

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 00/2

10953 HOUSE LABOR & COMMERCE

Hidden Treasures MBP
Juneau Montessori School, Southeast Alaska Friends of Montessori,
Juneau Dance Unlimited
750 St. Ann's Ave., Douglas, AK 99824

February 01, 2004

House Labor and Commerce Committee
House Finance Committee
Senate Leadership Conference/ Concurrence Committee
State Capitol Building
Juneau, AK 99801

Honorable Chairman and Members,

As we follow the progress of SB 102, moved from the House Finance Committee to the House Labor and Commerce Committee on January 28, 2004, we realize that the language that prohibits all municipal taxation finds the opposition particularly from those municipalities that currently impose sales tax or other forms of local taxation.

As beneficiaries and administrators of a gaming operation in Juneau, we would like to propose a rather simple but effective compromise that will create a universal taxation platform that is sustainable and easily adjusted if necessary.

- **Establish a Single, Realistic, and Universal Statewide Tax. 15% of the ideal net.**
- **Change the Statutes to require reporting gaming activity by location.**
- **Include Local Municipalities Proportionately in the Revenue Stream.** This universal statewide tax will be collected by the distributors and split equally between the state and the municipalities based on where the funds are generated. (See Chart 1)

WHO WINS AND WHO LOOSES

- **The State is a Winner.** This tax increase will represent over \$3,000,000 of new revenue for the State as well as an opportunity to strengthen accountability in this industry. The State would virtually guarantee collection, force administrative excess out of the current system, and insure that every municipality retains some of the proceeds raised within its jurisdiction to cover the indirect costs of gambling in its community.
- **Local Municipalities Not Currently Taxing Gaming Are Winners.** The majority of municipalities in the State that do not have a local sales tax or other form of local taxation on gaming will receive a proportional share from this tax and will not only benefit financially, but also this will encourage more gaming proceeds to be put to use locally.

➤ **Permit Holders are Winners.**

This may seem contradictory considering the increased taxation. However, as we can demonstrate with our financial records, this taxation will flow from excessive administrative costs, rather than from proceeds non-profit organizations receive since the statutory minimum returns will remain the same at 30%.

With a stable taxation platform, permit holders will be able to start planning for their futures without constantly worrying about the possibility of unexpected new taxes or tax increases.

❖ **Local Municipalities Currently Taxing are Partial Losers.**

The eleven municipalities that currently impose sales tax or other form of local taxation on gaming will see a reduction on their revenue flow. However, it would be unrealistic for any gaming operation to be able to pay over 28% of the ideal net in combined state and local taxes, return the minimum 30% to the charities and remain in business. Without a compromise, these communities would face a total loss of revenue from gaming. A partial loss of revenue as our compromise suggests makes sense and it is fiscally sound statewide. These municipalities would receive their proportional share of revenue and will ensure that their communities will continue receiving the services provided by those non-profit organizations that depend on gaming funding.

❖ **Operators, Gaming Managers, and Gaming Administrators are Losers.**

It is well known the administrative excess existing in this industry. We cannot condone abuse of a state granted privilege. Operators, gaming managers and administrators will have to tighten their belts, increase their performance, and make their operations more efficient.

We encourage each of you to carefully study the objective numbers surrounding this issue and patiently tolerate the many hostile voices you are certain to encounter along the way. We are certain that with thorough examination of the facts, our proposed compromise will grow in merit. We believe our goals are not different than yours. While improving the accountability in this industry and thus adding more credibility to this type of fundraising, we can create a sustainable future for the countless non-profits diligently serving many Alaskan communities. And, with a stable revenue structure in this industry, participant municipalities will benefit financially while new revenue is added to the State funds.

The following pages are a detailed overview, including financial projections of our proposed compromise.

Sincerely,

Lupita Alvarez
JMS Director
364-3535

Anna Eberhardt
JMS President
321-3149

Mary Neary
JDU President
789-3994

Darla Buck
SEAFOM Pres.
586 0006

David Sanden
Hidden Treasures Manager
364-2890

Table 2 -- Population of Alaska by Labor Market Area, Borough and Census Area, 1990-2003

Area Name	AKDOLWD	AKDOLWD	AKDOLWD	April 1 Census 2000	April 1 Census 1990	Change 2000- 2003	Average Annual Rate of Change (%)			Natural Increase (Births-Deaths) 4/1/00- 6/30/03	Net Migration (In-Out) 4/1/00- 6/30/03
	Provisional Estimate 2003	Revised Estimate 2002	Revised Estimate 2001				1990- 2000	2000- 2003	1990- 2000		
Alaska	648,818	641,482	632,674	626,931	550,043	21,887	76.888	1.1	1.3	22,356	-469
Anchorage Mat-Su Region	341,476	333,031	325,824	319,605	266,021	21,871	53,534	2.0	1.8	11,305	10,566
Anchorage Municipality	274,003	268,738	264,052	260,283	228,338	13,720	33,945	1.6	1.4	8,625	4,095
Matanuska-Susitna Borough	67,473	64,293	61,772	59,322	39,683	8,151	19,639	4.0	4.0	1,680	6,471
Gulf Coast Region	75,261	74,259	73,804	73,799	64,063	1,462	9,736	0.6	1.4	1,926	-464
Kenai Peninsula Borough	51,220	50,486	50,051	49,691	40,802	1,529	8,889	0.9	2.0	1,085	444
Kodiak Island Borough	13,811	13,664	13,623	13,913	13,309	-102	604	-0.2	0.4	574	-676
Valdez-Cordova Census Area	10,230	10,100	10,130	10,195	9,952	35	243	0.1	0.2	267	-232
Interior Region	96,397	99,055	98,119	97,417	92,111	-1,020	5,306	-0.3	0.8	4,284	-5,304
Denali Borough	1,814	1,884	1,908	1,893	1,764	21	129	0.3	0.7	54	-33
Fairbanks North Star Borough	82,214	84,859	83,774	82,840	77,720	-626	5,120	-0.2	0.6	3,866	-4,492
Southeast Fairbanks Census Area	5,922	5,941	5,916	6,174	5,913	-252	281	-1.3	0.4	233	-485
Yukon Koyukuk Census Area	6,347	6,371	6,521	6,510	6,714	-163	-204	-0.8	-0.3	131	-294
Northern Region	23,905	23,840	23,735	23,789	20,380	116	3,409	0.1	1.5	1,253	-1,137
Nome Census Area	9,370	9,353	9,307	9,196	8,288	174	908	0.6	1.0	467	-293
North Slope Borough	7,234	7,246	7,265	7,385	5,979	-151	1,406	-0.6	2.1	405	-556
Northwest Arctic Borough	7,301	7,241	7,163	7,208	6,113	93	1,095	0.4	1.6	381	-288
Southeast Region	71,841	71,935	72,128	73,082	68,989	-1,241	4,093	-0.5	0.6	1,587	-2,828
Haines Borough	2,327	2,362	2,380	2,392	2,117	-65	275	-0.8	1.2	4	-69
Juneau City and Borough	31,283	30,940	30,551	30,711	26,751	572	3,960	0.6	1.4	874	-302
Ketchikan Gateway Borough	13,548	13,697	13,351	14,059	13,828	-511	231	-1.1	0.2	270	-781
Prince of Wales-Outer Ketchikan C.A.	5,601	5,690	5,832	6,157	6,278	-556	-121	-2.9	-0.2	152	-708
Sitka City and Borough	8,891	8,812	8,804	8,835	8,588	58	247	0.2	0.3	238	-182
Skagway-Hoonah-Angoon C.A.	3,164	3,243	3,390	3,436	3,680	-272	-244	-2.5	-0.7	-25	-247
Wrangell-Petersburg Census Area	6,336	6,471	6,621	6,684	7,042	-348	-358	-1.6	-0.5	63	-411
Yakutat City and Borough	691	720	699	808	705	-117	103	-4.8	1.4	11	-128
Southwest Region	39,938	39,382	39,064	39,259	38,479	699	760	0.5	0.2	2,001	-1,302
Aleutians East Borough	2,700	2,732	2,554	2,697	2,464	3	233	0.0	0.9	38	-33
Aleutians West Census Area	5,420	5,075	5,263	5,485	9,478	-45	-4,013	-0.3	-5.4	71	-116
Bethel Census Area	16,774	16,529	16,184	16,046	13,656	728	2,380	1.4	1.6	1,084	-356
Bristol Bay Borough	1,105	1,165	1,179	1,258	1,410	-153	-152	-4.0	-1.1	31	-184
Dillingham Census Area	4,912	4,920	4,913	4,922	4,012	-10	910	-0.1	2.0	195	-205
Lake and Peninsula Borough	1,628	1,637	1,741	1,823	1,668	-195	155	-3.5	0.9	18	-213
Wade Hampton Census Area	7,399	7,304	7,230	7,028	5,791	371	1,237	1.6	1.9	566	-195

Source: Alaska Department of Labor and Workforce Development, Research and Analysis.

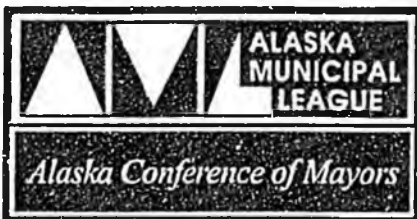
2002 Gaming Industry Facts and Trends

The Division presents data in this report based upon permittee and operator annual reports filed as of July 30, 2003. The reader should note the following:

- Gross receipts include the dollar value of play-backs (winning pull-tabs which the player has returned to the seller in exchange for additional pull-tabs in lieu of receiving the prize in cash).
- Adjusted gross income means gross receipts less prizes awarded and federal and municipal taxes paid on gross receipts. Adjusted gross income is the amount available to pay gaming expenses and make distributions of net proceeds.
- Net proceeds means adjusted gross income less gaming expenses. Gaming expenses include the 3% pull-tab tax, permit fees, and the 1% additional fee on permittee gaming profits.
- The Division based the 2002 calendar year permittee data on 1,171 annual financial statements filed as of July 30, 2003. There are 77 annual reports outstanding and the Division excluded two erroneous or incomplete reports.
- The division issued 14 MBP permits in 2001 and 2002. All MBPs filed their reports.
- The division issued 26 operator licenses in 2001 and 27 in 2002. All Operators filed their reports.

Fees and taxes collected by the division:	<u>FY-03</u>	<u>FY-02</u>
3% Tax on Pull-Tabs:	\$ 2,115,146	\$ 2,045,124
1% Additional Fee on Permittees' Gaming Profits:	341,561	325,218
Permit and License Fees:	128,800	141,863
	<u>\$ 2,585,507</u>	<u>\$ 2,512,205</u>

- Distributors reported \$2,007,000 of pull-tab tax paid for calendar year 2002.



217 Second Street, Suite 200 • Juneau, Alaska 99801
 Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

Municipal Pull Tab Revenue
 Compiled April 2, 2004

Municipality	rate	Revenue (based on '03)
Juneau	5% of gross	\$600,000
Wasilla	2.5% of ideal net	\$9,000
Palmer	3% of gross	
Bethel	6% "gaming tax"	\$500,000
Kotzebue	6% of gross	\$80- 100,000
Dillingham	6% "gaming tax"	\$100,000
North Pole	3% of gross	\$16,000
Hoonah	5% of gross	\$32,812
Chevak	3% (basis unknown)	
Nome	4% of gross	\$475,000
Alakanuk	3% of gross	
Noorvik	3% of gross	\$9,388

23-GS1131U
Luckhaupt
4/5/04

HOUSE CS FOR CS FOR SENATE BILL NO. 102(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act increasing the amount of revenue received by the state from charitable gaming**
2 **activities, and relating to taxes on pull-tabs."**

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

4 *** Section 1.** AS 05.15.128(a) is amended to read:

- 5 (a) The department shall revoke the license of an operator who does not
- 6 (1) report an adjusted gross income of at least 15 percent of gross
- 7 income annually based on the total operation of the operator; [OR]
- 8 (2) pay to each authorizing permittee annually at least 30 percent of the
- 9 adjusted gross income, as determined under (1) of this subsection, from a pull-tab
- 10 activity or at least 10 percent of the adjusted gross income, as determined under (1) of
- 11 this subsection, from a gaming activity other than pull-tabs, received from activities
- 12 conducted on behalf of the authorizing permittee; or
- 13 (3) pay the tax imposed under AS 05.15.184.

14 *** Sec. 2.** AS 05.15.184 is amended to read:

1 **Sec. 05.15.184. Pull-tab tax.** A pull-tab distributor shall collect a tax of 15
2 [THREE] percent of [AN AMOUNT EQUAL TO] the ideal net on [GROSS
3 RECEIPTS LESS PRIZES AWARDED ON] each series of pull-tab distributed. The
4 pull-tab distributor shall pay to the department the tax collected in the preceding
5 month at the time that the report under AS 05.15.183(d) is filed with the department.

6 * **Sec. 3.** AS 05.15.184 is amended by adding a new subsection to read:

7 (b) The tax levied under (a) of this section does not apply to pull-tabs
8 distributed and sold or used in a municipality that is, on the effective date of this
9 subsection, levying a sales or use tax on pull-tabs under AS 29.45.650(k) or
10 29.45.700(g).

11 * **Sec. 4.** AS 29.10.200(51) is amended to read:

12 (51) AS 29.45.650(c), (d), (e), [AND] (f), and (k) (sales and use tax);

13 * **Sec. 5.** AS 29.10.200(52) is amended to read:

14 (52) AS 29.45.700(d), [AND] (e), and (g) (sales and use tax);

15 * **Sec. 6.** AS 29.45.650 is amended by adding a new subsection to read:

16 (k) A borough may not levy or collect a sales or use tax on pull-tabs used in
17 charitable gaming unless the borough levied and collected that tax on pull-tabs used in
18 charitable gaming on the effective date of this subsection. The tax must be levied on
19 gross receipts or on the ideal net, as defined in AS 05.15.690. The rate of tax on gross
20 receipts may not exceed five percent. The rate of tax on the ideal net may not exceed
21 the rate imposed by the state under AS 05.15.184. This subsection applies to home
22 rule and general law municipalities.

