

SENATE BILL NO. 4001

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FOURTH SPECIAL SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 11/14/06

Referred: Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to employment-related insurance benefits for the same-sex partner of a**
2 **state employee; relating to survivor and medical benefits for the same-sex partner of a**
3 **member of the state's teachers', public employees', judicial, or elected public officers**
4 **retirement systems; and providing for an effective date."**

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

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

8 PURPOSE AND FINDINGS. (a) It is the purpose of this Act, to the extent required by
9 the decision of the Alaska Supreme Court in the case of *Alaska Civil Liberties Union v. State*,
10 122 P.3d 781 (Alaska 2005), to allow state employees and retirees under the state's retirement
11 systems to have access to employment-related insurance and survivor benefits for their same-
12 sex partners that are provided to spouses of state employees and retirees under AS 39.30.090
13 and 39.30.091, and under the statutes that provide for the public employees' retirement
14 system, teachers' retirement system, judicial retirement system, and elected public officers

1 retirement system.

2 (b) The legislature finds that the eligibility requirements established in this Act for
3 entitlement to enrollment of a state employee's or state retirement system member's same-sex
4 partner in employment-related insurance benefits and designation of a same-sex partner as
5 survivor under the state retirement systems are reasonable and necessary to prevent fraud. The
6 legislature also finds that the requirements are reasonable and necessary to ensure that access
7 to the insurance and survivor benefits funded by state trust funds is provided to same-sex
8 partners who are in committed relationships with public employees and retirees.

9 * **Sec. 2.** AS 14.25 is amended by adding a new section to read:

10 **Sec. 14.25.154. Same-sex partner survivor and medical benefits.** (a) A
11 member may designate the member's same-sex partner as the beneficiary to receive
12 survivor benefits that are available to a spouse of a member under the plan. The
13 designation of beneficiary is not valid unless the member files with the administrator

14 (1) with the designation of beneficiary an affidavit executed by the
15 member and the same-sex partner making the declarations, under penalty of perjury,
16 set out in AS 39.30.093(b)(1) - (11); and

17 (2) documentation establishing that the member and same-sex partner
18 meet at least five of the criteria set out in AS 39.30.093(c)(1) - (8).

19 (b) A member who has designated a same-sex partner as beneficiary under this
20 section shall provide written confirmation of the designation, supplementing
21 documentation provided under (a) of this section if that information has changed, upon
22 request of and in the manner requested by the administrator. Failure to provide written
23 confirmation requested by the administrator may result in ineligibility of the
24 designated same-sex partner for survivor benefits.

25 (c) A deceased member's same-sex partner whom the administrator determines
26 is validly designated under this section as the member's beneficiary to receive survivor
27 benefits has the same rights to survivor benefits that a surviving spouse would have
28 under the plan, and is subject to the same requirements that a surviving spouse would
29 be subject to relating to those benefits.

30 (d) A member may revoke a designation of beneficiary under this section at
31 any time. After the date of retirement, a member's revocation of the designation of the

1 member's same-sex partner as the beneficiary to receive survivor benefits does not
 2 change the form or amount of a joint and survivor benefit payable to the member or
 3 allow designation of a different beneficiary to receive the joint and survivor benefit.

4 (e) A member who is entitled to medical coverage under the plan may enroll
 5 the member's same-sex partner and the same-sex partner's eligible dependent children
 6 in the plan's medical coverage in accordance with AS 39.30.093.

7 * **Sec. 3.** AS 14.25 is amended by adding a new section to read:

8 **Sec. 14.25.462. Same-sex partner survivor and medical benefits.** (a) A
 9 member may designate the member's same-sex partner as the beneficiary to receive
 10 survivor benefits that are available to a spouse of a member under the plan. The
 11 designation of beneficiary is not valid unless the member files with the administrator

12 (1) with the designation of beneficiary an affidavit executed by the
 13 member and the same-sex partner making the declarations, under penalty of perjury,
 14 set out in AS 39.30.093(b)(1) - (11); and

15 (2) documentation establishing that the member and same-sex partner
 16 meet at least five of the criteria set out in AS 39.30.093(c)(1) - (8).

