ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672
10915 HOUSE LABOR & COMMERCE

History.

PERS participants hired prior to 1986 are referred to as Tier 1. Tier 1 participants qualify to receive major medical insurance and the Alaska cost of living allowance when they qualify to receive a monthly benefit.

In 1986, SCSCSHB252(FIN)Miller and Duncan: By Finance, made significant cuts to PERS benefits. The medical benefit was eliminated until the participant reached age 60 and the Alaska cost of lining allowance was revoked until age 65.

In 2001, HB242, KOTT, Stevens, Dyson, Cissna, Crawford, and Guess made significant, positive, changes to retirement law; including partially restoring the medical insurance benefit cut in 1986. This change now allowed "All Other" PERS participants to receive the medical insurance benefit at their "normal retirement" (30 years of service). It also granted "Peace Officers" the medical insurance benefit, but; only if they worked 5 extra years beyond their "normal retirement" (25 years of service).

This bill, HB 91, would provide the medical insurance benefit to "Peace Officers" at normal retirement (20 years) and it would also provide "Peace Officers" with the Alaska cost of living allowance at "normal retirement".

The Alaska cost of living allowance remains unchanged since the cuts of 1986.

Note: See following PERS Plan Comparison Chart.

History.

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The Alaska cost of living allowance remains unchanged since the cuts of 1986.

Note: See following PERS Plan Comparison Chart.

Public Employees Retirement System - "Mission" (in part)

On January 1, 1961, the Alaska legislature established the Public Employees' Retirement System (PERS) to attract and retain qualified people into public service employment.

This bill will help in this mission. It provides incentives for "Peace Officers" to work to normal retirement by recovering, in part, two of the benefits lost in 1986.

#1-Alaska Cost of Living Benefit Allowance for "Peace Officers" at normal retirement; 20 years of credited service.

#2-Major medical insurance for "Peace Officers" at normal retirement; 20 years of credited service.

This bill only affects "Peace Officers" as defined by the Public employees Retirement System (PERS).

Sec. 39.35.680. Definitions.

In this chapter, unless the context otherwise requires,

(28) "peace officer" or "fire fighter" means an employee occupying a position as a peace officer, chief of police, regional public safety officer, correctional officer, correctional superintendent, fire fighter, fire chief, or probation officer, but does not include a village public safety officer employed by a village public safety officer program established under AS 18.65.670 ;

Regulation 2 AAC 35.850

"(a) Except as may be expressly authorized by AS 39.35, a "peace officer" means only a person who is a regular employee of a police agency or organization which is part of the state or a political subdivision of the state and who has primary responsibility for the prevention and detection of crime and the enforcement of the fish and game, penal, traffic or highway laws of the state or employing political subdivision..."

Note:
The 2002 Validation report for PERS lists 2,683 active occupation code "P" (Peace Officer) members. Of those, 2,021were hired since 1986 and would be affected by this bill.

Sectional Analysis HB 91

Section 1: Amends the statute requiring Alaska COLA recipients be age 65 or older, or be receiving a disability benefit, to allow peace officers with at least 20 years of credited service to receive the COLA benefit upon retirement.

Section 2: Amends the statute requiring peace officers to work 25 years in order to receive medial benefits upon retirement to allow peace officers with at least 20 years of credited service to receive medical benefits upon normal retirement.

Alaska State Legislature
House of Representatives

Official Business

State Capitol
Juneau, AK 99801

SPONSOR STATEMENT FOR HB 91
BY: Representative Tom Anderson

TITLE: An Act relating to a cost-of-living allowance and medical benefits for retired peace officers after 20 years of credited service.

The state troopers, firemen, correctional officers, and others known as "peace officers," employed by the State of Alaska, are an invaluable resource. These employees risk their health and safety in their service to the citizens of Alaska.

Until 1986, all PERS benefit recipients were eligible to receive major medical insurance benefits after becoming vested in the retirement system. In addition, peace officers were eligible to receive an Alaska Cost-of-Living-Allowance (COLA) after reaching normal retirement with 20 years of service. In 1986, the requirements for medical benefits and COLA were modified to reduce the number of benefit recipients eligible to receive these benefits.

Currently, PERS participants may receive major medical insurance benefits upon their normal retirement after 30 years of service. Normal retirement for peace officers is after 20 years of service, however, current law requires peace officers to have 25 years of service before they are eligible to receive medical benefits. This undermines the intent of the peace officer normal retirement by withholding their medical insurance benefit until an additional 5 years of service are given.

HB 91 corrects the existing benefit delay by allowing peace officers to receive major medical insurance at their normal retirement.

Alaska COLA is currently payable to non-disabled PERS benefit recipients, age 65 or older, who remain in Alaska after retirement. HB 91 will provide the COLA benefit to peace officers upon normal retirement after 20 years of service, offering an incentive to these honorable citizens to remain in Alaska where they may continue contributing to the public good.

This legislation will end the requirement that peace officers work beyond their normal retirement in order to obtain their medical benefits. By offering the COLA benefit upon retirement, this legislation also encourages retired peace officers to remain in Alaska where they can provide training and education to future generations of peace officers.

I urge your support.

ALASKA STATE HOUSE OF REPRESENTATIVES

Labor & Commerce Committee, Chair

Judiciary Committee, Vice-Chair

Community & Regional Affairs

Administrative Regulation Review

State Capitol Building
Room 432
Juneau, AK 99801

(907) 465-4939 phone
(907) 465-2418 fax

Representative Tom Anderson

MEMORANDUM

Date: February 18, 2003

To: House Labor & Commerce Committee

From: Representative Tom Anderson T.A.

Re: HB 91

I respectfully request that you schedule HB 91 for a hearing before the House Labor & Commerce Committee.

Enclosed are:

1. HB 91
2. Sponsor Statement
3. Sectional Analysis
4. Peace Officer definitions
5. PERS mission statement
6. History of PERS benefit
7. PERS comparison chart
8. Peace officer PERS contribution graph
9. Explanation of retention graphs
10. Retention graphs
11. Retention data
12. Letters of support
    a. Joe D'Amico, PSEA Business Manager
    b. Brian Reed, AFFU President

Thank you for your consideration of this request.

Alaska State Legislature

Rep. Tom Anderson, Chair
Rep. Bob Lynn, Vice - Chair
Rep. Nancy Dahlstrom, Member
Rep. Carl Gatto, Member
Rep. Norman Rokeberg, Member
Rep. Harry Crawford, Member
Rep. David Guttenberg, Member

House Labor & Commerce Committee

State Capitol
Juneau, Ak 99801-1182
(907) 465-4954
Fax: (907) 465-2418

MEMORANDUM

Date: February 12, 2003

To: Suzi Lowell, Chief Clerk

From: Representative Tom Anderson, Chairman T.A.
House Labor & Commerce Committee

Re: House Labor & Commerce Committee Schedule

The House Labor & Commerce Committee has scheduled to hear the following bills:

Wednesday, February 19th at 3:15 pm. Room 17

+ * HB 36 – Electronic Mail

+ * HB 85 – Credit Reports

Friday, February 21st at 3:15 pm. Room 17

+ * HB 91 – Retired Peace Off Cola/Medical Benefits

+ - Teleconferenced
* - First Hearing in First Committee of Referral
= - Bill was Previously Heard/Scheduled

HB

94

Alaska State Legislature

Rep. Tom Anderson, Chair
Rep. Bob Lynn, Vice - Chair
Rep. Nancy Dahlstrom, Member
Rep. Carl Gatto, Member
Rep. Norman Rokeberg, Member
Rep. Harry Crawford, Member
Rep. David Guttenberg, Member

House Labor & Commerce Committee

State Capitol
Juneau, Ak 99801-1182
(907) 465-4954
Fax: (907) 465-2418

MEMORANDUM

Date: February 26, 2003

To: Suzi Lowell, Chief Clerk

From: Representative Tom Anderson, Chairman T.A.
House Labor & Commerce Committee

Re: House Labor & Commerce Committee Schedule

The House Labor & Commerce Committee has scheduled to hear the following bills:

Monday, March 3rd at 3:15 pm. Room 17

\+ HB 51 – Labeling of Prescription Drugs
\+ * HB 94 – Overtime Pay for Airline Employees

Bills Previously Heard/Scheduled

\+ - Teleconferenced
* - First Hearing in First Committee of Referral
= - Bill was Previously Heard/Scheduled

SPONSOR STATEMENT
HB 94

This legislation was introduced to codify what is existing Department of Labor policy related to the treatment of a flight crew for purposes of overtime in a non-collective bargaining carrier.

Over the course of time, Alaska courts have ruled in a mixed fashion that has cast a cloud on how flight crews should be treated by the Wage and Hour Division for purposes of overtime.

This legislation simply puts in statute what is existing policy and exempts flight crews from overtime..

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 94
() Publish Date:

Revision Date/Time (Note if correction):
Title: Overtime Pay for Airline Employees
Department: Labor and Workforce Development
BRU: Labor Standards & Safety
Component: Wage and Hour
Sponsor: House Transportation by Request
Requester: House L&C
Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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 (FY2003) cost: None

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill codifies existing department policy based on the Attorney General's 1980 interpretation of the exempt status of flight crews employed by air carriers subject to 45 USC 181 - 188.

The State of Alaska overtime laws are pre-empted by the federal Railway Labor Act. Since the early 1980's the department has held that flight crews on subject airlines are not under the state's jurisdiction with regard to state overtime laws. However, the department's opinion has not stopped former employees from bringing private lawsuits. By placing this into the law, the likelihood of such private causes of action will be greatly reduced and air carriers will be saved the considerable expense of having to defend themselves in court.

Prepared by: Hali Denton, Acting Director
Phone: 465-4855
Division: Labor Standards & Safety
Date/Time: 2/14/03 3:05 PM
Approved by: Greg O'Claray, Commissioner
Date: 02/14/03
Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

(Rev 1/26/2000 OMB)

Era Aviation, Inc.
6160 Carl Brady Drive
Anchorage, Alaska
99502

February 3, 2003

The Honorable Tom Anderson
Chair, House Labor & Commerce Committee
State Capitol
Juneau AK 99801-1182

RE: Proposed Overtime Exemption Bill for Interstate Air Carriers

Dear Senators Bunde and Olson:

Thank you for agreeing to sponsor the attached proposed legislation regarding the exemption of flight crew personnel employed by Interstate Air Carriers from the state's overtime exemption laws. The Alaska Air Carriers Association (AACA) has made this legislative amendment a priority and fully supports its passage.