23 * **Sec. 7.** AS 29.45.700 is amended by adding a new subsection to read:

24 (g) A city may not levy or collect a sales or use tax on pull-tabs used in
25 charitable gaming unless the city levied and collected that tax on pull-tabs used in
26 charitable gaming on the effective date of this subsection. The tax must be levied on
27 gross receipts or on the ideal net, as defined in AS 05.15.690. The rate of tax on gross
28 receipts may not exceed five percent. The rate of tax on the ideal net may not exceed
29 the rate imposed by the state under AS 05.15.184. This subsection applies to home
30 rule and general law municipalities.

31 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: REGULATIONS. The Department of Revenue may proceed to adopt
3 regulations necessary to implement the changes made by this Act. The regulations take effect
4 under AS 44.62 (Administrative Procedure Act), but not before the effective date of secs. 1 - 7
5 of this Act.

FRANK H. MURKOWSKI
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
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JUNEAU

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March 5, 2003

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill designed to increase the amount of state revenue received from charitable gaming fees and taxes.

Large amounts of money are spent on bingo, pull-tabs, and other charitable gaming activities in Alaska. Gross receipts for calendar year 2001 alone exceeded \$351 million. Only \$2.4 million of this amount was paid to the state in taxes and fees. Charities only received \$30.6 million. The rest, over \$318 million went for prizes, rent, operator fees, and other expenses of gaming.

Because of the large sums involved in charitable gaming, state government must devote significant resources to monitoring gaming activity. Despite the state's best efforts, it is not enough. The state continues to find gaming enterprises where so much of the gaming receipts are used up paying rent and other expenses that charities receive less than the minimum amount required by law. This bill would reduce the strain on the state by increasing revenue. Additionally, the bill would assure the public that its money is going toward its intended purpose, through provisions requiring professional gaming operators and vendors to shoulder the burden of the enhanced tax imposed for their activities.

The tax on pull-tab sales has not been raised since 1988. This bill would increase the tax to five percent of the gross receipts of the games. The current rate is only three percent of the ideal net of the games. Ideal net is the amount left over after all prizes are paid, assuming that every pull-tab game is sold. The State of Alaska's current pull-tab tax rate is significantly lower than the rates imposed by many other states. Oklahoma and Massachusetts collect a tax of 10 percent of the gross pull-tab receipts. Michigan collects a tax equal to 40 percent of the net pull-tab profit.

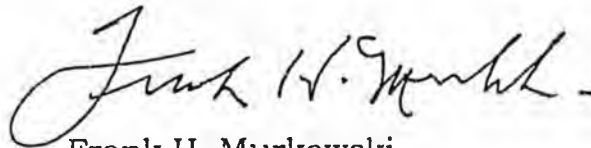
The Honorable Gene Therriault
March 5, 2003
Page 2

The bill would also discourage the professional gaming operators from passing on the cost of the tax increase to charity by reducing the expense cap on costs they can pass along to the charitable gaming permittees for whom they sell pull-tab games. The bill would place similar restrictions on vendors that sell pull-tabs in their liquor establishments for charitable gaming permittees.

It is estimated that in fiscal year 2004, the bill would raise an additional \$11.5 million in revenue. The bill would raise an additional \$12.5 million in each subsequent fiscal year.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank H. Murkowski". The signature is written in a cursive style with a long horizontal stroke at the end.

Frank H. Murkowski
Governor

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 102
(S) Publish Date: 3/6/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Charitable gaming tax BRU Revenue Operations
Component Tax Division
Sponsor Rules Committee
Requester Governor Component No. 2476

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	125.0	125.0	125.0	125.0	125.0	125.0
Travel	15.0	15.0	15.0	15.0	15.0	15.0
Contractual	22.0	12.0	12.0	12.0	12.0	12.0
Supplies	3.0	3.0	3.0	3.0	3.0	3.0
Equipment	15.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	180.0	155.0	155.0	155.0	155.0	155.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	11,500.0	12,500.0	12,500.0	12,500.0	12,500.0	12,500.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	180.0	155.0	155.0	155.0	155.0	155.0
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	180.0	155.0	155.0	155.0	155.0	155.0

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	2	2	2	2	2	2
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would increase the state's charitable gaming tax rate from 3 percent of ideal net on pull-tabs to 5 percent of ideal gross receipts for pull-tabs. This marks the first change in tax rates since 1988. This legislation the state tax rate on raffles, bingo and other charitable gaming.

The tax increase would take effect July 1, 2003. The Department of Revenue estimates the increase will generate \$12.5 million in additional state revenue for a full fiscal year, with approximately \$11.5 million in Fiscal 2004 because the state would receive the higher revenues for 11 months in the fiscal year. (Taxes are paid one month after sales for distributors on pull-tab games.)

See attached page for more information on the revenue and program costs.

Prepared by: Jeff Prather and Larry Meyers Phone 465-3410
Division Tax Division Date/Time 3/5/03 2:10 PM
Approved by: Larry Persily, Deputy Commissioner Date 3/5/2003
Agency Department of Revenue

**Department of Revenue
Charitable Gaming Tax**

SB 102 FN #1 Page 2 of 2

Operating Expenditures

The Department of Revenue is requesting general fund program receipts to cover the cost of one Revenue Auditor III position and an Investigator III position. With such a large increase in taxes due the state (an estimated \$12.5 million per year), the department anticipates the need to strenuously verify the gross receipts that the new tax increase is based upon. A lack of sufficient staff to verify, audit and enforce the state's higher charitable gaming tax rate would exacerbate an already serious shortage in the state's enforcement effort.

The incidence of taxation under this legislation would be focused on gross receipts, an area that is possible for manipulation in an industry that is very cash oriented. These two new positions would focus on distributor-reporting practices and audits for the sale of pull-tab games. The projected annual salary cost for these new positions totals \$125,000.

The department is also requesting one-time Fiscal 2004 funding of \$15,000 for equipment and \$10,000 for start-up contractual costs.

Comparison to other states

The National Association of Fundraising Ticket Manufacturers 2001 Annual Report on the Charity Gaming in North America lists 34 states that tax pull-tabs and/or bingo. Four states have rates equal to or greater than 5% of gross receipts on pull-tabs, the two highest being Massachusetts and Oklahoma, both with a 10% tax on gross receipts.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB102(STA)
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title: Charitable gaming revenue BRU: Revenue Operations
Component: Tax Division
Sponsor: Rules Committee
Requester: Senate Finance Committee Component No. 2476

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	125.0	125.0	125.0	125.0	125.0	125.0
Travel	15.0	15.0	15.0	15.0	15.0	15.0
Contractual	22.0	12.0	12.0	12.0	12.0	12.0
Supplies	3.0	3.0	3.0	3.0	3.0	3.0
Equipment	15.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	180.0	155.0	155.0	155.0	155.0	155.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	9,000.0	10,000.0	10,000.0	10,000.0	10,000.0	10,000.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	180.0	155.0	155.0	155.0	155.0	155.0
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	180.0	155.0	155.0	155.0	155.0	155.0

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	2	2	2	2	2	2
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would increase the state's charitable gaming tax rate from 3 percent of net on pull-tabs (actual gross less prizes) to 15 percent of ideal net for pull-tabs (the amount that would be left after prizes assuming all of the pull-tabs in a series are sold). This marks the first change in tax rates since 1988. This legislation would not change the state tax rate on raffles, bingo and other charitable gaming.

The tax increase would take effect July 1, 2003. The Department of Revenue estimates the increase will generate \$10 million in additional state revenue for a full fiscal year, with approximately \$9 million in Fiscal 2004 because the state would receive the higher revenues for 11 months in the fiscal year. (Taxes are paid one month after sales for distributors on pull-tab games.)

See attached page for more information on the revenue and program costs.

Prepared by: Jeff Prather and Larry Meyers Phone 465-3410
Division: Tax Division Date/Time 5/6/03 6:22 PM
Approved by: Larry Persily, Deputy Commissioner Date 5/6/2003
Agency: Department of Revenue

**Department of Revenue
Charitable Gaming Revenue
CSSB 102(STA) FN #2**

Page 2 of 2

Operating Expenditures

The Department of Revenue is requesting general fund program receipts to cover the cost of one Revenue Auditor III position and an Investigator III position. With such a large increase in taxes due the state (an estimated \$10 million per year), the department anticipates the need to strenuously verify the ideal net that the tax increase is based upon. A lack of sufficient staff to verify, audit and enforce the state's higher charitable gaming tax rate would exacerbate an already serious shortage in the state's enforcement effort.

The projected annual salary cost for these new positions totals \$125,000.

The department is also requesting one-time Fiscal 2004 funding of \$15,000 for equipment and \$10,000 for start-up contractual costs.

SB

210

HOUSE LABOR
& COMMERCE

COMMITTEE
PACKET
Index

May 12, 2003

1

HB 285

*Electronic Transactions
& Signatures*

Previously Scheduled Not Heard

2

SB 210

*Wage and Hour
Overtime Computation*

Alaska State Legislature

DURING SESSION
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SENATOR CON BUNDE
District P

VICE-CHAIR: SENATE FINANCE COMMITTEE
CHAIR: SENATE LABOR & COMMERCE COMMITTEE
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

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FAX: (907)269-0184

E-MAIL
Senator.Con.Bunde@legis.state.ak.us

Sponsor Statement **Senate Bill 210**

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

By the Senate Labor & Commerce Committee

This legislation is designed to protect Alaska employers who properly calculated overtime wages for their employees prior to the effective date of Ch. 43, SLA 99 (HB201), and correct an erroneous judicial interpretation of Alaska's Wage and Hour Act.

In 1999 the Alaska Legislature passed HB 201 dealing with the issue of wage “pyramiding” (paying overtime wages more than once for the same hour of overtime work). Unfortunately, a last minute amendment deleted the Act's retroactive effective date (April 1, 1997). Though future claims were clearly precluded, those claims existing on or before the effective date of HB 201 remained active. As a result several employers were sued for calculating overtime wages exactly how the Alaska Department of Labor had instructed them to do it. Every other business in the state used the same method.

This measure, once and for all, brings certainty to the interpretation of computing overtime under Alaska's Wage & Hour Act. These changes are consistent with both concerns and policy goals expressed by the Legislature in the enactment of Chapter 43, SLA 99 and official State Department of Labor practices going back to pre-statehood.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 210
 (S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Wage and Hour Overtime Computation BRU: Labor Standards and Safety
 Component: Wage and Hour Administration
 Sponsor: Senate L&C
 Requester: Senate 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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (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 will retroactively change overtime pay requirements for certain claims during the period of July 1, 1990 through June 2, 1999. The department does not anticipate a financial impact as a result of this legislation.

Prepared by: Grey Mitchell, Director Phone: 465-4855
 Division: Labor Standards and Safety Date/Time: 5/2/03 1:39 PM
 Approved by: Greg O'Claray, Commissioner Date: 05/02/03
 Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

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MEMORANDUM

April 22, 2003

SUBJECT: Retroactive application of 1999 legislative changes to AS 23.10.060(b) (Work Order No. 23- LS1025)

TO: Senator Con Bunde

FROM: Barbara R. Craver 
Legislative Counsel

Ch. 43, SLA 1999, amending AS 23.10.060(b), is an enactment that clarifies that the Alaska Wage and Hour Act (AS 23.10) does not allow "pyramiding." Pyramiding is paying overtime wages more than once for the same hour of overtime work.

You have asked whether there would be any legal issues raised by a bill which made the changes to AS 23.10.060(b) that were enacted in ch. 43, SLA 1999 retroactive to the payment of overtime wages before the bill's effective date of June 2, 1999. In other words, the bill would apply the change to AS 23.10.060(b) to give effect as to wages earned prior to June 2, 1999. The effect would be to remove any claims a person might have against an employer who paid them without pyramiding overtime pay for work performed prior to June 2, 1999. Any person who had a final court judgment for pyramided overtime pay would not be affected. HB 201 in the 21st legislature, the source of ch. 43, SLA 1999, had a retroactive section which was removed at the last minute.

My initial response to your question as to whether a retroactive application would be constitutional was no, it would violate the due process rights of persons who had worked overtime prior to the effective date of the changes. You authorized me to speak to attorney Dan Grauz who represents Holland America in a case brought by Stuart Hallam in regard to overtime wages. Mr. Grauz referred me to Dave Oesting and Erik Jenkins, attorneys with Davis, Wright and Tremaine in Anchorage. Mr. Oesting and Mr. Jenkins provided me with a very detailed legal memoranda explaining why making the 1999 changes retroactive would not violate the Alaska constitution and its prohibition against impairing existing contracts. A copy of their analysis is enclosed.

A very brief summary of their argument is: the right to overtime under AS 23.10.060(b) is a statutory right which does not "vest" until reduced to final court judgment. A person's due process rights are not violated if that person becomes deprived of a right to sue under a statute which had formerly given them a claim, but that statute was changed

Senator Con Bunde
April 22, 2003
Page 2

or removed prior to a final court judgment. This is a fairly uncommon situation, and there are only a few court cases, none in Alaska.