17 (b) A member who has designated a same-sex partner as beneficiary under this
 18 section shall provide written confirmation of the designation, supplementing
 19 documentation provided under (a) of this section if that information has changed, upon
 20 request of and in the manner requested by the administrator. Failure to provide written
 21 confirmation requested by the administrator may result in ineligibility of the
 22 designated same-sex partner for survivor benefits.

23 (c) A deceased member's same-sex partner whom the administrator determines
 24 is validly designated under this section as the member's beneficiary to receive survivor
 25 benefits has the same rights to survivor benefits that a surviving spouse would have
 26 under the plan, and is subject to the same requirements that a surviving spouse would
 27 be subject to relating to those benefits.

28 (d) A member may revoke a designation of beneficiary under this section at
 29 any time. After the date of retirement, a member's revocation of the designation of the
 30 member's same-sex partner as the beneficiary to receive survivor benefits does not
 31 change the form or amount of a joint and survivor benefit payable to the member or

1 allow designation of a different beneficiary to receive the joint and survivor benefit.

2 (e) A member who is entitled to medical coverage under the plan may enroll
3 the member's same-sex partner and the same-sex partner's eligible dependent children
4 in the plan's medical coverage in accordance with AS 39.30.093.

5 * **Sec. 4.** AS 22.25 is amended by adding a new section to read:

6 **Sec. 22.25.036. Same-sex partner survivor and medical benefits.** (a) A
7 member may designate the member's same-sex partner as the beneficiary to receive
8 survivor benefits that are available to a spouse of a member under this chapter. The
9 designation of beneficiary is not valid unless the member files with the administrator

10 (1) with the designation of beneficiary an affidavit executed by the
11 member and the same-sex partner making the declarations, under penalty of perjury,
12 set out in AS 39.30.093(b)(1) - (11); and

13 (2) documentation establishing that the member and same-sex partner
14 meet at least five of the criteria set out in AS 39.30.093(c)(1) - (8).

15 (b) A member who has designated a same-sex partner as beneficiary under this
16 section shall provide written confirmation of the designation, supplementing
17 documentation provided under (a) of this section if that information has changed, upon
18 request of and in the manner requested by the commissioner of administration. Failure
19 to provide written confirmation requested by the commissioner of administration may
20 result in ineligibility of the designated same-sex partner for survivor benefits.

21 (c) A deceased member's same-sex partner whom the commissioner of
22 administration determines is validly designated under this section as the member's
23 beneficiary to receive survivor benefits has the same rights to survivor benefits that a
24 surviving spouse would have under this chapter, and is subject to the same
25 requirements that a surviving spouse would be subject to relating to those benefits.

26 (d) A member may revoke a designation of beneficiary under this section at
27 any time.

28 (e) A member who is entitled to medical coverage under the plan may enroll
29 the member's same-sex partner and the same-sex partner's eligible dependent children
30 in the plan's medical coverage in accordance with AS 39.30.093.

31 * **Sec. 5.** AS 39.30 is amended by adding new sections to read:

1 **Sec. 39.30.093. Same-sex partner insurance coverage.** (a) A state employee
2 or a state retirement system member who is covered by group insurance under
3 AS 39.30.090 or 39.30.091 or by an alternative insurance program under an exemption
4 allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), may
5 enroll the employee's or state retirement system member's same-sex partner in the
6 group insurance or alternative insurance program if the employee and same-sex
7 partner or state retirement system member and same-sex partner meet the requirements
8 of this section.

