

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

8672

11235 SENATE LABOR & COMMERCE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 254
 (1/12/2004) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Tourism & Recreation Assessment RDU Executive Admin and Dev (119)
 Component Office of Economic Development
 Sponsor Senator Therriault
 Requester Senate Labor & Commerce Component No. 2743

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)

The Act establishes a 2%-4% assessment on certain tourism-related and recreation-related goods and services. Proceeds of the assessment would be deposited into a sustainable tourism and marketing account, created in the general fund. The Legislature may appropriate the funds to the department to enter into a contract with a qualified trade association for tourism marketing under AS 44.33.125. The assessment must be approved by eligible visitor industry businesses that together account for at least 51% of the value of sales, leases and rentals described in the bill. SB 254 provides a mechanism for the visitor industry to terminate the assessment and repeals the current levy of excise taxes on certain passenger and recreation vehicles.

No new funds are required to implement these provisions.

Prepared by: Albert H. Clough, Deputy Commissioner Phone (907) 465-2500
 Division Office of Economic Development Date/Time 2/12/04 11:59 AM
 Approved by: Edgar Blatchford, Commissioner Date 2/12/2004
 Agency Department of Community & Economic Development

LEGAL SERVICES

SB254

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

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Juneau, Alaska 99801-7182
Deliveries to: 125 6th St., Rm. 329

MEMORANDUM

November 18, 2003

SUBJECT: Funding of regional seafood marketing plans
(Work Order No. 23-LS1409)

TO: Senator Ben Stevens, Co-chair, Salmon Industry Task Force
Attn: Cheryl Suron

FROM: George Utamohle
Legislative Counsel

This memorandum is in response to your inquiry regarding certain legal issues associated with the establishment and funding of regional seafood marketing organizations in Alaska. It is my understanding that a proposal for the establishment of regional seafood marketing organizations to promote Alaska seafood products on a regional basis is currently being considered by participants in the legislative Salmon Industry Task Force. One of the proposed options to fund the marketing operations of the organizations would be through assessments on the members of the organization.

ONE: What are some of the implications that arise from state involvement in the creation and/or funding of regional seafood marketing organizations? Once the state becomes involved in the establishment and/or funding of regional seafood marketing organizations, many of the constitutional and legal constraints placed on the state may apply to the organizations and the state's involvement with the organizations. Certainly one of the issues to be addressed is whether the regional organizations are private entities or subdivisions of the state. In regard to organizations currently involved in the commercial fishing industry, such as the regional and private hatchery associations and dive fishery management associations, the most significant concerns relate to the use of the state's taxing power to collect taxes and assessments from members of such organizations and the use of state appropriations to pay for the operations of those organizations.

The state has broad powers to impose taxes. The state has exercised the taxing power to collect money from various groups, such as commercial fishermen and processors, through taxes and assessments imposed on those groups. The current salmon marketing tax, dive fishery management assessment, seafood processors' assessment, and fishery business tax are some examples of the use of the taxing power.

Two issues of significant concern arise when the state uses the taxing power to collect money on behalf of organizations for the purposes of funding activities of the

organizations. The first issue arises from the desire on the part of those being assessed to approve either the assessment itself, the amount of the assessment, or both. In the context of a state imposed assessment, the assessment is a tax for purposes of the Alaska Constitution. The Alaska Constitution provides that "[t]he power of taxation shall never be surrendered." Constitution of the State of Alaska, art. IX, sec. 1, first sentence. The ability of the members of an organization to vote to approve or repeal taxes and assessments imposed by the state may constitute an invalid delegation of the legislature's taxing powers. Under the Alaska Constitution, only the legislature may impose a tax and that power may only be delegated to a borough or city. The Alaska Supreme Court struck down a royalty assessment on salmon to pay for salmon hatcheries and salmon enhancement because the assessment was a tax and the legislature did not have the authority to authorize regional associations to approve or disapprove the imposition of the assessment. State v. Alex, 646 P.2d 203 (Alaska 1982). Under the Alex decision, the legislature can impose a tax or an assessment but it cannot delegate authority to the regional associations to determine if the assessment takes effect or not. Arguably, the current salmon enhancement tax, seafood processors' assessment, and the dive fishery management assessment, among other taxes and assessments, are valid because any approval of the relevant tax or assessment by the taxpayers was only a condition precedent to the enforcement of a lawfully enacted tax and not a delegation of the legislative power to the taxpayer to impose a tax. However, the Alaska courts may not recognize a meaningful distinction between conditioning the implementation of a tax on the happening of a specific event (such as approval by the taxpayers) and the outright delegation of the authority to impose a tax to the taxpayer, (thus, many of the current commercial fishing taxes and assessments are potentially unconstitutional under the Alex decision.)

The second issue raised by state imposed and enforced taxes and assessments arises from the expectation that the money collected by the state will be appropriated back to the organization or region where the money was collected. Except as provided by the Alaska Constitution, the state cannot be required to dedicate state revenue for a particular purpose. The Alaska Constitution disfavors dedicated funds.¹ "The dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs." State v. Alex, 646 P.2d 203, 210 (Alaska 1982), quoting with approval 1975 Alaska Atty. Gen. Op. No. 9 at 24 (May 2). The taxes and assessments of the kind discussed in this memorandum are general revenue of the state and are potentially available for any public purpose. / Any requirement that the

¹. Article IX, sec. 7, Constitution of the State of Alaska states:

Dedicated Funds. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

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legislature appropriate the money collected from a tax or assessment to a particular purpose raises the dedicated funds issue. Thus far the legislature has avoided a direct conflict with the prohibition against dedicated funds by stating in the relevant statutes, such as the salmon enhancement tax, salmon marketing tax, dive fishery management assessment, etc., that the resulting revenue may be appropriated to a particular purpose. See, AS 43.76.025(c), 43.76.120(d), and 43.76.200(a). This approach seemingly retains the full discretion of the legislature to determine how the revenue from the relevant taxes and assessments may be used. The downside of this approach is that it potentially misleads constituents to believe that the money from the taxes and assessments that they pay will be used only for certain purposes and creates a "moral" obligation on the part of legislators to appropriate the money for a specific purpose which may, in effect, violate the prohibition against dedicated funds.

TWO: What conflicts might arise between existing seafood marketing efforts and those of the proposed regional marketing organizations? The state already has its own statewide seafood marketing agency, the Alaska Seafood Marketing Institute, which promotes Alaska seafood as a whole and which is indirectly funded from assessments and taxes paid by fishermen and seafood processors. There is also the new federally created and funded Alaska seafood promotion board which has more flexibility to promote Alaska seafood than does the Alaska Seafood Marketing Institute. The addition of new state-funded regional marketing organizations would provide for still more marketing efforts on behalf of Alaska seafood. As inevitably happens there will be some duplication of efforts and possibly conflicting messages and programs due to multiple organizations attempting to do similar things. The possibility that there may be more than one regional marketing organization promoting seafood products from a region may create additional inefficiencies. The fewer the number of entities involved in marketing of Alaska seafood, the greater should be the efficiency of marketing operations. Coordination of the various regional, federal, and state seafood marketing organizations may be necessary to avoid unproductive duplication of efforts. On the other hand, there is the risk that efforts to coordinate the many seafood marketing organizations may result in additional administrative overhead, reduce the total amount of funding available for actual seafood marketing, and stifle the grassroots, entrepreneurial spirit that seems to underlie the proposal for regional marketing organizations. However, these issues do not pose legal problems. These are policy issues that the legislature may wish to address when it considers the authorization and funding of regional seafood marketing organizations.

THREE: Are there alternatives to state organized and funded regional seafood marketing organizations? An alternative to state organized and funded seafood marketing efforts would be a privately organized and funded seafood marketing organization. Individual fishermen, boat owners, fish processors, and others are free to join together in organizations to promote common goals. The members of such organizations are free to assess fees on themselves to fund the purposes of the organization. The organization may structure itself in any manner that the members consider appropriate for achieving their intended purpose. The organization may limit

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membership to certain categories of persons and organizations. And those persons and organizations are free to join or leave the organizations as they consider appropriate. Such private organizations would not be subject to the many constitutional and statutory constraints imposed on the state when it becomes involved in what is inherently a private sector function.

Despite the constraints imposed on the state's seafood marketing efforts, the state still has advantages not available to the private sector, such as greater ability to provide the funding, organization, and unifying goals necessary to operate a seafood marketing program. It is partly for these reasons that a significant privately organized and funded seafood marketing organization has not been established in the state.

If I may be of further assistance, please advise.

GU:mdr

03-199.mdr

HAINES HITCH-UP R.V. PARK, INC.



**P O BOX 383
HAINES, ALASKA 99827**

**(907)766-2882
HitchupRV@aol.com**

FEBRUARY 27, 2004

SENATOR CON BUNDE
STATE CAPITAL, ROOM 506
JUNEAU AK 99801-1182

Re: SB 254 & HB 426 Sustainable Tourism & Recreation Assessment

Dear SENATOR BUNDE:

I am opposed to SB 254 and HB 426 for the following reasons:

- These bills indicate that "eligible visitor industry businesses (defined as anyone who will be subject to paying the tax)" will be given the opportunity to participate in the approval voting.

How will ATIA or the State have this election and insure that all "eligible visitor industry businesses" will be included in the voting process? Please consider that a grocery store could be included if 75% of their sales occur between May 1st and October 1st.

Who is going to pay for this election?

I also see defining an "eligible visitor industry business" as being very subjective;

- This tax targets a specific industry and is not broad based across all state businesses. I already spend 10% or more of my revenues on advertising and promotion to attract recreational vehicle visitors to Alaska. When the RV visitor arrives they not only spend money in my facility but

thru out the community and state. They purchase fuel, groceries, eat out in restaurants, visit beauty and barber shops, have repairs made on their vehicle just to name a few. Those expenditures then turn over four or five times within the community. The entities that receive this business are getting a free ride at my expense. They have for the most part not spent one dime to bring in these tourists but yet they receive a great benefit from my expenditures and efforts.

- If any tax is necessary (???), I feel that all businesses should share the burden of a statewide tax to reflect the benefits they are receiving from my efforts. The RV traveler is very intelligent and when they see that they are being specifically tax targeted it will leave a very sour taste with them;
- There is a breaking point that may have already been crossed. It is very expensive for a recreational vehicle visitor to travel to Alaska due to the distances involved. My rates have to include all of my expenses including advertising and promotion (per above) and Alaska is very expensive to do business in (every thing that I buy from utilities to supplies costs much more than in the lower 48). In addition my local area has a sales tax and a bed tax that they are subject to. In Haines we have a 5-1/2% borough sales tax and a 4% borough bed tax equaling 9-1/2%. With this proposed 2% tax, a RV tourist staying at my RV Park in Haines will be paying 11-1/2% in taxes. If the legislature adds a statewide bed or sales tax it will be higher yet. Also being considered is HB 156 to increase the fuel tax our visitors will pay by \$.12 per gallon. I'm competing with many other areas in the United States and Canada for the RV visitor. The RV'er is able to visit these other areas with far less travel costs, enjoys rates far less than mine (because it is far cheaper to do business) in those areas, and is not faced with a mountain of taxes. When I review the summer visitor arrivals in the recent surveys done by the Department of Community and Economic Development I see an alarming 31% decline (92,100/133,300) in highway and ferry traffic from the high reported in 1998 (21,600 + 111,700 = 133,300) to 2003 (15,900 + 76,200 = 92,100). This is not all due to a lack of marketing and promotion but also must include an overpricing of our product.

- This bill will not apply to the cruise ships and they should not be allowed to vote on this issue;
- I feel that each "eligible visitor industry businesses", excluding cruise ship companies, should have one vote on this matter. One eligible business = one vote. It should not be subject to 51% of the total value of sales covered by these bills, as no one will be able to determine with any certainty what this 51% is. The majority of the voters should rule;
- I object to the disposition of proceeds stating that the legislature "may" appropriate the funds in the sustainable tourism and marketing fund. This should be changed to read "shall";
- This tax should not reduce what the state currently contributes to tourism marketing and promotion. The State of Florida proposed a lottery bill with the proceeds going to education funding. This passed and the lottery raised a lot of money that has gone to education but the state subsequently reduced their general fund contribution to education by a greater amount;
- This bill should apply to any governmental agency (federal, state, city) or nonprofit organization that offers a service that is also offered by the private sector. If these entities have a campground or RV park (which is not an inherent governmental function or is a unrelated revenue for a nonprofit) competing against me in the private sector they should also be subject to the tax;
- We see many tourist related businesses that are not included under this bill. What about fishing charters, fishing guides, sport shops, small boat harbor rentals, air travel (being questioned due to federal regulations) to name a few. The determination of who is subject to this tax is going to be very subjective;
- The state should put a cap on the total sales, bed & tourism tax anyone should be subject to. If there are state taxes they should come first, followed by the borough sales tax, then the borough lodging and tourism taxes being limited by the cap;

- I oppose any taxes on commissions, which is double taxation. If the total sale is subject to the tax then a resulting commission paid to a third party for arranging the transaction should not be taxed again.
- If a state wide sales tax is enacted this bill should not be necessary to cover state expenditures. A clause should be added to this bill stating that it become "null and void" at any time the State of Alaska enacts a statewide sales tax.