I have read the cases referred to by Mr. Oesting and Mr. Jenkins and researched to see if any of them had been overruled on the points relied on for their argument. It appears that their argument is sound. Because the Alaska court has not ruled on this exact issue, I can only speculate as to the outcome of a lawsuit on this point. However, the arguments made in the memorandum are persuasive, and I am not aware of any contrary case law on the point at issue. Because this issue has not been ruled on in Alaska, I cannot be certain, but using the arguments and cases cited in the memorandum from Davis, Wright and Tremaine, it seems more than likely that a retroactive law in this area would not be found to unconstitutionally violate due process.

If I may be of further assistance, please advise.

BRC:mdr
03-078.mdr

Enclosure

Davis Wright Tremaine LLP
ANCHORAGE OFFICE


MEMORANDUM

TO: Barbara Craver

FROM: David Oesting
Eric Jenkins

DATE: April 7, 2003

RE: Retroactive Application of Amendments to the Alaska Wage and Hour Act



Question Presented

Can the Alaska Legislature retroactively amend AS 23.10.060(b) to foreclose pyramiding of daily and weekly overtime hours?

Brief Answer

Yes. Retroactive amendment of statutory schemes is permitted provided that the legislature clearly expresses its intent and the proposed amendment does not deprive parties of property rights without due process. Where a right of action does not exist at common law but instead depends solely upon statute, that right does vest until reduced to a final unappealable judgment. Statutory rights, by their very nature, are acquired and pursued with the knowledge that the statute upon which they depend may be amended or repealed at any time by the legislature, thereby altering or extinguishing the right. Federal courts have examined at least two prominent retroactive amendments to the Fair Labor Standards Act ("FLSA") and upheld both amendments in the face of constitutional challenges.

Background

In 1999, the Alaska Legislature amended AS 23.10.060(b) to correct an erroneous judicial interpretation of the statute that authorized the so-called "pyramiding" of overtime hours. Pyramiding permits an employee to be paid both daily and weekly overtime for the same hour of work. For example, an employee

who works ten hours on Monday and eight hours on each of the remaining four days of the week (42 total hours), would receive 2 hours of overtime for having worked in excess of eight hours on Monday, and an additional two hours of weekly overtime because the final two hours on Friday exceed the 40 hour weekly total. Thus, pyramiding grants the employee four hours of overtime for two hours of additional work. Even more peculiar, however, is the fact that an employee who worked ten hours on Friday and eight hours the first four days of the week, would receive only two hours of overtime despite having worked the exact same workweek. The California Court of Appeals noted the irrational results produced by pyramiding when it rejected pyramiding as a proper construction of California law in Monzon v. Shaefer Ambulance Service, Inc., 273 Cal.Rptr. 615, 627 (1990).

Not surprisingly, pyramiding conflicts with the consistent and longstanding instructions given to Alaska employers by the Alaska Department of Labor ("DOL"). See Department of Labor, Wage and Hour Opinion Letter #63 (March 5, 1987); See Wage & Hour Opinion Letter # 120 (April 25, 1997); Wage & Hour Opinion Letter # 127 (April 7, 1998). DOL Commissioner Ed Flannagan testified in support of the 1999 legislature before the House Labor and Commerce Committee and noted that pyramiding created an unfair and unjustified obligation for employers who have been paying overtime in accordance with the DOL's own instructions for decades. The Alaska Legislature responded by promptly passing (with only a single vote in opposition) legislation which amended AS 23.10.060(b) and confirmed that the statute was not intended to require pyramiding of overtime hours. The legislation that is currently under consideration would make that amendment retroactive and would protect employers who paid overtime in good faith prior to the 1999 amendments.

Discussion

A. Retroactive Legislation is Permitted Provided that the Legislature Clearly Expresses Its Intent and the Legislation Does Not Deprive Parties of Property Rights Without Due Process.

The ability of the Alaska Legislature to pass retroactive legislation is recognized by AS 01.10.090, which states that legislation will be assumed to operate prospectively unless the enacting legislation expressly declares otherwise. See also State, Alcoholic Bev. Cont. Bd. v. Odom Corp., 671 P.2d 375, 377 (Alaska 1983) (referencing AS 01.10.090 and noting that "[h]ad the legislature

stated expressly that it intended the revised fee schedule to apply retroactively to January 1, 1980, we have no doubt that such retroactivity would be permissible.")

While prospective application is contemplated for the majority of legislation, courts have long recognized that the legislature not only has the power to pass retroactive legislation, but that retroactive laws often serve important purposes:

It may be said that this legislation is retroactive; and as applied to the case before us, it is so. But there is no constitutional inhibition against retrospective laws. Though generally distrusted, they are beneficial and sometimes necessary. Where they violate no provision of the Constitution of the United States, there exists no power in this Court to declare them void.

copied
Ferrer v. Waterman S.S. Corp., 76 F.Supp. 601 (D.P.R. 1948). The Ninth Circuit Court of Appeals reaffirmed these principles in Austin v. City of Bisbee, Ariz., 855 F.2d 1429, 1435 (9th Cir. 1988), noting: *copied to Shepard's*

The retroactive application of a federal statute (other than an ex post facto law or a bill of attainder) is not forbidden under the Constitution so long as due process requirements are met.

Like Ferrer, the Austin court was examining the constitutionality of a retroactive amendment to the FLSA.

B. Retroactive Amendment of AS 23.10.060(b) Does Not Impair Vested Rights or Violate Due Process.

The Due Process Clause of the Federal Constitution, and its Alaska counterpart, prohibit the government from depriving persons of property without due process of law. Austin, 855 F.2d at 1435-36. Within the context of economic legislation, due process requires that government actions which implicate protected property rights be neither arbitrary nor irrational.

Even if Austin had a cognizable property right to overtime compensation his claim fails on due process grounds. The FLSA is one of myriad legislative Acts adjusting the burdens and benefits of economic life. Such legislation comes to the Court with a presumption of constitutionality, and the burden is on the one

complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way . . . Retroactive application of economic legislation meets the test of due process simply if retroactive application of the legislation is itself justified by a rational legislative purpose.

Austin, 855 F.2d at 1470 (internal citations omitted). See also Graczyk, 229 Cal.Rptr. at 501 ("Vested rights are not immutable; the state, exercising its police power may impair such rights when considered reasonably necessary to protect the health, safety, morals and general welfare of the people.").

Retroactive amendment of AS 23.10.060(b) would thus be proscribed by the Due Process Clause only if: (1) property rights which are cognizable under the Due Process Clause would thereby be circumscribed; and (2) retroactive amendment of the statute would be arbitrary or irrational.

1. Retroactive amendment of AS 23.10.060(b) does not impair any protected property rights.

Rights that are created by statutory schemes such as the FLSA and the Alaska Wage and Hour Act are inchoate and do not become vested property rights until reduced to final judgment.

Rights under the Fair Labor Standards Act came into existence only by virtue of an act of Congress. These rights did not exist at common law, nor were they established by the Constitution. Therefore, since these rights were created by the Congress, they may be taken away in whole or in part, or altered, by Congress which established them at any time before they have ripened into a final judgment.

Ferrer, 76 F.Supp. at 603 (citing cases). See also Graczyk v. Workers' Comp. Appeals Bd., 229 Cal.Rptr. 494, 501 n.5 (1986) ("The justification for the rule that a statutory right of action may be repealed is that all statutory remedies are pursued with full realization that the Legislature may abolish the right to recover at any time.").

In Austin, the Ninth Circuit reiterated the analysis set forth in Ferrer and Graczyk and applied that analysis to hold that no protected property rights were implicated by retroactive amendment of the FLSA:

In the case at bar, the overtime had been performed and suit for its compensation had been commenced by Austin prior to the effective date of the amendments. We nonetheless find that in this instance Austin was not deprived of a right without due process . . . A cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause. However, it is inchoate and affords no definite or enforceable property right until reduced to final judgment. Thus Austin perfected no right in his cause of action before the amendments were passed. Nor does he possess a vested right in overtime compensation. Property rights to public benefits are defined by the statutes or customs that create the benefits. When as here, the statute authorizing the benefits is amended or repealed, the property right disappears.

Austin, 855 F.2d at 1435-36 (internal citations omitted). It is for this reason that Alaska, like most other states, has enacted a general savings statute (AS 01.10.100) which provides that the repeal of a statute shall not extinguish any liability incurred under that statute unless the enacting legislation expressly so provides.

2. Retroactive amendment of AS 23.10.060(b) is neither arbitrary nor irrational.

Even if amendment of AS 23.10.060(b) could be said to impact protected property rights – which it does not – it would not violate due process unless the legislature acted in a manner that was arbitrary or irrational. The retroactive amendments to the FLSA at issue in Austin and Ferrer are particularly instructive in addressing the justification for, and efficacy of, retroactive amendment of AS 23.10.060.

a. Austin v. City of Bisbee, Ariz.

In 1985, the U.S. Supreme Court decided Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985). Garcia rewrote the landscape of federalism and held that state and local government entities were subject to the FLSA. Nine months after Garcia was decided, Congress stepped in to retroactively exempt cities and states from compliance with the FLSA and grant state and local governments a transitional period of slightly in excess of a year

within which to adjust budgets to the unexpected liability created by Garcia Austin, 855 F.2d at 1434-35.

Austin was one of a number of plaintiffs who brought suit for alleged violations of the FLSA during the transition period, claiming that Congress exceeded its authority in retroactively exempting municipal governments from compliance with the FLSA. Austin both performed the work at issue, and filed suit, prior to the passage of legislation exempting his employer from compliance with the FLSA. Austin, 855 F.2d at 1435. Nevertheless, the Ninth Circuit held that the amendment did not disturb any protected property rights, and that Congress' decision to retroactively exempt state and municipal governments was neither arbitrary nor irrational. Rather, given the unexpected liability created by Garcia, the Ninth Circuit concluded that it was entirely reasonable to retroactively amend the FLSA and provide state and local governments with a transition period within which to adjust work practices, staffing patterns, and fiscal priorities. Id. at 1436.

b. Ferrer v. Waterman S.S. Corp.

Ferrer involved a constitutional challenge to passage of the Portal-to-Portal Pay Act (codified at 29 U.S.C. §§251-62), an early amendment to the FLSA. The Portal-to-Portal Pay Act addressed, among other things, whether time spent walking to worksites, and other preliminary activities on the premises of the employer, constituted compensable work under the FLSA. Ellen C. Kearns, The Fair Labor Standards Act 19-20 (1999); Hollingsworth v. Federal Mining & Smelting Co., 74 F.Supp. 1009 (D.Idaho 1947). Congress passed the Act in response to the U.S. Supreme Court's decision in Anderson v. Mount Clemens Pottery Co., 328 U.S. 680 (1946), which held that such activities did indeed constitute compensable work time. Id. The Portal-to-Portal Act declared that such activities, whether undertaken before or after passage of the Act, were compensable only if made so by an express provision in a contract of employment. See 29 U.S.C. §§ 252-54; Ellen C. Kearns, The Fair Labor Standards Act 19-20 (1999).

Congress explained the justifications for passage of the Portal-to-Portal Pay Act in 29 U.S.C. § 251:

The Congress finds that the Fair Labor Standards Act of 1938, as amended 29 U.S.C.A § 201 et seq., has been interpreted judicially in

disregard of long-standing customs, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation [because court decisions necessarily operate retroactively] upon employers with the result that, if said Act as so interpreted or claims arising under such interpretations were permitted to stand, (1) the payment of such liabilities would bring about the financial ruin of many employers and seriously impair the capital resources of many others . . .

Despite the fact that it applied to pre-enactment conduct, the courts rejected any contention that retroactive amendment of the FLSA disturbed vested rights and upheld the Portal-to-Portal Pay Act as a valid exercise of Congress' power. See, e.g., Ferrer, 76 F.Supp. at 603; Hollingsworth, 74 F.Supp. at 1023; Holland v. General Motors Corp., 75 F.Supp. 274, 278-79 (W.D.N.Y. 1947). Statutory rights are pursued with the realization that the repeal or amendment of the statute may alter or extinguish those rights at any time. Id.

Like the legislation at issue in Austin and Ferrer, the 1999 amendments to the Alaska Wage and Hour Act were passed in response to a judicial decision that the Alaska Legislature declared to be erroneous and a serious threat to Alaska employers if not promptly corrected. See 1999 SLA Ch. 43 § (1). Whatever rights are claimed in reliance upon the prior version of the statute are inchoate and afford no definite or enforceable property right until reduced to final judgment. Passage of legislation retroactively amending AS 23.10.060 would by no means be arbitrary or irrational, nor would it implicate legally cognizable property rights. Indeed, since the judicial interpretation adopting pyramiding was rendered by a lower court, rather than the Alaska Supreme Court, any due process challenge would be all the more tenuous.

C. Retroactive Amendment of AS 23.10.060 Would Not Impair the Obligation of Contracts.

A final challenge to retroactive amendment of statutory schemes such as the FLSA and Alaska Wage and Hour Act is that such amendments violate the Contract Clause of the federal constitution. The Contract Clause prohibits legislative bodies from passing legislation that impairs the obligation of contracts. Retroactive amendment of the FLSA, it is argued, impairs the obligation of contracts since the key provisions of the FLSA are considered to be a part of all

contracts of employment. The Alaska Wage and Hour Act also contains such a provision. See AS 23.10.060(c).

Ferrer considered and rejected the contention that retroactive application of the Portal-to-Portal Pay Act impaired the obligation of contracts:

Even though it be conceded, which it is not, that the Fair Labor Standards Act, 29 U.S.C.A. § 201 et seq., created a contractual right at law which must be read into every contract of employment covered by it, there is nothing to prevent Congress, in the exercise of the commerce clause power to modify that right. Contracts, however, express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but, when contracts deal with a subject-matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.