Era has become increasingly concerned with the uncertainty associated with the appropriate wage and hour treatment of its flight crews under Alaska wage and hour laws. The Alaska Department of Labor, Wage and Hour Section has assisted the Alaska based interstate air carrier industry by providing a chart that outlines the treatment of air carriers under the Alaska Wage and Hour Act. (See Attachment 2). Era is paying its flight crew employees in a manner consistent with this directive. However, the Alaska state courts have clouded this approach. In Dayhoff v. Temsco Helicopters, Inc., 848 P2d 1367 (Alaska 1993), the Alaska Supreme Court concluded that a helicopter pilot was owed overtime, while in a later Era case, an Alaska Superior Court judge denied overtime to a fixed wing co-pilot. (See Attachments 3 and 4). The non-Alaska based interstate air carriers, such as Alaska Airlines, Delta Airlines, and various air cargo carriers, do not really have a stake in this issue because the pay of their flight crews is governed by collective bargaining agreements, which preempt the state's overtime laws. Era, like most of the Alaska based interstate air carriers, is non-unionized. Thus, there are no labor agreements that take us outside the state's wage and hour laws. Even though we adhere to the Alaska Department of Labor's pay policy guidance, there is no guarantee that a court will not chose to interpret the state's overtime laws differently in the future, thereby exposing us to liability for two years of back wage recalculations.

We believe that the proposed exemption would remove this uncertainty by codifying the existing position of the Alaska Department of Labor, Wage and Hour Section administrators. The proposed exemption would not change the way the law is currently being administered. The codified exemption would however, provide a clear, consistent rule for the interstate air carrier industry and remove any uncertainty as to how a court would address overtime issues in the future.

907-248-4422
fax 907-266-8383

Thank you for your assistance in this matter. If you have any questions about this letter or its attachments, please feel free to give me a call at 907-266-8361.

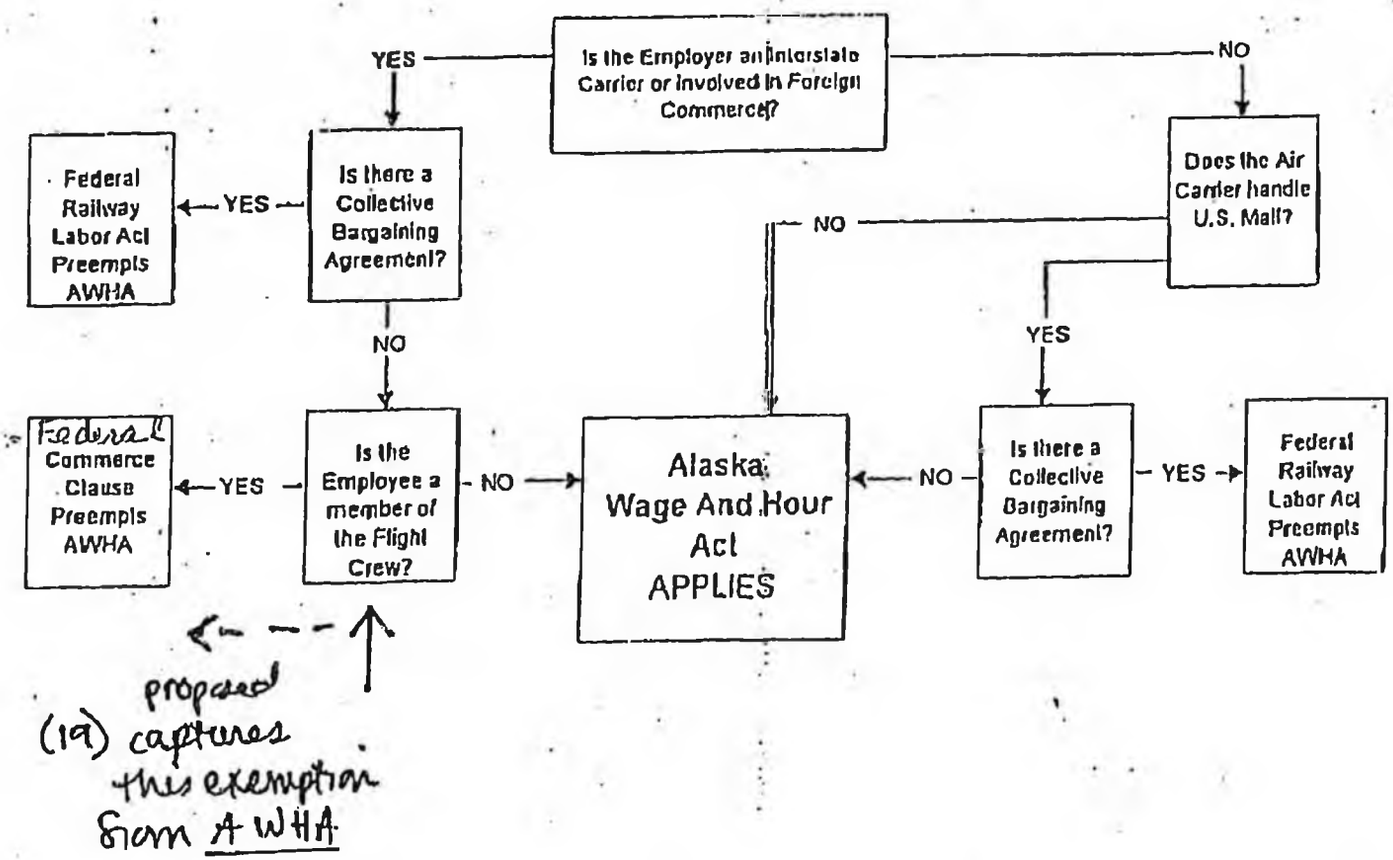
Sincerely,

Charles Johnson
President

Cc: Karen Casanovas, Executive Director AACA
Paul Landis, Senior Vice President, Era
Kip Knudson, Manager of Government Affairs, Era
Marcia Davis, General Counsel, Era
David Parish

Attachment 2

AIR CARRIERS
&
The Alaska Wage And Hour Act
(AWHA)



proposed (19) captures this exemption from AWHA

defendant's witnesses not credible does not mean that the defendant acted in bad faith.

2. The plaintiff's motion for JNOV regarding her overtime claim is DENIED. The evidence, considered in a light most favorable to the defendant, supports a jury finding that Ms. Lindfors was an exempt professional employee under AS 23.10.055(9).

Ms. Lindfors participated in hundreds of hours of specialized training prior to obtaining her co-pilot position. That training included intellectual disciplines such as mathematics, aerodynamics, weather, navigation and similar studies. 8 AAC 15.910(a)(11)(A). From this evidence the jury could reasonably conclude that Ms. Lindfors was not a technician, but a highly trained professional charged with exercising substantial judgment and discretion to protect the lives and safety of ERA's commercial airline passengers. Id.; 8 AAC 15.910(a)(11)(B)(i).[2]

3. The defendant's motion for JNOV, new trial or remittitur is DENIED.

ERA's motion for JNOV restates legal arguments raised and decided during trial. Those arguments are rejected for the reasons stated at trial and as follows. Ms. Lindfors' complaint, amended complaint and other pretrial pleadings provided notice to ERA that Lindfors was seeking recovery for disparate treatment in promotions, retaliation for filing a Human Rights Commission complaint and constructive discharge for intolerable working conditions. Although Lindfors' proposed jury instructions combined these claims, the court had discretion and the responsibility to instruct the jury regarding each separate claim, if doing

[2]The court's 9/28/98 order denying Lindfors' motion for summary judgment addresses the other issues germane to the professional employee exemption.

Attachment 4

DAYHOFF VS. TEMSCO HELICOPTERS, INC.

burden to prove the exemption is applicable. *Reeves v. International Tel. & Tel. Corp.*, 357 F.Supp. 295, 298 (W.D.La.1973), *aff'd*, 616 F.2d 1342 (5th Cir.1980), *cert. denied*, 449 U.S. 1077, 101 S.Ct. 857, 66 L.Ed.2d 800 (1981). "Exemptions are to be narrowly construed against the employer." *Id.* at 297. "If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be ruled non-exempt." *Adam v. United States*, 26 Cl.Ct. 782, 786 (Cl.Ct.1992). All four elements must be met before an employee is found exempt. *Id.*

The parties agree that Dayhoff was a salaried employee, compensated on a fee basis. The parties dispute the level of education required of Dayhoff, what Dayhoff's primary duty was, how to characterize the discretion exercised by Dayhoff, and if the character of work was intellectual or physical.

Dayhoff claims the knowledge required to become a commercial pilot is not the type of advanced learning needed to qualify as a professional. Dayhoff also claims his primary duty was not professional because approximately 62% of his time was spent performing non-aviation duties. Even while flying, Dayhoff had no discretion as his actions were controlled by superiors. The only discretion and judgment exercised was in the physical operation of the aircraft.

Temsco argues that Dayhoff's primary duty was to be a pilot. He was hired as a pilot and his time was spent flying or waiting to fly. Temsco contends that being a commercial helicopter pilot requires knowledge of an advanced type. Further, Temsco argues that a commercial helicopter pilot is required to consistently exercise discretion and judgment.

[12, 13] The applicability of exemptions are questions of fact to be determined considering the individual's duties and other qualifications, and not upon how the employer classified the employee. *Reeves*, 357 F.Supp. at 302-03. A trial court must make a finding of fact in determining an employee's status. *Dalheim v. KDFW-TV*, 918 F.2d 1220, 1226, 1228 (5th Cir. 1990). While both parties moved for summary judgment on this issue, we first review the grant of summary judgment in favor of Temsco. We must view the facts in a light most favorable to Dayhoff. Dayhoff was primarily self-educated. He claims that for approximately 62% of his time he performed non-aviation duties. Dayhoff had no significant authority to control decisions regarding flight assignments or routes. The only discretion Dayhoff exercised was in the physical operation of his aircraft. Viewing the facts in the light most favorable to Dayhoff, Temsco does not meet the burden of showing that the exemption is applicable. Dayhoff can, at most, be classified as a highly trained technician and not as a professional.

Next we review the denial of Dayhoff's motion for summary judgment. For this purpose we view the facts in the light most favorable to Temsco. It is undisputed that Dayhoff obtained his commercial helicopter license through self study and obtained his flight instructor certificate after only ten hours of formal instruction. This is not the type of advanced study required to classify an employee as a professional. Further, the discretion exercised by Dayhoff in flying a helicopter is not the type of discretion which characterizes a person as a professional for purposes of this exemption.

On the basis of the foregoing we conclude that the FAA does not preempt the AWHA, that the AWHA is not violative of the commerce clause, and that Dayhoff is not a professional for purposes of the AWHA exemption.