Please consider that our tourists are already paying more than their fair share of taxes for which they receive no benefit. When they pay for anything that they purchase in Alaska they are paying the full shot of taxes including property taxes, as all of these are included in the price of the product or service that they purchase. Yet, we are not building and staffing schools for their children, we don't need jail space for any (or but very few) of them, if they need medical care they have medical insurance or pay for it, we don't need to build low income housing for them, they are not on welfare, public assistance or state workmen's compensation just to name a few things that the our tax dollars pay for that they don't receive the benefit of. If they use and pay for many things such as medical care in hospitals or on the ferry system their expenditures are supporting facilities and services that Alaskans would not other wise be able to afford.

I ask that you give consideration to my opposition to this tax.

Very truly yours,



Fred C Bretthauer

CC: all legislatures

Subject: [Fwd: Comments on Worker Comp and Tourism tax]

Date: Fri, 13 Feb 2004 17:13:26 -0900

From: Con Bunde <Senator_Con_Bunde@Legis.state.ak.us>

Organization: Alaska State Legislature

To: Jane Alberts <Jane_Alberts@legis.state.ak.us>

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

Subject: Comments on Worker Comp and Tourism tax

Date: Fri, 13 Feb 2004 09:03:02 -0900

From: "Valdez Heli-Ski Guides" <ski@valdezheliskiguides.com>

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

Dear Mr. Bunde,

I have been planning on writing you a detailed letter regarding concerns on Workman Comp issues and felt the need to expedite this with an email. I read in the ADN dated 2/12/04 your comments regarding Workmans Comp issues. I would like to encourage you to work hard on your initiative and wanted to voice my support for this. To pass on any further costs or rate increase in the year 2004 is completely unfair to the business owners of Alaska.

I own Valdez Heli-Ski Guides which is the largest heli-ski operation in the U.S. We lease the Tsaina Lodge on ThompsonPass and employ a total of 30 seasonal workers We generate gross revenue of more than \$750,000 and have been in business since 1993. Since I purchased this business in 2000, I have seen my workman comp rates shoot thru the roof! Just yesterday, I renewed my 2004 policy and found that my rates per \$100 had almost doubled in ever classification since just last year. In this day and age of where every penny makes a difference, my profit is going to the WC Insurance companies. While I understand the need for rate increases, I have some concerns with the company which dictates this info to the state of Alaska. The National Council of Compensation, (NCCI) Insurance is a company which provides WC information to 33 states. From what I gather the Ak div of Insurance in its annual meetings does exactly what NCCI recommends. I have a problem with this. First of all, the NCCI board is made up of Insurance company owners. This in itself is flawed and does lead me to believe that NCCI is looking out for the consumer in any way. In essence what is happening is that Insurance companies are dictating the rates that the state in turn requires business owners to have. That's a great deal for the insurance companies. Secondly, NCCI has what is called an experience modification charge. This charge is used to recover losses from high risk policies and is also designed to give credits to low risk polices. Without going into to much detail, I feel that this is a way to extract more money from companies which are required by law to have Workmans comp. Let me give you an example of this. I own 2 companies, Valdez Heli Ski Guides (VHSG) and Alaska Mountain Adventures. I purchased VHSG in 2000 and for the last 3 years have been forced to pay extravagant hazard mod charges because the prior owners had a large amount of claims in the year 2000. I'm not to happy about this, but that's a part of doing business and I accept that. Well, the hazard mod is based off of the prior 3 years of business. On my policy for this year, it should only reflect claims that occurred between the years of 2001 and 2003. My company has had only 1 claim for \$35,000 in that time, yet my hazard mod has only dropped slightly. And to top it all off, this hazard mod follows me with any business that I start. So my policies with Alaska Mountain Adventures (AMA) also have this hazard mod charge even though we have never had a claim!!! Last year AMA had to pay a higher mod charge which was originated from the previous owners of VHSG. As mentioned my only claim in the last 3 years has been for \$35,000 and the hazard mod charges assed to my companies over the years have more than paid for this one claim. But because I am required by the state of Alaska to pay Workmans Comp and because the state of Alaska authorizes NCCI to dictate our states polices, I am forced to pay what ever they say and I really don't have a lot of options. I have spoken to NCCI about my ratings and have gotten no where. My next step is to approach the Alaska Div of Insurance, but I don't have a lot of faith or confidence in that department.. What's even more frustrating about the entire state of Alaska Workmans Comp program is that I can offer my employees year round health insurance at a cost less than what my Workmans comp policy costs VHSG. The health insurance policy provides the same coverage (slightly less for long term disability) plus offers vision and dental. While this scenario is much better for both VHSG and my employees (it's a year round policy versus a 12 week WC policy) I can't offer it to them because state law requires that I have a specific Workmans Comp policy thru an assigned risk pool which is currently only offered by 2 companies. My companies are going bankrupt trying to afford this type of insurance and I think it's ludicrous that I am forced to pay Workmans comp when there is a better option available. In short, we have had to eliminate budgets for safety training and equipment to make the extra funds available for the extravagant rise in WC

rates and I see no end to the increase in rates.

I would also like to comment on the proposed tourism tax that I read about in today's ADN. I would ask that you do not support a tax of this nature for several reasons.

First of which would be that ATIA has done nothing to help support tourism for my industry or my area. The Valdez Convention and Visitors Bureau looks out for our immediate interests and the money we pay them works just fine. They specialize on our area and our industry. I'm not in favor of paying a 2% tax to a statewide program which supports summer tourism or especially the cruise ship industry which always seems to reap the rewards of our state without having to pay financially for our natural product. Secondly, while our economy is taking a turn for the better and hopefully this will mean an increase in tourism, several businesses and industries such as mine are still feeling the effects of 3 poor financial years. Any extra taxes that might be imposed would be devastating to my industry. I'm not as knowledgeable on this proposal as I would like to be, so I will stop my comments here. But I hope you understand the concern I have with any additional taxes that we might incur.

To conclude, I have been an Alaskan for 14 years. I am a republican, entrepreneur, adventurer and explorer. I am one of a rare breed that is willing to stick its neck out to make things happen both socially and financially. But I'm finding it increasingly difficult and very frustrating to conduct business in this state. While I'm not asking anything specifically of you today, I think it's important that you hear from your constituents and are aware of their issues and concerns. I will continue my battle with Workmans comp when my season concludes in June and look forward to your assistance at that time.

Sincerely,

Scott Raynor

Scott Raynor

ski@valdezheliskiguides.com

www.valdezheliskiguides.com

Ph 907.835.4528/ Fax 800.817.4828



February 9, 2004

Alaska Salmon Bake
3175 College Rd. #1
Fairbanks, AK 99709

To Whom It May Concern:

I have been following Senate Bill 254, the tourism tax, and am definitely a supporter of this tax. However, Section 44.33.126, Paragraph (8) of this bill refers directly to my restaurant in Fairbanks and places me in unequal competition with all other Fairbanks restaurants.

I do not feel I should be singled out as the only Fairbanks restaurant subject to this tax. Our restaurant caters to a high percentage of local residents, as well as the tourist trade. Additionally, we have a small hotel and two gift shops which will be taxed as per Paragraph (4) and (9) in the same section.

I have been in business for 25 years and am the original owner of the Alaska Salmon Bake in Fairbanks. I am very interested in the future development of Fairbanks and make many contributions to the community.

I recently invested in a large remodel at the Salmon Bake which unfortunately occurred concurrently with the devastation of September 11, 2001. I am continuing to invest in our future and am only asking for equal treatment with all other restaurants in Fairbanks.

I am aware that this bill is being considered very soon and will support the tax bill, but would like to request that either Paragraph (8) be eliminated from this bill, or that 100% of Fairbanks restaurants be included in this paragraph.

Thank you for your time and consideration in regard to this very urgent matter. Should you have any questions, please feel free to contact me at 907-452-7274.

Sincerely,

A handwritten signature in cursive script that reads "Rick Winther".

Rick Winther
CEO



Alaska State Legislature

Please enter into the record my testimony to the LABOR AND COMMERCE
committee name

Committee on SB 254 Date, FEBRUARY 15, 2004
bill # / subject

LABOR AND COMMERCE COMMITTEE MEMBERS:

SB 254 ONLY BENEFITS NEW EMPLOYEES HIRED TO IMPLEMENT THESE NEW TAXES.

I am OPPOSED to SB 254 because it will create another layer of government administration.

Our state currently needs to be cutting entire departments! Realistically, a two percent tax will not pay for the administrative costs of this department. Creating a new tax department would entail furnishing these new administrators and employees with office equipment, such as new computers, tax software, accountants, auditors, photo copiers, faxes, receptionists, etc. All for two percent tax? Any potential gains would be greatly overshadowed by administrative costs.

There are exclusions to these proposed new taxes. Special interests have influenced this bill.

VOTE NO ON SB 254 IT WILL NOT MAKE A PROFIT. IT WILL CAUSE DEFICIT SPENDING

Signed: LAURIE CHURCHILL
Testifier

SELF
Representing (optional)

PO BOX 7043 NIKISKI AK 99635 EMAIL ADDRESS : ak501c3@yahoo.com
Address

907-776-3499
Phone number

Subject: SB254

Date: Thu, 12 Feb 2004 02:02:56 -0900

From: "Arctic Treks" <arctreks@polarnet.com>

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

Dear Senator Bunde--

I'm writing to express my strong opposition to SB254, proposing a "Sustainable Tourism and Recreation Assessment". As the co-owner of a small, family run tourism business, Arctic Treks, for the last 25 years, I've watched many changes take place, while some things have stayed remarkably the same. Some of the dramatic changes have been the decline in marketing dollars for tourism, and the parallel decline in non-cruise tourism--which means the primarily small, Alaskan owned businesses that are the true core of "sustainable" Alaskan tourism. One thing that has remained the same is the unconscionable control the cruise ship industry has on the Alaskan tourism industry, AVA / ATIA, and factions of the Legislature.

I'm appalled and outraged right now to see the hypocrisy and just plain gall that the cruise industry, its lobbyists and legislative allies have expressed in this new "tourism assessment", and even more disgusted that this proposal is being presented under the guise of having been proposed and supported by the "tourism industry" itself, via ATIA. From my 20+ years perspective of being involved in "sustainable tourism" issues, this is what the story line looks like:

I was never a member of AVA, because it was totally dominated by cruise companies and the businesses who fed off of them (companies literally bought votes in AVA based on what their revenues were), and the tourism marketing strategies and policies promoted by AVA primarily served those interests. With the restructuring of AVA into ATIA, I became a member of ATIA because it seemed like there was potential for positive change, in spite of the fact that this restructuring was largely driven by the cruise industry's efforts to ward off "head taxes" on cruise passengers by creating other sources of revenue for tourism marketing dollars. While there have been some significant changes in representation on the ATIA board, and new discussions emerging, the AVA "old guard" has managed to manipulate the board process so that it has maintained a slim "pro-cruise" majority on the board. This was largely done by pushing through a rule at the first ATIA organizational board meeting that the chair could "appoint" a certain number of directors of his/her choice, *after* membership elections. The effect of this is that, even though representatives of cruise lines and allied companies keep losing elected board seats to small business representatives by increasing numbers, the "pro-cruise" majority on the ATIA board "mysteriously" never changes.

The other thing that hasn't really changed is the focus of the "state's" tourism marketing program. While there have been some marginal improvements in the marketing program, as far as strategies that would truly benefit small, Alaskan owned businesses (thanks to dedicated efforts by the minority of small business board members and other non-cruise members), the overall focus of the "state" marketing program, that we all pay for, is still designed to primarily promote and benefit the multinational, mega-corporation cruise lines--as if they need our help! Their "self-sufficiency" and self-marketing capacity was amply demonstrated in their response to the dramatic dive in tourism after 9-11. They managed to fill their ships by massively discounting their prices, along with massive marketing. Meanwhile, the effect of their heavy discounting drew business away from smaller volume Alaskan companies who couldn't compete with those discounts, plus it attracted lower income customers who didn't spend money on land excursions, etc. supplied by other small Alaskan companies who'd become complacent in thinking that the cruise lines would always "feed" them.

