

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11277 SENATE LABOR & COMMERCE

- **Medical treatment**—11 states permit alcohol to be given to minors in connection with medical treatment.
- **Education**—three states permit educational institutions to provide alcohol to minors in connection with being a student or for educational purposes.

### Furnishing Alcohol to Minors

	Furnishing Alcohol to Minors	EXCEPTIONS				
		Parent/Guardian	Legal-aged Spouse	Religious Services	Medical Treatment	Education
Alabama	√					
Alaska <sup>2</sup>	√	√	√		√	
Arizona	√					
Arkansas <sup>3</sup>	√	√	√	√		
California	√					
Colorado	√					
Connecticut	√	√	√		√	
Delaware	√	√		√		
District of Columbia	√					
Florida	√					√
Georgia	√					
Hawaii	√					
Idaho	√					
Illinois	√			√		
Indiana	√					
Iowa	√	√			√	
Kansas <sup>4</sup>	√	√				
Kentucky	√	√				
Louisiana	√					
Maine	√	√				
Maryland	√					
Massachusetts	√	√				
Michigan	√					
Minnesota	√	√				
Mississippi	√					
Missouri	√	√				
Montana <sup>5</sup>	√	√		√	√	
Nebraska	√					

<sup>2</sup>Alaska's statute includes references to "legal spouse" rather than "legal-aged spouse." The exceptions apply only off the licensed premises.

<sup>3</sup>Arkansas's statute refers to "family members" but does not specify which family members.

<sup>4</sup>In Kansas, parents or legal guardians may provide only cereal malt beverage to their minor child or ward.

<sup>5</sup>In Montana, §16-6-305 1(b) specifies that "a parent, guardian, or other person may not knowingly sell or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age." Section 16-6-305 1(c) defines "intoxicating quantity" as "a quantity of an alcoholic beverage that is sufficient to produce: (i) a blood, breath, or urine alcohol concentration in excess of 0.05; or (ii) substantial or visible mental or physical impairment."

	Furnishing Alcohol to Minors	EXCEPTIONS				
		Parent/Guardian	Legal-aged Spouse	Religious Services	Medical Treatment	Education
Nevada	√	√			√	
New Hampshire	√					
New Jersey	√					
New Mexico	√	√				
New York	√					√
North Carolina	√					
North Dakota	√					
Ohio	√	√	√	√	√	
Oklahoma	√					
Oregon	√	√				
Pennsylvania	√			√		
Rhode Island	√					
South Carolina	√	√	√	√		√
South Dakota	√	√	√		√	
Tennessee	√					
Texas	√					
Utah	√	√			√	
Vermont	√					
Virginia	√				√	
Washington	√	√		√	√	
West Virginia <sup>6</sup>	√	√	√			
Wisconsin	√	√	√	√		
Wyoming	√	√			√	
<b>State Totals</b>	<b>51</b>	<b>23</b>	<b>8</b>	<b>9</b>	<b>11</b>	<b>3</b>

<sup>6</sup> In West Virginia, both §60-3-22a and §60-3A-24 state that "Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any liquor from whatever source, is guilty of a misdemeanor...."

## FURNISHING ALCOHOL TO INTOXICATED INDIVIDUALS

Almost every state and the District of Columbia have a provision that prohibits sales and service of alcohol to intoxicated persons. The primary ways in which the states describe the offense include specific wording related to intoxication levels and the types of prohibitions enumerated. For example, the following words are used to describe intoxicated persons:

- obviously intoxicated
- visibly intoxicated
- appears to be intoxicated
- noticeably intoxicated
- reason to believe is intoxicated
- apparently under the influence of liquor.

At least one state, Arizona, defines what it means to be obviously intoxicated. AZ ST 4-244 states:

For purposes of this section, "obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

Although there is variation in the language used to describe the state of intoxication, it does not appear to make a practical difference in terms of court interpretation or enforcement practices.

Differences across state statutes also include the standard of proof required as evidence of intoxication. For example, some states require knowledge of the person's intoxication, although most apply a negligence standard (a reasonable person in like circumstances should have known that the person was intoxicated). The only method for determining the standard of proof applied in a given state is to analyze case law, and, in many cases, such an analysis will be inconclusive. Therefore we did not attempt to catalog the standard of proof variable.

### Furnishing Alcohol to Intoxicated Individuals

	Furnishing Alcohol to Intoxicated Individuals
Alabama	√
Alaska	√
Arizona	√
Arkansas	√
California	√
Colorado	√
Connecticut	√
Delaware	√
District of Columbia	√
Florida	
Georgia	√
Hawaii	√
Idaho	√

	Furnishing Alcohol to Intoxicated Individuals
Illinois	√
Indiana	√
Iowa	√
Kansas	√
Kentucky	√
Louisiana	√
Maine	√
Maryland	√
Massachusetts	√
Michigan	√
Minnesota	√
Mississippi	√
Missouri	√
Montana	√
Nebraska	√
Nevada	
New Hampshire	√
New Jersey	√
New Mexico	√
New York	√
North Carolina	√
North Dakota	√
Ohio	√
Oklahoma	√
Oregon	√
Pennsylvania	√
Rhode Island	√
South Carolina	√
South Dakota	√
Tennessee	√
Texas	√
Utah	√
Vermont	√
Virginia	√
Washington	√
West Virginia	√
Wisconsin	√
Wyoming <sup>1</sup>	
<b>State Totals</b>	<b>48</b>

<sup>1</sup> In Wyoming, §12-5-301 states that "No order shall be received from nor delivery made to a person under twenty-one (21) years of age or an intoxicated person in the area." Since this provision applies only to "Drive-In Areas," we did not include this state as having a provision that prohibits furnishing alcohol to intoxicated individuals.

## RESPONSIBLE BEVERAGE SERVICE

Responsible Beverage Service (RBS) or server training programs have two goals: (1) to establish policies and procedures in retail alcohol outlets for preventing alcohol sales and service to minors and intoxicated persons; and (2) to train managers and servers/clerks to implement those policies and procedures effectively. Server/clerk training focuses on serving and selling procedures, signs of intoxication, methods for checking age identification, and intervention techniques. Manager training includes the server/clerk training as well as policy and procedures development and staff supervision.

Experimental RBS programs first appeared in the early 1980s. States with RBS provisions have either mandatory programs or incentive-based voluntary programs. Voluntary, private programs exist to varying degrees in the other states, but those states do not have provisions that provide statewide structure for the design and implementation of these programs.

A program is designated as mandatory if state law requires at least some alcohol retail employees to attend a RBS training. Thirteen states require some type of RBS training, but these states vary widely in who must participate:

- *Type of employee*: statutes may require owners or licensees, managers and servers/clerks, or a subset of these classifications to participate;
- *Type of outlet*: statutes may require either on-sale or off-sale establishments, or both, to participate; and
- *Date of license issuance*: statutes may require participation from establishments with licenses issued after the legislation is enacted or from all establishments, regardless of the date of the license.

The eleven states that have established voluntary programs provide incentives for retailers to participate in RBS, but do not impose penalties for those who don't. Incentives vary by state and include (1) a defense in dram shop liability law suits; (2) mitigation of fines for sales to minors or intoxicated persons; (3) discounts in dram shop liability insurance; and (4) protection against revocation of a license for sales to minors or intoxicated persons.

Whether mandatory or voluntary, RBS programs vary in training curricula components; procedures for administering the program; certificate requirements for RBS trainers, servers/clerks, and managers; penalties for violations; and enforcement practices. These variables may have a dramatic impact on the program's effectiveness in reducing sales to minors and intoxicated persons.

The following variables pertain to mandatory provisions:

- **Employee categories**—of the 13 states that require mandatory RBS training, 7 require the licensee, managers, and servers to attend; 5 states require only managers and servers to take the training; and 1 requires the licensee and managers to attend.
- **Establishment types**—eight states require that on- and off-sale establishments participate in RBS training; four states require only on-premise establishments to participate; and one requires only off-premise establishments to receive training.

- **Date of issuance of license**—all 13 of the states that require mandatory RBS training require new licensees to participate, and 2 states exempt establishments licensed before the legislation was enacted.

The variables that pertain to voluntary incentives are as follows:

- **Liability defense**—three states allow licensees to use their RBS training as a defense in dram shop liability cases.
- **Mitigation of fines**—seven states allow fines for sales of alcohol to minors or intoxicated persons to be mitigated if the licensee can demonstrate that he or she participated in RBS training.
- **Discount insurance**—three states allow discounts in dram shop liability insurance if the licensee has participated in RBS training.
- **Protection of license**—three states provide protection against revocation for sales of alcohol to minors or intoxicated persons if the licensee has participated in RBS training.

### Responsible Beverage Service

	RBS Provision		Mandatory States							Voluntary States			
			Categories of Employees Required to Attend RBS Training			Establishment Type Required to Participate		Applies to New or Existing Licenses		Incentives			
			Licensee	Manager	Server	On	Off	New	Existing	Liability Defense	Mitigation of Fines	Discount Ins.	Protection of License
Alabama		√										√	√
Alaska	√			√	√	√	√	√	√				
Arizona		√									√		
Arkansas		√									√		
California													
Colorado													
Connecticut													
Delaware	√		√	√	√	√	√	√	√				
District of Columbia													
Florida		√									√		√
Georgia													
Hawaii													
Idaho													
Illinois		√									√	√	
Indiana		√									√		
Iowa													
Kansas													
Kentucky													
Louisiana	√			√	√	√	√	√	√				

	RBS Provision		Mandatory States							Voluntary States			
			Categories of Employees Required to Attend RBS Training			Establishment Type Required to Participate		Applies to New or Existing Licenses		Incentives			
	Man-datory	Volun-tary	Licensee	Manager	Server	On	Off	New	Existing	Liability Defense	Miti-gation of Fines	Dis-count Ins.	Pro-tection of License
Maine		√								√			
Maryland	√		√	√	√	√	√	√	√				
Massachusetts													
Michigan		√										√	
Minnesota													
Mississippi													
Missouri													
Montana													
Nebraska													
Nevada													
New Hampshire		√								√	√		
New Jersey	√		√	√	√	√	√	√	√				
New Mexico	√			√	√	√	√	√	√				
New York													
North Carolina													
North Dakota													
Ohio													
Oklahoma													
Oregon	√			√	√	√		√	√				
Pennsylvania	√			√	√	√	√	√	√				
Rhode Island		√								√	√		
South Carolina													
South Dakota													
Tennessee	√		√	√	√	√		√	√				
Texas		√											√
Utah	√		√	√	√	√		√	√				
Vermont	√		√	√	√	√	√	√	√				
Virginia													
Washington	√		√	√	√	√		√	√				
West Virginia													
Wisconsin	√		√	√	√	√	√	√	√				
Wyoming													
<b>State Totals</b>	<b>13</b>	<b>11</b>	<b>8</b>	<b>13</b>	<b>12</b>	<b>12</b>	<b>9</b>	<b>13</b>	<b>11</b>	<b>3</b>	<b>7</b>	<b>3</b>	<b>3</b>

## KEG REGISTRATION

Keg registration allows tracking of beer kegs from the time of purchase to the time the empty keg is returned to the vendor. The purpose of these laws is to deter adults from providing keg beer to minors and to identify and punish those who do. The laws are also designed to protect distributors from being accused of selling kegs to underage consumers.

Keg registration laws require wholesalers or retailers to attach a tag, sticker, or engraving with an identification number to kegs exceeding a specified capacity. When the keg is purchased, the retailer records identifying information about the purchaser. A refundable deposit may also be collected, but very few states specify whether a deposit is required and, if required, the amount of the deposit. For those states that do specify, the information appears in the footnotes to the chart below.

The recent introduction of disposable kegs presents a complicating factor for keg registration laws. These containers cannot be tagged or traced easily because they are meant to be disposed of when empty. This new technology suggests that deposit provisions are particularly important as a disincentive against destroying the keg, which defeats the purpose of the law. The analysis below indicates whether a state has a keg registration law, how "keg" is defined for the purposes of the keg provision, the type of purchaser information a retailer is required to obtain (and keep on file for a specified time period), and the type of information to be placed on kegs.

