(2)

September 26, 2003

Mr. Jim Griffin
laska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P. O. Box 113300
Juneau, Ak. 99811-3300

Re: Letter Sept. 18, 2003

Dear Mr. Griffin:

I received management letter No. 1 on September 23, 2003, thank you. I will try to respond as briefly and the best I can.

Just for clarification the Board does not set renewal fees. They are set by the Department of Commerce, Division of Occupational Licensing .

The notion that untrained, uneducated persons perform to the standards of practice as those who have spent hundreds of hours and thousands of dollars in educational courses and training . is in my opinion not a sensible argument.

Ensuring the individual dispenser/optician has the education and training to sort and select the appropriate and safe combination of eyewear and lenses from the complex and extensive variety of products on the market is not just a valuable service it is essential to the publics safety. This is amply documented by the numerous warnings and vision safety notices that are part of every set of lenses from optical laboratories. Concern for "vision safety" has never been more acute than now. The wide choices of sport, safety and dress eyewear can lead to mistakes and have caused the loss of sight (see attached documents). The need for educated and trained contact lens fitters and dispensers is even more important as permanent harm can be caused by patients not having professional advice regarding their contact lenses. (see attached)

The Board has reviewed the 2002 changes in statutes that were vague and inconsistent. The Board had a bill to remedy this in 2002. That bill never made it into the legislation because the lobbyist for the Opticians Association of Alaska thought the timing to introduce the bill was wrong and then it became to late in the legislative session for consideration. The Board will have this introduced in the 2003 legislation. (see attached draft).

The Board did research and give recommendations to the then licensing examiner and the Director of the Division of Occupational Licensing for a practical exam from a private sector contractor. One alternative, Dr. Ferguson's The Learning Curve could of been procured and administrated at no cost to the Department. This information was a part of the 2001 audit report (Sept. 2001). The "acquiescence" to the 2002 legislatures bill SB 270 (no practical) was the best alternative available to us at the time as we were told it would take at least 2 years and a large sum of money for a "request for proposal" bid for a practical test.

(3)

Deficit - The current deficit began in 1998 when the board was informed of an "accounting error" which caused a deficit. In the next two years our licensing examiner was new and spent probably more time than necessary getting up to speed. From documented time sheets, she spent about one half of her time on the apprentice program. In 2002, $5,500 was billed to the Board by the Department of Law for litigation from a class action law suit regarding contact lenses. This constitutes 22%of our current deficit and these charges should be reversed. The Board has yet to received a breakdown of the $9300.00 "contractual " charges for 2003.

RECOMMENDATIONS

I agree with your recommendations for clarifying training hours, licensing individuals from other jurisdictions and transferring apprentice registration and administration to the U.S.D.O.L. See attached "draft bill".

I feel that there is no need to increase licensing fees. I have been in contact with the licensing examiner, Denise Williams, and she states that if there is no apprentice program to administer, she will spend less than 5% of her time on BDO activities annually. With no other unforeseen bills from the Department of Law, this should bring our expenses to a manageable figure and reduce our deficit to the point we will be in compliance.

The Board respectfully request that you extend the Board of Dispensing Opticians for another 6 years. The Board has made great strides to comply with recommendations and work with the Optometrist and Ophthalmologists.

The fact that of the 83% of the licensed opticians in the state, renewed their license even with the increased fees, shows that the profession feels the need to hold themselves up to a higher standard of performance and education then stylists, assistants or sales persons. The Licensed Optician whether licensed in spectacles, contacts or in both is continually working to insure the health, safety and welfare of the public through education and training.

Thank you for your time and consideration.

Sincerely,

James Rothmeyer

James Rothmeyer
Chair. Board of Dispensing Opticians

(4)

Corrected Copy

A BILL
FOR AN ACT ENTITLED

"An act relating to dispensing Opticians and dispensing Opticians apprentices"
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

- Section 08.71.080 License required is amended to read;
- Sec. 08.71.080 License required A person may not act as a dispensing optician in the state unless that person is licensed under this chapter. A license shall be issued for (1) the fitting and dispensing of contact lenses, or (2) the fitting and dispensing of other lenses, eyeglasses, spectacles, artificial eyes and their appurtenances, or (3) both.

*Sec. 08.71.090. Examination requirement is amended to read;

Sec.08.71.090 Examination requirement. To be licensed to fit and dispense contact lenses, a person, unless eligible for licensing under AS 08.71.145, shall document to the board that the person has passed the contact lens registry exam offered by the National Contact Lens Examine s with a score acceptable to the board. In order to be licensed to fit and dispense other lenses, eyeglasses, spectacles, artificial eyes, and their appurtenances, a person, unless eligible for licensing under AS 08.71.145, shall document to the board that the person has passed the national opticianry competency examination offered by the American Board of Opticianry with a score acceptable to the board. An applicant for licensure in both areas shall document having received a score acceptable to the board on both examinations. The board shall by regulation, establish the scores that will be acceptable for the examinations described in this section.

*Section 1. AS08.71.110(a) is amended to read:

(a) The board may issue a license to a person who
(1) has [HAD EDUCATION EQUIVALENT TO FOURS YEARS ATTENDANCE AT] a high school diploma or its equivalent,
(2) Has either
(A) completed at least 1,800 hours of training for spectacles and/or 1,800 hours for contact lenses as an apprentice after registering with the US Dept. of Labor as an apprentice; or
(B) been engaged for at least 1,800 hours practice as a dispensing optician in spectacles and /or 1,800

(5)

hours practice in contact lenses in a state, territory, district, or possession of the United States;

(3) has passed the applicable examination required under AS08.71.090 with a score acceptable to the board;
(4) has passed a course designated in the board's regulations as being acceptable; and
(5) has paid the required license fee.

*Sec. 2 AS 08.71.145 is amended to read:

08.71.145. Licensure by credentials. A person with a valid license as a dispensing optician from another state, territory, district, or possession of the United States with licensing requirements substantially equivalent to or higher than those of this state shall, without further examination, be issued a license under this chapter for those professional areas in which the person is licensed in the other jurisdiction upon payment of any fee and documentation that the board may require by regulation.

*Sec.3 AS 08.71.145 is amended by adding a new subsection to read:

(b) A person who is designated by the American Board of Opticianry as a Master Optician or as an individual certified as an Advanced Certified optician may be issued a license authorizing that person to be a licensed dispensing optician with respect to spectacles upon payment of the appropriate fee and submission of the documentation that the board may require by regulation.;
(c) A person who is designated a Fellow of the Contact Lens Society of America, or who is designated by the National Contact Lens Examiners as an Advanced Certified Contact Lens Fitter may be issued a license authorizing that person to be a licensed dispensing optician with respect to contact lenses upon payment of the appropriate fees and submission of the documentation that the board may require by regulation.

(6)

*Sec. 4. AS. 08.71.160 (a) is amended to read:

(a) A person may be employed by [OR SERVE UNDER] a licensed Physician, optometrist, or dispensing optician as an apprentice for dispensing optician tasks. An apprentice shall register with the U.S. Department of Labor [DEPARTMENT] before beginning employment [OR SERVICE] as an apprentice[,SHALL BE DSIGNATED AS SUCH IN THE RECORDS OF THE BOARD] and shall be in training under the supervision of the [a] licensed physician, optometrist, or dispensing optician. Notwithstanding AS 08.71.180, a registered apprentice may perform dispensing opticiana tasks that are delegated by and performed under the regular supervision of the licensed physician, optometrist, or dispensing optician and may use the title "dispensing optician apprentice"

*Sec. 5 AS 08.71.200 is amended to read:

Sec. 08.71.200 Contact lenses. Contact lenses shall be fitted in conjunction with and under the supervision of a licensed physician or an optometrist using [AND WITH] a written contact lens fitting authorization that (1) shows the powers of the sphere, cylinder and axis location; (2) includes an authorization to fit; and (3) states a requirement that the patient return to the prescriber for a final recheck after the contact fitting has been completed.[PRESCRIPTION SHOWING THAT THE PRESCRIPTION MY BE FILLED FOR CONTACT LENSES AND REQUIRING THAT THE PATIENT RETURN TO SEE THE PRESCRIBING PHJYSICIAN OR OPTOMETRIST]. In no case may contact lenses be prepared by neutralizing a persons eyeglasses or spectacles. Duplicated contact lenses may be dispensed, mailed to, or otherwise delivered to a patient from a written contact lens prescription that shows the exact specifications and parameters needed to exactly duplicate the patients previous contact lenses. Notwithstanding other provisions of this section, contact lenses may not be provided to a patient at a time that is after the expiration of the most recent prescription for the patient unless authorized in writing or orally by the person who issued the prescription.

*Sec. 6 AS 08.71.230 is amended to read:

(7)

Sec. 08.71.230 Exemptions from and limitations on the application of this chapter. This chapter may not be construed to

(1) limit or restrict a licensed physician or optometrist from the practices enumerated in this chapter, and each licensed physician and optometrist has all the rights and privileges which may accrue under this chapter to dispensing opticians licensed under it;

(2) prohibit an unlicensed person from performing mechanical work upon inert matter in an optical office, laboratory or shop;

(3) prohibit an unlicensed person from engaging in the sale of eyeglasses, spectacles, magnifying glasses, goggles, sunglasses, telescopes, binoculars, or any like articles which are completely preassembled and sold only as merchandise; however, the exemption in this paragraph does not authorize an unlicensed person to sell contact lenses of any type.

(4) authorize or permit a licensee under this chapter to hold out as being able to, or to offer to, or to attempt by any means, to refract or exercise eyes, diagnose, treat, correct, relieve, operate or prescribe for any human ailment, deficiency, deformity, disease or injury.

(8)

"Duty To Warn" – A Growing Responsibility

It has been seven years since the Optical Laboratories Association (OLA) issued its first "Duty To Warn" kit. To appreciate why this subject has become so important to the whole industry, it might help to review how laboratories first became involved in a problem that seems to be more a concern of those who deal directly with patients at the retail level.

When retail offices are involved in litigation resulting from broken eyewear, manufacturers and laboratories used in making the glasses are usually brought into the action so that, no matter who ends up with the blame, that person will be involved in the lawsuit. What brought "duty to warn" into prominence in recent years has been the emergence of polycarbonate as a viable lens material for dress eyewear.

The first recorded court case occurred in 1981 when a Wyoming rancher wearing photochromic lenses in a dress frame, sustained an injury while roping. No award was granted on the basis that polycarbonate was so new a product, it was only available from one source at the time the glasses were dispensed. The case did, however, alert the Optical Laboratories Association to the problem and their concern led directly to the development of the OLA "Duty To Warn" kit.

Since that time, polycarbonate lenses have matured and are now readily available in almost any type of lens design. At the same time, there has been additional litigation in which the courts consistently ruled that "failure to warn" patients about their options regarding lens materials justifies damage claims. This places a considerable burden on everyone dispensing eyewear to the public. The OLA is attempting to answer that concern with their program. They have just revised their kit and reissued it with a number of improvements and additions.

Among the new items included in the revised kit are the following:

Practitioner Forms. One of the most persistent requests from retail offices during the last few years has been for office forms that would help establish that patients had been properly informed regarding lens materials. They particularly asked for a Patient Rejection Form. Three new practitioner forms are now included in the kit.

Refractionist's Duty and Script. A concise examination of the refractionist's obligations under "Duty To Warn" is provided along with a suggested script for the doctor to follow.

Dispenser's Duty and Script. Just as the refractionist has a "duty to warn", so do dispensers, whether they work in the refractionist's office or in an outside office. These duties are clearly outlined.

Lens Menu. The Lens Menu patient brochure is a key component in the "Duty To Warn" process. A sample Lens Menu and an order form are included.

Safety Warnings. Every pair of eyeglasses dispensed must be accompanied by a printed Safety Warning. Offices that order finished eyewear from an OLA laboratory usually receive this important form with each pair of finished eyewear they order. Offices doing their own edging have the obligation of providing their own Safety Warnings to pass on with the eyewear they dispense. Camera-ready artwork for each Safety Warning form (dress eyewear and safety eyewear) is part of the kit.

In-Office Edging. Edging lenses in a retail office imposes special responsibilities under the "Duty To Warn". In the eyes of the FDA and OSHA, these offices become the eyewear manufacturer and, as a consequence, assume the same legal responsibilities as laboratories. To help them meet these obligations, a brochure titled "Impact Testing of Ophthalmic Dress Lenses" is included in the kit.

A variety of other background material is also included so that retail offices have everything they need to set up a "Duty To Warn" process in their office. Today's economic climate makes compliance with the duty to warn process as important as maintaining proper fire insurance.

The OLA is making these kits available at minimal cost ($14.95). They are available through most OLA laboratories. If you need information on OLA laboratories in your area, you may call 1-800-477-5652 for the names.

— Joe Bruneni

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Informing The Patient

An Increasingly Important Professional Responsibility

by
Pamela Joyce Miller, O.D., F.A.A.O., J.D.

Published as a public service
to the Eyecare Professions by the
Optical Laboratories Association

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Informing The Patient — An Increasingly Important Professional Responsibility

by Pamela Miller, O.D., F.A.A.O., J.D.

It was not until the mid1980's that this industry began to realize that there were some potential problems regarding the impact resistance of lens materials. The subject first arose when a Wyoming lawsuit was filed over a broken lens. The suit claimed one lens material was more impact resistant than any other and the company selling the glasses should have informed the patient about polycarbonate.