Ferrer, 76 F.Supp. at 603 (quoting Norman v. Baltimore & O.R. Co., 294 U.S. 240 (1935)). Thus, although the provisions of the FLSA and Alaska Wage and Hour Act are incorporated into every contract of employment, the right of the legislature to amend or eliminate those rights is also included. Were the rule otherwise, the obligations of the parties under multi-year contracts of employment would be unconstitutionally impaired every time amendments are made to the FLSA or Alaska Wage and Hour Act.

Conclusion

Retroactive amendment of AS 23.10.060 is permissible. Statutory rights are pursued with full knowledge that the legislature may amend or repeal the statute upon which those rights depend at any time. Retroactive amendments which impact statutory rights do not implicate property interests which are entitled to protection under the Due Process Clause. Moreover, even where protected rights are at issue, government action may circumscribe those rights provided that the government does not act in a manner that is arbitrary or irrational. Amending AS 23.10.060 in the proposed manner is neither arbitrary nor irrational. Rather, it is consistent with the concerns and policy goals expressed by the Alaska Legislature in 1999 SLA Ch. 43 § 1.

Alaska State Legislature

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SENATOR CON BUNDE District P

VICE-CHAIR: SENATE FINANCE COMMITTEE
CHAIR: SENATE LABOR & COMMERCE COMMITTEE
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

MEMORANDUM

DATE: May 11, 2003
TO: Representative Tom Anderson
Chair, House Labor and Commerce
FROM: Senator Con Bunde
RE: Hearing Request

A handwritten signature in black ink, appearing to read "Con", written over the "FROM:" line of the memorandum.

I respectfully request that you schedule SB 210 "Wage and Hour/Overtime Compensation" for a hearing at your earliest convenience.

I have attached a copy of:

- SB 210
- Sponsor Statement
- Fiscal Note
- Legal Services Opinion
- Legal Opinion, Davis Wright Tremaine LLP

SB

254

SB 254



In 2001 (FY02) the Legislature approved the Alaska Travel Industry Association (ATIA) Millennium Plan calling for a requirement of 70/30 match; 70% state contribution and 30% industry contribution to fund the statewide tourism marketing program. The Industry contribution (match) is generated from small Alaskan tourism businesses in addition to cruise lines and Convention and Visitor Bureaus (CVBs).

In FY03, the statute required that the Industry match increase from 30% to 60% while state funds were reduced from 70% to 40%. This match proved to be an ambitious goal set by the industry. This 40/60 split scenario has been a severe challenge for the industry, requiring ATIA to use reserves in order to meet the match. Association reserves have now been depleted.

Even though ATIA has increased their revenue-generated match from \$2 million in FY01 to over \$5 million in FY03 & FY04, we have never been able to meet the 60% match requirement. It was an ambitious goal and we accomplished over 83% of the target. Alaska's sluggish tourism market has resulted in declining Convention and Visitors' Bureau (CVB) contributions due to reduced hotel revenues in their respective communities. Additionally, since 9/11, the declining independent traveler market has detrimentally impacted small independent Alaska tour businesses. Our matching revenue opportunities have been negatively affected.

Not being able to meet the required match has impacted many FY04 programs and caused us to defer them until FY05. This in turn will impact the FY05 budget and place us in a similar predicament at this stage next year. Allowing for a 50/50 split would not take any additional funds from the state coffers, but simply allow ATIA to utilize the funds that have been allocated.

Existing Plan (60/40)		Revised Plan (50/50)	
Industry Contributions (Cruise, CVB's and AK businesses)	\$6.0 million	Industry Contributions (Cruise, CVB's and AK businesses)	\$5.1 million
State Contribution	\$4.0 million	State Contribution	\$4.0 million
Total Existing Plan	\$10 million	Total Revised Plan	\$9.1 million

SB

272

Post-it® Fax Note	7671	Date	5/3/	# of pages	4
To	LINDA SNYDER	From	GARY BADER		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	465-5532	Fax #	346-4679		

RESUME OF EXPERIENCE AND BACKGROUND
for
GARY P. BADER
May 3, 2004

PERSONAL DATA

AGE 63, BORN IN KETCHIKAN ALASKA 1940
MARRIED, 5 CHILDREN
EXCELLENT HEALTH
PAST STATE PERSONNEL BOARD CHAIRMAN
PAST PUBLIC EMPLOYEE RETIREMENT BOARD VICE CHAIRMAN
PAST PUBLIC EMPLOYEES RETIREMENT BOARD MEMBER
PAST ANCHORAGE YMCA BOARD MEMBER/TRUSTEE
PAST ANCHORAGE TELEPHONE UTILITY LABOR BOARD
PAST SCIENCE ALLIANCE BOARD MEMBER
PAST ANCH. PROBLEM RESOLUTION CORP. BOARD MEMBER
PAST VICE PRESIDENT, ANCHORAGE NATIVE CAUCUS
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EDUCATION

GRADUATE, JUNEAU HIGH SCHOOL, 1960
GRADUATE, RCA INSTITUTES SCHOOL OF ELECTRONICS, 1965
UNIVERSITY OF ALASKA, PERSONNEL RELATED COURSES

SIGNIFICANT WORK EXPERIENCE

4/65 TO 5/71: COMMUNICATIONS AND RADAR TECHNICIAN FOR RCA MISSILE TEST PROJECT IN THE BAHAMAS AND WEST INDIES

5/71 TO 4/74: COMMUNICATIONS TECHNICIAN FOR RCA ALASKA COMMUNICATIONS SYSTEM IN JUNEAU

4/74 TO 8/74: OMBUDSMAN FOR RCA ALASCOM.

8/74 TO 3/75: EMPLOYEE AFFAIRS ADMINISTRATOR FOR RCA ALASCOM. RESPONSIBLE FOR EEO AND DEVELOPING AAP'S

3/75 TO 11/78: LABOR RELATIONS MANAGER FOR RCA ALASCOM. NEGOTIATED AND ADMINISTERED STATE WIDE LABOR AGREEMENT WITH TEAMSTERS LOCAL 959

11/78 TO 7/79: MANAGER, EMPLOYEE RELATIONS FOR RCA ALASCOM. RESPONSIBLE FOR MANAGING HR FOR NON-REPRESENTED EMPLOYEES

07/79 TO 6/81: LABOR RELATIONS MANAGER FOR ALYESKA PIPELINE. APPROXIMATE \$500,000.00 BUDGET

* SUCCESSFULLY MAINTAINED NON-UNION STATUS OF 1300 MEMBER WORK FORCE DURING 2 MAJOR UNIONIZATION ATTEMPTS

* SUCCESSFULLY MANAGED PROJECT LABOR AGREEMENT DURING CONSTRUCTION OF PUMP STATIONS 2 AND 7 WITH NO WORK STOPPAGES OR SLOW DOWNS

6/81 TO 4/90: HUMAN RESOURCES MANAGER FOR ALYESKA PIPELINE. BUDGET VARIED FROM \$2,000,000 TO \$5,000,000

* MANAGED THE SAFETY, HEALTH, AND FIRE PROTECTION PROGRAM FOR 1300 EMPLOYEES ON ALL PIPELINE/TERMINAL LOCATIONS. SUCCESSFULLY REWROTE SAFETY-LOSS CONTROL PROGRAM AND CONDUCTED EXTENSIVE SAFETY-LOSS AUDITS SYSTEM WIDE

* MANAGED ALYESKA'S EMPLOYMENT FUNCTION DURING TIMES OF GROWTH AND DECLINE SUCCESSFULLY WITH NO ADVERSE LEGAL DECISIONS BECAUSE OF ERRORS IN EMPLOYMENT OR LAYOFF ACTIONS. MANAGED EEO AND AFFIRMATIVE ACTION PROGRAMS

* MANAGED ALYESKA'S PERSONNEL ADMINISTRATION FUNCTION INCLUDING MOST EMPLOYEE RELATED POLICIES AND PROCEDURES; A LARGE HOME SALE/EMPLOYEE RELOCATION PROGRAM; AND ALYESKA'S HR FIELD REPRESENTATIVES PROGRAM

* MANAGED ALYESKA'S MEDICAL/HEALTH PROGRAM INCLUDING URBAN AND FIELD MEDICAL SUPPORT PERSONNEL/TECHNICIANS AT 11 LOCATIONS UNDER THE AUSPICES OF A STATE LICENSED M.D.. DEVELOPED AND IMPLEMENTED D.O.T. REQUIRED DRUG TESTING COMPANY WIDE

* MANAGED ALYESKA'S LABOR RELATIONS PROGRAM INCLUDING MAINTENANCE OF NONUNION STATUS, RESPONSIBLE FOR LINE WIDE MAINTENANCE LABOR AGREEMENT, PROJECT LABOR AGREEMENT, AND ALL EMPLOYEE RELATED LAW SUITS. 100% SUCCESS ON ALL LAW SUITS, EEO CHARGES, ARBITRATION'S, AND EMPLOYEE PROBLEM RESOLUTIONS. DEVELOPED AND PRESENTED EEO, SEXUAL HARASSMENT, AND DRUG TESTING TRAINING SESSIONS.

5/90 TO 7/95: COMMUNITY RELATIONS MANAGER FOR ALYESKA PIPELINE. \$2,225,000 BUDGET

- * RESPONSIBLE FOR MANAGING AND RENEGOTIATING ALYESKA'S CONTRACT WITH THE REGIONAL CITIZENS ADVISORY COUNCIL. (THIS 17 MEMBER COUNCIL CONSISTS OF ORGANIZATIONS FROM THE IMPACTED AREA OF THE EXXON VALDEZ OIL SPILL. THE COUNCIL HAS RESPONSIBILITY FOR MONITORING ALYESKA'S TERMINAL, SERVS AND TANKER OPERATIONS IN PRINCE WILLIAM SOUND INCLUDING THE TERMINAL AND ASSOCIATED OIL SPILL CONTINGENCY PLANS)

- * RESPONSIBLE FOR THE DEVELOPMENT AND IMPLEMENTATION OF THE COMMUNITY RESPONSE PROCESS UNDER THE PWS C-PLAN INCLUDING CONTRACTING WITH FISHING VESSELS, THE HATCHERY PROTECTION PLAN, AND THE AREA RESPONSE CENTERS

- * RESPONSIBLE FOR LIAISON WITH ALL COMMUNITIES ALYESKA'S OPERATION EITHER DIRECTLY IMPACTS OR HAS THE POTENTIAL OF IMPACTING

- * 8/95 TO 12/95: MEMBER OF ALYESKA'S LONG RANGE PLANNING TEAM. PARTICIPATED IN THE DEVELOPMENT OF A 5 TO 10 YEAR OPERATING PLAN

- * 12/95 to Present: Retired

SENATOR
JOHN J. COWDERY

Anchorage

Committees

Chair: Rules
Chair: Transportation
Chair: World Trade &
State/Federal Relations
Legislative Council
State Affairs



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May - December:
716 W. 4th Avenue
Anchorage, Alaska 99501
Tel: 907-269-0222
Fax: 907-269-0223

Senator.John.Cowdery@legis.state.ak.us

SPONSOR STATEMENT FOR SB 272

"An Act relating to certain monetary advances in which the deposit or other negotiation of certain instruments to pay the advances is delayed until a later date ..."

The deferred deposit advance industry, recognizing consumer demand for small, short-term credit, has rapidly expanded across the United States. Thirty-nine states and the District of Columbia specifically regulate this service; Alaska is currently unregulated.

The purpose of SB 272 is to regulate deferred deposit/payroll advance businesses in two ways. One is consumer protection – requiring reasonable fees and preventing predatory lending tactics. The second is to protect deferred deposit/payroll advance businesses from unreasonable regulatory burdens.

SB 272 proposes licensing and record-keeping requirements, limits on terms and the number of allowable renewals, fees, and reasonable limits on the amount of the advances. It would provide the consumer detailed information about the type of service and require full disclosure for all fees and costs incurred during the advance process.

Additionally, provisions of the bill create a next day "change of mind" provision allowing the consumer time to reconsider their decision for any reason. Also included is a requirement that the borrower be offered a repayment installment plan.

Additionally, SB 272 clearly states that businesses may not threaten customers with criminal action as a result of a payment deficit.

I urge your support for this legislation.

LEGAL SERVICES

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

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


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

MEMORANDUM

April 23, 2004

SUBJECT: Sectional summary of CSSB 272(L&C) relating to certain monetary advances (Work Order No. 23-LS1516\U)

TO: Senator John Cowdery
Attn: Richard

FROM:  Theresa L. Bannister
Legislative Counsel

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

Section 1. Adds licensees under the new chapter to the list of persons who are not covered by the authority of the Department of Community and Economic Development to authorize state financial institutions to exercise the powers of, or be subject to the limitations of, a federally chartered financial institution.

Section 2. Adds deferred deposit licensees to the definition of "financial institution" for the administration chapter of title on banks and financial institutions.

Section 3. Establishes a new chapter relating to deferred deposit advances.

Sec. 06.50.010. Requires a license for engaging in the business of making or offering deferred deposit advances.

Sec. 06.50.020. Lists the qualifications for a license.

Sec. 06.50.030. Requires an application for a license to be written, under oath, and on the Department's form, and identifies what it must include. Requires submission of an application fee and the bond required by sec. 06.50.040.

Sec. 06.50.040. Requires a bond. Sets the amount. Indicates what it must state regarding the obligation of the obligor. Requires the bond to remain in effect for three years after denial of a renewal of a license, or after the expiration of a license. Allows the department to require additional bonding if the filed bond is unsatisfactory.

Senator John Cowdery

April 23, 2004

Page 2

Sec. 06.50.050. Directs the department to investigate the applicant and to issue the license if it finds the applicant satisfies the qualifications.

Sec. 06.50.060. Makes the requirements of certain statutes conditions precedent to the license.