Currently 22 states have keg registration provisions of the type analyzed in this document. The variables analyzed in the chart below are as follows:

- **Keg definition**—this variable describes the minimum number of gallons a keg must hold to require registration. It varies from 2 to 16 gallons. One state (Rhode Island) does not specify the number of gallons needed to constitute a keg.
- **Purchaser information**—all states that require keg registration require that the purchaser provide his or her name or signature on the registration form. Sixteen states require that the purchaser show some type of identification; eight states allow the use of a driver's license, and two allow the use of car registration information. In addition, four states require that the purchaser specify where the keg will be consumed.
- **Type of identification label**—in most states with keg registration, the ABC will either issue forms to be used to track purchasers or sales (10 states) or specify the forms to be used (13 states). In three states, the ABC department or agency must approve the form used by those who sell kegs.

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## Keg Registration

	Keg Registration Provision	Keg Definition: Minimum Number of Gallons	Purchaser Information				Type of Identification Label		
			Identification	Driver's License	Car Registration	Keg Consumption Location	Form Specified	ABC Issued	Approved by ABC
Alabama									
Alaska									
Arizona									
Arkansas									
California <sup>1</sup>	√	6	√	√			√	√	
Colorado									
Connecticut <sup>1</sup>	√	6			√		√		
Delaware									
District of Columbia	√	4	√			√		√	
Florida									
Georgia <sup>1</sup>	√	2	√	√		√	√		√
Hawaii									
Idaho	√	7.75					√	√	
Illinois									
Indiana	√	7.75					√		
Iowa									
Kansas	√	4	√	√				√	
Kentucky									
Louisiana									
Maine <sup>2</sup>	√	7.75	√				√		√
Maryland	√	4	√				√	√	
Massachusetts <sup>3</sup>	√	2	√				√	√	
Michigan									
Minnesota	√	7	√						
Mississippi									
Missouri									
Montana									
Nebraska	√	5	√	√			√		
Nevada									
New Hampshire	√	7	√	√			√		
New Jersey									
New Mexico	√	More than 6	√	√			√		
New York									
North Carolina									
North Dakota <sup>4</sup>	√	6	√	√					

<sup>1</sup> In California, Connecticut, and Georgia, a deposit is required to obtain a keg, but the deposit amount is not specified.

<sup>2</sup> In Maine, a deposit of up to \$50 is required.

<sup>3</sup> In Massachusetts, there are two types of fees required: (1) a container fee of not less than \$10.00 for each keg of six or more gallons and not less than \$1.00 for each container of less than six gallons; (2) a registration fee of \$10.00 for each keg of six or more gallons and \$4.00 for each keg of less than six gallons.

<sup>4</sup> North Dakota is the only state that specifies the type of ink to be used on the keg label.

	Keg Registration Provision	Keg Definition: Minimum Number of Gallons	Purchaser Information				Type of Identification Label		
			Identifi- cation	Driver's License	Car Registration	Keg Consumption Location	Form Specified	ABC Issued	Approved by ABC
Ohio <sup>5</sup>	√	5					√	√	
Oklahoma									
Oregon	√	7	√	√	√		√	√	
Pennsylvania									
Rhode Island	√								
South Carolina									
South Dakota <sup>6</sup>	√	8 or 16							
Tennessee									
Texas									
Utah <sup>7</sup>									
Vermont <sup>8</sup>	√	5	√						√
Virginia	√	4	√			√		√	
Washington	√	4	√			√		√	
West Virginia									
Wisconsin									
Wyoming									
<b>State Totals</b>	<b>22</b>		<b>16</b>	<b>8</b>	<b>2</b>	<b>4</b>	<b>13</b>	<b>10</b>	<b>3</b>

<sup>5</sup> In Ohio, keg registration is mandatory only if five or more kegs are being purchased.

<sup>6</sup> South Dakota statute 35-1-11 defines a keg as "an eight or sixteen gallon reusable plastic or metal container."

<sup>7</sup> In Utah, "a person may not sell, offer to sell, or otherwise furnish or supply beer to the general public in containers larger than two liters. This does not preclude licensed beer wholesalers from selling, offering to sell, or otherwise furnishing or supplying beer in containers larger than two liters to beer retailers authorized by this title to dispense beer on draft for consumption on the beer retailer's licensed premises." In addition, "a person may not purchase or possess beer in containers larger than two liters unless that person is a beer retailer authorized by this title to dispense beer on draft for consumption on the beer retailer's licensed premises."

<sup>8</sup> In Vermont, a \$25 deposit is required.

## FALSE AND MISLEADING ADVERTISING

Commercial speech is protected under the First Amendment of the U.S. Constitution, but there is no constitutional protection for false or misleading advertising. For example, any advertisement that targets underage persons for alcohol sales or consumption (the typology immediately following this one) can be interpreted as misleading because it invites an illegal transaction. Although legal interpretations of the terms "false", "misleading", and "targeting minors" are not well developed as they apply to alcohol advertising, a state with such a provision provides a basis for conducting investigations, establishing specific rules regarding ad content that is attractive to minors, and developing remedies to ensure that the ads will not be misleading.

In the typology below, we note the states with laws that expressly prohibit false and misleading advertising. All but two of these states (Maryland and Tennessee) cover all types of alcoholic beverages (distilled spirits, wine, and beer). We also list specific references to the type of advertising in which false and misleading claims are prohibited (newspapers and magazines, outdoor advertising, and electronic media). At present, 30 states have policies prohibiting false and misleading advertising.

### False and Misleading Advertising

	False and Misleading Provision	Advertising Type			
		Newspapers and Magazines	Outdoor Advertising	Electronic Media	Not Specified
Alabama	√				√
Alaska					
Arizona					
Arkansas					
California					
Colorado					
Connecticut <sup>1</sup>	√				√
Delaware	√	√	√	√	
District of Columbia	√				√
Florida					
Georgia	√				√
Hawaii					
Idaho	√	√	√	√	
Illinois	√				√
Indiana					
Iowa					
Kansas	√				√
Kentucky	√				√
Louisiana					
Maine					
Maryland <sup>2</sup>	√				√
Massachusetts	√				√
Michigan <sup>1</sup>	√				√
Minnesota	√				√
Mississippi <sup>1</sup>	√				√

<sup>1</sup> The relevant provisions for Connecticut, Michigan, and Mississippi are found outside the ABC code.

<sup>2</sup> In Maryland and Tennessee, the provisions apply only to distilled spirits and wine.

	False and Misleading Provision	Advertising Type			
		Newspapers and Magazines	Outdoor Advertising	Electronic Media	Not Specified
Missouri	√				√
Montana					
Nebraska	√				√
Nevada					
New Hampshire	√				√
New Jersey	√				√
New Mexico					
New York <sup>3</sup>	√				√
North Carolina	√				√
North Dakota					
Ohio					
Oklahoma					
Oregon	√				√
Pennsylvania	√				√
Rhode Island					
South Carolina					
South Dakota					
Tennessee <sup>2</sup>	√	√			
Texas	√	√	√	√	
Utah	√				
Vermont	√	√	√	√	
Virginia	√				√
Washington <sup>4</sup>	√		√		√
West Virginia <sup>5</sup>	√			√	
Wisconsin					
Wyoming	√				√
<b>State Totals</b>	<b>30</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>24</b>

<sup>3</sup> In New York, the provision applies only to package stores.

<sup>4</sup> Washington has two provisions that relate to false and misleading advertising: one deals with outdoor advertising, and one does not specify the type of advertising.

<sup>5</sup> Virginia does not allow radio or TV ads for alcoholic beverages. A Constitutional issue concerning content-based restrictions and First Amendment protections may be relevant here.

## ADVERTISING THAT TARGETS MINORS

Legal provisions in many states prohibit ads of any type in which advertisers intend to target children, minors, or those under the legal drinking age, or encourage them, induce them, or make a special appeal to them to buy or consume alcoholic beverages. Targeting minors provisions can also prohibit advertising that uses images of children or models who are under the legal drinking age. We have focused on the specific wording of each statute because, although a state agency can pursue legal action against such ads through false or misleading provisions, enforcement is much easier when there is a specific provision against targeting minors. On the other hand, a provision that is poorly drafted will probably undermine a general false or misleading statute; a court is likely to conclude that the state legislature intended the targeting minors provisions to override (or serve as an interpretation of) a general false and misleading provision. For this reason, if a state has a targeting minors provision, it is important that the scope of the provision not be unduly restricted.

At present, 25 states have provisions of the type analyzed for this report. The variables in the chart below are defined as follows:

- **Reference**—this variable describes how the legal provision defines the audience that is not to be targeted. Nine states use the term “children” while six states refer to those “under the legal drinking age.” Fourteen states refer to “minors”, and in Kentucky and New Mexico the audience is not specified.
- **Placement**—nine states prohibit the placement of alcohol advertisements in school-related locations (this may include schools, universities, school buses, and yearbooks). Three states prohibit advertising near churches, and three states prohibit advertisements near playgrounds.
- **Symbols**—states may also restrict the use of symbols that can be depicted in advertisements. Six states prohibit the use of symbols of children; four states restrict symbols related to holidays such as Christmas or Easter; and five states prohibit the use of toys or other items that might appeal to children.
- **Wording**—seven states prohibit advertising that “induces” minors to drink; five states prohibit advertising that “encourages” minors to drink; and eight states prohibit advertising that “makes a special appeal” to minors. In some states, more than one of these phrases may be used to prohibit advertising that targets minors.

### Advertising That Targets Minors

	Targets Minors	Reference			Placement			Symbols			Wording		
		Children	Under Legal Drinking Age	Minors	School Related	Churches	Play-grounds	Symbols of Children	Holidays	Toys	Induces	Encourages	Makes Special Appeal
Alabama	√			√									√
Alaska													
Arizona													
Arkansas													
California <sup>1</sup>	√			√						√		√	
Colorado													
Connecticut	√	√						√	√	√			
Delaware	√			√							√		
District of Columbia <sup>2</sup>	√	√							√	√			√
Florida													
Georgia	√		√										
Hawaii													
Idaho													
Illinois	√	√											√
Indiana													
Iowa													
Kansas													
Kentucky <sup>3</sup>	√												
Louisiana													
Maine	√			√							√		
Maryland													
Massachusetts													
Michigan <sup>4</sup>	√			√									
Minnesota	√	√			√			√		√			√
Mississippi <sup>5</sup>	√	√											
Missouri													
Montana													
Nebraska	√	√		√				√					
Nevada													
New Hampshire	√		√	√	√						√		
New Jersey	√	√		√				√			√		
New Mexico	√				√								
New York													
North	√		√		√						√		

<sup>1</sup> California includes language that prohibits "the use in any advertisement of alcoholic beverages of any subject matter, language, or slogan addressed to and intended to encourage minors to drink the alcoholic beverages."

<sup>2</sup> The District of Columbia prohibits "the use of any picture or illustration depicting a child or immature person...."

<sup>3</sup> Kentucky has a general alcohol advertising provision that prohibits scenes of family or the home.

<sup>4</sup> Michigan has a general alcohol advertising provision that prohibits any references to minors on alcohol cartoons or containers.

<sup>5</sup> Mississippi has a provision that prohibits TV ads five minutes before or after a program that consists primarily of animated material intended for children.

	Targets Minors	Reference			Placement			Symbols			Wording		
		Children	Under Legal Drinking Age	Minors	School Related	Churches	Play- grou:ds	Symbols of Children	Holidays	Toys	Induces	Encou- rages	Makes Special Appeal
Carolina													
North Dakota													
Ohio	√	√			√	√	√	√	√				
Oklahoma													
Oregon	√			√								√	√
Pennsylvania	√		√	√	√	√	√						
Rhode Island													
South Carolina													
South Dakota													
Tennessee													
Texas													
Utah	√			√	√			√	√			√	√
Vermont	√		√									√	√
Virginia	√			√	√					√			
Washington	√	√	√	√	√	√	√			√			√
West Virginia	√			√						√	√		
Wisconsin													
Wyoming													
<b>State Totals</b>	<b>25</b>	<b>9</b>	<b>6</b>	<b>14</b>	<b>9</b>	<b>3</b>	<b>3</b>	<b>6</b>	<b>4</b>	<b>5</b>	<b>7</b>	<b>5</b>	<b>8</b>

## HAPPY HOURS AND DRINK SPECIALS

Excessive drinking practices include happy hours, all-you-can-drink specials, unlimited quantities of alcohol for one low price (usually during specified hours), ladies' nights, two-for-one promotions, nickel pitchers, and other practices that encourage customers of bars and restaurants to drink large quantities of alcohol quickly thereby reducing the incentive to monitor consumption levels and drink responsibly. The consequences of this high-risk drinking include automobile crashes and fatalities, injuries, unplanned sexual activity, assault, rape, and property damage.