In that case, the patient was a cowboy wearing glasses while performing in a rodeo. While twirling a rope, his glasses broke and an eye injury resulted. Fortunately for the dispenser, the court ruled that, while the dispenser had a duty to inform the patient about polycarbonate, these lenses were not yet readily available or in general use at that time. The Court issued no award, but the subject did receive close attention from the industry. It illuminated a subject to which few eyecare professionals had given much thought.

The Optical Laboratories Association (OLA) immediately set up a study group to establish how laboratories and their customers could best deal with the legal, professional, moral and business issues involved. The result of this study was the development of a practical program to meet these new responsibilities of retailers and laboratories.

The study concluded that dispensers and doctors have a legal and professional responsibility to make sure patients have all the information required to make an informed decision about lens materials and frames. **Because of these legal responsibilities, the duty to warn must be part of every dispensing transaction.** To help professionals comply with this new responsibility, the OLA published a "DUTY TO WARN" kit, with sections fully documenting the responsibilities of the doctor, the dispenser and the manufacturing laboratory. It provided specific details on how to discharge the professional's "duty to warn" and included sample forms for setting up a "Duty to Warn" system for retailers and for laboratories.

Issued in 1988, the OLA has distributed thousands of these guides through member labs and made them available to O.A.A. and A.O.A. members. That, however, was six years ago and concerns about the doctor/dispenser's responsibilities and "DUTY TO WARN" were gradually forgotten.

A recent lawsuit in Minnesota reminded the professions of the importance of this duty to warn patients regarding choice of lens material. A youngster suffered an eye injury while wearing conventional plastic lenses. The court ruled the retailer did not adequately inform the patient about a safer lens material. The award was for $73,610.93.

The OLA has now revised the original "Duty to Warn" kit and again made it available through OLA members for $14.95. One issue is clear. The only way to make sure every patient is properly informed regarding lens materials is to set up a standard office routine and follow it for every patient. The "Duty to Warn" kit provides camera ready copies of various forms to be used for this purpose. It's always best when the dispenser *(or doctor)* personally discusses the options for polycarbonate lenses with each patient. This is sometimes difficult and it only takes one omission to lay the groundwork for potential problems.

The OLA recently revised their popular "Lens Menu", an attractive four color patient brochure that explains each lens option available to persons ordering eyewear. This latest revision adds a powerful "Vision Safety Notice" to the back panel. Verbiage in this important section was taken in whole from the OLA "Duty to Warn" kit. **Now, offices who provide the Lens Menu to each patient going through their office will be subtly reinforcing their professional responsibility to fully inform patients regarding lens materials.**

The obligation to inform buyers of a product's inherent dangers is nothing new. Nearly every product today is accompanied by warnings of one type or another. When someone is involved in recommending a product, they assume certain liabilities based on those recommendations. It's important to remember that eyeglass manufacturers and/or laboratories cannot get their warning message to the purchaser until after the patient has selected a lens material and a frame.

Because of this, doctors and dispensers have a legal and professional responsibility to make sure patients understand the risks involved in wearing eyeglasses and the relative safety of each lens material or frame style. This doesn't mean every patient must order polycarbonate. It just means that each lens material must be explained, along with the relative risks of each material. It's important to establish a program in your office that makes sure every patient is fully informed about lens materials. Some offices take this so seriously they insist every patient sign a document indicating that they have been told about the safety issues involved. There is some question whether this really does much good and it does have the potential of upsetting some patients. The best procedure is to set up a standard routine that makes sure every patient is informed of safety issues with the doctor or dispenser noting on the patient's file that the patient was so informed.

Do this and you can be secure you are fulfilling your "duty to warn".

Pamela Joyce Miller holds a doctorate in both Optometry and Jurisprudence. She has a solo practice in Highland, California and is a widely known practice management consultant who lectures and publishes worldwide. She has authored over 100 articles, including THE VISION CARE ASSISTANT, a guide for new paraoptometrics, published by Vision Extension in Santa Ana, California.

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LITIGATION YOU SHOULD KNOW ABOUT

by Pamela Joyce Miller, O.D., F.A.A.O., J.D.

January, 1981

January, 1981 saw one of the first significant cases involving Polycarbonate lenses. In essence, a Wyoming farmer, wearing photochromic lenses in a dress frame, suffered an injury resulting in a cataract, when his lens shattered during a roping accident. The basic claim was that the doctor should have prescribed polycarbonate lenses in view of the fact that the patient was involved in an active and dangerous endeavor. The jury concluded *(based on expert testimony)* that the accident would not have been prevented with polycarbonate lenses, although polycarbonate was a new product and only available from one source at the time of the dispensing.

1982

A 1982 case in Louisiana involved a high school student who suffered a severe eye and lower lid cut during a volleyball game, while wearing glass lenses. The patient claimed that no one had told him that scratched lenses had a greater propensity toward shattering. Although the case was settled, it was alleged that the dispenser failed to warn of the risks associated with wearing the glasses in sporting events. A claim for contribution against the school board was also filed by the dispenser *(to defray the costs of settlement)*.

January, 1993

A January, 1993 jury ruling involved a Minnesota optical chain that failed to warn a customer sufficiently about his spectacle lens options. A 13 year old boy purchased a metal semi-rimless frame with CR 39 lenses in November, 1986. Some 6 months later, he was hit in the eye, and the lens shattered resulting in permanent eye damage. The case centered on the "FAILURE TO WARN" issue. The case resulted in a settlement *(not to exceed $73,610.93)*, with the amount and the jury proceedings sealed in the court records.

The Present

"Duty to Warn"

The trend is obviously toward an emphasis on the dispenser's or doctor's "duty to warn" or failure to advise a patient of their options. Greater responsibility is placed on patient education, informed consent, and documentation of the information given to a patient *(or the parent or guardian)*.

Your Duty

You have a clear cut duty to the patient. A breach of that duty, which results in harm to the patient, could result an action for Negligence. The result may be lengthy and costly litigation against the dispenser, the laboratory, and the lens manufacturer. If you elect to have an in-office laboratory, your liability may be substantially increased.

Your Responsibility

In essence, the last person to work on the lens may be regarded as the manufacturer in a Product Liability case. The concept of professional responsibility is growing and with that growth comes your responsibility to document what was advised and provided to every patient.

o The continued impact resistance of your lenses depends on how well you protect them from physical shocks and abuse. For your own protection, scratched or pitted lenses should be replaced immediately.

o If your occupational or recreational activities expose you to the risk of flying objects or physical impacts , your eye safety requires special safety spectacles with safety lenses, side shields, goggles and/or a full face shield.

o Federal Regulation 29 CFR 1910.133 states that your employer shall make available eye protection suitable for your work, and that you shall use such protectors. For more information, consult your safety officer or supervisor.

Your vision specialist can provide more information and help you select the proper eyewear to meet these vision safety needs.

Sports Eyewear

Many sports present unique eye safety risks. Industrial safety eyeglasses are not designed to protect against these special risks. As a result, special eyewear designs have been developed for a number of sports. The standards for such eyewear vary according to the sport for which they are designed, so it is important to base your selection on how the eyewear will be used.

Optical Laboratories Association
Post Office Box 2000
Merrifield, VA 22116-2000

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• The continued impact resistance of your lenses depends on how well you protect them from physical shocks and abuse. For your own protection, scratched or pitted lenses should be replaced immediately.

• If your occupational or recreational activities expose you to the risk of flying objects or physical impacts, your eye safety requires special safety spectacles with safety lenses, side shields, goggles and/or a full face shield.

Your vision specialist can provide more information and help you select the proper eyewear to meet these vision safety needs.

Sports Eyewear

Many sports present unique eye safety risks. Neither dress eyewear nor industrial safety eyewear are designed to protect against these special risks. As a result, special eyewear designs have been developed for a number of sports. The standards for such eyewear vary according to the sport for which they are designed, so it is important to base your selection on how the eyewear will be used.

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Merrifield, VA 22116-2000

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Dispenser: Safety spectacles with polycarbonate lenses must not be dispensed without this warning.

Important!

Read this notice before using your new safety eyewear.

Proper selection and use of eyewear is critical to your eye safety. No single pair of eyeglasses is best for all situations, so make sure you consider how your eyeglasses will be used before deciding whether to wear dress, safety or sports eyewear.

Vision Safety Notice:

o The polycarbonate lenses in these safety spectacles have been prepared in accordance with the order of your plant safety officer or vision specialist. The lenses meet or exceed American National Standard Z87.1 and the requirements of the Occupational Safety and Health Administration, but they are not unbreakable or shatterproof.

o If struck with sufficient force, the lenses can break into sharp pieces that can cause serious injury to the eye, or blindness. Even if the lenses do not break, the force of impact may cause the lenses or spectacle frame to contact the eye or surrounding area, causing injury.

o For tasks requiring additional impact protection, polycarbonate lenses should be used. Of all the materials that lenses can be made from, polycarbonate is the most impact resistant.

Dispenser: Dress eyewear must not be dispensed without this warning.

Important!

Read this notice before using your new eyewear.

Proper selection and use of eyewear is critical to your eye safety. No single pair of eyeglasses is best for all situations, so make sure you consider how your eyeglasses will be used before deciding whether to wear dress, safety or sports eyewear.

Vision Safety Notice:

• Your new eyeglasses are dress eyewear, not safety spectacles.

• The type and style of the spectacle frame is an important factor in determining how much protection your eyeglasses will provide. Many frames are fragile and are designed for appearance—not for protection.

• Your lenses meet or exceed American National Standard Z80.1 and FDA requirement 21 CFR Sec 801.410 for impact resistance, but they are not unbreakable or shatterproof. Of all the materials that lenses can be made from, polycarbonate is the most impact resistant.

• If struck with sufficient force, the lenses can break into sharp pieces that can cause serious injury to the eye, or blindness. Even if the lenses do not break, the force of impact may cause the lenses or spectacle frame to contact the eye or surrounding area, causing injury.

(Intentionally left blank)

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 4/14/05

FURTHER: Finance

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

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered SENATE BILL NO. 175

SB 175 DISPENSING OPTICIANS

"An Act relating to dispensing opticians, to dispensing optician apprentices, to the Board of Dispensing Opticians, and to the practice of dispensing opticianry; and providing for an effective date."

and recommends:

[ ] be **replaced** with _____ **CS** _____ (_____)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

CS Senate Bill:
[ ] Same Title
[ ] New Title

SCS 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
Bettye Davis	X			
[illegible]			X	
Ralph Jenkins	✓			
Ben Stevens	X			
CHAIR: [illegible]	✓			

24-LS0828\F
Bannister
4/18/05

CS FOR SENATE BILL NO. 175(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to dispensing opticians, to dispensing optician apprentices, to the Board of Dispensing Opticians, and to the practice of dispensing opticianry; and providing for an effective date."

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

*** Section 1.** AS 08.01.010(16) is repealed and reenacted to read:

(16) regulation of dispensing opticians under AS 08.71;

*** Sec. 2.** AS 08.71.055 is amended to read:

Sec. 08.71.055. Powers and duties. The **department** [BOARD] shall have the following powers and duties:

(1) to issue licenses to applicants;

(2) to renew licenses;

(3) to hold hearings and order disciplinary sanctions against a person who violates this chapter or the regulations of the **department** [BOARD];

(4) to supply forms for applications, licenses, and other needed

documents;

(5) to keep a record of all proceedings open to the public, including the name of each license applicant and each licensee;

(6) to enforce the provisions of this chapter and adopt or amend regulations necessary to make these provisions effective.

* **Sec. 3.** AS 08.71.080 is amended to read:

Sec. 08.71.080 License required. A person may not act as a dispensing optician in the state unless the person is licensed under this chapter. A license shall be issued for (1) **a** [THE] dispensing **optician for** [OF] contact lenses, [OR] (2) **a** [THE] dispensing **optician for** [OF] other lenses, eyeglasses, [SPECTACLES, ARTIFICIAL EYES,] and their appurtenances, or (3) both. The **department** [BOARD] shall by endorsement on the license designate for which aspect of dispensing opticianry the license is issued.

* **Sec. 4.** AS 08.71.090 is amended to read:

Sec. 08.71.090. Examination requirement. To be licensed to **act as a dispensing optician for** [DISPENSE] contact lenses, a person, unless eligible for licensing under AS 08.71.145, shall **provide documentation** [DOCUMENT] to the **department** [BOARD] that the person has passed the contact lens registry examination **that the department requires by regulation** [OFFERED BY THE NATIONAL CONTACT LENS EXAMINERS] with a score acceptable to the **department. For this purpose, the department may adopt an examination established by a nationally recognized professional organization for contact lens examiners. To** [BOARD. IN ORDER TO] be licensed to **act as a dispensing optician for** [DISPENSE] other lenses, eyeglasses, [SPECTACLES, ARTIFICIAL EYES,] and their appurtenances, a person, unless eligible for licensing under AS 08.71.145, shall **provide documentation** [DOCUMENT] to the **department** [BOARD] that the person has passed the national opticianry competency examination **that the department requires by regulation** [OFFERED BY THE AMERICAN BOARD OF OPTICIANRY] with a score acceptable to the **department** [BOARD]. **For this purpose, the department may adopt the examination established by a nationally recognized professional organization for dispensing opticians**

examiners. An applicant for licensure in both areas shall **provide documentation** [DOCUMENT] having received a score acceptable to the **department** [BOARD] on both examinations. The **department** [BOARD] shall, by regulation, establish the scores that will be acceptable for the examinations described in this section.

