chapter, an individual who inspects a home is not required to be licensed or registered
31 under this chapter if the individual is

1 (1) employed by the federal or state government, a political
 2 subdivision of the state, or a municipality or unincorporated community and the
 3 employee is performing only duties that are within the employee's official duties;

4 (2) performing a home inspection only with respect to property that is
 5 the individual's residence or in which the individual has a financial interest;

6 (3) registered as an engineer or architect under AS 08.48, prepares a
 7 written report after the inspection, and either

8 (A) affixes the individual's seal to the home inspection report;

9 or

10 (B) signs the report and puts the individual's registration
 11 number on the report;

12 (4) engaged as an engineer in training or architect in training who
 13 works for and is supervised by a person described in (3) of this section and the person
 14 described in (3) of this section affixes the person's seal to the home inspection report
 15 or signs and puts the person's registration number on the report;

16 (5) licensed as a pesticide applicator by the Department of
 17 Environmental Conservation and is performing only activities within the scope of that
 18 license;

19 (6) registered as a general contractor with a residential contractor
 20 endorsement under AS 08.18 and is performing only activities within the scope of that
 21 registration;

22 (7) certified as any type of real estate appraiser under AS 08.87 and is
 23 performing only activities that are authorized under that certification; or

24 (8) only determining whether a building complies with the thermal and
 25 lighting energy standards required by AS 46.11.040.

26 **Sec. 08.57.990. Definitions.** In this chapter,

27 (1) "board" means the Board of Home Inspectors;

28 (2) "department" means the Department of Community and Economic
 29 Development;

30 (3) "home inspection" means a visual examination, performed in
 31 accordance with standards of practice adopted by the board, of the readily accessible

1 parts of one or more of the following systems and components of a residence or
2 intended residence:

- 3 (A) heating and air-conditioning systems;
- 4 (B) plumbing and electrical systems;
- 5 (C) built-in appliances;
- 6 (D) roof, attic, and visible insulation;
- 7 (E) walls, ceilings, floors, windows, and doors;
- 8 (F) foundation and basement;
- 9 (G) visible interior and exterior structures;
- 10 (H) drainage to and from the residence;
- 11 (I) other systems or components as specified by the board in

12 regulations;

13 (4) "home inspector" means a person who performs or offers to
14 perform a home inspection;

15 (5) "joint license" means a license that authorizes an individual to
16 inspect both new construction and previously occupied residences;

17 (6) "knowingly" has the meaning given in AS 11.81.900;

18 (7) "real estate transaction" means the transfer or attempted transfer of
19 an interest in a unit of real property or an act conducted as a result of or in pursuit of a
20 contract to transfer an interest in a unit of real property;

21 (8) "residence" means

22 (A) a single-family home;

23 (B) a duplex, triplex, or four-plex; or

24 (C) a residential townhouse or residential condominium unit;

25 (9) "visual examination" means an examination performed in person at
26 the physical location of the residence unless a method other than personal physical
27 inspection has been approved by the Alaska Housing Finance Corporation under
28 AS 18.56.300(b).

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

30 (37) Board of Home Inspectors (AS 08.57.010).

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

1 (22) Board of Home Inspectors (AS 08.57.010) -- June 30, 2005.

2 * Sec. 4. AS 18.56.300(b) is amended to read:

3 (b) As a condition of a commitment to purchase or approve a loan under this
 4 section for residential housing the construction of which begins after June 30, 1992,
 5 the corporation shall require inspection of the unit of residential housing that is the
 6 subject of the loan. The inspection must be performed by a municipal building
 7 inspector, by a person who is approved or certified to perform residential inspections
 8 by the International Conference of Building Officials or the International Association
 9 of Electrical Inspectors, by an individual who is licensed or registered under
 10 AS 08.57.050 to perform home inspections for new construction [OR, WHEN THE
 11 UNIT OF RESIDENTIAL HOUSING IS LOCATED IN A RURAL AREA], by an
 12 architect licensed under AS 08.48, by an engineer licensed under AS 08.48, or by
 13 another person approved by the corporation. When the unit of residential housing is
 14 located in a rural area, the person who makes the inspection may use methods other
 15 than a personal physical inspection to make the inspection if the method is approved
 16 by the corporation, and variations from the applicable code may be accepted at the
 17 corporation's discretion, if the person authorized to inspect the unit under this
 18 subsection satisfies the corporation that the variation does not adversely affect the
 19 structural integrity of the unit or the health and safety of the residents. The person
 20 who makes the inspection shall determine whether the construction conforms to
 21 relevant provisions of the construction codes of the municipality or of the state
 22 building code, as applicable, at each of the following stages of construction:

- 23 (1) plan approval;
 24 (2) completion of footings and foundations;
 25 (3) completion of electrical installation, plumbing, and framing;
 26 (4) completion of installation of insulation;
 27 (5) final approval.

28 * Sec. 5. AS 18.56.300(b) is amended to read:

29 (b) As a condition of a commitment to purchase or approve a loan under this
 30 section for residential housing the construction of which begins after June 30, 1992,
 31 the corporation shall require inspection of the unit of residential housing that is the

1 subject of the loan. The inspection must be performed by a municipal building
 2 inspector, [BY A PERSON WHO IS APPROVED OR CERTIFIED TO PERFORM
 3 RESIDENTIAL INSPECTIONS BY THE INTERNATIONAL CONFERENCE OF
 4 BUILDING OFFICIALS OR THE INTERNATIONAL ASSOCIATION OF
 5 ELECTRICAL INSPECTORS,] by an individual who is licensed or registered under
 6 AS 08.57.050 to perform home inspections, by an architect licensed under AS 08.48,
 7 by an engineer licensed under AS 08.48, or by another person approved by the
 8 corporation. When the unit of residential housing is located in a rural area, the person
 9 who makes the inspection may use methods other than a personal physical inspection
 10 to make the inspection if the method is approved by the corporation, and variations
 11 from the applicable code may be accepted at the corporation's discretion, if the person
 12 authorized to inspect the unit under this subsection satisfies the corporation that the
 13 variation does not adversely affect the structural integrity of the unit or the health and
 14 safety of the residents. The person who makes the inspection shall determine whether
 15 the construction conforms to relevant provisions of the construction codes of the
 16 municipality or of the state building code, as applicable, at each of the following
 17 stages of construction:

- 18 (1) plan approval;
- 19 (2) completion of footings and foundations;
- 20 (3) completion of electrical installation, plumbing, and framing;
- 21 (4) completion of installation of insulation;
- 22 (5) final approval.

23 * Sec. 6. AS 44.62.330(a) is amended by adding a new paragraph to read:

- 24 (60) Board of Home Inspectors.

25 * Sec. 7. AS 45.50.471(b) is amended by adding a new paragraph to read:

- 26 (43) violating AS 08.57.320, 08.57.330, or 08.57.900.

27 * Sec. 8. AS 18.56.300(c) is repealed.

28 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
 29 read:

30 APPLICABILITY. The change made by sec. 8 of this Act applies to causes of action
 31 that accrue on or after July 1, 2003.

1 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 REGULATIONS. The Board of Home Inspectors may proceed to adopt regulations to
4 implement this Act. A regulation adopted under this section takes effect under AS 44.62
5 (Administrative Procedure Act) but not before the effective date of the law implemented by
6 the regulation.

7 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 TRANSITIONAL BOARD PROVISIONS. Notwithstanding AS 08.57.010, added by
10 sec. 1 of this Act, the three home inspectors appointed to the initial Board of Home Inspectors
11 are not required to be licensed as home inspectors before appointment but must be licensed as
12 home inspectors in order to be appointed or reappointed after expiration of their first term in
13 office.

14 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 TRANSITIONAL LICENSING PROVISIONS. (a) Notwithstanding AS 08.57,
17 added by sec. 1 of this Act, the Board of Home Inspectors shall issue a joint license that is
18 valid until January 1, 2004, to an individual who submits to the board satisfactory evidence of
19 being in the business of home inspection in the state at the time of application for a license
20 under this subsection and of having

21 (1) been in the business of home inspection in the state on October 1, 2000;
22 and

23 (2) passed the building inspector examination or property maintenance and
24 housing inspector examination given by the International Conference of Building Officials.

25 (b) Notwithstanding AS 08.57, added by sec. 1 of this Act, the Board of Home
26 Inspectors shall issue a license to practice home inspection of previously occupied residences
27 that is valid until January 1, 2004, to an individual who submits to the board satisfactory
28 evidence of being in the business of home inspection in the state at the time of application for
29 a license under this subsection and of having passed

30 (1) the national home inspector examination given by the American Society of
31 Home Inspectors; or

1 (2) the examination of the Examination Board of Professional Home
2 Inspectors.

3 (c) Notwithstanding AS 08.57, added by sec. 1 of this Act, the Board of Home
4 Inspectors shall issue a license to practice home inspection of new construction that is valid
5 until January 1, 2004, to an individual who submits to the board satisfactory evidence of being
6 in the business of home inspection in the state at the time of application for a license under
7 this subsection and of having passed the combination inspector examination or the
8 combination dwelling inspector examination given by the International Conference of
9 Building Officials.

10 (d) Notwithstanding AS 08.57, added by sec. 1 of this Act, the Board of Home
11 Inspectors shall grant registration as an associate home inspector that is valid until January 1,
12 2004, to an individual who submits to the board satisfactory evidence of being employed by
13 an individual who is in the business of home inspection and is licensed under this section or
14 under AS 08.57.

15 (e) A license or registration issued under this section may not be renewed or
16 extended.

17 (f) Except as provided in (e) of this section, a license or registration issued under this
18 section is considered to be a license or registration issued under AS 08.57, added by sec. 1 of
19 this Act.

20 (g) In this section, "joint license" has the meaning given in AS 08.57.990, added by
21 sec. 1 of this Act.

22 * **Sec. 13.** AS 08.57.050, 08.57.300 - 08.57.330, 08.57.430(a), 08.57.800 - 08.57.810,
23 enacted by sec. 1 of this Act, and the amendment of AS 18.56.300(b), made by sec. 4 of this
24 Act, take effect July 1, 2002.

25 * **Sec. 14.** Section 5 of this Act takes effect January 1, 2004.

26 * **Sec. 15.** Sections 8 and 9 of this Act take effect July 1, 2003.

27 * **Sec. 16.** Except as provided in secs. 13 - 15 of this Act, this Act takes effect immediately
28 under AS 01.10.070(c).

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

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

website: <http://www.akrepublicans.org/Rokeberg.htm>



INTERIM:
716 WEST 4TH AVENUE, SUITE 350
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

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

Representative Norman Rokeberg

e-mail: Representative.Norman.Rokeberg@legis.state.ak.us
SPONSOR STATEMENT FOR CSHB 27 (L&C)

License Home Inspectors

TITLE: An Act relating to the licensure and registration of individuals who perform home inspections; relating to home inspection requirements for residential loans purchased or approved by the Alaska Housing Finance Corporation; relating to civil actions by and against home inspectors; and providing for an effective date.

CSHB 27 (L&C) will protect consumers and the home inspection industry by licensing home inspectors in Alaska.

Currently, anyone can call himself or herself a home inspector and there is no state agency overseeing the industry. Consumers desire assurance that the home inspector they hire is competent, and that they have recourse against inspectors that are not. CSHB 27 (L&C) accomplishes this by establishing licensing qualifications such as registration, insurance, and proof of competency via a written and practical examination. Home inspectors will also be required to provide consumers with an inspection report.

A faulty inspection could have serious consequences for consumers, practically when they are buying or selling a home. Common sense dictates that home inspectors must be held accountable for their work. This limits legal actions against a licensed and registered home inspector to a written home inspector report that is not more than 180 days old and/or unlawfully disclosed.

I have met with representatives from the industry who agree licensure for home inspectors is a worthy goal. It will establish a competency level that will protect the name of the profession and shield consumers from faulty inspections.

I would urge your support for this legislation.

ED2:02/16/2001

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

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

website: <http://www.akrepublicans.org/Rokeberg.htm>



INTERIM:
716 WEST 4TH AVENUE, SUITE 350
ANCHORAGE, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0110

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

Representative Norman Rokeberg

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

SECTIONAL ANALYSIS CSHB 27 (FIN)

An Act relating to the licensure and registration of individuals who perform home inspections; relating to home inspection requirements for residential loans purchased or approved by the Alaska Housing Finance Corporation; relating to civil actions by and against home inspectors; and providing for an effective date

Prepared by Representative Norman Rokeberg

Section 1:

Article 1: Creates Board of Home Inspectors and sets forth membership and general duties. Permits Board to meet by teleconference and sets quorum requirement.

Article 2: Mandates that a license is required to be a home inspector unless a person is exempt under 08.57.920 of the bill or is a registered associate home inspector. Establishes qualifications for license. Establishes qualifications for license renewal and continued competency. Permits the department to establish fees for license and renewal of home inspector license or registration as an associate home inspector, examination fees, and publications and seminars.

Article 3: Sets forth the requirement that a home inspector must have and maintain certain insurance.

Article 4: Establishes identification and advertising requirements. Sets forth that a pre-inspection document is required and establishes that document shall contain. Establishes that a conflict of interest must be disclosed and defines "conflict of interest". Establishes that a written inspection report is required.

Article 5: Establishes the grounds for disciplinary sanctions or other license violations. Mandates that regulations and proceedings of the board are governed by the Administrative Procedures Act. Establishes that the board or department may institute action against a licensee to enjoin an individual from performing a home inspection in violation of the law. Sets forth the class of violation.

Article 6: Describes legal actions by the home inspector and legal actions against the home inspector.

Article 7: Lists prohibited acts. Establishes limitation on activities. Sets forth exemptions and definitions.

Section 2: Adds the Board to the list of boards and commissions in the centralized licensing statutes.

- Section 3:** Establishes a sunset date of June 30, 2005 for the Board.
- Section 4:** Amends current AHFC statute requiring a home inspection before certain loan commitments are made by AHFC. Adds licensed home inspectors to list of people qualified to accomplish an inspection and eliminates the distinction in current law for rural areas, thus allowing an architect, engineer, or other person approved by AHFC to qualify as a home inspector under the AHFC statute for all homes, not just those in rural areas.
- Section 5:** Amends same AHFC statute described in Section 4, but amendment does not take effect until January 1, 2004, so is set out separately. Would eliminate persons certified by the ICBO and IAEA from being qualified to do the AHFC inspections referred to in AS 18.56.300(b) as these individuals would now be under the home inspector license requirements.
- Section 6:** Adds Board of Home Inspectors to Administrative Procedures Act.
- Section 7:** Brings violations of 08.57.320 [disclosures of conflict of interest], 08.57.330 [home inspection report], or 08.57.900 [prohibited acts] under the "unfair trade practices" statutes.
- Section 8:** Repeals AS 18.56.300(c) effective July 1, 2003 (see Section 15).
- Section 9:** Establishes applicability of Section 8.
- Section 10:** Permits the new board to begin working on regulations immediately.
- Section 11:** Permits initial home inspector members of the board to be appointed before they are licensed as home inspectors.
- Section 12:** Provides for transitional licensing.
- Section 13:** Effective date for certain provisions of the legislation.
- Section 14:** Section 5 effective date is January 1, 2004.
- Section 15:** Sections 8 and 9 take effect July 1, 2003.
- Section 16:** Immediate effective date for remainder of legislation except as provides for in sections 13-15.

ED2:02/16/2001

Sec. 18.56.300. Construction standards for housing eligible for purchase of loans.