B. DAYHOFF DOES NOT HAVE A CAUSE OF ACTION UNDER THE ALASKA LITTLE DAVIS-BACON ACT (ALDBA).

1. ALDBA provides a private cause of action.

ALDBA was modeled after the Davis-Bacon Act, 40 U.S.C. § 276 (1988). ALDBA stipulates that a contractor or subcontractor on a public construction contract must pay its employees the prevailing

Attachment 3

The scope of the currently proposed exemption is exactly the same as that encompassed by the existing exemption (18) that was passed by the Alaska Legislature in 1999 for the trading of work shifts. That exemption only applies to an "employee employed by an air carrier subject to subchapter II of the Railway Labor Act (45 U.S.C. 181-188)". So the proposed exemption is not recreating the wheel. It is terrain that has been covered before.

Background

Subchapter II of the Railway Labor Act (45 U.S.C. 181-188) - This subchapter embodies the application of the Railway Labor Act to Air Carriers who are by definition Interstate Air Carriers.

Section 181- Application of 45 USC Section 151, 152, 154-163 to carriers by air

All of the provisions of Title I, except the provision of section 3 thereof, are extended to and shall cover **every common carrier by air engaged in interstate or foreign commerce and every carrier by air transporting mail for or under contract with the United States Government**, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

What is Interstate Commerce?
The definition for "Interstate Air Commerce" contained in the FAA's regulations at 14 CFR Section 1.1 illuminates the above scope of the RLA:

> "Interstate Air Commerce means the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation in commerce between a place in any state of the United States... and a place in any other State...; or between places in the same state through airspace over any place outside thereof;...."

What is Foreign Commerce?
Foreign commerce would obviously involve transporting person or property or mail between a point in the US and a foreign country.

The above information is all that is required in order to ascertain the scope of the exemption.

Common Misunderstanding about term "Interstate Air Carrier".
Many people get twisted around the axle talking about Interstate Air Carriers, as though there is a certificate that designates them as such. In truth there is no certificate called that. Rather all commercial air carriers have an "Air Carrier Certificate" issued by the U.S. Department of Transportation. Each such "Air Carrier Certificate" is issued subject to various authorizations, and limitations, which define what kind of operations that air

carrier can engage in and where they can conduct those operations. The scope of permitted operations does not appear on the face of the certificate. Rather they are contained in the FAA file for the certificate and posted on the internet as well.

Aattached is a copy of Era's "Air Carrier Certificate" and the FAA info on that certificate, namely that Era is authorized to conduct Domestic and Flag Operations (Passengers and Cargo). In 14 CFR Section 119.3 you find that the definition of "Domestic Operation" means any scheduled operation of aircraft with more than 9 seats between any locations in the lower 48 or wholly within Alaska. The definition of "Flag Operation" means any scheduled operation between Alaska and outside Alaska. Thus, Era's certificate gives it authorization to engage in "interstate commerce" and "foreign commerce". But Era actually has to do so, to bring itself within the proposed overtime exemption.

Thus, an air carrier actually has to be engaged in some act of interstate commerce or foreign commerce, by transporting passengers, cargo or US mail to bring it within the jurisdiction of the Railway Labor Act, and then in turn within the scope of the overtime exemption. The air carrier does not have to be engaged exclusively in interstate commerce or foreign commerce; rather if it is authorized to do so, and it is doing some, it falls within the RLA.

HB

119

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 24, 2003 **FURTHER REFERRALS: Finance**

Date of Committee Action: March 19, 2003

The LABOR AND COMMERCE Committee considered: **HB 119**

HOUSE BILL NO. 119 **WATER/SEWER/WASTE GRANTS TO UTILITIES**

"An Act permitting grants to certain regulated public utilities for water quality enhancement projects and water supply and wastewater systems."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 119 (L&C)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CED			✓	
DEC				✓

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

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	✓			
	GUTTENBERG			✓	
	DAHLSTROM	X			
	ROKEBERG	✓			
Chair: Tom Anderson	ANDERSON	X			
Chair:					

HOUSE LABOR & COMMERCE

COMMITTEE PACKET

Index

March 19, 2003

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:
3340 Badger Road, Suite 290
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4721

Session Contact:
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

HB 119 SPONSOR STATEMENT

GRANTS TO REGULATED PUBLIC UTILITIES

Under current law, municipalities who operate public utilities have the ability to obtain a grant to make improvements or replace aging sewer and water systems disappears. They also have the ability to receive grants to expand utilities. Private utilities that are regulated by the Regulatory Commission of Alaska to provide public utilities to a service area do not qualify for grants. This results in increased utility costs for customers of the private utilities and discourages private operation of public utilities.

HB 119 would enable a privately owned water and wastewater utility to participate in the State's water and wastewater grant program if the Regulatory Commission of Alaska regulates the utility. Grants for solid waste processing, disposal or recovery systems would remain available only to municipalities.

When the grant process is utilized, the private utility would not be able to pass on the cost of improvements paid to the ratepayers. The Regulatory Commission of Alaska would not include the grant in the capital costs portion of the formula that sets the utility rate.

HB 119 creates equity for public and private utility ratepayers and encourages privatization of public utilities.

Representative_John_Coghill@LEGIS.state.ak.us

Kyanna Ross

Fairbanks North Star Borough Office of the Mayor

809 Pioneer Road P.O. Box 71267 Fairbanks, Alaska 99707-1267 907/459-1300
Fax 907/459-1102
Email mayor@co.fairbanks.ak.us

March 4, 2003

The Honorable Representative John Coghill
119 N. Cushman, Suite 211
Fairbanks, AK 99701

Dear Representative Coghill:

I am writing you to give my support to House Bill 119, which would allow privately owned, public utilities to receive water and wastewater grants through the Department of Environmental Conservation.

The Fairbanks North Star Borough is a second-class borough and, as such, has limited powers in providing for water and wastewater utilities. These utilities can only be provided through citizen approved service areas. The citizens within the service area then raise their personal property tax mill rate to pay for specific services.

Two out of the 117 service areas within the Borough have elected to provide some level of water and wastewater utility. Neither service area can afford the cost of providing quality utility functions nor can they afford major, necessary improvements. This has resulted in health and safety issues that must be addressed. One service area in particular, Ballaine Lake, has already raised their property taxes to the maximum mill rate allowed by statute. In order to improve their current wastewater process, they must turn to a privately owned, public utility company.

As in all other communities in Alaska, House Bill 119 would help privately owned, public water and wastewater utility companies to improve the existing infrastructure without placing the entire burden on the ratepayer. In our Borough, expansion of services as a result of HB 119 would allow improvements to areas with marginal, current systems.

Please add my support to this critical legislation. The Fairbanks North Star Borough Assembly and I will be submitting a resolution in support of HB 119 within the next two weeks.

Sincerely,

Rhonda Boyles

Rhonda Boyles,
Mayor

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 119
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: DCED
Title: Grants to Regulated Public Utilities
BRU: Regulatory Commission of Alaska (399)
Component: Regulatory Commission of Alaska
Sponsor: Representative Coghill
Requester: House Labor & Commerce
Component No.: 2417

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
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						
1141 - RCA Receipts	*	*	*	*	*	*
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

Please see analysis continuation.

Prepared by: Jim Strandberg, Commissioner
Phone 907-276-6222
Division: Regulatory Commission of Alaska
Date/Time 3/19/03 3:13 PM
Approved by: Edgar Blatchford, Commissioner
Date 3/19/2003
Agency: Department of Community & Economic Development

(Revised 9/2002 OMB)

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. HB 119

ANALYSIS CONTINUATION

This legislation would make public water and sewer utilities eligible for grants for projects if they serve as the primary utility for a municipality and their rates are regulated by the Regulatory Commission of Alaska under AS 42.05.

Legislative Audit recommended that the Commission determine the appropriate regulatory environment for small rural water and sewer utilities. For very small unsophisticated utilities, certification and economic regulation is difficult and expensive. For these utilities, local oversight and input is less costly. The RCA has held hearings and drafted regulations on small water and sewer regulation. The regulations are scheduled for discussion at the Commission's 4/9/03 public meeting. As currently proposed, the regulations would reduce the regulatory burden on small water and sewer utilities by establishing 3 classes of water/sewer utilities based on size: exempt, for very small utilities; reduced regulation, for the majority of smaller utilities; and certification and/or economic regulation for the very largest class. Passage of this legislation may cause some of the utilities to seek a higher degree of regulation in order to be eligible to receive these grant funds.

If large amounts of funds are available, this legislation could require an additional engineer and tariff analyst to analyze approximately 250 water and 125 sewer utilities who may apply for certification and economic regulation within the statutory timeliness deadlines. Two water and two sewer utilities currently certificated may require rate review to become economically regulated and eligible to receive grants. After two years, these positions can be reduced to part-time. Economic regulation will require the Commission to review and analyze all changes to each utility's rates and tariffs within the statutory deadlines. RCA's budget is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanisms. No general funds are allocated for support of the agency. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers it regulates. The RCC is capped at 0.8 % of regulated utilities annual gross revenues; the agency's current budget is too close to the cap to allow funding these positions.

23-LS0617\D
Craver
3/12/03

CS FOR HOUSE BILL NO. 119( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE COGHILL

A BILL

FOR AN ACT ENTITLED

"An Act permitting grants to certain regulated public utilities for water quality enhancement projects and water supply and wastewater systems."

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

*** Section 1.** AS 46.03.030(b) is amended to read:

(b) The department may grant to a municipality **or, to the extent allowed under (i) of this section, to a public utility**, as funds are available, a grant for any of the following:

(1) a water quality enhancement project;

(2) a public water supply, treatment, or distribution system;

(3) a wastewater collection, treatment, or discharge system;

(4) a solid waste processing, disposal, or resource recovery system.

*** Sec. 2.** AS 46.03.030(e) is amended to read:

(e) A grant under this section to a municipality **or public utility eligible under (i) of this section** for a project funded by an appropriation made by the

legislature

(1) before July 1, 1994, may not exceed 50 percent of the eligible costs of the project;

(2) after July 1, 1994, may not exceed

(A) 85 percent of the eligible costs for a **utility serving** [MUNICIPALITY WITH] a population of 1,000 persons or less;

(B) 70 percent of the eligible costs for a **utility serving** [MUNICIPALITY WITH] a population of 1,001 to 5,000 persons; and

(C) 50 percent of the eligible costs for a **utility serving** [MUNICIPALITY WITH] a population greater than 5,000 persons; however, if a **utility serving** [MUNICIPALITY WITH] a population greater than 5,000 persons seeks a grant for a project that relates to a solid waste processing or disposal system that incorporates resource recovery, the department may provide a grant for up to 60 percent of the eligible costs of the project.