9 (b) In order to enroll a same-sex partner in group insurance coverage provided
10 under AS 39.30.090 or 39.30.091 or an alternative insurance program under an
11 exemption allowed by regulations adopted by the commissioner under
12 AS 39.30.090(a)(2), the covered employee or covered member of a state retirement
13 system must file with the health plan or state retirement system administrator an
14 affidavit executed by the employee and same-sex partner or the state retirement
15 system member and same-sex partner declaring under penalty of perjury that they

16 (1) are at least 18 years old and are each competent to enter into a
17 contract;

18 (2) have been in an exclusive, committed, and intimate relationship
19 with each other for the last 12 consecutive months and intend to continue that
20 relationship indefinitely, unless the close personal relationship would have violated
21 AS 11.41.434 - 11.41.440;

22 (3) have resided together at a common primary residence for the last
23 12 consecutive months and intend to reside together indefinitely;

24 (4) consider themselves to be members of each other's immediate
25 family;

26 (5) are not related to each other to a degree that would preclude them
27 from marrying each other in this state if they were of the opposite sex from each other;

28 (6) are neither one of them legally married to anyone else;

29 (7) have not executed an affidavit affirming same-sex partner status
30 with anyone else within the last 12 months;

31 (8) are each other's sole domestic partner and are each responsible for

1 the common welfare of the other;

2 (9) share financial obligations, including responsibility for basic living
3 expenses and health care costs;

4 (10) understand that, under applicable federal income tax law,
5 payments for medical coverage of a same-sex partner or child of a same-sex partner
6 may not be eligible for pre-tax treatment, and coverage of a same-sex partner may
7 result in additional imputed taxable income to the covered employee, state retirement
8 system member, or survivor and related withholding for payroll, income, or pension
9 and annuity taxes; and

10 (11) understand that, in addition to requirements of this section, there
11 are terms and conditions of coverage set out in each group policy, state plan of self-
12 insurance, or alternative insurance program to which they are bound.

13 (c) In order to enroll a same-sex partner in group insurance coverage provided
14 under AS 39.30.090 or 39.30.091 or an alternative insurance program under an
15 exemption allowed by regulations adopted by the commissioner under
16 AS 39.30.090(a)(2), the covered employee or state retirement system member shall
17 provide documentation establishing that the employee and same-sex partner, or the
18 state retirement system member and same-sex partner, meet at least five of the
19 following criteria:

20 (1) joint interest in real property, as evidenced by title or mortgage,
21 lease, or rental agreement, by the employee or state retirement system member and the
22 same-sex partner;

23 (2) joint ownership or purchase of a motor vehicle by the employee or
24 state retirement system member and the same-sex partner;

25 (3) joint ownership of a checking, savings, or investment account or
26 joint liability for a loan or credit account by the employee or state retirement system
27 member and the same-sex partner;

28 (4) the same-sex partner is named as primary beneficiary for a life
29 insurance policy of the employee or state retirement system member;

30 (5) the same-sex partner is named as primary beneficiary for the
31 employee's or state retirement system member's pension or annuity plan benefits,

1 deferred compensation plan, individual retirement arrangement or account, 401(k)
2 plan, Keogh plan, or other tax-deferred or taxable plan;

3 (6) the same-sex partner is named as primary beneficiary in the
4 employee's or state retirement system member's will;

5 (7) the same-sex partner has authority to deal with property owned by
6 the employee or state retirement system member under a valid written power of
7 attorney;

8 (8) the employee or state retirement system member has given the
9 same-sex partner written authority to make decisions concerning the employee's or
10 state retirement system member's health and well being if the employee or state
11 retirement system member is unable to do so.

12 (d) An employee or a state retirement system member who enrolls a same-sex
13 partner in coverage under this section may also enroll the child of the same-sex partner
14 if the child is unmarried, is dependent on the employee or state retirement system
15 member for support, and meets other requirements set out in the group policy, state
16 plan of self-insurance, or alternative insurance program, and applicable statute
17 governing the state retirement system, including age and applicable school enrollment
18 requirements.

19 (e) An employee or a state retirement system member who has enrolled a
20 same-sex partner, or a same-sex partner and child, in coverage under this section shall
21 provide written confirmation of eligibility of the enrolled person, supplementing
22 documentation provided under (c) of this section if that information has changed, upon
23 request of and in the manner requested by the plan administrator. Failure to provide
24 written confirmation requested by the plan administrator may result in suspension of
25 coverage of the enrolled person.