In this analysis, we focused on state statutes and regulations that specifically targeted happy hour types of promotions. At present, 27 states have such a provision. Although some states may have provisions that prohibit awarding alcohol as a prize or providing free beverages, in other parts of statutory or regulatory codes as a stand-alone statute or regulation, the information below focuses on states with provisions expressly prohibiting excessive drinking practices. Additionally, several states, such as New Hampshire, have separate provisions prohibiting advertising happy hours or happy hour-related activities, such as ladies' nights. We did not include these provisions in this analysis.

The variables found in the chart below are defined as follows:

- **Free beverages**—ten states have happy hour provisions that contain specific prohibitions against the distribution of free alcoholic beverages.
- **Additional servings**—16 states prohibit an establishment from providing additional servings of alcoholic beverages until previous servings have been consumed.
- **Reduced price – specified day or time**—18 states prohibit the sale of alcoholic beverages at reduced prices during a specified days or time.
- **Unlimited beverages – fixed price, fixed time**—23 states prohibit the sale of alcoholic beverages during a fixed period of time for a fixed price.
- **Increased volume**—12 states prohibit increasing the volume of alcoholic beverages in a drink without increasing the price.
- **Prizes**—15 states have happy hour provisions that contain specific prohibitions against giving alcoholic beverages as prizes.

### Happy Hours and Drink Specials

	Happy Hours and/or Drink Specials	Free Beverages	Additional Servings	Reduced Price - Specified Day or Time	Unlimited Beverages - Fixed Price, Fixed Time	Increased Volume	Prizes
Alabama	√			√	√		
Alaska	√	√	√	√	√		√
Arizona	√		√		√		
Arkansas							
California							
Colorado							
Connecticut	√		√		√		√
Delaware	√			√	√		√
District of Columbia							
Florida							
Georgia							
Hawaii							
Idaho							
Illinois	√		√	√	√	√	√
Indiana	√		√	√			
Iowa							
Kansas	√	√		√	√	√	√
Kentucky							
Louisiana <sup>1</sup>	√				√		
Maine	√	√	√		√		√
Maryland							
Massachusetts	√	√	√	√	√	√	√
Michigan	√				√		√
Minnesota							
Mississippi							
Missouri							
Montana							
Nebraska	√				√		
Nevada							
New Hampshire							
New Jersey	√				√	√	√
New Mexico	√	√	√	√	√		√
New York	√	√			√		
North Carolina	√			√	√		
North Dakota							
Ohio	√		√	√	√	√	√
Oklahoma	√		√	√	√	√	√
Oregon <sup>2</sup>							
Pennsylvania	√		√	√	√	√	
Rhode Island	√	√	√	√	√	√	√

<sup>1</sup> In Louisiana, selling or serving alcoholic beverages at a fixed price after 10 p.m. is prohibited.

<sup>2</sup> Although Oregon has no happy hour statute per se, it does have a provision that prohibits providing alcohol as prizes.

	Happy Hours and/or Drink Specials	Free Beverages	Additional Servings	Reduced Price - Specified Day or Time	Unlimited Beverages - Fixed Price, Fixed Time	Increased Volume	Prizes
South Carolina	√	√		√			
South Dakota							
Tennessee	√	√	√	√	√	√	√
Texas	√		√	√	√	√	
Utah							
Vermont	√		√			√	
Virginia	√	√	√	√	√	√	√
Washington	√			√			
West Virginia							
Wisconsin							
Wyoming							
<b>State Totals</b>	<b>27</b>	<b>10</b>	<b>16</b>	<b>18</b>	<b>23</b>	<b>12</b>	<b>15</b>

## Conclusion

The analyses of these policies relating to key provisions of alcohol beverage control laws reveal that there are considerable discrepancies in the ways in which states regulate the sale and consumption of alcohol in the United States. Key findings produced by the study include:

- Four states prohibit the purchase of alcohol by a minor only if the minor makes a false statement or representation of age in order to purchase the alcohol.
- Ten states allow minors to possess alcohol in any private location, including any private residence or venue.
- Three states do not prohibit the furnishing of alcohol to intoxicated individuals.
- Thirteen states require some type of mandatory Responsible Beverage Service (RBS), and 11 states provide incentives for retailers to participate. Three of the states with voluntary programs provide protection against license revocation for sales to minors or intoxicated persons if the licensee has participated in RBS training.
- Twenty-two states have passed keg registration laws, but the requirements vary widely from the definition of what constitutes a keg to the type of purchaser information required.
- Twenty-five states prohibit alcohol advertising that target minors.

Our analysis highlights the importance of understanding state laws that address underage consumption and drinking to intoxication. The presence or absence of a law may have a significant effect on the rate of alcohol-related problems in a state, particularly alcohol-related motor vehicle crashes. A law's wording, or the inclusion of an exception, may undercut the ability of law enforcement officials, regulatory agencies, and the courts to enforce it, thereby negating the law's intended effect. Research is needed to assess the impact of these laws and the variations across jurisdictions. When researchers engage in this work, it is important that they note the variations and loopholes in provisions to ensure accurate interpretation of results.

Our report provides a first, important step in assessing these state laws. There are several limitations that have already been noted. Most important, we do not include any analysis of local legislation, and we have not researched case law interpretations. These critical aspects of a comprehensive legal analysis are more appropriately accomplished on a state-by-state basis. Our goal is to provide an overview and introduction to the subject that can serve as an important starting point for researchers, policymakers, public health and law enforcement officials, and community organizations across the country.

**HB**

**430**

# SENATE COMMITTEE REPORT

DATE: 04/16/04

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Labor and Commerce Committee considered HOUSE BILL NO. 430

## HB 430 EMPLOYEES UNDER 21 AT LICENSED PREMISES

"An Act relating to employees under 21 years of age in the premises of hotels, restaurants, and eating places that are licensed to sell, serve, deliver, or dispense alcoholic beverages."

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
<i>Bettye Davis</i>	X			
<i>[Signature]</i>			<	
CHAIR: <i>[Signature]</i>	✓			

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COPIES



**State of Alaska**  
Department of Public Safety  
**Alcoholic Beverage Control Board**

Frank H. Murkowski, Governor  
William Tandeske, Commissioner

February 24, 2004

Representative Beth Kerttula  
Alaska House of Representatives  
State Capitol  
Juneau, Alaska 99801-1182

RE: HB 430

Dear Representative Kerttula:

Your office communicated with me by fax regarding concerns or comments I might have regarding HB 430. This bill addresses the issue of work permits, which include written parental or guardian consent, for eighteen year-olds working on liquor licensed premises.

I have reviewed the bill and see no reason that it should not become law. The requirement that eighteen year old persons, many of whom are emancipated from parental control and possess all rights of adults save access to tobacco and alcohol, must receive consent from parents for certain work opportunities is archaic. I believe these young adults are adequately protected by the remaining law that employment on licensed premises cannot involve serving alcohol. This change will address a disparity that now exists between the state's labor and alcohol laws and increase employment opportunities for young adults and the prospective labor pool for employers.

If you have any further specific questions, I will be happy to answer them for you.

Sincerely,

A handwritten signature in cursive script that reads "Douglas B. Griffin".

Douglas B. Griffin  
Director

cc: Lee Ann Lucas, Special Assistant, Department of Public Safety

Alcoholic Beverage Control Board  
5848 E. Tudor Road - Anchorage, AK 99507 - Voice (907) 269-0350 - Fax (907) 272-9412



August 26, 2002

Representative Beth Kerttula  
Alaska State Legislature, District 3  
Room 430  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Kerttula,

Recently when trying to hire an eighteen-year-old individual I came across one of those unfortunate situations.

The person, [REDACTED], needed a Work Permit approved by the Department Of Labor. He needed parental permission or permission from his legal guardian to complete the permit. He has no legal guardian as he is eighteen and no readily available access to parental consent.

His work permit was disapproved by the Department of Labor and I have enclosed the information they return to me with a copy of the disapproved permit.

There is no one we should be helping more than [REDACTED]. He is being brought to my premise by someone from *Dreams TFC, Inc.*, is in the Foster care system, and having a State Probation officer's assistance ([REDACTED]) yet is not hireable.

The State Statues should be changed. They should not require parental consent and should not require work permits designed for minors for an eighteen-year-old to work in a restaurant of my type.

Best regards,

H.B. Freer Jr.

Cc [REDACTED] - Foster Parent



# Representative Beth Kerttula

---

Alaska State Legislature District 3

## Sponsor Statement

### House Bill 430

**"An Act relating to employees under 21 years of age in the premises of hotels, restaurants, and eating places that are licensed to sell, serve, deliver, or dispense alcoholic beverages."**

Current law requires parental permission for 18-year-olds who are legal adults to work in establishments that serve alcohol. House Bill 430 would allow 18-year-olds to work in these establishments without parental permission. Under law, they still would not be able to sell, serve, deliver or dispense alcoholic beverages.

This change would clear up difficulties that 18-year-olds have had in finding gainful employment. In one instance, a young man was not able to get a job in a restaurant because there was no one who could sign a work permit for him. He had been a foster child and because he was 18, his foster parents no longer had the right to sign his work permit for him. House Bill 430 would fix this problem.

Thank you for your consideration of House Bill 430.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: HB 430  
(H) Publish Date: 2/26/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: Employees under 21 at Licensed Premises RDU: Labor Standards & Safety  
Sponsor: Representative Kerttula Component: Wage & Hour  
Requester: House Labor & Commerce Component Number: 345

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: None  
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)

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Grey Mitchell, Director Phone 465-4855  
Division: Labor Standards & Safety Date/Time 2/20/04 11:35 AM  
Approved by: Greg O'Claray, Commissioner Date 2/20/2004  
Agency: Department of Labor and Workforce Development

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: HB 430  
(H) Publish Date: 2/26/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
Title An act related to employees under 21 years of RDU Statewide Support  
age in the premises of hotels, restaurants, .... Component ABC Board  
Sponsor Representative Kertula  
Requester H. Labor & Commerce Component No. 2690

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

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

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)

No fiscal impact is anticipated by the Department of Public Safety.

Prepared by: Douglas B. Griffin, Director Phone 269-0350  
Division ABC Board Date/Time 2/23/04 8:25 AM  
Approved by: Commissioner William Tandeske Date 2/23/2004  
Agency Department of Public Safety

**HB**

**464**

# SENATE COMMITTEE REPORT

TE: 04/14/04

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

and Commerce Committee considered HOUSE BILL NO. 464

## HB 464 EXTEND BOARD OF REAL ESTATE APPRAISERS

Act extending the termination date of the Board of Certified Real Estate Appraisers."

recommends:

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

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

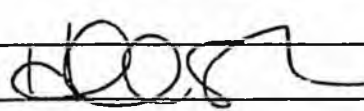
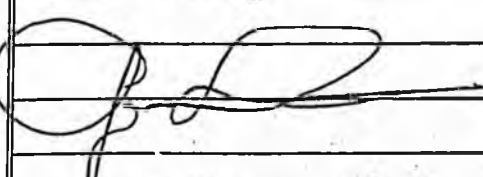
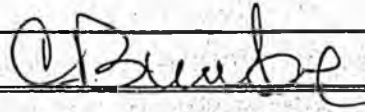
**NEW FISCAL NOTE(S):**

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			
	A			
CHAIR: 	✓			

August 18, 2003

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMUNITY AND  
ECONOMIC DEVELOPMENT  
BOARD OF CERTIFIED REAL ESTATE APPRAISERS  
SUNSET REVIEW

July 17, 2003

Audit Control Number

08-20024-03

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(20), the Board of Certified Real Estate Appraisers is scheduled to terminate on June 30, 2004. If the legislature takes no action to extend the termination date, the board would be allowed one year in which to conclude its administrative operations.

In our opinion, the termination date for the Board of Certified Real Estate Appraisers should be extended. The certification of appraisers remains a central requirement attached to various types of real estate loans made by federally insured financial institutions. We recommend the legislature extend the termination date of the Board of Certified Real Estate Appraisers to June 30, 2008.