Now, to add final insult to injury, this same cruise industry "coalition" (including one of ATIA's lobbyists who is also a lobbyist for one of the largest cruise lines operating in Alaska), has pushed through a new

proposal, via SB254, to market "Alaskan" tourism (with the same marketing program that primarily promotes cruise ships) by collecting an "assessment" from only *non-cruise* tourism businesses!! This bill couldn't be more thorough in its "exemptions" to the "assessable" entities, as far as making sure cruise lines aren't impacted in any way: Alaska Marine Highway passengers are taxed, but not cruise passengers; Alaska Railroad passengers are taxed, but there is only a tow charge for cars carrying private (read "cruise line") passengers.

Meanwhile, the ATIA website has the hypocrisy and gall to tell its members that the "cruise sector contributes to the proposed assessment by providing 40% of the customers for land tours, shore excursions, railroad trips, etc." --when the board and staff is fully aware of the dramatic decline described above in such "feeder" add-on tours--not to mention the absolute unfairness of the inequality in this kind of "selective" taxing in what is supposed to be an "industry-wide" taxation scheme. AVA and ATIA have long exhorted small companies like mine to support, on principle, "unfair" taxes aimed at just a segment of the tourism industry--meaning the "head taxes" or any other taxes targeted at just cruise ships. But somehow that principle seems to have vanished when it's the cruise industry promoting a tax on only non- cruise tourism businesses. And their contrived explanation of a "legal prohibition" of taxing cruise lines for these purposes doesn't hold water when it's examined in a critical, unbiased manner.

Also, after reading countless press releases from cruise companies (and ATIA) stating how any amount of tax on them would have a drastic, negative effect not only on their corporations, but all of Alaskan tourism, we're now being told on ATIA's website (by this same cruise ship coalition) that "the assessment rate of 2% is small enough to be absorbed by businesses without a negative effect". If this is so for small, family owned Alaskan businesses like mine, why wouldn't that be true for some of the largest corporations in the world??!!

In closing, I want to say that we do urgently need a dramatic increase in tourism marketing dollars if we want to have a truly sustainable tourism industry comprised of Alaskan businesses who are truly vested in this state, owned by people who live and raise their families here as well as run their businesses. And we need a Alaskan tourism marketing program that truly serves the interests of Alaskan businesses, not just the cruise ship mega-corporations. But the solution proposed in SB254 is seriously flawed and if it is to move forward in any form, I urge you to solicit input from the widest range of tourism businesses, not the just the voice and lobbying dollars of the cruise lines and their allies.

Carol Kasza
co-owner, Arctic Treks
Box 73452
Fairbanks, AK 99707
907 455-6502

by Chip Thomas
Box 21884 Juneau - 99802

HB 426 Tourism Assessment Act by Kott, McGuire 2/12/04
SB 254 " " " by Therriault

Tourism taxation has been very successful for the past 5 years, especially here in S.E. Alaska, which has seen dramatic increases in the numbers of passengers traveling on the largest of cruiseships. What was recently projected as a 9% increase in passenger numbers for 2004 was actually a 15 to 20% increase just a few years ago. Soon, as we reach a million passengers, a 5% increase will be huge, and this occurs on a yearly basis.

The Juneau city docks have been widened and strengthened for the Panamax size ships, downtown streets and sidewalks have improved for both the tour buses and the extra summer foot traffic, and new public restrooms and parks were just constructed. Juneau was able to do this expeditiously because, after years of local debate, residents collected signatures, put the issue on the municipal ballot, and voters approved a \$5 individual passenger fee by a wide margin. The use of the passenger fee for capital improvements near the waterfront has been a success, for residents, businesses and the 800,00 cruiseship tourists that visit here. I think everyone will agree, it's a real Plus-Plus situation.

I fear that HB 426 (and SB 254) veers dramatically from this successful model. My reading of the bill is that a 2% sales tax, or assessment, from tourist-related Alaska businesses would be collected, and a portion or all of that may be allocated to a single, qualified tourism trade association for unspecified marketing.

I respectfully disagree that there is a need to further market tourism to S.E. Alaska. Summer tourism here is not Wild Alaska Salmon. The state does not need to help sell the product. The big tour companies, cruiselines, airlines and local visitor bureaus already promote travel here on a daily basis; in newspapers, magazines and commercials nationwide.

As the only realistic way to come to Alaska as a summer tourist is either by cruise ship or airline, the use of tax assessment monies for more generic travel advertising would be superfluous. Plus, the cruseships, Alaska Airlines and SE destination towns are full... all

summer long. Why add to the congestion, or worse yet, throw local tax monies into a generic advertising pool, without addressing local capital construction needs to service the increasing numbers of summer tourists?

The individual passenger fee, also known as the head tax, is passed on directly to the passenger, just like the surtax for an airport rental car. No one complains. It's easy to collect, and easy to explain; it goes for improving downtown waterfronts, and for new cruise ship docks. Passengers are happy to pay for those purposes. The cruise companies list it as 'port fees', which are added to the bottom line of tickets worldwide.

However, HB 426 (SB 254), a statewide sales tax on local, Alaska businesses to pay for generic, "come visit Alaska" advertising does not address the need to provide clean, safe and beautiful waterfronts for all these folks to visit. I urge you to re-examine the purpose of this assessment in the bill, as well as the target tax group of local, Mom and Pop tourist businesses. Thank you for your time. I am available to answer any questions you may have.

Cruise West – An Alaskan Success



American-owned Cruise West is North America's leading small-ship cruise line – and a major Alaskan success story. Our roots in the state stretch back over 50 years. In 1946 our founder, Chuck West, started a travel agency in Fairbanks and air tours to the Arctic. These businesses became the original Westours. Over time, Chuck became known as "Mr. Alaska" for his role in founding Alaska's first hotel chain, motorcoach line, modern-day cruises, and many other aspects of Alaska tourism today.

Smaller is Better – Today's Cruise West began in 1973 with the philosophy that Alaskan visitors deserve to explore the Great Land in small numbers, while causing minimal impact on the land and on the communities we visit. Our long-standing promise to our guests is that they will enjoy an Alaska experience that is **Up-Close – Casual – Personal**.

Small Ships, Low Impact – Our seven ships range in capacity from just 70 to 114 guests. When we visit a community, our limited numbers do not overwhelm the local facilities or the local population.

<i>Spirit of Alaska</i>	78	<i>Spirit of Discovery</i>	84
<i>Spirit of Oceanus</i>	114	<i>Spirit of Columbia</i>	78
<i>Spirit of Endeavour</i>	102	<i>Spirit of '98</i>	96
<i>Sheltered Seas</i>	70		

Wide Distribution of Visitation – Our vessels call on more Alaskan communities than all large cruise ship companies – combined. We actively seek to offer our guests experiences in fascinating, out-of-the-way communities that are reflective of the "real Alaska." We particularly like to work with small communities who seek sustainable levels of tourist visitation, without having an undue impact on their local way of life.

Hyder	Metlakatla	Ketchikan	Kake
Wrangell	Petersburg	Sitka	Juneau
Gustavus	Elfin Cove	Pelican	Skagway
Haines	Cordova	Whittier	Homer
Anchorage	Kodiak	Dutch Harbor	St. Paul
Gambell	Nome	Little Diomed	

See Alaska with Alaskans – Many of our ship's crews, and virtually all of our land tour staff, are year-round Alaskans. On land, we employ 75 to 80 Alaskans in Ketchikan, Petersburg, Juneau, Anchorage, Denali Park, Whittier and Fairbanks.

More Overnights on Land – Many of our cruises begin or end in Ketchikan, Juneau and Anchorage, with included overnight stays. This means local hotels and restaurants get more business, and cities earn applicable taxes. Juneau alone, for instance, is the turnaround port for five of our seven Alaska itineraries. Our guests occupy thousands of hotel rooms each season.

We Support Our Local Communities – In addition to our overnight stays in local communities, we re-provision in Anchorage, Ketchikan and Juneau, pay port charges, airport landing fees, and make all the other necessary expenditures that help keep Alaska running!

Cruise West is a Good Citizen

PUBLIC POLICY ISSUE	CRUISE WEST	LARGE CRUISE LINE
American owned and operated	Yes	No
Pays Federal taxes on profits	Yes	No
Largely employs U.S. crews	Yes	No
Offers gambling on board	No	Yes



**TAKE ONLY PHOTOGRAPHS –
LEAVE ONLY OUR WAKE BEHIND**

 **Cruise West**
Up-close, casual and personal.



February 9, 2004

Alaska Salmon Bake
3175 College Rd. #1
Fairbanks, AK 99709

To Whom It May Concern:

I have been following Senate Bill 254, the tourism tax, and am definitely a supporter of this tax. However, Section 44.33.126, Paragraph (8) of this bill refers directly to my restaurant in Fairbanks and places me in unequal competition with all other Fairbanks restaurants.

I do not feel I should be singled out as the only Fairbanks restaurant subject to this tax. Our restaurant caters to a high percentage of local residents, as well as the tourist trade. Additionally, we have a small hotel and two gift shops which will be taxed as per Paragraph (4) and (9) in the same section.

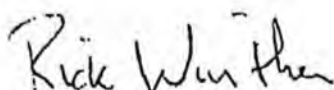
I have been in business for 25 years and am the original owner of the Alaska Salmon Bake in Fairbanks. I am very interested in the future development of Fairbanks and make many contributions to the community.

I recently invested in a large remodel at the Salmon Bake which unfortunately occurred concurrently with the devastation of September 11, 2001. I am continuing to invest in our future and am only asking for equal treatment with all other restaurants in Fairbanks.

I am aware that this bill is being considered very soon and will support the tax bill, but would like to request that either Paragraph (8) be eliminated from this bill, or that 100% of Fairbanks restaurants be included in this paragraph.

Thank you for your time and consideration in regard to this very urgent matter. Should you have any questions, please feel free to contact me at 907-452-7274.

Sincerely,


Rick Winther
CEO

23-LS0947W
Kurtz
2/4/04

CS FOR SENATE BILL NO. 254()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR THERRIAULT

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to the levy and collection of an assessment on certain tourism-related**
2 **and recreation-related goods and services, relating to tourism marketing contracts, and**
3 **repealing the levy of excise taxes of certain passenger and recreation vehicles; and**
4 **providing for an effective date."**

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

6 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 **SHORT TITLE.** This Act may be known as the Sustainable Tourism and Recreation
9 Assessment Act.

10 *** Sec. 2.** AS 44.33.125(a) is amended to read:

11 (a) Subject to appropriations for the purpose, the Department of Community
12 and Economic Development shall, on or before April 1 of each fiscal year, contract
13 with a single qualified trade association for the purpose of planning and executing a
14 destination tourism marketing campaign during the next fiscal year. If a sustainable

1 tourism and recreation assessment under AS 44.33.126 is in effect when the
2 contract is executed, the qualified trade association may not be required to
3 provide matching funds. However, if a sustainable tourism and recreation
4 assessment under AS 44.33.126 is not in effect when the contract is executed, the
5 [THE] contract may be executed [AWARDED] only if the qualified trade association
6 provides matching funds equal to at least 60 percent of the costs of the marketing
7 campaign described in the contract. The marketing campaign may promote distinct
8 segments of tourism, such as highway tourism, seasonal tourism, ecotourism, cultural
9 tourism, regional tourism, and rural tourism. Before the contract is executed, the
10 marketing campaign plan must be approved by the department.