* **Sec. 3.** AS 46.03.030 is amended by adding a new subsection to read:

(i) A public water and sewer utility is eligible for a grant for projects described in (b)(1) - (3) of this section if its rates are regulated by the Regulatory Commission of Alaska under AS 42.05.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 119
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affecte: Environmental Conservation
Title: Expanding Eligibility of Water/Sewer/Waste Grants to Include Certain Public Utilities.
BRU: Facility Construction and Operation
Component: Facility Construction and Operation
Sponsor: Coghill
Requester: House Labor and Commerce
Component No.: 637

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

HB 119 will expand eligibility for Municipal Water, Sewer and Solid Waste Matching Grants to include privately-owned water and sewer utilities that serve as a municipality's primary utility and are regulated by the Regulatory Commission of Alaska under AS 42.05. It is anticipated that only one additional water and sewer utility will qualify under the expanded eligibility. This will not affect program workload and will not have a fiscal impact on the department.

Prepared by: Dan Easton
Phone 465-5135
Division: Facility Construction and Operation
Date/Time 3/13/03 4:32 PM
Approved by: Kurt Fredriksson
Date 3/13/2003
Agency: Department of Conservation

(Revised 9/2002 OMB)

From CHARTLAW@aol.com
Sent Thursday, March 13, 2003 2:42 pm
To akpolitics@alaska.net
Cc
Bcc
Subject Service Contracts
Attachments AKOpt2.doc 1K AKOpt2.doc 24K

Rynnieva:

Thanks for speaking with me. Again, you can learn about me at www.chartlaw.com

I wish we had made contact sooner but I have been busy on other legislation around the country.

Fundamentally, a state has 3 options on prepaid service contracts:

1.) Register ALL prepaid service contracts equally but make clear they are not insurance and include some effective and reasonable means to enforce. Splitting meaningless hairs over who sells, where, when, through whom on what product or how much they costs is simply bad public policy. Fundamentally, a prepaid service contract is a prepaid service contract---the same issues apply to all. The NAIC model was intended to do this but has fallen short and needs updating. I do have improved model language should your state choose to go the limited registration route. I don't recommend it. It's just not warranted and has not proved worthwhile in states where tested.

2.) Declare once and for all (like so many other states ----Mississippi just passed their law last month) South Dakota, Montana, Idaho, North Dakota etc.... that ALL prepaid service contracts are not insurance and not regulated under the insurance code. This fundamentally leave regulation under your State Consumer Protection Action like any other business where it should be, or ;

3.) Deem ALL prepaid service contract providers to be in the business of insurance and make them all produce their insurance certificate or C&D them. I assure you there are thousands of providers in Alaska today--most go unchallenged.

Option 3 above would fly in the face of every credible insurance expert in the country today. It defies logic and defies the NAIC recommendation. There is no insurance contract in the country that covers normal wear and tear or inherent produce defect as most all prepaid service contracts do. Likewise, service contracts are not allowed to cover indemnity for the usual sudden and fortuitous perils of fire, loss, theft, windstorm, death, accident sickness etc.. The contracts are the exact inverse of each other fundamentally. It is just wrong to even suggest to consumers that service contracts are a form of

insurance when they have NO insurance type benefits and simply unfair to confuse consumers otherwise.

Attached is a draft for Alaska of Option 2 based upon the Mississippi law just adopted two weeks ago,

Thank you for your time, interest and concern. I would be glad to testify and work with you and Rep. Coghill to work this out beneficially.

Arthur J. Chartrand
913-269-4701
email chartlaw@aol.com my bio is at www.chartlaw.com

Ver 3/5/03

Based upon 2003 Mississippi law passed just 2 weeks ago

REPLACEMENT FOR HB 120

AN ACT TO DEFINE THE TERM "SERVICE CONTRACT' TO PROVIDE THAT "HOME WARRANTIES" AND "SERVICE CONTRACTS" AND OTHER PREPAID CONSUMER SERVICE CONTRACTS ARE NOT INSURANCE AND NOT SUBJECT TO THE ALASKA INSURANCE CODE, BUT ARE SUBJECT TO THE ALASKA CONSUMER PROTECTION ACT; AND FOR RELATED PURPOSES

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OFALASKA:

SECTION I :

"Service contract" means a contract or agreement for a separate or additional consideration, for a specific duration to maintain, service, repair or replace property, or indemnification for repair, replacement or maintenance, for the operational or structural failure due to a defect in materials, workmanship or normal wear and tear, with or without additional provision for incidental indemnity payments when service, repair or replacement is not reasonably or commercially feasible , provided any such indemnity payment per incident shall not exceed the purchase price of the property serviced. Service contracts may also include, but not be limited to:

(1) Contracts for the repair, replacement or maintenance of property for damage resulting from power surges and accidental damage from the handling of the same.

(2) Contracts for the repair, replacement or maintenance of residential structures, appliances and systems, for the operational or structural failure due to a defect in materials, workmanship or normal wear and tear.

(3) Prepaid legal service contracts.

Service contract does not include mechanical breakdown insurance, insurance contracts otherwise regulated under the insurance code or retainers paid to licensed attorneys.

SECTION II:

The marketing, sale, offering for sale, issuance, making proposing to make and administration of a service contract as defined above, is not a contract of insurance under Alaska law and is exempt from all provisions of the Alaska Insurance Code.

SECTION III:

Service contracts shall be subject to the Alaska Consumer Protection Act, as applied to any consumer transaction or contract.

SECTION IV.

This act shall take effect and be in force from and after its passage, and shall be applicable to all proceedings pending before the Department of Insurance or the courts of this state on the effective date of this act.

State of Louisiana
DEPARTMENT OF JUSTICE
PUBLIC PROTECTION DIVISION
Baton Rouge
70804-9095

RICHARD P. IEYOUB
ATTORNEY GENERAL

P.O. BOX 94095
TELEPHONE (504) 342-7900
FAX (504) 342-7901

MAY 04 1998

OPINION #98-121

Mr. Joseph D. Wills
Louisiana Department of Insurance
Post Office Box 94214
Baton Rouge, Louisiana 70804-9214

Dear Mr. Wills:

You requested an opinion from this office concerning the classification of household service contracts. You indicated that these agreements can be interpreted as either "insurance", "a warranty" or "a service contract." In a subsequent telephone conversation, you stated that the specific concern of the Department of Insurance was whether a household service contract is insurance, and therefore subject to Department regulation under the Insurance code.

We were not provided with the Department's interpretation or definition of a household service contract. You did, however, provide us with a copy of an American Home Shield Home Warranty Application to use as a reference or guide in determining the nature of a household service contract. After reviewing the application, this office has determined, for the purpose of this opinion, that a household service contract is a contract which provides for the service, repair or replacement of an existing home's mechanical systems and major built in appliances which become inoperable due to normal wear and tear. The agreement is usually purchased at the sale of a pre-owned home and can be purchased by either the buyer or seller of said home to provide coverage for one full year.

LSA-R.S. 22:5(1)(a) defines insurance as a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies. Black's Law Dictionary defines insurance as a contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils. Thus, applying these provisions, insurance is simply an agreement between two parties whereby one party agrees to pay another a specified amount based upon the occurrence of a loss caused by or resulting from a specific peril.

In Opinion Number 77-1350, the Attorney General's office addressed the classification and regulation of home warranty programs. In that opinion, a home warranty program

contract was defined as a contract between a purchaser of a previously owned residence and a person or firm who obligates itself, for valuable consideration, to repair or replace for a period of one year certain items in the residence which may malfunction due to normal use. The opinion concluded that the home warranty program was not a form of insurance contract contemplated by the Louisiana Insurance Code and should not be subject to regulation thereunder.

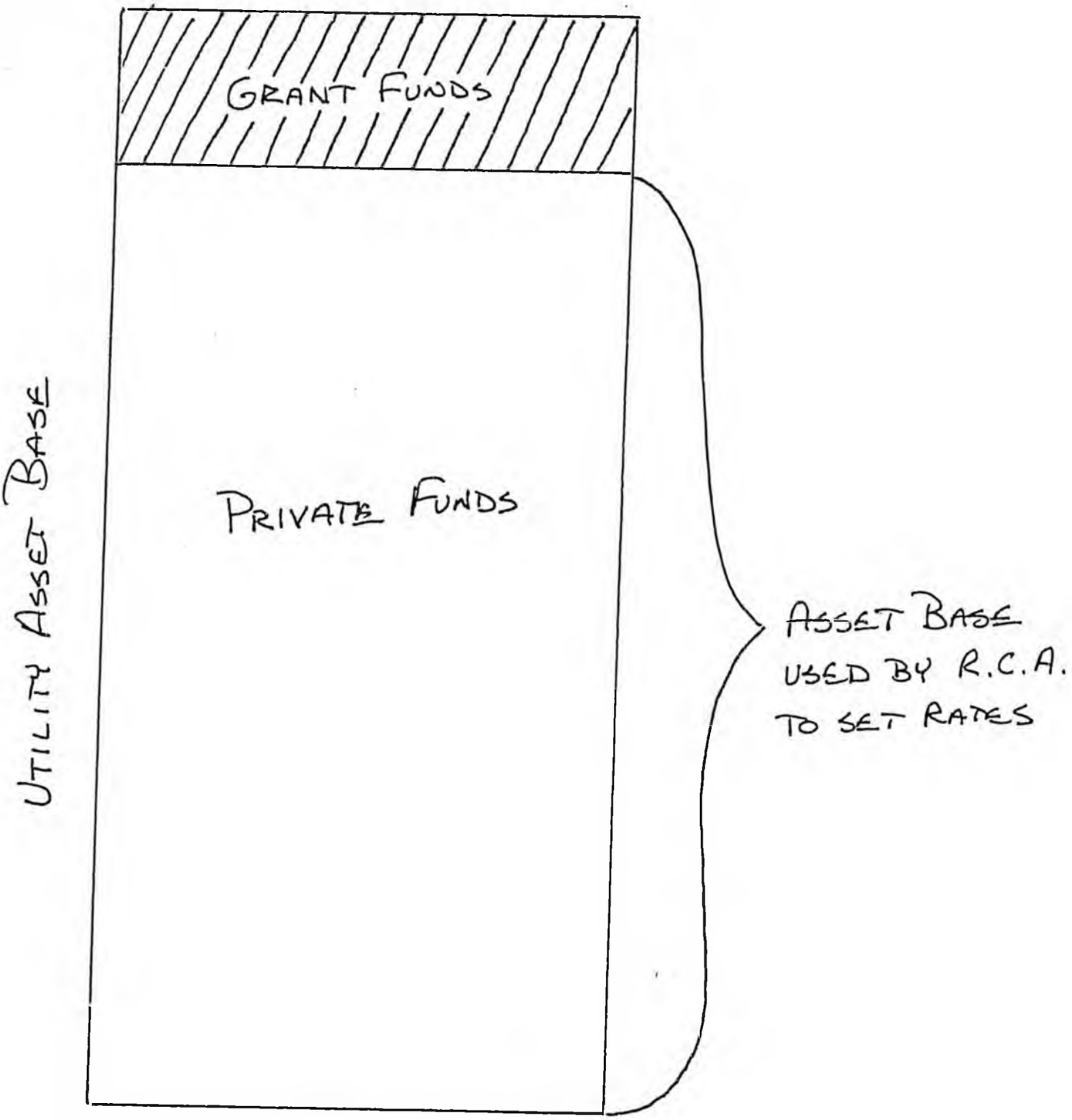
The home warranty program contract addressed in Opinion Number 77-1350 and the household service contract which is the subject of your opinion request appear to be the same kind of contract. They both provide for the repair and replacement of an existing home's mechanical systems and appliances which become inoperable due to the normal use of the item and/or normal wear and tear. Therefore, based on the conclusion of this office that the home warranty program contract is not a form of insurance contract and should not be subject to regulation under the Louisiana Insurance Code; it is also the conclusion of this office that a household service contract is not insurance and is not subject to regulation under the Louisiana Insurance Code.

