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EXECUTIVE ORDERS 42, 45, 47

January 30, 1980

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

Dear Mr. President:

On January 29, 1980, the Senate Judiciary Committee considered Executive Orders 42, 45 and 47, all of which are to become effective July 1 of this year.

The orders respectively involve transferring the Public Defender's Office from the Governor's Office to the Department of Administration, transferring the Alaska Police Standards Council from the Office of the Governor to the Department of Public Safety, and transferring the recording function and the Uniform Commercial Code filing function from the Department of Commerce and Economic Development to the Department of Natural Resources.

All agencies and departments concerned were notified of the hearing and personal contact was made with each; no objections to any of the Executive Orders were made.

The Committee therefore feels that the Executive Orders should take effect as the Governor has ordered.

Respectfully submitted,

SENATOR ZIEGLER, CHAIRMAN

SENATOR BENNETT, MEMBER

SENATOR DANKWORTH, MEMBER

SENATOR MELAND, MEMBER

SENATOR RAY, MEMBER

January 30, 1980

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Respectfully submitted,

SENATOR ZIEGLER, CHAIRMAN

SENATOR BENNETT, MEMBER

SENATOR DANKWORTH, MEMBER

SENATOR MELAND, MEMBER

SENATOR RAY, MEMBER

EXECUTIVE ORDER NO. 42

Under the authority of Article III, Section 23, of the Constitution of the State of Alaska, and in accordance with AS 24.30.130(b), I order the following:

* Section 1. FINDINGS. As governor, I find that it would be in the best interests of efficient administration to transfer the Alaska Public Offices Commission from the lieutenant governor's office to the Department of Administration.

* Sec. 2. AS 15.13.020(a) is amended to read:

(a) There is created in the Department of Administration [OFFICE OF THE LIEUTENANT GOVERNOR] the Alaska Public Offices Commission consisting of five members.

* Sec. 3. AS 39.25.120 is amended by adding a new paragraph to read:

(12) the executive director and staff of the Alaska Public Offices Commission.

* Sec. 4. Administrative regulations of the Alaska Public Offices Commission, currently located in Title 6 of the Alaska Administrative Code, remain in effect and are to be relocated to Title 2 (Department of Administration).

* Sec. 5. This order takes effect July 1, 1980.

DATED: January 14, 1980
Juneau, Alaska

s/ JSH
Jay S. Hammond
Governor

EXECUTIVE ORDER NO. 42

Under the authority of Article III, Section 23, of the Constitution of the State of Alaska, and in accordance with AS 24.30.130(b), I order the following:

* Section 1. FINDINGS. As governor, I find that it would be in the best interests of efficient administration to transfer the Public Defender's Office from the governor's office to the Department of Administration.

* Sec. 2. AS 18.85.010 is amended to read:

Sec. 18.35.010. PUBLIC DEFENDER AGENCY ESTABLISHED. There is created in the Department of Administration [OFFICE OF THE GOVERNOR] a Public Defender Agency to serve the needs of indigent defendants.

* Sec. 3. AS 39.25.120(5) is amended to read:

(5) all employees of the Office of the Governor and the lieutenant governor, including the staff of the governor's mansion [AND THE ATTORNEY MEMBERS OF THE STAFF OF THE PUBLIC DEFENDER AGENCY, BUT NOT INCLUDING THE NONATTORNEY MEMBERS OF THE STAFF OF THAT AGENCY];

* Sec. 4. AS 39.25.120 is amended by adding a new paragraph to read:

(12) the attorney members, but not the non-attorney members, of the staff of the public defender agency in the Department of Administration.

* Sec. 5. This order takes effect July 1, 1980.

DATED: January 14, 1980
Juneau, Alaska

s/ JSH
Jay S. Hammond
Governor

EXECUTIVE ORDER NO. 43

Under the authority of Article III, Section 23, of the Constitution of the State of Alaska, and in accordance with AS 24.30.130(b), I order the following:

* Section 1. FINDINGS. As governor, I find that it would be in the best interests of efficient administration to transfer the Alaska Historical Commission from the governor's office to the Department of Education.

* Sec. 2. AS 44.19.461 -- 44.19.501 are repealed.

* Sec. 3. AS 44.27 is amended by adding new sections to read:

ARTICLE 2. ALASKA HISTORICAL COMMISSION.

Sec. 44.27.040 CREATION. There is created in the Department of Education the Alaska Historical Commission.

Sec. 44.27.050. COMPOSITION. The Alaska Historical Commission consists of four members appointed by the governor, ex officio the lieutenant governor, and ex officio the executive director who may not vote. The lieutenant governor shall serve as chairman.

Sec. 44.27.060. APPOINTMENT. The governor shall make his appointments from a list of recommended nominees submitted to him each year by the Alaska Historical Society. In the first year of the commission the list of nominees shall contain at least eight names and in each subsequent year the list shall contain at least four names. A person who has served on the commission may be renominated.

Sec. 44.27.070. TERMS OF OFFICE. The term of office for each appointed member of the commission is two years; however, of the members first appointed, two shall serve for one year and two shall serve for two years. When a member's term has expired and a replacement has not been appointed, the member shall continue to serve until a replacement is appointed.

Sec. 44.27.080. COMPENSATION. The members of the commission are not entitled to receive compensation for their services, but they are entitled to receive the same travel pay and per diem as state officials and employees.