26 (f) An employee or a state retirement system member who enrolls a same-sex
27 partner in coverage under this section shall agree that, if the employee or state
28 retirement system member and same-sex partner no longer meet the requirements of
29 this section, the employee or state retirement system member will file with the
30 administrator of each plan in which the same-sex partner is enrolled a statement of
31 termination of eligibility within 30 days of the date eligibility ends. Eligibility of the

1 same-sex partner for benefits of a plan terminates on midnight of the date eligibility
 2 ends as declared in writing by the employee or state retirement system member.
 3 Failure to notify the plan administrator of termination of eligibility will result in
 4 liability of the employee or state retirement system member for any resulting
 5 overpayment of benefits under the plan. Continuation of coverage will be offered to
 6 the former same-sex partner of the employee or state retirement system member as if a
 7 divorce had occurred.

8 (g) An employee or a state retirement system member who enrolls a same-sex
 9 partner, or same-sex partner and eligible child under (d) of this section, in coverage
 10 under this section shall pay any premium established by the plan that an employee or
 11 state retirement system member is required to pay for comparable coverage for a
 12 spouse or spouse and dependent child.

13 (h) To be considered as having resided together at a common primary
 14 residence under (b)(3) of this section, the employee or a state retirement system
 15 member and the employee's or member's same-sex partner must share the same home.
 16 The common primary residence can change during the 12-month period described in
 17 (b)(3) of this section. Once an employee or a state retirement system member and
 18 same-sex partner have begun to reside together at a common primary residence,
 19 absence by the employee or a state retirement system member or of the same-sex
 20 partner required for employment that requires periodic absence from the common
 21 primary residence, education, medical care or services, military service, or other
 22 reasons determined by the plan administrator does not result in a break in eligibility, as
 23 long as the absent person intends to return to the common primary residence.

24 (i) In addition to any other action or remedy provided by law, willful
 25 falsification of information in an affidavit under (b) of this section or provided under
 26 (c) of this section may result in termination of enrollment of the same-sex partner and
 27 any child of the same-sex partner and termination of entitlement to survivor benefits.

28 **Sec. 39.30.094. Enrollment of same-sex partner and same-sex partner's**
 29 **eligible child.** (a) Enrollment of a same-sex partner or child of a same-sex partner may
 30 occur only at an open enrollment or upon the occurrence of a qualifying status change
 31 and in accordance with the terms of the plan. For purposes of a plan described in

1 AS 39.30.093(a) that allows an employee or a state retirement system member to
 2 enroll a spouse or dependent child within a period of time after a qualifying status
 3 change occurs, such as a change in family structure, ineligibility for other coverage, or
 4 a change in insurance coverage, a qualifying status change for enrollment of the
 5 employee's or state retirement system member's same-sex partner or eligible children
 6 of a same-sex partner occurs on the date upon which

7 (1) the employee or state retirement system member is first able to
 8 meet the requirements of AS 39.30.093(b) and (c), if the plan allows enrollment of a
 9 spouse and eligible dependent children when a plan member marries; or

10 (2) a status change occurs related to the same-sex partner that would
 11 constitute a qualifying status change event under the terms of the plan if the status
 12 change related to the spouse of the employee or state retirement system member.

13 (b) Except as provided in this section or under the terms of the applicable
 14 plan, once sufficient documentation required under AS 39.30.093(c) is received and
 15 verified by the administrator of a plan under AS 39.30.090 or 39.30.091 or an
 16 alternative insurance program under an exemption allowed by regulations adopted by
 17 the commissioner under AS 39.30.090(a)(2), coverage of the eligible same-sex partner
 18 is effective on the latest of the first day of the month after the enrollment form is
 19 received by the plan administrator, the date of the employee's appointment to receive
 20 retirement or disability benefits if the enrollment is for a retiree insurance plan, the
 21 date that coverage is allowed under the terms of an open enrollment if the enrollment
 22 is filed under the open enrollment, or January 1, 2007. Payment will not be made on
 23 covered claims until eligibility is established under AS 39.30.093. Payment will not be
 24 made on claims arising more than 12 months before eligibility is established under
 25 AS 39.30.093.