Sincerely,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY: Cassandra A. Simms
CASSANDRA A. SIMMS
ASSISTANT ATTORNEY GENERAL

/CAS


GRANT FUNDS
PRIVATE FUNDS
UTILITY ASSET BASE
ASSET BASE USED BY R.C.A. TO SET RATES

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 119
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: DCED
Title: Grants to Regulated Public Utilities
BRU: Regulatory Commission of Alaska (399)
Component: Regulatory Commission of Alaska
Sponsor: Representative Coghill
Requester: House Labor & Commerce
Component No.: 2417

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
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						
1141 - RCA Receipts	*	*	*	*	*	*
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

Please see analysis continuation.

Prepared by: Jim Strandberg, Commissioner
Phone 907-276-6222
Division: Regulatory Commission of Alaska
Date/Time 3/19/03 3:06 PM
Approved by: Edgar Blatchford, Commissioner
Date 3/19/2003
Agency: Department of Community & Economic Development

(Revised 9/2002 OMB)

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. HB 119

ANALYSIS CONTINUATION

This legislation would make public water and sewer utilities eligible for grants for projects if they serve as the primary utility for a municipality and their rates are regulated by the Regulatory Commission of Alaska under AS 42.05.

Legislative Audit recommended that the Commission determine the appropriate regulatory environment for small rural water and sewer utilities. For very small unsophisticated utilities, certification and economic regulation is difficult and expensive. For these utilities, local oversight and input is less costly. The RCA has held hearings and drafted regulations on small water and sewer regulation. The regulations are scheduled for discussion at the Commission's 4/9/03 public meeting. As currently proposed, the regulations would reduce the regulatory burden on small water and sewer utilities by establishing 3 classes of water/sewer utilities based on size: exempt, for very small utilities; reduced regulation, for the majority of smaller utilities; and certification and/or economic regulation for the very largest class. Passage of this legislation may cause some of the utilities to seek a higher degree of regulation in order to be eligible to receive these grant funds.

If large amounts of funds are available, this legislation could require an additional engineer and tariff analyst to analyze approximately 250 water and 125 sewer utilities who may apply for certification and economic regulation within the statutory timeliness deadlines. Two water and two sewer utilities currently certificated may require rate review to become economically regulated and eligible to receive grants. After two years, these positions can be reduced to part-time. Economic regulation will require the Commission to review and analyze all changes to each utility's rates and tariffs within the statutory deadlines. RCA's budget is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanisms. No general funds are allocated for support of the agency. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers it regulates. The RCC is capped at 0.8 % of regulated utilities annual gross revenues; the agency's current budget is too close to the cap to allow funding these positions.

HB 120

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 24, 2003 **FURTHER REFERRALS:**

Date of Committee Action: March 19, 2003

The LABOR AND COMMERCE Committee considered: **HB 120**

HOUSE BILL NO. 120 **SERVICE CONTRACT SALES ARE NOT INSURANCE**

"An Act excluding service contracts from regulation as insurance; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 120 (LBC)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	GATTO				
	CRAWFORD			/	
	GUTTENBERG				
	DAHLSTROM	✓			
	ROKEBERG	✓			
Vice Chair:	LYNN	X			
Chair:	ANDERSON	X			

23-LS0537\H
Ford
3/14/03

CS FOR HOUSE BILL NO. 120( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE COGHILL

A BILL

FOR AN ACT ENTITLED

"An Act excluding service contracts from regulation as insurance; and providing for an effective date."

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

* Section 1. AS 21.03.021 is amended by adding a new subsection to read:

(e) This title does not apply to a service contract offered, issued for delivery, delivered, or renewed in this state. In this subsection, "service contract"

(1) means a contract or agreement for a separate or additional consideration, for a specific duration, to

(A) maintain, service, repair, or replace property, or to indemnify for repair, replacement, or maintenance, for an operational or structural failure due to a defect in materials or workmanship or normal wear and tear, with or without additional provision for incidental indemnity payments when service, repair, or replacement is not reasonably or commercially feasible;

(B) repair, replace, or maintain property damaged as a result of power surges or as a result of accidental damage from the handling of property damaged by power surges;

(C) repair, replace, or maintain residential structures, appliances, and systems, including damage resulting from operational or structural failure due to a defect in materials or workmanship or normal wear and tear; or

(D) provide prepaid legal services;

(2) does not include

(A) mechanical breakdown insurance;

(B) a contract that requires an indemnity payment per incident and the payment exceeds the purchase price of the property serviced; or

(C) retainers paid to licensed attorneys.

*** Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

Insurance covers repair or replacement from perils such as fire, earthquake, or flood. Service contracts cover repair and replacement from normal wear and tear that is pretty predictable. Incidental indemnity is in legislation to cover a cash settlement for an appliance that repair is not possible for a variety of reasons including the possibility that parts are no longer made for the appliance. Incidental is the key word because a cash settlement would be rare and is not the primary function of the contract. If incidental indemnity is not in the statute, claims that would otherwise be settled through a cash payment would be denied.

AMENDMENT #1

OFFERED IN THE HOUSE L & C BY REPRESENTATIVE ROKEBERG

Line 6, after the word "state"

Insert: **where the tangible property has a purchase price of $20,000.00 or less, exclusive of sales tax. In this subsection, "tangible property" means household consumer goods.**

AMENDMENT # 2

OFFERED IN THE HOUSE L & C BY REPRESENTATIVE ROKEBERG

1 Line 5, after "service contract"

2 Insert: , **or home warranties."**

AMENDMENT # 3

OFFERED IN THE HOUSE L & C BY REPRESENTATIVE ROKEBERG

Line 8, after "money."

Insert: **Motor vehicle sales and activities are excluded from this subsection.**

CONCEPTUAL LANGUAGE FOR HB 120

OFFERED IN THE HOUSE L & C BY REPRESENTATIVE ROKEBERG

(e) This title does not apply to a service contract**. or home warranties,** issued for delivery, delivered, or renewed in this state **where the tangible property has a purchase price of $20,000.00 or less, exclusive of sales tax.** In this subsection, **"tangible property" means household consumer goods. In this subsection,** service contract means a contract or agreement to provide for the repair, replacement, or maintenance of property over a definite period of time in exchange for a fixed amount of money. **Motor vehicle sales and activities are excluded from this subsection.**

CONCEPTUAL LANGUAGE FOR HB 120

OFFERED IN THE HOUSE L & C BY REPRESENTATIVE ROKEBERG

TO: HB 120

(e) This title does not apply to a service contract issued for delivery, delivered, or renewed in this state. In this subsection, service contract means a contract or agreement to provide for the repair, replacement, or maintenance of property over a definite period of time in exchange for a fixed amount of money **Auto service contracts are excluded from this subsection.**

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:
3044 Badger Road, Suite 290
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4721

Session Contact:
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

HB 120

SPONSOR STATEMENT

The last administration and its director of the Division of Insurance concluded that service contracts are considered insurance.

Service contracts have not been an area of consumer complaint in Alaska. Leaving the interpretation of service contracts to the will of an administration could eliminate the willingness of manufacturers to offer such contracts in Alaska.

In a 1980, Attorney General's Opinion, Avrum Gross set out guidelines for determining whether a prepaid legal services plan was insurance. He determined it was not. One determinate was that the "plan was principally engaged in offering service, not in indemnifying against risks."

Twenty states have adopted statutes or regulations treating service contracts as separate and distinct from insurance, but have done so by adopting provisions that require more government and more regulation overview. These states include Washington, Illinois, Texas, South Carolina, New York, Nevada, Wyoming and others.

HB 120 exempts service contracts from Title 21 regarding insurance. Six other states, Idaho, Montana, Nebraska, North Dakota, South Dakota and West Virginia, have taken the same approach as HB 120 and exempted service contracts from insurance statutes rather than creating more bureaucracy.

Representative_John_Coghill@LEGIS.state.ak.us

I would like to call the House Labor & Commerce Committee to order.

Let the record reflect the time is _____P.M. and the date is Wednesday, March 19, 2003.

Let the record also reflect there is a quorum. Members present are:

- Rep. Bob Lynn, Vice Chairman
- Rep. Nancy Dahlstrom
- Rep. Carl Gatto
- Rep. Norman Rokeberg
- Rep. Harry Crawford
- Rep. David Guttenberg

And myself, Rep. Tom Anderson, Chairman

Today's Schedule:

HB 119 (Rep. Coghill)	**Water/Sewer/Waste Grants To Utilities**
HB 120 (Rep. Coghill)	**Service Contracts are Not Insurance**
HB 111 (RLS By Req./Gov)	**Extend the RCA**

*****Sub Committee only no testimony or discussion*****

THU 27TH 1PM JUDICIARY

Friday March 21st

No Meeting Scheduled – Energy Break

Monday March 24th

No Meeting Scheduled – Energy Break

Office of the Attorney General

Dimond Courthouse, 123 Fourth Street, 4th Floor
P.O. Box 110300
Juneau, AK 99811-0300

PHONE: (907) 465-2133 FAX: (907) 465-2075

Date: March 5, 2003 **Number of pages:** 2

To: Rynnieva Moss **Fax:** 907-465-3258

From: **David W. Marquez**
Assistant Attorney General

Attached is the list of laws you requested that provide protection to consumers in the context of contracts generally, and service contracts specifically. Please let me know if you need anything more.