*** Sec. 5.** AS 08.71.110(a) is amended to read:

(a) The **department** [BOARD] may issue a license to a person who

(1) has [HAD EDUCATION EQUIVALENT TO FOUR YEARS ATTENDANCE AT] a high school **diploma or its equivalent**;

(2) has [EITHER]

(A) completed at least **2,000** [1,800] hours of training **for eyeglasses or at least 2,000 hours of training for contact lenses** as an apprentice after registering with the **United States Department of Labor** [DEPARTMENT] as an apprentice; or

(B) been engaged for at least **2,000** [1,800] hours as a **dispensing** [PRACTICING] optician **in eyeglasses and at least 2,000 hours as a dispensing optician in contact lenses** in good standing in a state, territory, district, or possession of the United States;

(3) has passed the applicable examination required under AS 08.71.090 with a score acceptable to the **department** [BOARD];

(4) has passed a course designated in the **department's** [BOARD'S] regulations as being acceptable; and

(5) has paid the required license fee.

*** Sec. 6.** AS 08.71.130(c) is amended to read:

(c) If **a** [THE] license remains lapsed for more than one year, the **department** [BOARD] may require the applicant to retake and successfully pass again the applicable examination or examinations required under AS 08.71.090.

*** Sec. 7.** AS 08.71.130(d) is amended to read:

(d) Before a license may be renewed, the licensee shall submit to the **department** [BOARD] evidence of continuing competence in optical dispensing as prescribed by regulations of the **department** [BOARD].

*** Sec. 8.** AS 08.71.145 is amended to read:

Sec. 08.71.145. Licensure by credentials. A person with a valid license as a dispensing optician from another state, territory, district, or possession of the United States with licensing requirements substantially equivalent to or higher than those of this state shall be issued a license under this chapter for those professional areas in which the person is licensed in the other jurisdiction upon payment of any fee and documentation that the **department** [BOARD] may require by regulation.

* **Sec. 9.** AS 08.71.145 is amended by adding new subsections to read:

(b) In addition to licensing under (a) of this section, the department may issue a license to a person to act as a dispensing optician with respect to eyeglasses and lenses, other than contact lenses, and their appurtenances, if the person satisfies the requirements that the department establishes by regulation to protect the public interest and if the person pays the appropriate fee and submits the documentation that the department may require by regulation. For the purposes of this subsection, the department may adopt the designations of a nationally recognized professional organization for dispensing opticians examiner

(c) In addition to licensing under (a) of this section, the department may issue a license to a person to act as a dispensing optician with respect to contact lenses and their appurtenances if the person satisfies the requirements that the department establishes by regulation to protect the public interest and if the person pays the appropriate fee and submits the documentation that the department may require by regulation. For the purposes of this subsection, the department may adopt the designations of a nationally recognized professional organization for contact lens examiners.

* **Sec. 10.** AS 08.71.160 is amended to read:

Sec. 08.71.160. Dispensing optician's apprentice. (a) **To satisfy apprenticeship training required by AS 08.71.110(a), a** [A] person may be employed by [OR SERVE UNDER] a licensed physician, optometrist, or dispensing optician as an apprentice for dispensing optician tasks. An apprentice shall register with the **United States Department of Labor** [DEPARTMENT] before beginning employment [OR SERVICE] as an apprentice **under this subsection** [, SHALL BE DESIGNATED AS SUCH IN THE RECORDS OF THE BOARD,] and shall be in

training under the regular supervision of **the** [A] licensed physician, optometrist, or dispensing optician. **An** [NOTWITHSTANDING AS 08.71.180, A REGISTERED] apprentice **registered with the United States Department of Labor** may perform dispensing optician tasks that are delegated by and performed under the regular supervision of the licensed physician, optometrist, or dispensing optician and may use the title "dispensing optician apprentice."

(b) **Not** [NO] more than **four** [TWO] apprentices may be under the direct supervision of one licensed dispensing optician at the same time.

* **Sec. 11.** AS 08.71.170 is amended to read:

Sec. 08.71.170. Prohibited conduct. The **department** [BOARD] may revoke or suspend the license of a dispensing optician, or the licensee may be reprimanded or otherwise disciplined when the **department** [BOARD] finds, after a hearing, that the licensee

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted of a crime **that** [WHICH] affects the licensee's ability to continue to practice competently and safely;

(5) intentionally or negligently engaged in or permitted the performance of patient care by persons under the licensee's supervision **that** [WHICH] does not conform to minimum professional standards regardless of whether actual injury to the patient occurred;

(6) continued to practice after becoming unfit due to

(A) professional incompetence;

(B) addiction or severe dependency on alcohol or other drugs **that** [WHICH] impairs the licensee's ability to practice safely;

(C) physical or mental disability;

(7) engaged in lewd or immoral conduct in connection with the delivery of professional service to patients;

(8) participated in the division, assignment, rebate, or refund of fees to a physician or optometrist in consideration of patient referrals; **or**

(9) advertised the services of any other segment of the healing arts.

*** Sec. 12.** AS 08.71.180 is amended to read:

Sec. 08.71.180. Practicing without a license. A person may not practice as a dispensing optician without a license issued under this chapter or while the person's license is suspended or revoked. A person who **knowingly** violates this section is guilty of a class b misdemeanor. **In this section, "knowingly" has the meaning given in AS 11.81.900.**

*** Sec. 13.** AS 08.71.200 is amended to read:

Sec. 08.71.200. Contact lenses. Contact lenses shall be fitted in conjunction with and under the supervision of a licensed physician or an optometrist **using** [AND WITH] a written contact-lens **fitting authorization that (1) shows the powers of the sphere and the cylinder and axis location; (2) includes an authorization to fit; and (3) states a requirement that the patient must return to the person who prescribed the contact lenses for a final evaluation after the fitting has been completed** [PRESCRIPTION SHOWING THAT THE PRESCRIPTION MAY BE FILLED FOR CONTACT LENSES AND REQUIRING THAT THE PATIENT RETURN TO SEE THE PRESCRIBING PHYSICIAN OR OPTOMETRIST]. In no case may contact lenses be prepared by neutralizing a person's eyeglasses**. Duplicate contact lenses may be dispensed, mailed to, or otherwise delivered to a patient from a written contact lens prescription that shows the exact specifications and parameters needed to exactly duplicate the patient's previous contact lenses. Notwithstanding other provisions of this section, contact lenses may not be provided to a patient at a time that is after the expiration of the most recent prescription for the patient unless authorized in writing or orally by the person who issued the prescription** [OR SPECTACLES].

*** Sec. 14.** AS 08.01.050(d)(3); AS 08.03.010(c)(9); AS 08.71.010, 08.71.020, 08.71.040, 08.71.240(1); and AS 44.62.330(a)(22) are repealed.

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

TRANSITION PROVISIONS: GENERAL. The department shall carry out the functions of the board on and after July 1, 2005. Litigation, hearings, investigations, and other proceedings pending on July 1, 2005, continue in effect and may be continued or completed by the department. Licenses, certificates, orders, and regulations issued or adopted by the board and in effect on July 1, 2005, remain in effect for the term issued or until revoked, amended, vacated, or repealed by the department. In this section, "board" and "department" have the meanings given in AS 08.71.240.

*** Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION PROVISIONS: EFFECT ON CURRENT APPRENTICES. Notwithstanding AS 08.71.110(a), as amended by sec. 5 of this Act, a person who is in an apprentice program under AS 08.71.160, as that section exists before the effective date of this Act, may satisfy the requirements of AS 08.71.110(a), as that section exists before the effective date of this Act, instead of AS 08.71.110(a), as amended by sec. 5 of this Act, in order to become a dispensing optician licensed under AS 08.71, as that chapter is amended by this Act, in this state. In this section, "dispensing optician" has the meaning given in AS 08.71.240.

*** Sec. 17.** This Act takes effect July 1, 2005.

Matt Morookian, ABOM
7401 Florence Cir.
Anchorage AK 99507
1-907-276-1021

Dear Alaska State Legislator:

Regarding the subject of licensing opticians I am writing to implore you to keep licensing a requirement as well as implementing a 2000 to 3000 hour apprenticeship requirement* . License and renewal fees always cover all of the costs**.

I operated my own independent retail optical store in California for over twenty years. There, passing the American Board of Opticianry entry level exam was the only requirement to be permenantly certified. Few opticians had a good educational foundation to begin with and far too few invested in ABO certified continuing education once they were certified.
I encountered daily clients who suffered from misinformation about what to expect from their prescription, their particular lens design, their frame fit, and lens options they had chosen at some other supplier. I commonly observed glasses that were below standard due to poor measuring, poor grinding and fabricating and poor fitting. Lenses that conformed to the doctor's prescription (a fact that was always emphasized by the "optician") may have still provided uncomfortable or even unacceptable vision for a myriad of other reasons. The deliverer was often not sufficiently knowledgeable to identify the problem and craft a solution. **The client would often be convinced that their result was normal and would therefore tolerate what should not (or at least need not) have been tolerated.**

The history of licensing laws in Alaska has allowed me to observe a refreshing difference in the result consumers' get in their glasses and contact lenses. The competence of Alaskan opticians and the improved products that clients receive as the natural result is both appropriate, reasonable and what consumers expect.

Another issue of concern is the education that fills the vacuum when license based education is lost – corporate based education (indoctrination.) Opticians so trained will get maximized emphasis on choices that pertain to profit and minimal or no objective knowledge on issues that conflict with corporate goals.

Properly trained and knowledgeable opticians can always offer clients the best and appropriate options. They will avoid incorrect or poor choices, clearly explain the merits and ramifications of various product choices and know to explore possible causes of and solutions to visual distress in new glasses or contact lenses (which often are related to aspects other than the prescription itself!)

We get our hair cut by trained and licensed people (we then leave the shop with...less hair!) Consumers deserve no less from providers of eyewear prescriptions.

Please do not let mandatory licensing end in Alaska. Were that to happen, the quality of glasses and contact lenses in Alaska would on the whole diminish greatly.

Alaskan consumers would suffer the greatest loss.

Sincere thanks for your serious consideration,

Matt Morookian , ABO certified Master Optician

- * I believe there is a federal program in place, prepared to oversee this.
- ** For clarification, contact me or board member Larry Harper, also at 1-907-276-1021.

To all Legislators of the State of Alaska:

I am an optician who has previously worked in a non-licensed state as a dispensing optician and as an optician in a licensed state. In that time I have seen many differences in the training of opticians and the care of the consumer.

- **The care of the consumer was lacking** in the non-licensed state because of the absence of training.
  In the non-licensed state, I worked at a national corporate store where there was no training done. I was handed a job and left alone to do it; only briefly familiar with what I was suppose to do. In the licensed state I also worked at a national corporate store where a formal training program was required as well as the state apprenticeship requirements. I was never left alone and always had a licensed optician there to assist.

- **Verifications of prescriptions were never a done**.
  In the non-licensed state they never taught us to verify prescriptions nor did they make it a priority to teach us, causing the consumer and the optician to be only hopeful that they were receiving the correct prescription.

- **I was called an "optician" after receiving only basic retail training**, receiving only minimum wages. I then moved to a licensed state that required education. I was able to go to night school for optics in order to help me pass the state-licensing exam. For the knowledge I acquired, my starting salary was forty percent more than the non-licensed state, allowing me to now own my first home.

- **The retail price for eyeglasses and contact lenses were identical**. Licensing for opticians made no difference in the retail price paid by consumers for the exact same eyeglasses. In the Non-licensed state not only did wages suffer but also the quality of care provided to the consumer.

I moved to a licensed state because I wanted to take my retail job and transform it to a professional career. The only way I was going to accomplish that, and be paid appropriately, was to move where opticians are viewed and educated as professionals. I then chose to move to Alaska because it too is a licensed state. Here I can continue my optical education and perhaps someday specialize in contact lenses. However now, licensing itself is being debated. I moved from a non-licensed state to licensed state to pursue my professional career only to find that perhaps it may once again be just another retail job. If that were to happen I may have to once again consider moving to where my profession is respected.

Shana K Pickford

ABOC, NCLEC

Sectional Description
SB 175 Dispensing Opticians

Section 1 – changes the authority of the Division of Occupational Licensing from regulating the Board of Dispensing Opticians (hereafter "board") to regulating dispensing opticians.

Section 2 – technical changes replacing "Board" with "department", thereby implementing the transfer of authority from the board to the division.

Section 3 – drafting stylistic changes and technical amendments – "board" to "department."

Section 4 – allows the department to rely on nationally-recognized tests to determine if an applicant has met the qualifications of the chapter.

Section 5 – clarifies the educational requirements for licensure by stating that an applicant must have a high school diploma or its equivalent; delineates the practical training or work experience for licensure; and additional technical amendments.

Section 6 – drafting stylistic changes and a technical amendment – "board" to "department."

Section 7 – technical amendments – "board" to "department."

Section 8 – technical amendment – "board" to "department."

Section 9 – adds statutory authority for the division to adopt regulations to allow a person from another state to be licensed as an optician, if they have a professional designation conferred by a nationally recognized professional organization

Section 10 – (a) transfers administration of the optician apprenticeship program to the US Department of Labor. (b) increases from two to four, the number of apprentices that can work under a license.

Section 11 – technical amendments – "board" to "department" and "which" to "that."

Section 12 – adds "knowingly" standard to violation of practice act provision.

Sec. 11.81.900. Definitions.

(a) For purposes of this title, unless the context requires otherwise,

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is

unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance

Section 13 – clarifies the requirements for the prescription, fitting, and sale of contact lenses.

Section 14 – repeals AS 08.01.010(16) which authorizes the department to regulate the "board"; AS 08.01.050(d)(3) which allows the board to request the department to contract with public agencies and private professional organizations to provide assistance and treatment to persons licensed by the board who abuse alcohol, other drugs, or other substances; AS 08.03.010 (c)(9) which establishes the sunset date of the board; AS 08.71.010 which creates the board; AS 08.71.020 which establishes the membership of the board; AS 08.71.040 which sets parameters for the election of officers of the board; AS 08.71. 240(1) which defines "board" in chapter 08.71; AS 44.62.330(a)(22) which requires that meetings of the board be conducted in accordance with the Administrative Procedures Act.