(a) The corporation may not make or purchase a housing loan for residential housing the construction of which begins after June 30, 1992, unless the seller of the mortgage loan complies with the provisions of this section and unless

(1) the unit is in compliance with the construction codes of the municipality, if the unit is located within a municipality that has adopted and enforces construction codes and each of those codes meets or exceeds the comparable standards for similar housing established by the state building code; or

(2) the unit is in compliance with the comparable standards for similar housing established by the state building code

(A) if the unit is located

(i) within a municipality whose construction codes do not meet the standards for similar housing established by the state building code;

(ii) within a municipality that does not enforce construction codes; or

(iii) outside a municipality; or

(B) as to each specific code within the construction codes of the municipality that has adopted and enforces construction codes if the specific code does not meet or exceed the comparable standard for similar housing established by the state building code.

(b) As a condition of a commitment to purchase or approve a loan under this section for residential housing the construction of which begins after June 30, 1992, the corporation shall require inspection of the unit of residential housing that is the subject of the loan. The inspection must be performed by a municipal building inspector, by a person who is approved or certified to perform residential inspections by the International Conference of Building Officials or the International Association of Electrical Inspectors, or, when the unit of residential housing is located in a rural area, by an architect licensed under AS 08.48, by an engineer licensed under AS 08.48, or by another person approved by the corporation. When the unit of residential housing is located in a rural area, the person who makes the inspection may use methods other than a personal physical inspection to make the inspection if the method is approved by the corporation, and variations from the applicable code may be accepted at the corporation's discretion, if the person authorized to inspect the unit under this subsection satisfies the corporation that the variation does not adversely affect the structural integrity of the unit or the health and safety of the residents. The person who makes the inspection shall determine whether the construction conforms to relevant provisions of the construction codes of the municipality or of the state building code, as applicable, at each of the following stages of construction:

(1) plan approval;

(2) completion of footings and foundations;

(3) completion of electrical installation, plumbing, and framing;

(4) completion of installation of insulation;

(5) final approval.

(c) A person may not bring an action for damages based on a duty imposed by (b) of this section to inspect a residential unit unless the action is for damages caused by gross negligence or intentional misconduct.

(d) This section does not apply to a nonconforming housing loan made or purchased by the corporation.

(e) In this section,

(1) "construction codes" means, with reference to a municipality, the building, mechanical, plumbing, and electrical codes, or any of them that have been adopted and are enforced by the municipality;

(2) "rural area" means a community with a population of 5,500 or less that is not connected by road or rail to Anchorage or Fairbanks;

(3) "state building code" means

(A) for building standards, the standards set out in the version of the Uniform Building Code adopted by the Department of Public Safety under AS 18.70.080, including the provisions of that code applicable to buildings used for residential purposes containing fewer than four dwelling units, notwithstanding the exclusion of those buildings from the Department of Public Safety's jurisdiction made by AS 18.70.080(a)(2);

(B) for mechanical standards, the standards set out in the version of the Uniform Mechanical Code adopted by the Department of Public Safety under AS 18.70.080, including the provisions of that code applicable to buildings used for residential purposes containing fewer than four dwelling units, notwithstanding the exclusion of those buildings from the Department of Public Safety's jurisdiction made by AS 18.70.080(a)(2);

(C) for plumbing standards, the minimum plumbing code adopted for the state under AS 18.60.705; and

(D) for electrical standards, the minimum electrical standards prescribed by AS 18.60.580.

(§ 2 ch 85 SLA 1990; am § 1 ch 29 SLA 1991; am §§ 1, 2 ch 52 SLA 1991; am § 99 ch 4 FSSLA 1992; am §§ 1, 2 ch 81 SLA 1994; am § 1 ch 2 SLA 1996)

Revisor's notes. Paragraph (e)(2) was enacted as (e)(3). Renumbered in 1994, at which time former (e)(2) was renumbered as (e)(3).

Effect of amendments. The first 1991 amendment, effective June 12, 1991, in former subparagraph (e)(2)(C) (now (e)(3)(C)), substituted "the publications identified as the minimum plumbing code" for "the minimum plumbing code adopted by the Department of Labor."

The second 1991 amendment, effective June 16, 1991, in the first sentences of subsections (a) and (b), substituted "June 30, 1992" for "June 30, 1991."

The 1992 amendment, effective July 1, 1992, in subsection (d), inserted "nonconforming" and "or purchased" and deleted "under AS 18.56.106" from the end.

The 1994 amendment, effective September 4, 1994, rewrote the second sentence in subsection (b) and added present paragraph (e)(2).

The 1996 amendment, effective May 30, 1996, in subparagraph (e)(3)(C), deleted "publications identified as the" following "plumbing standards, the" and inserted "adopted for the state."

Editor's notes. Section 3, ch. 85, SLA 1990, as amended by § 4, ch. 52, SLA 1991, provides that former AS 18.56.300(e)(2)(A) and (B) (now (e)(3)(A) and (B)) "are intended to assure that, for purposes of determining whether housing the construction of which begins after June 30, 1992, meets the building and mechanical standards under AS 18.56.300(a) and (b), enacted by § 2 of this Act, the standards set out in each of the following fully apply to residences containing fewer than four dwelling units, even though those

residences are excepted from regulation by AS 18.70.080(a)(2):

"(1) the Uniform Building Code, adopted for the state by 13 AAC 50.020(a);

"(2) the Uniform Mechanical Code, adopted for the state by 13 AAC 50.020(b)."

12-8-2006

From: www.ashi.com

American Society of Home Inspectors®

State Home Inspector Licensing/Regulation as of October 27, 2000



Alabama Registration. Under the "Alabama Home Inspectors Registration Act," home inspectors must show proof of liability insurance and show evidence of one of the following: 1) membership in and adherence to the ethical standards of ASHI or an equivalent professional body; 2) current approval or certification by the United States Veterans Administration, the United States Department of Housing and Urban Development, the Southern Building Code Congress International, or the Council of American Building Officials; 3) a high school diploma or its equivalent, work experience for at least one year as a home inspector, and completion of at least 100 home inspections for compensation; or 4) current licensure in Alabama as a general contractor, architect, structural engineer, or residential home builder.

Arizona Registration. Under the Arizona Home Inspector Registration Act, the State Board of Technical Registration (SBTR) administers registration requirements for home inspectors. The law establishes a process and requirements for registration and registration renewal as a home inspector. In addition, the law requires that registered home inspectors have one of the following financial assurances: a. Errors and Omissions in the amount of \$200,000 in the aggregate and \$100,000 per occurrence. b. \$25,000 bond or. c. Financial assurance mechanism with a value of at least \$25,000. The law states that a failure to obtain, or loss of, financial assurance is grounds for revocation of registration. The law allows a practicing home inspector to present evidence of sufficient experience to not have to obtain training through December 31, 2002. The act exempts individuals from course study requirements for registration that can provide evidence to the SBTR that they have performed 250 or more home inspections for compensation.

Arkansas Registration. Under the "Arkansas Home Inspector Registration Act," all home inspectors in the state must register with the Secretary of State. In addition, home inspectors must conduct all inspections in adherence to the ASHI Standards of Practice and Code of Ethics, the Arkansas Association of Real Estate Inspectors, or an equivalent professional home inspection association. The law prohibits inspectors from performing repairs on a structure he has inspected within the previous 12 months. In order to register under the law, an applicant must procure general liability insurance of at least \$100,000 and, if applicable, workers compensation insurance coverage. Home inspectors must also demonstrate a positive net worth, or provide a \$10,000 bond payable to the Secretary of State.

California Trade practice act. The law in California prohibits "unethical" home inspection practices, including repairing properties that home inspectors have inspected in the previous 12 months. The law encourages courts to consider the ASHI Standards of Practice and Code of Ethics and the California Real Estate Inspection Association when determining whether or not an inspection meets the required standard of care.

Connecticut Licensure. Connecticut law requires home inspectors to be licensed under the "Home Inspection Licensing Board." In order to be eligible for a home inspector license, an applicant shall: 1) have successfully completed high school or its equivalent; 2) have either been engaged as a home inspector intern for not less than one year and not performed less than 200 home inspections for compensation or have taken and successfully completed a board-approved training program, earned a home inspector intern permit, and performed not less than 100 home inspections under the direct supervision and in the presence of a licensed home inspector; 3) have passed an oral, written, or electronic competency examination; and 4) have paid a \$200 fee. In order to receive a permit as a home inspector intern, an applicant shall: 1) have successfully completed high school or its equivalent; 2) have enrolled in and completed a board-approved training program; 3) have an identified supervisor, who is licensed as a home inspector, is in good standing, and has agreed to perform the supervisory functions required; and 4) have paid a \$100 fee.

Georgia Trade practice act. Georgia law requires home inspectors to provide written documents containing certain information with regard to inspections. The documents must include the scope of the inspection, including the structural elements and systems to be inspected and, must state the inspection is a visual inspection, and that the home inspector will notify, in writing, the person on whose behalf such inspection is being made of any defects noted during the inspection.

Louisiana Licensure. HB 893 created the "Louisiana Home Inspectors Licensing Law." The bill created the Louisiana State Board of Home Inspectors within the Department of Economic Development, and it requires the Board to establish minimum qualifications for licensing and allows the Board to charge and collect fees. Applicants for licensure must be at least 18 years old and must have successfully complete high school or its equivalent, and must have passed the required examination. Applicants must also show evidence of successful completion of at least 120 hours of instruction, at least 30, but no more than 40 of which, must be in course work containing actual practical home inspections. Home inspectors are required to provide a written report of the home inspection, and are prohibited from, at the time of the inspection and for a reasonable time thereafter, advertising or soliciting to perform repair services on the home, which the inspection was performed. As a condition of renewal of a license, a home inspector must show evidence of completion of 20 hours of continuing education. Active licensees are required to carry errors and omission insurance, and the Board must establish a group insurance program.

Maryland Trade practice act. Maryland law requires home inspectors to disclose professional qualifications and the scope of the inspection within the home inspection contract. The law also requires home inspectors to conduct home inspections in accordance with the standards of practice set forth by a professional home inspection trade association such as ASHI or the National Association of Home Inspectors.

Massachusetts Licensure. Massachusetts's law requires home inspectors and associate home inspectors to be licensed under the Board of Registration of Home Inspectors. The Board is required to: 1) establish the requirements for licensure and for the standards of professional and ethical conduct; 2) establish standards for continuing education; 3) authorize and conduct examinations; 4) grant licenses to qualified applicants; and 5) establish penalties. The law also requires that the Director of the Office of Consumer Affairs and Business Regulation publish an informational brochure on home inspections, which must be issued to homebuyers at the signing of an offer to purchase. Licensed home inspectors must: 1) have successfully completed high school or its equivalent; 2) have been engaged as a licensed associate home inspector for not less than one year and have performed not less than 100 home inspections under the supervision of a licensed home inspector; 3) have passed a written or electronic competency examination; and 4) paid the appropriate fee. A licensed associate home inspector must: 1) have successfully completed high school or its equivalent; 2) have successfully completed a Board-approved training program; 3) have performed not less than 25 home inspections in the presence of a licensed home inspector; 4) have passed a written or electronic competency exam; 5) have an identified supervisor who is a person licensed in good standing as a home inspector; and 6) paid the appropriate fee. Licensed home inspectors and associate home inspectors must carry errors and omissions insurance in an amount not less than \$250,000. Also, a home inspector or associate home inspector may not attempt to limit liability for negligent or wrongful errors or omissions by use of a clause within a performance contract that limits the cost of damages from negligent or wrongful errors or omissions.

Montana Trade practice act. The Montana law (SB 210), the "Home Inspection Trade Practices Act," prescribes what elements must be identified in a home inspection and defines prohibited activities by a home inspector.

Nevada Certification. Nevada law provides for the certification of home inspectors of structures by the Real Estate Division of the Department of Business and Industry. Applicants must submit proof they have errors and omissions insurance of at least \$100,000 and general liability insurance of at least \$100,000. The

law also provides that a purchaser may not recover damages from a seller on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by a certified inspector of real estate.

New Jersey Licensure. The New Jersey's "Home Inspection Professional Licensing Act," sets specific educational and experience requirements in order to become a licensed home inspector. All home inspectors are required to: 1) complete high school or its equivalent; 2) serve as a licensed associate inspector for at least one year; 3) perform at least 250 inspections; 4) carry \$500,000 in insurance; and 5) pass the ASHI exam, in order to become a licensed associate home inspector under the law, an inspector must: 1) perform at least 50 inspections in the presence of a licensed inspector; and 2) pass the ASHI exam. Also, the law provides that, if home inspectors fail to disclose problems or accept payment from another party in the transaction, they can lose their license. Home inspectors are regulated by a five-member Home Inspection Advisory Committee housed under the State Board of Professional Engineers and Land Surveyors.

North Carolina Licensure. The North Carolina "Home Inspection Licensure Act" provides for the licensing and regulation of home inspectors through the creation of a Home Inspector Licensure Board within the Department of Insurance. In order to become licensed as a home inspector, an individual must pass the licensing examination prescribed by the Board, have minimum net assets or a bond in an amount determined by the Board (not less than \$5,000 nor more than \$10,000) and meet certain educational conditions, including: 1) have a high school diploma or its equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation; 2) have education and experience the Board considers to be equivalent to that in subpart 1. above; or 3) be licensed as a general contractor, architect, or professional engineer. In order to become licensed as an associate home inspector, an individual must pass a licensing examination prescribed by the Board, have a high school diploma or its equivalent, and be affiliated with or intend to be affiliated with a licensed home inspector and submit a sworn statement by the licensed home inspector with whom the applicant is or intends to be affiliated certifying that the licensed home inspector will actively supervise and train the applicant.

Oregon Certification. The law in Oregon requires home inspectors to be certified under the Construction Contractors Board, and allows the Board to establish competency testing, training, and continuing education requirements. Also, home inspectors in Oregon are required to post bond and carry insurance under a law passed in 1992.

Rhode Island Trade practice act. The law in Rhode Island forbids home inspectors, pest control inspectors, and contractors from doing work on property that is inspected prior to real estate sales. The law was passed to help eliminate activities that could present a conflict of interest.

Licensure. The new Rhode Island legislation creates a home inspector licensing law and requires that all home inspectors be licensed. Home inspectors would be required to maintain \$250,000 of liability insurance and would be required to pass written examinations. This law will take effect on January 1, 2001.

South Carolina Licensure. South Carolina law requires any person desiring to be a licensed home inspector to file with the South Carolina Residential Builders Commission. A home inspector must show to the satisfaction of the Commission that he is currently certified as a home inspector by an organization recognized by the Commission, that he has a minimum of one year of experience as a home inspector under the supervision of a licensed inspector, and that he has performed a minimum of fifty residential inspections.

South Dakota Licensure. The South Dakota law provides for the regulation of home inspectors. The South Dakota Real Estate Commission shall issue and renew certificates to licensed and registered home inspectors pursuant to the provisions of this law. No person may provide a home inspection for compensation unless registered or licensed in the State of South Dakota. Applicants for a license as a home inspector shall meet the following requirements; 1) Good moral character; 2) Completion of high school or equivalency; 3) Employment as a registered home inspector for not less than one year and performance of not less than one hundred home inspections for compensation; 4) Successful completion of licensing exam. Applicants for registration as a home inspector shall meet the following requirements; 1) Good moral character; 2) Completion of high school or equivalency; 3) Successful completion of an approved course of study; 4) Successful completion of registration exam.

Tennessee Certification. Tennessee law only applies to the inspection of new construction and authorizes such inspections if the inspector is: 1) a licensed contractor; 2) certified by the state as a fire prevention officer or building official; 3) certified by the Southern Building Code Congress; 4) certified by the Home Inspectors of Tennessee Association; or 5) certified by ASHI. The law only applies to inspectors in certain counties in Tennessee.