Laws Protecting Consumers related to Contracts Generally

AS 45.02.101-.725 (Uniform Commercial Code – Sales. These provisions regulate all aspects of a contract for the sale of goods, including form, formation, contract obligations and construction, passing of title, rights of sellers and buyers, performance, breach, and remedies. Note: a service contract itself would not be subject to the UCC, because it is not a "good". But the underlying contract for the sale of a good, for which a service contract is provided, is subject to these provisions).

> **AS 45.02.313-316** (These provisions of the UCC regulate express and implied warranties in the sale of goods).

Common Law – applicable to contracts for the sale of goods to the extent UCC provisions do not provide a specific right or remedy.

> **Implied Covenant of Good Faith and Fair Dealing** – read into every contract
> **Quasi- contract remedies** – in absence of an express contract, courts will fashion a remedy as if a promise had been made.

AS 45.10.010-.230 (Retail Installment Sales Act. This Act establishes various disclosure requirements regarding the terms of a installment transaction, but does not have requirements for warranty provisions.)

AS 45.50.471(b)(13) (Unfair Trade Practices and Consumer Protection Act - making it an unfair trade practice to fail to deliver a written order or contract at the time of an installment sale)

AS 45.50.471(b)(14) (Unfair Trade Practices and Consumer Protection Act - making it an unfair trade practice to represent that an agreement confers rights if it does not, or which are prohibited by law)

Laws Protecting Consumers related to Service Contracts Specifically

AS 45.25.620 (requirements for motor vehicle service contracts)

15 U.S.C. Sec. 2301-2312 (Magnuson-Moss Warranty Act – federal requirements related to warranties or service contracts on any goods)

16 CFR 455, et seq. – (FTC used car rule requires the FTC buyer's guide to be posted on used cars. The form contains warranty information.)

SEARS

Joshua S. Ellis
Manager
Government Affairs
Sears, Roebuck and Co.
3333 Beverly Road, BC-128A
Hoffman Estates, IL 60179

March 3, 2003

Chairman Tom Anderson
House Labor & Commerce Committee
State Capitol Room 432
Juneau, Alaska 99801-1182

Re: House Bill 120

Dear Chairman Anderson:

I am pleased to write to you today on behalf of Sears, Roebuck and Co, our four retail stores, and our 600 associates employed in Alaska. I am writing to ask your support of HB 120, which allows for increased competition in the service contract marketplace.

Sears and its wholly-owned subsidiary Sears Protection Company are among the leaders in selling protection agreements, Sears' term for service contracts, for consumers and small businesses throughout the country. The principal purpose of these agreements is to provide for the repair, replacement or maintenance of specified products necessitated by inherent defects or by normal wear and tear. These kinds of agreements do not have the fundamental characteristics of an insurance contract because they do not cover accidental damage due to fire, floods, acts of God and similar risks.

House Bill 120 if enacted would clarify that all service contracts would not be regulated as insurance. Under current practice as we understand it in Alaska, some service contracts are not treated as insurance (for example, when Sears itself issues a protection agreement on an item it sold). But other service contracts could be treated as insurance (for example, if Sears Protection Company issued a protection agreement on an item Sears sold). In other words, only retailers and manufacturers of products can safely sell service contracts -- not repair shops, not subsidiaries of retailers, no third parties at all.

Other states have recognized that focusing on who sells a service contract rather than on the principal purpose of service contracts reduces competition in the marketplace. H.B. 120 would benefit consumers by opening up the market for these non-insurance contracts to all companies. Alaska is one of a small number of states that do not permit this increased competition.

There are two types of solutions that other states have used to open up the market. First, some states have opted to comprehensively regulate the business of issuing service contracts -- no matter who sells the contracts. Some states do this in the Insurance Department, others in catch-all regulatory agencies, still others in the Agriculture Department. Another group of states -- including Idaho, Montana, Nebraska, North and South Dakota and West Virginia --decided to exempt all service contracts from the scope of insurance laws as House Bill 120 provides.

We support House Bill 120 and urge its passage. We stand ready to provide any information that you and your colleagues need as you consider this measure. Please do not hesitate to ask me.

Sincerely,

Joshua S. Ellis
Manager
Government Affairs

CC: Thyes Schaub

STATE OF ALASKA

MEMORANDUM

Kenneth C. Moore
Division of Insurance
Department of Commerce &
Economic Development

DATE: January 18, 1980

FILE NO: J-66-359-80

TELEPHONE NO:

SUBJECT: Is Don Caldwell Legal Service Plan Insurance?

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Leslie J. Ludtke
Assistant Attorney General

You have requested this department's advice as to whether the legal service plan proposed by the Don Caldwell Corporation is subject to regulation by the Division of Insurance. "Insurance" is defined in Title 21 as "a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount of benefit upon determinable contingencies." As proposed, the Don Caldwell Corporation legal service plan does exhibit some characteristics of "insurance" within this definition.

However, the technical definition of insurance should not control the issue of whether regulation under the insurance statutes is appropriate. */ If the Don Caldwell legal service plan is not considered to constitute insurance, it will be regulated by both the Department of Commerce and Economic Development and the Alaska Bar Association. The issue here is not whether some aspects of the proposed plan may or may not be insurance, but whether the principal purpose of the plan is to provide insurance.

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*/ In Physicians' Defense Co. v. O'Brien, 111 N.W. 396, 398 (1907), the dissent stated: "The statutory definition of insurance is comprehensive, but it does not follow that all contracts which contain a technical element of indemnity are insurance contracts. The statute should be read in light of the development of insurance law, and the purpose of requiring insurance companies to become subject to the examination and control of the state." See also, State v. Anderson, 408 P.2d 864, 875 (Kan. 1966).

The primary issue is whether the particular regulatory provisions of the insurance statutes would in this instance protect the purchasers of the legal service plan from the Don Caldwell Corporation as administrator of the plan. Particularly at issue in the instant case is whether the deposit requirements established by AS 21.09.090 should be imposed upon the Don Caldwell Corporation as a condition to allowing it to commence business in the state. These deposit requirements are designed to safeguard the subscriber's indemnification rights in the event of the insurer's insolvency.

The principal purpose test enunciated in the cited cases has been widely recognized. 44 C.J.S. Insurance § 59 reads:

> Whether a company is engaged in the insurance business depends not on the name of the company, but on the character of the business that it transacts, and whether the assumption of a risk, or some other matter to which it is related, is the principal object and purpose of the business.

This approach was adopted by the second circuit court of appeals in Jordan v. Group Health Ass'n, 107 F. 2d 239 (2nd Cir. 1939). In that case, the court of appeals considered whether a medical service organization was subject to regulation as an insurer. The organization was a nonprofit corporation which managed a group health plan. This nonprofit corporation was to use its best efforts to make available to members, upon payment of membership dues, the services of physicians. These services were contracted for by the group health organization. The main purpose of the business in the court's view was to "contract for the rendition of the services by independent contractors, not to supply them at all events or contingently." The court's holding that the group health plan was not insurance was premised on the adoption of the principal purpose test. The court emphasized that the plan was principally engaged in offering service, not in indemnifying against risks. The court stated:

> That an incidental element of risk distribution or assumption may be present should not outweigh all other factors. If attention is focused only on that feature, the line between insurance or indemnity and other types of legal arrangement and economic function becomes faint, if not extinct. This is especially true when the contract is for the sale of goods or services on contingency. But obviously it was not the purpose of the insurance statutes to regulate all arrangements for assumption or distribution of risk. That view would cause them to engulf practially all contracts, particularly conditional sales and contingent service agreements. The fallacy is in looking only at the risk element, to the exclusion of all others present or their subordination to it. The question turns, not on whether risk is involved or assumed, but on whether that or something else to which it is related in the particular plan is its principal object and purpose.

The court further noted that the application of insurance statutes to the group health plan would result in the destruction of the organization, rather than in its regulation. In particular, the court found that the reserve requirement was uneconomic and inappropriate. It stated at 251:

> Imposition of the requirements in such circumstances would be not only useless, but an economic waste. It is not the function or purpose of group health to pile up vast accumulations of capital to await the needs of a distant day; it is rather to keep a steady flow of funds, with as small a margin as possible, running from patient to physician as nearly contemporaneously with the reverse flow of service from physician to patient can be. It is a distributing, not an accumulating agency.

The primary issue is therefore whether the Don Caldwell legal service plan can be properly classified as a contingent service plan. The proposed plan structurally parallels the group health plan discussed in the Jordan case. There is, however, one significant difference. In Jordan, the corporation was a nonprofit corporation controlled by the very parties to which the health service inured. Here, the Don Caldwell corporation is a profit corporation and consequently does not evidence the same identity of interests.

The design of the program is fairly simple. The Don Caldwell Corporation administers and markets the plan. Subscribers desiring coverage pay a set fee to the Don Caldwell Corporation in exchange for the corporation's promise to procure certain legal services. Don Caldwell Corporation then deposits the money into a trust fund. Don Caldwell Corporation is paid designated amounts from the trust fund for providing administrative services. The rate and terms of compensation are controlled by the administration-trustor agreement.

In order to provide the agreed upon legal services, the Don Caldwell Corporation contracts with licensed attorneys to provide the services for a set fee. The attorneys agree to look primarily to the trust fund for payment, of which the terms and conditions are set by the attorney-trustor agreement. This agreement establishes that the attorney shall be paid ten dollars from each individual subscriber's fee. (4.2 Attorney-Trustor Agreement) The contracting attorney is entitled to retain this fee regardless of what services are performed for each member. The fee must be returned only if the legal service is discontinued or the certificate of coverage is terminated. Section 3.11.2 also establishes that the ten dollar fee will constitute the attorney's full and complete claim against the covered member and the trust fund. This provision indicates that if the trust fund refuses to pay or becomes insolvent that the contracting attorney may pursue a claim for ten dollars against an individual subscriber. The attorneys contracting with the Don Caldwell Corporation assume the status of independent contractors and are not employees of the Don Caldwell Corporation.

The provision that the independently contracting attorney may seek recourse against a covered individual distinguishes the Don Caldwell plan from the plan discussed in Jordan and related cases. The subscribing individual has prepaid Don Caldwell Corporation for certain legal services.

Although the amount of service has not been established, the type of service is clearly delineated. The Don Caldwell Corporation has agreed to provide each subscriber with a simple will, unlimited telephone consultation and referral service at a set rate. However, if the subscriber takes advantage of these services, he may, under the provisions of the attorney-trustor agreement, be held liable up to $10.00. The independently contracting attorney, has not, under the Don Caldwell plan, agreed to look exclusively to the Don Caldwell Corporation for payment; the subscriber still is secondarily liable. Therefore, the Don Caldwell Corporation has agreed to indemnify the subscriber for certain legal services and yet has not established a guarantee fund assuring that the subscriber will in fact be indemnified for the expenses related to these services. In this king of situation, a reserve fund would serve to protect the insured from any potential liability.