Section 15 – transitional language that provides for continued regulation of the optician professions as the regulatory authority passes from the board to the department.

Section 16 – transitional language provides the opportunity for individuals to complete the state administered apprenticeship program in which they are currently registered. New apprentices will register in a program administered by the US Department of Labor.

Section 17 – the effective date provides a smooth transition between the Board of Dispensing Opticians sunsetting on June 30, 2005 and the department assuming the regulation of dispensing opticians on July 1, 2005

Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

Sponsor Statement
SB 175 Dispensing Opticians

The legislature created the Board of Dispensing Opticians in 1973 to regulate the practice of opticianry and administer the optician licensing practical examination. In 2002 the legislature repealed the requirement for a practical examination, and legislative auditors then determined that the remaining functions of the board could be more efficiently handled by the Division of Occupational Licensing. So this bill will follow that recommendation and create a smooth transition of oversight from the board to the department.

This bill sunsets the Board of Dispensing Opticians (BDO) and transfers authority for regulating opticians to the Division of Occupational Licensing in the Department of Community and Economic Development. It will continue to license dispensing opticians. It will increase from 2 to 4 the number of apprentices that can work under one licensed optician, optometrist, or medical doctor, allowing for more individuals to enter into the profession. The bill will simplify licensure for opticians wanting to practice in Alaska to do so.

This bill will trar fer the administration of the optician's apprenticeship program from the state to the US Department of Labor. USDOL administers a number of apprenticeship programs and the Division of Occupational Licensing will use its standards and requirements as guidelines for issuing licenses to qualified opticians.

We see all these changes as positive moves for the industry, by maintaining quality through licensing and ensuring consumer protection for Alaskans who need eyewear services in our state.

Sponsor Statement

Senate Bill: SB 175 Dispensing Opticians
Short Title:
Sponsor: Senate Labor and Commerce Committee
Current Version: Sb 175
Contact: Jane Alberts, 465-4843

Summary:

- Sunsets the Board of Dispensing Opticians (BDO) and transfers authority for regulating opticians to the Division of Occupational Licensing in the Department of Community and Economic Development
- Continues licensing for dispensing opticians.
- Increases from 2 to 4 the number of apprentices that can work under one licensed optician, optometrist, or medical doctor.
- Simplifies the process for opticians from other state to be licensed in Alaska.
- Transfers administration of the optician's apprenticeship program from the state to the US Department of Labor. USDOL administers a number of apprenticeship programs

Benefits:

- Keeping the licensure component for opticians protects the consumer purchasing eyeglasses and contacts by ensuring a level of expertise and education within the industry
- Assists the opticians in a smooth transition from board oversight to the Department of Occupational Licensing
- Allows more people to enter the profession by increasing the number of allowable apprentices from 2 to 4.

Background

- The legislature created the BDO in 1973 to regulate the practice of opticianry and administer the optician licensing practical examination. In 2002 the legislature repealed the requirement for a practical examination, legislative auditors then determined that the remaining functions of the board could more efficiently be handled by the Division of Occupational Licensing. So this bill will follow that recommendation.

Fact Sheet

SB

177

SENATE COMMITTEE REPORT

DATE: 2/6/06

FURTHER:

DATE TURNED
IN TO OFFICE:_____

Labor and Commerce Committee considered SENATE BILL NO. 177

SB 177 PRACTICE OF PSYCHOLOGY

"An Act eliminating the requirement that persons using titles or descriptions of services that incorporate the terms 'psychotherapy,' 'psychotherapeutic,' or 'psychotherapist' be licensed by the Board of Psychologist and Psychological Associate Examiners."

and recommends:

[ ] be **replaced** with _____ **CS** _____ (_____)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

CS Senate Bill:
[ ] Same Title
[ ] New Title

SCS 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
Bruce Davis			X	
Jay Kelly Davis			X	
Ralph Wilkins	✓			
Ben Stevens	—			
CHAIR: Con Bunde	✓			

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 177
() Publish Date:

Revision Date/Time (Note if correction):
Title: Practice of Psychology
Dept. Affected: Commerce
RDU: Occupational Licensing (117)
Component: Occupational Licensing

Sponsor: Health, Education & Social Services
Requester: Senate Health, Education & Social Services
Component No.: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0 0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

SB177 eliminates certain titles or description of services from requiring licensure by the Board of Psychologist and Psychological Associate Examiners. New funds are not required to implement the provisions of this bill.

Prepared by: Jennifer Strickler, Administrative Manager
Phone: (907) 465-2144
Division: Occupational Licensing
Date/Time: 4/19/05 7:30 PM
Approved by: Edgar Blatchford, Commissioner
Date: 4/19/2005
Agency: Commerce, Community, and Economic Development

(Revised 9/23/2004 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB177CS(HES)-DHSS-DHCS-02-07-06
( ) Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Health & Social Services

Title: USE OF THE TERMS PSYCHOTHERAPY, PSYCHOTHERAPEUTIC, OR PSYCHOTHERAPIST
RDU: Health Care Services
Component: Medicaid Services

Sponsor: SENATE (HES) BY REQUEST
Requester:
Component No.: 2077

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost:
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill eliminates the prohibition on the use of the terms 'psychoanalysis', 'psychoanalyst', 'psychotherapy', 'psychotherapeutic' or 'psychotherapist' in descriptions of services or titles by licensed clinical social workers, licensed marital and family therapists, or licensed professional counselors.

This bill is not expected to have an effect on any aspect of the Medicaid program.

Prepared by: Dwayne Peeples, Director — Phone 907-465-5830
Division: Health Care Services — Date/Time 02/02/2006
Approved by: Karleen Jackson, Commissioner — Date 02/07/2006
Agency: Department of Health and Social Services

(Revised 9/7/2005 OMB)

Sec. 08.86.170. Use of title.

(a) Unless licensed under this chapter, a person may not use the title "psychologist" or a title, designation, or device indicating or tending to indicate that the person is a psychologist or practices psychology.

(b) Unless licensed under this chapter, a person may not use the title "psychological associate" or a title, designation, or device indicating or tending to indicate that the person is a psychological associate or practices counseling or psychometrics.

Sec. ⏭08.86.180⏮. Practice of psychology.

(a) Unless licensed under this chapter, a person may not practice psychology or hold out publicly as a psychologist or as practicing psychology. A person holds out as a psychologist by using a title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychometry," "psychotherapy," "psychotherapeutic," "psychotherapist," "psychoanalysis," or "psychoanalyst" or when holding out publicly to be trained, experienced, or qualified to render services in the field of psychology.

(b) This section does not apply to

(1) a person employed by a governmental unit, educational institution or private agency who may be required to engage in some phase of work of a psychological nature in the course of the person's employment, if the employer maintains appropriate supervision of psychological activities and professional conduct, and if the person is performing the psychological activities as part of the duties for which the person was employed, is performing the activities solely within the facilities of the organization in which the person is employed or under the supervision of the organization in which the person is employed, and does not render or offer to render psychological services to the public for compensation in addition to the salary the person receives from the organization;

(2) a student, intern, or resident in psychology pursuing a course of study approved by the board as qualifying training and experience for a psychologist, if that person's activities constitute a part of that person's supervised course of study and that person is designated by titles such as "psychology intern" or "psychology trainee";

(3) a qualified member of another profession, in doing work of a psychological nature consistent with that person's training and consistent with the code of ethics of that person's profession, if the person does not hold out to the public by a title or description of services incorporating the words "psychology," "psychological," "psychologist," "psychometry," "psychotherapy," "psychotherapeutic," "psychotherapist," "psychoanalysis," or "psychoanalyst" or represent to be trained, experienced, or qualified to render services in the field of psychology.

(4) *[Repealed, Sec. 15 ch 65 SLA 1973].*

(5) a physician engaged in the normal practice of medicine for which the physician is licensed under AS 08.64.

(c) Nothing in this chapter authorizes a person licensed as a psychologist to engage in the practice of medicine, as defined by the laws of the state.

(d) Nothing in this section prohibits a clinical social worker from holding out to the public by a title or description of services incorporating the words "psychotherapy," "psychotherapist," or "psychotherapeutic."

Sec. 08.86.185. Practice of counseling and psychometrics. [Repealed, Sec. 24 ch 58 SLA 1980. For current law, see AS 08.86.180].

Repealed or Renumbered

Psychotherapy means:

the treatment of mental or emotional problems by psychological means

the treatment of psychological disorders or maladjustments by a psychological technique, as psychoanalysis, group therapy, or behavioral therapy. Psychotherapy does not include physiological interventions, such as drug therapy or electroconvulsive therapy, although it may be used in combination with such methods. Behavior therapy aims to help the patient eliminate undesirable habits or irrational fears through the use of principles of conditioning

a set of techniques believed to cure or to help solve behavioral and other psychological problems in humans. The common part of these techniques is direct personal contact between therapist and patient, mainly in the form of talking. Due to the nature of these communications, there are significant issues of patient privacy and/or client confidentiality.

A generic term for the treatment of mental illness or emotional disturbances primarily by verbal or nonverbal communication.

The treatment of mental and emotional disorders through the use of psychological techniques designed to encourage communication of conflicts and insight into problems, with the goal being relief of symptoms, changes in behavior leading to improved social and vocational functioning, and personality growth.

(Partial) List of Psychotherapeutic Modalities

- Analytical psychology
- Autogenic psychotherapy
- Behavior therapy
- Biodynamic psychotherapy
- Bioenergetic analysis
- Biosynthesis
- Jungian psychotherapy
- Rogerian psychotherapy
- Cognitive analytic psychotherapy
- Cogn[illegible] behavioural psychotherapy
- Concentrative movement therapy
- Core proces psychotherapy
- Daseins analytic psychotherapy
- Encounter groups
- Existential analysis
- Family therapy
- Freudian psychotherapy
- Gestalt therapy
- Group therapy
- Huma[illegible]tic psychology
- Logotherapy
- Neuro-Linguistic Programming
- Person centred psychotherapy
- Personal construct psychology (PCP)
- Positive psychotherapy
- Postural integration
- Primal integration
- Primal therapy
- Psychoanalysis
- Psychodrama
- Psychodynamic psychotherapy
- Psycho-Organic analysis
- Psychosynthesis
- Pulsing
- Rational emotive behaviour psychotherapy
- Reichian psychotherapy
- Rolfing
- Sophia analysis
- Systemic therapy
- T Groups
- Transactional analysis
- Transpersonal psychotherapy

Dear Legislator:

An issue has been brought up to me agai.. by members of the Community Mental Health Center (CMHC) providers association. They are concerned because one of the primary services that they provide is "psychotherapy". There is confusion among them and others because the statutes regarding licensed psychologists says that only they and social workers may call themselves "psychotherapists", and use the terms "psychotherapy" and "psychotherapeutic" to describe the work that they do. This statute was written prior to the licensing of professional counselors (LPC) and marital and family therapists (LMFT) who currently make up close to half of the licensed mental health professionals practicing in the state and an even larger percentage working in state funded community mental health centers (CMHC).

The problem is that "psychotherapy" is a generic term much like "physical therapy". There are many modes of therapy that fall under the umbrella of this generic term and they all have to do with working with people's minds to improve health or alter behavior. Attached are several definitions of psychotherapy easily found on the internet at medical dictionary sites. Also attached is the statutory language limiting the use of the psychotherapy terms and the definition of the practice of psychology.

When billing for services at a CMHC, Medicaid recognizes "psychotherapy" as a service and Medicaid regulations allow all of the four mental health professions to bill for it. However, there is currently confusion and fear that service providers could be found to be billing fraudulently if they have LMFT or LPC staff sign and bill for those services.

It is clear that legislators in the past recognized that psychologists were not the only mental health professionals to practice psychotherapy. Before the licensing of LMFT and LPC clinicians, they amended the psychology statutes to include:

> Sec. 08.86.180. (d) Nothing in this section prohibits a clinical social worker from holding out to the public by a title or description of services incorporating the words "psychotherapy," "psychotherapist," or "psychotherapeutic."

In a survey that I did two years ago, I found that there were only 8 licensed psychologists working in community mental health centers across the state. The rest of the clinical staff were mostly social workers and LPCs with a few MFTs. These numbers help to demonstrate the necessity to make changes to current law in order to recognize the reality of the current workforce, the actual practice of clinical staff, and the need to support clinical staff on whom many rely for mental health services.

Should you wish to contact me to discuss this bill, my email address is alhenry@alaska.net, and my phone numbers are: (H) 272-0816, (cell) 250-5244.

Thank you very much for considering this.
Respectfully,
Anne L. Henry
LPC Board Chair

JBSAN
SB 177

DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Division of Corporations, Business and Professional Licensing

Frank H. Murkowski, Governor
William Noll, Commissioner
Rick Urion, Director

January 10, 2006

The Honorable Fred Dyson
Alaska State Senate
10928 Eagle River Road
Eagle River, AK 99577

Dear Senator Dyson:

This letter is in support of Senate Bill 177, which references the use of words such as "psychotherapy/psychotherapeutic" by licensed mental health professionals. As you know, currently terms such as "psychotherapy", "psychotherapeutic" and "psychotherapist" that are used by Psychologists may not be used by other mental health professionals. We would like to eliminate the requirement that only Psychologists licensed by their Board can use those terms.