Sec. 06.50.070. States that a license is valid for two calendar years.

Sec. 06.50.080. Indicates when and how a license is renewed.

Sec. 06.50.090. Requires the department to notify an applicant who is not qualified for a license or a license renewal. Allows for review of the denial under the Administrative Procedure Act. Requires a licensee to return a license to the department after the licensee receives notice that the denial of a renewal was upheld. When a license renewal is denied, or a license is surrendered, suspended, or revoked, subjects a licensee's accounts to this chapter until paid in full.

Sec. 06.50.200. Generally prohibits the transfer of a license, except to a new location.

Sec. 06.50.210. Requires the prior written approval of the department for a change in control of the licensee.

Sec. 06.50.220. Requires a licensee to notify the department before a proposed change in the business location or name.

Sec. 06.50.230. Allows a licensee to conduct other business at the licensed location except to evade or violate the chapter.

Sec. 06.50.300. Allows the department to suspend or revoke a license under certain conditions.

Sec. 06.50.310. Requires a licensee to file an annual report with the department. Lists what the report must include. Requires a licensee to file a report when certain events occur. Indicates that the department may consider one of the events to constitute grounds for suspension or revocation of a license.

Sec. 06.50.320. Requires a licensee to maintain its records at the location for which the licensee has the license. Establishes certain criteria for the records. Allows the department access to the records. Requires the licensee to retain advance records for two years after the last entry on the advance. Requires a licensee to retain advance records for at least two years after judgment in or settlement of a court action on the advance.

Sec. 06.50.330. Directs the department to examine the records of a licensee. Allows the department to examine a licensee's advances, business transactions, and records. Requires the licensee to provide the department with access to the licensee's offices,

places of business, and records. Requires a licensee to pay for an hourly examination rate. Gives the department certain other investigative powers. Allows the department to apply to the superior court to compel compliance with a subpoena or to compel testimony.

Sec. 06.50.400. Establishes certain requirements for advances, including a written signed agreement, a form approved by the department, certain disclosures, and prohibition of a particular waiver.

Sec. 06.50.410. Sets a maximum amount that a licensee may advance to one recipient at one time.

Sec. 06.50.420. Prohibits a licensee from inducing or permitting a recipient to divide advance amounts or to become indebted for more than one advance at one time in order to obtain more origination fees.

Sec. 06.50.430. Prohibits a licensee from accepting collateral or services as security or payment for an advance.

Sec. 06.50.440. Sets the minimum length of an advance.

Sec. 06.50.450. Prohibits a licensee from making an advance to someone acting on another's behalf.

Sec. 06.50.460. Establishes the fees that a licensee may charge. States that these fees are considered earned at the time of the advance and may not be prorated. Prohibits a fee to access the advance money.

Sec. 06.50.470. Sets the minimum term of an advance renewal. Prohibits renewing an advance more than two consecutive times. Prohibits renewal fees from being greater than the fees under sec. 06.50.460(a).

Sec. 06.50.480. Permits a recipient to rescind an advance without cause. Sets the conditions for the rescission.

Sec. 06.50.490. Prohibits requiring a recipient to agree to mandatory arbitration.

Sec. 06.50.500. Requires a licensee to post a notice in each business location that discloses the licensee's fees. Establishes some criteria for the notice.

Sec. 06.50.510. Requires a licensee to provide a disclosure statement before disbursing funds. States what the disclosure must contain.

Sec. 06.50.520. Indicates how a licensee may pay the advance amount to the recipient.

Senator John Cowdery
April 23, 2004
Page 4

Sec. 06.50.530. Indicates how a recipient may repay an advance. States when the advance is paid in full. Prohibits a licensee from accepting payment from the proceeds of another advance by the same licensee.

Sec. 06.50.540. Sets the conditions for a licensee collecting certain fees when a recipient's payment is returned unpaid.

Sec. 06.50.550. When a recipient defaults, requires a licensee to take certain steps before assigning the payment obligation for collection and before initiating a court action. Allows a licensee to initiate a court action to recover damages and costs allowed under AS 09.68.115 if the licensee satisfies with certain conditions. Sets a maximum on the damages and costs that may be recovered.

Sec. 06.50.560. Prohibits a licensee from threatening a recipient with criminal action as a result of the recipient's default.

Sec. 06.50.600. Authorizes the department to adopt regulations for the chapter.

Sec. 06.50.610. Limits the application of the chapter if it is preempted by or conflicts with federal law. States that this chapter governs if it conflicts with another state law.

Sec. 06.50.900. Defines terms for the chapter.

Section 4. Adds the department's licensing and regulation of persons making advances to the administrative adjudication portion of the Administrative Procedure Act.

Section 5. Establishes some transitional provisions for the new chapter to cover current persons who are in the business of making advances.

Section 6. Establishes some transitional provisions for the department to start adopting regulations for the new chapter.

Section 7. Gives sec. 6 an immediate effective date.

Section 8. Gives secs. 1 - 5 an effective date.

If I may be of further assistance, please advise.

TLB:lmb
04-121.lmb

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 272(L&C)
(S) Publish Date: 4/21/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Deferred Deposit Advances RDU Banking, Securities & Corporations (115)
(Payday Loans) Component Banking, Securities & Corporations
Sponsor Senate Rules
Requester Senate Labor & Commerce Component No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	104.0	104.0	104.0	104.0	104.0	104.0
Travel	12.0	12.0	12.0	12.0	12.0	12.0
Contractual	103.7	103.7	103.7	103.7	103.7	103.7
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	4.8					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	226.0	221.2	221.2	221.2	221.2	221.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	74.5	46.5	93.3	72.0	118.8	97.5
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	226.0	221.2	221.2	221.2	221.2	221.2
TOTAL	226.0	221.2	221.2	221.2	221.2	221.2

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	2					
Part-time	0					
Temporary	0					

ANALYSIS: (Attach a separate page if necessary)

This legislation requires the Division of Banking, Securities and Corporations to license and supervise Alaska's payday lending establishments.

The division anticipates two additional staff will be needed to implement these provisions.

Personal Services: One Financial Institution Examiner I (\$61.7) and one Administrative Clerk III (\$42.3)

Travel: In-state and out-of-state travel to verify establishments have licenses and to examine licensed establishments.

Continued on Next Page

Prepared by: Mark Davis, Director Phone (907) 465-2521
Division Banking, Securities & Corporations Date/Time 4/20/04 11:48 AM
Approved by: Edgar Blatchford, Commissioner Date 4/20/2004
Agency Department of Community & Economic Development

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSSB 272(L&C)

ANALYSIS CONTINUATION

Contractual: Hearings for applicants who file formal complaints regarding the denial of applications or revocation of a license (\$100.0), rent (\$1.2), and miscellaneous contractual expenses for two new employees (\$2.5).

Supplies: Miscellaneous contractual expenses for two new employees (\$2.5).

Equipment: Computer equipment for new staff (\$4.8).

Change in Revenues: The division anticipates an increase in revenues (Receipt Supported Services/RSS) as a result of collecting new licensing fees required by this legislation. This estimate is based on the assumption that there are 20 establishments who will each pay \$2.0 for a biennial license which equates to \$20.0 in revenues on an annual basis in FY05. We estimate that the number of establishments would increase by 6 establishments in each of the next five years and then level off at 50 establishments.

The division also estimates there will be additional revenues collected to recover the cost of examining establishments for compliance with the provisions of this legislation. We estimate that we would recoup approximately \$1,125.00 per examination. This is based on the assumption that each examination would require an average of 15 examination hours at a cost of \$75 per hour.

The total revenue for the first year would be an estimated \$74.5.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 272(FIN)
 (S) Publish Date: 4/29/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Deferred Deposit Advances RDU Banking, Securities & Corporations (115)
(Payday Loans) Component Banking, Securities & Corporations
 Sponsor Senate Rules
 Requester Senate Finance Component No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	78.0	78.0	78.0	78.0	78.0	78.0
Travel	12.0	12.0	12.0	12.0	12.0	12.0
Contractual	35.0	45.0	50.0	55.0	65.0	70.0
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	4.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	130.5	136.5	141.5	146.5	156.5	161.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	94.5	52.5	119.3	84.0	150.8	115.5
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Increase in Revenues (RSS)	130.5	136.5	141.5	146.5	156.5	161.5
TOTAL	130.5	136.5	141.5	146.5	156.5	161.5

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	2					
Part-time	0					
Temporary	0					

ANALYSIS: (Attach a separate page if necessary)

This legislation requires the Division of Banking, Securities and Corporations to license and supervise Alaska's payday lending establishments. The division anticipates two additional staff will be needed to implement these provisions.

Personal Services: One Financial Institution Examiner I working 3/4 time (\$46.3) and one Administrative Clerk III working 3/4 time (\$31.7) will conduct examinations of the new licensees. Regulation of these new licensees is expected to generate a significant number of consumer complaints and inquiries which will necessitate the need for a new clerk.

Prepared by: Mark Davis, Director Phone (907) 465-2521
 Division Banking, Securities & Corporations Date/Time 4/28/04 6:29 PM
 Approved by: Edgar Blatchford, Commissioner Date 4/28/2004
 Agency Department of Community & Economic Development

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSSB 272(FIN)

ANALYSIS CONTINUATION

Travel: In-state and out-of-state travel to verify establishments have licenses and to examine licensed establishments

Contractual: Hearings for applicants who file formal complaints regarding the denial of applications or revocation of a license (\$35.0), rent (\$1.2), and miscellaneous contractual expenses for two new employees (\$2.5)

Supplies: Miscellaneous contractual expenses for two new employees (\$2.5)

Equipment: Computer equipment for new staff (\$4.0)

Change in Revenues: The total revenue for the first year would be an estimated \$94.5.

The division anticipates an increase in revenues (Receipt Supported Services/RSS) as a result of collecting new licensing fees required by this legislation. This estimate is based on the assumption that there are 20 establishments who will each pay \$3.0 for a biennial license which equates to \$60.0 in revenues on an annual basis in FY05. We estimate that the number of establishments would increase by 6 establishments in each of the next five years and then level off at 50 establishments.

The division also estimates there will be additional revenues collected to recover the cost of examining establishments for compliance with the provisions of this legislation. We estimate that we would recoup approximately \$1.125 per examination. This is based on the assumption that each examination would require an average of 15 examination hours at a cost of \$75 per hour. The division estimates that the cost of travel to be reimbursed will be \$12.0.

HOUSE LABOR &
COMMERCE

COMMITTEE
PACKET
Index

May 5, 2004

1

*Consideration of
Gary Bader – Appointed to
the Alaska Labor
Relations Agency*

2

SB 272
**DEFERRED DEPOSIT
ADVANCES
(PAYDAY LOANS)**



Official Business

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

MEMORANDUM

Date: May 4, 2004

To: Representative Anderson, Chair
Labor and Commerce Committee

From: Suzi Lowell *sl*
Chief Clerk

Subject: Governor's Appointments

Attached is an updated resume for Mr. Gary P. Bader who is being considered for confirmation to the Alaska Labor Relations Agency. The Speaker referred the appointment to the Labor and Commerce Committee on April 5.

Attachment as noted

SB

282

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSB 282(RES)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservat
 Title Identification of finfish in food products BRU Environmental Conservation
 Component Food Safety and Sanitation
 Sponsor Senator Elton
 Requester (H) Fisheries Component No. 2343

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The Department has discretionary powers of enforcement. Enforcement of this bill can be incorporated into current restaurant inspections.

Prepared by: Cameron Yourkowski, Committee Aide Phone 465-3306
 Division House Special Committee on Fisheries Date/Time 5/7/04 10:11 AM
 Approved by: Representative Seaton, Chair Date 5/7/2004
 Agency House Special Committee on Fisheries



SENATOR KIM ELTON

MEMORANDUM

DATE: May 6, 2004

TO: Representative Tom Anderson, Chair
House Labor and Commerce Committee

FROM: Senator Kim Elton

SUBJ: Hearing Request for SB 282, An Act relating to the identification of finfish in food products and to the misbranding of food products consisting of or containing finfish.

I respectfully request a hearing for SB 282, which requires retail food establishments to state on its menu whether fish it is selling in a prepared food product is wild fish or farmed fish. State law currently provides that farmed fish be identified on the label when the fish is sold at the retail level.

Recent reports in the scientific and general media focus on increased toxin loads in farmed fish and environmental degradation near fish farm sites. Restaurant consumers in Alaska deserve the same notice as retail consumers when they make purchase decisions based on whether the fish is farmed or wild.

The Joint Legislative Salmon Task Force comprised of legislators, seafood harvesters and seafood processors unanimously supported SB 282.

I ask that you hear SB 282 at your earliest convenience.

ALASKA SENATE

STATE CAPITOL • JUNEAU, ALASKA 99801-1182 • (907) 465-4947 • FAX (907) 465-2108

SENATOR_KIM_ELTON@LEGIS.STATE.AK.US



SENATOR KIM ELTON

SB 282

Sponsor Statement

"An Act relating to the identification of finfish in food products and to the misbranding of food products consisting of or containing finfish."

SB 282 requires retail food establishments to state on its menu whether fish it is selling in a prepared food product is wild fish or farmed fish. State law currently provides that farmed fish be identified on the label when the fish is sold at the retail level.

Recent reports in the scientific and general media focus on increased toxin loads in farmed fish and environmental degradation near fish farm sites. Restaurant consumers in Alaska deserve the same notice as retail consumers when they make purchase decisions based on whether the fish is farmed or wild.

The Joint Legislative Salmon Task Force comprised of legislators, seafood harvesters and seafood processors has unanimously supported SB 282.