This sunset review was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing this report are set out in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Certified Real Estate Appraisers (BCREA) to determine if the termination date for the board should be extended. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report as part of the oversight process in determining if BCREA should be reestablished. Currently, AS 08.03.010(c)(20) specifies that BCREA will terminate on June 30, 2004. If no action is taken by the legislature, the board will have one year from that date to conclude its administrative operations.

### Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of real estate appraisers.

The assessment of the operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

### Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted the majority of this review. We followed professional standards to determine that the other auditor was independent and that their work was competent and sufficient.

The major areas of our review were board proceedings, licensing, complaint investigation, and resolution functions. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Files and documentation related to individuals certified as appraisers, including those who have been issued a courtesy license to practice within Alaska.
- Files and documentation related to individuals who applied for certification as an appraiser or for a courtesy license to practice within Alaska.

- Minutes of board meetings, budget documents, and annual reports related to, or issued by BCREA.
- Complaints filed with the Division of Occupational Licensing, the Alaska State Commission for Human Rights, the Office of the Ombudsman, the Office of Victims' Rights, and the Federal Equal Employment Opportunity Commission.
- Correspondence with the Appraisal Subcommittee, a national organization that reviews the regulation and oversight of real estate appraisers.
- A report to Congress by the U.S. General Accounting Office that assessed the oversight of real estate appraisers.

Additionally, we conducted interviews with Division of Occupational Licensing staff.

## ORGANIZATION AND FUNCTION

Alaska Statute 08.87.010 establishes the Board of Certified Real Estate Appraisers (BCREA). BCREA consists of five members, specified in statute to consist of at least one each of the following: (1) a certified general real estate appraiser, (2) a certified residential real estate appraiser, (3) a mortgage banking executive, and (4) a person from the general public. The fifth board position is undesignated in statute, and is commonly referred to as the "at large" position. Currently, the member at large happens to also be a certified general real estate appraiser.

Alaska Statute 08.87.020 defines the board's authority, purpose, and scope of work. Under this statute BCREA establishes the following: (1) examination specifications for certification as a real estate appraiser; (2) rules of professional conduct to establish and maintain a high standard of integrity in the real estate appraisal profession; and, (3) regulations necessary to carry out the purposes of the statutes.

---

### BOARD OF CERTIFIED REAL ESTATE APPRAISERS *(As of June 30, 2003)*

Stephen Turner, Residential Real Estate Appraiser  
—Vice Chair (no Chair as of above date)

James A. Hage, Member at Large

Nelida Irvine, Public Member

Judy Kemplen, Mortgage Banking Executive

Steven J. MacSwain, MAI, General Real Estate Appraiser

---

BCREA certifies general real estate appraisers, residential real estate appraisers, institutional appraisers,<sup>1</sup> and registers appraiser trainees. Courtesy licenses are also issued for real estate appraisers who are certified or licensed in other states but are temporarily practicing in Alaska.

Qualifications for certification as a general and residential real estate appraiser include education related to real estate appraisal, experience in real property appraisal, and passing an examination endorsed by the board. The qualifications for receiving an institutional appraisal certificate are that the applicant is a full-time employee of a financial institution with offices in Alaska, and the applicant meets education and testing requirements. The requirement to become a registered trainee includes 75 hours of instruction in courses related to real estate appraisal theory or practices from an organization approved by the board.

Real estate appraisal certificates are renewed biennially. The next biennial renewal date is June 30, 2005. In order to renew their certification, certified appraisers must complete a renewal application, provide evidence of continuing education, and remit a license fee. Individuals certified or licensed as appraisers in other jurisdictions can obtain a courtesy license to conduct appraisals in Alaska. Such licenses are issued for a single appraisal assignment, and individuals are limited to only one courtesy license every twelve months.

---

<sup>1</sup> While BCREA has the authority to certify institutional appraisers, as of the date of this report, no individuals have applied for this certification.

### Duties of the Department of Community and Economic Development

The Department of Community and Economic Development, Division of Occupational Licensing provides administrative and investigative assistance to BCREA. This includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings.

Alaska Statute 08.01.065 mandates the Department of Community and Economic Development, with the concurrence of the board, adopt regulations to establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers the Division of Occupational Licensing with the authority to act on its own initiative or in response to a complaint. The division may:

1. Conduct an investigation if it appears a person is engaged in, or is about to engage in, a prohibited professional practice.
2. Bring an action in superior court to enjoin the act.
3. Examine the books and records of an individual.
4. Issue subpoenas for the attendance of witnesses and records.

## BACKGROUND INFORMATION

An appraisal is a decision-making tool used to facilitate a real estate transaction. The primary role of appraisals in the loan underwriting process is to provide evidence that the collateral value of the property is sufficient to avoid losses on loans if the borrower was unable to repay the loan. Consumers often mistakenly assume that appraisals are intended to validate the purchase price of the property in question. In a loan transaction, the lender rather than the borrower engages the appraiser and this usually occurs after the borrower has agreed to purchase the property. The primary intent of federal statutory appraisal reforms was to protect the federal deposit insurance funds – and, by extension, mortgage lenders – from avoidable losses.

In 1986, the House Committee on Government Operations issued a report concluding that faulty and fraudulent appraisals contributed significantly to the losses that the federal government suffered during the savings and loan “crisis.”<sup>2</sup> In response to the “crisis,” Congress passed the 1989 Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA). Congress set out provisions in Title XI of FIRREA that were intended to ensure federally-related transactions had appraisals that were: (1) performed by real estate appraisers who met minimum qualifications criteria; and, (2) conducted in compliance with uniform standards.<sup>3</sup>

Title XI established a complex oversight structure for real estate appraisals and appraisers that involves private, federal, and state entities (see table, below).

<b>TITLE IX REGULATORY OVERSIGHT STRUCTURE AND ENTITIES</b>		
<b>PRIVATE</b>	<b>FEDERAL</b>	<b>STATE OF ALASKA</b>
<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center; margin: 0;"><b>Appraisal Founation</b></p> <ul style="list-style-type: none"> <li>▶ Appraisal Standards Board</li> <li>▶ Appraisal Qualifications Board</li> </ul> </div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center; margin: 0;"><b>Appraisal Subcommittee</b></p> </div> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center; margin: 0;"><b>Federal Financial Regulators</b></p> <ul style="list-style-type: none"> <li>▶ Federal Reserve System</li> <li>▶ Federal Deposit Insurance Corporation</li> <li>▶ Office of the Comptroller of the Currency</li> <li>▶ Office of Thrift Supervision</li> <li>▶ National Credit Union Administration</li> </ul> </div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center; margin: 0;"><b>Board of Certified Real Estate Appraisers</b></p> </div>

<sup>2</sup> *Impact of Appraisal Problems on Real Estate Lending, Mortgage Insurance, and Investment in the Secondary Market*, H.Rep. 99-891 at 4-6 (Sept. 25, 1986), House Committee on Government Operations, 99th Congress, 2nd session.

<sup>3</sup> U.S. Code 3331 - 3351, Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

### Appraisal Foundation

The Appraisal Foundation, a nonprofit educational organization composed of groups from the real estate industry, provides the organizational framework for the Appraisal Standards Board (ASB) and the Appraiser Qualifications Board (AQB) to carry out their responsibilities related to Title XI.<sup>4</sup> The Appraisal Foundation was founded in 1987 by eight leading professional appraisal organizations in the United States to foster professionalism in real estate appraising. ASB and AQB establish minimum standards for developing and reporting an appraisal and the minimum criteria for certified appraisers in connection with federally related transactions.

ASB is responsible for setting standards for appraisals and is composed of six appraisers who are appointed for three-year terms by the Board of Trustees of the Appraisal Foundation. ASB's minimum standards for appraisals are contained in the Uniform Standards of Professional Appraisal Practice (USPAP). Under Title XI, these minimum standards apply to all federally-related transactions. The standards cover both of the steps appraisers must take in developing appraisals and information the appraisal report must contain.

AQB is composed of five appraisers who are appointed for three-year terms by the Board of Trustees of the Appraisal Foundation, establishes the minimum education, experience, and examination requirements for state-certified real estate appraisers (set out in Real Property Appraiser Qualification Criteria and Interpretations of the Criteria). In addition, AQB performs a number of ancillary duties related to real property and personal property appraiser qualifications. The AQB's criteria covers four categories of appraisers—certified general, certified residential, licensed, and trainee—each with specific education, experience, examination, and continuing education requirements.

### Appraisal Subcommittee

The Appraisal Subcommittee (ASC) was established by U.S. law as the principal federal agency responsible for monitoring the activities of the other components of the real estate appraisal industry oversight structure. Specifically, ASC is responsible for:

- Monitoring and reviewing the practices, procedures, activities, and organizational structure of the Appraisal Foundation—including making grants in amounts that it deems appropriate to the Appraisal Foundation to help defray costs associated with its Title XI activities;

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<sup>4</sup> The 2002 sponsors of the Appraisal Foundation consisted of eight appraisal organizations, four affiliate organizations (representing primarily the users of appraisal services), and one international appraisal organization. In addition, over 80 organizations, corporations, and government agencies are affiliated with the Appraisal Foundation.

- Monitoring the requirements established by the states, territories, and the District of Columbia and their appraiser regulatory agencies for the certification and licensing of appraisers;
- Monitoring the requirements established by the federal financial institution regulators regarding appraisal standards for federally related transactions and determinations of which federally-related transactions will require the services of state-licensed or state-certified appraisers;
- Maintaining a national registry of state-licensed and state-certified appraisers who may perform appraisals in connection with federally-related transactions; and,
- Transmitting an annual report to Congress regarding the activities of ASC during the preceding year.

ASC has six board members and seven staff members. Each of the respective board members is designated by the head of the Department of Housing and Urban Development's Federal Housing Administration (HUD/FHA) and the heads of the following five financial institution regulatory agencies:

1. Board of Governors of the Federal Reserve System,
2. Federal Deposit Insurance Corporation,
3. Office of the Comptroller of the Currency,
4. Office of Thrift Supervision, and
5. National Credit Union Administration.

State Oversight—Board of Certified Real Estate Appraisers

States may establish, under Title XI, their own agencies to certify and license appraisers. In 1990, the Alaska State Legislature created the Board of Certified Real Estate Appraisers (BCREA) in response to FIRREA. Although BCREA is responsible for the certification of appraisers, ASC has a role in ensuring Alaska's qualifications satisfy Title XI objectives. Federal agencies and federal financial institutions may not accept appraisals from BCREA certified appraisers if the subcommittee issues a written finding that:

- a. BCREA has failed to recognize and enforce the standards, requirements, and procedures of Title XI;
- b. BCREA does not have enough authority to carry out its functions under Title XI; or,

- c. BCREA does not make decisions on appraisal standards and qualifications or supervise appraiser practices in a method that carries out the purposes of Title XI<sup>5</sup>.

In addition, BCREA is required to provide ASC with the names of those appraisers who become certified or licensed in accordance with Title XI and to collect from them an annual registry fee that goes to the subcommittee.

In August 2001, BCREA was the subject of an ASC review. ASC found all but one of the eight earlier review findings had been appropriately resolved by the board.<sup>6</sup> In their report, ASC commented that "*Alaska needs to revise its [Courtesy License] regulations to comply with Title XI of [FIRREA]...*" In addition, ASC developed two new findings that required action by the board. The board is proposing regulatory and procedural changes to implement all ASC recommendations made in the 2001 report.

Recent federal study determined oversight of real estate appraisers should be enhanced.

In May 2003, the U.S. General Accounting Office (GAO) issued a report regarding oversight of the real estate appraisal industry. The primary policy question addressed in the report was whether certain provisions of FIRREA that require certification of real estate appraisers are still necessary.

GAO was asked to conduct this review because some industry observers believed the appraisal industry regulations, required by FIRREA, are no longer needed.<sup>7</sup> Others argued that the law's purpose and scope should be expanded.

In the report,<sup>8</sup> GAO concluded there was not only a continuing need for appraisers to be certified and regulated at the state level, but federal regulatory oversight should be enhanced. Among other things, GAO recommended that ASC "*develop and apply consistent criteria for determining and reporting states' compliance levels with Title XI.*" GAO also recommended that ASC "*explore potential options for assisting states in carrying out their [regulatory oversight] activities, particularly for investigating appraiser complaints.*"

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<sup>5</sup> 12 USC § 3347(a), (b) (2000).

<sup>6</sup> BCREA is subject to ASC reviews on a triennial basis. Prior to the 2001 review, the most recent ASC review was conducted in August 1998.