The Webster's Dictionary defines "psychotherapy" as "the treatment of psychological disorders or maladjustments"... In the Statutes for Licensed Marriage and Family Therapists, (LMFT) Sec. 08.63.900, the "practice of marital and family therapy" (5) is defined as (A) "the professional application of assessments and treatments of psychotherapeutic services to individuals, couples and families for the purpose of treating the diagnosed emotional and mental disorders". Therefore, the term "psychotherapeutic" is already being used as is in the Statutes for LMFTs.

In order that the public understand that all licensed mental health professionals are qualified to provide psychotherapeutic services, we need to ensure passage of Senate Bill 177. Currently, there is apparent contradictory information in the Statutes.

The Marriage and Family Therapy licensing Board is in support of Senate Bill 177

Thank you for your attention to this matter.

Sincerely,

Vivian C. Finlay

Vivian C. Finlay, Chair
Marital & Family Therapists Board

PO Box 110806, Juneau, AK 99811-0806
Telephone: (907) 465-2534 Fax: (907) 465-2974 Website: www.commerce.state.ak.us/occ

DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Division of Corporations, Business and Professional Licensing

Frank H. Murkowski, Governor
William Noll, Commissioner
Rick Union, Director

JASW

RECEIVED
JAN 17 ...

January 13, 2006

The Honorable Fred Dyson
Alaska State Senate
State Capitol, Room 121
Juneau, AK 99801-1182

Dear Senator Dyson:

The Board of Social Work Examiners has met and discussed the merits of Senate Bill 177. After discussion and consideration of the Statutes and Regulations governing the licensing of social workers, we are in agreement that the statutory changes proposed in the amended version of SB177 (below) are consistent with the mission of the Board. The amended bill will protect the public safety while better defining the work of the practitioners who serve them.

Amend SB177 to: *Delete proposed changes to Sec. 08.86.180(a) and (b). This maintains the restrictive language currently in Statute which will prevent unlicensed individuals from using the restricted terminology. This protects the public while remedying the confusion about who is permitted to use the generic terminology to describe the work that is done by all four disciplines.*

Add a change to Sec. 08.86.180: (d) Nothing in this section prohibits a licensed clinical social worker, licensed marital and family therapist or licensed professional counselor from holding out to the public by a title or description of services incorporating the words "psychotherapy", "psychotherapist", "psychotherapeutic", "psychoanalysis", or "psychoanalyst".

Thank you for your sponsorship of SB177.

Respectfully,

Denny Patella

Denny Patella, LCSW, Chairperson
Board of Social Work Examiners

PO Box 110806, Juneau, AK 99811-0806
Telephone: (907) 465-2534 Fax: (907) 465-2974 Website: www.commerce.state.ak.us/occ

April 20, 2005

Senator Fred Dyson, Chair
& Members of Senate H&SS Committee
State Capitol Building
Juneau, Alaska

Re: Senate Bill 177

Senator Dyson,

I am writing to you in support of Senate Bill 177, which seeks to remove the unintentional, discriminatory language that was inserted into state statutes prior to the licensing of LPC and LMFT clinicians in the state of Alaska.

My strong support for the bill stems in part from the shortage of mental health professionals licensed to legally provide services to Alaska's village communities and adolescent populations, given the current wording of the statute. I lend further support given the fact that many clients take comfort in being able to choose from qualified multidisciplinary mental health providers when attempting to obtain needed services; however, due to the language in the current statute, health insurance companies may choose to limit subscriber's coverage to psychologists or clinical social workers only.

Senate Bill 177 would update the statutory language necessary to include licensed professional counselors to provide mental health services that they are clearly schooled and qualified to provide and it would also promote unity among the four professions (psychology, social work, counseling and marriage and family therapy) that are vital in providing access to behavioral healthcare for all Alaskans.

As we rapidly interface with the 21st century, so do our social challenges as a community. I thank you for your support, as one of the many professionals, who is dedicated to moving Alaska forward and supporting quality mental health clinicians and understanding their inclusive scope of practice.

In appreciation of your efforts,
Ann M. Ginn, M.Ed., LPC, LBSW

Health, Education, and Social Services Committee
Alaska State Senate

SPONSOR STATEMENT

CS SB 177 (HES)—*"An Act eliminating the prohibition on the use by certain licensed professionals of titles or descriptions of services that incorporate the terms 'psychoanalysis,' 'psychoanalyst,' psychotherapy,' 'psychotherapeutic,' or 'psychotherapist."*

AS 08.86.180 prohibits professionals—except for licensed psychologists and clinical social workers—from using certain terms to describe their services or their titles. These terms include: "psychology," "psychological," "psychologist," "psychometry," "psychotherapy," "psychotherapeutic," "psychotherapist," "psychoanalysis," and "psychoanalyst." This statute was written prior to the licensure of professional counselors (LPC's) and marital and family therapists (LMFT's), who also provide these types of psychological services. LPC's and LMFT's constitute a large portion of Alaska's licensed mental health professional workforce, and are an even larger percentage of professionals working in state funded community mental health centers.

CS SB 177 (HES) was composed with the collaboration of the Alaska Board of Licensed Professional Counselors, the Alaska Psychological Association, the Alaska Board of Psychologist and Psychological Associate Examiners, the Alaska Chapter of the National Association of Social Workers, the Alaska Board of Marital and Family Therapists, and the Alaska Board of Social Work Examiners.

SB 177 updates these statutes to reflect current practice and training as well as maintaining a degree of protection to the public. The language affects licensed clinical social workers, licensed marital and family therapists, and licensed professional counselors.

SB

207

2/8 Came after we passed out. Not in Finance

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number
Bill Version: CSSB207(L&C)
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Commerce
Title: AK Aerospace Development Corporation Board Membership
RDU: AK Aerospace Devel Corp (127)
Component: AK Aerospace Devel Corp
Sponsor: Gary Stevens
Requester: Labor & Commerce
Component No.: 1424

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel	13.1	13.1	13.1	13.1	13.1	13.1
Contractual	1.5	1.5	1.5	1.5	1.5	1.5
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**14.6**	**14.6**	**14.6**	**14.6**	**14.6**	**14.6**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	14.6	14.6	14.6	14.6	14.6	14.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**14.6**	**14.6**	**14.6**	**14.6**	**14.6**	**14.6**

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation adds two members who shall be residents of the borough where the launch activities occur to the corporation's board of directors, and provides that three of the state residents appointed shall be residents of the borough where the launch activities of the corporation occur. The corporation anticipates funds will be needed to cover the costs of these three members to travel to Anchorage for five meetings.

Prepared by: Monica James, Chief Financial Officer
Phone: 907 561 3338
Division: Alaska Aerospace Development Corporation
Date/Time: 2/7/06 1:44 PM
Approved by: Pat Ladner, President and CEO
Date: 2/7/2006
Agency: Alaska Aerospace Development Corporation

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/9/06

FURTHER: Finance

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

DATE TURNED IN TO OFFICE: _____

Labor and Commerce Committee considered SENATE BILL NO. 207

SB 207 AK AEROSPACE DEVEL. CORP BD MEMBERSHIP

An Act relating to the membership on the board of directors of the Alaska Aerospace Development Corporation."

and recommends:

[ ] be **replaced** with _____ **CS** _____ (_____)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

CS Senate Bill:
[ ] Same Title
[ ] New Title

SCS 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
Ralph Seekins	✓			
Betty Davis	X			
Jeff Ellis			X	
Ben Stevens	X			
CHAIR: Al Bird	✓			

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB 207
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Commerce
Title: AK Aerospace Development Corporation Board Membership
RDU: AK Aerospace Devel Corp (127)
Component: AK Aerospace Devel Corp
Sponsor: Gary Stevens
Requester: Labor & Commerce
Component No.: 2362

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel	8.7	8.7	8.7	8.7	8.7	8.7
Contractual	1.0	1.0	1.0	1.0	1.0	1.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**9.7**	**9.7**	**9.7**	**9.7**	**9.7**	**9.7**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	9.7	9.7	9.7	9.7	9.7	9.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**9.7**	**9.7**	**9.7**	**9.7**	**9.7**	**9.7**

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation adds two members who shall be residents of the borough where the launch activities occur to the corporation's board of directors. The corporation anticipates funds will be needed to cover the costs of these members to travel to Anchorage for five meetings.

Prepared by: Pat Ladner, President and CEO
Phone: 907.561.3338
Division: Alaska Aerospace Development Corporation
Date/Time: 1/24/06 10:01 AM
Approved by: William C. Noll, Commissioner
Date: 1/24/2006
Agency: Commerce, Community and Economic Development

Introduced by: Mayor Selby
Requested by: Mayor Selby
Introduced: 09/01/2005
Adopted: 09/01/2005

KODIAK ISLAND BOROUGH
RESOLUTION NO. FY2006-09

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY URGING THAT THE GOVERNOR AND LEGISLATURE DESIGNATE TWO SEATS FOR KODIAK RESIDENTS ON THE ALASKA AEROSPACE DEVELOPMENT CORPORATION BOARD OF DIRECTORS

WHEREAS, the Alaska Aerospace Development Corporation (AADC) was created in 1997 as a public corporation of the State of Alaska; and

WHEREAS, the purpose of the AADC is to allow the State to take a lead role in the exploration and development of space, to enhance human and economic development, and to provide a unified direction for space-related economic growth thereby ensuring a stable and dynamic research and business climate by attracting space-related businesses to locate within and utilize the opportunities provided in the state among other goals; and

WHEREAS, the powers and responsibilities of the AADC are vested in the board of directors, include but are not limited to: acquiring real and personal property; owning and improving launch sites, launch pads, landing areas, ranges, payload facilities, laboratories, space business incubators, facilities for the construction of rockets and other launch vehicles, and other space facilities and space-related systems, including educational, cultural, tourism, and parking facilities, and space-related initiatives; operating transportation facilities appropriate to meet the transportation requirements of a facility operated by the AADC; operating water, sewage, and utility service to a facility operated by the AADC; and providing public safety facilities for a facility operated by the AADC; and

WHEREAS, all of these activities, and others the AADC may pursue have the potential to significantly impact the greater Kodiak community and economy; and

WHEREAS, the board of directors of the AADC consists of nine members appointed by the governor as follows: (1) three state residents who have a significant high level of experience in the private business sector, specializing in financing or economic development or marketing; (2) the president or the designee of the president of the University of Alaska; (3) the director or designee of the Geophysical Institute of the University of Alaska; (4) the commissioner of commerce, community, and economic development or the commissioner's designee; (5) two members who have held or currently hold positions in the aerospace or commercial space industry or special experience regarding federal regulatory procedures and policies involving space or operational experience; members with aerospace experience may not exceed one; and (6) a public school educator or a public member; and

WHEREAS, the members of the board of directors of the AADC described above may be nonresidents of the State and in addition, two members of the legislature shall serve as ex- officio nonvoting members of the board of directors. The two ex-officio nonvoting members shall include one member of the senate appointed by the president of the senate and one member of the house appointed by the speaker of the house; and

WHEREAS, since the creation of the AADC, two board members have also been Kodiak residents;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THAT the Governor and the Legislature should designate two seats for Kodiak residents on the Alaska Aerospace Development Corporation Board of Directors.

ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THIS FIRST DAY OF SEPTEMBER 2005

KODIAK ISLAND BOROUGH

Jerome M. Selby, Borough Mayor

ATTEST:

Judith A. Nielsen, CMC, Borough Clerk

CITY OF KODIAK
RESOLUTION NUMBER 05–37

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK INSISTING THAT THE GOVERNOR AND LEGISLATURE DESIGNATE TWO SEATS ON THE ALASKA AEROSPACE DEVELOPMENT CORPORATION BOARD OF DIRECTORS FOR KODIAK RESIDENTS

WHEREAS, the Alaska Aerospace Development Corporation was created in 1997 as a public corporation of the State of Alaska; and

WHEREAS, the purpose of the corporation is to allow the State to take a lead role in the exploration and development of space, to enhance human and economic development, and to provide a unified direction for space-related economic growth, thereby ensuring a stable and dynamic research and business climate by attracting space-related businesses to locate within and utilize the opportunities provided in the State, among other goals; and

WHEREAS, the powers and responsibilities of the corporation vested in the board of directors include but are not limited to acquiring real and personal property; owning and improving launch sites, launch pads, landing areas, ranges, payload facilities, laboratories, space business incubators, facilities for the construction of rockets and other launch vehicles, and other space facilities and space-related systems, including educational, cultural, tourism, and parking facilities, and space-related initiatives; operating transportation facilities appropriate to meet the transportation requirements of a facility operated by the corporation; operating water, sewage, and utility service to a facility operated by the corporation; and providing public safety facilities for a facility operated by the corporation; and

WHEREAS, all of these activities and others the Alaska Aerospace Development Corporation may pursue have the potential to significantly impact the greater Kodiak community and economy; and

WHEREAS, The board of directors of the corporation consist of nine members appointed by the governor as follows: (1) three State residents who have a significant high level of experience in the private business sector, specializing in financing or economic development or marketing; (2) the president or the designee of the president of the University of Alaska; (3) the director or designee of the Geophysical Institute of the University of Alaska; (4) the commissioner of Commerce, Community, and Economic Development or the commissioner's designee; (5) two members who have held or currently hold positions in the aerospace or commercial space industry or special experience regarding federal regulatory procedures and policies involving space or operational experience; members with aerospace experience may not exceed one; and (6) a public school educator or a public member; and

WHEREAS, the members of the board of directors of the corporation described in (5) above may be nonresidents of the State and, in addition, two members of the legislature shall serve as ex-

officio nonvoting members of the board of directors, and the two ex-officio nonvoting members shall include one member of the senate appointed by the president of the senate and one member of the house appointed by the speaker of the house; and

WHEREAS, since the creation of the Alaska Aerospace Development Corporation, two board members have also been Kodiak residents.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that the governor and the legislature should appoint and designate two seats on the Alaska Aerospace Development Corporation Board of Directors for Kodiak residents.