ALASKA SENATE

STATE CAPITOL • JUNEAU, ALASKA 99801-1182 • (907) 465-4947 • FAX (907) 465-2108

SENATOR KIM.ELTON@LEGIS.STATE.AK.US

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 282(RES)
(S) Publish Date: 3/8/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to the identification of finfish in RDU CIVIL
food products and to the misbranding of food products consisting..." Component Natural Resources
Sponsor Senator Elton
Requester Senate Resources Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the Alaska Food, Drug, and Cosmetic Act, adding a new section requiring that food establishment menus discern between wild fish and farmed fish in prepared food products. A federal version of farmed fish labeling legislation was enacted last fall.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director
Division: Administrative Services
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General
Agency: Department of Law

Phone 465-3673
Date/Time 3/3/04 8:20 AM
Date 3/3/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 282(RES)
(S) Publish Date: 3/8/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
Title: Identification of finfish in food products RDU: Environmental Health
Component: Food Safety and Sanitation
Sponsor: Senator Elton
Requester: (S) Resources Component No. 2343

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	55.9	55.9	55.9	55.9	55.9	55.9
Travel	5.0	5.0	5.0	5.0	5.0	5.0
Contractual	8.4	6.9	6.9	6.9	6.9	6.9
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.9	0.5	0.5	0.5	0.5	0.5
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	77.2	69.3	69.3	69.3	69.3	69.3

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

1002 Federal Receipts	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	77.2	69.3	69.3	69.3	69.3	69.3
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	77.2	69.3	69.3	69.3	69.3	69.3

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Kristin Ryan, Director Phone (907) 269-7645
Division: Environmental Health Date/Time 3/1/04 10:00 AM
Approved by: Kurt Fredriksson, Deputy Commissioner Date 3/1/2004
Agency: Environmental Conservation

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSSB 282(RES)

ANALYSIS CONTINUATION

SB 282 requires retail food establishments to state on their menus whether the fish they serve is wild or farmed. Regulations would need to be revised, and inspection and compliance resources added to the retail food program to implement this requirement.

An Environmental Health Technician would be hired to implement the requirements of SB 282. The position would survey retail food establishments and solicit menus for compliance review. This position would research and identify the sources and status of fish and fish products that are sold in Alaska and provide technical assistance on this identification to Alaskan suppliers and retail food establishments. The position would also conduct complaint investigations and initiate enforcement action.

Basic position support costs are included for contractual and supplies. An additional \$1.5 in contractual cost is included in the first year to public notice proposed regulations. Equipment cost in FY 2005 includes ordinary office equipment (desk, chair, and office furniture) and a computer workstation with \$.5 in subsequent years for equipment replacement and software upgrades.

Personal Services New Position Detail FN # 2 CSSB 282(RES)

Department of Environmental Conservation

Scenario: A Scenario for FY2005 Fiscal Notes (3605)
 Component: Food Safety & Sanitation (2343)
 RDU: Environmental Health (207)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#032	Environmental Health Tech.	FT	A	GP	Anchorage	2A	15B	12.0		38,280	0	0	17,585	55,865

Justification:

Required for implementation of SB 282. Position will research and identify finfish suppliers, provide technical assistance to Alaskan suppliers and retailers, conduct menu reviews, issue approvals, initiate enforcement actions and conduct complaint investigations.

Funding Detail:

1004	General Fund Receipts	100.00%	55,865
Total Funding:		100.00%	55,865

Component Summary:

Total New Positions: 1

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	55,865
Total Funding:	100.00%	55,865

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

Home News Speeches Photos Bio First Lady TV

Governor Murkowski

News & Announcements

State of Alaska > Governor > News > News Detail

Governor Comments on USDA Labeling Rule

FOR IMMEDIATE RELEASE: February 27, 2004 No. 04-031

Governor Sends Comments, Recommendations to USDA on Country of Origin Labeling Rule

(Juneau) - In a letter to the USDA Agricultural Marketing Service, Governor Frank H. Murkowski has provided the State of Alaska's position and recommendations on a proposed rule that would require country of origin labeling (COOL) for, among other commodities, wild and farmed seafood products.

Murkowski, who has long supported COOL as helpful to consumers as well as America's food producers, expressed the state's support for the regulation, but added a number of recommendations to make the rule better.

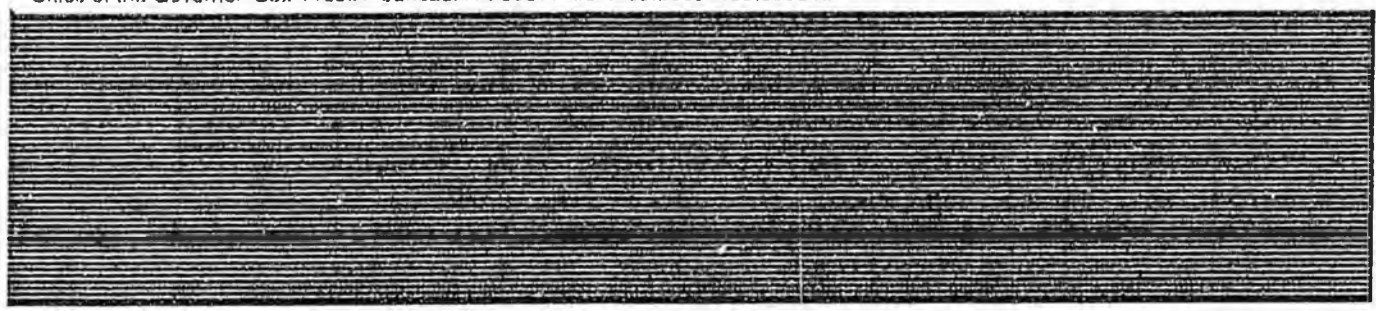
"Today, there is often a premium paid in the market for Alaska seafood products," Murkowski said. "The state believes this trend will increase, but only if truthful information reaches the consumers. Consumers, particularly in Europe and most recently Japan, want to know where their food comes from, who made it, what is in it, and what safety conditions apply to that production. COOL supports this growing trend and puts US producers on a competitive track."

Among modifications to the proposed rule that Murkowski recommended are: · To include compliance by specialty shops, such as butcher shops and fish markets, which would be exempted under the current proposal. · To clarify coverage of products that have undergone a chemical or physical change, such as cured ham. In other words, if the product from which a second product is made is covered, the resultant product should not be exempted. · To clearly identify canned salmon as a commodity that is covered by COOL regulations. · To extend the time that a retailer must maintain records of the sale of an item from seven to 30 days. · To revise USDA's statement regarding the potential cost of COOL and whether US consumers would be willing to pay for the labeling.

"US consumers do want to know where their food comes from," Murkowski said. "When determining the actual value of the COOL regulations, the state asks that USDA consider the importance of consumer education, our small US-based producers and their inability to mount expensive lobbying campaigns, the importance of progressive regulations, and discouraging fraudulent information in our marketplace." # # #

News Archive >
Old site News Archive

John Manly Press Secretary, 465-3995
Office of the Governor Box 110001 Juneau, AK 99811 907.465.3500 465.3532 fax



In other news: For H. Murkowski's State speech calling for a Conference of Alaska the Permanent Fund chair and convenor reporters in the Governor room Wednesday. Rogers answers a regarding the Feb. in Fairbanks. Behind (left) Marc Langland Helvi Sandvik, Steve Sturgulewski, and (Full story >

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Sunday, January 25, 2004

P-I Focus: Farming is a net-loss proposition -- ecologically, socially and economically

A Salmon Scare
By JOHN VOLPE

From the perspective of the specialist, it is a mixed blessing when the world turns its attention to your chosen area of endeavor. You feel somehow legitimized when, if only briefly, the public shares your own intense interest in the issues to which you have devoted your professional life. However, initial excitement quickly gives way to exasperation as rhetoric overshadows the substantive deliberation necessary to move from knowledge to understanding.

As a university professor dealing with issues surrounding seafood ecology, I toil in relative obscurity. The bread and butter of my research is how the relationship between the fishing and aquaculture industries is altering ecological, social and economic checks and balances the world over.

The landmark study detailing the greatly increased toxin loads found in farm salmon relative to their wild counterparts has thrust me and my colleagues around the world into the media limelight for a few moments. A seemingly endless parade of cameras and microphones has passed through my lab recently at the University of Alberta in search of expert opinion to put these startling data in perspective.

On average, farm-raised salmon have an order of magnitude higher load of cancer causing POPs (persistent organic pollutants) than wild caught salmon. This is not new. In fact over the last few years three other such studies -- albeit much smaller -- have come to nearly identical conclusions. As the dust settles around the current research, attention is shifting to consumer reaction and what effect this news will have on the aquaculture industry.

What I have not seen in any of the worldwide coverage is anyone asking "Why?" By this I don't mean, "Why are toxin loads higher in farm salmon?" The answer is straightforward and was predicted long ago from well-established bioaccumulation principles. Nor am I referring to the implied paradigm of the existence of such a thing as a safe level of carcinogen. No, my frustration is rooted in the deafening absence of what should be a vigorous debate -- "Why industrial aquaculture?" -- or more specifically -- "Why industrial salmon aquaculture?"

Consider the following:

- Current production methods adopt maximum economies of scale. Thus, feedlot style, open net-pens in the oceans simultaneously maximize

consumption of marine (read: public) resources (i.e. fresh, oxygenated water) while offloading production wastes (feces, uneaten food) and byproducts (toxins, antibiotic residues, escaped fish, bioamplified parasites and pathogens). Each net-pen (numbering in the hundreds on both of Canada's coasts) is tantamount to an untreated sewer outfall introducing solid and dissolved wastes directly into the marine environment. This is in every way "industrial waste," disposed of at no charge.

- The unnaturally high densities of animals in the feedlot environment of net-pens make that environment a breeding ground for disease and parasites. Recently in British Columbia, farm-derived parasites were implicated as the causal agent leading to the largest salmon cohort collapse on record anywhere in the world, ever.
- Three to five kilos of edible fish are used to make one kilo of farm salmon; a net loss of protein badly needed by humanity.
- The contribution of the salmon aquaculture industry to British Columbia's gross domestic product in 2001, as calculated by the Canadian Centre for Policy Alternatives, was \$87 million. Marine-based industries directly jeopardized by salmon farming, including commercial and sport fisheries and marine tourism, contributed \$582 million, or 51 percent of the provincial total.
- Salmon farming in Canada is dominated (greater than 80 percent of B.C. production) by foreign-owned multinational companies seemingly intent on liquidating Canada's natural marine capital for a very small profit. A similar arrangement characterizes the Washington state industry.
- Farm salmon overproduction (principally from Chile and Norway) has driven the price of all salmon to all-time lows. This forces Canadian and American farms to slash jobs to remain competitive and has brought ruin to coastal fishing communities across the Northern Hemisphere (which depend on a fair price for their wild catch).

So, even a cursory review of the available information leads to the question of why we are engaging in this activity? This industry is clearly a net-loss proposition, whether viewed from the ecological, social or economic perspective. Consumers have either been uninformed or have opted to turn a blind eye to these facts. Admittedly, the cause-and-effect relationship between the viability of the world's oceans and your choice of entree is not as obvious as it could or should be but that does not make it any less real.

The take-home message of the recent research is that we can no longer ignore the natural law that what is bad for the environment is bad for your health. Perhaps if industrial salmon aquaculture really held promise to feed the world's hungry or revitalize our struggling coastal communities or even provide a worry-free epicurean experience, there would be reason to give that industry the benefit of the doubt.

Alas, the farm-raised salmon destined for your dinner plate arrives with overwhelming environmental and social baggage, in addition to -- as we now know -- not being as healthful as you've been told.

As with most enviro-social dilemmas, there is hope, and options are available to consumers. The wild Pacific salmon fishery, contrary to popular belief, is not dead. Its major problem has not been lack of wild salmon, which have been plentiful in recent years. Rather, the problem has been to remain viable in the face of rock-bottom prices from the farms offloading costs of production to our coastal habitats. There are five wild Pacific salmon species, each unique in taste and texture.

Advances in flash freezing at sea have resulted in continent-wide availability of a prime product 12 months of the year. In fact, for anyone who cares about what she/he eats, Internet communication and entrepreneurial spirit have combined to make it possible to buy fish (not just salmon) directly from the fisherman, regardless of location (some even have on-board Web cams). Supporting these fisheries not only does your body a service but also helps to support the dozens of coastal communities hurt by plummeting salmon prices.

The major hurdle to the informed consumer is the current lack of labeling in supermarkets and restaurants. Without consistent labeling (farmed or wild, country of origin), the consumer cannot make an informed decision. Currently grocers and restaurants are not required to provide this information, a situation that is unfair to consumers and must change.

The moral of this story resonates far beyond the farm salmon debate, coloring all of industrial agriculture: There are no shortcuts. So long as market forces alone shape how our food is produced, we will be faced with similar reality checks with increasing frequency and magnitude. Market forces only work when truthful product labeling and public understanding of all the costs accompany them.

Indeed, the current crop of toxic farm salmon stories appearing in this paper compete for page space with mad cow disease coverage, transgenic crops and the like -- all born of the shortsighted demand for more with less.

In light of the remarkable shortcomings of this industry, it is time consumers *and* bureaucrats recognize that industrial salmon farming is a solution in search of a problem. Aquaculture in general has a bright future to be sure, but farm-rearing salmon is no one's idea of sustainability. The story is not just that farm salmon have greatly elevated toxin loads, but that this is actually the thin edge of the wedge.

John Volpe is assistant professor of fisheries and seafood ecology at the University of Alberta-Edmonton.