26 * **Sec. 6.** AS 39.30.400(b) is amended to read:

27 (b) Upon application of an eligible person, the administrator shall reimburse to
 28 the eligible person the costs for medical care expenses as defined in 26 U.S.C. 213(d).
 29 Reimbursement is limited to the medical expenses of

30 (1) an eligible member, the spouse of an eligible member, and the
 31 dependent children of an eligible member; [OR]

1 (2) a surviving spouse and the dependent children of an eligible
2 member dependent on the surviving spouse; or

3 (3) to the extent allowed by federal law, the same-sex partner of
4 the eligible member whom the eligible member has enrolled in health coverage
5 under AS 39.30.093 or whom the eligible member has designated as a beneficiary
6 under AS 14.25.154, 14.25.462; AS 22.25.036; AS 39.35.456, or 39.35.861, and the
7 dependent children of the same-sex partner who are dependent on the member.

8 * **Sec. 7.** AS 39.35 is amended by adding a new section to read:

9 **Sec. 39.35.456. Same-sex partner survivor and medical benefits.** (a) An
10 employee may designate the employee's same-sex partner as the beneficiary to receive
11 survivor benefits that are available to a spouse of an employee under the plan. The
12 designation of beneficiary is not valid unless the employee files with the administrator

13 (1) with the designation of beneficiary an affidavit executed by the
14 employee and the same-sex partner making the declarations, under penalty of perjury,
15 set out in AS 39.30.093(b)(1) - (11); and

16 (2) documentation establishing that the employee and same-sex partner
17 meet at least five of the criteria set out in AS 39.30.093(c)(1) - (8).

18 (b) An employee who has designated a same-sex partner as beneficiary under
19 this section shall provide written confirmation of the designation, supplementing
20 documentation provided under (a) of this section if that information has changed, upon
21 request of and in the manner requested by the administrator. Failure to provide written
22 confirmation requested by the administrator may result in ineligibility of the
23 designated same-sex partner for survivor benefits.

24 (c) A deceased employee's same-sex partner whom the administrator
25 determines is validly designated under this section as the employee's beneficiary to
26 receive survivor benefits has the same rights to survivor benefits that a surviving
27 spouse would have under the plan, and is subject to the same requirements that a
28 surviving spouse would be subject to relating to those benefits.

29 (d) An employee may revoke a designation of beneficiary under this section at
30 any time. After the date of retirement, an employee's revocation of the designation of
31 the employee's same-sex partner as the beneficiary to receive survivor benefits does

1 not change the form or amount of a joint and survivor benefit payable to the employee
2 or allow designation of a different beneficiary to receive the joint and survivor benefit.

3 (e) An employee who is entitled to medical coverage under the plan may
4 enroll the employee's same-sex partner and the same-sex partner's eligible dependent
5 children in the plan's medical coverage in accordance with AS 39.30.093.

6 * **Sec. 8.** AS 39.35 is amended by adding a new section to read:

7 **Sec. 39.35.861. Same-sex partner survivor and medical benefits.** (a) An
8 employee may designate the employee's same-sex partner as the beneficiary to receive
9 survivor benefits that are available to a spouse of an employee under the plan. The
10 designation of beneficiary is not valid unless it is made before the employee is
11 appointed to retirement and the employee files with the administrator

12 (1) with the designation of beneficiary an affidavit executed by the
13 employee and the same-sex partner making the declarations, under penalty of perjury,
14 set out in AS 39.30.093(b)(1) - (11); and

15 (2) documentation establishing that the employee and same-sex partner
16 meet at least five of the criteria set out in AS 39.30.093(c)(1) - (8).

17 (b) An employee who has designated a same-sex partner as beneficiary under
18 this section shall provide written confirmation of the designation, supplementing
19 documentation provided under (a) of this section if that information has changed, upon
20 request of and in the manner requested by the administrator. Failure to provide written
21 confirmation requested by the administrator may result in ineligibility of the
22 designated same-sex partner for survivor benefits.

23 (c) A deceased employee's same-sex partner whom the administrator
24 determines is validly designated under this section as the employee's beneficiary to
25 receive survivor benefits has the same rights to survivor benefits that a surviving
26 spouse would have under the plan, and is subject to the same requirements that a
27 surviving spouse would be subject to relating to those benefits.