CITY OF KODIAK

Charles E. Davidson

DEPUTY MAYOR

ATTEST:

Debra Marlar

CITY CLERK

Adopted: August 25, 2005

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-4925
Fax: (907) 465-3517
Toll Free: 1-800-821-4925

Senator Gary Stevens

Alaska State Legislature

INTERIM ADDRESS:
112 Mill Bay Road
Kodiak, Alaska 99615
(907) 486-4925
Fax: (907) 486-5264

Sponsor Statement for SB 207

SB 207 "An Act relating to membership on the board of directors of the Alaska Aerospace Development Corporation"

SB 207 is a straightforward bill to increase membership of the board of directors of the Alaska Aerospace Development Corporation (AADC) from 9 to 11 members. Additionally, the bill ensures two members of the AADC board will reside in the borough where the launch activities of the corporation occur.

Since the late 1990s, AADC has conducted numerous rocket launches, infrastructure construction projects and other activities at its Kodiak Launch Complex facility on Kodiak Island. These activities have had an enormous impact on local residents' recreational activities at nearby Pasagshak Beach, local government operations and the Kodiak Island economy. With the Kodiak Launch Complex playing a key role in the testing of the nation's missile defense system it makes sense for the island community to be well represented on the AADC board of directors. SB 207 will allow that to happen without substantially affecting the current board structure.

SB 207 is supported by the City of Kodiak and the Kodiak Island Borough.

I ask for your support of this important measure.

LEGAL SERVICES

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

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

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

MEMORANDUM January 19, 2006

SUBJECT: Sectional analysis of SB 207 (Work Order No. 24-LS1208\F)

TO: Senator Gary Stevens
Attn: Doug

FROM: Theresa Bannister
Legislative Counsel

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

Section 1. Amends AS 14.40.826(a) to increase to 11 the number of members on the board of directors of the Alaska Aerospace Development Corporation. Increases to five the number of members who must be state residents with a significant level of experience in the private business sector (specializing in financing or economic development or marketing). Requires that two of these five members be residents of the borough where the launch activities of the corporation occur.

Section 2. Provides transition provisions to handle the initial appointments and terms of the two new members added by sec. 1 of this bill.

If I may be of further assistance, please advise.

TLB:ljw
06-019.ljw

Sectional Analysis

SB

222

[redacted]

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/9/06

FURTHER: Judiciary

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

DATE TURNED IN TO OFFICE: _____

Labor and Commerce Committee considered SENATE BILL NO. 222

SB 222 PROTECTION OF PERSONAL INFORMATION

"An Act relating to breaches of security involving personal information, consumer report security freezes, consumer credit monitoring, credit accuracy, protection of social security numbers, disposal of records, factual declarations of innocence after identity theft, filing police reports regarding identity theft, and furnishing consumer credit header information; and amending Rule 60, Alaska Rules of Civil Procedure."

and recommends:

[ ] be **replaced** with _____ **CS** _____ (_____)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

CS Senate Bill:
[ ] Same Title
[ ] New Title

SCS 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
Betty A. Davis	X			
[illegible]	X			
Ralph Wilkins	✓			
[illegible]				X
CHAIR: C. Bunde	X			

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-8554

February 13, 2006

The Honorable Gene Therriault
State Capitol
MS 3100
Room 119
Juneau, AK 99801-1182

The Honorable Gretchen Guess
State Capitol
MS 3100
Room 423
Juneau, AK 99801-1182

How quickly can a credit report be blocked or un-blocked? SS # can't release to court? Notify person of ...

Re: SB 222, Version 24-LS1419\A

Dear Senator Therriault and Senator Guess:

The Department of Law ("Department") has reviewed SB 222, and supports your effort to address this important and developing area of law. Identity theft continues to be the number one reported complaint to the Federal Trade Commission ("FTC") for 2005. The FTC received 421 identity theft complaints from Alaska residents in 2005, ranking 26th in the nation.

The Department has some concerns, however, with how this legislation will affect the numerous state agencies that must deal with, and disclose, personal information as part of performing their regular statutory duties. We believe the state is not the kind of potential "offender" that prompted this legislation. Several agencies have commented that personal information, as defined in the bill, is disclosed in a number of transactions.

The Department's criminal division, for example, discloses social security information regularly to the court in connection with criminal prosecutions. The Department's Human Services and Collections sections collect and disclose personal information when pursuing collection of judgments. The Department of Motor Vehicles obtains and discloses Social Security Numbers ("SSN's) in a number of contexts. The Division of Insurance transmits various kinds of data to national data bases accessed by regulators in other states. Alaska's Commission on Post Secondary Education collects personal information and passes it on to credit agencies when a borrower is in default, and also provides personal information to loan servicers. Other agencies must obtain and disclose personal information as well, including the Department of Revenue, the Department of Labor and Workforce Development, the Department of Fish and Game, and the Department of Community, Commerce, and Economic Development.

It appears the language in Article 1 of SB 222 does not define these kinds of disclosures as a "security breach," thus the notification requirements of the bill would not be triggered by the disclosure of information in the regular course of business. The Department would like to confirm that the intent of the bill is not to require notification in these circumstances. Instead, we understand the notification requirements of the bill, as currently drafted, only apply when there has been "unauthorized acquisition" of personal information. "Acquisition" is then defined to include "acquisition by photo copying, facsimile, or other paper-based method" in addition to other methods. The Department is concerned that, given the broad definition of "acquisition," the inadvertent disclosure of personal information via facsimile or e-mail could trigger a notice requirement. The Department would like to confirm that it is not the intent to require notification in these types of circumstances.

Specific comments on SB 222, version 24-LS1419\A are:

Page 2, line 20, in Sec. 45.48.030(3). This subsection provides that an information collector can utilize an alternative disclosure method if it "demonstrates" that providing notice meets certain cost and number of consumer requirements. Exactly to whom must the information collector make this demonstration to?

Page 3, after line 23, in Sec. 45.48.060. In this "Violations" section, the Department proposes an additional subsection be added that reads:

(d) An action may not be brought under this section against a governmental entity or its employees.

This addition would eliminate the ability of a private plaintiff to bring an action against the state for failing to comply with this law. The state would still be required, however, to comply with the law, and provide the necessary notification in the event of a security breach. The Department believes this is critically important. Otherwise, this law creates a potential cause of action against the state for damages. Because the state is an attractive target for creative plaintiffs, this exposure could lead to expensive lawsuits. Unlike private enterprise, the state has no profit motive for not complying with this law. Thus, this provision will not detract from the effectiveness of the bill.

Page 3, lines 24 - 27; Sec. 45.48.070. This entire section is not necessary. The minimum contacts required to subject an information collector to the provision of this bill exist as a matter of law.

Page 4, lines 26-28 in Sec. 45.48.090(3)(B). This provision states that any of the individual items listed in (i) - (iv) of this paragraph, even without a person's name, can be included in the definition of "personal information" if the item alone would be sufficient to attempt to engage in identity theft. Because any of the items described in (i) - (iv) are always sufficient for an attempted identity theft, this provision essentially nullifies the requirement that

there be a "combination" of one of these items plus a person's name. Either this provision should be deleted, or the first part of (A) should be deleted.

The Department has proposed an amendment to Article 1 of SB 222 that we believe address these concerns. The amendment is attached. The language in the amendment is taken from laws found in Arkansas, Texas, New York, Rhode Island, Montana, Connecticut, New Jersey, and Colorado.

The department is available to answer any question you have about these comments.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By: Clyde E. Sniffen, Jr.
Assistant Attorney General

cc: Senator Con Bunde
Chairman
Senate Labor and Commerce Committee

Kevin Jardell, Legislative Director
Office of the Governor

Randy Ruaro, AAG
Deborah Behr, AAG
Department of Law

CES/sjm

AMENDMENTS INCLUDED IN CS SB 222, VERSION F

Monday, February 13, 2006

Article 1 – Breach of Security Involving Personal Information

1. Change the "notification of law enforcement" provision to include appropriate law enforcement agencies in addition to the Alaska Department of Law (e.g., FBI).
   Page 2, lines 8 – 13.

Article 4 - Social Security Number

2. Allow printing of Social Security Number on materials mailed to the individual if the material is in an envelope and is sent to establish, amend, or terminate an account, contract, or policy, or to confirm the accuracy of the social security number.
   Conforming to amended California law.
   Pages 15, lines 25 - 31 and page 16, lines 1 - 5.

3. Revised the text to allow for situations when collection or submission of Social Security Number is required by state or federal law.
   Page 16, lines 8 – 10.

4. Added language to clarify businesses may require forms of identification other than a Social Security Number.
   Page 16, lines 10 – 11.

Article 8 – Truncation of Card Information

5. Article eight was added in its entirety. It prohibits printing of more than the last five digits of a credit card number on receipts.
   Page 21, line 29 – page 22, line 27.

Article 9 – General Provisions

6. Change the section on "relationship to federal law" to eliminate reference to conflicts with federal law.
   Old language: "If a provision of this chapter is preempted by or conflicts with federal law…"
   New Language: "If a provision of this chapter is preempted by federal law…"
   Page 22, lines 29 – 31.

24-LS1419\F
Bannister
2/13/06

CS FOR SENATE BILL NO. 222( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS THERRIAULT AND GUESS, Ellis

A BILL

FOR AN ACT ENTITLED

"An Act relating to breaches of security involving personal information, consumer report security freezes, consumer credit monitoring, credit accuracy, protection of social security numbers, disposal of records, factual declarations of innocence after identity theft, filing police reports regarding identity theft, furnishing consumer credit header information, and truncation of credit and debit card information; and amending Rule 60, Alaska Rules of Civil Procedure."

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

* **Section 1.** AS 45 is amended by adding a new chapter to read:

Chapter 48. Personal Information Protection Act.

Article 1. Breach of Security Involving Personal Information.

Sec. 45.48.010. Disclosure of breach of security. (a) If a person owns or uses personal information that includes personal information on a state resident, and a breach of the security of the information system containing the personal information

occurs, the person shall, after discovering or being notified of the breach, disclose the breach to the state resident, whether or not the personal information has or has not been accessed by an unauthorized third party for legal or illegal purposes.

(b) An information collector shall make the disclosure required by (a) of this section in the most expedient time possible and without unreasonable delay, except as provided in AS 45.48.020 and as necessary to determine the scope of the breach and restore the reasonable integrity of the information system.

Sec. 45.48.020. Allowable delay in notification. An information collector may delay disclosing the breach under AS 45.48.010 if an appropriate law enforcement agency determines that disclosing the breach will interfere with a criminal investigation and provides the information collector with a written request for the delay. However, the information collector shall disclose the breach to the state resident as soon as notification would not any longer interfere with the investigation.

Sec. 45.48.030. Methods of notice. An information collector shall make the disclosure required by AS 45.48.010

(1) by a written document;

(2) by electronic means if making the disclosure by the electronic means is consistent with the provisions regarding electronic records and signatures required for notices legally required to be in writing under 15 U.S.C. 7001 et seq. (Electronic Signatures in Global and National Commerce Act); or

(3) if the information collector demonstrates that the cost of providing notice would exceed $250,000, that the affected class of state residents to be notified exceeds 500,000, or that the information collector does not have sufficient contact information to provide notice, by

(A) electronic mail if the information collector has an electronic mail address for the state resident;

(B) conspicuously posting the disclosure on the Internet website of the information collector if the information collector maintains an Internet site; and

(C) providing a notice to major statewide media.

Sec. 45.48.040. Exception for employees and agents. In AS 45.48.010 -

45.48.090, the good faith acquisition of personal information by an employee or agent of an information collector for a legitimate purpose of the information collector is not a breach of the security of the information system if the employee or agent does not use the personal information for a purpose unrelated to a legitimate purpose of the information collector and does not make further unauthorized disclosure of the personal information.

Sec. 45.48.050. Waivers. A waiver of AS 45.48.010 - 45.48.090 is void and unenforceable.

Sec. 45.48.060. Violations. (a) If an information collector violates AS 45.48.010 - 45.48.090 with regard to the personal information of an individual, the individual or a state agency may bring a civil action in court to

(1) recover the damages suffered by the state resident;

(2) enjoin from further violations of AS 45.48.010 - 45.48.090 an information collector who engages in business and the security breach occurred to the personal information used or owned by the information collector in the business.

(b) The rights and remedies available under this section are in addition to any other rights and remedies available under another law.

(c) In this section, "state agency" means

(1) a department, division, or office in the executive branch of state government that has authority under the statutes of this state to regulate the operation of the information collector; or

(2) the Department of Law if another state agency does not have authority under the statutes of this state to regulate the operation of the information collector.

Sec. 45.48.070. Minimum contacts. An information collector is subject to AS 45.48.010 - 45.48.090 if the information collector engages in activities that provide at least the minimum contacts required by substantive due process for the state to exercise jurisdiction over the information collector.