Texas Licensure. The Texas licensure law provides for the examination of home inspectors and established continuing education requirements. The law also requires home inspector applicants to work as apprentice inspectors under the supervision of a professional licensed home inspector. If an applicant is unable to obtain an apprenticeship, educational coursework and an examination can be substituted. The Texas Real Estate Commission regulates home inspectors.

Wisconsin Certification. Under Wisconsin's law, home inspectors must register with the State and pass an examination approved by the Department of Regulation and Licensing. The law instructs the Department to consider the use of an examination modeled after ASHI's examination. The law also requires that a home inspector perform a "reasonably competent and diligent" inspection; however, the inspection is not required to be technically exhaustive. Home inspectors are prohibited from limiting their liability from damages resulting in a failure to conduct a "reasonably competent and diligent" inspection. Also, inspectors are prohibited from performing repairs, maintenance, or improvements to a structure that they have inspected within the last two years.



By Rick Jarvis, CRS, CRP
Associated Broker
Re/Max Properties

Should We Care Who the Buyer

Chooses to Do a Home Inspection?

Who are those guys who have so much influence on the residential real estate market? Their written reports and recommendations affect the buying and selling of millions of dollars worth of properties each year. But they are NOT state tested for knowledge, or licensed or regulated in any manner. Their reports and their opinions can and often do influence the decision making of buyers, lenders, appraisers, real estate agents, underwriters, contractors, and specialists of all kinds. Yet they are Not regulated in any manner.

Let me ask you a few questions: What is the purpose of a home inspection? What do you know about the background, experience and training of your favorite "home inspector?" Why should we care? As a Buyer's Agent, should we care who the buyer chooses to do a home inspection? As a Seller representative, should we question a home inspection report or depend upon the appraisers and lender to scrutinize these reports? Have you ever asked a home inspector to show you where his recommendations for repairs are supported by code or lender requirements?

Perhaps the most important question to ask a home inspector is: DO YOU HAVE ERRORS AND OMISSIONS INSURANCE? Could this be important information for a buyer, seller or real estate agent to know about? What if the home inspector makes a mistake? A few are trying to hold their liability to only the cost of the home inspection report. One home inspector said the reason he did not have E & O insurance was to avoid being sued. "That way they don't come after me." Gee. I wonder who a disgruntled buyer or seller will look to next?

Now don't get me wrong, and let me make it perfectly clear: I do believe that there is a vital place and purpose for home inspections within the scope of a real estate transaction. In fact I believe that almost every home inspector I have met tries his best to do a thorough and conscientious inspection.

After conducting an informal survey of home inspectors, the following observations were made:

1. *Every home inspector interviewed agreed that some*

form of reasonable and reliable regulation for home inspectors is needed.

2. *Only about half the home inspectors interviewed had Errors and Omission Insurance.*

3. *Three years was about the average time frame a home inspector has been in the business.*

4. *Most thought the American Society of Home Inspectors (ASHI) set the best standards and qualifications for a person to become a home inspector.*

5. *Most every home inspector had a construction, engineering or architectural background.*

6. *On average the home inspectors interviewed conducted between 125-175 home inspections a year.*

The demand for home inspections is ever increasing. Relocation companies are now requiring home inspections on the home purchase by transferee as a requirement for a "buy out" program when the employee is transferred again. Alaska Housing is planning to make home inspections "mandatory" for a buyer to sign. It makes buyers aware of the importance of a home inspection and asks them to indicate whether or not they will be obtaining a home inspection. Indeed, home inspections are becoming a normal routine for most residential transactions.

Let me suggest that all home inspectors organize themselves to become self-regulated. They should set the standards by which all home inspections are conducted and establish the qualifications to become a general home inspector in Alaska. They need to have continuing educational courses. They should have standardized written report forms. They need to have E & O Insurance. They should do this ASAP. And if they cannot organize themselves, then the Real Estate Commission, interested REALTOR® Boards, real estate agents, brokers, appraisers, home inspectors, banks and mortgage companies should create a task force to ask the State Legislature to regulate home inspectors.

In the meantime, what to do? Ask lots of questions -- E&O, background, experience, how report is structured, easy to understand, how long to receive, fees, liability, issues, etc. The Anchorage Board is looking for your input about this process. Please send your comments/recommendations: Fax - 563-8476.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Home-inspection bill would help buyers



CLAIR RAMSEY

Home inspections have become an intricate part of the home-buying process. As the importance of home inspection has increased, so have concerns of regulating this relatively new profession in Alaska. Legislation sponsored by state Rep. Norm Rokeberg, R-Anchorage, has taken on the job.

Rokeberg's proposal — HB207 — calls for state oversight of home inspectors similar to that applied to real estate agents, with licensing, bonding and educational requirements.

With input of local inspectors and the rest of the real estate industry, I hope that this proposal will be the guideline to ensure professional inspections provide adequate consumer protection with a minimal amount of government regulation.

Home inspections have also become a focal point for changes to the Federal Housing Authority's appraisal process. Andrew Cuomo, federal secretary of Housing

Please see Page C-2, RAMSEY

ADN
27 June 1999 C-1

RAMSEY: Bill would help buyers

Continued from Page C-1

and Urban Development, recently announced an initiative to provide extra protection to the more than 1 million families that obtain FHA-insured loans each year. FHA-insured loans allow buyers who may not qualify under other financing programs to purchase a house using a minimal amount of money up front (a little more than 3 percent of the purchase price).

Key aspects of the Homebuyer Protection Initiative include: 1) Educating consumers about appraisals and inspections; 2) mandatory testing of appraisers to ensure quality appraisals; and 3) uncovering significant hidden defects in houses before purchase by providing a more comprehensive appraisal.

The reason for the change in focus is in response to major defects in houses being sold that are not detected before the sale. A new home buyer who barely qualifies for a loan typically lacks cash to make major repairs. As a result, some buyers defaulted on their mortgages, filed for bankruptcy or both.

The FHA's Homebuyer Protection Initiative encourages buyers to obtain a home inspection and not rely solely on the appraisal. The agency believes the home inspection is so important it even allows the

The Homebuyer Protection Initiative encourages buyers to obtain a home inspection.

areas for deficiencies normally covered under a home inspection. Such areas include health and safety issues; electrical, heating and plumbing systems; the structural condition of the walls, ceilings and foundations, as well as other items.

To eliminate the liability inherent with working outside their area of expertise, one solution may be for appraisers to receive a copy of the home inspection before completing their appraisal. Because the inspection typically occurs before the appraisal, this is easy to do. If for any reason the appraisal is ordered first, the appraisers can complete the investigative work but hold back the appraisal until they can review the inspection report.

In an era of specialization, every aspect of buying a house needs to be dealt with by the proper professional. The lender provides the best financing to fit your needs, the appraiser determines value and the home inspector examines the property for soundness and safety. Doubling up on services is like asking the surgeon or anesthesiologist to do the other person's job. Not

1998	180,819,987	\$130,593,667	\$69.3
1995	218,001,719	\$170,029,398	\$90.3
1994	181,218,648	\$174,547,820	\$93.5
1993	218,071,180	\$145,328,506	\$77.5

But it wasn't enough. Not nearly. In fact, 1998 was an economic disaster for Bristol Bay fishermen, the poorest year in a row.

Expert home inspections useful for buyer and seller



**CLAIR
RAMSEY**

Previously I discussed licensing of home inspectors (June 27, Page C-1). This time, let's focus on the actual home inspection. After a buyer and seller sign a purchase agreement on a home defining price and terms, the home inspection occurs. By the time the inspection report and buyer's request for repairs is delivered to the seller, the home typically has been off the market for two weeks.

In many cases the results of the inspection report reopen negotiations between buyer and seller. Negotiating on repairs can delay closing, and it rarely is resolved to the seller's liking. The lender and or appraiser also may require repairs of major items noted in the inspection before financing the home.

The home inspection report typically groups items between minor ongoing

maintenance and major repairs. Major repairs are of most concern to buyers and sellers alike. Major problem areas frequently include the roof, groundwater, furnaces and decks.

Let's start with the roof. What is the age and condition of the roof? Is the roof ventilated or non ventilated? Does the roof have an ice shield? If the roof is 2 to 3 years old, there should not be a problem. If the roof is 20 years old, per-

haps there are reasons for concern. Non ventilated roofs are subject to condensation problems not always visible on the home's interior. Ice shields help prevent infiltration of water when ice dams form in the winter months. Replacing or repairing a roof can be expensive.

Groundwater problems are a second

Please See Page C-5, RAMSEY

ADN

23 July 1999 p C-1

RAMSEY: Inspections focus on repairs.

Continued from Page C-1

area of concern. Is there evidence of water in the crawl space? How is water removed from the crawl space? Does your home have a sump pump? Does it pump into the city sewer — which is illegal — or to an outside drain? Does the ground outside slope away from the home, or toward it? Ground that slopes toward the house may send water into the crawl space or basement. The crawl space is an area where homeowners rarely look, unless a problem arises. Groundwater problems can also be expensive to repair.

The third problem area is the furnace. What is the condition of the furnace or forced-air heating systems? Does the furnace have a cracked heat exchanger? If it is 10 to 15 years old, it may have. This may necessitate a new furnace if the heat exchanger cannot be economically replaced.

As Anchorage ages, it becomes evident that many homes built in the late '70s and early '80s are not withstanding the test of time gracefully. Decks and bathrooms are typical areas of concern in older homes. Most decks were built with fir, and homeowners did not fully understand the upkeep required. Many of these decks are now rotting and require renovation or even complete replacement.

Bathrooms in older homes may also need

attention. Walls around tubs and showers may be showing evidence of deterioration as water penetrates through the grout between the tile to the sheet rock behind. Removing and replacing select tiles can be difficult, particularly when trying to match older ceramic tile. However, repairing either of these areas prior to putting your home on the market helps demonstrate that your property has been adequately maintained.

Before you sell your home, find out if you have a major problem. Don't worry about small items like ground-fault circuit interrupter outlets (GFCIs), seismic straps or hot water tanks. Focus on the bigger-cost items. If you have any concerns about these types of problems, address them before going on the market. Have your real estate agent recommend an inspector to check specific areas of concern. If you wait, it will be harder to get the buyers to adjust the sales price or participate in repairs after they make an offer. Completing repairs first may allow you to recover some of the expense with an increase in the sales price.

Clair Ramsey, CRS, is a local associate broker specializing in residential real estate. His opinion column appears every fourth Sunday. His e-mail address is ramsey@alaska.net.

INSPECT THE INSPECTOR: Choosing the Right One Can Help Avoid Costly Mistakes

by Karen Crawford, HouseMaster, 346-9190, hmalaska@pobox.alaska.net

Home buyer horror stories are plentiful: A new home owner finds the roof leaks during the first rain, the circuit breakers blow the first time everything gets plugged in, the furnace malfunctions during the first cold snap.

Buying a home is fraught with perils that are supposed to be eliminated with a professional home inspection. Unfortunately, such new homeowner nightmares can, and do, happen - even when a "professional" home inspector was called in to inspect the prospective home.

Many homebuyers think they are automatically protected against risk and liability when they order a home inspection. But home inspectors, unfortunately, are not all created equal.

There is so much riding on the inspection, yet many homebuyers don't know what qualifications they should be looking for in an inspection firm.

Inspection Industry Unregulated

There is no "official" regulation of the home inspection industry with regard to training, experience or insurance coverage, so credentials and credibility vary widely. It's the 'consumer beware' in this situation.

The home inspection industry grew out of a group of contractors, roofers and plumbers who supplemented their earnings during slow periods with inspections. These "independents" often did not have the complete knowledge of the total workings of a house and their findings were not always impartial.

Along with the boom real estate market in the 80s, the residential home inspection industry grew rapidly. Today, the consumer has the choice of hiring an independent inspector, who may or may not do it as a full-time profession, or go with an inspection company whose sole business is home inspections. These firms run the gamut from small "mom and pop" operations, to companies or franchise offices affiliated with a large national corporation. HouseMaster, with more than 230 offices across the U.S. and Canada, falls into the latter group.

Insurance & Training of Great Importance

Because there is no federal, state or provincial regulation of the home inspection industry, consumers need to know what to look for when hiring an inspector. While everyone - trained or not - is capable of making a mistake, the outcome can vary greatly depending on several key factors. Carrying the necessary insurance - called "Errors and Omissions (E&O)" insurance - is one of these critical factors.

In the event your buyer must bring a lawsuit against an uninsured inspector, chances are he'll simply go out of business and they will never collect the money needed for repairs, even if you win your case in court.

For inaximum benefit and liability protection for both buyers and sellers, HouseMaster advises that it is essential to hire a home inspection firm that employs inspectors with all of the following credentials:

* **Training and Technical Support:** training in all aspects of home inspection and ongoing support for questions and changes in residential construction techniques and systems.

* **Certification:** certification by a reputable training institute, which requires re-testing annually, such as The American Society of Home Inspectors (ASHI) or National Institute of Building Inspectors (NIBI).

* **Insurance:** insurance coverage, including general liability, worker's compensation and especially E and O insurance, which is like malpractice insurance

* **Written Guarantee:** a formal, written guarantee, which backs up the inspection findings.

If the inspector is missing any of these important credentials - particularly the E and O insurance - don't hire them. Even if they say they are certified, that does not guarantee that they have all the other credentials.

Large reputable companies have helped set many industry-accepted inspector requirements with their own stringent rules. HouseMaster, for example, requires all its franchise offices to carry Errors and Omissions insurance. It encourages all of its offices to have their inspectors trained and certified.

Engineer Versus General Inspector

Many engineers have been drawn to the inspection field as their industries have changed and scaled down, such as the defense industry or the aerospace industry. Consequently, there has been some confusion about whether to hire an 'engineer' or a 'general inspector'. But licensed engineers - even trained structural engineers - may not know a great deal about heating, plumbing, electrical systems or roofing. Hiring one for a home inspection is just like getting a heart specialist to do a general physical. Consumers should verify specifically what home inspection and experience training they have had in addition to their engineering background.

The biggest misconception is that structural problems can only be detected by a structural engineer. Properly trained inspectors are totally capable of detecting structural deficiencies.

In reality, the incidence of structural problems with resale homes is only around two percent, according to HouseMaster statistics. The highest incidence of problems, however, is with electrical wiring, water penetration, plumbing, heating and roofing, depending on the age of the home.

Is a structural engineer going to be able to find an electrical or heating system deficiency? These are serious and often expensive problems to be concerned with.

(Continued on Page 8)

(Continued from Page 7)

According to Warren Boroson, co-author with HouseMaster chairman Kenneth Austin of "The Homebuyer's Inspection Guide" available in bookstores, most homebuyers seem more comfortable dealing with people who have extensive home inspection experience, rather than those who have only advanced degrees. For example, an engineer may have studied aeronautical or chemical engineering, both of which offer no practical expertise in the systems that make a house work.

It's really critical to find a home inspector who is knowledgeable about all the systems within a home, is trained to look for symptoms of problems and keeps up to date on equipment and repair techniques. In the small percentage of cases where a structural condition is detected during an inspection, we may recommend further evaluation by a licensed engineer.

Proper Insurance Coverage Key Factor in the Litigious '90s

Critical to the home inspection is that the inspection firm or inspector carries all the proper insurance coverage. This helps ensure that the buyer is not financially responsible if the inspector makes an error (E&O), falls off the roof (Worker's Comp) or damages the seller's property in some way (General Liability).

Errors and Omissions insurance in real estate is the equivalent of malpractice insurance. This is very difficult insurance for home inspectors to obtain. If your buyers find an inspector who does not carry this type of insurance, it is usually an indication that the inspector has had no formal training, or has a poor track record in the industry.

