

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE THOMPSON

TO: CSHB 4002(FIN), Draft Version "H"

1 Page 5, line 24, through page 6, line 1:

2 Delete all material.

3

4 Renumber the following bill sections accordingly.

5

6 Page 6, line 13:

7 Delete "Sections 1-13"

8 Insert "Sections 1 - 12"

9

10 Page 6, line 14:

11 Delete "Section 14"

12 Insert "Section 13"

13

14 Page 6, line 15:

15 Delete "sec. 16"

16 Insert "sec. 15"

#2

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE THOMPSON

TO: CSHB 4002(FIN), Draft Version "H"

- 1 Page 4, line 2:
- 2 Delete ","
- 3 Insert "and"

AMENDMENT

#3

OFFERED IN THE HOUSE

BY REPRESENTATIVE NEUMAN

TO: CSHB 4002(FIN), Draft Version "H"

1 Page 1, line 3:

2 Delete "**peace officers and firefighters**"

3 Insert "**officers of the Alaska state troopers**"

4

5 Page 2, line 25:

6 Delete "**peace officers or firefighters**"

7 Insert "**officers of the Alaska state troopers**"

8

9 Page 4, line 2:

10 Delete "a peace officer or firefighter"

11 Insert "an officer of the Alaska state troopers"

12

13 Page 4, line 5:

14 Delete "a peace officer or firefighter"

15 Insert "an officer of the Alaska state troopers"

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

June 17, 2016

SUBJECT: Constitutional guarantee of equal protection
(Work Order No. 29-GH2430\H.1; HB 4002)

TO: Representative Mark Neuman
Co-Chair of the House Finance Committee
Attn: Genevieve Wotjusik

FROM: Megan A. Wallace 
Legislative Counsel

Attached please find the amendment you requested. The amendment would provide major medical coverage to the surviving dependents of Alaska state troopers who die on the job, but would not provide that coverage to the surviving dependents of other public employees who die on the job, including other peace officers, firefighters, airport security officers, university police officers, village public safety officers, and commercial vehicle inspection officers. This makes the bill vulnerable to a legal challenge based on the equal protection clauses of the state and federal constitutions, which guarantee equal treatment by the government and require that similarly situated individuals be treated similarly. However, because economic interests are afforded less protection, and Alaska state troopers may be at greater risk of death, a court may be reluctant to find the change made by this amendment unconstitutional.

Equal Protection in Alaska

The Alaska Supreme Court has said, "[i]n considering state equal protection claims based on the denial of an important right we ordinarily must decide first whether similarly situated groups are being treated differently."¹ Whether two entities are similarly situated is generally a question of fact.² Although all government employees may be at risk of dying in the line of duty, facts may show that the peace officers and firefighters who benefit from the bill's provisions are at a higher risk than other government employees, including those in positions you have identified. If so, a court would probably determine that government employees at a lower risk are not similarly situated with respect to those who are at a higher risk. The Court has said:

¹ *Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 966 (Alaska, 2005) (internal footnotes omitted).

² *Id.*, 967.

... in "clear cases" we have sometimes applied "in shorthand the analysis traditionally used in our equal protection jurisprudence." If it is clear that two classes are not similarly situated, this conclusion "necessarily implies that the different legal treatment of the two classes is justified by the differences between the two classes."^[3]

The Alaska Supreme Court applies a sliding scale in reviewing challenges under the equal protection clause and is more protective of the right than federal courts are. At a minimum, the legislature must provide a rational justification for treating similarly situated individuals differently.⁴

In *Malabed v. North Slope Borough*, the Court summarized the equal protection test as follows:

[T]he Alaska Constitution's equal protection clause affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment. To implement Alaska's more stringent equal protection standard, we have adopted a three-step, sliding-scale test that places a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed classification and the nature of the governmental interests at stake: first, we determine the weight of the individual interest impaired by the classification; second, we examine the importance of the purposes underlying the government's action; and third, we evaluate the means employed to further those goals to determine the closeness of the means-to-end fit. An appropriation that cannot be justified under this minimum standard would likely violate the equal protection clause of the Alaska Constitution.^[5]

As the importance of the individual rights affected increases, so does the burden on the state to show that the state's goal justifies the intrusion on the individual's interests in equal treatment and that the state's goal is rationally related to the means chosen to achieve the goal.

First, a court would probably find that the interest of employees and surviving dependents who are denied the benefits provided by the bill to Alaska state troopers is purely economic. A person's interest may be accorded a low level of protection from discrimination under the state equal protection clause, if the court determines that the

³ *Id.*, (internal footnotes omitted).

⁴ See *Underwood v. State*, 881 P.2d 322 (Alaska 1994).

⁵ *Malabed v. North Slope Borough*, 70 P.3d 416, 420 - 421 (Alaska 2003).

Representative Mark Neuman
June 17, 2016
Page 3

discrimination implicates only an economic interest.⁶ Second, a court may determine that the state's goal in providing major medical coverage to survivors of Alaska state troopers is to aid recruitment and retention of the most qualified Alaska state troopers, to ensure public health and safety. If so, the court may find that the goal outweighs a constitutionally protected but purely economic interest.⁷ Third, a court finding that there is a rational basis between advancement of the bill's public health and safety goals and the means the bill uses would probably be sufficient for the court to find that the means is justified, particularly if the state can show that the government employees who are discriminated against by the bill occupy positions for which recruitment and retention is less difficult, or for which the risk of dying in the line of duty is less. In support for that justification, a court might take into consideration that, under PERS, Alaska state troopers made eligible for a new benefit by the bill have historically been eligible for various other benefits for which employees in other positions are not eligible. Nevertheless, because the amendment plainly treats Alaska state troopers differently than other peace officers, it may be found unconstitutional.

Please do not hesitate to contact me if you have further questions.

MAW:lcm:dla
16-592.dla

Attachment

⁶ See *Underwood v. State*, 881 P.2d 322 (Alaska 1994).

⁷ See *Gray v. State*, 525 P.2d 524, 528 (Alaska 1974); where a compelling state interest is shown, a constitutional right may be held to be subordinate to express constitutional powers such as the authorization of the legislature to promote and protect public health and provide for the general welfare.

AMENDMENT #4

by Rep. Kawasaki
Rep. Guttentberg

OFFERED IN THE HOUSE

TO: CSHB 4002(FIN), Draft Version "H"

1 Page 1, following line 4:

2 Insert a new bill section to read:

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

5 LEGISLATIVE INTENT. It is the intent of the legislature to consider methods and
6 mechanisms to provide payment of death benefits to the surviving spouses, designated
7 beneficiaries, children, or parents of village public safety officers and volunteer firefighters
8 who die during the performance of duties."
9

10 Page 1, line 5:

11 Delete **"Section 1"**

12 Insert **"Sec. 2"**
13

14 Renumber the following bill sections accordingly.
15

16 Page 6, line 13:

17 Delete "Sections 1-13"

18 Insert "Sections 2 - 14"
19

20 Page 6, line 14:

21 Delete "Section 14"

22 Insert "Section 15"
23

- 1 Page 6, line 15:
- 2 Delete "sec. 16"
- 3 Insert "sec. 17"