Sec. 45.48.090. Definitions. In AS 45.48.010 - 45.48.090,

(1) "breach of the security" means unauthorized acquisition of personal information that compromises the security, confidentiality, or integrity of the personal

information maintained by the information collector; in this paragraph, "acquisition" includes acquisition by

(A) photocopying, facsimile, or other paper-based method;

(B) a device, including a computer, that can read, write, or store information that is represented in numerical form; or

(C) a method not identified by (A) or (B) of this paragraph;

(2) "information collector" means a person who owns or uses personal information in any form if the personal information includes personal information on a state resident;

(3) "personal information" means information in any form on an individual, other than, if applicable, the information collector, that is not lawfully available to the general public from federal, state, or local government records and that consists of

(A) a combination of an individual's first name or first initial, the individual's last name, and one or more of the following information elements, when the name or the information elements are not encrypted or redacted:

(i) the individual's social security number;

(ii) the number of the individual's driver's license or state identification card;

(iii) the individual's account number, credit card account number or debit card account number if the number does not require additional identifying information, access codes, or passwords for use;

(iv) account passwords or personal identification numbers or other access codes;

(B) an item listed in (A)(i) - (iv) of this paragraph if the item would be sufficient to engage in or attempt to engage in the theft of an individual's identity.

Article 2. Consumer Report Security Freeze.

Sec. 45.48.100. Security freeze authorized. A consumer may prohibit a

consumer reporting agency from releasing all or a part of the consumer's consumer report or information derived from the consumer report without the express authorization of the consumer by placing a security freeze on the consumer's consumer report.

Sec. 45.48.110. Placement of security freeze. (a) To place a security freeze, a consumer shall make the request to the consumer reporting agency

(1) by certified mail;

(2) by telephone if the consumer provides the consumer reporting agency with certain personal identification; or

(3) through a secure electronic mail connection if the consumer reporting agency makes a secure electronic mail connection available to the consumer.

(b) A consumer reporting agency shall place a security freeze within five business days after receiving a request under (a)(1) of this section and immediately after receiving a request under (a)(2) or (3) of this section.

Sec. 45.48.120. Confirmation of security freeze. (a) Within five business days after a consumer makes the request under AS 45.48.110, a consumer reporting agency shall send a written confirmation of the placement of the security freeze to the consumer.

(b) At the same time that the consumer reporting agency sends a confirmation under (a) of this section, the consumer reporting agency shall provide the consumer with a unique personal identification number or password to be used by the consumer when the consumer authorizes the release of the consumer's consumer report or information derived from the report under AS 45.48.130.

Sec. 45.48.130. Access and actions during security freeze. (a) While a security freeze is in place, a consumer reporting agency shall allow a third party access to a consumer's consumer report or information derived from the consumer report if the consumer requests that the consumer reporting agency allow the access.

(b) To make a request under (a) of this section, the consumer shall contact the consumer reporting agency by telephone, certified mail, or secure electronic mail connection, authorize the consumer reporting agency to allow the access, and provide the consumer reporting agency with

(1) proper identification to verify the consumer's identity;

(2) the unique personal identification number or password provided under AS 45.48.120(b); and

(3) the proper information necessary to identify the third party to whom the consumer reporting agency may allow the access or the time period during which the consumer reporting agency may allow the access to third parties who request the access.

(c) A consumer reporting agency that receives a request from a consumer under (b) of this section shall comply with the request immediately after receiving the request by telephone or electronic mail or within three business days after receiving the request by certified mail.

(d) If a security freeze is in place, a consumer reporting agency may not release the consumer report or information derived from the consumer report to a third party without the prior express authorization of the consumer.

(e) If a security freeze is in place on a consumer's consumer report and information derived from the consumer report and if a third party applies to a consumer reporting agency to provide the third party with access to the consumer's consumer report or information derived from the consumer report, the consumer reporting agency may treat the third party's application as incomplete unless the consumer authorizes the access under (a) of this section.

(f) A consumer reporting agency shall notify a consumer that a third party has attempted to access the consumer's consumer report or information derived from the report if a third party requests a consumer reporting agency to provide the third party with access to the consumer report or information, a security freeze has been placed, and the purpose of the access is not for the sole purpose of account review.

(g) This section is not intended to prevent a consumer reporting agency from advising a third party that requests access to a consumer's consumer report or information derived from the consumer report that a security freeze is in effect.

(h) The procedures used by a consumer reporting agency for implementing the provisions of this section may include the use of telephone, facsimile, or electronic means if making the disclosure by the electronic means is consistent with the

provisions regarding electronic records and signatures required for notices legally required to be in writing under 15 U.S.C. 7001 et seq. (Electronic Signatures in Global and National Commerce Act), Internet, electronic mail, or another electronic method.

Sec. 45.48.140. Removal of security freeze. (a) Except as provided by AS 45.48.130, a consumer reporting agency may not remove a security freeze unless

(1) the consumer requests that the consumer reporting agency remove the security freeze under (b) of this section; or

(2) the consumer made a material misrepresentation of fact to the consumer reporting agency when the consumer requested the security freeze under AS 45.48.110; if a consumer reporting agency intends to remove a security freeze on a consumer's consumer report under this paragraph, the consumer reporting agency shall notify the consumer in writing five business days before removing the security freeze.

(b) A consumer reporting agency shall remove a security freeze immediately after receiving a request for removal from the consumer who requested the security freeze if the consumer provides proper identification to identify the consumer and the unique personal identification number or password provided by the consumer reporting agency under AS 45.48.120.

Sec. 45.48.150. Prohibition. When dealing with a third party, a consumer reporting agency may not suggest, state, or imply that a consumer's security freeze reflects a negative credit score, history, report, or rating.

Sec. 45.48.160. Charges. (a) Except as provided by (b) of this section, a consumer reporting agency may not charge a consumer to place or remove a security freeze, to provide access under AS 45.48.130, or to take any other action, including the issuance of a personal identification number or password under AS 45.48.120, that is related to the placement of, removal of, or allowing access to a consumer report or information derived from a consumer report on which a security freeze has been placed.

(b) If a consumer fails to retain a personal identification number or password issued under AS 45.48.120, a consumer reporting agency may charge the consumer up to $5 for each time after the first time that the consumer reporting agency issues the consumer another personal identification number or password because the consumer

failed to retain the personal identification number or password.

Sec. 45.48.170. Notice of rights. When a consumer reporting agency is required to give a consumer a summary of rights under 15 U.S.C. 1681g (Fair Credit Reporting Act), a consumer reporting agency shall also give the consumer the following notice:

Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your consumer report at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your consumer report under state law (AS 45.48.100 - 45.48.290).

The security freeze will prohibit a consumer reporting agency from releasing any information in your consumer report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and other services from being approved in your name without your consent. When you place a security freeze on your consumer report, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your consumer report or to temporarily authorize the release of your consumer report to a specific third party or specific third parties or for a specific period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

(1) proper identification to verify your identity;

(2) the personal identification number or password provided by the consumer reporting agency;

(3) proper information necessary to identify the third party or third parties who are authorized to receive the consumer report or the specific period of time for which the report is to be available to third parties.

A consumer reporting agency that receives your request to temporarily lift a freeze on a consumer report is required to comply with the request immediately after receiving your request if you make the request by telephone or electronic mail, or within three business days after receiving your request if you make the request by certified mail.

A security freeze does not apply to circumstances where you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around, or specifically for a certain creditor, a few days before actually applying for new credit.

You have a right to bring a civil action against someone who violates your rights under these laws on security freezes. The action can be brought against a consumer reporting agency or a user of your consumer report.

Sec. 45.48.180. Notification after violation. If a consumer reporting agency violates a security freeze by releasing a consumer's consumer report or information derived from the consumer report, the consumer reporting agency shall notify the consumer within five business days after the release, and the information in the notice must include an identification of the information released and of the third party who received the information.

Sec. 45.48.190. Violations and penalties. (a) A consumer who suffers damages as a result of a person's violation of AS 45.48.100 - 45.48.290 may bring an action in court against the person and recover, in the case of a violation where the person acted

(1) negligently, actual damages, including loss of wages, and, when applicable, damages for pain and suffering;

(2) knowingly,

(A) damages as described in (1) of this subsection;

(B) punitive damages that are not less than $100 nor more than $5,000 for each violation as the court determines to be appropriate; and

(C) other relief that the court determines to be appropriate.

(b) A consumer may bring an action in court against a person for a violation or threatened violation of AS 45.48.100 - 45.48.290 for injunctive relief, whether or not the consumer seeks another remedy under this section.

(c) Notwithstanding (a)(2) of this section, a person who knowingly violates AS 45.48.100 - 45.48.290 is liable in a class action for an amount that the court allows. When determining the amount of an award in a class action under this subsection, the court shall consider, among the relevant factors, the amount of any actual damages awarded, the frequency of the violations, the resources of the violator, and the number of consumers adversely affected.

(d) In this section, "knowingly" has the meaning given in AS 11.81.900.

Sec. 45.48.200. Minimum contacts. A consumer reporting agency is subject to AS 45.48.100 - 45.48.290 if the consumer reporting agency engages in activities that provide at least the minimum contacts required by substantive due process for the state to exercise jurisdiction over the consumer reporting agency.

Sec. 45.48.210. Reports not covered. The provisions of AS 45.48.100 - 45.48.290 do not apply to a consumer report if the consumer report is

(1) a report that only contains information relating to transactions or experiences between the consumer and the person making the report;

(2) a communication of the information that is described in (1) of this section or that is taken from a consumer's credit application if

(A) the communication is limited to internal communication within the organization of the person making the report; and

(B) the consumer is informed by a clear and conspicuous written disclosure that the information contained in the credit application may be communicated as allowed under (A) of this paragraph, except that, if a credit application is taken by telephone, the consumer shall initially be

informed orally when the application is taken, and a clear and conspicuous written disclosure shall be made to the consumer in the first written communication to the consumer after the application is taken;

(3) a report containing information solely about a consumer's character, general reputation, personal characteristics, or mode of living and the information is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom the consumer is acquainted or who may have knowledge concerning those items of information; or

(4) a consumer report furnished for use in connection with a transaction that consists of an extension of credit to be used solely for a commercial purpose.

Sec. 45.48.220. Exemptions. The provisions of AS 45.48.100 - 45.48.290 do not apply to the use of a consumer report by

(1) a person, the person's subsidiary, affiliate, or agent, or the person's assignee with whom a consumer has or, before the assignment, had an account, contract, or debtor-creditor relationship if the purpose of the use is to review the consumer's account or to collect a financial obligation owing on the account, contract, or debt;

(2) a subsidiary, an affiliate, an agent, an assignee, or a prospective assignee of a person to whom access has been granted under AS 45.48.130 if the purpose of the use is to facilitate the extension of credit or another permissible use;

(3) a person acting under a court order, warrant, or subpoena;

(4) an agency of a state or municipality that administers a program for establishing and enforcing child support obligations;

(5) the Department of Health and Social Services, its agents, or its assigns when investigating fraud;

(6) the Department of Revenue, its agents, or its assigns when investigating or collecting delinquent taxes or unpaid court orders or when implementing its other statutory responsibilities;

(7) a person if the purpose of the use is prescreening allowed under 15 U.S.C. 1681 - 1681w (Fair Credit Reporting Act);

(8) a person administering a credit file monitoring subscription service to which the consumer has subscribed;

(9) a person providing a consumer with a copy of the consumer's consumer report at the consumer's request.

Sec. 45.48.290. Definitions. In AS 45.48.100 - 45.48.290,

(1) "account review" means activities related to account maintenance, account monitoring, credit line increases, and account upgrades and enhancements;

(2) "consumer" means an individual who is the subject of a consumer report;

(3) "security freeze" means a prohibition against a consumer reporting agency from releasing all or a part of a consumer's consumer report or information derived from the consumer report without the express authorization of the consumer;

(4) "third party" means a person who is not

(A) the consumer who is the subject of the consumer's consumer report; or

(B) the consumer reporting agency that is holding the consumer's consumer report.

Article 3. Consumer Credit Monitoring; Credit Accuracy.

Sec. 45.48.300. Required disclosure. A consumer reporting agency shall, if a consumer makes the request and the request is not covered by the free disclosure provision of 15 U.S.C. 1681j(a) - (d) (Fair Credit Reporting Act), clearly and accurately disclose to the consumer the information described under AS 45.45.310.

Sec. 45.48.310. Information to be disclosed. (a) The following information shall be disclosed under AS 45.45.300:

(1) all information in the consumer's file when the consumer makes the request, except that this paragraph may not be construed to require a consumer reporting agency to disclose information concerning credit scores, risk scores or other predictors that are governed by 15 U.S.C. 1681g;

(2) the sources of the information described in (1) of this subsection;

(3) an identification of each person, including each end user identified under 15 U.S.C. 1681e, who procured a report on the consumer

(A) for employment purposes during the two-year period that precedes the date when the consumer's request is made; or

(B) for a purpose other than employment purposes during the one-year period that precedes the date when the consumer's request is made;

(4) the dates, original payees, and amounts of any checks that

(A) provide the basis for an adverse characterization of the consumer; and

(B) are included in the file when the disclosure is made or can be inferred from the file;

(5) a record of all inquiries that were received by the consumer reporting agency during the one-year period that precedes the request and that identify the consumer in connection with a credit or insurance transaction that was not initiated by the consumer; and

(6) a statement that the consumer may request and obtain a credit score if the consumer requests the credit file and not the credit score.

(b) The information to be disclosed under (a)(3) of this section must include

(1) the name of the person or, if applicable, the full trade name under which the person conducts business; and

(2) the address and telephone number of the person if requested by the consumer.

(c) A consumer reporting agency is not required to disclose the information described in (a)(3) of this section if

(1) the end user is an agency of the United States government and procures the consumer's consumer report from the consumer reporting agency to determine the eligibility of the consumer to receive access or continued access to classified information; in this paragraph, "classified information" has the meaning given in 15 U.S.C. 1681b; and

(2) the individual who is in charge of the end user makes a written finding as prescribed under 15 U.S.C. 1681b(b)(4)(A).