Because of the cost of E and O insurance and the difficulty in qualifying for it, a small percentage of independent inspectors will carry it.

General liability insurance and worker's compensation is also extremely important. Without such coverage, the homebuyer assumes a large degree of liability for the safety and well being of the inspector while in the employ of the homebuyer during the inspection.

Independent Vs. Large Inspection Firm

There are other advantages to hiring a home inspector who works for an established company. National companies have set requirements for hiring, training, professionalism and insurance coverage; they have credibility and experience; and they can offer special services and technical support to customers and inspectors.

It is also important to ask whether the inspection firm will stand behind its inspection with a formal, written guarantee. HouseMaster, for example, includes in the inspection fee, a complimentary 90-day guarantee on the inspection for most of the major elements in the home that it found to be satisfactory at the time of the inspection.

In addition, its technical information center is available for buyers who want to know more about how to maintain or repair equipment in their home.

Educating homebuyers about the operation and maintenance of their new home is one of our main objectives. We encourage buyers to

(Continued on Page 14)

Finally A Tax Break For Self-Employed

MSAs
(Medical Savings Accounts)
Passed by Congress
Signed by President

- a) \$ into MSA = 100% tax-deductible*
- b) \$ into health premium = 45% tax-deductible

For many self-employed, a) and b) combined will cost less than conventional health insurance.

The law is more detailed than we can describe here. For more information on getting a tax-advantaged MSA, call:

Lonnie Crosby
Phone: 907-248-6348
Fax: 907-243-7847

Happy Thanksgiving!

We extend our sincere *Thanks* for your valued business and *Best Wishes* for the holiday.



(Continued from Page 8)

come along on the inspection, ask questions and call our office afterwards. We also provide printed material and a free instructional videotape on home maintenance and repairs as part of our comprehensive inspection package.

When you consider the potential risk and liability involved with the purchase or sale of a home, it pays to shop for the best - not the cheapest - inspection service available in your area.

The Six Most Important Questions to Ask When Hiring A Home Inspector

1. Is home inspection your only business?

Make certain it is, in order to avoid any potential conflicts of interest. Many independent inspectors do it on a part-time basis to supplement their real businesses as contractors, roofers, etc., and their report findings might be suspect.

2. Do you carry all the necessary insurance, including professional liability (E&O), general liability and worker's compensation?

E&O is the number one priority, says Warren Boroson, co-author of the Homebuyer's Inspection Guide. This malpractice-type insurance protects the inspector (and indirectly the homebuyer and those referring the inspector) against post-inspection legal problems. General liability covers personal liability not covered by the basic E&O policy and worker's compensation covers the safety of the inspector during the inspection.

3. Does the home inspection firm offer a written guarantee on the inspection?

It's best to hire an inspection company that offers a formal, written guarantee along with the inspection, although not many do.

4. How long does the inspection take and can the homebuyer accompany the inspector?

Yes, they should. A professional inspection of the average house takes about two hours. Be skeptical of home inspectors who don't want you to tag along. Inspectors who invite the homebuyer along will often offer valuable maintenance tips.

5. What type of a report will they buyer receive and when will they receive it?

There are various types of reports given by professional inspectors, including typed narrative (sent to the homebuyer within a week), and on-the-spot written reports for those who need or want the information as soon as possible. Don't accept a verbal report without a written backup, since you will have no record of the inspector's findings for future referral.

6. Is the inspector trained or certified in home inspection by a recognizable organization, such as the American Society of Home Inspector's (ASHI)?

With no official government regulation of the home inspection industry required in Alaska, certification by ASHI ensures that the inspector meets strict guidelines set forth by one of the largest and most reputable home inspection organizations.

Real help for real estate pros.

We know the real estate world isn't an 8 a.m. to 5 p.m. business. Count on NBA for flexible and convenient mortgage loan service. Call us today at 257-3434.

National Bank of Alaska
Investing In Your Life



**COURSES BY CORRESPONDENCE
TWENTY HOURS
FOR
2000 LICENSE RENEWAL**

\$250

Need less than 20 hours? Call for Rates!

Broker Licensing & Training

Broker License Self-Study	\$125
Broker License Exam Prep Software	\$35
Broker Training 15 Required Hours	\$250

**Real Estate Associate Learning Systems
2600 Cordova Street, Suite 100
Anchorage, Alaska 99503**

**Kathleen Kowalczuk
360-1176**

**Anita Bates
243-8777**



REALTOR NEWS

Equal Housing Opportunity Notice • Federal law prohibits discrimination based on race, color, sex, religion or national origin in the connection with the sale or rental of residential real estate. REALTOR NEWS does not knowingly accept advertisements in violation of the law.

PUBLICATION OF THE ANCHORAGE BOARD OF REALTORS

November
1999

Anxiety Continues Over FHA Appraisal Reform



Judy Kemplen, President
Alaska Mortgage
Bankers Association
SVP, National Bank of Alaska

On August 1, 1999, the HUD "Homebuyer Protection Plan", a major reform of the FHA appraisal process, went into effect. According to HUD, the goal of the plan is to ensure that appraisers identify observable defects that could undermine the safety, marketability or security of the property. Secretary Cuomo initiated the plan after widespread publicity about FHA borrowers buying homes with serious property defects.

On August 20, 1999, Anchorage appraisers met with Realtors, lenders and the local HUD office to discuss concerns over the new appraisal process contained in a revised HUD Handbook. It appeared to those who reviewed the revised Handbook that FHA wanted appraisers to perform the work of home inspectors or engineers. In addition, appraisers were now subject to severe sanctions for non-compliance with the Handbook. After that meeting, finding an appraiser to accept an FHA assignment was about as difficult as finding an Alaskan voting "yes" on the Advisory Vote.

For the next thirty days, the leadership of the Anchorage Board of Realtors, Alaska Mortgage Bankers Association, and Anchorage Appraisal Institute worked with Senator Stevens office to obtain revisions to the HUD handbook.

That work culminated in a nationally distributed letter to Senator Stevens from FHA Commissioner William C. Apgar. In summary, the letter states:

- * HUD will not enforce sanctions against appraisers until March 1, 2000.
- * FHA is not asking appraisers to perform home inspections.
- * FHA will allow an FHA-insured loan to close on a snow-covered roof home.

Round One of the FHA Appraisal Reform Battle is now over with Alaskans claiming a victory;

Round One of the FHA Appraisal Reform Battle is now over with Alaskans claiming a victory; however, there is still much work to be done. Today's FHA appraisals are more expensive not only because appraisers are charging more, but often an appraiser must require additional inspections from others to meet FHA requirements. Alaska is not the only state to experience an increase in costs. Lenders around the country are seeing higher FHA appraisal charges; some appraisers are refusing to do FHA appraisals. Appraiser Boards in several states have issued warnings to their appraisers to exercise caution when completing an FHA appraisal assignment.

(Continued from Page 1)

In November, FHA will issue a revision to their appraisal Handbook. We are hopeful that this revision will contain meaningful changes that will restore affordability to an FHA loan. Approximately half of the loans originated in Alaska have FHA insurance. Our delinquency rate for FHA loans is 5.41% compared to the national average at 7.74%; the percentage of loans in foreclosure is .5% (national, 2.42%). Alaska's performance on FHA loans exceeds the national average considerably. Commissioner Apgar was quoted in the National Mortgage News on September 13, 1999, that "if fewer [FHA] loans are made, so be it -- as long as they are the right fewer loans". Commissioner Apgar may be willing to accept fewer FHA loans; however, the Alaskan real estate community is not. We understand the crucial role FHA plays in getting Alaskans into homes and we will continue to advocate for reasonable appraisal requirements that do not constitute yet another barrier to home ownership.

1999 Publications Committee

Chairperson: **Ruth Horton,**
Pacific Northwest Title Company

Members:

Linda Cardoza, GRI	Polar Realty, Inc.
John Blaine	Prudential Jack White Real Estate
Don McKenzie	Re/Max of Eagle River
Ethhann Oldham	Stewart Pacific Rim Title
Production:	Charles Emerson

NEW REALTOR® APPLICANTS

The following people have made application for membership to the Anchorage Board of REALTORS®. If a member objects to any of these applicants becoming a member of the board, such objection must be stated in writing and submitted to the board within 10 days of receiving this publication.

Connie Heyworth	Fortune Properties
Margie Hubbard	Prudential Vista Real Estate
Laura Lyons	Wiley Brooks Company
David Rodriguez	Prudential Jack White Real Estate

Computer Network Solutions

Honesty and Integrity is an important part of our team.



We work with people that expect the best in computer help.

Tom, Rosanne, Ron

**We Replace or Upgrade Hardware,
Install and Update Software
Troubleshoot Problems,
Set up email**

MLS Trained Technicians



907-250-1954

This Newsletter is a monthly publication of:
Anchorage Board of REALTORS®

741 Sesame Street, Suite 100
Anchorage, Alaska 99503
Telephone: (907) 561-2338 Fax: (907) 563-8476

1999 Officers and Directors:

President - **Bill Brady, CRS, GRI**
President Elect - **Denny Wood, CRS**
Vice President - **Eva Lokken, ABR, CRS, GRI**
Secretary - **Michelle Coburn, CRS**
Treasurer - **Greg Erkins, ABR, CRB, CRS**
Past President - **Don McKenzie**

Anita Bates	Bernd Hoffmann, CCIM, CPM
John Blaine	Bill Minuse
Linda Cardoza, GRI	Ainslie Phillips
Gary Gearhart, CRS	Stephan Vlahovich
Elaine Girvan, CRS	LaVonne Vogt, ABR, CRS, GRI

Executive Officer
Sandy Forrest

Administrative Assistant
Charles Emerson

Materials reported in this publication are obtained from various sources which the Anchorage Board of REALTORS® believes to be reliable. Reasonable effort has been made to insure the accuracy of such material. The Anchorage Board of REALTORS® expressly disclaims any and all liability or responsibility arising directly or indirectly out of any discrepancy, error, mistake or omission in this publication. Opinions expressed in articles by individual authors and contributors are not necessarily the official opinion of the Anchorage Board of REALTORS®. Materials may not be reproduced in whole or in part in any form whatsoever without the expressed written permission of the Anchorage Board of REALTORS®.



ALASKA ASSOCIATION OF REALTORS, INC.
741 Sesame Street, Suite 100 - Anchorage, Alaska 99503
Telephone 907-563-7133 • Fax 907-561-1779

January 16, 2001

JAN 16 2001

Representative Rokeberg
State Capitol
Juneau, Alaska 99801-1182

RE: HB 27 - Relating to the licensing of home inspections

Dear Representative Rokeberg,

The Alaska Association of REALTORS with over 1,100 members statewide supports House Bill 27 relating to the licensing of home inspectors.

We agree that there should be some minimum standards set forth in this bill to protect the consumer. Minimum standards should include but are not limited to testing, insurance, education and the forming of a home inspector bill.

The Association encourages the passage of HB 27 during the first session. We continue to be available as a resource to pass this bill. Please feel free to contact the Association at (907) 563-7133.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bill Brady', written over a horizontal line.

Bill Brady, CRS, GRI
President





**ANCHORAGE BOARD
OF REALTORS, INC.**

REALTOR® *The Voice for Real Estate™* In Anchorage

741 Sesame Street
Suite #100
Anchorage, Alaska 99503
(907) 561-2338
(907) 563-8476 Fax

January 16, 2001

JAN 16 2001

Representative Rokeberg
State Capitol
Juneau, Alaska 99801-1182

RE: HB 27 – Relating to the licensing of home inspections

Dear Representative Rokeberg,

The Anchorage Board of REALTORS with over 600 members statewide supports House Bill 27 relating to the licensing of home inspectors.

The Anchorage Board is in agreement with the Alaska Association that there should be minimum standards set forth for home inspectors to protect the consumer.

The Board encourages the passage of HB 27.

Sincerely,

Gary Gearhart
President



LESSMEIER & WINTERS

LAWYERS - LLC

MICHAEL L. LESSMEIER
GREGORY W. LESSMEIER
SHELDON E. WINTERS
COLBY J. SMITH

431 NORTH FRANKLIN STREET
SUITE 400
JUNEAU, ALASKA 99801-1186

TELEPHONE: (907) 586-5912
FACSIMILE: (907) 463-3020
E-MAIL: l-w@gci.net

February 2, 2001

Representative Norman Rokeberg
State Capitol
Juneau, Alaska 99801-1182

FEB 02 2001

Re: CSHB 27

Dear Representative Rokeberg:

I am writing to you on behalf of State Farm Insurance Companies. State Farm insures roughly 75,000 homes in Alaska. Creating a board of home inspectors and requiring licensure, registration and oversight of home inspectors will in a variety of ways only benefit home owners, prospective home purchasers, qualified home inspectors and the public in general. State Farm supports CSHB 27 and encourages its passage.

Sincerely,

LESSMEIER & WINTERS

By: 
Sheldon E. Winters

465-2040

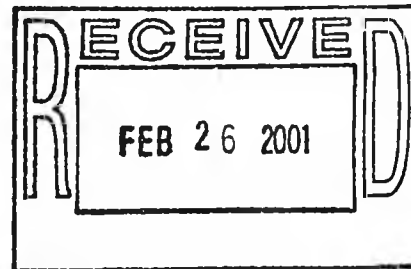


Alaska State Legislature

Please enter into the record my testimony to the (H) Jud
committee name
 committee on HB 27 . dated 2-23-2001
bill/subject

see attached

4 PAGES OF TESTIMONY.

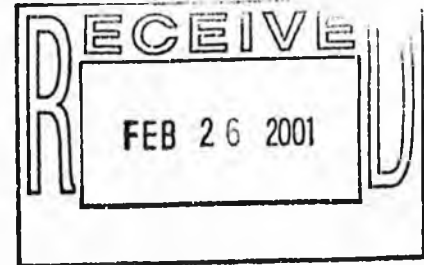


Signed: *SAV* (FRANCO VENUTI)
 Testifier

SELF
 Representing (Optional)
P.O. BOX #3652, HOMER, AK. 99603
 Address
907 235-7480 OR 399-1550
 Phone No.

1 of 4

F. Venuti, P.O. Box # 3652, Homer, Alaska 99603
(907)235-7480 or 399-1550



February 24, 2001

House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

In order to introduce myself, a statement of my qualifications is attached to this testimony.

Please enter the following testimony into the record regarding House Bill 27.

- I wish to comment about a letter from Carla Stanley which was introduced by Representative Rokeberg to the House Labor & Commerce Committee during that committee's hearings on this bill and which became part of the public record on Feb. 2nd. This letter is extremely insulting to me, contains a number of allegations that are not true and slanders my business reputation.

The letter refers to a civil case between the Stanleys and their builder, which went to binding arbitration in 1999. The arbitrator held the Stanleys liable. The Stanleys then appealed the arbitration. In 2000, the superior court also held the Stanleys liable. This case has been judged in two instances and set aside as having no merit, yet it is apparently being used as supporting evidence for this Bill. I was unaware of this letter when it was introduced and this Bill was moved out of that committee before I had a chance to review and comment about it. Since this letter slanders my reputation and refers to a case that has been found to be without merit, **I wish to take this opportunity to respectfully request that this letter be removed from the public record.**
- This case points out some interesting issues: The model codes are minimum standards only, not design ideals. **On new construction**, I often never meet the homeowners and never have any contact or a contract with them. My contract is normally with the builder. There are a number of builders that I inspect for on a regular basis. The quality of workmanship varies with their experience as well as with the price range that they build within. In the field, I cannot hold the builder to anything except minimum code standards. The home buyer usually does not understand this and often expects maximum standards. The reality of the market place is that the quality of a home is directly related to the budget. Unfortunately many new homebuyers have unrealistic expectations. Often, homeowners expect more than they pay for and naively assume that a \$130,000. home will have the same quality as a \$300,000. home. If the budget for a home only allows the structure to be built to minimum standards, **This is exactly what they get**, and sometimes they do not like it.

