

SB

293

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 7, 1980

SUBJECT: Snow Skiing (CSHB 860)

TO: Representative Charles H. Parr
Chairman, House Judiciary Committee

FROM: Richard A. Bradley **B**
Legislative Counsel

The bill requested by the committee is enclosed.

Certain observations are useful.

The title is changed to reflect the fact that the bill is no longer limited to the "inherent risks of skiing."

Sec. 3 of the bill adds material to AS 18. The snow safety material did not relate to civil procedure or the risks of skiing and therefore did not seem appropriate to AS 09.

The addition of the material to AS 18 means that the definitions should be added to the new chapter. Thus I have defined "ski area" and "ski area operator."

But I should call to your attention additional terms that are not self-explanatory and thus should, perhaps, be defined. I refer to the phrases "snow skiing industry" and "recognized standards and usages" of that industry. Or, put differently, I suggest that the material contained within sec. 18.76.010(c) of the bill does not establish clear standards by which to determine whether a ski area operator is responsible for an injury to a skier or whether the skier was injured in an accident that is part of the inherent risks. That result may be anticipated in any case but the bill would be clearer if the suggested language in (c) were deleted.

Note also that I changed the definition of "skier" to "skiing." I did this at the suggestion of the Revisor who noted that while skier was defined to include tobogganing,

Representative Charles H. Parr
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etc., the limitation on claims for injuries received applied to "snow skiing." However, "snow skiing" was not defined to include the tobaggans and they are not naturally included in the term.

RAB:jdn

Enclosure

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 7, 1980

SUBJECT: Presumptive death
(Work Order Number 8544)

TO: Representative Charles H. Parr
Chairman, House Judiciary Committee

FROM: Kenneth E. Vassar
Legislative Counsel *KEV*

You have requested assistance in determining whether and to what extent Senate Bill 293 amended satisfies Judge Keene's request in his letter to Senator Ziegler (a copy of which was presented to you by Senator Ziegler). You have also asked whether the reference in Senate Bill 293 amended to "six consecutive years" should be changed to "five consecutive years" to coordinate with AS 13.06.035.

Senator Ziegler supplied you with a copy of my memo to him dated January 15, 1980. The last sentence of that memo states:

It [AS 13.06.035] appears to accomplish Judge Keene's goal.

I would stress "appears". Under present law, there are two groups of statutes which address the subject of missing persons and presumptions of death. In AS 09.55.020 - 09.55.060, a person may be presumed to be dead, and a judge or magistrate may enter an order to that effect, after a jury unanimously returns a verdict that sufficient evidence has been presented to fairly support that presumption. The second group of statutes consists of various sections of AS 13.06 (part of Alaska's probate code) which indicate that the probate code is intended to apply to missing persons. Specifically, AS 13.06.035 provides that a person "is presumed to be dead" after a continuous absence of five years.

The first sentence of AS 09.55.050 appears to connect these two groups of statutes. It states:

After the judge or magistrate has entered an order declaring that the person is presumed to be dead either under secs. 20 - 60 of this chapter or under the laws dealing with missing persons, the judge or magistrate shall make out and sign a certificate entitled "Presumptive Death Certificate" in the form and manner and containing the information required by the Bureau of Vital Statistics. (Emphasis added).

The remainder of the section indicates that after the filing of the certificate, the missing person's estate may be administered in accordance with the laws applicable to the administration of the estates of deceased persons.

From these two groups of statutes, the following conclusions may be reached:

- (1) a person is presumed to be dead after a continuous, unexplained absence of five years;
- (2) the presumption of (1) is clearly applicable only as it relates to the probate code; and
- (3) the administration of the missing person's estate can begin only after a judge or magistrate makes out and signs a Presumptive Death Certificate under AS 09.-55.050.

These statutes also raise some questions, however. Two of those questions are:

- (1) Does the presumption of death provided in AS 13.-06.035 allow a judge or magistrate to make and sign a Presumptive Death Certificate without the necessity of calling a jury?
- (2) Is the presumption of death applicable to anything other than the probate code?

With regard to the first question above, I think the intent was probably to avoid the jury requirement but the language certainly does not express that conclusion, and the power of the judge or magistrate is limited by the provisions of AS 09.55.030, which requires a jury verdict before the judge or magistrate can enter the order of presumptive death.

Representative Charles H. Parr
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May 7, 1980

With regard to the second question, AS 13.06.035 states that it applies to "proceedings under this [the probate] code". That would seem to resolve the matter; however, the reference in AS 09.55.050, which is part of the civil code, to an order "under the laws dealing with missing persons", which almost certainly means the probate code, creates some reasonable basis for a determination that the presumption applies to other matters as well. Logic would require that a person considered dead for one purpose be considered dead for all purposes.