Sec. 45.48.320. Cost of disclosure. (a) A consumer reporting agency may impose a reasonable charge on a consumer for making a disclosure under

AS 45.48.300. The charge may not exceed

(1) $2 for each of the first 12 requests from the consumer in a calendar year;

(2) $8 for each request beyond the 12 requests covered by (1) of this subsection in a calendar year.

(b) The consumer reporting agency shall disclose the charge to the consumer before making the disclosure under AS 45.48.300.

Sec. 45.48.330. Form of disclosure. (a) A consumer may make the request under AS 45.48.300 in writing, in person, by telephone if the consumer has made a written request for the disclosure, by electronic means if the consumer reporting agency offers electronic access for any other purpose, or by any other reasonable means that is available from the consumer reporting agency.

(b) To make a request in person under (a) of this section, the consumer shall, after reasonable notice to the consumer reporting agency, appear during normal business hours at the consumer reporting agency's place of business where the consumer reporting agency normally provides disclosures under AS 45.48.300.

Sec. 45.48.340. Timing of disclosure. A consumer reporting agency shall provide a consumer with the disclosure under AS 45.48.300 within

(1) 24 hours after the date on which the request is made if the disclosure is made by electronic means under AS 45.48.330(a); or

(2) five days after the date on which the request is made if the disclosure is made in writing, in person, by telephone, or by any other reasonable means that is available from the consumer reporting agency, except by electronic means.

Sec. 45.48.350. Credit accuracy. (a) A person who does business in the state by distributing information about an individual's credit history, score, or ranking shall, when notified that the information that the person is distributing is inaccurate, immediately stop distributing the information until the accuracy of the information can be verified or the inaccuracies in the information corrected.

(b) If a person who does business in the state by distributing information about an individual's credit history, score, or ranking releases information about an

individual that is inaccurate, the person shall, as quickly as possible after discovering that inaccurate information is being distributed,

(1) repair, to the extent possible, the damage to the individual caused by the release of the inaccurate information; and

(2) pay fair and reasonable compensation to the individual for the damage caused to the individual by the release of the inaccurate information.

(c) If a person fails to comply with (b) of this section, an individual may bring an action in court to compel the person to comply with (b) of this section.

(d) In this section, "does business in the state" means engages in activities that provide at least the minimum contacts required by substantive due process for the state to exercise jurisdiction over the person who is engaging in the activities.

Article 4. Protection of Social Security Number.

Sec. 45.48.400. Use of social security number. (a) A person may not, without the consent of the individual,

(1) intentionally communicate or otherwise make available to the general public an individual's social security number;

(2) print an individual's social security number on a card required for the individual to access products or services provided by the person;

(3) require an individual to transmit the individual's social security number over the Internet unless the Internet connection is secure or the social security number is encrypted;

(4) require an individual to use the individual's social security number to access an Internet site unless a password, a unique personal identification number, or another authentication device is also required in order to access the site;

(5) print an individual's social security number on material that is mailed to the individual unless

(A) state or federal law requires the social security number to be on the material; or

(B) the social security number is included on an application or other form, including a document sent as a part of an application process or an enrollment process, sent by mail to establish, amend, or terminate an account, a

contract, or a policy, or to confirm the accuracy of the social security number; however, a social security number allowed to be mailed under this subparagraph may not be printed, in whole or in part, on a postcard or other mailer that does not require an envelope, or in a manner that makes the social security number visible on the envelope or without the envelope being opened;

(6) refuse to do business with an individual because the individual does not consent to the receipt by the person of the social security number of the individual, unless the person is expressly required by state or federal law, in connection with doing business with an individual, to collect or submit the individual's social security number to the state or federal government; this paragraph does not prohibit a person from asking for another form of identification from the individual.

(b) A person may not sell, lease, loan, trade, rent, or otherwise disclose an individual's social security number to a third party for any purpose without the individual's written consent.

Sec. 45.48.410. Penalties. (a) A person who knowingly violates AS 45.48.400 is liable to the state for a civil penalty not to exceed $3,000.

(b) An individual may bring a civil action in court against a person who knowingly violates AS 45.48.400 and may recover actual damages or $5,000, whichever amount is greater, and court costs and attorney fees allowed by the rules of court.

(c) A person who knowingly violates AS 45.48.400 is guilty of a class A misdemeanor.

(d) In this section, "knowingly" has the meaning given in AS 11.81.900.

Article 5. Disposal of Records.

Sec. 45.48.500. Disposal of records. (a) A business shall take, in connection with and after the disposal of the records, all reasonable measures necessary to protect against unauthorized access to or use of the records of the business that contain personal information.

(b) Notwithstanding (a) of this section, if a business has otherwise complied with the provisions of AS 45.48.500 - 45.48.590 in the selection of a third party engaged in the business of record destruction, the business is not liable for the disposal

of records under AS 45.48.500 - 45.48.590 after the business has relinquished control of the records to the third party for the destruction of the records.

Sec. 45.48.510. Measures to protect access. The measures required to be taken under AS 45.48.500 include

(1) implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of paper documents containing personal information so that the personal information cannot practicably be read or reconstructed;

(2) implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other nonpaper media containing personal information so that the personal information cannot practicably be read or reconstructed; and

(3) after due diligence, entering into a written contract with a third party engaged in the business of record destruction to dispose of records containing personal information in a manner consistent with AS 45.48.500 - 45.48.590.

Sec. 45.48.520. Due diligence. In AS 45.48.510(3), due diligence ordinarily includes performing one or more of the following:

(1) reviewing an independent audit of the third party's operations and its compliance with AS 45.48.500 - 45.48.590;

(2) obtaining information about the third party from several references or other reliable sources and requiring that the third party be certified by a recognized trade association or similar organization with a reputation for high standards of quality review;

(3) reviewing and evaluating the third party's information security policies and procedures, or taking other appropriate measures to determine the competency and integrity of the third party.

Sec. 45.48.530. Business policy and procedures. A business shall comprehensively describe and classify as the business's official policy in the writings of the business the policies and procedures that relate to the adequate destruction and proper disposal of personal records. In this section, "writings" includes corporate handbooks, employee handbooks, and similar corporate documents.

Sec. 45.48.540. Civil penalty. An individual or a business that knowingly violates AS 45.48.500 - 45.48.590 is liable to the state for a civil penalty not to exceed $3,000. In this section, "knowingly" has the meaning given in AS 11.81.900.

Sec. 45.48.550. Court action. An individual who is damaged by a violation of AS 45.48.500 - 45.48.590 may bring a civil action in court to enjoin further violations and to recover damages for the violation and court costs and attorney fees allowed by the rules of court.

Sec. 45.48.590. Definitions. In AS 45.48.500 - 45.48.590,

(1) "business" means a person who conducts business in the state or a person who conducts business and maintains or otherwise possesses personal information on state residents; in this paragraph,

(A) "conducts business" includes engaging in activities as a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this state, another state, the United States, or another country;

(B) "possesses" includes possession for the purpose of destruction;

(2) "dispose" means

(A) the discarding or abandonment of records containing personal information;

(B) the sale, donation, discarding, or transfer of

(i) any medium, including computer equipment or computer media, that contains records of personal information;

(ii) nonpaper media, other than that identified under (i) of this subparagraph, on which records of personal information are stored; and

(iii) equipment for nonpaper storage of information;

(3) "personal information" means information that identifies, relates to, describes, or is capable of being associated with a particular individual, and includes a name, signature, social security number, fingerprint, photograph, computerized image, physical characteristic, physical description, address, telephone number, passport

number, driver's license, state identification number, date of birth, medical information, bank account number, credit card number, debit card number, and financial information;

(4) "records" means material on which information that is written, drawn, spoken, visual, or electromagnetic is recorded or preserved, regardless of physical form or characteristics, but does not include publicly available directories containing names, addresses, telephone numbers, or other information an individual has voluntarily consented to have publicly disseminated or listed.

Article 6. Factual Declaration of Innocence after Identity Theft; Right to File Police Report Regarding Identity Theft.

Sec. 45.48.600. Factual declaration of innocence after identity theft. (a) A victim of identity theft may petition the superior court for a determination that the victim is factually innocent of a crime if

(1) the perpetrator of the identity theft was arrested for, cited for, or convicted of the crime using the victim's identity;

(2) a criminal complaint has been filed against the perpetrator in the victim's name; or

(3) the victim's identity has been mistakenly associated with a record of a conviction for a crime.

(b) In addition to a petition by a victim under (a) of this section, the department may petition the superior court for a determination under (a) of this section, or the superior court may, on its own motion, make a determination under (a) of this section.

Sec. 45.48.610. Basis for determination. A determination of factual innocence under AS 45.48.600 may be heard and made on declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be made a part of the record by the court.

Sec. 45.48.620. Criteria for determination; court order. (a) A court shall determine that a victim is factually innocent of a crime if the court finds that the petition or motion brought under AS 45.48.600 is meritorious and that

(1) there is not a reasonable cause to believe that the victim committed

the crime for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name; or

(2) the victim's identity has been mistakenly associated with a record of a conviction of a crime.

(b) If a court finds under this section that the victim is factually innocent of a crime, the court shall issue an order indicating this determination of factual innocence and shall provide the victim with a copy of the order.

Sec. 45.48.630. Orders regarding records. After a court issues an order under AS 45.48.620, the court may order the name and associated personal information of the victim that is contained in the files, indexes, and other records of the court that are accessible by the public deleted, sealed, or labeled to show that the name and personal information is impersonated and does not reflect the defendant's identity.

Sec. 45.48.640. Vacation of determination. A court that has issued an order under AS 45.48.620 may, at any time, vacate the order if the petition or motion, or any information submitted in support of the petition or motion, is found to contain a material misrepresentation or fraudulent material.

Sec. 45.48.650. Court form. The supreme court of the state may develop a form to be used for the order under AS 45.48.620.

Sec. 45.48.660. Data base. The department may establish and maintain a data base of individuals who have been victims of identity theft and who have received an order under AS 45.48.620. The department shall provide a victim or the victim's authorized representative access to a data base established under this section in order to establish that the individual has been a victim of identity theft. Access to the a data base established under this section is limited to criminal justice agencies, victims of identity theft, and individuals and agencies authorized by the victims.

Sec. 45.48.670. Toll-free telephone number. The department may establish and maintain a toll-free telephone number to provide access to information in a data base established under AS 45.48.660

Sec. 45.48.680. Right to file police report regarding identity theft. (a) Even if the local law enforcement agency does not have jurisdiction over the theft of an individual's identity, if an individual who has learned or reasonably suspects the

individual has been the victim of identity theft contacts, for the purpose of filing a complaint, a local law enforcement agency that has jurisdiction over the individual's actual place of residence, the local law enforcement agency shall make a report of the matter and provide the individual with a copy of the report. The local law enforcement agency may refer the matter to a law enforcement agency in a different jurisdiction.

(b) This section is not intended to interfere with the discretion of a local law enforcement agency to allocate its resources to the investigation of crime. A local law enforcement agency is not required to count a complaint filed under (a) of this section as an open case for purposes that include compiling statistics on its open cases.

Sec. 45.48.690. Definitions. In AS 45.48.600 - 45.48.690,

(1) "crime" has the meaning given in AS 11.81.900;

(2) "department" means the Department of Law;

(3) "identity theft" means the theft of the identity of an individual;

(4) "perpetrator" means the person who perpetrated the theft of an individual's identity;

(5) "victim" means an individual who is the victim of identity theft.

Article 7. Consumer Credit Header Information.

Sec. 45.48.800. Consumer credit header information. (a) A consumer reporting agency may not furnish by a written, an oral, or another method of communication a consumer's credit header information to a person unless the person has a permissible purpose under 15 U.S.C. 1681b (Fair Credit Protection Act) to obtain the consumer's consumer report.

(b) In this section, "credit header information" means the social security number of a consumer, or a derivative of the social security number, the maiden name of the mother of the consumer, the birth date of the consumer, and other personally identifiable information of a consumer that is derived from nonpublic personal information, except the name, address, and telephone number of the consumer listed in a residential telephone directory available in the locality of the consumer.

Article 8. Truncation of Card Information.

Sec. 45.48.850. Truncation of card information. (a) A person who accepts credit cards or debit cards for the transaction of business may not print more than the

last five digits of the card number or the expiration date on any receipt provided to the cardholder at the point of the sale or transaction.

(b) This section applies only to receipts that are electronically printed and does not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(c) An individual may bring a civil action in court against a person who knowingly violates this section and may recover actual damages or $5,000, whichever is greater, and court costs and attorney fees allowed by the rules of court.

(d) A person who knowingly violates this section is liable to the state for a civil penalty not to exceed $3,000.

(e) A person who knowingly violates this section is guilty of a class A misdemeanor.

(f) In this section,

(1) "credit" means the right granted by a creditor to a debtor to defer payment of debt, to incur debts and defer payment of the debt, or to purchase property or services and defer payment of the purchase; in this paragraph, "creditor" means a person who regularly extends, renews, or continues credit, a person who regularly arranges for the extension, renewal, or continuation of credit, or an assignee of an original creditor who participates in the decision to extend, renew, or continue credit;

(2) "credit card" means a card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit;

(3) "debit card" means a card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at the financial institution for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(4) "knowingly" has the meaning given in AS 11.81.900.

Article 9. General Provisions.

Sec. 45.48.900. Relationship to federal law. If a provision of this chapter is preempted by federal law in a particular situation, the provision does not apply to the extent of the preemption.