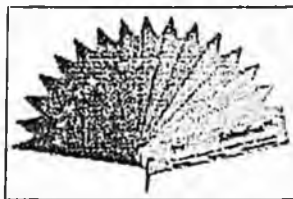
Think Twice About Eating Farmed Salmon

Salmon Farming and Human Health

Nutrition

A single serving of most seafood, including wild or farmed salmon, provides the daily requirement of healthy Omega 3 - an essential fatty acid with many health benefits. However, wild fish have a higher Omega 3 to Omega 6 ratio than farmed salmon which is best for your diet and overall health.

Farmed Atlantic salmon also contain higher levels of unhealthy saturated fats than wild coho, sockeye, steelhead pink and chum salmon. In addition, preliminary research indicates farmed salmon have up to 10 times more PCBs and dioxins than wild salmon. People who eat between 1 and 3 servings of farmed salmon per week are exposed to an amount of contaminants which exceeds the safety level set by the World Health Organization.



SalmoFan - CAAR Files

The food given to farmed salmon does not contain the natural sources of color and as a result, their flesh is an unappetizing gray color. To make their product more marketable, fish farm companies choose what color they want their salmon from the SalmoFan. Chemical additives are then added to the fish feed.

Farmed Atlantic salmon contain 200 per cent more unhealthy, saturated fat than wild pacific pink or chum salmon. This has led some health professionals to question the nutritional value of farmed salmon.

In a letter urging retailers to stop selling farmed salmon to customers, Warren Bell MD, president of the Canadian Association of Physicians for the Environment (CAPE) writes, "Not only is the fat content of farmed salmon higher than that of wild salmon but the composition of farmed salmon fat is also less healthy than that of wild salmon fat." He also writes that, "Another issue of concern to consumers is the fact that the monitoring of residues of antibiotics and other drugs in farmed salmon is inadequate."

Antibiotics & Biocides

Disease and parasites are frequent occurrences on salmon farms. Farmers attempt to control these problems by using powerful drugs including antibiotics and biocides. Farmed salmon are fed more antibiotics per pound, than any other livestock in North America.

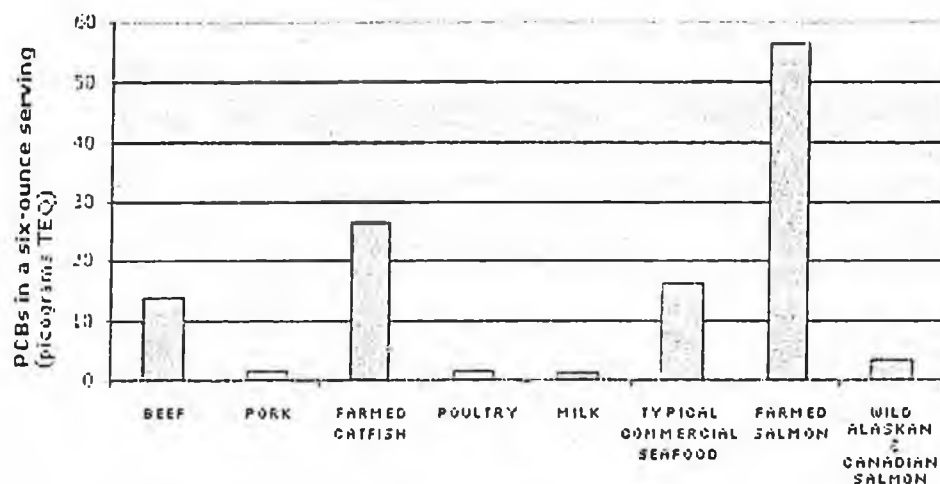
Excess drugs make their way along the food chain. Research suggests that between 74-100 per cent of wild fish caught near farms contain antibiotics in their flesh. Escaped fish caught in a Broughton Archipelago stream were found carrying bacteria known to cause a range of human maladies and these bacteria were resistant to 10 different antibiotics. Excessive use of antibiotics has already led to the development of antibiotic resistant "super-bugs".

Summary — PCBs in farmed salmon

Seven of ten farmed salmon purchased at grocery stores in Washington DC, San Francisco, and Portland, Oregon were contaminated with polychlorinated biphenyls (PCBs) at levels that raise health concerns, according to independent laboratory tests commissioned by Environmental Working Group.

These first-ever tests of farmed salmon from U.S. grocery stores show that farmed salmon are likely the most PCB-contaminated protein source in the U.S. food supply. On average farmed salmon have 16 times the dioxin-like PCBs found in wild salmon, 4 times the levels in beef, and 3.4 times the dioxin-like PCBs found in other seafood. The levels found in these tests track previous studies of farmed salmon contamination by scientists from Canada, Ireland, and the U.K. In total, these studies support the conclusion that American consumers nationwide are exposed to elevated PCB levels by eating farmed salmon.

A serving of farmed salmon has up to 40 times more PCBs than other foods



NOTES: The levels shown on this figure represent the sum of the 12 PCB compounds that resemble dioxin, widely recognized as the most toxic of all industrial pollutants, and linked to cancer as well as to damage of the nervous, reproductive, and immune systems. PCB concentrations are shown as toxic equivalents (TEQ) of 2,3,7,8-Tetrachlorodibenzo-p-dioxin, the benchmark dioxin chemical.

SOURCE: EWG analysis of data from Ayoob (2003), Saxon et al. (2002), EPA (2000a and 2000b), Friedler et al. (2000), Jacobs et al. (2002), NMFS (2002), NAS (2002), Schecter et al. (2001), and USDA (2002).

LINK: [Methodology and References](#)

PCBs are persistent, cancer-causing chemicals that were banned in the United States in 1976 and are among the "dirty dozen" toxic chemicals slated for global phase-out under the United Nations Convention on Persistent Organic Pollutants, signed by

President Bush on May 23, 2001. Because of their persistence, PCBs continue to contaminate the environment and the food supply.

A number of studies show that farmed salmon accumulate PCBs from the fishmeal they are fed. The feed is often designed to have high amounts of fish oil and is made largely from ground-up small fish. PCBs concentrate in oils and fat, and previous tests of salmon feed have consistently found PCB contamination.

If farmed salmon with the average PCB level found in this study were caught in the wild, EPA advice would restrict consumption to no more than one meal a month. But because farmed salmon are bought, not caught, their consumption is not restricted in any way.

This is because the EPA sets health guidance levels for PCBs in wild-caught salmon, and its standards, which were updated in 1999 to reflect the most recent peer-reviewed science, are 500 times more protective than the PCB limits applied by the Food and Drug Administration (FDA) to commercially-sold fish. The FDA has not updated its PCB health limit for commercial seafood since it was originally issued in 1984. In the intervening two decades new scientific research has shown that the PCBs that build up in fish and people are more potent cancer-causing agents than originally believed, and that they present other health risks as well, in particular neurodevelopmental risks to unborn children from maternal consumption of PCB-contaminated fish.

When the FDA's standard was developed, salmon was something of a rarity in the U.S. diet. Today it is standard fare at home and in restaurants, particularly among consumers who are health-conscious, well educated, and relatively affluent. Last year salmon overtook "fish sticks" as the third most popular seafood in the American diet (trailing only tuna and shrimp). The increased consumption was made possible by the explosive growth in salmon farming, an industrial system that produces the fish in vast quantities at a price far lower than wild salmon.

Seven of the farmed salmon we tested came from factory-scale farms in Canada, the U.S., and Iceland. Six of these seven were polluted with PCBs at levels that would be safe to eat no more than once a month, according to EPA health standards. About 23 million Americans eat salmon more than once a month, the majority of it farmed salmon. One salmon imported from Scotland contained PCBs at levels so high that EPA would restrict consumption to no more than six meals a year, if the salmon were caught, not bought.

The farmed salmon industry claims that both farmed and wild salmon can be eaten safely more than once a week. This claim relies on FDA's outdated contamination limit. In EWG's testing program, nine of 10 farmed salmon tested from five countries of origin failed EPA's health-based limits for weekly consumption (6000 parts per trillion), exceeding the standard by an average of 4.5 times. A pilot study published by Canadian scientists last year showed that farmed Canadian salmon contain ten times the PCBs of wild Alaskan and Canadian salmon.

EWG's analysis of seafood industry fish consumption data shows that one quarter of all adult Americans (52 million people) eat salmon, and about 23 million of them eat salmon more often than once a month. Based on these data we estimate that 800,000 people face an excess lifetime cancer risk of more than one in 10,000 from eating farmed salmon, and 10.4 million people face a cancer risk exceeding one in 100,000. The government's preferred level of increased risk from contaminants like PCBs is no more than one in one million, a threshold set to account for a regulatory system that addresses chemicals or chemical classes individually and is unable to set safe levels for the complex mixtures of hundreds of industrial chemicals to which people are exposed.

Recommendations

Six of every ten salmon sold in stores and restaurants are raised in high-density fish pens in the ocean, managed and marketed by the salmon farming industry. These fish are eaten by a quarter of all adults in the U.S. and experts predict that the exponential growth of the farmed salmon industry will continue.

Farm-raised fish are here to stay. If raised correctly, these fish can help meet global demand for high-quality protein and take some of the pressure off of highly depleted populations of wild fish. But major reforms to the industry are needed.

In addition to the well documented ecological problems with salmon farming, there is now compelling evidence of near industry-wide contamination with unacceptably high levels of PCBs.

To remedy this problem, we recommend that:

- Congress pass a funding increase for FDA to support testing of farmed salmon and other protein sources for PCBs.
- The Food and Drug Administration move quickly to conduct a definitive study of PCB contamination in farmed salmon, and make all results public. This testing is critical, because FDA will be unable to update its regulation on PCBs in farmed salmon until the agency conducts its own laboratory studies.
- The FDA issue a PCB health advisory for seafood consumption in line with current PCB health guidance issued by the EPA.
- Policy-makers do more to preserve salmon habitat in Alaska, where, preliminary indications are, fish are naturally low in PCB contamination.
- The salmon farming industry monitor salmon feed for PCB contamination and shift or refine feed sources to produce fish lower in PCBs and other pollutants.

What you can do

To reduce your exposure to PCBs, trim fat from fish before cooking. Also, choose broiling, baking, or grilling over frying, as these cooking methods allow the PCB-laden fat to cook off the fish. When possible, choose wild and canned Alaskan salmon instead of farmed, and eat farmed salmon no more than once a month.

Two Groups to Sue Farmed Salmon Industry

TERENCE CHEA, Associated Press Writer

AP Online 01-23-2004

Dateline: SAN FRANCISCO

The farmed salmon industry faces legal action in California for failing to warn consumers that the fish contain what environmental groups say are potentially dangerous levels of cancer-causing chemicals.

The Environmental Working Group and the Center for Environmental Health filed notice last week of their intent to sue 50 salmon farms, fish processors and grocery chains under a California anti-toxics law.

"Our goal is to challenge them to change their practices so their fish is safe to eat," said Michael Green, executive director for the Oakland-based Center for Environmental Health.

The potential lawsuit comes after a major study published earlier this month in the journal *Science* found that farm-raised salmon contains significantly more contaminants than salmon caught in the wild because of PCBs, polychlorinated biphenyls, in feed. It recommended that farmers change fish feed and urged consumers to buy wild salmon.

The farmed salmon industry disputes the conclusions, citing experts who say the benefits outweigh the risks of eating farmed salmon.

"(Consumers) will be doing themselves and their families a great disservice if they stop eating farmed salmon," said Alex Trent, executive director of the trade group Salmon of the Americas. He noted that farmed salmon, a source of heart-healthy omega-3 fatty acids, is much cheaper than wild salmon and can be purchased year-round.

Under Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, companies are required to notify consumers if their products contain hazardous levels of chemicals known to cause cancer or reproductive harm.

State law requires private groups to first file notice of their intent to sue to give the state attorney general and other prosecutors 60 days to decide whether to join or take over the lawsuit.

Defendants named include major U.S. grocery chains such as Safeway Inc., Kroger Co., Albertsons Inc. and Costco Wholesale Corp. and farmed salmon producers in Canada and Europe.

Risky behaviour: Well, it's up to you; Peter McKnight
Vancouver Sun 01-19-2004

Let's say the Environmental Protection Agency and Health Canada give you conflicting information about the safety of eating farmed salmon. Whom should you trust?

The answer: Trust yourself.

That's a bit cryptic, I know, but then there's been a lot of cryptic reporting on this subject. So let me try to clarify.

On Jan. 9, Science magazine published the now (in)famous study that found farmed salmon had much higher levels of polychlorinated biphenyls (PCBs) than wild salmon.

Specifically, farmed salmon had average PCB levels of 36.63 parts per billion, compared to 4.75 parts per billion for the wild variety.

By themselves, those numbers are uncontroversial. After all, even fish farmers admit their fish contain higher PCB levels than wild salmon.

However, the researchers also relied on Environmental Protection Agency guidelines (which set limits for PCBs in fish at 24-48 parts per billion), and concluded that it might not be safe to eat farmed salmon.

That prompted a quick response from the U.S. Food and Drug Administration and Health Canada, both of which set limits for PCBs at 2,000 parts per billion.

Health Canada issued a news release stating that, based on its risk assessment, "consuming farmed salmon does not pose a health risk to consumers."

So who's right? The EPA or the FDA and Health Canada?

Someone must be correct, since this is all based on science, right? Well, no.

While the amount of PCBs in fish is a scientific fact, any recommendation -- whether it be to eat or avoid salmon -- is necessarily a value judgment.

Agencies look at the (scientifically verified) amount of PCBs in contaminated fish and then decide what they consider to be an "acceptable" risk.

What counts as acceptable depends, of course, on the values of the agency.

For example, the EPA guidelines are based on the amount of PCBs that could cause one case of cancer in 100,000 people over a 70-year lifetime.

But why choose one in 100,000 as an appropriate limit? Why not one in a million?
Or one in 10,000?

There's no scientific answer to that question because it's not a scientific question.