11 * Sec. 3. AS 44.33 is amended by adding new sections to read:

12 **Sec. 44.33.126. Sustainable tourism and recreation assessment.** (a) A
13 sustainable tourism and recreation assessment is levied on

14 (1) the sale of scenic and sightseeing transportation services, including
15 land, water, and aerial transportation, involving same-day return to the place of origin;

16 (2) the lease or rental of a passenger vehicle in this state if the lease or
17 rental does not exceed a period of 90 consecutive days; for purposes of this paragraph,
18 "passenger vehicle" means a motor vehicle as defined in AS 28.40.100 that is driven
19 or moved on a highway or other public right-of-way in the state, but does not include

20 (A) a commercial motor vehicle as that term is defined in
21 AS 28.40.100;

22 (B) emergency or fire equipment that is necessary to the
23 preservation of life or property;

24 (C) a farm vehicle that is controlled and operated by a farmer,
25 used to transport agricultural products, farm machinery, or farm supplies to or
26 from that farmer's farm, not used in the operations of a common or contract
27 motor carrier, and used within 150 miles of the farmer's farm; or

28 (D) a recreational vehicle;

29 (3) the lease or rental of a recreational vehicle in this state if the lease
30 or rental does not exceed a period of 90 consecutive days; in this paragraph,
31 "recreational vehicle" means

- 1 (A) a motor vehicle or trailer for recreational dwelling
2 purposes;
- 3 (B) a motor home or other vehicle with a motor home body
4 style;
- 5 (C) a one-piece camper vehicle; and
6 (D) any other self-propelled vehicle with living quarters;
- 7 (4) rental of accommodations in a hotel, motel, bed and breakfast,
8 recreational or vacation camp, recreational vehicle park, campground, or other
9 commercial establishment providing short-term lodging if the rental does not exceed a
10 period of 30 consecutive days;
- 11 (5) Alaska marine highway system passenger fares;
12 (6) Alaska railroad corporation passenger fares;
13 (7) Alaska railroad corporation passenger tour car towing charges;
14 (8) meals sold at salmon bakes; for purposes of this paragraph, a
15 salmon bake is an establishment offering exclusively fixed-price meals featuring
16 salmon or other seafood;
- 17 (9) goods sold by seasonal retail shops; for purposes of this paragraph,
18 "seasonal retail shop" means a retail store that makes more than 75 percent of its sales
19 on or after May 1 but before October 1 in each calendar year;
- 20 (10) the retail sale of arts and crafts made in Alaska and not subject to
21 assessment under (9) of this subsection;
- 22 (11) the retail sale of smoked Alaska fish and other foods produced in
23 Alaska and not subject to assessment under (9) of this subsection;
- 24 (12) the retail sale of gifts and souvenirs featuring Alaska images and
25 not subject to assessment under (9) of this subsection; for purposes of this paragraph,
26 (A) "Alaska images" includes the word "Alaska," the name or
27 image of a municipality in the state, the name or image of an Alaska landmark,
28 whether natural or constructed, the image of the stars of the "Dipper," a picture
29 or scene associated with Alaska, and images of bears, moose, caribou, seals,
30 walrus, whales, eagles, salmon, wolves, sled dogs, and other animals and
31 wildlife associated with Alaska;

1 (B) "gifts and souvenirs" includes tee shirts, sweatshirts, and
2 other clothing, jewelry, glassware, cups, plates, cutlery, key chains, carvings,
3 statues, statuettes, clocks, books, paintings, prints, photographs, postcards,
4 calendars, and videos; and

5 (13) the retail sale on or after May 1, but before October 1, in each
6 calendar year of tickets to theater productions, revues, cabarets, movies, readings, and
7 other entertainment offerings that feature the gold rush, Soapy Smith, or other Alaska
8 historical themes or figures, and that appeal primarily to visitors.

9 (b) The assessment in (a) of this section shall be levied if an election is held
10 under AS 44.33.129 at which the assessment is approved by eligible visitor industry
11 businesses that together account for at least 51 percent of the value of sales, leases,
12 and rentals described in (a) of this section and not exempt under AS 44.33.127. An
13 election shall be held if a majority of the board of a qualified trade association votes to
14 hold an election.

15 (c) The rate of the assessment is two percent.

16 (d) The provisions of AS 43.05 and AS 43.10 apply to the enforcement and
17 collection of the sustainable tourism and recreation assessment.

18 **Sec. 44.33.127. Exemptions.** The assessment levied under AS 44.33.126
19 does not apply to

20 (1) sales, leases, and rentals that are

21 (A) explicitly exempted from taxation under another provision
22 of state law; or

23 (B) exempt from taxation under federal law and purchases
24 made with

25 (i) food coupons, food stamps, or other types of
26 certificates issued under 7 U.S.C. 2011 - 2036 (Food Stamp Act); and

27 (ii) food instruments, food vouchers, or other types of
28 certificates issued under '2 U.S.C. 1786 (special supplemental nutrition
29 program for women, infants, and children);

30 (2) sales and purchases by federal government entities;

31 (3) purchases by state or local government entities;

1 (4) sales, leases, or rentals made to an entity described in 26 U.S.C.
2 501(c)(3) (Internal Revenue Code) and exempt from federal income tax under 26
3 U.S.C. 501(a);

4 (5) sales, leases, or rentals made by an entity described in 26 U.S.C.
5 501(c)(3) (Internal Revenue Code) and exempt from federal income tax under 26
6 U.S.C. 501(a) if the income from the sale or rental is exempt from federal income
7 taxation;

8 (6) casual and isolated sales, leases, or rentals by a seller who does not
9 regularly engage in the business of selling goods or services or making rentals, but
10 only if the total sales or rentals do not exceed \$1,000 a year and the sales or rentals do
11 not occur for more than 14 days in a calendar year.

12 **Sec. 44.33.128. Termination of the sustainable tourism and recreation**
13 **assessment.** (a) A sustainable tourism and recreation assessment levied under
14 AS 44.33.126 shall be terminated by the commissioner of revenue if

15 (1) an election is held under AS 44.33.129 in which the termination is
16 approved by eligible visitor industry businesses that together account for at least 51
17 percent of the value of sales, leases, and rentals described in AS 44.33.126(a) and not
18 exempt under AS 44.33.127; or

19 (2) two-thirds of the board of a qualified trade association at a regular
20 meeting adopts a resolution requesting the commissioner of revenue to terminate the
21 assessment.

22 (b) An election under (a)(1) of this section shall be held if

23 (1) the proposed election for the termination of the assessment is
24 approved by a majority of the board of the qualified trade organization at a regularly
25 scheduled meeting; or

26 (2) a petition is presented to the director of elections requesting
27 termination of the assessment by eligible visitor industry businesses that together
28 account for at least 25 percent of the value of sales, leases, and rentals described in
29 AS 44.33.126(a) and not exempt under AS 44.33.127 during the calendar year.

30 (c) The qualified trade association shall provide notice of an election in
31 accordance with AS 44.33.129 within 60 days after receiving notice from the director

1 of elections that a valid petition under (b)(2) of this section has been received.

2 (d) The sustainable tourism and recreation assessment is terminated on the
3 effective date stated on the ballot.

4 **Sec. 44.33.129. Procedures for an election to approve or terminate a**
5 **sustainable tourism and recreation assessment.** (a) A qualified trade association
6 may conduct an election under this section after the director of elections approves the

7 (1) notice to be published by the qualified trade association;

8 (2) ballot to be used in the election; and

9 (3) registration and voting procedures for the approval or termination
10 of the sustainable tourism and recreation assessment.

11 (b) In conducting an election under this section, a qualified trade association
12 shall adopt the following procedures:

13 (1) the proposed levy or termination of the assessment shall be adopted
14 at a regularly scheduled meeting of the board held not less than 60 days before the
15 date on which the ballots must be postmarked to be counted unless the election is for
16 termination of the assessment and has been initiated by a petition under
17 AS 44.33.128(b)(2);

18 (2) the qualified trade association shall hold at least one meeting, not
19 less than 30 days before the date on which ballots must be postmarked to be counted,
20 to explain the reason for the proposed sustainable tourism and recreation assessment
21 or termination of the assessment and to explain the voting procedure to be used in the
22 election; the qualified trade association shall provide notice of the meeting by

23 (A) mailing the notice to each eligible visitor industry business;

24 and

25 (B) publishing the notice in at least one newspaper of general
26 circulation in each region of the state at least two weeks before the meeting;

27 (3) the qualified trade association shall mail ballots to each eligible
28 visitor industry business not more than 45 days before the date specified as the date
29 ballots must be postmarked;

30 (4) the ballot must

31 (A) state the rate at which the assessment is or is to be levied;

1 (B) indicate the effective date of the levy of the assessment or
2 termination of the assessment;

3 (C) ask whether the assessment shall be levied or, if the
4 election is to terminate the assessment, whether the assessment shall be
5 terminated;

6 (5) the ballots shall be returned by mail and shall be counted by the
7 director of elections or a representative.

8 (c) The director of elections shall certify the results of an election under this
9 section if the director determines that the requirements of (a) and (b) of this section
10 have been satisfied.

11 (d) For purposes of this section, a ballot submitted by a corporation is
12 presumed valid if the ballot is signed by an individual who is indicated to be an officer
13 of the corporation and the ballot is imprinted with the corporate seal.

14 **Sec. 44.33.131. Determination of sales.** Upon request from the director of
15 elections, the commissioner of revenue shall determine

16 (1) the total value of sales, leases, and rentals subject to assessment
17 under AS 44.33.126(a) and not exempt under AS 44.33.127 during the calendar year;

18 (2) whether, for purposes of AS 44.33.126(b) or 44.33.128(a), the
19 eligible visitor industry businesses approving the levy or termination of a sustainable
20 tourism and recreation assessment together produced at least 51 percent of the total
21 value of sales, leases, and rentals subject to assessment under AS 44.33.126(a) during
22 the calendar year; or

23 (3) whether the eligible visitor industry businesses petitioning for an
24 election under AS 44.33.128(b)(2) together produced at least 25 percent of the total
25 value of sales, leases, and rentals subject to assessment under AS 44.33.126(a) during
26 the calendar year.

27 **Sec. 44.33.132. Collection of assessment.** (a) A seller shall add the amount
28 of the assessment levied under AS 44.33.126 to the total price of the sale, lease, or
29 rental subject to the assessment, and the assessment shall be stated separately on any
30 sales receipt, invoice, or other record of the sale, lease, or rental.

31 (b) The person making the sale, lease, or rental shall collect the assessment

1 from the purchaser and remit the assessment collected to the department not later than
2 30 days following the last day of the month in which the assessment was collected.
3 However, a person that collects less than \$1,000 in assessments in a calendar quarter
4 may remit the assessments within 30 days following the last day of the calendar
5 quarter in which the assessment was collected.

6 (c) A person remitting the assessment collected under AS 44.33.126 to the
7 department as required under (b) of this section and filing a complete and timely
8 return on a form prescribed by the department may retain one percent of the amount
9 collected to cover expenses associated with collecting and remitting the assessment.

10 **Sec. 44.33.133. Exemption certificate.** The department shall provide
11 exemption certificates to persons and entities exempt from the assessment under
12 AS 44.33.127.

13 **Sec. 44.33.134. Disposition of proceeds.** (a) The sustainable tourism and
14 marketing account is created in the general fund.

15 (b) The proceeds of the assessment levied under AS 44.33.126 shall be
16 deposited into the sustainable tourism and marketing account.

17 (c) The legislature may appropriate the money in the sustainable tourism and
18 marketing account to the Department of Community and Economic Development for
19 the purpose of entering into a contract with a qualified trade association for tourism
20 marketing under AS 44.33.125.

21 (d) The deposit required and appropriation authorized by this section are not
22 intended to create a dedication in violation of art. IX, sec. 7, Constitution of the State
23 of Alaska.

24 **Sec. 44.33.139. Definitions.** In AS 44.33.126 - 44.33.139,

25 (1) "board" means the board of directors of a qualified trade
26 organization;

27 (2) "eligible visitor industry business" means a business that would be
28 liable for payment of a sustainable tourism and recreation assessment under
29 AS 44.33.126;

30 (3) "qualified trade organization" means the trade organization
31 contracting with the Department of Community and Economic Development under

1 AS 44.33.125 for the fiscal year.

2 * Sec. 4. AS 43.52.010, 43.52.020, 43.52.030, 43.52.040, 43.52.050, 43.52.060, 43.52.070,
3 43.52.080, 43.52.090, and 43.52.099 are repealed.

4 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 APPLICABILITY. The amendments to AS 44.33.125 made in sec. 2 of this Act apply
7 to contracts for tourism marketing entered into under AS 44.33.125 for fiscal years beginning
8 July 1, 2006.

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

11 TRANSITION: REGULATIONS. The Department of Revenue may proceed to adopt
12 regulations necessary to implement the provisions of this Act. The regulations take effect
13 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
14 provision being implemented. In adopting regulations implementing AS 44.33.126, the
15 department shall strive for consistency with the 2002 North American Industrial Classification
16 System (NAICS) codes system used by the United States Bureau of the Census for classifying
17 business establishments.

18 * Sec. 7. Section 2 of this Act takes effect January 1, 2006.

19 * Sec. 8. Section 6 of this Act takes effect immediately under AS 01.10.070(c).

20 * Sec. 9. Except as provided in secs. 7 and 8 of this Act, this Act takes effect January 1,
21 2005.

ALASKA STATE LEGISLATURE

SENATOR
Gene Therriault
119 N. Cushman Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
FAX (907) 488-4271



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
FAX (907) 465-3884

Senate
Senate District F

Senate Bill 254

"An Act relating to the levy and collection of an assessment on certain tourism-related and recreation-related goods and services, and repealing the levy of excise taxes of certain passenger and recreation vehicles; and providing for an effective date."

SPONSOR: Senator Gene Therriault

SPONSOR STATEMENT:

For years, Alaska's tourism industry has requested increased funding for marketing efforts by the State. However, due to a lack of general fund dollars, legislators have been reluctant to provide that additional funding unless some other means of paying for the increase were identified. Senate Bill 254 provides that means.

Developed at the request of the Alaska Travel Industry Association (ATIA), SB 254 permits the state to collect a fairly broad assessment from the various segments of Alaska's wide-ranging tourism industry. The funds will be deposited into a separate account in the general fund that the legislature may appropriate for the purpose of entering into a contract with a qualified trade association (QTA) for tourism marketing under AS 44.33.125. The state's current QTA is the ATIA.