<sup>7</sup> More specifically, the report commented that some observers believed both "*the risk to federal deposit insurance funds and the lack of uniform [appraisal] standards and [appraiser] qualifications*" no longer existed.

<sup>8</sup> An abridged version of the GAO report is included as Appendix A to this report beginning on page 19. A complete report can be found at [www.gao.gov/cgi-bin/getrpt?GAO-03-404](http://www.gao.gov/cgi-bin/getrpt?GAO-03-404).

## REPORT CONCLUSIONS

In accordance with AS 08.03.010(c)(20), the Board of Certified Real Estate Appraisers (BCREA) is presently scheduled for termination on June 30, 2004. If no action is taken by the legislature, the board has one year in which to conclude its affairs and will be dissolved at June 30, 2005.

The BCREA has been given the responsibility in AS 08.87.020 to: *(1) establish the examination specifications for certification as a general real estate appraiser, as a residential real estate appraiser, and as an institutional appraiser; (2) adopt rules of professional conduct to establish and maintain a high standard of integrity in the profession; and, (3) adopt regulations necessary to carry out the purpose of [the appraiser statute]....* As discussed in the Background Information section, a recent GAO study concluded that, nationwide, there is an ongoing need not only to maintain, but also to enhance these oversight functions.

The use of state certified real estate appraisers will be a continuing requirement for Alaska's financial institutions to qualify for federal deposit insurance and to participate in selling mortgage loans to federal government-sponsored enterprises.<sup>9</sup> Failure to maintain a real estate appraiser certification program that meets federal requirements could cause the financial institutions – and by extension, the citizens – of the State to not only lose the opportunity to participate in a number of federally-sponsored real estate loan programs, but also the ability to obtain federal deposit insurance. In this context, we recommend that the legislature extend BCREA's termination date to June 30, 2008.

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<sup>9</sup> Government-sponsored enterprises include such entities as the Federal Home Loan Mortgage Corporation (generally referred to as "Freddie Mac") and the Federal National Mortgage Association (generally referred to as "Fannie Mac").

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## A NALYSIS OF PUBLIC NEED D

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were unable to cover within the scope of our review.

### *The extent to which the board, commission, or program has operated in the public interest.*

As reflected in the discussion under the Background Information section, the original impetus for establishing the Board of Certified Real Estate Appraisers (BCREA) was the federal law passed by Congress responding to the savings and loan "crisis" of the 1980s. Accordingly, most of the regulatory and statutory requirements that BCREA responds to is set by organizations and entities established by, or affiliated with, the federal government.

As part of that federal oversight, the board's regulations and activities are periodically reviewed by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council.

In August 2001, BCREA was the subject of an ASC review. ASC found all but one of the eight earlier review findings had been appropriately resolved by the board.<sup>10</sup> In their report, ASC commented that "*Alaska needs to revise its [Courtesy License] regulations to comply with Title XI of Financial Institutions Reform, Recovery, and Enforcement Act [FIRREA]...*" In addition, ASC developed two new findings that required action by the board. The board is proposing regulatory and procedural changes to implement all ASC recommendations made in the 2001 report.

### *The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.*

Most of the board's revenue is from certification, licensing, and renewal fees. Renewals are conducted on a biennial basis. This creates a two-year cycle in the board's revenues, with the board receiving most of its revenues during the renewal period. We reviewed the internal records maintained by the Occupational Licensing (OccLic) for revenues and expenditures associated with the Board of Certified Real Estate Appraisers. We did not audit this information, but present it on the following page for general information purposes.

AS 08.01.065(c) requires "...that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation." As the schedule on the

<sup>10</sup> BCREA is subject to ASC reviews on a triennial basis. Prior to the 2001 review, the most recent ASC review was conducted in August 1998.

following page reflects, the board was running a substantial deficit at the end of FY 02. However, for the FY 03/04 biennial licensing period, license renewal fees were increased more than 45% – from \$515 to \$750. Additionally, board expenses for FY 03 are projected to decrease from the previous fiscal year.

<b>State of Alaska</b> <b>Board of Certified Real Estate Appraisers</b> <b>Schedule of License Revenues and Board Expenditures</b> <b>FY 99 - FY 02</b> <b>(Unaudited)</b>				
	<u>FY 02</u>	<u>FY 01</u>	<u>FY 00</u>	<u>FY 99</u>
Revenue	\$ 18,676	\$ 77,645	\$ 8,680	\$ 77,355
Direct Expenses				
Personal Services	26,653	27,258	20,757	24,652
Travel	4,408	920	2,769	3,397
Contractual	23,227	17,339	7,881	13,943
Supplies	131	30	78	165
Equipment	-	-	-	-
Total Expenses	54,419	45,547	31,485	42,157
Indirect Expense	6,281	7,423	7,207	7,044
Total Expenses	60,700	52,970	38,692	49,201
Annual Surplus (Deficit)	(42,024)	24,675	(30,012)	28,154
Beginning Cumulative Surplus (Deficit)	9,690	(14,985)	14,954	(13,200)
Unallocated Administrative Indirect Revenue	20	-	73	-
Ending Cumulative Surplus (Deficit)	\$ (32,314)	\$ 9,690	\$ (14,985)	\$ 14,954

*The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.*

As discussed previously, during August 2001 the board was reviewed by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council. ASC presented BCREA with a list of recommendations which the board is implementing through various proposed regulatory and procedural changes.

These changes include clarifying the board's policy regarding the definition of "assignment" for courtesy license purposes, increasing the number of courtesy licenses a person may be issued within a year (from one to two per year), and lowering the fees charged for courtesy licenses, which ASC considered excessive. ASC also requested that BCREA require experience logs from certified residential real estate applicants, just as it does for certified general real estate applicants. Once implemented, these changes will bring Alaska regulations into compliance with Title XI of FIRREA.

As a result of one lengthy investigation, the board has sought to define moral turpitude in the regulation. BCREA recommended other statutory and regulatory changes primarily related to work experience, education requirements, and certification and renewal fees.

*The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.*

The public received notice of all meetings consistent with the requirements of statute and regulation. The agenda of items to be discussed was available before scheduled meetings. A public comment period has been set aside in the agenda for each board meeting.

Interested parties can attend meetings in person or by teleconference. In addition to accepting public comment at the meetings, the board regularly discussed correspondence from various individuals, agencies and other interested parties. OccLic forwards public comment and concerns to the board for consideration during board meetings.

***The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.***

Draft regulations developed by the board were properly advertised for the required amount of time. Public notices of regulatory hearings were published in major newspapers and on the board's website. The board accepted public comment at meetings. We found no indication in the BCREA records that public testimony has been inappropriately restricted by the board.

***The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.***

During the 48-month period from July 1, 1999 through June 30, 2003, the Division of Occupational Licensing opened 21 investigative cases related to individuals certified by the board. Almost half of the cases (9) involved complaints made by clients or individuals from the general public. Most of the complaints (15) involved alleged incompetence or professional ethics violations by the appraisers.

Of the 17 cases closed as of the date of our review, two resulted in licensure action involving the voluntary surrender of the appraiser's certificate. Of the remaining cases, 12 were closed with a finding of no violation, two were closed with warning letters issued by the board, while one case was closed through a referral to other investigative agencies (the Alaska Department of Labor and Workforce Development and the Internal Revenue Service).

Of the four cases not closed as of the date of our review, three had been opened within the previous 120 days. Of the three opened cases, two are in the process of closure and one is awaiting expert review by a board member. The remaining open case was still under active investigation and was being reviewed by the Department of Law.

We have reviewed the nature and extent of complaints filed involving appraisers. In our view OccLic, in conjunction with the board, has proceeded in a manner consistent with the potential threat the complaints posed to the public welfare.

There were no complaints filed with the Office of the Ombudsman or the Office of Victims' Rights for the period under review.

*The extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.*

From FY 00 through FY 02 the board approved and certified 32 new appraisers and issued 35 courtesy licenses. We found no instances where the board issued a certificate or license to an unqualified candidate, nor did we find any instances where a qualified candidate was denied certification or licensure. The table below summarizes licensing activity for the prior three fiscal years, listing the number of new certificates or licenses issued each year for each certificate or license type, as well as the number of current certificates.

	FY 00	FY 01	FY 02	Total	Current Certificates as of June 30, 2002
<b>New Certificates Issued</b>					
General Appraisers	0	4	0	4	70
Residential Appraisers	6	4	7	17	81
Institutional Appraisers	0	0	0	0	0
Total	6	8	7	21	151
Registered Appraiser Trainees	6	1	4	11	9
Courtesy Licenses Issued	13	12	10	35	--

*The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.*

We found no evidence of the board not complying with state personnel practices, including affirmative action, in the qualifying process of applicants. Each time the board has denied an applicant's certification, reasoning has been based on requirements set out by statute and regulation, not on the personal attributes of applicants. The reasons for denials are stated in writing, with the applicant always informed of their rights and the process in which they can contest or appeal any denial of licensure.

*The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interest of the public and to comply with the factors enumerated in AS 44.66.050.*

As noted, much of the impetus and oversight of BCREA stems from actions taken by oversight organizations and entities affiliated with the federal government. In recent years, BCREA's licensing fees have not been set at a sufficiently high-enough level to cover the board's costs. However, as noted earlier in this section, the board has adopted a 45% increase in appraiser certification renewal fees and appears to have decreased board expenses.

During our review of the board's composition, we noted AS 08.87.010 requires two of the board members to be "licensed" real estate appraisers in the State of Alaska.

In the statutes, real estate <sup>certified</sup> appraisers are referred to as being certified, but state law does not use the term licensed. We encourage the department, when proposing sunset extension legislation, to consider amending AS 08.87.010 and make the nomenclature consistent within the statute.

APPENDIX A

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May 2003

REGULATORY  
PROGRAMS

Opportunities to  
Enhance Oversight of  
the Real Estate  
Appraisal Industry



G A O

Accountability \* Integrity \* Reliability

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Highlights of GAO-03-404, a report to Congressional Requesters

## REGULATORY PROGRAMS

# Opportunities to Enhance Oversight of the Real Estate Appraisal Industry

### Why GAO Did This Study

Since the passage of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the appraisal and mortgage lending industry has changed dramatically. Some have concluded that the law is obsolete because the problems Title XI was intended to address—the risk to federal deposit insurance funds and the lack of uniform standards and qualifications—no longer exist. Others argue that the law's purpose and scope should be expanded. To help Congress better understand these issues, GAO looked at the roles of the private, state, and federal entities that oversee the appraisal industry, the challenges Title XI presented to these entities, and industry participants' concerns about the effectiveness of the Title XI regulatory structure.

### What GAO Recommends

Among other things, the Chairman of the Appraisal Subcommittee should:

- develop and apply consistent criteria for determining and reporting states' compliance levels with Title XI;
- explore potential options for assisting states in carrying out their Title XI activities, particularly for investigating appraiser complaints; and
- explore alternatives for providing future Title XI grant funding to the Appraisal Foundation and its two boards.

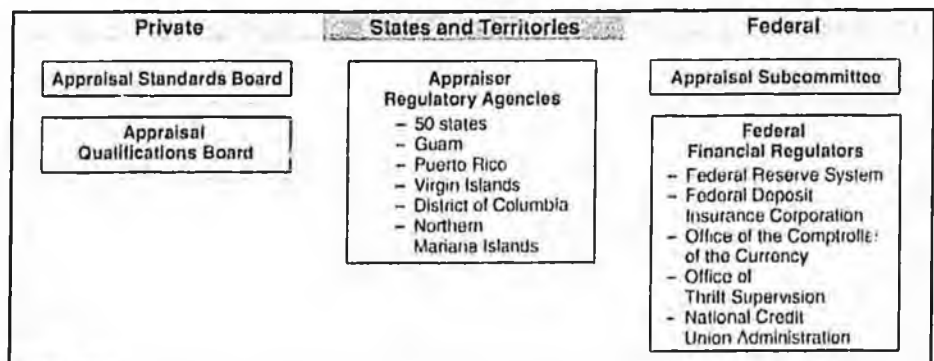
### What GAO Found

Title XI created a complex oversight structure for real estate appraisals and appraisers that involves private, state, and federal entities. Two private entities establish uniform rules for real estate appraisals and set minimum criteria for certifying appraisers. State regulatory agencies certify appraisers based on these criteria. The federal financial regulators oversee financial institutions' use of appraisals, and a federal agency, the Appraisal Subcommittee, monitors and coordinates the functions of the parties involved in regulating appraisals and appraisers.