Sec. 44.27.090. DUTIES OF THE COMMISSION. The duties of the commission are to

(1) survey, evaluate, and catalog Alaska prehistory and history materials now in print;

(2) ascertain and register what Alaska prehistory and history work is now in progress;

(3) identify the existing gaps in the coverage of Alaska's past in presently available published works and establish priorities for bridging them;

(4) prepare a thematic study of Alaska's history for historic preservation;

(5) identify the sources of Alaska's history;

(6) coordinate the production and publication of works that will adequately present all aspects of Alaska's past; and

(7) cooperate with the federal government in programs relating to history and archaeology.

Sec. 44.27.100. REPORTS. The commission shall make an annual report to the governor.

Sec. 44.27.110. EXECUTIVE DIRECTOR. The commission shall appoint, subject to approval by the governor, an executive director who is to be in the partially exempt service as set out in AS 39.25.120. The executive director shall serve as the executive officer of the commission in the accomplishment of its functions. He serves at the direction and at the pleasure of the governor.

Sec. 44.27.120. GIFTS AND INCOME. (a) There is established in the state general fund a special Alaska Historical Commission receipts account into which shall be paid:

(1) all monetary gifts, grants, and bequests received by the commission;

(2) all royalties and other income which the commission receives from its projects.

(b) The legislature may appropriate funds from this account for commission projects.

* Sec. 4. AS 39.25.120 is amended by adding a new paragraph to read:

(12) the executive director of the Alaska Historical Commission.

* Sec. 5. Contracts and proceedings entered into by the commission are not affected by the relocation made by this order.

* Sec. 6. This order takes affect July 1, 1980.

DATED: January 14, 1980
Juneau, Alaska

s/ JSH
Jay S. Hammond
Governor

EXECUTIVE ORDER NO. 44

Under the authority of Article III, Section 23, of the Constitution of the State of Alaska, and in accordance with AS 24.30.130(b), I order the following:

* Section 1. FINDINGS. As governor, I find that it would be in the best interests of efficient administration to transfer the Alaska State Council on the Arts from the governor's office to the Department of Education.

* Sec. 2. AS 39.50.200(9)(J) is amended to read:

(B) Alaska State Council on the Arts (AS 44.27.040) [(AS 44.19.900)];

* Sec. 3. AS 44.19.900 -- 44.19.950 are repealed.

* Sec. 4. AS 44.27 is amended by adding new sections to read:

ARTICLE 2. ALASKA STATE COUNCIL ON THE ARTS.

Sec. 44.27.040. CREATION. There is created in the Department of Education an Alaska State Council on the Arts.

Sec. 44.27.050. COMPOSITION. The Alaska State Council on the Arts consists of 11 members, broadly representative of all fields of the performing, visual, and fine arts, who are widely known for their competence and experience or interest in connection with the performing, visual, and fine arts.

Sec. 44.27.060. APPOINTMENT. The members are to be appointed by the governor from among citizens of Alaska. In making the appointments, consideration must be given to the recommendations made by representative civic, educational, and professional associations and groups concerned with or engaged in the production or presentation of the performing, visual, and fine arts generally. In making the appointments consideration must also be given to having state-wide geographical representation on the council. The members of the council serve at the pleasure of the governor and their appointments are not subject to legislative confirmation.

Sec. 44.27.070. TERMS OF OFFICE. The term of office of each member is three years; however, of the members first appointed, three are to be appointed for terms of one year, four for terms of two years, and four for terms of three years. All vacancies are to be filled for the balance of the unexpired term in the same manner as original appointments.

Sec. 44.27.080. COMPENSATION. The members of the council are not entitled to receive compensation for their services, but they are entitled to receive the same travel pay and per diem as provided by law for board members.

Sec. 44.27.090. CHAIRMAN AND VICE-CHAIRMAN. The governor shall designate a chairman and a vice-chairman from the members of the council to serve as such at the pleasure of the governor. The chairman shall be the chief executive officer of the council.

Sec. 44.27.100. DUTIES OF COUNCIL. The duties of the council are

(1) to stimulate and encourage throughout the state the study and presentation of the performing, visual, and fine arts and public interest and participation;

(2) to make surveys, which are considered advisable, of public and private institutions engaged in the state in artistic and cultural activities, including but not limited to music, theatre, dance, painting, sculpture, architecture, and allied arts and crafts, and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) to take steps necessary and appropriate to encourage public interest in the cultural heritage of our state and to expand the state's cultural resources;

(4) to encourage and assist freedom of artistic expression essential for the well being of the arts;

(5) to recommend to the governor a list of persons for consideration for appointment to the Advisory Council on Cultural Facilities, in accordance with AS 44.33.400.

Sec. 44.27.110. POWERS OF COUNCIL. The council is authorized and empowered to hold public and private hearings, to enter into contracts, within the limit of funds available, with individuals, organizations, and institutions for services furthering the educational objectives of the council's programs; to enter into contracts, within the limit of funds available, with local and regional associations for cooperative endeavors furthering the educational objectives of the council's programs; to accept gifts, contributions, and bequests of

unrestricted funds from individuals, foundations, corporations, and other organizations or institutions for the purpose of furthering the educational objectives of the council's programs; to make and sign -- agreements and to do and perform any acts necessary to carry out the purposes of AS 44.27.040 -- 44.27.140. The council may request and is entitled to receive from any department, division, board, bureau, commission, or agency of the state the assistance and data which will enable it properly to carry out its powers and duties. The council is authorized to receive state funds made available for its purposes.