Over 1.5 million people visit Alaska each year, spending over \$1.8 billion in the state. Surveys conducted by the Department of Community and Economic Development found visitors coming to Alaska by domestic air, highway, and ferry declined by 2 percent over 2002 arrivals. Other studies done for ATIA have shown that small adventure-based businesses and those in the Interior have been hit the hardest by the downturn in tourism.

The Alaska Legislature has been asking the tourism industry to identify a way to pay for increased marketing efforts. In a time when tourism numbers and dollars are declining, other states are increasing their marketing efforts, and Alaska's economy is in need of diversification, it is both appropriate and necessary to consider this legislation.

SPONSOR STATEMENT



Senate Majority News

Traci Kempert, Senate Majority Press Secretary
Alaska State Capitol
Juneau, AK. 99801
Phone: (907) 465-3803
Web Site: <http://www.akrepublicans.org>

For Immediate Release, January 9th, 2004

Contact: Traci Kempert at (907) 465-3803

More Money, More Marketing More Visitors To Alaska

(Juneau)- Responding to declines in non-cruise ship visitors to Alaska, Senate President Gene Therriault, R-North Pole, today filed tourism marketing legislation that will allow Alaska to increase its marketing budget. The Alaska Travel Industry Association requested the measure.

Modeled largely after the Alaska Seafood Marketing Institute, Senate Bill 254 allows the industry to impose a 2 percent assessment on tourism related goods and services in the state. Those services range from day tours to overnight accommodations. The assessment will generate an estimated \$18 million.

"I support marketing Alaska as a tourism destination because of the benefits it brings to Alaskan owned and operated businesses," Therriault said. "These benefits include jobs, increased property tax base for local governments, and increased sales tax revenues for those communities that have them."

Over 1.5 million people visit Alaska each year, spending over \$1.8 billion in the state. Surveys conducted by the Department of Community and Economic Development found visitors coming to Alaska by domestic air, highway, and ferry declined 2 percent over 2002 arrivals. Other studies done for ATIA have shown that small adventure-based businesses and those in the Interior have been hit the hardest by the downturn in tourism. Many businesses experiencing declines are located along the Richardson Highway corridor, which Therriault represents.

"ATIA's mission to create demand in the marketplace for all sectors of Alaska tourism is inextricably connected to our obligation to nurture these small, independent businesses," said Ron Peck, ATIA president and chief operating officer. "The assessment, we believe, will make our statewide tourism-marketing program more competitive with other destinations. This, in turn, will increase the number of visitors to the state, generating additional business for Alaska's smaller, visitor industry operators."

"For years, legislators have been asking the tourism industry to identify a way to pay for increased marketing efforts. Now that they have come forward with such a proposal, I want to make sure they have an opportunity to make their case to other legislators," Therriault said.

###

Scenario Six - Summary Table – Tourism Activity Tax: Revenue Projections

<u>Taxable Activity</u>	<u>Estimated Expenditures</u>	<u>1% Tax</u>	<u>1.5% Tax</u>	<u>2% Tax</u>
1 Scenic & Sightseeing Transportation - Land, Water, Other	\$217,107,760	\$2,171,078	\$3,256,616	\$4,342,155
2 Passenger Car & RV Rental(revised)	\$56,768,148	\$567,681	\$851,522	\$1,135,363
3 Hotels and Motels	\$373,485,250	\$3,734,853	\$5,602,279	\$7,469,705
4 Bed & Breakfast Inns	\$6,341,626	\$63,416	\$95,124	\$126,833
5 Recreational and Vacation Camps(except campgrounds)	\$32,737,713	\$327,377	\$491,066	\$654,754
6 Recreational Vehicle Parks and Campgrounds	\$5,725,858	\$57,259	\$85,888	\$114,517
7 Alaska Marine Highway Passenger Fares	\$38,700,000	\$387,000	\$580,500	\$774,000
8 Alaska Railroad Passenger Fares & Passenger Car Towing	<u>\$14,000,000</u>	<u>\$140,000</u>	<u>\$210,000</u>	<u>\$280,000</u>
Subtotal Sectors 1-7	\$744,866,355	\$7,448,664	\$11,172,995	\$14,897,327
9 Alaska Native Arts & Crafts	\$105,115,830	\$1,051,158	\$1,576,737	\$2,102,317
10 "Seasonal" Retail Shops (exclusive of Native Arts & Crafts)	\$117,400,000	\$1,174,000	\$1,761,000	\$2,348,000
11 <u>Salmon Bakes</u>	<u>\$2,500,000</u>	<u>\$25,000</u>	<u>\$37,500</u>	<u>\$50,000</u>
Total sectors 1-11	\$967,382,185	\$9,698,822	\$14,548,233	\$19,397,644

revised (2/10/04)

SB

263

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/14/04

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/19/04

Labor and Commerce Committee considered SENATE BILL NO. 263

SB 263 EXTEND ALASKA COMMISSION ON AGING

"An Act extending the termination date of the Alaska Commission on Aging and making technical revisions to citations related to the commission."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

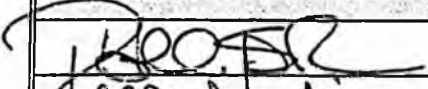
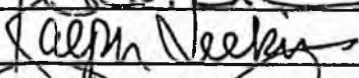
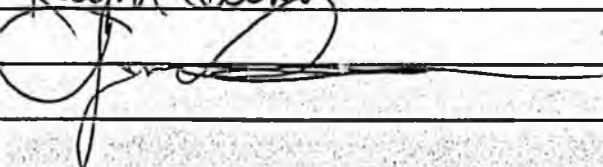
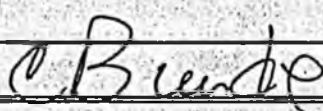
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
	X			
	✓			
	X			
CHAIR: 	✓			

STATE OF ALASKA

OFFICE OF THE LONG TERM CARE OMBUDSMAN

FRANK H. MURKOWSKI, GOVERNOR

550 WEST 7th AVENUE, SUITE 1830
ANCHORAGE, ALASKA 99501
PHONE: (907) 334-4460
FAX: (907) 334-4486

February 19, 2004

Senator Con Bunde, Chair
Senate Labor and Commerce Committee
State Capitol, Room 506
Juneau, AK 99801-1182

Via Facsimile 907-465-3871
and Regular Mail

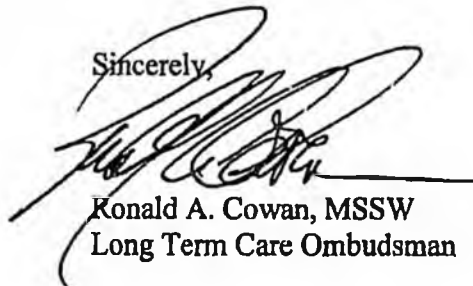
Dear Senator Bunde:

This letter is to communicate the Office of the Long Term Care Ombudsman's support for SB 263, which extends the sunset provision for the Alaska Commission on Aging.

We believe the Commission provides a valuable service to older Alaskans, and that their activities and voice for seniors is especially needed at this time. As you know, our office has maintained a relationship with the Commission for most, if not all of the years since our creation. We believe our two agencies work well with each other, and compliment each other to the benefit of older Alaskans throughout the state.

We therefore respectfully urge you to endorse the passage of this piece of legislation.

Sincerely,



Ronald A. Cowan, MSSW
Long Term Care Ombudsman

Cc: Alaska Commission on Aging

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____

Bill Version: SB 263

() Publish Date: _____

Revision Date/Time (Note if correction): Revised 2/19/04

Dept. Affected: Health & Social Services

Title EXTEND TERMINATION DATE OF
COMMISSION ON AGING

RDU Boards and Commissions

Component Commission on Aging

Sponsor DAVIS

Requester SENATE (L&C)

Component No. 2674

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	216.4	216.4	216.4	216.4	216.4	216.4
Travel	48.7	48.7	48.7	48.7	48.7	48.7
Contractual	80.3	80.3	80.3	80.3	80.3	80.3
Supplies	6.3	6.3	6.3	6.3	6.3	6.3
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	351.7	351.7	351.7	351.7	351.7	351.7

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

CHANGE IN REVENUES (0)						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	48.8	48.8	48.8	48.8	48.8	48.8
1037 GF/Mental Health	7.6	7.6	7.6	7.6	7.6	7.6
Other(1007 Interagency Receipts)	202.4	202.4	202.4	202.4	202.4	202.4
Other(1092 MHTAAR)	92.9	92.9	92.9	92.9	92.9	92.9
TOTAL	351.7	351.7	351.7	351.7	351.7	351.7

Estimate of any current year (FY2004) cost: 407.7

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	2	2	2	2	2	2
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Alaska Commission on Aging (ACOA) is due to sunset on June 30, 2004. The ACOA is tasked with helping older Alaskans lead dignified, independent, and useful lives. ACOA is authorized to administer and coordinate state programs for older Alaskans and to administer federal programs funded under provisions of the Older Americans Act (OAA). The ACOA is required by federal regulations. Section 305 of the Older Americans Act requires each state to designate an agency as the sole state agency to 1) develop and administer a state plan and 2) coordinate all state activities related to the Older Americans Act and 3) serve as an effective and visible advocate for the elderly, and 4) distribute funds to individuals with the greatest economic or social need. The Department of Health and Social Services (DHSS) is designated as the sole state agency. The Division of Senior

continued on Page 2.

Prepared by: Janet Clarke

Division: Administrative Services

Approved by: Joel S. Gilbertson, Commissioner

Agency: Department of Health and Social Services

Phone 465-1630

Date/Time 02/19/2004

Date 02/19/2004

FISCAL NOTE
FN #

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB 263

ANALYSIS CONTINUATION

and Disabilities Services (DSDS) is responsible for coordinating all state activities and granting funds for older Alaskans. The ACOA has been charged with the responsibility of developing a state plan and working with the DSDS to implement the plan, and to serve as an effective advocate for the elderly. If the ACOA expires, the Department of Health and Social Services (DHSS) stands to lose \$13 million in federal dollars for senior services.

Alaska State Legislature

Interim: (May - Dec.)
716 W. 4th Ave
Anchorage, AK 99501
Phone: (907) 269-0144
Fax: (907) 269-0148



Session: (Jan. - May)
State Capitol, Suite 7
Juneau, AK 99801-1182
Phone: (907) 465-3822
Fax: (907) 465-3756
Toll free: (800) 770-3822

Senator Bettye Davis@legis.state.ak.us
<http://www.akdemocrats.org>

Senator Bettye Davis

Sectional Analysis Senate Bill 263

Section 1. Extends the termination date of the Alaska Commission on Aging to 2008 and update the statutory reference to the Commission.

Section 2. Updates the statutory reference to the commission.

Section 3. Updates the statutory reference to the commission.

Alaska State Legislature

Interim: (May - Dec.)
716 W. 4th Ave
Anchorage, AK 99501
Phone: (907) 269-0144
Fax: (907) 269-0148



Session: (Jan. - May)
State Capitol, Suite 7
Juneau, AK 99801-1182
Phone: (907) 465-3822
Fax: (907) 465-3756
Toll free: (800) 770-382

[Senator Bettye Davis@legis.state.ak.us](mailto:Senator_Bettye_Davis@legis.state.ak.us)
<http://www.akdemocrats.org>

Senator Bettye Davis

Senate Bill 263 "An Act extending the termination date of the Alaska Commission on Aging and making technical revisions to citations related to the commission."

Sponsor Statement

The Alaska Commission on Aging has continued to help older Alaskans lead dignified independent and useful lives. This legislation would extend the commission until June 30, 2008 and would make changes to statute to reflect the transfer of the commission from the Department of Administration to the Department of Health and Social Services.

Audit Report

DEPARTMENT OF HEALTH
AND SOCIAL SERVICES
ALASKA COMMISSION ON AGING
SUNSET REVIEW

October 1, 2003



Audit Control Number:

06-20025-03

Division of Legislative Audit
P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from the Senate and two from the House. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$6 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed as mandated by Alaska Statutes or at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in Juneau, Anchorage, or at our web site <http://www.legaudit.state.ak.us/>

BUDGET AND AUDIT COMMITTEE

Representative Ralph Samuels, Chair
Representative Mike Hawker
Representative Beth Kerttula
Representative Vic Kohring
Representative Jim Whitaker
Representative Reggie Joule (alternate)
Representative Bill Williams (alternate)

Senator Gene Therriault, Vice Chair
Senator Ben Stevens
Senator Gary Wilken
Senator Con Bunde
Senator Lyman Hoffman
Senator Lyda Green (alternate)

DIVISION OF LEGISLATIVE AUDIT

Pat Davidson, CPA
Legislative Auditor

P.O. Box 113300
Juneau, AK 99811-3300

(907)465-3830, Juneau
(907)561-1445, Anchorage
(907)465-2347, Juneau Fax
(907)561-1452 Anchorage Fax

The TRUST

The Alaska Mental Health Trust Authority

Senator Con Bunde, Chair
Senate Labor and Commerce Committee
State Capitol, Room 506
Juneau, AK 99801-1182

Dear Senator Bunde,

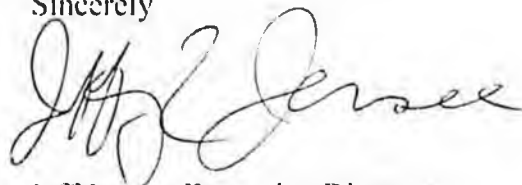
This letter is to communicate the Trust's support for SB 263 which extends the sunset provision for the Alaska Commission on Aging.