Senate Bill 293 amended would resolve these problems by specifically allowing a judge or magistrate, under certain circumstances, to make and sign a Presumptive Death Certificate without requiring a jury verdict and by making it clear that this presumption is applicable for purposes which include but are not limited to probate. I think this satisfies Judge Keene's request while also clarifying some confusing sections of law; on the other hand, existing law could be said to accomplish Judge Keene's goal if the declaration of presumptive death under the circumstances provided in AS 13.-06.035 can be made without a jury verdict and if that presumption applies to more than strictly probate matters.

As to your question about the length of time a person must be missing before the presumption of his death arises, I know of no reason why five years should not be inserted instead of six years; and, considering the confusion which could arise if that change were not made, I think it would probably be advisable.

Finally, as my memo to Senator Ziegler would indicate, I did not locate the presumptive death language of AS 13.06.035 until Senate Bill 293 had already been drafted; therefore, certain additional amendments which would further clarify the relationship between AS 13 06 and AS 09.55 were not included in the bill. For the committee's consideration, I would suggest the following amendments:

Page 1, line 17

Insert the following new language:

* Sec. 2. AS 09.55.050 is amended to read:

Sec. 09.55.050. EFFECT OF PRESUMPTIVE DEATH CERTIFICATE. After the judge or magistrate has entered an order declaring that the person is presumed to be dead [EITHER] under AS 09.55.020 - 09.55.060 [OR UNDER THE LAWS DEALING WITH MISSING PERSONS], the judge or magistrate shall make out and sign a death certificate entitled "Presumptive Death Certificate" in the form and manner and containing the information required by the Bureau of Vital Statistics. The certificate shall be recorded by the judge or magistrate and then filed with the Bureau of Vital Statistics. Upon the entry of the order and the recording and filing of the "Presumptive Death Certificate" as herein provided, the missing person is presumed to be dead, and his estate may be administered in accordance with the then existing provisions of law applicable to the administration of the estates of deceased persons.

* Sec. 3. AS 03.06.035(3) is amended to read:

(3) A person for whom a Presumptive Death Certificate is recorded under AS 09.55.050 [WHO IS ABSENT FOR A CONTINUOUS PERIOD OF FIVE YEARS, DURING WHICH HE HAS NOT BEEN HEARD FROM, AND WHOSE ABSENCE IS NOT SATISFACTORILY EXPLAINED AFTER DILIGENT SEARCH OR INQUIRY IS PRESUMED TO BE DEAD; HIS DEATH] is presumed to have died at the time the Presumptive Death Certificate is recorded [OCCURRED AT THE END OF THE PERIOD] unless there is sufficient evidence for determining that death occurred earlier.

KEV:ljb



Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

February 1, 1980

Clem V. Tillion,
President of the Senate
Room 101 Capital Building
Juneau, Alaska

Re: SB 293.

Dear Mr. President:

When the Senate Judiciary Committee considered the captioned bill at its regularly scheduled hearing on January 29, 1980, Donald P. Koch of the Division of Insurance testified before us, advising us that the Division was not opposed to the legislation.

However, Mr. Koch stated that there had been an occasion when a life insurance company, notwithstanding the double indemnity provision for accidental death contained in its policy, had paid the beneficiary only the face amount of the policy.

It is the intent of the Senate Judiciary Committee that a presumptive death certificate shall have the same force and effect as a regularly issued death certificate insofar as ascertaining the amount of insurance proceeds payable is concerned.

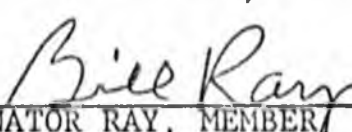
Respectfully submitted,



SENATOR ZIEGLER, CHAIRMAN



SENATOR BENNETT, MEMBER



SENATOR RAY, MEMBER



SENATOR MELAND, MEMBER



SENATOR DANKWORTH, MEMBER

MEMORANDUM

State of Alaska

TO: Honorable Robert Ziegler, Chairman
Senate Judiciary Committee

DATE: January 31, 1980

THRU: Kenneth C. Moore
Director

FILE NO:

TELEPHONE NO:

FROM: Donald P. Koch
Chief of Market Surveillance
Division of Insurance
Department of Commerce
and Economic Development

SUBJECT: Presumptive Death Certificates
Senate Bill 293

DK
KCM

On January 29, 1980, I appeared before your committee concerning Senate Bill 293, an Act relating to presumptive death. After our testimony you requested that we provide information to you in memo form. The information follows.