Sec. 44.27.120. POWERS OF CHAIRMAN. Subject to available appropriations the chairman may, with the concurrence of a majority of the council, employ necessary personnel and may contract for the services of experts and other persons who may be needed.

Sec. 44.27.130. REPORTS. The council shall report to the governor and the legislature not later than November 1, 1966, and from time to time thereafter.

Sec. 44.27.140. NATIONAL ENDOWMENT FUNDS. The council is the official agency of this state to receive and disburse funds made available by the National Endowment for the Arts.

* Sec. 5. AS 39.25.120 is amended by adding a new paragraph to read:

(12) the chief executive officer, but not other staff, of the Alaska State Council on the Arts.

* Sec. 6. Contracts and proceedings entered into by the council are not affected by the relocation made by this order.

* Sec. 7. This order takes effect July 1, 1980.

DATED: January 14, 1980
Juneau, Alaska

s/ JSH
Jay S. Hammond
Governor

EXECUTIVE ORDER NO. 45

Under the authority of Article III, Section 23, of the Constitution of the State of Alaska, and in accordance with AS 24.30.130(b), I order the following:

* Section 1. FINDINGS. As governor, I find that it would be in the best interests of efficient administration to transfer the Alaska Police Standards Council from the governor's office to the Department of Public Safety.

* Sec. 2. AS 18.65.140 is amended to read:

Sec. 18.65.140. CREATION. There is created in the Department of Public Safety [OFFICE OF THE GOVERNOR] the Alaska Police Standards Council.

* Sec. 3. AS 39.25.120 is amended by adding a new paragraph to read:

(12) the administrator of the Alaska Police Standards Council.

* Sec. 4. Administrative regulations of the Alaska Police Standards Council, currently located in Title 6 of the Alaska Administrative Code, remain in effect and are to be relocated to Title 13 (Department of Public Safety).

* Sec. 5. This order takes effect July 1, 1980.

DATED: January 14, 1980
Juneau, Alaska

s/ JSH
Jay S. Hammond
Governor

EXECUTIVE ORDER NO. 46

Under the authority of Article III, Section 23, of the Constitution of the State of Alaska, and in accordance with AS 24.30.130(b), I order the following:

* Section 1. FINDINGS. As governor, I find that it would be in the best interest of efficient administration to transfer the Alaska Council on Science and Technology from the governor's office to the Department of Environmental Conservation.

* Sec. 2. AS 44.19.181 -- 44.19.189 are repealed.

* Sec. 3. AS 44.46 is amended by adding new sections to read:

ARTICLE 4. ALASKA COUNCIL ON SCIENCE AND TECHNOLOGY.

Sec. 44.46.070. COUNCIL ESTABLISHED. (a) There is established in the Department of Environmental Conservation the Alaska Council on Science and Technology. The council consists of seven members who are appointed by the governor upon the recommendations of the state's scientific, engineering, and related communities and organizations. Members have overlapping three-year terms, except that, of the first members, two have terms of one year, two have terms of two years, and three have terms of three years. Two members shall be selected from different executive departments of state government having significant research activities, two members shall be selected from the Alaska academic community, two members shall have significant activities or direct interests in research and shall be selected from the general public, and one member shall be selected from the staff of the legislature. The council shall elect one of its members a chairman. A chairman may be elected for successive terms as chairman and serves until his successor is designated. Four members constitute a quorum.

(b) Council members receive no compensation but are entitled to the travel and per diem provided by law for members of boards or commissions.

Sec. 44.46.080. PURPOSE, POWERS, AND DUTIES. (a) The purpose of the council is to review and recommend the scientific and technological research needs of state government, to issue research grants and contracts, to oversee the issued grants and contracts, to promote high standards of research for the priorities proposed by the council, and to address stated legislative or administrative requests for research.

(b) The council may

(1) apprise itself of local, state, federal, and private research programs, activities, and needs;

(2) convene committees, task forces, conferences, public hearings, and other meetings necessary to carry out the council's purposes;

(3) award research grants and contracts on a fair and competitive basis and administer those grants and contracts;

(4) enter into agreements creating one or more systems of information exchange with any appropriate research funding sources;

(5) at the request of any state agency, enter into and administer, but not perform, the research under research grants and contracts funded by that state agency;

(6) investigate the need for and when necessary establish advisory committees for reviewing its program;

(7) request and receive from any agency of the state government the assistance and data needed to carry out the requirements of this section;

(8) hire an executive director and staff that may be necessary to implement AS 44.46.070 -- 44.46.110.