Science is a purely descriptive, rather than prescriptive, enterprise.

It deals with cold, hard facts, and tells us how things are rather than how they should be.

In other words, science can tell us how many PCBs are in fish, and it can approximate the probability that we will develop cancer if we eat contaminated fish.

But safety is another matter entirely, since nothing is 100 per cent safe. When agencies label a food unsafe, they are making a prescription: They are saying you shouldn't eat the food.

That is a value judgment -- it's a statement of how much risk the agencies think you should assume. But, ultimately, only you can decide what is an acceptable risk.

Interestingly, we engage in risky behaviour every day, without even thinking about it. Everything we do has attendant risks -- from driving a car (relatively speaking, a highly dangerous activity) to taking a shower (perhaps the most dangerous thing you do in your own home) to eating farmed salmon.

Yet when a scientific study appears, we suddenly look to scientists to tell us whether we should continue to engage in certain activities.

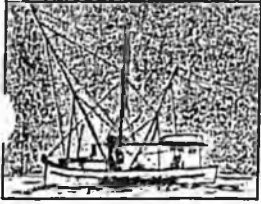
Scientists simply can't tell us that -- they can only suggest what might happen to us if we do so. As far as eating farmed salmon is concerned, it's up to each of us to decide whether the risk is worth it.

In the final analysis, the whole shebang comes down to what my mother used to say whenever she was dissatisfied with the many hare-brained decisions I've made.

"It's your life," Mom would say. And she was right.

It is your life, and while you can and should avail yourself of information provided by scientists, no one but you -- not scientists, or government agencies, or environmental activists, or fish farmers -- can tell you how to live it.

(Copyright Vancouver Sun 2004)



Alaska Trollers Association

130 Seward St., No. 211
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

2004 Legislative Positions

House Bills

HCR 25	Support	Alaska Wild Salmon Week
HJR 32	Support	Labeling of wild and farmed / country of origin
HJR 34	Support	USDA Trade Adjustment Assistance Program
HJR 36	Support	NPS mitigate adverse effects of fishing closures and restrictions
HB 396	Oppose	MSY of "important salmon stocks" and ensuring hatchery brood stock.
HB 409	No Action	Maximum length of seine vessel
HB 410	No Action	CFEC permit buy-back programs
HB 415	No Action	Permit holders (not vessels) fish in multiple areas
HB 419	Oppose as written	Regional seafood development associations and taxes
HB 426	Oppose	Tax certain tourism/recreation-related goods and services
HB 433	Support	Labeling and ID of genetically modified fish & fish products
HB 435	Support	Labeling and misbranding
HB 444	Support	Direct marketing taxes
HB 473	No Action	JV fish processing businesses and tax liability.
HB 478	No Action	Issuance of commercial fishing interim-use permits.

Senate Bills

SCR 19	Support	Support fisheries education
SB 27	No Action	Pesticide Use
SB 281	Support	Labeling and ID of genetically modified fish & fish products
<u>SB 282</u>	Support	Labeling and misbranding
SB 286	Support	Direct marketing taxes
SB 315	No Action	CFEC permit buy-back programs
SB 322	No Action	Salmon enhancement tax rate

ASMI Issues

Support 1% salmon marketing assessment
Neutral on mandatory processor assessment
Support ASMI board size of 11-15 members

SB

291

Alaska State Legislature

DURING SESSION
STATE CAPITOL
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(907) 465-4843 (800) 892-4843
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SENATOR CON BUNDE

District P

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Sponsor Statement

Last session the legislature passed SB 168 which required that cigarette tax stamps be affixed to all packages of cigarettes in the state of Alaska. SB 168 was signed into law on June 16, 2004. The bill's effective date for affixing cigarette tax stamps was January 1, 2004. SB 168 contained transition language that allowed distributors and retailers to sell unstamped cigarettes that were in the state prior to January 1, 2004 to the end user by March 31, 2004. Based on data from the state of Hawaii, (the most recent state to enact a tax stamp requirement), it was deemed that 90 days was adequate time to dispose of unstamped cigarettes. That timeframe also seemed adequate because the cigarette manufacturers had a very liberal returned goods policy. Basically, the manufacturers would take back any and all cigarettes for whatever reason from all retailers and distributors.

But that friendly return policy shifted between July 2003 and October 2003, when the three largest cigarette manufacturers, Philip Morris, R.J. Reynolds, and Brown & Williamson, announced significant changes to their returned goods policies. They announced that they would no longer take any cigarettes back except in very limited circumstances. What used to be a very liberal returned-goods policy, basically became a "no returned-goods" policy. Therefore, on January 1, 2004, Alaska distributors and retailers could not simply return their unstamped cigarettes to the manufacturers as previously allowed.

The Department of Revenue contacted both Philip Morris and RJ Reynolds and requested that they extend their old returned goods policy and allow distributors and retailers in Alaska to return cigarettes for a full credit. This would have allowed the department the authority to give a credit for previously taxed cigarettes. Distributors and retailers could then repurchase cigarettes and tax stamps. The manufacturers refused to change their return goods policy.

Due to the change in the manufacturers' returned-goods policies, it is apparent that Alaska businesses need more than 90 days to dispose of their cigarette inventories that were in the state prior to January 1, 2004. This legislation would extend the transition period to June 30, 2004, giving retailers and distributors an additional 90 days to dispose of unstamped cigarettes. In addition, the Department of Revenue will continue to request that the manufacturers loosen their returned goods policy at least for distributors so that all cigarettes they sell to retailers will be affixed with tax stamps as soon as possible.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 291
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Unstamped Cigarettes RDU Revenue Programs & Services
Component Tax Division
Sponsor Senate Labor and Commerce
Requester Senate Labor and Commerce Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Transition Period for Unstamped Cigarettes - Bill Analysis

Bill Language: This bill will extend the transition period for selling unstamped cigarettes that were in the state prior to January 1, 2004 from March 31, 2004 to June 30, 2004. Due to a recent change in cigarette manufacturers' returned goods policies, cigarette distributors and retailers may not return their unstamped inventory of cigarettes to the manufacturers. At the time cigarette tax stamp legislation was introduced and passed, cigarette manufacturers had a very liberal returned goods policy. Based on those policies and experiences of other states, a 90-day transition period was an adequate amount of time to either sell cigarettes to the end user or return the cigarettes to the manufacturer. Since manufacturers will no longer
(cont. on page 2)

Prepared by: Johanna Bales Phone 269-6628
Division: Tax Division Date/Time 2/9/04 1:10 PM
Approved by: Steve Porter, Deputy Commissioner Date 2/9/2004
Agency: Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB291

ANALYSIS CONTINUATION

accept returns of cigarettes, the transition period for selling cigarettes to the end user needs to be extended to June 30, 2004 to reduce potential hardship on small businesses throughout the state. The Tax Division anticipates no change to cigarette tax revenues due to this legislation as it only applies to previously taxed cigarettes. Cigarettes imported into the state after December 31, 2003 must be affixed with a cigarette tax stamp as proof that the cigarette excise tax has been paid.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 1104CJ
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

February 9, 2004

The Honorable Con Bunde
Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Bunde:

This letter is to inform you of the Department of Revenue's support of Senate Bill 291. This bill will extend the transition period for selling unstamped cigarettes that were in the state prior to January 1, 2004 from March 31, 2004 to June 30, 2004. At the time cigarette tax stamp legislation was passed, the major cigarette manufacturers had very lenient returned goods policies. Basically, cigarettes could be returned to the manufacturer by distributors and retailers for virtually any reason. Beginning in July 2003, the manufacturers severely restricted their returned goods policies and will only accept cigarette returns in very limited circumstances.

The Department of Revenue has received approximately 50 calls from distributors and retailers across the state regarding the March 31, 2004 deadline to have all cigarettes bear a tax stamp. These businesses believe they will not be able to sell their unstamped product, product that was in the state prior to January 1, 2004, to the ultimate consumer by the deadline. Since they can no longer return the cigarettes to the manufacturer, they will have to destroy product upon which the Alaska cigarette tax has already been paid in order to be in compliance with the new law.

The Department believes that extending the stamp deadline from March 31, 2004 to June 30, 2004, as proposed in SB 291, is needed so that small businesses across the state will not be penalized by a change in state statute coupled with a change in the returned goods policies of major manufacturers. Therefore, the Department of Revenue supports the language of SB 291.

Sincerely,



Steven B. Porter
Deputy Commissioner



Senator Con Bunde
Alaska Senate
State Capitol, Room 506
Juneau, AK 99801

February 7, 2004

RE: SB 291 Deadline extension for possessing unstamped cigarettes

Dear Senator Bunde:

My name is Mike Elerding, president and owner of an Alaska based wholesale distribution company. I would like to speak in favor of SB 291, which solves a unique and specific timing problem created as a result of the change in State law that took effect at the start of this year.

Last year Northern Sales Company of Alaska, Inc. supported and worked with you towards the passage of SB 168, which provides for the collection of Alaska excise tax on cigarettes through the implementation of an Alaska tobacco tax stamp on cigarettes sold in Alaska.

Prior to passage of SB 168, compliance with State law required licensed wholesalers to collect and remit state excise tax to the State based on the filing of a monthly report. After 1/1/04 (the effective date of SB 168), compliance with state law requires that all cigarettes imported into the state carry an Alaska tobacco stamp to show that the State excise tax has been collected. The problem is in the transitioning – when wholesale and retail trade inventories contain a mixture of stamped and unstamped product.

State law does not provide licensed wholesalers with a mechanism to stamp unstamped cigarettes that were imported and paid the state excise tax prior to 1/1/04. SB168 was based on an expectation that wholesale trade would be able to sell-through unstamped inventory prior a 3/31/04 transition deadline for the possession of unstamped product. The reality is that the sell-through of unstamped cigarettes at the wholesale level is taking longer than expected. Retailers are reluctant to buy unstamped product because possession of unstamped cigarettes after 3/31/04 is a violation of state law with significant financial penalties. As the deadline approaches retailers are becoming more reluctant to purchase unstamped cigarettes because they will not be able to sell-through this product, which compounds the problem.

The transition from unstamped to stamped inventory creates a unique problem for the retail trade. State law properly prohibits selling cigarettes below cost to dispose of distressed inventory. In addition, because the retail trade does not collect or remit the excise tax there is no mechanism for the state to credit the retail trade for a tax it does not collect. The end result is that retailers with any unstamped cigarettes after 3/31/04 will be guilty of misconduct involving unstamped cigarettes, which is a class C felony.

The legislation creating the tobacco tax stamp is good for Alaska because it provides greater assurance that the excise tax will be collected on all cigarettes imported into the state and it will reduce the sale of cigarettes through black market distribution channels. However, Alaska licensed wholesalers and retailers need some relief from the 3/31/04 deadline. SB 291 helps extend a reasonable transition period for the State of Alaska to fully implement the cigarette-stamping program.

Sincerely yours,

Michael J. Elerding

Subject: sb291

Date: Fri, 6 Feb 2004 08:38:38 -0900

From: "Bobby Scott" <bobbyscott@acsalaska.net>

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

Good Morning Jane

I work for Jan's distributing here in Anchorage. We service all of Anchorage, Wasilla, Fairbanks and the Kenai area. We are in favor of extending the transition period for unstamped cigarettes. Extending until June will give us and the retailer more time to get through our unstamped inventory. If you have any questions please call me at 243-5267.

Thanks

Bobby Scott

Jan's Distributing

Subject: FW: SB 291

Date: Thu, 5 Feb 2004 17:58:22 -0600

From: Bob Galosich <bgalosich@northwest.ca>

To: "Jane_Alberts@Legis.state.ak.us" <Jane_Alberts@Legis.state.ak.us>

CC: Gary Long <GLong@northwest.ca>,
"johanna_bales@revenue.state.ak.us" <johanna_bales@revenue.state.ak.us>

Jane,

Per Johanna's e-mail below, Frontier Expeditors and Alaska Commercial Company support Senator Bundy's legislation. Our 25 retail stores in Rural Alaska would not be able to sell the slower moving unstamped product by March 31st. We appreciate your office's assistance in this matter.

Bob Galosich
Vice President of Wholesale Operations
Alaska Commercial Company
907-868-4505
bgalosich@northwest.ca

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

From: Johanna Bales [mailto:johanna_bales@revenue.state.ak.us]
Sent: Thursday, February 05, 2004 2:35 PM
To: Bob Galosich
Subject: SB 291

Bob,

Senator Bunde has introduced legislation to extend the transition period for unstamped cigarettes from March 31, 2004 to June 30, 2004. If you support this legislation, please provide a support statement to Senator Bunde's aid, Jane Alberts via email. Her email address is:

Jane_Alberts@Legis.state.ak.us

Thanks.

Johanna Bales

L & J ENTERPRISES, INC.

THREE BEARS

P.O. Box 189
Tok, Alaska 99780
(907) 883-4324
FAX (907) 883-4238

February 9, 2004

The Honorable Con Bunde
State Capitol Room 506
Juneau, AK 99801-1182

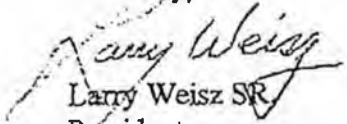
Dear Senator:

I was told today that you are going to introduce SB291. Thank you, Thank you. I am the owner of five retail stores in Alaska. With out this bill we will have to destroy thousands of dollars in tobacco product.

I have no problem with the old bill, only the way it was written. The real problem is the supplier is still sending unstamped product and this could go on until March 31, 2004. If the suppliers, cutoff date was March 31, 2004 and the retailer June 30, 2004 this would work.

Thank you in advance for your bill.

Sincerely,


Larry Weisz SR
President

THREE BEARS ALASKA
TOK VALDEZ SEWARD KENAI