3. **On existing home transactions.** the final call on whether a home gets purchased usually falls on the real estate appraiser who evaluates a property based upon how it relates to the financing scenario. I might add that specific financing programs often have their own unique requirements and not all minimum code standards apply. In the typical home sale there are more people involved than just the buyer and the home inspector has to walk a fine line in order to keep the buyer, seller and realtor happy. In the real world, savvy inspectors write reports that please everybody and try not to squash any deals. This is because, in most instances, the realtor actually controls who does the inspection, they wisely only give referrals to inspectors who get positive results. In my experience, I have observed that if a buyer has his heart set on buying a specific home, he or she will do so irregardless of what an inspection report says about the property.

Existing home inspections and new construction inspections are two completely different issues. Somehow they need to be more clearly separated within this bill.

4. Regarding the text on page 4 line #1 (item 6 of Sec. 08.57.060) of this bill: which basically states that the board can refuse to issue a license to an individual who is the subject of an unresolved complaint.
What constitutes an unresolved complaint?
What if the complaint is without merit?
This statement has the potential of making it open season on Home Inspectors.

I support the intent of this bill, however, I do not think that, as it is written, it will eliminate homebuyer complaints. I think it will simply complicate issues.

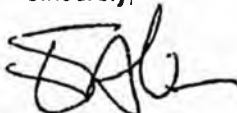
I submit that another more effective method of assuring homebuyer satisfaction is to require that homebuyers purchase new construction warranty insurance on new construction.

These programs already exist in the market place and would not require the layers of beauracracy and additional inspection costs to the consumer that this bill would entail.

Once again, I respectfully request that the Stanley letter be removed from the public record.

Thank you for giving me this opportunity to testify on this Bill.

Sincerely,



Franco Venuti
fcvenuti@xyz.net

Franco Venuti, P.O. Box # 3652, Homer, Alaska 99603
(907) 235-7480 or 399-1550

Qualification Statement

I have worked within the Alaskan construction industry as a licensed contractor, construction project manager, journeyman craftsman and building, fire/life safety inspector since 1978.

This experience has given me a realistic view of the management and budget processes involved in all types of construction, renovation and property maintenance/ facility repair projects.

I understand construction-funding procedures, job cost analysis, project crew management, fire and safety management (OSHA), commercial & residential code compliance as well as new and existing building inspection, evaluation and appraisal.

I am a certified ICBO Combination Dwelling Inspector (ICBO #865284-55).

In addition, I am a member of the FHA/HUD certified construction compliance panel (Insp.#3516) and also serve as the new and existing construction compliance inspector for the Veterans Administration on the Kenai Peninsula (Insp.#1004). My responsibilities in these positions involve performing plan reviews as well as on site inspections of new and existing residential and commercial properties on the lower and central Kenai Peninsula in order to assure compliance with the mandated parameters and minimum property standards of these Federal programs. My credentials permit me to perform all necessary inspections required to meet the criteria of the AHFC standards of new construction projects underwritten by this state agency.

I understand and use word processing, spreadsheet and data management programs and am Windows, Mac and Internet computer literate. I am very adept as CAD operator with the ability to draft detailed descriptive drawings as well as architectural and engineering plans in both two and three-dimensional planes. I am an excellent drafter and technical writer, am well organized and know how to communicate effectively with others.

Experience

For the past twenty-two years, I have worked in Alaska as a designer, contractor, renovator, and inspector. I had the opportunity to be involved in the design, management and construction of many residential, commercial and municipal projects. This would include: The Homer High School, The Bradley Lake Hydro-Electric Generating Facility and the South Peninsula Hospital. In 1980-81, our company built the Kachemak Community Center, including playground & picnic shelter. In 1983, I designed and built a three-store mall for the Anchor River Inn in Anchor Point. In 1984, I designed and built the Coal Point Monument. In 1985, I built the Port & Harbor offices addition. In 1991 & 1993, I completed two building renovation construction projects for the South Peninsula Mental Health Center.

In addition, during this period, I have been involved in numerous residential design, construction and renovation projects. An extensive list of clients could be provided if required.

I write a weekly column for the Homer News related to home maintenance, trade tips and code literacy.

I am a certified member of the International Conference of Building Officials (ICBO #865284-55), and am Handicap Access Literate with an understanding of the Americans with Disabilities Act of 1991.

I hold journeyman carpenter status with Carpenters Local 1281 and own a complete set of current codes.

Education

Boston Technical High School, Boston Mass. Graduate 1961
Northeastern University, Boston Mass. BBA Degree Program 1965-1969
Jordan Marsh Company, Boston Mass. Executive Training Program Graduate 1965
Cape Cod Community College, Barnstable Mass. 1971-1972.
Banff School of Fine Arts, Banff, Alberta, Canada 1973.
State of Alaska, Emergency Trauma Technician Training, Homer, AK. 1986.
Alaska Craftsman Building Energy Efficiency Standards Workshop. 1987.
Kenai Peninsula College, 1987-present.
AHFC / ICBO Inspector Training Workshop, Anchorage, AK. 1992.
Barrier Free Alaska Training Workshop (ADA Access) Homer, Ak. 1992.
FHA/HUD 203K Program Workshop, Anchorage, Ak. 1994.
AHFC- Residential Mechanical Ventilation Inspectors Workshop, Anchorage, AK. 1999.
ICBO- 1997 Uniform Building Code Inspectors Workshop, Anchorage, AK. 1998.
ICBO-Wood Inspection" Wood Framing" Inspectors Workshop, Anchorage, Ak. 1999.
ICBO- Load Path & Continuity in Engineered Wood Frame Inspectors Workshop, Anchorage AK. 2001.
ICBO- 2000 International Residential Code Inspectors Workshop, Anchorage, AK. 2001.
Continuing self education and improvement through hands on training as well as trade journals, periodicals & associated product literature.

References

Drew Scalzi , Alaska House of Representatives, Juneau AK. 465-2689
Karen Berg-Forrester, Coastal Realty Company, Homer 235-7700
Gail Phillips , Homer, AK. 235-6748
Jon Faulkner, Lands End Acquisition Corp., Homer 235-0400
Angie Newby, Homer Real Estate Associates, Homer, Alaska 235-5294
Dr. William Marley, DDS, Bayview Avenue, Homer AK. 235-8909
Sam Beachy , Beachy Construction Inc. , Homer, Alaska 235-8876
Robert Clutts, Anchor River Inn, Anchor Point, AK. 235-8390
Richard Rodriguez, VA Chief, Construction & Valuation, Anchorage, AK. 257-4700

I am a member of the Alaska Central Chapter ICBO, Anchorage, Alaska .
I am a member of the Homer ICBO Inspectors Group committee.
I served one term as a member of the Homer Public Library Advisory Board.
I currently serve as a member of the Boys & Girls Club of Homer Advisory Board.

HB

32

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 8, 2001

FURTHER REFERRALS: Finance

Date of Committee Action: 3.19.01

The JUDICIARY Committee considered:

HB 32

HOUSE BILL NO. 32

SEX CRIME AND PORNOGRAPHY FORFEITURES

"An Act relating to the forfeiture of property used to possess or distribute child pornography, to commit indecent viewing or photography, to commit a sex offense, or to solicit the commission of, attempt to commit, or conspire to commit possession or distribution of child pornography, indecent viewing or photography, or a sexual offense."


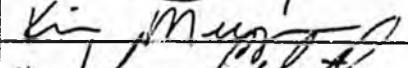
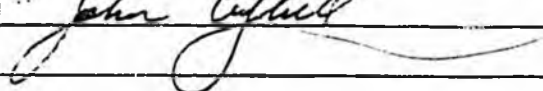
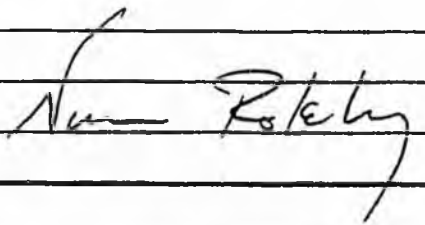
Recommends it be replaced with CS HB32 (JUD) [Same Title [New Title
 For Senate Bills with new title: [Technical Title [New Title: HCR _____

- [] attach amendments
- [] add new referral to _____ Committee
- [] Letter of Intent _____ Committee

List of Abbrev. For Depts.:
 ADM
 CED
 COR
 CRT
 FED
 DEC
 DFG
 GOV
 HSS
 LAA
 LAV
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
FN#	List by Dent(s):	Fiscal	Indet.	Zero
	DPS			✓
	CRT			✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN #	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Berkowitz			✓	
	Meyer	✓			
	Craybill	✓			
Chair: 	Rokeberg	✓			
Chair:					

22-LS0270\C
Luckhaupt
3/7/01

Adopted

CS FOR HOUSE BILL NO. 32()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES HAYES, McGuire, Guess, Murkowski

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the forfeiture of property used to possess or distribute child
2 pornography, to commit indecent viewing or photography, to commit a sex offense, or to
3 solicit the commission of, attempt to commit, or conspire to commit possession or
4 distribution of child pornography, indecent viewing or photography, or a sexual
5 offense."

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

7 * **Section 1.** AS 11.41 is amended by adding a new section to read:

8 **Sec. 11.41.468. Forfeiture of property used in sexual offense.** (a) Property
9 used to aid a violation of AS 11.41.410 - 11.41.470 or to aid the solicitation of,
10 attempt to commit, or conspiracy to commit a violation of AS 11.41.410 - 11.41.470
11 may be forfeited to the state upon the conviction of the offender.

12 (b) In this section, "property" means computer equipment,
13 telecommunications equipment, photography equipment, video or audio equipment,

1 books, magazines, photographs, videotapes, audiotapes, and any equipment or device,
2 regardless of format or technology employed, that can be used to store, create, modify,
3 receive, transmit, or distribute digital or analog information, including images, motion
4 pictures, and sounds.

5 * **Sec. 2.** AS 11.61 is amended by adding a new section to read:

6 **Sec. 11.61.129. Forfeiture of property used in indecent viewing or**
7 **photography or child pornography.** (a) Property used to aid a violation of
8 AS 11.61.123 - 11.61.127 or to aid the solicitation of, attempt to commit, or
9 conspiracy to commit a violation of AS 11.61.123 - 11.61.127 may be forfeited to the
10 state upon the conviction of the offender.

11 (b) In this section, "property" has the meaning given in AS 11.41.468.

22-LS0270\F
Luckhaupt
3/7/01

CS FOR HOUSE BILL NO. 32()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES HAYES, McGuire, Guess, Murkowski

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the forfeiture of property used to possess or distribute child
2 pornography, to commit indecent viewing or photography, to commit a sex offense, or to
3 solicit the commission of, attempt to commit, or conspire to commit possession or
4 distribution of child pornography, indecent viewing or photography, or a sexual
5 offense."

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

7 * **Section 1.** AS 11.41 is amended by adding a new section to read:

8 **Sec. 11.41.468. Forfeiture of property used in sexual offense.** Property,
9 other than real property, that contributes directly and materially to a violation of
10 AS 11.41.410 - 11.41.470 or to the solicitation of, attempt to commit, or conspiracy to
11 commit a violation of AS 11.41.410 - 11.41.470 may be forfeited to the state upon the
12 conviction of the offender.

13 * **Sec. 2.** AS 11.61 is amended by adding a new section to read:

1 Sec. 11.61.129. Forfeiture of property used in indecent viewing or
2 photography or child pornography. Property, other than real property, that
3 contributes directly and materially to a violation of AS 11.61.123 - 11.61.127 or to the
4 solicitation of, attempt to commit, or conspiracy to commit a violation of
5 AS 11.61.123 - 11.61.127 may be forfeited to the state upon the conviction of the
6 offender.

Amend #1

Line 9. p1

Line 1 p2

delete "used to aid"

insert

" other than real property,
that contributes directly
and materially to "

2.21.01

Not formally offered

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 32
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DPS
 Title: Sex Crime and Pornography Forfeitures BRU: Alaska State Troopers
 Component: AST-Detachments
 Sponsor: Representative Hayes
 Requester: House Judiciary Component Number: 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

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 (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not expected to have a fiscal impact.

Prepared by: Lt. Steve Dunnagan Phone (907)269-4532
 Division: Alaska State Troopers Date/Time 2/16/01 12:00 AM
 Approved by: Commissioner Glenn G. Godfrey Date 2/16/01
 Agency: Department of Public Safety

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 32

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Sex Crime and Pornography Forfeitures BRU Alaska Court System
 Component Trial Courts
 Sponsor Rep. Joe Hayes
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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 (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The court system does not anticipate any fiscal impact from the passage of HB 32.

Prepared by: Douglas Wooliver *[Signature]* Phone 463-4750
 Division Alaska Court System Date/Time 2/15/01 12:46 p.m.
 Approved by: Stephanie Cole *[Signature]* Date 2/15/01
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

House Committees

Labor & Commerce
Military & Veterans Affairs
State Affairs
Regulation Review

Alaska State Legislature Representative Joe Hayes

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
(907) 456-7423 / Fax: 451-9293

While in Juneau
State Capitol
Juneau, AK 99801-1182
(907) 465-3466 / Fax: 465-2937

Sponsor Statement

HB 32, Sex Crimes and Pornography Forfeitures

As the use of computers and the Internet expands so too do crimes involving the use of these technologies. One area of particular concern is sex crimes against children. Adults prone to abusing children will use the Internet to solicit a minor for sex or to set up a meeting with a child in order to rape or abuse the child. Further, many people, who are inclined to distribute or view child pornography, are now using their computers to do so. These are new technologies and the state still has relatively few tools for dealing with criminals using these technologies. HB32 provides us with another tool to use in combating sexual predators.

Across the country and at the federal level there are forfeiture laws in place. Several other states already have laws on the books specifically relating to the forfeiture of computers used in sex crimes. The use of computers in sex crimes is a national problem. As more and more states pass forfeiture legislation it is becoming increasingly obvious that this is a useful and valuable tool in the fight against computer crimes.

HB32 would make it possible for the police to stay on top of this rapidly changing industry without spending more state dollars. Advances in computer technologies seem to happen on a daily basis. New technology can often "outwit" last year's model, leaving the police at a large disadvantage in their attempt to curb crimes committed with the aid of the newest technology. In order for the police to combat computer and Internet crimes effectively it is imperative that they be constantly provided with new hardware.

Under AS 12.55.015 (c) the court may award forfeited property or a percentage of it to any municipal law enforcement agency involved in the arrest or conviction of the defendant. This would allow the courts to pass on seized property to the police so that the police can stay up to date with available technology in a cost-effective manner.

HB 32 is designed to help protect our children in a twofold manner: 1) forfeiture is a proven tool in the fight against crime, and 2) the forfeited property can be given to our local law enforcement agencies in order to help make sure that they have the necessary tools to protect our children. I ask for your support in passing this legislation.

District 30

representative_joe_hayes@legis.state.ak.us

House Committees


Labor & Commerce
Military & Veterans Affairs
State Affairs
Regulation Review

Alaska State Legislature
**Representative
Joe Hayes**

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
(907) 456-7423 / Fax: 451-9293

While in Juneau
State Capitol
Juneau, AK 99801-1182
(907) 465-3466 / Fax: 465-2937

Memorandum

To: Representative Rokeberg, Chair House Judiciary Committee
From: Representative Joe Hayes 
Date: February 6, 2001
Re: Sectional Analysis, HB32

Section 1. Adds a new section that authorizes forfeiture of property used to aide in the commission of a sexual offense under AS 11.41.410 – 11.41.470 including inchoate forms of those sexual offenses.