(c) The council shall

(1) develop methods of surveying research needs of the state, based on the present and future information needs of policy makers, state agencies, and the public at large;

(2) annually review the research needs and propose priorities for funding;

(3) annually submit to the governor and the legislature the findings of the council, including a listing, description, ranking, and justification of research needs, and a commentary on significant research activities of the preceding year funded by the state and including the relationship of that research to the state's needs and priorities;

(4) promote [illegible] chance standards for research activities for which the council has administrative oversight;

(5) establish review procedures for research proposals;

(6) at the request of either the governor or the legislature, advise in a timely fashion on inquiries concerning scientific investigation or comment;

(7) evaluate and forward to appropriate agencies and persons products of research activities funded by the council; the council shall prepare comments to accompany research reports summarizing the applications, importance, or further research needs demonstrated by the findings of council-supported research;

(8) coordinate its data and information needs with other research organizations in order to avoid unnecessary duplication;

(9) not conduct any research itself other than that necessary to further the purpose of the council as provided in (a) of this section;

(10) supply to any person or agency requesting assistance the available information on past or present research activities for which the council has information, except that the council shall not release information which may endanger the acceptance of any research proposal which is at the time competing with other proposals for funding.

(d) The council may, as funds are appropriated, make grants of financial assistance of up to $5,000 to persons engaged in the development or implementation of northern technology. An application for a grant under this subsection shall be submitted to the council which shall determine the manner in which applications are reviewed and approved. The council may make grants in coordination with other sources of funding. An applicant for funds for a demonstration project shall include with his application a statement that the completed project will be available for public inspection. Any patents or royalties accruing from projects funded through grants made by the council remain the property of the individual receiving the grant.

Sec. 44.46.090. RECORDS, REPORTS. (a) The council shall have its financial records audited by an independent certified public accountant. The internal auditor and legislative auditor shall jointly prescribe the form and content of the financial records of the council and shall be afforded access to these records at any time.

(b) Before January 15 of each year, the council shall submit to the governor and the legislature a comprehensive report describing operations and expenditures and the status of grants and contracts for the last preceding fiscal year.

(c) The provisions of AS 09.25.110 -- 09.25.120 apply to the council.

Sec. 44.46.100. DEFINITIONS. In AS 44.46.070 -- 44.46.110,

(1) "council" means the Alaska Council on Science and Technology established in AS 44.46.070;

(2) "northern technology" means the application in Alaska

of methods of energy generation, waste disposal, recycling, food production, transportation, building design, and industrial enterprise which may be more efficient, and less costly, and less energy intensive than those methods presently utilized and which are appropriate to the Alaska environment.

Sec. 44.46.110. SHORT TITLE. AS 44.46.070 -- 44.46.110 may be cited as the Science and Technology Act.

* Sec. 4. AS 39.25.120 is amended by adding a new paragraph to read:

(12) the executive director, but not other staff, of the Alaska Council on Science and Technology located in the Department of Environmental Conservation.

* Sec. 5. As provided in sec. 8, ch. 56 SLA 1979, subsec. (d) of AS 44.46.080, as enacted in sec. 3 of this order, terminates June 30, 1984.

* Sec. 6. Contracts and proceedings entered into by the council are not affected by the relocation made by this order.

* Sec. 7. This order takes effect July 1 ,1980.

DATED: January 14, 1980
Juneau, Alaska

s/ JSH
Jay S. Hammond
Governor

EXECUTIVE ORDER NO. 47

Under the authority of Article III, Section 23 of the Constitution of the State of Alaska, and in accordance with AS 24.30.130(b), I order the following:

* Section 1. Findings. As governor, I find that it would be in the best interests of efficient administration to transfer the recording function and the Uniform Commercial Code filing function from the Department of Commerce and Economic Development to the Department of Natural Resources.

* Sec. 2. AS 44.37.020 is amended to read:

Sec. 44.37.020. DUTIES OF DEPARTMENT WITH RESPECT TO NATURAL RESOURCES. (a) The Department of Natural Resources shall administer the state program for the conservation and development of natural resources, including forests, parks, and recreational areas, lands, waters, agriculture, soil conservation and minerals (including petroleum and natural gas), but excluding commercial fisheries, sport fish, game, and fur-bearing animals in their natural state.

(b) The Department of Natural Resources shall administer and maintain a recording system established under the laws of this state.

* Sec. 3. AS 44.37 is amended by adding a new section to read:

Sec. 44.37.025. RECORDING. (a) The Department of Natural Resources shall adopt regulations, establishing, modifying, or discontinuing recording districts or precincts and prescribing the records to be maintained and the instruments to be recorded.

(b) The department shall engage and compensate recorders and deputy recorders, prescribe and account for recording fees, and do all other things necessary to maintain the recording system established under the laws of this state.

(c) The department, with the concurrence of the administrative director of courts, may appoint judicial employees to record documents in locations where the department has no employees available to serve as recorders.

* Sec. 4. AS 45.05.734(e) is amended to read:

(e) The requirements of AS 45.05.768(a)(1) and (2), 45.05.772(b), (c), and (e), and 45.05.780 [SECS. 768(a)(1) AND (2), 772(b), (c), AND (e) AND 780 OF THIS CHAPTER] do not apply to a security interest in personal property of any description created by a deed of trust or mortgage made by a corporation primarily engaged in the business of a common carrier by rail, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipeline, or the production, transmission or distribution of electricity, steam, gas, or water, but this security interest may be perfected under AS 45.05.690 -- 45.05.794 [SECS. 690-794 OF THIS CHAPTER] by filing the deed of trust or mortgage in the office of the commissioner of the Department of Natural Resources [COMMERCE AND ECONOMIC DEVELOPMENT]. When filed, the instrument remains effective until terminated, without the need for filing a continuation statement. Assignments and releases of the instrument may also be filed in the office of the commissioner of the Department of Natural Resources [COMMERCE AND ECONOMIC DEVELOPMENT]. This commissioner is a filing officer for the foregoing purposes, and the uniform fee for filing, indexing and furnishing filing data under this subsection is $10.