28 (d) An employee may revoke a designation of beneficiary under this section at
29 any time. After the date of retirement, an employee's revocation of the designation of
30 the employee's same-sex partner as the beneficiary to receive survivor benefits does
31 not change the form or amount of a joint and survivor benefit payable to the employee

1 or allow designation of a different beneficiary to receive the joint and survivor benefit.

2 (e) An employee who is entitled to medical coverage under the plan may
3 enroll the employee's same-sex partner and the same-sex partner's eligible dependent
4 children in the plan's medical coverage in accordance with AS 39.30.093.

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

7 **ELECTED PUBLIC OFFICERS RETIREMENT SYSTEM MEMBERS' SAME-SEX**
8 **PARTNER SURVIVOR AND MEDICAL BENEFITS.** (a) A member of the elected public
9 officers retirement system may designate the member's same-sex partner as the beneficiary to
10 receive survivor benefits that are available to a spouse of a member under former AS 39.37,
11 as modified by sec. 51, ch. 117, SLA 1986; sec. 5, ch. 89, SLA 1988; sec. 35, ch. 106, SLA
12 1988; and sec. 1, ch. 91, SLA 2001. The designation of beneficiary is not valid unless the
13 member files with the administrator

14 (1) with the designation of beneficiary an affidavit executed by the member
15 and the same-sex partner making the declarations, under penalty of perjury, set out in
16 AS 39.30.093(b)(1) - (11), enacted by sec. 5 of this Act; and

17 (2) documentation establishing that the member and same-sex partner meet at
18 least five of the criteria set out in AS 39.30.093(c)(1) - (8), enacted by sec. 5 of this Act.

19 (b) A member who has designated a same-sex partner as beneficiary under this
20 section shall provide written confirmation of the designation, supplementing documentation
21 provided under (a) of this section if that information has changed, upon request of and in the
22 manner requested by the administrator. Failure to provide written confirmation requested by
23 the administrator may result in ineligibility of the designated same-sex partner for survivor
24 benefits.

25 (c) A deceased member's same-sex partner whom the administrator determines is
26 validly designated under this section as the member's beneficiary to receive survivor benefits
27 has the same rights to survivor benefits, including that a surviving spouse would have under
28 former AS 39.37, as modified by sec. 51, ch. 117, SLA 1986; sec. 5, ch. 89, SLA 1988; sec.
29 35, ch. 106, SLA 1988; and sec. 1, ch. 91, SLA 2001, and is subject to the same requirements
30 that a surviving spouse would be subject to relating to those benefits.

31 (d) A member may revoke a designation of beneficiary under this section at any time.

1 (e) A member who is entitled to medical coverage under former AS 39.37.145 may
2 enroll the member's same-sex partner and the same-sex partner's eligible dependent children
3 in the plan's medical coverage in accordance with AS 39.30.093, enacted by sec. 7 of this Act.

4 (f) In this section,

5 (1) "administrator" means the commissioner of administration or the
6 commissioner's designee;

7 (2) "member" means a member of the elected public officers retirement
8 system under former AS 39.37, as modified by sec. 51, ch. 117, SLA 1986; sec. 5, ch. 89,
9 SLA 1988; sec. 35, ch. 106, SLA 1988; and sec. 1, ch. 91, SLA 2001.

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

12 **RATIFICATION OF SPECIAL ENROLLMENT FOR INSURANCE BENEFITS**
13 **FOR SAME-SEX PARTNERS OF EMPLOYEES AND RETIREES.** The special enrollment
14 conducted in accordance with regulations adopted by the commissioner of administration on
15 October 13, 2006, 2 AAC 38, by the state of Alaska's insurance plans and by alternative
16 insurance programs under an exemption allowed by regulations adopted by the commissioner
17 under AS 39.30.090(a)(2), is ratified.

18 * **Sec. 11.** Section 10 of this Act takes effect immediately under AS 01.10.070(c).

19 * **Sec. 12.** Except as provided in sec. 11 of this Act, this Act takes effect January 1, 2007.