Section 2. Adds a new section that authorizes forfeiture of property used to aide in the commission of indecent photography or child pornography under AS 11.61.123 – 11.61.127 including inchoate forms of those offenses.

whereabouts and the child's whereabouts hidden from his wife and the authorities; this conduct was sufficient to constitute that actus reus of the offense of custodial interference: the keeping of the child with no legal right to do so. *Strother v. State*, 891 P.2d 214 (Alaska Ct. App. 1995).

Protracted period. — See note under same catchline, AS 11.41.320, *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

Sec. 11.41.370. Definitions. In AS 11.41.300 — 11.41.370, unless the context requires otherwise,

(1) "lawful custodian" means a parent, guardian, or other person responsible by authority of law for the care, custody, or control of another;

(2) "relative" means a parent, stepparent, ancestor, descendant, sibling, uncle, or aunt, including a relative of the same degree through marriage or adoption;

(3) "restrain" means to restrict a person's movements unlawfully and without consent, so as to interfere substantially with the person's liberty by moving the person from one place to another or by confining the person either in the place where the restriction commences or in a place to which the person has been moved; a restraint is "without consent" if it is accomplished

(A) by acquiescence of the restrained person, if the restrained person is under 16 years of age or is incompetent and the restrained person's lawful custodian has not acquiesced in the movement or confinement; or

(B) by force, threat, or deception. (§ 3 ch 166 SLA 1978)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

NOTES TO DECISIONS

Restraint by deception. — The jury could have concluded that defendant had secured victim's presence in his van through deception — by luring her with false promises of information concerning a child custody dispute — thereby committing an act of restraint. *State v. McDonald*, 872 P.2d 627 (Alaska Ct. App. 1994).

Defense that victim was defendant's relative. — The new criminal code, which states in AS 11.41.300(b)(1) that it is an affirmative defense that defendant was a relative of the victim, provides for a

broader exemption from the kidnapping statute than the absolute exemption for the abduction of a minor by his parent under former AS 11.15.260. *Crump v. State*, 625 P.2d 857 (Alaska 1981).

Quoted in *Alam v. State*, 793 P.2d 1081 (Alaska Ct. App. 1990).

Stated in *Strother v. State*, 891 P.2d 214 (Alaska Ct. App. 1995).

Cited in *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

Article 4. Sexual Offenses.

Section

- 410. Sexual assault in the first degree
- 420. Sexual assault in the second degree
- 425. Sexual assault in the third degree
- 427. Sexual assault in the fourth degree
- 432. Defenses
- 434. Sexual abuse of a minor in the first degree
- 436. Sexual abuse of a minor in the second degree
- 438. Sexual abuse of a minor in the third degree

Section

- 440. Sexual abuse of a minor in the fourth degree
- 445. General provisions
- 450. Incest
- 455. Unlawful exploitation of a minor
- 458. Indecent exposure in the first degree
- 460. Indecent exposure in the second degree
- 470. Definitions

Cross references. — For provisions concerning evidence and procedure in certain sexual offense cases, see AS 12.45.045 and 12.45.046.

For authority of court to order a defendant to submit to a blood test when sexual penetration is an element of the offense, see AS 18.15.300.

NOTES TO DECISIONS

Origin. — The Alaska Revised Code provisions defining sexual offenses are based on a proposed

Michigan Code. *Reynolds v. State*, 664 P.2d 621 (Alaska Ct. App. 1983).

Prohibiting suspension against the granting of sentence applies to persons to commit one of the sex

Collateral references §§ 1-12; 65 Am. Jur. 2d, R 2d, Sodomy, § 1 et seq.

42 C.J.S., Incest, §§ 1-1 97; 75 C.J.S., Rape, § 1 et et seq.

Anthony Morosco, *The Sex Crimes* (Matthew Be Entrapment to commit 1194.

Incest as included with 484.

Criminal responsibility assault to commit rape, (ALR4th 105.

Fraud or impersonation Impotency as defense t rape, or assault with inter 1351.

Rape or similar offense woman who is allegedly r 1227.

Consent as defense in ALR3d 636.

Multiple instances of f same defendant and sam multiple crimes of rape, 81 A

What constitutes offe ALR3d 1250.

Sec. 11.41.410. § crime of sexual assa

(1) the offender e that person;

(2) the offender a consent of that pers

(3) the offender e

(A) who the offen

(B) who is in the

(i) by authority o

(ii) in a facility o

(4) the offender e

is unaware that a s

(A) the offender i

(B) the offense te

(b) Sexual assau

provided in AS 12.5

1982; am § 10 ch 7

ch 79 SLA 1992; an

Cross references. —

conduct in trials of sex

attempt to commit sexu

AS 12.45.045.

Effect of amendme

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this section, see AS 12.25.030(b).

Effect of amendments. — The 1991 amendment, effective September 16, 1991, deleted paragraph (a)(6) and made related stylistic changes.

NOTES TO DECISIONS

Proof of caller's intent to harass or annoy required. — Paragraph (a)(4) does not punish speech simply because it is anonymous. While the anonymity of the caller is itself a circumstance raising discomfort and fear in the receiver of the call, nevertheless the statute requires proof of an additional element: that the caller's purpose was to annoy or harass the other person. *McKillop v. State*, 857 P.2d 358 (Alaska Ct. App. 1993).

Only calls without legitimate purpose prohibited. — When paragraph (a)(4) of this section is read in conjunction with AS 11.81.900(a)(1) (intentionality), the statute is theoretically broad enough to punish political speech or other legitimate communication upon proof that one of the speaker's subsidiary motives was to annoy the listener. Because the scope of the statute is potentially so broad, paragraph (a)(4) of this section must be interpreted to prohibit telephone calls only when the call has no legitimate communicative purpose, when the caller's speech is devoid of

any substantive information, and the caller's sole intention is to annoy or harass the recipient. *McKillop v. State*, 857 P.2d 358 (Alaska Ct. App. 1993).

Failure to disclose identity makes call anonymous. — The defendant's telephone calls were anonymous even though he disclosed his motel's telephone number and his room number, because he failed to disclose his identity. *McKillop v. State*, 857 P.2d 358 (Alaska Ct. App. 1993).

For case construing former AS 11.45.035 relating to illegal use of telephones, see *Anniskette v. State*, 489 P.2d 1012 (Alaska 1971).

Quoted in *Allen v. State*, 759 P.2d 541 (Alaska Ct. App. 1988).

Cited in *Brower v. State*, 728 P.2d 645 (Alaska Ct. App. 1986); *Royster v. State*, 800 P.2d 944 (Alaska Ct. App. 1990); *Petersen v. State*, 930 P.2d 414 (Alaska Ct. App. 1996); *Jacko v. State*, 981 P.2d 1075 (Alaska Ct. App. 1999).

Collateral references. — Misuse of telephones as disorderly conduct, 97 ALR2d 504; 95 ALR3d 411.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass, 95 ALR3d 411.

Forum state's jurisdiction over nonresident defendant in action based on obscene or threatening telephone call from out of state, 37 ALR4th 852.

Sec. 11.61.123. Indecent viewing or photography. (a) A person commits the crime of indecent viewing or photography if, in the state, the person knowingly views, or produces a picture of, the private exposure of the genitals, anus, or female breast of another person and the view or production is without the knowledge or consent of

(1) the parent or guardian of the person viewed, or who is shown in the picture, if the person who is viewed or shown is under 16 years of age; and

(2) the person viewed or shown in the picture, if the person viewed or shown is at least 13 years of age.

(b) Each viewing of a person, and each production of a picture of a person, whose genitals, anus, or female breast are viewed or are shown in a picture constitutes a separate violation of this section.

(c) This section does not apply to viewing or photography conducted by a law enforcement agency for a law enforcement purpose.

(d) In a prosecution under this section, it is an affirmative defense that the viewing or photography was conducted as a security surveillance system, notice of the viewing or photography was posted, and any viewing or use of pictures produced is done only in the interest of crime prevention or prosecution.

(e) In this section,

(1) "picture" means a film, photograph, negative, slide, book, newspaper, or magazine, whether in print, electronic, magnetic, or digital format; and

(2) "private exposure" means that a person has exposed the person's body or part of the body in a place, and under circumstances, that the person reasonably believed would not result in the person's body or body parts being (A) viewed by the defendant; or (B) produced in a picture; "private exposure" does not include the exposure of a person's body or body parts in a law enforcement facility, correctional facility, designated treatment

ed. *Anniskette v. State*,

ch prohibited under
: statute, see *Anniskette*
ka 1971).

ing public officer. —
language nor constitu-
tion as including within
call criticizing a public
of his official duties.
1012 (Alaska 1971).
nally offended by defen-
t render the defendant's
v. State, 489 P.2d 1012

able cause to arrest
aduct committed in their
id and belligerent when
t 3:15 a.m. and his con-
a reasonable belief that
disturb the peace of his
een taken into custody.
(Alaska Ct. App. 1990).
t order to seize prop-
in forcibly resisting state
ruck under a court order,
us condition for others,
criminal charge of disor-
825 P.2d 909 (Alaska Ct.

mer AS 11.40.080, pro-
nd exhibition, see E.L.L.
a 1977).
te, 703 P.2d 415 (Alaska
ate, 718 P.2d 160 (Alaska
v. State, 754 P.2d 757

765 P.2d 982 (Alaska Ct.
ity of Kodiak, 2 P.3d 78

g statutes or ordinances
ns or conduct, 12 ALR3d

lerly conduct statute or

l directly to police officer
lerly conduct, 14 ALR4th

'harassment if, with

ikely to provoke an

intent to impair the

urs;

e call that threatens

am § 10 ch 61 SLA

facility, or a juvenile detention facility; in this paragraph, "correctional facility" has the meaning given in AS 33.30.901, "designated treatment facility" has the meaning given in AS 47.30.915, and "juvenile detention facility" has the meaning given in AS 47.12.990.

(f) Indecent viewing or photography is a

(1) class C felony if the person viewed or shown in a picture was, at the time of the viewing or production of the picture, a minor;

(2) class A misdemeanor if the person viewed or shown in a picture was, at the time of the viewing or production of the picture, an adult. (§ 1 ch 29 SLA 1995; am § 5 ch 33 SLA 1999)

Revisor's notes. — Subsection (f) was enacted as (c) and subsections (c)-(e) were enacted as (d)-(f), respectively. Relettered in 1995.

Effect of amendments. — The 1999 amendment, effective May 28, 1999, made a section reference substitution at the end of paragraph (e)(2).

Effective dates. — Section 1, ch. 29, SLA 1995, which enacted this section, took effect on August 13, 1995.

Editor's notes. — Under § 2, ch. 29, SLA 1995, this section "applies to all offenses committed on or after August 13, 1995."

Sec. 11.61.125. Distribution of child pornography. (a) A person commits the crime of distribution of child pornography if the person brings or causes to be brought into the state for distribution, or in the state distributes, or in the state possesses, prepares, publishes, or prints with intent to distribute, any material that visually or aurally depicts conduct described in AS 11.41.455(a), knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

(b) This section does not apply to acts that are an integral part of the exhibition or performance of a motion picture if the acts are performed within the scope of employment by a motion picture operator or projectionist employed by the owner or manager of a theater or other place for the showing of motion pictures, unless the motion picture operator or projectionist

(1) has a financial interest in the theater or place in which employed; or

(2) causes the performance or motion picture to be performed or exhibited without the consent of the manager or owner of the theater or other place of showing.

(c) The possession of 100 or more films, audio, video, electronic, or electromagnetic recordings, photographs, negatives, slides, books, newspapers, magazines, or other materials, including a combination of these items totaling 100 or more, is prima facie evidence of distribution and intent to distribute under (a) of this section.

(d) In this section, "distribution" includes delivering, selling, renting, leasing, lending, giving, circulating, exhibiting, presenting, providing, exchanging, and placing on a computer network or computer system, whether or not for monetary or other consideration.

(e) Distribution of child pornography is a class B felony. (§ 2 ch 57 SLA 1983; am §§ 1, 2 ch 39 SLA 1985; am § 4 ch 161 SLA 1990; am §§ 5, 6 ch 81 SLA 1998; am § 15 ch 65 SLA 2000)

Revisor's notes. — Subsection (c) was enacted as (e). Relettered in 1998, at which time former (c) was relettered as (e).

Cross references. — For crime of unlawful exploitation of a minor, see AS 11.41.455.

For applicability provisions relating to the 2000 amendment of (d) of this section by sec. 15, ch. 65, SLA 2000, see sec. 18, ch. 65, SLA 2000 in the 2000 Temporary & Special Acts.

Effect of amendments. — The 1985 amendment in subsection (a) deleted "sale or" preceding "distribution" and "sell, or exhibit to others for commercial consideration" preceding "any material," inserted "in the state distributes, or," and substituted "in" for

"under" following "conduct described"; and added subsection (d).

The 1990 amendment inserted "or aurally" in subsection (a).

The 1998 amendment, effective June 11, 1998, substituted "class B felony" for "class C felony" in subsection (e) and added subsection (c).

The 2000 amendment, effective May 23, 2000, inserted "and placing on a computer network or computer system" in subsection (d).

Editor's notes. — Section 23, ch. 81, SLA 1998 provides that the 1998 enactment of subsection (c) and the 1998 amendment to subsection (e) "apply to offenses committed on or after June 11, 1998."

Cited in *Harris v. State*, App. 1990; *Rowe v. Burdick*, Alaska 1994).

Collateral reference of statutes and of performance by child, 42

Sec. 11.61.127. 1 of possession of child visually or aurally production of the material in the conduct.

(b) This section (c) the course of a sex offense AS 33.30.011(a)(5).

(c) Each film, audio negative, slide, book depicts conduct described in the production of the material engaged in the conduct.

(d) Possession of 70 SLA 1995; am § 5

Revisor's notes. — Subsection (d). Relettered in 1998, relettered as (d).

Effect of amendment effective September 3, 1998, substitution in subsection (c).

The 1998 amendment inserted "knowingly" in "class C felony" for "class B felony".

Sec. 11.61.130. 1 misconduct involving

(1) except as authorized removes, conceals,

(2) the person enters

(3) the person directs

(b) Misconduct involving

Collateral reference Bodies, §§ 47-50.

25A C.J.S., Dead Body Immunity from liability of dead body in operation of mental unit or agency, 1

Sec. 11.61.140. 1 animals if the person

(1) knowingly in

(2) with criminal death of the animal or

(3) kills an animal

nal facility" has the
he meaning given in
en in AS 47.12.990.

s, at the time of the

re was, at the time of
§5; am § 5 ch 33 SLA

tion 1, ch. 29, SLA 1995,
took effect on August 13,

er § 2, ch. 29, SLA 1995,
offenses committed on or

person commits the
ses to be brought into
possesses, prepares,
ally or aurally depicts
tion of the material
he conduct.

t of the exhibition or
scope of employment
ner or manager of a
s the motion picture

loyed; or
exhibited without the
howing.

c, or electromagnetic
magazines, or other
more, is prima facie
ection.

ting, leasing, lending,
g, and placing on a
ary or other consider-

.7 SLA 1983; am §§ 1,
1998; am § 15 ch 65

described"; and added sub-

inserted "or aurally" in sub-

ffective June 11, 1998, sub-
r "class C felony" in subsec-

ction (c).
effective May 23, 2000, in-
computer network or com-

tion 23, ch. 81, SLA 1998
ctment of subsection (c) and
subsection (e) "apply to of-
ter June 11, 1998."