* Sec. 5. AS 45.05.768(a)(3) is amended to read:

(3) in all other cases, in the office of the Department of Natural Resources [COMMERCE AND ECONOMIC DEVELOPMENT].

* Sec. 6. AS 44.33.020(22) and 44.33.025 are repealed.

* Sec. 7. Sec. 3, ch. 118 SLA 1976 is amended to read:

Sec. 3. The recording districts established by the supreme court in effect on January 1, 1977 shall remain in effect until regulations establishing, modifying, or discontinuing recording districts or precincts have been adopted by the Department of Natural Resources [COMMERCE AND ECONOMIC DEVELOPMENT].

* Sec. 8. This order takes effect July 1, 1980.

DATED: January 14, 1980
Juneau, Alaska

B/ JSH
Jay S. Hammond
Governor

SB

7

COMMITTEE REPORT

SENATE

FURTHER: None

1/15/79

Date: 3/13/79

Mr. President:

The Committee on JUDICIARY has had SENATE BILL NO. 7
relating to judicial forfeitures

under consideration and (a majority of the committee) (~~the committee~~)
reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

February 12, 1979

SUBJECT: Substitute for SB 7; Judicial Forfeitures

TO: Senator Bill Sumner

FROM: Richard A. Bradley
Legislative Counsel

In the interests of time, I have not done a sectional analysis of the changes proposed. Rather, some points may be noted:

(1) The material at lines 17 - 23 of your bill, to which no amendment of substance had been proposed, is the area that the substitute proposes the clarify and change.

(2) The existing law on this subject is not altogether clear, and, to that extent, at least, the proposal represents a substantial clarification. Whether it represents an improvement, I leave to your judgment.

(3) Existing law allows ~~those~~ any forfeiture to be handled as part of the case against the defendant when violations of fish and game laws are prosecuted:

(A) The violator may be prosecuted, as under any other criminal law.

(B) The tools and transportation utilized may be forfeited as may the illegally taken fish and game, if a conviction results. Both events occur in the same proceeding. Graybill v. State, 545 P.2d 629 (1976).

In fact, the Supreme Court suggested in Graybill that it saw no need for a separate forfeiture proceeding since the issue decided in the main trial -- guilt or innocence -- was finally determined in that proceeding and could not be relitigated in separate proceedings because of the judicial doctrine of collateral estoppel.

(4) The proposed amendments take the proceedings in (3)(A) and (B) and allow the state to separate them; they also deal explicitly with the prerogatives of "innocent" owners of the property seized.

(5) I have some policy reservations about the provision on page 2 providing that it is "no defense" that the "criminal action. . ." "has resulted in. . . . acquittal. . ."

In paragraph (8) below, I raise the question whether in the presence of adequate fines and imprisonments, forfeiture does not constitute an unnecessary remedy for the state's use.

In this paragraph, I suggest that the state should not get a "second chance" against a defendant if he is acquitted in the personal litigation.

And the full logic of this reservation calls into question the entire logic of allowing an independent in rem action. Rather, the state should, at most, be allowed to proceed against the tools of the crime in the actual case against the defendant. This kind of policy determination by the committee would require amendment of the proposed substitution. Note that the single action is the present law; separation of the case into two actions is the result of the amendment.

(6) Sec. 190(d) [page 2, lines 8 - 13] allows a civil action for damages. Whether this is viewed as a new authorization or confirmation of an existing authority, I do not know. I do believe that the authority is reasonable.

If allowed, I would suggest that it not be joined with any action for a forfeiture. I think the issues in the civil claim for damages should not be confused with the criminal claims in a forfeiture case. Graybill, supra, recognizes that forfeiture is essentially a criminal complaint.

(7) At this point, I see no other subtleties to these procedures. They seem straightforward and do not seem to merit explanation. Whether you consider them wise policy, I leave to your judgment.

(8) One possibly irrelevant point, I am unaware why prosecutors need these prosecution tools in fish and game [and in drug] cases; either forfeit cars used in rape or bank robbing cases or eliminate the forfeiture proceedings in all cases and rely on fines and imprisonment to do justice. Perhaps the state can advise why it needs these special remedies in these cases.

RAB:jdn

BILL ANALYSIS

ASSIGNMENT DATE 1/12/79

UNASSIGNED

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
PUBLIC SAFETY	SUMNER	SB7

DEPARTMENT POSITION

Oppose

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Woldstad	1/19/79	[signature]	1-22-79

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING) Unknown

(2) OTHER AGENCIES AFFECTED BY BILL Unknown

(2) a. ORGANIZATIONAL SUPPORT FOR BILL

None Known

(2) b. ORGANIZATIONAL OPPOSITION TO BILL

None Known

(3) PROGRAM EFFECTS OF BILL

Program effects could be substantial to the successful enforcement of a number of the Laws and Regulations pertaining to commercial use of resources, particularly in commercial fisheries and guiding. The prohibition dealing with hunting the same day airborne will be effected.

(4) FISCAL IMPACT ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

No amendments proposed.