This bill is consistent with the recommendation of the Division of Legislative Audit that the Commission's termination date be extended to June 30, 2008. In addition, it makes technical changes that are necessary to conform the Commission's statutes to the reorganization executive order issued last year.

The Alaska Commission on Aging is a critical part of the Trust's funding and policy processes and it is essential that the sunset provision be extended. The Commission also provides a critical voice for Alaskan elders and seniors and we very much appreciate and depend upon the Commission's efforts on behalf of our beneficiaries who are amongst the most vulnerable of Alaskans.

Thank you for your attention to this important matter and please feel free to contact me if I may be of further assistance.

Sincerely



Jeff Jesse, Executive Director
Alaska Mental Health Trust Authority
550 W. 7th Avenue Suite 1820
Anchorage, Alaska 99501

SB

272

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/21/04

FURTHER: Finance

DATE of 5-Day Notice: _____
 in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: _____

Labor and Commerce Committee considered SENATE BILL NO. 272

SB 272 DEFERRED DEPOSIT ADVANCES (PAYDAY LOANS)

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; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Sam Nelson</i>			✓	
<i>Betty Davis</i>				✓
<i>[Signature]</i>		X		
<i>[Signature]</i>			✓	
CHAIR: <i>C B Center</i>			✓	

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB272
 () Publish Date: _____

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
----------------------------------	-------------	-------------	-------------	-------------	--------------	-------------

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

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB272

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.

LEGAL SERVICES

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

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

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

MEMORANDUM

April 19, 2004

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

TO: Senator John Cowdery
Attn: Richard

FROM: ^{JB} 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.

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 a renewal fee from being greater than the fee under (a) of the section.

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 19, 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:med
04-424.med

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB272
 () Publish Date: _____

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)	64.0	69.0	64.0	69.0	74.0	79.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
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

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)

Prepared by: Mark Davis, Director Phone (907) 465-2521
 Division Banking, Securities & Corporations Date/Time 4/6/04 11:39 AM
 Approved by: Edgar Blatchford, Commissioner Date 4/6/2004
 Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB272

ANALYSIS CONTINUATION

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 will be 50 establishments who will each pay \$500 for a license.

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 \$39.0 from the cost examination of these licensees.

COMPARISON OF CSHB389 TO CURRENT LAW

	CSHB389 DEFERRED DEPOSIT BILL	CURRENT STATUS
REGULATION	Specifically, and by law	Operates under Small Loan Act Exemption of \$500
AUDIT & INVESTIGATIONS	Minimum every 18 months	None
REGULATORY OVERSIGHT	State Division of Banking & Securities	None
STATISTICS/REPORTS	Submissions to Division of Banking	None
ADVANCE LIMIT	\$500	\$500
ROLLOVERS	Limit of 2	No Limit
ALLOWABLE FEE	\$15/ \$100 advanced - \$5 origination fee	Decided by individual lenders
TERMS OF ADVANCE	Minimum of 14 days	Between lender and consumer
CONSUMER PROTECTIONS	<p>Right of Rescission mandated</p> <p>Required disclosure of charges, interest, terms, penalties, and rights</p> <p>Certified mailing to borrower offering payment plan option before legal action</p> <p>Payment plan option for up to 6 months with no add'l charge except \$25 fee</p>	<p>No Right of Rescission required</p> <p>Annual Percentage Rate only</p> <p>Legal action 15 days after notification by mail to consumer</p> <p>Between lender and consumer</p>
PENALTY FOR BAD CHECK	Limits penalty to \$700	Limits penalty to \$1000

Cost Comparison

CONSUMER DILEMMA

A consumer who is between paydays and has insufficient savings must immediately pay a \$50 utility bill and a \$50 minimum payment on a credit card balance.

OPTIONS



OPTION#1
\$100 Deferred
Deposit Advance



\$15 TOTAL



OPTION#2
2 late
payments



\$50 reconnect fee to utility company
\$29 late fee to credit card company

\$79 TOTAL

**PLUS TEMPORARY LOSS OF
UTILITY AND NEGATIVE
EFFECT ON CREDIT RECORD**



OPTION#3
2 bounced
checks



\$22 NSF Fee to Bank
+\$25 Fee from Vendor
\$47 in Fees Per Check
X 2 Checks

\$94 TOTAL

**PLUS STIGMA OF
WRITING BAD CHECK**

STATE LAW GOVERNING DEFERRED DEPOSIT SERVICES/PAYDAY ADVANCE

STATES	Deferred Deposit Available under Law	Permitted Fees	Permitted Period	Max. Amount of Check
Alabama	Yes	17.5% of the amount advanced	min. of 10 days and max. or 31 days	\$500
Arizona	Yes	15% of the check	min. of 5 days	\$500
Arkansas	Yes	10% of the check + \$10 charge + \$5 fee on 1st transaction	min. of 6 days and max. of 31 days	\$400
California	Yes	15% of the check	max of 30 days	\$300
Colorado	Yes	20% of the 1st \$300 - 7.5% on amt greater than \$300	max. of 40 days	\$500
Delaware	Yes	rate determined by parties	max. of 60 days	\$500
DC	Yes	scale of fees	max. of 31 days	\$1,000
Florida	Yes	10% of advance + \$5 verification fee	min. of 7 days and max. of 31 days	\$500
Hawaii	Yes	15% of the check	max. of 32 days	\$600
Idaho	Yes	rate determined by parties	term determined by parties	\$1,000
Illinois	Yes	N/A	max of 30 days	\$400
Indiana	Yes	15% of the check on the 1st \$100; 10% over \$100; fee cannot exceed \$35	min. of 14 days	\$400
Iowa	Yes	15% of the check on 1st \$100; 10% on subsequent \$100 increments	max. of 31 days	\$500
Kansas	Yes	scale of fees	max. of 30 days	\$860
Kentucky	Yes	\$15 per \$100 on face amt of check	min. of 14 days and max. of 60 days	\$500
Louisiana	Yes	16.75% of the check	max. of 30 days	\$350
Michigan	Yes *	n/a	n/a	n/a
Minnesota	Yes	scale of fees	max. of 30 days	\$350
Mississippi	Yes	18% of the check	max. of 30 days	\$400
Missouri	Yes	no limit, but total fees, inc rollovers, can't exceed 75% of loan	min. of 14 days and max. of 31 days	\$500
Montana	Yes	cannot exceed 25% of amount advanced	max. of 31 days	\$300
Nebraska	Yes	\$15 per \$100 on face amt of check	max. of 31 days	\$500

Nevada	Yes	rate determined by parties	term determined by parties	1/3 of borrower's
New Hampshire	Yes	rate determined by parties, however, after initial term of loan interest can't be > 6% per yr.	min. of 7 days and max. of 30 days	\$500
New Mexico	Yes *	rate determined by parties	term determined by parties	\$2,500
N. Dakota	Yes	20% of amount borrowed	max. of 45 days inc rollover period	\$500
Ohio	Yes	\$5 per \$50 + 5% per month	cannot exceed 6 months	\$500
Oklahoma	Yes	\$15% of the 1st \$300 + 10% on amount greater than \$300	min. of 13 days and max. of 45 days	\$500
Oregon	Yes	rate of loan determined by parties	max. of 60 days	\$50,000
Rhode Island	Yes	10% of the check or \$5, whichever is greater	fixed term of 14 days	\$300
S. Carolina	Yes	15% of the check	max. of 31 days	\$300
S. Dakota	Yes *	rate determined by parties	term determined by parties	N/A
Tennessee	Yes	15% of check or \$30, whichever is lesser	max of 31 days	\$500
Texas	Yes	scale of fees	no less than 7 days	N/A
Utah	Yes	rate determined by parties	term determined by parties	N/A
Virginia	Yes	15% of advance amt	min. of 7 days	\$500
Washington	Yes	15% of the principal on first \$500 borrowed; 10% on amount of \$500	max. of 45 days	\$700
Wisconsin	Yes *	rate determined by parties	term determined by parties	\$25,000
Wyoming	Yes	\$30 or 20% per mo. on the principal balance of check	one calendar month	no statutory cap
Alaska				
Proposed Draft	Yes	15% of the amount advanced	min. of 15 days	\$1,000

Deferred deposit services are not permitted under state law in the following jurisdictions: Connecticut, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Vermont, and West Virginia.

* States regulated by Small Loan Acts or Dept of Commerce
Data current as of 10/03 per Financial Services of America (FiSCA)

What is the Deferred Deposit Industry

The Deferred Deposit Advance serves as a dignified and cost efficient “financial taxi” to get from one payday to another when faced with an unexpected cash need.

The Deferred Deposit industry, also know as payday advance, cash advance, or payday loans, represents one of the fastest growing segments of the consumer finance industry.

Over the past decade, most states have created a regulatory environment that satisfies the robust consumer demand for these short term, low denomination loans.

State policy makers have balanced the interests of the industry with substantive consumer protections that ensure responsible and informed use of the service.

Consumers use the service responsibly and for the intended purpose: to solve temporary cash flow problems by bridging the gap between paydays.

Just as commuters understand that taxi services are valuable and convenient when used for short term travel while inefficient for long term travel needs, our customers understand that Deferred Deposit services are economical and convenient when used for short term cash needs but are inappropriate to meet long term cash needs.

Deferred Deposit advances are just one of the many short-term credit options used by the middle class consumer.

Evolution of the Deferred Deposit Industry

The consumer's need for access to short term funds developed because:

- Traditional financial institutions exited the small denomination, short-term credit market, largely due to its high cost structure
- Demise of household finance storefronts
- Proliferation of automated credit card lending limited small dollar credit needs
- The cost of bounced check fees, late payment penalties, and other short-term credit products soared
- Increased difficulty of opening/maintaining a checking account
- Consumers need small dollar, short-term loans to bridge payment needs
- Enactment of legislation provided regulations and consumer protections for Deferred Deposit customers.

Who Uses Deferred Deposits

Typical borrowers have a household income between \$25,000 and \$50,000, have a job, but live on a tight budget that leaves little room for financial missteps or emergencies.

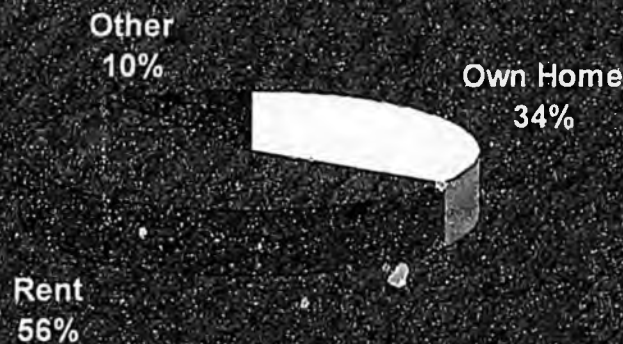
The Deferred Deposit advance helps them get through a cash crunch without paying late fees or bouncing checks. According to the IO Data Corporation Report commissioned by the Community Financial Services Association of America:

- Nearly all Deferred Deposit customers use credit other than Deferred Deposits and more than half have a bank credit card.
- 34% of them own their own homes and a majority have children under 18 still with them.
- 85% of them have graduated from high school; 55% have some college or a degree
- 74% have employment tenure of 1 year or more.

According to the McDonough School of Business, Georgetown University Report, April 2001, "Payday Advance Credit in America: An Analysis of customer Demand", Deferred Deposit customers are primarily moderate-income consumers who are often in early stages of the family life cycle. They are more likely to use consumer credit and tend to have higher levels of consumer debt relative to income than the population as a whole. They typically have high rates of return on investments in household good and a strong demand for credit. They tend to be insensitive to interest rates on loans though generally aware of the cost of such credit.