The Division of Insurance is not opposed to this legislation, but we do have some concerns relating to the impact of a presumptive death certificate under AS 09.55.020-060.

The primary concern relates to the effect of a presumptive death certificate on the contractual obligation of a life insurer to discharge the coverage amount on its policy with the issue of a presumptive death certificate. AS 09.55.050 states, in part:

Upon the entry of the order and the recording and filing of the "presumptive death certificate" as herein provided, the missing person is presumed to be dead, and his estate may be administered in accordance with the then existing provisions of law applicable to the administration of the estates of deceased persons.

The phrase "may be administered" raises the question of whether an insurer must discharge its coverage amount in the absence of a phrase "shall be administered." We are not suggesting that this language change be made since there are other reasons for the use of that particular permissive language rather than mandatory language. The loophole created, however, for insurers is one that should be sealed.

We have no evidence that insurers are failing to respond upon issuance of a presumptive death certificate, but we are aware of at least one situation where an amount was paid which may not have been the correct amount, which brings us to our second concern. Some policies have a provision whereby the death benefit is doubled or tripled if the death is accidental. About eight years ago, a presumptive death certificate was issued when a fisherman was presumed dead after the wreckage of his fishing boat was found. No body was ever recovered. The insurer paid the face amount of its policy, \$10,000, but refused to consider the double indemnity provision even though the circumstances surrounding the issuance of the certificate suggests that the loss of life had to have been accidental.

Honorable Robert Ziegler

-2-

January 31, 1980

The proposed amendment is not disturbing to the division since there is the six year requirement. While it may be possible that the person presumed deceased is actually a deserter, that situation could exist under the present law and is not a real concern. In checking with the Bureau of Vital Statistics, the State Registrar, Joan Brooks, advises that there has never been a case in Alaska where a presumptive death certificate has been reversed because the person was later found to be alive.

We believe that some legislative clarification or statement of intent would be useful and an aid to the public. We appreciate your interest in this issue, and we will be happy to assist you in whatever way you feel would be helpful.

DPK/sa

ALASKA STATE LEGISLATURE

ELEVENTH Legislature .. SECOND Session

SENATE ... BILL ... NO. 293...

By ... ZIEGLER

"An Act relating to presumptive death."

Introduced in the Senate ... 1/14/ 19... 80

#17316-Nassan

HISTORY IN THE SENATE

19 80 Read first time and referred to Committee on

1 14 Judiciary

1 30 Reported back with recommendation that *Jud 5 to pass*
W/ amend. Act of Intent to Dulles.
1 31 *Dulles: Calendar 2/1*

2 1 Read second time and *amended,*
adv

2 1 Read third time and

2 1 **PASS** *adv* Effective Date
Yeas 19 Yeas
Nays 0 Nays
Absent 1 Absent
Excused — Excused

Reconsideration
PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

2 1 Reported correctly engrossed
1 1 Signed by President
1 1 Sent to House

Roger Mulligan
SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19 80 Read first time and referred to Committee on

Feb 4 Judiciary

Reported back with recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration
PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reported correctly engrossed
Signed by Speaker
Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19 Received from House

Reported correctly enrolled

Sent to Governor

..... By Governor

Filed with Lt. Governor

Chapter No.

POSITION PAPER
ON
SENATE BILL NO. 293 am

"An Act relating to presumptive death."

This bill permits a district judge or magistrate to declare legally dead a person who has not been seen or heard from for six years without impaneling a coroner's jury. The resultant presumptive death certificate would be treated in the same manner as one prepared after a jury's verdict.

Such cases will be very rare since most presumptive death certificates are filed within a year of the disappearance. It would be cost saving to the court system because no jury is required.

This Department proposes that S.B. 293 am be passed.

Recommended by:

Joan P. Brooks
Joan P. Brooks/
State Registrar
Office of Information Systems

2/20/80
(DATE)

Approved by:

Helen D. Beirne
Helen D. Beirne, Commissioner
Department of Health and Social
Services

3/16/80
(DATE)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 293 am
Title An Act Relating to Presumptive Death
Requested by _____ Date _____

II. FISCAL DETAIL

Department of Health and Social Services
Agency Affected _____
Program Category Affected Vital Statistics
BRU, Program, or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No fiscal impact

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Prepared by: John P. Breda Date: 2/13/80
Division/Office: Vital Statistics PH: 465-3393
Department of Health & Social Services