NOTES TO DECISIONS

Cited in *Harris v. State*, 790 P.2d 1379 (Alaska Ct. App. 1990); *Rowe v. Burton*, 884 F. Supp. 1372 (D. Alaska 1994).

Collateral references. — Validity and construction of statutes and ordinances regulating sexual performance by child, 42 ALR5th 291.

Sec. 11.61.127. Possession of child pornography. (a) A person commits the crime of possession of child pornography if the person knowingly possesses any material that visually or aurally depicts conduct described in AS 11.41.455(a) knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct.

(b) This section does not apply to persons providing plethysmograph assessments in the course of a sex offender treatment program that meets the minimum standards under AS 33.30.011(a)(5).

(c) Each film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts conduct described in AS 11.41.455(a) that is possessed by a person knowing that the production of the material involved the use of a child under 18 years of age that engaged in the conduct is a separate violation of this section.

(d) Possession of child pornography is a class C felony. (§ 1 ch 51 SLA 1994; am § 1 ch 70 SLA 1995; am §§ 7, 8, 9 ch 81 SLA 1998)

Revisor's notes. — Subsection (c) was enacted as (d). Relettered in 1998, at which time former (c) was relettered as (d).

Effect of amendments. — The 1995 amendment, effective September 3, 1995, made a section reference substitution in subsection (b).

The 1998 amendment, effective June 11, 1998, inserted "knowingly" in subsection (a); substituted "class C felony" for "class A misdemeanor" in subsec-

tion (d); and added subsection (c).

Effective dates. — Section 1, ch. 51, SLA 1994, which enacted this section, took effect on August 21, 1994.

Editor's notes. — Section 23, ch. 81, SLA 1998 provides that the 1998 amendments to subsections (a) and (d) and the 1998 enactment of subsection (c) "apply to offenses committed on or after June 11, 1998."

Sec. 11.61.130. Misconduct involving a corpse. (a) A person commits the crime of misconduct involving a corpse if

(1) except as authorized by law or in an emergency, the person intentionally disinters, removes, conceals, or mutilates a corpse;

(2) the person engages in sexual penetration of a corpse; or

(3) the person detains a corpse for a debt or demand or upon a lien or charge.

(b) Misconduct involving a corpse is a class A misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 22 Am. Jur. 2d, Dead Bodies, §§ 47-50.

25A C.J.S., Dead Bodies, §§ 8(2)-8(4).

Immunity from liability for unlawful treatment of dead body in operation of hospital by state or governmental unit or agency, 25 ALR2d 244.

Liability in damages for withholding corpse from relatives, 48 ALR3d 240.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body, 81 ALR3d 1071.

Sec. 11.61.140. Cruelty to animals. (a) A person commits the crime of cruelty to animals if the person

(1) knowingly inflicts severe physical pain or prolonged suffering on an animal;

(2) with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal;

(3) kills an animal by the use of a decompression chamber.

FORFEITURE IS REASONABLE, AND IT WORKS

Stefan D. Cassella*

Asset forfeiture has become one of the most powerful and important tools that federal law enforcement can employ against all manner of criminals and criminal organizations -- from drug dealers to terrorists to white collar criminals who prey on the vulnerable for financial gain. Derived from the ancient practice of forfeiting vessels and contraband in Customs and Admiralty cases, forfeiture statutes are now found throughout the federal criminal code.

Why do forfeiture?

Federal law enforcement agencies use the forfeiture laws for a variety of reasons, both time-honored and new. Like the statutes the First Congress enacted in 1789, the modern laws allow the government to seize contraband -- property that is simply unlawful to possess, like illegal drugs, unregistered machine guns, pornographic materials, smuggled goods and counterfeit money.

Forfeiture is also used to abate nuisances and to take the instrumentalities of crime out of circulation. For example, if drug dealers are using a "crack house" to sell drugs to children as they pass by on the way to school, the building is a danger to the health and safety of the neighborhood. Under the forfeiture laws, we can shut it down. If a boat or truck is being used to smuggle illegal aliens across the border, we can forfeit the vessel or vehicle to prevent its use time and again for the same purpose. The same is true for an airplane used to fly cocaine from Peru into Southern California, or a printing press used to mint phony \$100 bills.

The government also uses forfeiture to take the profit out of crime, and to return property to victims. No one has the right to retain the money gained from bribery, extortion, illegal gambling, or drug dealing. With the forfeiture laws, we can separate the criminal from his profits -- and any property traceable to it -- thus removing the incentive others may have to commit similar crimes tomorrow. And if the crime is one that has victims -- like carjacking or fraud -- we can use the forfeiture laws to recover the property and restore it to the owners far more effectively than the restitution statutes permit.

Finally, forfeiture undeniably provides both a deterrent against crime and as a measure of punishment for the criminal. Many criminals fear the loss of their vacation homes, fancy cars, businesses and bloated bank accounts far more than the prospect of a jail sentence. In fact, in many cases, prosecution and incarceration are not needed to achieve the ends of justice. Not every criminal act must be answered with the slam of the jail cell door. Sometimes, return of the property to the victim and forfeiture of the means by which the crime was committed will suffice to ensure that the community is compensated and protected and the criminal is punished.

The parade of horrors

The expansion of forfeiture into all of these areas has, of course, been controversial. When laws that were designed to seize pirate ships from privateers are applied, over the course of a decade, to the seizure of homes, cars, businesses and bank accounts, there are a lot of issues to sort out. How do we protect innocent property owners? What procedures afford due process? When does forfeiture go too far, in violation of the Excessive Fines Clause of the Eighth Amendment? The ten forfeiture cases that the Supreme Court has had on its docket in the past five terms are part of this sorting out process. There are certain to be more; and Congress will need to pass legislation to fill in many of the loopholes.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

An informed debate on these issues is welcome. The debate is not informed, however, if it is muddled by the misconceptions and plain old-fashioned misstatements that seem to pop up in every article critical of asset forfeiture. Roger Pilon's article, containing the usual parade of horrors, is a good example.

Once again we are told that forfeiture is based on an absurd legal "fiction" that the property is guilty of the crime, which implies that property can be forfeited without proof that a crime was committed by a real live person. We're told that the government can seize property "almost at will," i.e. without due process, and that innocent people find the process so unfair that they walk away from their property without filing claims. And we're told that even when they do file claims, innocent owners just don't have any rights. Let's see if we can't inject a little truth and understanding into the debate on these points.

The legal "fiction"

There are three types of forfeiture under federal law: administrative forfeiture, civil judicial forfeiture, and criminal forfeiture. An administrative forfeiture is essentially a default proceeding. It occurs when property is seized and no one files a claim contesting the forfeiture. By definition, all administrative forfeitures are uncontested. Between 80 (eighty) and 85 (eighty-five) percent of all forfeitures handled by the Department of Justice fall into this category.

If someone does file a claim to the property, the government has a choice (assuming Congress has provided both options by statute). It can file a civil complaint against the property in district court, thus commencing a civil judicial forfeiture; or it can include a forfeiture count in the indictment in a criminal case, which sets the stage for a criminal forfeiture. In 1995, the Justice Department began aggressively training criminal prosecutors in the use of the forfeiture laws, so that now more than half of all contested forfeitures are criminal forfeitures.

Just because a forfeiture is handled administratively or civilly, of course, doesn't mean that there isn't a related criminal case. In all forfeiture cases there must be proof that a crime was committed by someone. In fact, in more than eighty percent of all forfeitures, including administrative and civil forfeitures, there is a parallel arrest and/or criminal prosecution. There wouldn't have been such a wail and cry about forfeiture constituting a violation of the Double Jeopardy Clause a few years ago if that weren't so. (Between the Ninth Circuit's decision in *United States v. \$405,089.23* in 1994 and the Supreme Court's decision putting the double jeopardy issue to rest in *United States v. Ursery*, thousands of federal prisoners filed post-conviction actions alleging that their criminal conviction and the civil forfeiture of their property constituted double jeopardy.)

The legal "fiction" that the property is "guilty" of the crime is simply a shorthand for the way a civil forfeiture case is styled: *United States v. \$405,089.23*, *United States v. 92 Buena Vista Ave.*, and so forth. In legal parlance, the property in such a case is the "defendant." But property doesn't commit crimes; people do. If there isn't proof that a person committed a crime, there is no forfeiture. If our normally verbose legal system styled its civil forfeiture cases to set forth the full legal theory, this would be obvious. The above cases, for example, might have been called *United States v. \$405,089.23 in Proceeds Earned by Charles Arlt From Selling Methamphetamine*; or *United States v. A Residence at 92 Buena Vista Ave. Purchased with Drug Proceeds that Joseph Brenna, a Drug Dealer, Gave to His Girlfriend*.

In short, forfeiture is a way of reaching the property involved in a crime, but the focus is on the crime, without which there can be no forfeiture.

Why do civil forfeiture?

If all forfeitures involve the commission of a crime, and the vast majority involve an arrest or prosecution, why does the government use civil forfeiture at all? It is not, as many contend, because it is necessarily easier. To the contrary, the easiest way to forfeit a criminal defendant's property in many cases is not to file a separate civil action, but to present the forfeiture issue to the same jury that just convicted the defendant in the criminal case. But sometimes, criminal forfeiture isn't available or doesn't make sense.

Take the administrative forfeiture cases for example. There is no point in including a criminal forfeiture count in an indictment and presenting the issue to a jury if the defendant is not going to contest the forfeiture. If a defendant facing criminal conviction for drug trafficking thinks it pointless to contest the forfeiture of the cash seized from him as drug proceeds at the time of his arrest, it is equally pointless to clutter the indictment with a forfeiture count when administrative forfeiture will answer.

What about the contested forfeitures that are done civilly? The reasons for this are many. First, while there are over 100 civil forfeiture statutes, there are relatively few criminal forfeiture statutes. Drug proceeds can be forfeited either civilly or criminally, for example, but firearms, gambling proceeds, vehicles used to smuggle illegal aliens, and counterfeiting paraphernalia can only be forfeited civilly. See 28 U.S.C. §2461(a). This is a problem Congress needs to fix.

Second, criminal forfeiture requires a federal conviction for the crime giving rise to the forfeiture. If the defendant is dead or is a fugitive, there can be no prosecution and therefore no criminal forfeiture. If the defendant was prosecuted in a State case, the federal forfeiture has to be civil, because there is no federal prosecution for the criminal offense. And if the defendant is prosecuted for one crime, but the property was involved in a related but separate crime, the forfeiture has to be civil, because the criminal forfeiture is limited to the offense of conviction. For example, drug proceeds seized from a defendant at the time of his arrest must be forfeited civilly if the defendant is charged with possession of drugs with intent to distribute, because such money was necessarily the proceeds of an earlier drug deal, not the one for which the defendant is actually prosecuted.

Third, and perhaps most important, criminal forfeiture is limited to the property of the defendant. If the defendant uses someone else's property to commit the crime, criminal forfeiture accomplishes nothing. Only civil forfeiture will reach the property. For example, if a drug dealer uses an airplane to smuggle drugs into California, the government has an interest in seizing and forfeiting the plane. But suppose the only person arrested and prosecuted is the pilot. If he owns the plane outright, criminal forfeiture is the way to go. But if the plane is owned by a corporation, or a third-party in South America, or by the pilot jointly with his spouse, criminal forfeiture is pointless.

The same is true if we want to forfeit a crack house. We can prosecute the tenants in the building until the cows come home, but we will never be able to forfeit the building criminally if the tenants don't own it. If the building belongs to a slumlord who allowed his property to be turned into a crack house, we need civil forfeiture to shut it down.

Due Process

Whatever the reasons why civil forfeiture is essential to federal law enforcement, it goes without saying that the process must be fair. All property owners -- whether they be criminal defendants or third parties -- are entitled to due process of law. Mr. Pilon contends that due process is lacking. He says that the government can seize property "almost at will," that officials can "seize property, real or personal, without notice or hearing," and that innocent parties find the system so daunting that they abandon their property without filing a claim. On all points, he is greatly mistaken.

Seizures of property for forfeiture are governed by the same rules that govern seizure of property for evidence — the search and seizure requirements of the Fourth Amendment. See *United States v. Lasanta*, 978 F.2d 1300 (2d Cir. 1992). If federal agents want to seize property for forfeiture, they have to get a warrant, unless one of the recognized exceptions to the Fourth Amendment applies, like when cash is found in plain view in a vehicle that can be driven away, and there is probable cause to believe it's drug proceeds, or when property is found during a search incident to a lawful arrest. In fact, in many instances, forfeiture seizures are more limited than their evidentiary counterparts. See 18 U.S.C. §981(b) (2) (in money laundering cases, warrantless seizures are authorized during searches incident to arrest, but not in other exigent circumstances).

In real property cases, the rules are still more restrictive. In *United States v. James Daniel Good Property*, 114 S. Ct. 492 (1993), the Supreme Court held that real property may not be seized at all, even with a warrant based on a showing of probable cause, until the property owner has been given notice and an opportunity to be heard. In short, in real property cases, the Due Process Clause of the Fifth Amendment requires the government to give property owners more "process" than is due under the Fourth Amendment.

Moreover, seizing the property isn't the end of the process; it's only the beginning. If someone wants to contest a forfeiture he has a right to file a claim, thereby forcing the government to file a civil or criminal forfeiture action in federal court. If the case is civil, the claimant has all the rights that attend normal civil litigation, including the right to discovery and the right to a trial by jury. Finally, the forfeiture verdict must be based on a preponderance of the admissible evidence, not the probable cause evidence that was sufficient for the seizure.

Of course, any system can be improved. The Justice Department has proposed legislation to make the government carry the burden of proof in civil forfeiture cases. We also have suggested making it easier for people to file claims in forfeiture cases by extending the filing deadlines, and we have proposed a remedy for those whose property is damaged in government custody. (The Justice Department's legislative proposal and supporting testimony are published in the record of the Hearing on the Civil Asset Forfeiture Reform Act, H.R. 1916, House Committee on the Judiciary, 104th Congress, 2d Sess., Serial No. 94, July 22, 1996.) But it is preposterous to say that property owners are denied due process under current law.

The Uncontested Forfeitures

What should we make of the fact that so many forfeitures are uncontested? The critics, of course, see this as evidence that innocent property owners are walking away from their property without filing a claim because the procedures are unfair. But the opposite is far more likely. Four out of five forfeitures are uncontested because in most cases the evidence is so overwhelming that contesting the forfeiture would be pointless. A defendant charged with smuggling illegal aliens, for example, might see little advantage in contesting the forfeiture of the truck he was driving when he was arrested and the aliens were found. Remember, eighty percent of all forfeitures involve a parallel arrest or prosecution. There are cases in which the defendant is in court anyway, has counsel, and yet most of the time does not object to the forfeiture.

Certainly, there are still due process issues to be worked out. One of the most nettlesome involves the current flood of post-conviction pleadings being filed by federal prisoners who contend that they didn't contest forfeiture actions because they didn't receive proper notice. See e.g. *United States v. Clark*, 84 F.3d 378 (10th Cir. 1996). Most commonly, the prisoners complain that the government sent the notice to the wrong jail or to a home address when the government knew that the person was incarcerated. Criminals have due process rights just like everyone else, so the government must find a way to provide

notice of forfeiture actions to persons being held in jail. But these are hardly cases that involve innocent claimants not filing claims because the procedures are stacked against them.

Innocent Owners

In his discussion of *Bennis v. Michigan*, Mr. Pilon makes a persuasive argument that the Constitution does not adequately protect innocent owners in civil forfeiture cases. It is an argument, however, that has little relevance to federal forfeiture law.