(6) COMMENTS:

(Attached)

6. COMMENTS

Senate Bill 7 is a copy of and reintroduction of Senate Bill No. 523 introduced by the Rules Committee in the Tenth Legislature, second session. Comments that were applicable at that time are still pertinent to the issue and are repeated again in total by various members of Headquarters Staff.

(WOLDSTAD) - The new Section 16.05.197, LIMITATIONS ON CONFISCATION OR FORFEITURE would, for all intents and purposes, eliminate the action of forfeiture of vessels, aircraft or other motor vehicles used in the commission of crime against resources, plus curtails confiscation to the degree it would be foolhardy to even attempt such action. This legislation is an attempt by the commercial business person or common carrier to protect and shield any operator/owner from responsibility for the acts committed through the use of the vehicular equipment regardless of the operator. The Bill, in effect, destroys the present statutory provisions of Sec. 16.05.190, which has been in existence since 1959.

A common business practice that has been used most frequently is to place ownership of real property and equipment in a neutral name far removed from normal business jeopardy. Any guide or common carrier could place ownership of his aircraft or mobile equipment in the name of a spouse or relative and protect his equipment from both seizure and forfeiture as the state could not then establish that the owner or person legally in charge was a consenting party to unlawful acts or privy to information concerning unlawful acts.

Under present penalty systems, the value of the State resources often exceeds the maximum penalty allowed when resource violators are found guilty of unlawful acts. It is not uncommon for the fruits of an unlawful act in resources to far exceed the maximum penalty if apprehended.

The threat of seizure and possible forfeiture upon completion of legal procedures has caused an effective deterrent to be created. Passage of this Senate Bill would make a mockery of any progress made to this point for the benefit of a commercial operator at the expense of the resources.

(ROBERTS) - This bill would eliminate the deterrent effect that the present law offers. Paragraph (a) - There is no need for this paragraph. If the State does not feel that an operator of a vessel, airboat, riverboat, ATV, or a pilot of an aircraft does not have knowledge that a crime was committed, he will not be prosecuted. If there is reasonable cause for prosecution and a conviction is obtained, it is at the discretion of the court as to whether the court will forfeit the air, land, or water vehicle used in committing the violation. The protection the sponsors of the Bill are seeking is a ready built into the existing law. It is not wise legislating to add additional language to any law that is already clear. Confusion is frequently the result of adding additional language.

Paragraph (b) - The response to this paragraph has to be pretty much the same as above. The court is not going to forfeit property used in committing a crime if that property was stolen from another individual and that individual was the legal owner at the time the property was stolen. Passage of this would make null and void 16.05.195(a)(2). The violator would simply claim he did not know who was using the equipment. "Persons unknown must have been using it without my permission."

6. COMMENTS

(ROBERTS, Cont.)

Paragraph (c) - All guides, commercial fishermen and transporters would have their equipment registered in someone else's name. No longer would the court be able to levy a penalty that would befit the crime of taking game or fish illegally for commercial purposes. If this amendment is passed we would have no alternative but to seek legislation that would make it a felony to violate a law or regulation that covers commercial fishing or guiding.

The net profits from successful violators range from a few thousand dollars to hundreds of thousands of dollars for one individual. By successful violation I mean two things: (1) a violation that is not detected and hence no prosecution, and (2) where/if a prosecution is forthcoming, the penalty is so slight in comparison to the illegal profits that it makes violating worthwhile.

Paragraph (d) - This would automatically reduce the penalty to the violator. The lien holder would receive the forfeited equipment, sell it to cover his interest and the defendant would be relieved of the penalty. It is the obligation of the individual who obtains the loan to pay the lien holder through agreed monthly payments, insurance coverage, etc., or the lien holder could take legal action to obtain the balance due.

If it is solely the desire of the sponsor to protect the lending institutio s, then I feel that an amendment to the Commerce laws would be more appropriate. Laws for the protection of our wildlife resources should not be weakened.

It is always interesting to me to notice that the honest fisherman, guide, common carrier, citizen is not the one to seek changes to penalty laws. It is always those whose intent it is to violate the law. The honest operator has nothing to fear.

(NUTGRASS) - There have been many incidences where vessels have been found in closed waters to commercial fishing. Location, pictures and officer observations established the illegal act; however, due to circumstances beyond the officers' control, personal contact with the unidentified perpetrators was not possible. Therefore, only the vessel found in the illegal act was positively identified. The State had no legal recourse until it was recognized and State Legislature inacted a statute that provides the State with the tool of in Rem action against an item found in the commission of an illegal act.

We are looking at a diminishing resource, the value which is incalcuable. The fleets are modern and highly mobile and efficient in their ability and method of taking fishery resources of this State.

The issue here is not only economical protection for persons who would loan money or lease equipment to individuals who through their business endeavors take fish and game resources of this State, contrary to State statutes and regulations.

The State has an invested interest and responsibility to manage and protect her fish and game resources. Section 197 is not in the best interest of the State's resources or the people of this State or any state in the U. S.. Each day articles are found in newspapers reporting the 200 mile limit and the government's increasing patrol vehicles to Alaska for the protection of the fishery resources. It makes little sense that the fishery resources are protected from 3 miles to 200 miles, and yet inside 3 miles little or no concern is shown.

6. COMMENTS

(NUTGRASS, Cont.)

This Bill shows no concern for the resources of this State and is directed towards a special interest group more concerned with their economical protection, which in turn provides protection for those and the equipment to commit illegal acts, and the State has no redress.

