

SB

176

House Judiciary Committee Minutes

Thursday, April 5, 1979

Chairman Charlie Parr called the meeting to order at 3:00 p.m. with Representatives Buchholdt, Phillips, O'Connell, and Anderson present.

The subject of the meeting was Senate Bill 176, limitation of civil actions as applied to minors.

Senator Pat Rodey appeared before the committee as prime sponsor of the legislation. He testified that the bill is basically a housekeeping measure, that he first discovered this inconsistency when looking at the structure of small claims courts. As the age of majority for everything (except consuming alcohol) in the state, the 18 year old person should have the right to sue in small claims court.

Representative Nels Anderson moved to report out SB 176 and since there was no objection, House Judiciary Committee reported out SB 176.

Memorandum

1-24-79 = 13 extra

Alaska Court System

Use
18yrs old

TO: Arthur H. Snowden, II
Administrative Director

DATE : November 16, 1978

FROM: James D. Babb, Jr.
Administrative Associate

SUBJECT: Conflict in Statutes Relating
to Capacity to Sue or Be
Sued in Small Claims Court

1. There has been some question as to whether it is correct that anyone 19 years old or older can file a small claim, or, alternatively, be sued in small claims court as is indicated in the latest edition of the Small Claims Handbook. Susan Miller is of the belief the correct age should be 18, in accordance with AS25.20.010 (1977), which states:

Age of Majority. A person is considered to have arrived at majority at the age of 18 years, and thereafter has control of his own actions and business and has all the rights and is subject to all liabilities of citizens of full age, except as otherwise provided by statute (§ 20-1-1ACLA 1949; am. § 1 ch 37 SLA 1959; am § 5 ch 63 SLA 1977) (emphasis added)

This statute appears in the Parent and Child chapter of the Marital and Domestic Relation title. The annotation, "Effect of the Amendment" states: "The 1977 amendment decreased the age of majority from 19 to 18 years.

2. Susan Burke, Deputy Administrative Director and Staff Counsel, with whom I agree, believes there is conflict in the statutes and that the question could be argued from either side. For example, AS 09.10.140 within the Limitations of Actions chapter of the Code of Civil Procedure title states:

Disabilities of Minority, Insanity, and Imprisonment. If a person entitled to bring an action mentioned in this chapter is at the time the cause of action occurs either (1) under the age of 19 years... the time of disability is not a part of the time limited for the commencement of the action.... (§ 1.14 ch 101 SLA 1962)

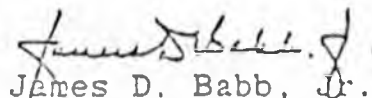
The annotations to that statute, relying on Turnbill v. Bonkowski 274 F Supp 733 (D. Alas. 1967), similarly indicate one must reach age 19 before one can be sued or has the capacity to be sued.

But, under the Parties chapter to the Code of Civil Procedure title, no exact reference is made to a number of years. AS 09.15.010, Parents or Guardian May Sue for Injuries or Death to a Child, and AS 09.15.020, Parents or Guardian May Sue for Seduction of Daughter, speak only to "the age of majority", which would seem to be controlled by the 1977 amendment above.

However, AS 45.60.091, the definitional section of the Alaska Uniform Gifts to Minors Act in the Trade and Commerce title defines an "adult" as one who has attained the age of 19 years, and a "minor" as one who has not attained the age of 19 years.

3. It is my belief that Ms. Miller is correct, despite the apparent confusion in the statutes, particularly in AS 09.10.140. However, for practical considerations, I want to be sure. If we spread the word that persons age 18 can be reached through the Small Claims court, there might be an increase in claims filed against them which then would be met with arguments based on AS 09.10.140. A similar result may occur where a person age 18 attempts a suit on his own behalf. Thus, we are going to have to reach a clear conclusion.
4. My opinion is that the 1977 amendment was intended to accomplish what it so simply states and that the proper age for the capacity to sue or be sued is 18, the body of AS 09.10.140 notwithstanding. However, I would like that opinion certified, so to speak, before we open the courts to a flood of adolescent litigation.

Very respectfully,



James D. Babb, Jr.
Administrative Associate

JD/ch

cc: Susan Burke
Susan Miller

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 12, 1979

SUBJECT: Age at which disability of minority is removed
for the purpose of actions in the small claims
courts. (Work Order No. 6423)

TO: Senator Patrick Rodey

FROM: Kenneth M. Rosenstein *KRM*
Legislative Counsel

Attached is the bill you have requested resolving an apparent conflict regarding the age at which a person may sue or be sued in small claims court.

Please be advised that the bill would lower that age to 18 years for the purpose of suits in all courts of the state, not only small claims. There seems little reason to limit this only to small claims actions. An 18-year old may presently enter into a contract for an amount over the \$2,000 jurisdictional limit of the small claims court. It therefore makes sense to allow him to sue or be sued on such contracts. If the bill is not satisfactory, please advise so that we can prepare a substitute.

KRM:jdj

Enclosure