In People v. California Mutual Ass'n, 441 P.2d 97 (Calif. 1968), the Supreme Court of California considered whether a health plan structured similarly to the Don Caldwell plan constituted insurance. In determining whether the plan constituted insurance, the court considered whether the plan contained "significant aspects of indemnity." Central to this inquiry, was the issue of whether the member incurred personal liability for services rendered or promised by the insurer and consequently whether a reserve fund would fulfill a regulatory goal. The court noted that the California Physicians' Service Plan, 167 A.L.R. 306, did not constitute insurance since the contracting physicians agreed to seek payment only from the service and therefore bore all the risk of the financial solvency of the service. Similarly, in Jordan, supra, at 243, the court emphasized that the contracts made with group health did not purport to obligate the member to pay the physician for the service. The court noted that the "risk" element hinged on the physician, because of his set payment, rather than upon the group health plan. The court stated at 246:

> The agreement is not to pay to the member or to any one else the amount of loss which is caused to him. True, the physician receives his salaried compensation. But he receives no more and no less because of the falling of the loss. He is not a beneficiary; nor is he an agent of the member; in an inaccurate, non-technical sense, he, rather than Group Health, is the one more nearly analogous to an insurer.

The issue is therefore whether the imposition of the reserve fund requirement is warranted in this case by the possible imposition of a ten dollar liability upon each subscribing individual. It is assumed under the Don Caldwell plan that the independently contracting attorney will bear the risk that the funds received will be adequate to cover the services offered, during the time in which the plan is in operation. In the context of the instant plan, the independently contracting attorney is able to offer reduced rates by spreading the cost of the service between users and non-users. The attorney is assuming the risk that the number of non-users will be sufficiently large to make profitable the service rendered to the users. This is a fundamental element of insurance, but it is the attorney, and not the Don Caldwell Corporation, that is assuming this risk of "use". */

In People v. California Mutual Ass'n, supra, the California court confronted a similar question. In that case, the California Mutual Association (CMA), a nonprofit corporation, contracted with thirty-eight physicians to provide medical services to its members. However, CMA also had contracts with seven physicians who had not agreed to look exclusively to CMA for payment. Generally, CMA reimbursed members for the cost of treatment by these seven physicians. The court held that the direct contracts with the thirty-eight doctors were service contracts and did not constitute indemnification. However, the contracts with the seven other doctors who had agreed only to serve members, but had not agreed to seek payment solely from CMA, were held to

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*/ In Guaranteed Warranty Corp., Inc. v. State, ex. rel. Humphrey, 533 P.2d 87, 90 (Ariz. 1975), the court listed five elements of insurance: (1) an insurable interest; (2) a risk of loss; (3) an assumption of the risk by the insurer; (4) a general scheme to distribute the loss among the larger group of persons bearing similar risks; and (5) the payment of a premium for the assumption of risk.

constitute insurance. */ The court remanded the case, to determine whether the indemnity or insurance portion of CMA's business constituted a "significant financial proportion" of the business. If the amount were found to be "financially significant" the plan as an entirety would be considered insurance. The court stated at 101:

> We realize that this determination involves balancing the indemnity aspects against the direct service aspects of the business, but only in the context of the plan as a whole can it be determined whether the indemnity feature is so significant as to warrant imposing the Insurance Code financial reserve requirements.

It should be noted that the legal service plan will also be extensively regulated by the Alaska Bar Association. Several aspects of the Don Caldwell legal service plan may not comport with existing bar regulations.

First, the subscription fee paid by the members should not be characterized as a "retainer fee." The Don Caldwell Corporation is not an attorney and may not accept a retainer fee. In the several agreements accompanying the plan, the subscription fee is labeled a "contribution" for the purchase of "group legal expense benefits." The Don Caldwell Corporation is, however, legally prohibited from selling legal services. Furthermore, Section 2.16.2 of the attorney-trustor agreement states that "contributions shall replace the words "premiums" of [sic] "fees." Therefore, by attempting to eliminate possible insurance connotations, the plan may run afoul of the standards of professonal conduct.

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*/ It is not clear from the case report whether these doctors agreed to look primarily to CMA for payment. The Don Caldwell plan may be distinguishable on the grounds that the independently contracting attorneys have agreed to look primarily to the trust fund for payment. Additionally, it is questionable whether those lawyers may legally assert a claim against the subscribing members. The subscribing members are third-party beneficiaries of the contract between the contracting attorneys and the Don Caldwell Corporation, and as such it is difficult to ascertain the legal basis on which liability to the independently contracting attorney may rest. These considerations undermine the indemnity aspect of the Don Caldwell plan.

Secondly, DR 2-103(B) prohibits a lawyer from "compensating or giving anything of value to a person or organization to recommend or secure his employment by a client..." Under the Don Caldwell plan, the legal service office is in one sense giving up part of the fee paid by the subscriber to the Don Caldwell Corporation. The subscriber is paying the Don Caldwell Corporation $28 for legal services. Out of that payment, the party providing the legal services receives only $10. There is thus a question as to whether the independently contracting attorney is in fact paying the Don Caldwell Corporation for referrals. Recently, the District of Columbia Legal Ethics Committee addressed this question of "joint advertising" expenditures. The Legal Ethics Committee concluded that under the current code of professional responsibility, which is similar to Alaska's, joint referral programs which were not approved by a bar association (DR 2-103(D)(3)) violated the code. Several amendments have been proposed to allow for such joint referral programs in the District of Columbia. However, unless Alaska adopts similar amendments, the program may be prohibited from operating by DR 2-103.

Although these issues are not directly related to the question of whether the insurance statutes should apply, they do address the issue of what kind of regulation is appropriate. The Bar Association is primarily responsible for insuring that the legal services provided by the plan conform to professional standards. The Code of Professional Responsibility is one method by which the Bar is able to enforce these standards.

LJL:cb

HB

135

Larry Holman M.S. LMFT
Susitna Counseling and Associates
2600 Denali St. Ste 450
Anchorage, AK. 99503
Ph. (907) 272-7002 Fax (907) 272-2851

February 28, 2003

Representative Peggy Wilson
State Capital Rm. 409
Juneau, AK. 99801

Re: House Bill 135

Dear Representative Wilson,

The Regulatory Board for Licensed Marriage and Family Therapists in the State of Alaska strongly support the passage of HB 135. One of our goals for the last couple of years has been to review our laws and regulations after being licensed for about 10 years, to see if they meet current standards of practice nationally. There were several areas identified which were seen as deficient and/or not up to the standards of other mental health professions in this state and nationally. The national organization for marriage and family therapists (AAMFT) as well as the Association of Marital and Family Therapy Regulatory Board has provided us with direction and guidance in bringing our laws and regulations up to a high standard so that the Alaskan public will be protected.

House Bill 135 advances that goal in several significant ways. First and possibly foremost is the provision that addresses sexual relationships between MFTs and clients. There are no mental health professional associations of which I am aware that do not have strict sanctions and prohibitions against sexual relationships with clients and former clients. Many specify two to three years. Social Workers specify a lifetime prohibition. This provision needs to be spelled out clearly since the possible harm caused can be so egregious. Other provisions in this law are attempts to be more responsive to the public, which our Board is charged to protect. The disclosure statement section contains a description of therapist's formal education, degrees obtained and institutions attended, therapist's area of specialization, and therapist's fee schedule. We think this is an important addition to our law in that it spells out the contract between a therapist and his/her client. Many clients are not very informed about these issues and this provision clarifies them.

These are just mentioned two examples of new provisions that this law addresses. The other provisions are significant as well and we encourage you to support them vigorously as we do. The Marriage and Family Therapy Regulatory Board thanks you for your sponsorship of this bill and if there is anything we can do to support its passage please let us know.

Sincerely,

Larry Holman, LMFT, Chairperson, MFT Regulatory Board

Alaska State Legislature

Representative Peggy Wilson
Putting Alaska's Families First

Sectional analysis (HB 135)

Section 1. Adds the board of Marital and Family Therapists (hereafter "board") to the list of boards that may request the division of occupational licensing to contract for substance abuse treatment for licensed therapists (hereafter "licensees").

Section 2. Authorizes the board to require physical and mental exams of licensees.

Section 3. Changes a licensing requirement relating to post-degree clinical contact.

Section 4. Adds two more categories of circumstances when a client's communications to a licensee may be revealed to others.

Section 5. Adds a new ground for disciplinary sanctions

Section 6. Allows summary suspension of a licensee who refuses to submit to a physical or mental examination.

Section 7. Adds two new sections of law. One requires disclosure statements to clients. The other enacts a practice limitation.

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Representative_Peggy_Wilson@Legis.state.ak.us • http://www.akrepublicans.org • 1-800-686-3824

Alaska State Legislature

Representative Peggy Wilson
Putting Alaska's Families First

SPONSOR STATEMENT
House Bill 135

"An act relating to marital and family therapists."

The law that established the Board of Marital and Family Therapy has been in place for ten years. It is time to pursue the placement of updated language within the statute.

HB 135 will bring the Alaska Statutes for Marriage and Family Therapy to the same standard as the laws regarding other counseling services in the state and Marriage and Family Therapy statutes nationally.

HB135~

- *Adds* the Board of Marital and Family Therapy to the list of boards that may request the Division of Occupational Licensing to contract for substance abuse treatment under licensed therapists,
- *Gives* the Board of Marital and Family Therapy authority to order a licensed marital and family therapist to submit to a reasonable physical or mental examination if the board has credible evidence sufficient to conclude that the therapist's physical or mental capacity to practice safely is at issue,
- *Allows* for individual client contact to be used as hours toward licensing,
- *Requires* the therapist to communicate to a potential victim or law enforcement officer if a threat of imminent serious physical harm to an identified victim has been made by a client,
- *Imposes* disciplinary sanctions with regard to therapist sexual misconduct.

HOUSE BILL 135 not only brings parity to the mental health professions in the state, it also adds additional consumer protection for Alaskans seeking professional counsel.

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FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 135
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: DCED
Title: An Act relating to marital and family therapists
BRU: Occupational Licensing (117)
Component: Occupational Licensing
Sponsor: Representative Wilson
Requester: House Labor & Commerce
Component No.: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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 1156 - Receipt Supported Services						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation amends several sections of AS 08 to include the responsibilities and requirements of marital and family therapists.