All of these entities except the federal financial regulators identified potential impediments to carrying out their Title XI responsibilities. The two private entities stated that fund limitations could impede their ability to ensure that development of standards and qualifications evolve with changing conditions. State agencies said that funding shortfalls hindered their ability to enforce compliance. Appraisal Subcommittee staff reported that rule-making authority and additional enforcement sanctions could facilitate its oversight of state compliance with Title XI.

Industry participants raised concerns about aspects of the Title XI regulatory system for appraisers. They cited differences in state regulation that affect both lenders and appraisers, gaps in Title XI's coverage—for example, transactions of less than \$250,000 do not require an appraisal—high fees and burdensome processes for having appraiser education courses approved, and weak enforcement and complaints processing. Some industry participants felt that states, traditionally involved in regulating professions, alone should regulate the appraisal industry. Others felt that the current structure needed a significant overhaul to become effective.

Title XI Regulatory Oversight Structure and Entities



Source: GAO

[www.gao.gov/cgi-bin/getrpt?GAO-03-404](http://www.gao.gov/cgi-bin/getrpt?GAO-03-404).

To view the full report, including the scope and methodology, click on the link above. For more information, contact David G. Wood (202) 512-8678 or woodd@gao.gov.



G A O

Accountability • Integrity • Reliability

United States General Accounting Office  
Washington, D.C. 20548

May 14, 2003

The Honorable Paul S. Sarbanes  
Ranking Minority Member  
Senate Committee on Banking,  
Housing, and Urban Affairs  
United States Senate

The Honorable Zell Miller  
United States Senate

Recent predatory mortgage lending cases, involving fraudulent and inflated appraisals, have highlighted the need for accurate real estate appraisals in preventing losses to the federal government and significant financial harm to individual consumers. When making mortgage loans, lenders need an objective and accurate assessment of the value of properties used as collateral to help avoid losses in the event that borrowers do not repay the loans. Congress enacted Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) in response to concerns that faulty and fraudulent appraisals played a major role in the savings and loans crisis of the 1980s. Title XI provisions address both the quality of *appraisals* and the qualifications of *appraisers*. Specifically, Title XI requires that real estate appraisals used in connection with federally related transactions be performed (1) in writing, in accordance with uniform professional standards, and (2) by individuals whose competency has been demonstrated and whose professional conduct is subject to effective supervision.<sup>1</sup>

To ensure that the purpose of the legislation was carried out, Title XI created a regulatory structure to monitor and oversee the real estate appraisal industry. Among other things, it established a federal entity called the Appraisal Subcommittee to monitor the Title's implementation. Title XI provides for national uniformity in appraisal standards and minimal national qualification requirements for some, but not all, appraisers. The Title XI regulatory structure was set up primarily to protect federally

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<sup>1</sup>As defined in Title XI, federally related transactions are real estate transactions involving financial institutions regulated by the federal government. These include banks, thrifts, and credit unions. Real estate transactions of mortgage bankers, brokers, pension funds, and insurance companies are not included.

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insured depository institutions from losses and by extension the federal deposit insurance funds.

Because of your concerns about the effectiveness of the current regulatory structure, you requested that we assess the appraisal oversight structure established in response to Title XI. As agreed with your offices, this report describes (1) the specific responsibilities under Title XI of the private, state, and federal entities that oversee the appraisal industry and the way these entities perform their roles; (2) factors that these entities identified as potential impediments to carrying out their Title XI responsibilities; and (3) concerns expressed by regulatory entities and industry participants about the effectiveness of the existing regulatory structure.

To answer these questions, we reviewed FIRREA and its legislative history; interviewed representatives of the private, state, and federal entities involved in the Title XI regulatory scheme; and, using a mailed questionnaire, surveyed appraiser regulatory agencies in the 50 states, the District of Columbia, and 4 U.S. territories.<sup>2</sup> A copy of the questionnaire, including summary responses to each question, can be found in appendix I. Additionally, we contacted industry participants, including trade groups that represent appraisers and lenders; Fannie Mae and Freddie Mac, two government-sponsored enterprises (GSE) that establish standards for appraisals used in connection with mortgages that they purchase; the Department of Housing and Urban Development (HUD), which establishes requirements for appraisals used in connection with mortgages it insures; representatives of appraiser education providers; and academic experts on issues related to real estate appraisals. We also obtained and reviewed records of the Appraisal Subcommittee's state oversight activities, as well as information on appraisers maintained in the subcommittee's national registry database. We conducted our work between March 2002 and March 2003 in accordance with generally accepted government auditing standards. Appendix II provides a detailed discussion of our scope and methodology, and appendix III contains a list of the entities that we contacted.

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<sup>2</sup>The territories included in our survey are Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands. The only other U.S. territory—American Samoa—does not have a regulatory oversight structure for appraisers because real estate there can only be inherited. In this report, the term "states and territories" refers to the 50 states, the District of Columbia, and the 4 territories.

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## Results in Brief

Title XI created a complex regulatory system that relies upon the actions of private, state, and federal entities to help assure the quality of appraisals and the qualifications of appraisers used in federally related transactions.

- The two private entities—the Appraisal Standards Board and Appraiser Qualifications Board—respectively establish (1) uniform rules for preparing and reporting real estate appraisals and (2) minimum qualification criteria for certified real estate appraisers. Certified real estate appraisers are one of the two categories of appraisers listed in Title XI, the other being licensed real estate appraisers.
- Title XI defers to the states with respect to the minimum qualification criteria for the licensed appraisers. In addition, Title XI relies on the states to (1) implement the certification and licensing of all real estate appraisers and (2) monitor and supervise compliance with appraisal standards and requirements. To assure the availability of certified and licensed appraisers, all of the states and territories have adopted structures to regulate and supervise the appraisal industry. These structures typically consist of a state regulatory agency coupled with a board or commission to establish education and experience requirements, license and certify appraisers, and monitor and enforce appraiser compliance.
- The federal financial institution regulators—defined in Title XI as the Federal Reserve System (FRS), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA)—are responsible for ensuring that federally insured depository institutions comply with Title XI requirements. To meet these responsibilities, the regulators have (1) adopted rules and policies specifying transactions for which regulated financial institutions are required to obtain an appraisal by a certified or licensed appraiser, (2) developed examination procedures to ensure that regulated financial institutions are in compliance with Title XI, and (3) appointed agency representatives to the Appraisal Subcommittee.
- The Appraisal Subcommittee is responsible for monitoring the implementation of Title XI by all parties—private, state, and federal. The subcommittee monitors the efforts of the federal financial institution regulators in developing and adopting appraisal-related regulations and policies, conducts periodic reviews of each state's licensing and

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certification program, and provides grants to the Appraisal Foundation to support the Title XI-related activities of its two boards—Appraisal Standards Board and Appraiser Qualifications Board.

The private, state, and federal entities involved in the Title XI regulatory structure described a number of factors that they believe could constrain their ability to perform more effectively and efficiently. For example, officials of the Appraisal Standards Board and the Appraiser Qualifications Board told us that insufficient federal grant funding may impede their ability in the future to ensure that standards and qualifications evolve with changing conditions, such as how to appraise contaminated or polluted properties. State appraiser agencies—which are funded at the state level—reported resource limitations as the primary impediment in carrying out their oversight responsibilities. For example, of the 54 states and territories that responded to our survey, 26 reported that the current number of investigators was insufficient for meeting its regulatory responsibilities, 37 cited a need for increasing the staff directed at investigations, and 22 cited a need for more resources to support litigation. Officials of the five federal financial institution regulators reported no major impediments to accomplishing their Title XI responsibilities. The Appraisal Subcommittee reported that rule-making authority and additional enforcement sanctions could facilitate its oversight of state compliance with Title XI. Subcommittee officials stated that the only enforcement action they can take under Title XI is to decertify a state, which would prohibit all licensed or certified appraisers from that state from performing appraisals in conjunction with federally related transactions. Subcommittee officials stated that using this sanction would have a devastating effect on the real estate markets and financial institutions within the state. However, the Appraisal Subcommittee stated that it has always been able to achieve states' compliance under the current enforcement and regulatory structure.

In addition to the impediments described above, officials of the regulatory agencies, appraiser trade groups, education providers, mortgage industry, HUD, and the GSEs raised concerns about the Title XI regulatory structure. However, there was no clear consensus regarding the need for or impact of possible changes. Some industry participants stated that a growing number of real estate transactions, such as those placed through mortgage brokers and those involving dollar amounts below the threshold level established by the federal financial institution regulators, are not universally subject to Title XI appraisal requirements. In addition, some industry participants cited concerns with the lack of a national qualification standard for the licensed real estate appraiser category. Education providers and appraiser

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trade groups expressed concerns about the Appraiser Qualifications Board's fees and requirements for instructor certification and course approval. Federal and state regulatory officials expressed concern about the apparent reluctance of lending institutions to make referrals or complaints regarding questionable appraisals they identify. HUD and GSE officials expressed concerns about a lack of consistent and effective enforcement actions by the states on referred cases and the adequacy of the Appraisal Subcommittee's oversight of state programs. This report makes recommendations to the Appraisal Subcommittee intended to enhance the effectiveness of the existing regulatory structure.

We received written comments on a draft of this report from the Appraisal Subcommittee, the Appraisal Foundation, HUD, Fannie Mae, and Freddie Mac. In addition, we received technical comments from the federal financial institutions regulators, who indicated that their overall comments had been incorporated into those provided by the Appraisal Subcommittee. The Appraisal Subcommittee agreed to take action on our recommendation to develop and apply consistent criteria for determining and reporting states' compliance with Title XI, and did not comment on our recommendation for greater coordination with HUD, Fannie Mae, and Freddie Mac on referrals of problem appraisers. Concerning the remaining two recommendations, the Appraisal Subcommittee

- agreed that additional funding for the states would improve compliance with Title XI, but stated that the Subcommittee is not the answer to that issue. Because the recommendation is to explore additional funding as well as other options for assisting the states, we did not revise it.
- agreed that the Appraisal Foundation faces future grant funding constraints, but stated that using the Subcommittee's surplus is not a long-term solution. We modified the report to emphasize that we are recommending that the subcommittee explore options, including drawing on the subcommittee's surplus, if necessary, for addressing future Appraisal Foundation grant shortfalls.

HUD agreed with our recommendation for greater coordination on referrals of problem appraisers to state appraiser agencies. Both Fannie Mae and Freddie Mac expressed concern about this recommendation, commenting that they are not regulatory entities. We revised the wording of our recommendation to emphasize the role that HUD, Fannie Mae, and Freddie Mac can play in helping the subcommittee carry out its oversight responsibilities.

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## Background

An appraisal is a decision-making tool used to facilitate a real estate transaction. The primary role of appraisals in the loan underwriting process is to provide evidence that the collateral value of the property is sufficient to avoid losses on loans if the borrower was unable to repay the loan. Consumers often mistakenly assume that appraisals are intended to validate the purchase price of the property in question. Furthermore, appraisals are sometimes confused with home inspections, which are intended to warn consumers about serious defects in the home being purchased that should be repaired. In a loan transaction, the lender rather than the borrower engages the appraiser and this usually occurs after the borrower has agreed to purchase the property. The primary intent of the appraisal reforms contained in Title XI was to protect the federal deposit insurance funds—and, by extension, mortgage lenders—from avoidable losses.

An appraisal is an opinion of the value of a property as of a specific date. Appraisers generally consider the property's value from three points of view—cost, income, and comparable sales—and determine an estimated value based upon weighing the three valuation methods. The cost approach is based on an estimate of the value of the land plus what it would cost to replace or reproduce the improvements minus the physical deterioration, functional obsolescence, and economic obsolescence. The income approach is of primary importance in ascertaining the value of income producing properties and is an objective estimate of what a prudent investor would pay based upon the net income the property produces. The comparable sales approach compares and contrasts the property under appraisal with recent offerings and sales of similar property. This approach is usually considered the most appropriate valuation approach for estimating the value of residential real estate property.