The same equipment could repeatedly be found in violation and because of the State's inability to establish the owner's knowledge of the illegal acts could not take legal action against the equipment nor prevent the equipment in the present or future from decimating the State's valuable resources.

In regards to an illegal guide operation, the aircraft that would be used for taking game illegally could never be forfeited under Section 197 because the guide, to insure his aircraft, would not fly it or have his name on the registration as owner.

(SHARP) - The proposed amendments to A.S. 16.05.190 and the addition of Section No. 2, 16.05.197(a)(b)(c)(d) relating to prohibiting confiscation or forfeitures in certain instances of vessels, aircraft or motor vehicles used in violation of fish and game laws or regulations is almost totally unacceptable for purposes of effective fish and game law enforcement.

1. The opportunity to confiscate or forfeit equipment apprehended in violations of fish and game laws or regulations, whether a common carrier or private person, is a powerful deterrent in violating these laws. In most cases, the only deterrent. To prove that the owner or person legally in charge of the equipment consented or had knowledge that the equipment was to be used in violation of the laws or regulations is unrealistic to expect. In every case, the owner or person in charge of the equipment would undoubtedly deny knowledge that the equipment was to be used illegally. Any reasonable person would do the same since if he admitted he knew that it was to be used illegally it could or would lead to the confiscation or forfeiture of the equipment. Proving prior knowledge would be almost impossible. The person operating that equipment must be the responsible person. If a vessel, aircraft or motor vehicle is used without the owner's consent to knowledge and is confiscated or forfeited the person who used that equipment in violation of laws or regulations should be civilly liable to the owner, not the State. This also applies to Sections (a), (c) and (d).

A comment on Section (d). If I were to use my car in violation of laws or regulations and a bank is the lienholder, my car should be subject to confiscation and forfeiture by the State. If it is forfeited to the State, I still owe the lienholder the full amount I owe. They are not the loser, I am. That makes me think twice before I use the equipment in violation of the law. A strong preventative force.

Under Section (b) of 16.05.197, it is the only section I agree with. If the vessel, aircraft or vehicle is stolen or otherwise unlawfully in possession of someone who is apprehended violating the law while using that equipment, the owner or lienholder should not be penalized. However, where it can be shown that the person who unlawfully possessed and used that equipment in violation of the law is financially able to make restitution to the lawful owner, the equipment should be subject to forfeiture, and the court in ruling make that person liable for payment to the owner for the full value of that equipment.

6. COMMENTS

(TETZLAFF) - Strongly object to the amendment of 16.05.190 in House Bill 7. Particularly if what they're saying is any and all vessels owned by canneries, used by another and caught in a violation would not be subject to forfeiture. Or any and all vehicles and/or equipment leased, rented or borrowed and used by another would not be subject to forfeiture. We would be losing too much and gaining nothing.

If adopted, I'm sure we would see all vessels or vehicles would soon be owned by others - at least on paper - taking the teeth right out of the forfeiture statute. One would think that with the demand on our fish and wildlife resources of today, and the serious condition/populations, nwe would have law makers tightening up on our statutes and regulations, not relaxing them.

AS A RESULT OF A TRIAL HELD IN KODIAK ON 1-17-79 BEFORE SUPERIOR COURT JUDGE ROY MADSEN, GEORGE L. GATTER AND WILLIAM FORENTINO WERE FOUND GUILTY OF COMMERCIAL SALMON FISHING IN CLOSED WATERS. THE TRIAL WAS HELD AS A RESULT OF THE F/V SHARA LEE BEING SIGHTED AND SEIZED BY OFFICERS OF THE P/V VIGILANT IN JULY, 1978. AT THE TIME OF THE SEIZURE, THE SHARA LEE WAS FISHING 3 1/4 MILES INSIDE THE CLOSURE MARKERS ON THE KVICHAK RIVER IN BRISTOL BAY. DURING THE TRIAL, THE DEFENDANTS CLAIMED THEY HAD FALLEN ASLEEP AND JUDGE MADSEN WARNED THAT THE LAW IMPOSES A HIGH STANDARD OF CARE ON FISHERMEN TO COMPLY WITH COMMERCIAL FISH REGULATIONS.

CONTINUED ON NEXT PAGE...
SP17/RLR

SP17 0241 08.28 01/20/79 JP01 0039 08.14 01/22/79

E DETACHMENT CONTINUED...

JUDGE MADSEN, IN SENTENCING GATTER AND FIORENTINO, STATED THIS WAS ONE OF THE WORST CASES TO COME BEFORE HIS COURT IN THE LAST THREE YEARS.

GEORGE GATTER'S COMMERCIAL SALMON FISHING PRIVILEGES WERE REVOKED FOR ONE YEAR AND HE WAS ALSO GIVEN A ONE YEAR SUSPENDED JAIL SENTENCE, A $5,000 FINE WITH $5,000 SUSPENDED AND PUT ON PROBATION FOR FIVE YEARS. [redacted] STATE.

WILLIAM FIORENTINO, THE CREWMAN, WAS GIVEN A 30 DAY SUSPENDED JAIL SENTENCE, A $5,000 FINE WITH $2,500 SUSPENDED AND ONE YEARS PROBATION.