New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager
Phone (907) 465-2144
Division: Occupational Licensing
Date/Time 3/3/03 3:43 PM
Approved by: Edgar Blatchford, Commissioner
Date 3/3/2003
Agency: Department of Community & Economic Development

(Revised 9/2002 OMB)

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 26, 2003 **FURTHER REFERRALS: HES**

Date of Committee Action: March 5, 2003

The LABOR AND COMMERCE Committee considered: **HB 135**

HOUSE BILL NO. 135 **MARITAL & FAMILY THERAPISTS**

"An Act relating to marital and family therapists."

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____(_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
IISS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CED				✓

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN				X
	GATTO	X			
	CRAWFORD	✓			
	DAHLSTROM	✓			
	ROKEBERG	✓			
Chair:	ANDERSON	X			
Chair:					

What Is a Marriage and Family Therapist?

Marriage and Family Therapists are mental health professionals trained to diagnose and treat mental and emotional disorders. MFT's specialize in treating mental disorders in the context of marriage or family relationships. Marriage and Family Therapists work with the individual, couple or family to change behavioral patterns so that problems can be resolved.

What types of services do Marriage and Family Therapists provide?

A fundamental tenet of marriage and family therapy is that individual problems are often best understood and treated in the context of the relationships in which the person is involved. Failure to address the marital or family environment, as part of the mental health treatment plan will result in decreased likelihood for a successful outcome. Therefore, marriage and family services are:

Brief
Solution Focused
Specific, with attainable goals
Designed with the "end in mind"

Marriage and Family Therapists treat a wide range of serious clinical problems including depression, alcohol and drug abuse, anorexia, and dementia.

Clients of MFTs, according to research studies, significantly improve after treatment for problems such as: adolescent substance abuse, depression and stress by family caregivers of elderly family members, clinical depression among women in distressed marriages, general child conduct disorders, child aggression, global family problems, communication and problem solving, phobias, and psychiatric symptoms.

Who licenses Marriage and Family Therapists?

Currently, forty-two states recognize and regulate marriage and family therapists as independent mental health providers. In addition, the Health Resources Services Administration recognizes the field of marriage and family therapy as one of the five core mental health disciplines for purposes of determining mental health shortage areas, and the healthcare program for military dependents. Champus/Tricare, recognizes and reimburses MFTS as independent health care providers.

How are Marriage and Family Therapists educated and trained?

Marriage and family therapy is a distinct professional discipline with graduate and postgraduate programs. To become a MFT, an individual must obtain a Master's degree or complete a doctoral program in marriage and family therapy or a related field. The American Association for Marriage and Family Therapy (AAMFT) Commission of Accreditation of Marriage and Family Therapy Education is designated by the U.S. Department of Education as the accrediting agency for academic institutions providing master's, doctoral and postgraduate training in marriage and family therapy.

Once the formal education of the MFT is completed, the individual must obtain post-graduate clinical experience in marriage and family therapy. The training of MFTs includes direct clinical supervision by experienced clinicians. When the supervision is completed, the therapist can take a state licensing exam or the national exam for MFTs conducted by the AAMFT Regulatory Board. This exam is used as a licensure requirement in most states.

Where are MFTs employed?

While many are in private practice, MFTs can be found in schools, businesses, government agencies, hospitals and other health care facilities (i.e., community mental health centers, residential treatment facilities, legal and correctional systems and county mental health departments. In addition, many are employed in Employee Assistance Programs (EAPs).

HMOs, PPOs and other managed care companies employ and contract with MFTs for utilization review and provider screening as well as to provide mental health treatments. Insurance companies reimburse for

Sexual Exploitation - the "Two-Year Rule"

Issue

Enact a law to create a cause of action against a psychotherapist for engaging in sexual relations with a patient either during the therapeutic relationship or within two years following termination of therapy.

Background

Sexual relations between a psychotherapist and his/her patient is generally prohibited by law. Violations usually result in disciplinary action by the licensing board (revocation or suspension of the license) and/or the filing of a civil action for damages by the patient. In some states, criminal penalties can be imposed on a psychotherapist who engages in sexual relations with his/her patient. Some believe that sexual relations between a psychotherapist and a patient or former patient should be prohibited in perpetuity. **This bill would instead provide that sexual relations between a psychotherapist and his/her patient are prohibited during the therapist-patient relationship and for two years following a termination of the relationship and would create a specific cause of action against a psychotherapist for a violation.**

This bill is necessary for several reasons. First, some argue or believe that a psychotherapist may have sexual relations with an ex-patient since the law only prohibits such relationships between therapist and patient. In the past, some therapists have simply terminated the therapist-patient relationship, perhaps made a referral, and then engaged in sexual relations with their "ex-patient," either moments or days later. This is clearly inappropriate and constitutes an ethical violation in most professions. Additionally, because of the power imbalance often present in the therapist-patient relationship, some reasonable amount of time must be allowed to pass before an intimate relationship should be allowed to begin.

Therapists who exploit the trust and vulnerability of patients for their own sexual gratification, especially when it can have such devastating and long-term effects upon patients, are practicing predatory psychotherapy. Imposition of a "two-year rule" will prevent therapists from avoiding the very purpose of the long-standing prohibition against therapist-patient sex by simply terminating therapy and engaging in sexual contact shortly thereafter. Establishment of a two-year rule provides for a cooling-off period that will discourage such relationships from occurring. The burden on therapists is not great, since they are free to have sexual relations with everyone except minors and ex-patients (for two years).

Opposition

This bill could be opposed by civil libertarian groups (such as the ACLU) on the basis of the limitation of a person's right to freely associate with others. They may ague that consenting adults should be allowed to engage in sexual relations with each other regardless of their prior professional relationship. They may additionally argue that the two-year rule is an arbitrary barrier to the right of free association. Other affected professions may claim that the present law is sufficient to deal with the existing problems and that the two-year rule is excessive or unnecessary.

Sample Language

Section 43.93 of the California Civil Code is an example of a law that creates a cause of action against a psychotherapist for engaging in sexual relations with a patient within two years following termination of therapy. Licensing law provisions that prohibit sexual relations between therapist and patient should also be amended to include the "two-year rule."

Alaska Association for Marriage and Family Therapy

2600 Denali St., Ste 450
Anchorage, Alaska 99503
Ph. (907) 272-7002

February 28, 2003

Representative Peggy Wilson
State Capital Rm 409
Juneau, AK. 99801

Re: House Bill 135

Dear Representative Wilson,

The Alaska Association for Marriage and Family Therapy appreciates your sponsorship of House Bill 135. Our organization supports this bill and was primarily responsible for initiating it. Much of the bill is housekeeping but there are parts, which are substantial changes. The addition of sexual misconduct brings MFT standards up to other mental health care professionals in the state as well as our own National Association's standards. It requires that two years must pass before a LMFT can have a sexual relationship with a former client. Sexual misconduct is one of the most problematic issues facing mental health care providers because of the nature of the relationships that are formed in the therapeutic process. Strict boundaries are absolutely necessary because of that relationship. The disclosure statement is a new provision, which is intended to inform and protect the client as a consumer of mental health services. It is a national trend in marriage and family therapy to educate the client with regards to the professional's training and specialization. In addition, it is a commonly accepted ethical procedure to make consumers aware of fees.

Again, thanks for sponsoring this bill.

Sincerely,

Susan Arth, Division President, AkAMFT

HB

148

HOUSE LABOR & COMMERCE

COMMITTEE PACKET

Index

March 26, 2004

1 **HB 330**

DECREASE TIME TO CLAIM UNCLAIMED PROPERTY
(Previously Scheduled)

2 **HB 148**

LAND SURVEY STANDARDS

ALASKA STATE LEGISLATURE
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 507 JUNEAU ,ALASKA 99801-1182 (907)465-4859

Summary of Changes
HB 148

The proposed changes to HB 148 are as follows:

1. Title change removes the Board of Registration for Architects, Engineers, and Land Surveyors.

2. Identifies the commissioner of DNR as the person adopting the new regulations.

3. Defines mortgage surveys.

4. Instructs the commissioner to consult with the Alaska Society of Professional Land Surveyors before adopting new standards for mortgage surveys.

ALASKA STATE LEGISLATURE
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 505 JUNEAU , ALASKA 99801-1182 (907)465-4859

Sponsor Statement
HB 148 – Minimum standards for mortgage surveys

House Bill 148 directs the Commissioner of Natural Resources to adopt minimum technical standards for mortgage surveys. Currently in Alaska, there are no standards in state law. It is left to the individual surveyors to include however much information on their surveys as they choose. This lack of standards can lead to undesired results. For example, information that a surveyor in Fairbanks would include in a mortgage survey, a surveyor in Kenai might leave off.

The American Land Title Association/ American Congress on Surveying and Mapping has adopted comprehensive minimum standards, but it is not the intention of HB 148 to place these standards in statute. The purpose of this bill is to have the commissioner develop and adopt, in regulations minimum standards for mortgage surveys while consulting with the Alaska Society of Professional Land Surveyors

It is my belief that a person who orders and pays for a mortgage survey should be able to expect the survey to provide certain pertinent information about the property's features. HB 148 will ensure the adoption of minimum standards so that every mortgage survey done in Alaska will include the same basic information.

ALASKA STATE LEGISLATURE
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Sectional Analysis
HB 148 – Minimum standards for land surveys

HB 148 makes changes under Title 34. in Chapter 65. To establish minimal technical standards for mortgage surveys.

Section 1. AS 34.65.010 will be changed by adding the language " to establish technical standards for mortgage surveys"

Section 2. AS 34.65 is amended by adding a new section, which directs the commissioner to establish minimum technical standards for Mortgage Surveys by working with the Alaska Society of Professional Land Surveyors and defines "mortgage survey"

23-LS0417\W
Kurtz
2/23/04

CS FOR HOUSE BILL NO. 148( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE HARRIS

A BILL

FOR AN ACT ENTITLED

"An Act relating to minimum technical standards for mortgage surveys."

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

*** Section 1.** AS 34.65.010 is amended to read:

Sec. 34.65.010. Purpose. The purpose of this chapter is to authorize right of entry on land for survey purposes, **to establish technical standards for mortgage surveys,** and to provide a method for preserving evidence of land surveys by filing records of survey and monument records. The provisions of this chapter supplement laws relating to land survey platting and subdivision surveys.

*** Sec. 2.** AS 34.65 is amended by adding a new section to read:

Sec. 34.65.080. Minimum technical standards for mortgage surveys. (a) The commissioner shall adopt regulations that establish minimum technical standards for the performance of mortgage surveys to ensure the achievement of not less than minimum degrees of accuracy, completeness, and quality. In developing regulations establishing minimum standards for the performance of mortgage surveys, the commissioner shall consult with and consider adopting standards recommended by the