In 1986, the House Committee on Government Operations issued a report concluding that faulty and fraudulent appraisals were an important contributor to the losses that the federal government suffered during the savings and loan crisis.<sup>3</sup> In response, Congress incorporated provisions in Title XI of FIRREA that were intended to ensure that federally related transactions had appraisals that were (1) performed by real estate

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<sup>3</sup>*Impact of Appraisal Problems on Real Estate Lending, Mortgage Insurance, and Investment in the Secondary Market*, H.Rep. 99-891 at 4-6 (Sept. 25, 1986), House Committee on Government Operations, 99th Congress, 2<sup>nd</sup> session.

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appraisers that had met minimum qualifications criteria and (2) conducted in compliance with uniform standards.

In addition to those identified in Title XI, there are other federal and government sponsored entities that have roles with respect to oversight of the real estate appraisal industry. Among these entities, the most important with respect to appraisal oversight issues are the HUD's Federal Housing Administration (HUD/FHA) and the two large GSEs that purchase residential loans in the secondary market—Fannie Mae and Freddie Mac. HUD/FHA uses appraisals to determine a property's eligibility for mortgage insurance and to estimate the value of a property for mortgage insurance purposes. Certified and licensed appraisers wishing to perform appraisals for HUD/FHA loans must first be placed on the FHA Roster of Appraisers, which requires the appraiser to pass a HUD/FHA examination on appraisal methods and meet other eligibility requirements. Both Fannie Mae and Freddie Mac consider appraisals or evaluations of the property value as a vital part of their risk analysis for loans that they purchase. For those loans for which Fannie Mae and Freddie Mac require an appraisal, the lender is required to use an appraiser that is state licensed or certified in accordance with the provisions of Title XI.<sup>4</sup> Fannie Mae and Freddie Mac largely hold the lender responsible for the selection and quality control of the appraiser. As such, Fannie Mae and Freddie Mac do not maintain a list of approved appraisers.

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## Title XI Created a Complex Appraiser Regulatory Oversight Structure

Various private, state, and federal entities play a role with respect to the Title XI regulatory structure (table 1). Private entities—the Appraisal Standards Board (ASB) and the Appraiser Qualifications Board (AQB)—establish minimum standards over the development and reporting of real estate appraisals and minimum qualification criteria for certified appraisers. States conduct the certification and licensing of appraisers, including setting education and experience requirements that, at minimum, must meet AQB criteria for certified appraisers and enforcing compliance with appraisal standards. FRS, FDIC, OCC, OTS, and NCUA—hereinafter referred to as the federal financial institution regulators—issue appraisal requirements for the financial institutions under their jurisdiction and

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<sup>4</sup>Both Fannie Mae and Freddie Mac allow lenders the options to use an inspection or evaluation instead of a traditional appraisal, on loans that they determine to be low-risk based on their automated loan underwriting systems. In the case of Freddie Mac, certain low risk loans may be eligible for delivery to Freddie Mac with no appraisal or inspection.

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monitor compliance with their regulations. Lastly, the Appraisal Subcommittee has primary responsibility for monitoring and reviewing the actions of the private, state, and federal entities as they relate to Title XI.

**Table 1: Title XI Roles and Responsibilities for Appraisal Standards and Appraiser Qualifications**

	Private	State	Financial institution regulatory agencies	Federal
<b>Appraisal Standards Board (ASB)</b>	<b>Appraiser Qualifications Board (AQB)</b>	<b>Appraiser regulatory agencies</b>	<b>Financial institution regulatory agencies</b>	<b>Appraisal Subcommittee</b>
<b>Appraisal standards</b>				
Standard setting				
Develop standards for the performance of real estate appraisals.			Promulgate regulations that establish appraisal standards, which meet or exceed ASB's standards, for federally insured depository institutions.	
<b>Implementation/Monitoring</b>				
		Enforce compliance with appraisal standards and requirements.	Monitor and enforce compliance by federally insured depository institutions with appraisal regulations.	<p>Monitor and review the Appraisal Foundation's practices, procedures, activities, and organizational structure.</p> <p>Monitor policies, practices, and procedures of states to determine consistency with Title XI requirements.</p> <p>Monitor appraisal requirements established by federal financial institution regulatory agencies.</p> <p>Make grants to the Appraisal Foundation to defray the costs of the Appraisal Standards Board's Title XI activities.</p>

(Continued From Previous Page)

	Private	State	Financial institution regulatory agencies	Federal
<b>Appraisal Standards Board (ASB)</b>	<b>Appraiser Qualifications Board (AQB)</b>	<b>Appraiser regulatory agencies</b>	<b>Financial institution regulatory agencies</b>	<b>Appraisal Subcommittee</b>
<b>Appraiser qualifications</b>				
Standard setting	Develop minimum qualification criteria for certified real estate appraisers.	Set qualifications criteria for certification, which meet or exceed AQB's criteria, and licensing of appraisers.	Establish additional qualification criteria as may be necessary or appropriate to carry out their statutory responsibilities.	
<b>Implementation/Monitoring</b>				
		Transmit to the Appraisal Subcommittee a roster of appraisers who have been licensed or certified.	Prescribe categories of federally related transactions that should be appraised by a state certified appraiser and those that can be performed by either a state certified or licensed appraiser.	Monitor qualification criteria set by states for the certification and licensing of individuals qualified to perform appraisals in connection with federally related transactions.
		Collect from appraisers and transmit to the Appraisal Subcommittee a \$25 annual registry fee.	Monitor and enforce compliance by federally insured depository institutions with appraisal regulations.	Maintain a national registry of state certified and licensed appraisers eligible to perform appraisals in federally related transactions.
		Enforce compliance with standards, requirements, and procedures prescribed by Title XI.		Monitor and review the Appraisal Foundation's practices, procedures, activities, and organizational structure.
				Make grants to the Appraisal Foundation to defray the costs of the Appraiser Qualifications Board's Title XI activities.

Source: GAO

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October 3, 2003

Ms. Pat Davidson, Legislative Auditor  
Legislative Budget and Audit Committee  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

Dear Ms. Davidson,

Thank you for the opportunity to comment on your preliminary audit report on the Board of Certified Real Estate Appraisers.

The department concurs with the findings in your report. As you requested, I have also provided a summary of the Board's FY 03 revenues and expenditures.

Your report clearly identifies the background which led to creation of the licensing program for Real Estate Appraisers in Alaska, including oversight and standards mandated by the Appraisal Foundation, and the Appraisal Subcommittee. Title XI allow States to establish their own agencies to certify and license appraisers; and therefore, the Alaska State Legislature created the Board of Certified Real Estate Appraisers in 1990.

Generally, your findings indicate the licensing of Real Estate Appraisers are in compliance with federal mandates. Page 15 of the report states that license denials have been based on requirements set out by statute and regulation. Since creation of the Board and its current statutes and regulations, the licensing function has become perfunctory. The considerable amount of staff time required to prepare for board meetings and to provide administrative support to the Board actually slows down the licensing process. In the interest of providing better service to the public and potential licensees, I request consideration be given to elimination of the Board of Certified Real Estate Appraisers but, to continue licensing by the Division of Occupational Licensing.

Again, I appreciate the opportunity to comment on your findings.

Cordially,

Edgar Blatchford  
Commissioner

Enclosure

**State of Alaska**  
**Board of Certified Real Estate Appraisers**  
**Schedule of License Revenues and Board Expenditures**  
**FY 03**

Revenue	\$119,240
Direct Expenses	
Personal Services	20,011
Travel	1,005
Contractual	7,078
Supplies	195
Equipment	--
Total Expenses	<u>28,289</u>
Indirect Expense	<u>8,597</u>
Total Expenses	<u>36,886</u>
Annual Surplus (Deficit)	<u>82,354</u>
Beginning Cumulative Surplus (Deficit)	(32,314)
Unallocated Administrative Indirect Revenue	--
Ending Cumulative Surplus (Deficit)	<u>\$ 50,040</u>

Mr. Stephen F. Turner, Vice Chair  
Board of Certified Real Estate Appraisers  
P. O. Box 240088  
Anchorage, Alaska 99524-0088

September 9, 2003

Pat Davidson, CPA, Legislative Auditor  
Alaska State Legislature  
Legislative Budget and Audit Committed  
Division of Legislative Audit  
P. O. Box 113300  
Juneau, Alaska 99811-3300

Dear Ms. Davidson;

I have carefully reviewed the "CONFIDENTIAL" preliminary audit report on:

*Department of Community and Economic Development, Board of Certified  
Real Estate Appraisers, Sunset Review.*

I found the report to be thorough, both in its review of the historical context of the board, and in its assessment of the board's ongoing actions. The audit reaffirmed that we have appropriately handled our responsibilities and that we play an essential role in appraiser oversight.

I concur with the single recommendation that the wording of AS 08.87.010 be amended. As the audit points out, the law presently requires two of the board members to be "licensed" real estate appraisers in the State of Alaska. Since Alaska appraisers are certified, not licensed, the correct terminology should be "certified" real estate appraisers. I plan to bring this issue before the board at our next meeting with the intent that a motion be passed recommending this change.

Thank you for this opportunity to review and respond to the audit report. My responses, of course, are mine alone, and do not represent the entire board. Be assured that I understand that the report is confidential at this time, and is not for public release pending final review and approval by the Legislative Budget and Audit Committee.

Sincerely;



Stephen F. Turner, Vice Chair  
Board of Certified Real Estate Appraisers

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# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 464  
 (H) Publish Date: 3/16/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Extend Board of Real Estate Appraisers RDU Occupational Licensing (117)  
 Component Occupational Licensing  
 Sponsor House Rules by Request of LBA  
 Requester House Labor and Commerce Component No. 2360

**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	20.0	20.0	20.0	20.0	20.0	
Travel	1.0	1.0	1.0	1.0	1.0	
Contractual	7.1	7.1	7.1	7.1	7.1	
Supplies	0.2	0.2	0.2	0.2	0.2	
Equipment	0.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>28.3</b>	<b>28.3</b>	<b>28.3</b>	<b>28.3</b>	<b>28.3</b>	

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( 1156 )</b>	<b>28.3</b>	<b>28.3</b>	<b>28.3</b>	<b>28.3</b>	<b>28.3</b>	
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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	28.3	28.3	28.3	28.3	28.3	
<b>TOTAL</b>	<b>28.3</b>	<b>28.3</b>	<b>28.3</b>	<b>28.3</b>	<b>28.3</b>	

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	2	2	2	2	2
Part-time					
Temporary					

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

The bill extends the Board of Certified Real Estate Appraisers to June 30, 2008. In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the Board to conclude its affairs. The information above identifies direct expenditure and revenue information included in the FY 2005 Operating Budget request. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
 Division Occupational Licensing Date/Time 3/2/04 8:36 AM  
 Approved by: Edgar Blatchford, Commissioner Date 3/2/2004  
 Agency Department of Community and Economic Development



# **Legislative Budget & Audit Committee**

**Representative Ralph Samuels, Chair**

## **Sponsor Statement for House Bili 464**

**TITLE:** An Act extending the termination date of the Board of Certified Real Estate Appraisers.

**Sec. 08.87.010** Established the Board of Certified Real Estate Appraisers and provided for the appointment of members by the governor. The board consists of one licensed general real estate appraiser, one licensed residential real estate appraiser, one mortgage banking executive, and one member who represents the public at large. If enacted, HB 464 would extend the board's operation for another 4 years to June 30, 2008.

The board is charged with establishing exam standards for the certification of real estate appraisers, adopting rules of professional conduct that establish standards and integrity in the real estate appraisal profession, and the adoption of regulations to satisfy state and federal regulations.

In the opinion of Legislative Audit, the Board of Certified Real Estate Appraisers should be extended. The regulation and certification of real estate appraisal professionals provides necessary public protection in the buying and selling of residential and commercial properties. I recommend that the board be extended to June 30, 2008, and urge you to vote for its passage.

HB

474

# SENATE COMMITTEE REPORT

DATE: 5/1/04

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 474(JUD) am

## HB 474 LIABILITY FOR AIRPORTS AND AIRSTRIPS

"An Act relating to civil liability associated with aircraft runways, airfields, and landing areas."

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
<i>Ralph Veerba</i>	✓			
<i>Betty Davis</i>			X	<del> </del> BP
<i>[Signature]</i>	X		<del> </del>	
CHAIR: <i>[Signature]</i>	✓			



AIRCRAFT OWNERS AND PILOTS ASSOCIATION

March 2, 2004

Representative Jim Holm  
State Capitol, Room 110  
Juneau, AK 99801-1182

Dear Representative Holm,

The Aircraft Owners and Pilots Association (AOPA) is a membership association consisting of over 400,000 pilots and aircraft owners nationwide, 4,600 of whom reside in the state of Alaska. AOPA is committed to ensuring the continued viability, growth, and development of aviation and airports in Alaska and the United States.