Customer Demographic Profile

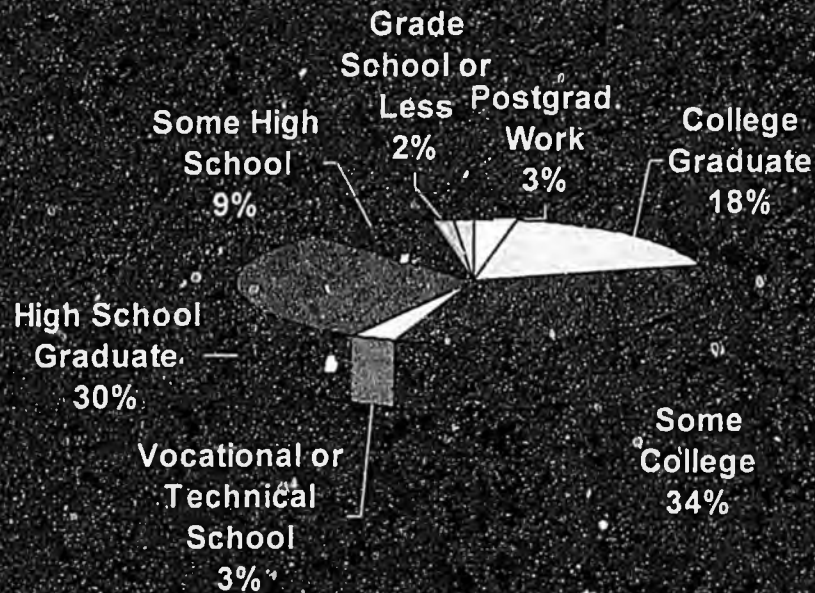
Own or Rent Home



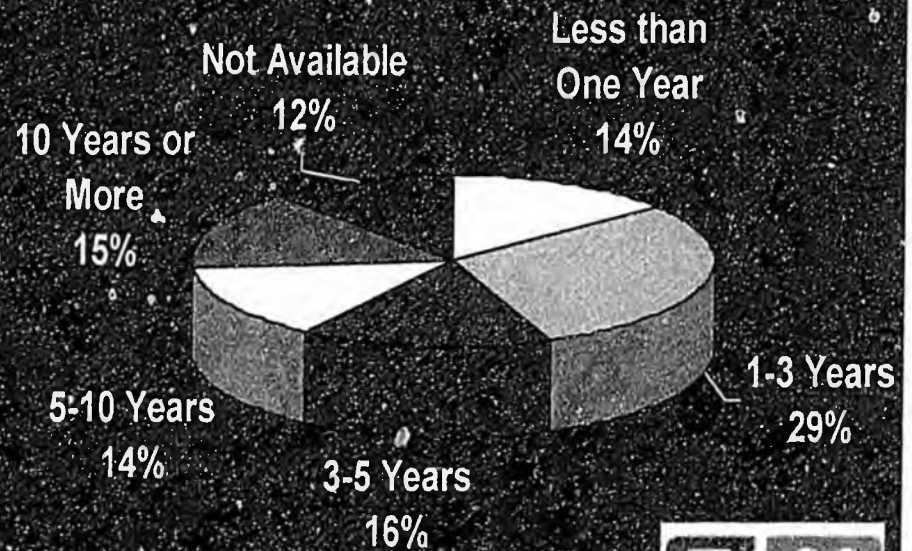
Children Under 18 at Home



Education



Employment Tenure



Source: Io Data Corporation

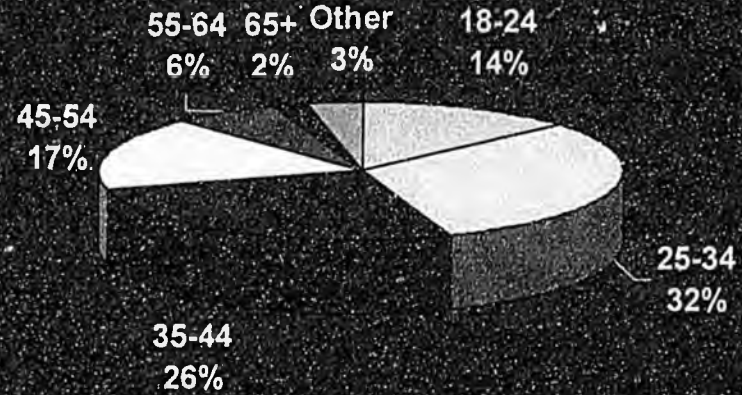


Customer Demographic Profile *(Continued)*

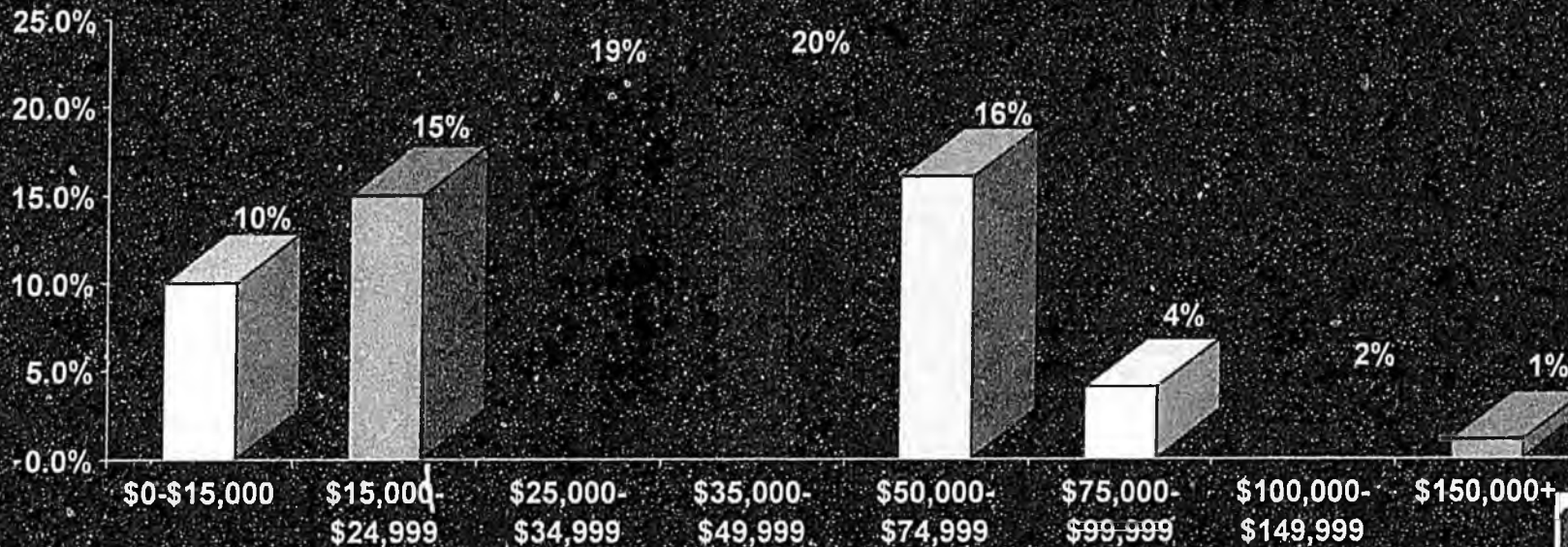
Gender



Age



Household Income



Source: Io Data Corporation



Alternatives Available in the Marketplace

Many of our customers don't have relatives or other friends to turn to for financial assistance when the family car breaks down or an unexpected expense comes up.

Deferred Deposits are sometimes the only viable option when people are strapped for cash. Alternatives available include bank overdraft protection – which requires available funds in another account, paying bounced check fees, paying late payment penalties, and pawn loans.

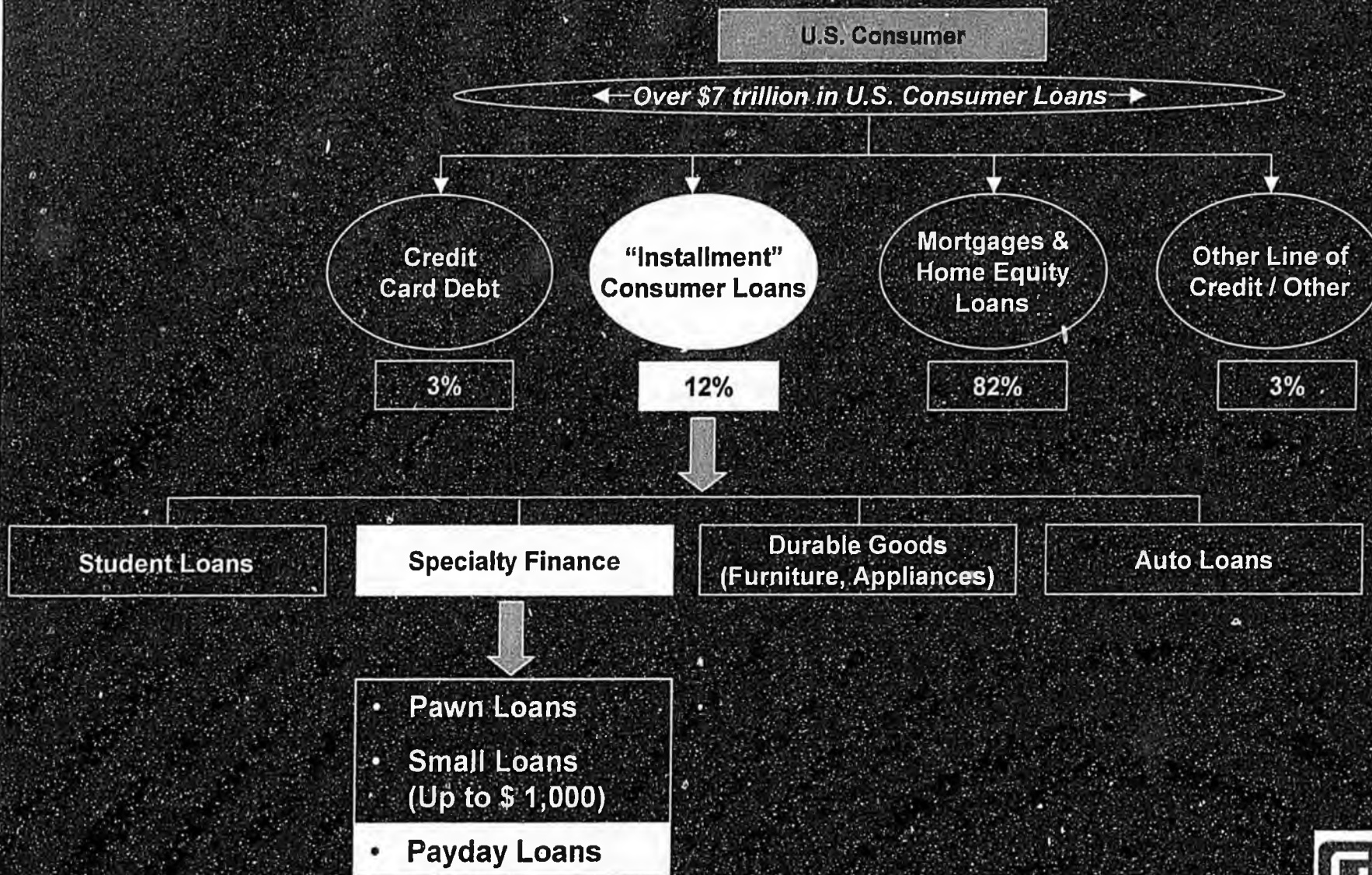
Deferred Deposit Advances are lower than many consumer alternatives.

- An example is the average \$29 late fee on credit card payments. For a \$100 due credit payment, the \$29 late fee would compare to a typical \$15 Deferred Deposit fee. In both instances, the payment would ultimately be made from the consumers next pay check.
- For a \$100 bounced check, the standard fee in Alaska is a \$22 bank fee plus a \$25 NSF fee charged by the merchant. That's a total of \$47 in NSF fees. A Deferred Deposit advance for a \$100 would cost only \$15.

A Deferred Deposit Advance allows the consumer to maintain a clean payment record and costs substantially less.

Where do Payday Loans Fit in the Broader Consumer Finance Industry?

Here's one way to segment the consumer's balance sheet.



How a Deferred Deposit Works

A Deferred Deposit Advance provides a small, unsecured, short-term cash advance until payday. Customers chose Deferred Deposit Advances to cover small expenses and avoid costly bounced-check or late payment penalties and other less desirable short-term credit option.

- A customer with an active checking account and regular income simply supplies a State ID, a current pay stub, and reads and signs an agreement that discloses transaction terms.
- The customer writes a personal check drawn on their local bank for the loan amount plus a fee of \$15 per \$100 borrowed.
- The lender immediately cashes the check and gives the money, less the fee, to the customer.
- The check is held for an agreed-upon time, up to 15 days, at the end of which time the check is deposited or the customer returns with cash to reclaim the check.
- If a customer chooses to defer this deposit for an additional 15 days, s/he may choose to “rollover” the deposit.

Deferred Deposit Fees

Businesses offering Deferred Deposit service take a risk that traditional financial institutions are unwilling to assume. Thus fees charged by the industry are higher than the interest rates charged by banks and credit card companies.