Bennis, it must be remembered, was a State case. Michigan, apparently, does not provide statutory protection for innocent owners, and the Supreme Court held that no such protection is required by the Due Process Clause. Fair enough. But the fact that the Constitution doesn't protect innocent owners doesn't mean that the legislature cannot do so. In fact, Congress has included an innocent owner defense in virtually all of the most widely used federal forfeiture statutes. For example, the drug statutes, 21 U.S.C. §881(a)(4) and (7), say that neither vehicles nor real property, respectively, may be forfeited if they were used to commit a crime without the knowledge or consent of the owner.

Mr. Pilon's claim that "hotels and apartment buildings are today forfeited when their owners are unable to prevent drug transactions in them" is just plain wrong. Even a property owner who "knows" that his property is being used for an illegal purpose is protected from forfeiture if he shows that he took all reasonable steps to prevent the activity. See *United States v. 141st Street Corp.*, 911 F.2d 870, 877-78 (2nd Cir. 1990) (landlord who knew building was being used for drug trafficking had opportunity to show he did not consent to such use), cert. denied, 111 S. Ct. 1017 (1991); *United States v. Parcel of Real Property Known as 6109 Grubb Road*, 886 F.2d 618, 626 (3rd Cir. 1989) (wife who knew of husband's use of residence for drug trafficking had opportunity to show she did not consent to such use); *United States v. One Parcel of Real Estate at 1012 Germantown Road*, 963 F.2d 1496 (11th Cir. 1992).

For example, the owner of a residential hotel doesn't have to put a stop to drug transactions on his property; he just has to do what a reasonable owner would do to try to stop it, like call the police, evict tenants convicted of committing drug crimes on the premises, and install security devices like locks and adequate lighting. See *United States v. All Right, Title and Interest (Kenmore Hotel)*, 77 F.3d 648 (2d Cir. 1996).

What Congress Can Do

A key provision in the Justice Department's legislative proposal would codify this concept and thus extend the innocent owner defense to all federal forfeiture statutes. In addition to the other due process reforms discussed above, this would go a long way toward making sure that the forfeiture laws are up to date and protect the rights of all property owners. But there is more that Congress can do to enhance the forfeiture laws.

First, the criminal forfeiture statutes should be revised to make sure the government can use them in all cases where it's appropriate to do so. Criminal forfeiture should be available wherever civil forfeiture is authorized. The government also needs better tools to enforce criminal forfeiture judgments against convicted defendants, and needs to be able to restrain property subject to forfeiture, including substitute assets, pre-trial, to make sure that the assets are still around once the defendant is convicted.

Also, there is no rhyme or reason to the current forfeiture laws regarding the forfeiture of criminal proceeds. We can forfeit proceeds in drug cases, but not in fraud cases; we can forfeit the money paid to a "bag man" in a money laundering case, but not the money paid to a "hit man" in a murder-for-hire

case. All criminal proceeds should be subject to forfeiture, and the term "proceeds" should be defined to mean gross proceeds, not net profits. It is absurd that some courts have allowed heroin traffickers to deduct their overhead expenses from the amount of proceeds subject to forfeiture. See *United States v. McCarroll*, 1996 U.S. Dist. LEXIS 8975 (N.D. Ill. Jun. 19, 1996).

In these and many other ways, the forfeiture laws can be improved both to protect the rights of property owners and to allow the government to make full use of this dramatically successful law enforcement tool. Congress has that opportunity this year. If we can avoid the misstatements and misconceptions that serve only to polarize the debate, law enforcement, defense attorneys and legislators can work together to produce a genuinely comprehensive and effective body of laws to make forfeiture work for all of us.

**Stefan D. Cassella is the Assistant Chief, Asset Forfeiture and Money Laundering Section U.S. Department of Justice. The opinions expressed in this article are solely those of the author and do not necessarily reflect the views or policies of the Department of Justice.*

Two Eielson airmen held on sex abuse charges

November 12, 1999

The Associated Press

SOLDOTNA—Two Eielson airmen have been charged with sexual abuse of a minor after allegedly spending a night in a Soldotna hotel room with two underaged girls they met on the Internet.

The suspects, Eielson Air Force Base airmen Angel R. Berrios, 25, and Jeremy Nguyen, 20, were indicted Friday on three counts each of sexual abuse of a minor.

Kenai Superior Court Judge Jonathan Link issued an arrest warrant for the men Tuesday. They were to be held on \$10,000 cash bail.

Neither had been arrested by Wednesday evening, according to Eielson spokesman Master Sgt. Christopher Shock. Much of the base was closed for the Veterans Day holiday Thursday and Shock did not immediately return a phone call seeking comment.

In addition to the abuse charges, the men were indicted on two misdemeanor charges each of furnishing alcohol to a minor.

Nguyen apparently struck up a relationship over the Internet with one of the girls, possibly through a chat room, said Soldotna Police Chief Shirley Warner, who investigated the case.

The two then talked on the telephone and made arrangements to meet at Soldotna's King Salmon Motel over Labor Day weekend, Warner said. Police say Nguyen and Berrios spent the night of Sept. 4 with the girls.

Warner said she could not comment further about the computers that were used or how the men hooked up with the girls over the Internet.

"Since chat rooms have become available, I think this kind of thing happens," she said. "I don't think it's anything new."

Warner said the recent indictments might serve as a wake-up call to families.

"I think this is a case where the information needs to get out to parents that this type of thing happens, so they can provide a safeguard to protect their kids," Warner said.

The indictments came about after the girls' parents started asking questions, Warner said. "We did have some parents who were on the ball and had a suspicion that things were going on and gave us the call," she said.



Fort Wainwright man charged with sex crimes

January 30, 2000

By Staff report

A Fairbanks grand jury this past week indicted a Fort Wainwright man on charges that he sexually assaulted a teenage girl in North Pole.



Miguel Duque, 36, was indicted on charges of sexual abuse of a minor in the second degree, sexual abuse of a minor in the third degree, second degree sexual assault, and third-degree sexual assault.

Duque had apparently met a friend of the girl's in an Internet chat room, where he went by the name Macdaddy, Alaska State Troopers said.

In October he allegedly drove the girls either to a gravel pit or to the end of a road in North Pole, where he supplied them with alcohol, troopers said. One of the charges alleges that the girl was intoxicated at the time of the assault.

Troopers had thought the man's name might have been "Mike," and they had been looking for him over the past three months. They discovered his identity with the help of tips that came in after they distributed the man's description to the media earlier this month.



	Toshiba MV13JI 13-inch TV/VCR \$174.90		Click here
---	---	--	------------

Man charged with sex abuse of teen

Saturday August 28, 1999

Staff report

Alaska State Troopers arrested a man Friday morning on charges that he simulated having sex with a teen-age girl and photographed the act to send over the Internet, according to court documents.

Richard L. Oehrig, 44, has been charged with six felonies, including three counts of sexual abuse of a minor, unlawful exploitation, distributing child pornography and witness tampering.

Troopers said they found nude photographs of the girl on Oehrig's computer, discs and digital camera. He is also accused of soliciting her to have sex with him at his North Pole home. The acts allegedly occurred between January and July.

In one picture -- for which Oehrig allegedly wanted the girl to pose so he could send it to someone over the Internet -- it looks as if he is having intercourse with her, according to court documents. The victim told investigators that although their genitals were touching for that photograph, there was no penetration.

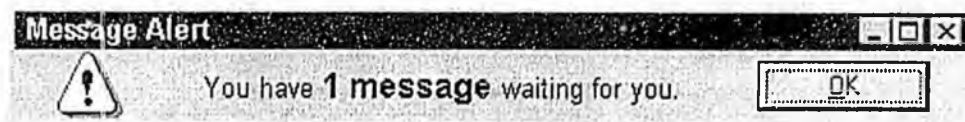
As the case was being investigated, Oehrig allegedly sent a computer note to the victim Aug. 16 telling her to stick to an initial account of what happened: "They don't have a thing unless you change your story."

He also threatened that if she told the truth "all hell breaks loose" and "everyone will suffer," according to court documents.

Oehrig was arrested about 11 a.m. in North Pole. Troopers had requested a warrant because he reportedly asked for a leave of absence from work and was considering leaving the state.

Bail is set at \$50,000, according to Fairbanks Correctional Center staff.

Troopers continue to investigate the case with help from a University of Alaska Fairbanks officer who specializes in Internet crime, according to court documents and UAF police.



Internet service worker charged with sex abuse

June 30, 2000

By BETH IPSEN
Staff Writer

A worker for a local Internet service provider has been indicted on charges of sexual abuse of two 15-year-old girls he met through an Internet chat room.

A 15-member grand jury decided the evidence was sufficient to charge Robert "Shawn" Christian, 22, with three counts of sexual abuse of a minor. The indictment was issued June 21.

Christian, a systems administrator at MosquitoNet, is charged with using the Internet and chat rooms to meet underage females to initiate sexual relationships.

The investigation arose when the sister of the second alleged victim went to police claiming her underage sister and Christian had sex the day before, said Detective Randy Coffey of the Fairbanks Police Department.

The second victim told her sister that she and her boyfriend, Christian, had been meeting every day at lunch for "hugging and kissing" before they had sex May 18, according to the sister's testimony in search warrants.

The first two counts arose later after an investigation, Coffey said. Those charges come from incidents involving a girl Christian allegedly contacted on the Internet when he was still living in Arizona, he said. Christian, now a University of Alaska Fairbanks student, later met the girl and her family when he vacationed in Alaska, Coffey said.

The family then invited Christian to live with them for almost six months in 1997 and 1998 while "he got on his feet in Fairbanks," he said.

Christian was 19 years old at the time he allegedly had a relationship involving sex with the first victim, Coffey said. Police are researching whether he had sexual relationships with minors in Arizona.

"We believe he has made contact with other girls over the Internet," Coffey said. "We're trying to contact them now. We're requesting if anybody has any knowledge to get ahold of us."

Police, with the assistance of an interagency computer crime task force, have seized several computers and countless computer discs and files. However, they're still trying to determine where all the contacts originated, said police Sgt. Dan Hoffman.

"Some of his work on computers seem to be routed through home," he said.

MosquitoNet President Bill St. Pierre said he was surprised by the charges. Christian



has worked for the company about 18 months, he said.

"He's been a real good employee, he's a good guy," St. Pierre said. "I hope there's some confusion here that can be cleared up."

Christian didn't return telephone calls Thursday.

If found guilty of the felony charges, Christian could face up to 10 years in prison for each count, according to the District Attorney's office.

Congratulations!
You have won a **FREE**
trial membership

fitnessheaven
health · fitness · wellness · com

Online Diets, Nutritional Analysis, Virtual Trainer & More!

Wife turns in spouse for child pornography

October 15, 2000

ANCHORAGE--An Anchorage man was arrested after police say his new wife found electronic mail messages suggestive of child pornography on his computer.

Ronald Becker, 37, was arrested Thursday. He was charged with 21 counts related to child pornography. One of the counts, distribution of child pornography, is a felony punishable by up to 10 years in prison. The other 20 counts are for possession.

Police said Becker had 5,000 computer disks and CDs at his home containing sexual images of children.

Becker's wife became suspicious because he was spending an inordinate amount of money. She began nosing around their house and found the suggestive e-mails on his computer, police said.

The woman met her future husband on-line in February and married him a few months later. She went to police in September to report his behavior and they obtained a search warrant.

Becker frequented chat rooms where he posed as a 15-year-old boy, police said.

Becker was convicted of indecent assault involving minors in Pennsylvania in 1992, according to charging documents. The charge was a misdemeanor. He was put on probation and ordered to perform 200 hours of community service.

Becker was being held at the Cook Inlet Pre-Trial Facility.

Bethel Air Terminal holds grand opening

BETHEL--The former Mark Air Terminal in Bethel re-opened Saturday with a new name and a new look.

About 300 people gathered for the opening of the Bethel Air Terminal, said Dwight Lefner, whose company purchased the facility from the state last December.

Pen Air, Frontier Airlines and mail carrier Bel Air moved into the terminal earlier this year. Reeve Aleutian Airways moved into the newly-renovated building Friday.

The 21-thousand-square-foot terminal has been vacant for over three years. Lefner said he's invested \$300,000 in the building. But he said the investment promises to be a good one because passenger service and mail volume is increasing every year.

The renovated building also has a store, a restaurant and an espresso bar.

"We have overhauled completely," said Lefner, owner of Lefner Investments who has lived in Bethel for 32 years. "We are just leasing space and seeing what



happens."

Lefner said he expects a barber shop to move into the building soon.

The state took over the facility after Mark Air filed for bankruptcy.



Zappos
the web's most popular shoe store!



FIND SHOES!
Click here for over
100 footwear brands!

Any evidence which tends to establish contemporary community standards of appeal to prurient interest or of customary limits of candor in the description or representation of nudity, sex or excretion, or which bears upon the question of significant literary, artistic, political, educational, or scientific value shall, subject to the provisions of the Evidence Code, be admissible when offered by either the prosecution or by the defense.

312.3. (a) Matter that depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct as defined in Section 311.4 and that is in the possession of any city, county, city and county, or state official or agency is subject to forfeiture pursuant to this section.

(b) An action to forfeit matter described in subdivision (a) may be brought by the Attorney General, the district attorney, county counsel, or the city attorney. Proceedings shall be initiated by a petition of forfeiture filed in the superior court of the county in which the matter is located.

(c) The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds. The notice shall state that any interested party may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. All notices shall set forth the time within which a claim of interest in the property seized is required to be filed.

(d) (1) Any person claiming an interest in the property or proceeds may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, county counsel, or city attorney, as appropriate.

(2) If, at the end of the time set forth in paragraph (1), an interested person has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of compliance with subdivision (c).

(e) The burden is on the petitioner to prove beyond a reasonable doubt that matter is subject to forfeiture pursuant to this section.

(f) It is not necessary to seek or obtain a criminal conviction prior to the entry of an order for the destruction of matter pursuant to this section. Any matter described in subdivision (a) that is in the possession of any city, county, city and county, or state official or agency, including found property, or property obtained as the result of a case in which no trial was had or that has been disposed of by way of dismissal or otherwise than by way of conviction may be ordered destroyed.

(g) A court order for destruction of matter described in subdivision (a) may be carried out by a police or sheriff's department or by the Department of Justice. The court order shall specify the agency responsible for the destruction.

(h) As used in this section, "matter" means any book, magazine,

newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines, or materials. "Matter" also means any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner any film or filmstrip.

(i) This section does not apply to a depiction of a legally emancipated minor or to lawful conduct between spouses if one or both are under the age of 18.

(j) It is a defense in any forfeiture proceeding that the matter seized was lawfully possessed in aid of legitimate scientific or educational purposes.

312.5. If any phrase, clause, sentence, section or provision of this chapter or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other phrase, clause, sentence, section, provision or application of this chapter, which can be given effect without the invalid phrase, clause, sentence, section, provision or application and to this end the provisions of this chapter are declared to be severable.

312.6. (a) It does not constitute a violation of this chapter for a person or entity solely to provide access or connection to or from a facility, system, or network over which that person or entity has no control, including related capabilities that are incidental to providing access or connection. This subdivision does not apply to an individual or entity that is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing, or knowing distribution of communications that violate this chapter.

(b) An employer is not liable under this chapter for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his or her employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

(c) It is a defense to prosecution under this chapter and in any civil action that may be instituted based on a violation of this chapter that a person has taken reasonable, effective, and appropriate actions in good faith to restrict or prevent the transmission of, or access to, a communication specified in this chapter.

312.7. Nothing in this chapter shall be construed to apply to interstate services or to any other activities or actions for which states are prohibited from imposing liability pursuant to Paragraph (4) of subsection (g) of Section 223 of Title 47 of the United States Code.