The Aircraft Owners and Pilots Association strongly supports House Bill 474, regarding civil liability relating to runways, airfields, and landing areas. This bill will help protect airport owners and operators that devote their time and resources to operate and maintain airstrips and landing areas in Alaska.

We anticipate that this bill will help protect the operation of these vital components of our transportation infrastructure.

On behalf of the 4,600 AOPA members in Alaska, thank you for sponsoring this bill.

Sincerely,

Tom George  
Alaska Regional Representative

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TOM GEORGE  
ALASKA REGIONAL REPRESENTATIVE  
PERSONAL ADDRESS: P.O. BOX 83750 FAIRBANKS, AK 99708  
907-388-9955 (PHONE) 907-455-9001 (FAX)  
E-MAIL: tom.george@aopa.org

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# ALASKA MINERS ASSOCIATION, INC.

3315 Arctic Blvd., #105, Anchorage, Alaska 99503 • (907) 563-9229 • FAX: (907) 563-9226 • www.alaskaminers.org

March 25, 2004

Honorable Jim Holm  
Alaska State House of Representatives  
Capitol Building  
Juneau, AK 99801

RE: House Bill 474, Civil Liability Associated with Airfields

Dear Representative Holm,

Thank you for the opportunity to comment on this bill. We support House Bill 474.

Over the past several years, many of our members have expressed concern that if they repaired or maintained an runway, airfield or other landing area, they could be potentially be held responsible if some other party was to have an accident while using the area. One miner was even warned by his insurance carrier that this could possibly be the case. This could happen even if the miner had built a landing area for his personal use associated with his mining operation.

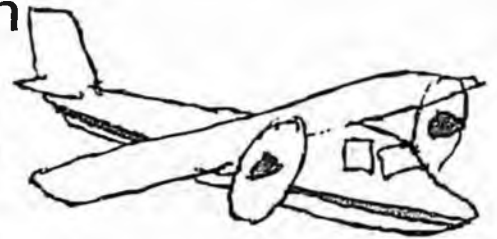
This bill, with the changes being proposed, will answer our concerns. It does not change the liability if there is gross negligence or recklessness or intentional misconduct but the bill makes it clear that a person acting in good faith will not be liable. The change being proposed also make the State law conform with the Federal Aviation Administration rules for marking and closing an airfield. These are all important changes.

Thank you for the opportunity to comment on this bill. We urge that this bill become law at the earliest possible date.

Sincerely,

Steven C. Borell, P.E.  
Executive Director

# Schafer Meadows Work Session Another Big Success!



*Pictured are (l-r) Deb Mucklow & Al Koss, USFS; Loren Smith, Prairie Kraft Specialties, Great Falls & Debbie Alke. Loren outdoes himself each year by providing a great meal for the volunteers on Saturday night and this year was no exception, thanks again Loren! Al Koss announced that he will be transferring with USFS to another area; we will miss him and appreciate his assistance throughout the years.*



*Lanny Hanson, Aeronautics Board member from Glasgow; Bob Brown, Secretary of State; and Joe Roberts and Jeff Morrison of Helena took some time out after a busy day to relax in the shade – with the sweltering temperatures we've been having shade has become a valuable commodity.*



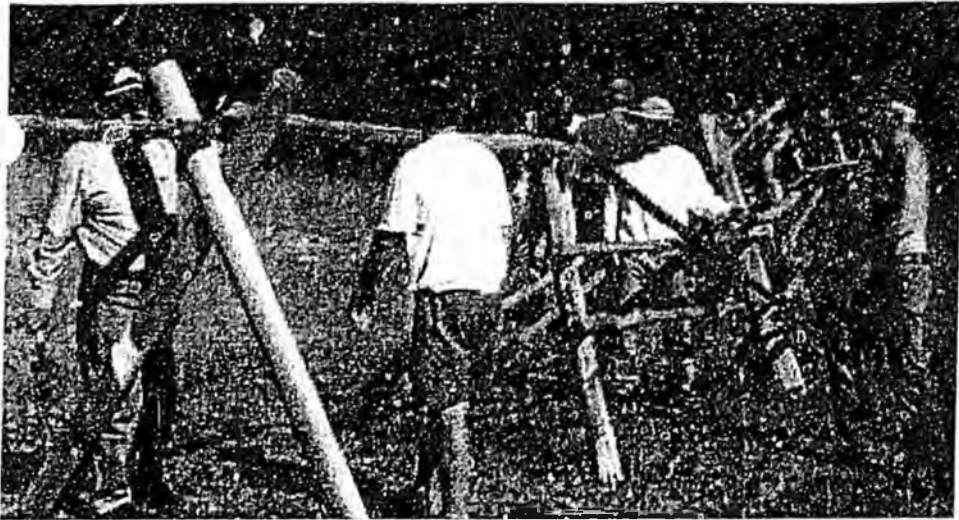
*A Schweizer 269C Helicopter flew into the work session and behind the controls was Representative Denny Rehberg along with his instructor Kent Potter of Laurel. Pictured are Kent, Denny's son A.J., Denny and John Giacometto of Stevensville. We certainly appreciate all of the assistance we receive from Representative Rehberg and thank him for his outstanding support.*



*Wade Cebulski of Seeley Lake and Guy Willson of Moore hung new windsocks during the work session. Windsocks are a very important reference for pilots when flying into these backcountry strips.*



*We are always happy to see our international visitor Bram Tilroe of Leduc Alberta Canada show up to lend a helping hand; he and Bill Gallea of Helena take time out for a much needed water break.*

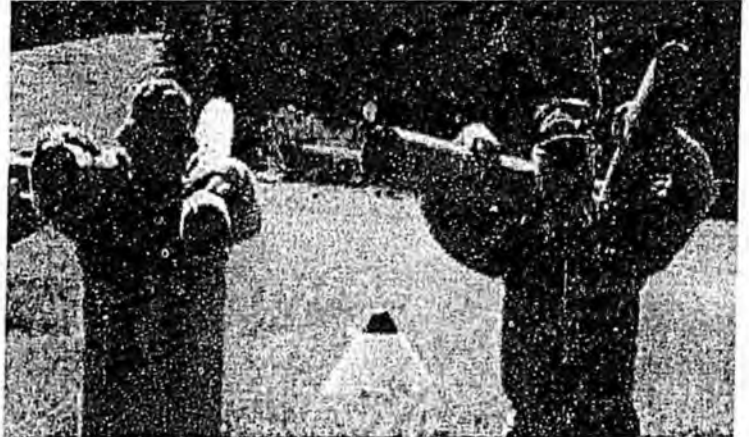


*Volunteers gathered at Schafer to repair fence, pick up rocks, fill gopher holes, replace the windsocks and clear brush on the airfield. The Schafer airstrip is maintained through a cooperative effort between the US Forest Service and the Montana Aeronautics Division. The Division coordinates with the Montana Pilots Association and the US Forest Service to organize this annual volunteer work session.*

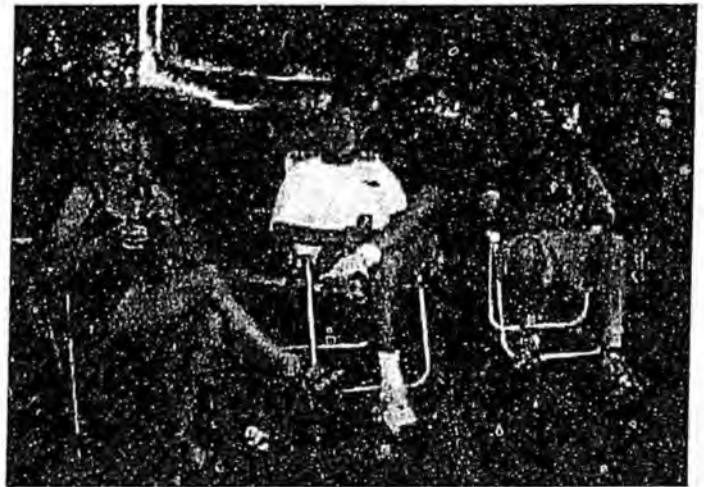
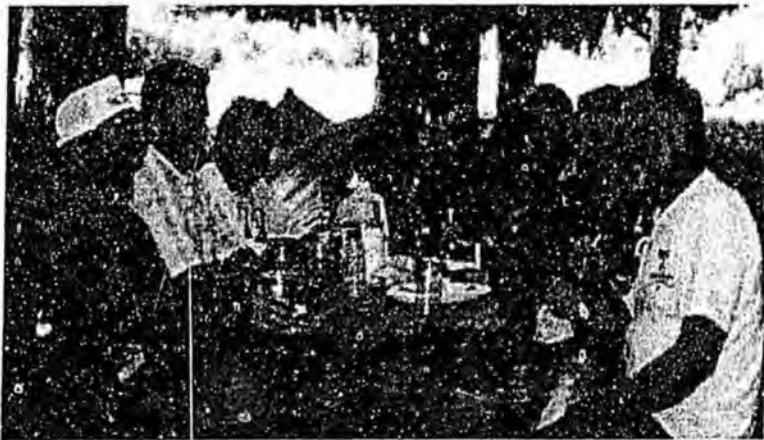
*These hardworking fencing volunteers did a first-rate repair job!!*



*The runway maintenance crew had quite a job ahead of them 3,200' to be exact!*



*Chuck Manning, Aeronautics Board Member, Kalispell and Secretary of State Bob Brown are just the kind of volunteers you like to see, always a smile no matter how big the task.*



*After a hard day's work volunteers finally get a chance to kick back and visit with friends old and new. Thank you to all of the people that work so hard to make this backcountry strip a safe place for pilots to enjoy, you couldn't ask for more beautiful surroundings.*



**Dog Days  
of  
Summer**

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 474(JUD)  
 (H) Publish Date: 4/5/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
 Title Civil Liability relating to airports RDU Administration & Support  
 Component Commissioner's Office  
 Sponsor Holm  
 Requester House Judiciary Component No. 530

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)*

Prepared by: Nona Wilson Phone 465-6973  
 Division: Legislative Liaison Date/Time 3/19/04 12:10 PM  
 Approved by: John MacKinnon Date 3/19/2004  
 Agency: Deputy Commissioner

# STATE OF ALASKA



*Interim:*

119 North Cushman, Rm. 205  
Fairbanks, Alaska 99701  
(907) 456-7423  
Fax: (907) 451-9293

*Session:*

State Capitol Building  
Juneau, Alaska 99801  
(907) 465-3466  
Fax: (907) 465-2937

## REPRESENTATIVE JIM HOLM DISTRICT 9

### Sponsor Statement for HB474

HB474 will remove the word "natural" from state statute to offer equal protection to all "persons". AS 09.65.093 is treating owners of private airstrips unfairly by granting liability protections to certain volunteers over others. Our current statute offers *some* protection to owners or users of private airstrips who spend their own time, effort and money on upkeep. At the same time, others who spend the same personal resources on their strips are not protected from liability.

Our past legislature has seen the justice in giving some statutory liability protection to people who freely or out of necessity maintain public or personal airstrips without being compensated. AS09.65.093 roughly states that if a "natural person", without being paid, repairs or maintains an airstrip, other users cannot hold that "natural" person liable for civil damages. There is an exception for extremely irresponsible conduct and private owners are required to take the extra steps of notifying the public with markings and listings in aeronautical publications. The reasoning goes that if people are nice enough to do this free maintenance then they should not be punished for the kind act. These very same protections are currently withheld from a "person" legally defined in AS 01.10.060 (8): "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.

Where we feel this protection is unjustly withheld is at the point when an organization performs the same service without pay. If a group, corporation or other organization repairs or maintains an airstrip without being paid, they *are* liable for users of that strip. It seems unreasonable to say that an individual can perform this service for free, but a group cannot

do the same without extra liability. It also seems to be poor policy to discourage the organized public from offering free services to their communities. These are services which, otherwise, may eventually have to be performed by the state. If not, we would allow airstrips to fall into general disrepair. Allowing this to happen would create an even more dangerous landing situation around the State.

Please join me in making this repair to our statute.