- The industry believes fees should be reasonable, cover the cost of the service and provide a reasonable profit to the business. The standard fee nation-wide is \$15 to \$20 per \$100 advance. Some Internet online providers can charge up to \$60 per advance.
- Competition is the key and, within the confines of state regulation, the market itself assures customers of a competitive service fee.
- Critics of Deferred Deposit Advances have raised concerns about the fees being charged by the industry. The Deferred Deposit Advance industry reports the Annual Percentage Rates (APR) of the advance as required by the federal Truth in Lending Act. However, using the APR to evaluate the costs of Deferred Deposits is not accurate because of the short-term nature of the cash advance. The industry considers the charge for the service a fee rather than interest.

Merchant NSF Fees to Clients

Sears	\$25
JC Pennys	\$29
Fred Meyer	\$25
Carrs	\$25
First Mortgage	\$50
Bank One	\$35
Nordstroms	\$25
discover	\$29
Walmart	\$29

Bank NSF Fees to Clients

Key Bank	\$27
Wells Fargo	\$28
Northrim	\$18
AK USA	\$18
First National	\$20
Denali Alaska	\$20
Credit Union One	\$20

Major Alaska Electric Companies

Name of Utility	NSF Fee	Late Fee	Reconnect Fee
Chugach	\$15	\$2	\$50
ML & P	\$25	\$2	\$95
Matanuska	\$25	7%	\$30
Tlingit Haida Regional	\$25	1.50%	\$50
Aurora electric	\$10	\$2	\$55 before 3:30/\$165 after
Golden Valley Elec	\$10	\$2	\$55 plus a deposit

Apartments in Anchorage - Late Fees	
Arctic sun	\$100
Arctic Tern	\$25
Boundary Manor	\$50
Calais Manor	\$100
Camlett Apts	\$50
Campbell Creek	\$65
Castle Apts	\$100
Chugach	\$100
Continental	\$100
Foxwood	\$25
Garden Villa	\$45
King court	\$25
Kinnear Park	\$67
Oasis	\$50
Casa blanca	\$50
Nicole	\$50
Northwind	\$100
Pier 25	\$50
Rancho	\$100

This data compiled between 12/15/03 and 1/9/04 by Cash Alaska

Rent late fees are applicable from 1 to 5 days after the rent is due.

15-Day Term

\$100 payday advance with \$15 fee

**APPROX
APR**

365%

AS COMPARED TO

\$100 check with \$22 nsf and \$25 merchant fee

564%

30-Day Term

\$29 late fee on \$100 credit card balance

348%

\$100 utility bill with \$47 late/reconnect fees

564%

1-Day Term

\$100 ATM withdrawal with \$1.50 fee

534%

Consumer Protection

The Deferred Deposit Advance bill has provisions protecting the consumer per the following:

- Consumers are given the right to rescind an Advance without cost before the end of the next business day,
- Rollovers are limited to four (Note: A rollover, or renewal, of a Deferred Deposit Advance occurs when the customer renews the advance by paying only the fee amount. The agreed upon deposit date is then moved out an additional 15 days),
- Collection practices, following State law, must be disclosed in the Agreement, and Criminal action is prohibited,
- Customers are informed in advance of the short-term nature of the Advance, what fees are charged for origination, and rollover requirements,
- Reasonable fees are charged for the service,
- Standardization and regulation in the Deferred Deposit industry is maintained and scrutinized by the Department of Community and Economic Development.

The Growth of Internet Deferred Deposit Advances

- A 2000 survey commissioned by FiSCA found over 50 separate websites offering payroll/Deferred Deposit advances. Today a Google search for “Payday Loans Online” will bring up 775,000 websites.
- Internet fee rates range from 15% to as high as 35%; median rate is 25% per \$100
- Most sites offered loans of up to \$500; a few sites offering up to \$1000
- Many online lenders are based in California, Delaware or offshore locations such as Costa Rica
- Limited customer service; over 30% of the sites fail to provide a phone number for customer service support.

Facts and Fiction

Some consumer groups have fought the growth of the Deferred Deposit industry across the country calling us predatory lenders who prey on the poor and uneducated, charge ridiculous rates, and cause people to sink into a cycle of debt. The following is a response to that concern.

Fiction: Deferred Deposit/Payday Advance companies prey on poor, uneducated or older consumers.

Fact: Deferred Deposit customers represent the heart of the working middle class.

- Majority has income between \$25K and \$50K
- 72% are under 45 years old; only 2% are over 65, compared to 20% of the population
- 85% have a high school diploma or better, with 55% having some college or a degree
- 34% own their own homes
- 100% have a steady income and an active checking account (required for advances)

Facts and Fiction

Fiction: They charge outrageous rates.

Fact: Deferred Deposit Advance fees typically cost less than other alternatives.

- Bank/merchant fees on a bounced check can cost 2 times that of a \$100 advance
- APR's are often lower than customer's alternatives (on same 2 week term)
 - ▶ \$100 payday advance with \$15 fee = 365% APR
 - ▶ \$100 bounced check with \$47 NSF/merchant fees = 564% APR
 - ▶ \$100 utility bill with \$50 late/reconnect fees = 564% APR
 - ▶ \$100 credit card balance with \$29 late fee = 348% APR

Fiction: They force customers into a cycle of debt.

Fact: Most customers use Deferred Deposit Advances responsibly and moderately.

- It's a closed-end, short-term transaction with a one-time flat fee. No revolving debt and no additional fees or accruing interest if not paid when due
- 66% use Advances to cover unexpected expenses/temporary reduction in income
- 34% use it for planned expenses or other discretionary uses
- 60% either don't renew over a 12 month period or renew only 1-4 times
- Research and regulators confirm more than 70% use the service about once a month or less.

Facts and Fiction

Fiction: They take advantage of unsuspecting customers.

Fact: Deferred Deposit Advance customers make informed decisions and receive consumer protections under law.

- Millions choose Deferred Deposit Advances as a dignified, discreet solution for temporary cash flow problems without asking family for money
- 70% choose them for reasons of convenience (quick, easy, & fast approval)
- 96% are aware of the charges and 78% recalled it being disclosed as an APR
- 92% believe it is a useful service, only 12% were dissatisfied w/their last advance
- 35 States and the D.C. provide balanced, responsible regulation of Deferred Deposit Advances, most of them also providing the following:
 - ▶ Educational brochure that encourages consumer responsibility and warns against long-term use
 - ▶ Full disclosure on in-store signage and in Agreement (with TILA disclosure)
 - ▶ Privacy notice
 - ▶ Limit on rollovers
 - ▶ Cost-free right of rescission
 - ▶ Professional, fair and lawful collection practices and no threat or use of criminal prosecution

REFERENCES

All the information was taken from the following.

1. Financial Services of America (FiSCA), A National Trade Association
www.fiscal.org. Various reports available on website.
2. Community Financial Services Association of America (CFSA)
www.cfsa.net. Various reports available on website.
3. PAYDAY ADVANCE CREDIT IN AMERICA: An analysis of customer demand. Monogram #35, April 2001. Credit Research Center, McDonough School of Business, Georgetown University, Wash DC. Authors: Gregory Eliehausen, PhD, and Edward C. Lawrence, PhD.
4. UPDATE ON the PAYDAY LOAN INDUSTRY: OBSERVATIONS on RECENT INDUSTRY DEVELOPMENTS, September 2003. Stephen, Inc. Investment Bankers. Authors: Jerry L. Robinson, and John D. Wheeler.
5. PAYDAY ADVANCE CUSTOMER RESEARCH CUMULATIVE STATE RESEARCH REPORT, September 2002, Io Data Corporation, Salt Lake City, Utah.

ALASKA STATE LEGISLATURE
SENATE DISTRICT 0

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John J. Cowdery
Senate Rules, Chair
Senate Transportation Committee, Chair
World Trade State & Federal Relations, Chair
State Affairs, Legislative Council

**Differences between the original bill (SB 272) and CS
(version LS1516\D)**

1. \$500 cap (vs. \$1,000 cap in original bill)
2. Only 2 rollovers allowed (4 in original bill)
3. Lender must post a bond to get a license (no bond in original bill)
4. Lender will be subject to closer scrutiny by Division of Banking
5. Lender must offer consumer a payment plan option before initiating legal action to collect against a consumer in default, including sending a certified letter offering to assist consumer.
6. There is a \$700 cap on total damages lender can recover (in addition to face value of check) for collection efforts (\$1,000 in original bill).
7. Lender can only charge \$15 per \$100 loaned and NO OTHER FEES, CHARGES OR INTEREST OF ANY KIND (original bill allowed for additional interest).
8. There are specific disclosure requirements concerning fees, charges, penalties that were not in the original bill.

SENATOR
JOHN J. COWDERY
Anchorage



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

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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.

23-LS1516D
Bannister
3/24/04

CS FOR SENATE BILL NO. 272()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certain monetary advances in which the deposit or other negotiation**
2 **of checks to pay the advances is delayed until a later date; and providing for an effective**
3 **date."**

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

5 *** Section 1. AS 06.01.050(3) is amended to read:**

6 (3) "financial institution" means an institution subject to the regulation
7 of the department under this title; in this paragraph, "institution" includes a
8 commercial bank, savings bank, credit union, premium finance company, small loan
9 company, bank holding company, financial holding company, trust company, [AND]
10 savings and loan association, and a deferred deposit advance licensee under
11 AS 06.50;

12 *** Sec. 2. AS 06 is amended by adding a new chapter to read:**

13 **Chapter 50. Deferred Deposit Advances.**

14 **Article 1. Licensing.**

1 **Sec. 06.50.010. License required.** A person, including a person doing
2 business from outside this state, may not engage in the business of making or offering
3 to make deferred deposit advances in this state without having a license under this
4 chapter. A separate license is required for each location from which the person
5 conducts the business.

6 **Sec. 06.50.020. Qualifications for license.** (a) To qualify for a license, an
7 applicant shall

8 (1) have cash assets of at least \$25,000, as determined under generally
9 accepted accounting principles, except that an applicant who wants to engage in the
10 business of making advances at more than one location in the state shall have cash
11 assets of at least \$25,000 for each location;

12 (2) demonstrate the financial responsibility, financial condition,
13 business experience, character, and general fitness that reasonably warrant the
14 department's belief that the applicant's business will be conducted lawfully and fairly;
15 when determining whether this qualification has been met, and for the purpose of
16 investigating compliance with this chapter, the department may review

17 (A) the relevant business records of the applicant and the
18 adequacy of the capital of the applicant;

19 (B) the competence, experience, integrity, and financial ability
20 of the applicant, and, if the applicant is an entity, of any person who is a
21 member, partner, director, senior officer, or owner of 10 percent or more of the
22 equity of the applicant; and

23 (C) a record of conviction, on the part of the applicant or a
24 person described in (B) of this paragraph, of

25 (i) criminal activity, fraud, or other act of personal
26 dishonesty;

27 (ii) an act, an omission, or a practice that constitutes a
28 breach of a fiduciary duty; or

29 (iii) a suspension, a revocation, a removal, or an
30 administrative act by an agency or a department of the United States or
31 a state from participation in the conduct of a business;

1 (3) if the person has a physical business location in the state, have a
2 physical business location that is accessible by and convenient to the public;

3 (4) have a current business license issued under AS 43.70; and

4 (5) if applicable, have a certificate of incorporation under
5 AS 10.06.218, have a certificate of authority under AS 10.06.705, have a copy of
6 articles of organization that satisfies AS 10.50.090, be registered under AS 10.50.605,
7 have a statement of foreign qualification filed under AS 32.06.922, have a certificate
8 of limited partnership filed under AS 32.11.060, or be registered under AS 32.11.420.

9 (b) The requirements in (a) of this section are continuing in nature and may be
10 reviewed periodically by the department.

11 **Sec. 06.50.030. Application.** (a) An application for a license must be in
12 writing and under oath, in a form prescribed by the department by regulation, and
13 include at least

14 (1) the legal name, residence, and business address of the applicant
15 and, if the applicant is not a natural person, of each member, partner, director, senior
16 officer, or owner of 10 percent or more of the equity of the applicant;

17 (2) the address and physical location of the principal place of business
18 named in the application; and

19 (3) other information the department may require with respect to the
20 applicant and, if the applicant is not a natural person, about the applicant's members,
21 partners, directors, senior officers, or owners of 10 percent or more of the equity of the
22 applicant.

23 (b) The applicant shall submit with the application the bond required by
24 AS 06.50.040 and a nonrefundable application fee in an amount that is established by
25 the department by regulation and that does not exceed \$1,200. The application fee for
26 the initial license may not be prorated.

27 **Sec. 06.50.040. Bond.** (a) An applicant for a license shall file with the
28 application a bond

29 (1) in a form to be approved by the department;

30 (2) in which the applicant is the obligor; and

31 (3) in the sum of \$25,000 for a business with one location and \$50,000