MADSEN ALSO STATED " [redacted] ARE NOT [redacted]

CONTINUED ON NEXT PAGE...
SP17/RLR

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

February 5, 1979

The Honorable Robert H. Zeigler, Sr.
Chairman Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: SB 7 (Judicial Forfeitures)

Dear Senator Zeigler:

As I mentioned in my January 31, 1979 letter to you and as we discussed on that day, I have enclosed a proposed committee substitute for this bill. It appears to protect an innocent lienholder when equipment is forfeited while retaining forfeiture as a valuable deterrent remedy.

Assistant Attorneys General John Gissberg and Liza Fussner of Anchorage, who drafted the proposed substitute, will be in Juneau from noon February 6 until evening February 8 to testify and explain the proposal at any hearing scheduled during that time. As an alternative, they will also be in Juneau February 14 through 16. They have asked me to again relay their request to appear before the committee.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Peter B. Froehlich
Assistant Attorney General

PBF:ams

Enclosure

cc: Senator Sumner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

February 8, 1979

The Honorable Robert H. Zeigler, Sr.
Chairman Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: SB 7 (Judicial Forfeitures)

Dear Senator Zeigler:

After a meeting yesterday with Senator Sumner, we have made several relatively minor changes to the proposed committee substitute for this bill which I gave you last week. A copy of the resulting 2nd draft is attached.

The changes are in proposed AS 16.05.197(a) wherein "$10,000" is changed to "$5,000" and "15 days" and "10 days" are changed to "20 days" and in a new proposed AS 16.05.197(c) concerning the option of quick sale of a seized item.

I understand that a hearing on this bill is scheduled for Thursday, February 15 and I have so notified Don Roberts, and Assistant Attorneys General John Gissberg and Liza Fussner who will be coming from Anchorage to testify. Please let me know if the hearing day is changed or if I may be of any further assistance.

Thanks for your cooperation.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Peter Froehlich
Peter B. Froehlich
Assistant Attorney General

PBF:ams

cc: Senator Sumner

3-CSLH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

January 31, 1979

The Honorable Robert H. Zeigler, Sr.
Chairman Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 7 (Judicial Forfeitures)

Dear Senator Zeigler:

I learned yesterday that the proposed committee substitute for this bill, which is being drafted in the Anchorage Attorney General's Office at your request, is now only in rough draft form. Assistant Attorneys General John Gissberg and Liza Fussner, who are preparing the draft proposal, will be in Juneau February 6 thru 8 with a complete finished draft. One or both of them would like to testify before your committee at that time to explain the draft. If that is not possible, they will also be available February 14 thru 16.

Both of these attorneys, who have handled several forfeiture cases, are confident that innocent lienholders can be protected while still preserving the important deterrent effect of the forfeiture remedy.

Please contact me at 465-3684 regarding scheduling of another hearing on SB 7 or if I can offer any further assistance.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Peter B. Froehlich
Assistant Attorney General

cc: John Gissberg

PBF:dlm

03-C6LH

SENATE BILL 7....Senator Sumner...Relating to Judicial Forfeitures.

This bill attempts to protect an innocent party, a common carrier, or a lien-holder from loosing a motor vehicle, vessel or aircraft through judicial forfeiture, if that person has no knowledge of the violation committed. The current law allows forfeiture of the vessel, motor vehicle, or aircraft regardless of whether the person who committed the violation owned the equipment or not.

Current law makes it difficult to obtain a loan on an aircraft since the lien-holder may loose the aircraft if the purchaser commits a violation serious enough to cause forfeiture.

SECTIONAL ANALYSIS

Section 1. Amends AS 16.05.190, to include the new section, 16.05.197, and removes the archaic use of the word "rule".

Section 2. Adds a new section entitled "Limitations on confiscation or forfeiture."

(a) Establishes that no vehicle, vessel or aircraft used as a common carrier may be confiscated and forfeited unless the owner or person legeally in charge of the vessel, aircraft or other motor vehicle, was at the time of the illegal act, a consenting party or privy to it.

(b) disallows forfeiture if the vehicle, vessel or aircraft was unlawfully in possession of the person committing the illegal act.

(c) prohibits forfeiture unless the owner was a consulting party to the illegal act or privy to it.

(d) Allows a person holding a lien, mortgage, or conditional sales contract on a vessel, vehicle, or aircraft to appear before the court in the proceeding for forfeiture to petition for remittance or mitigation of the forfeiture, and directs the court to remit or mitigate the forfeiture if the petitioner has interest in the vessel, aircraft or vehicle and had no knowledge that it would be used in or in aid of a violation of Title 16, or regulations adopted under Title 16.

SUGGESTIONS

1. In order to accomplish the intent of the bill, perhaps all forfeiture of vessels, aircraft, or motor vehicles should be eliminated, and penalties, both jail sentences and fines, should be strengthened. If a crime, no matter how serious, is committed with an automobile, the courts do not confiscate the automobile.

2. Language in Section (b) may need to be a little clearer.

3. Line 21, Page 2. You may want to change the word "shall" to "may".

PERSONS WHO SHOULD TESTIFY

1. Sponsor: Senator Sumner
2. Someone from the Dept. of Public Safety, Fish and Game enforcement Div.

SB

9

COMMITTEE REPORT

SENATE

FURTHER: None

2/1/79

Date: 2/13/79

Mr. President:

The Committee on JUDICIARY has had SB 9
taxes on business

under consideration and ~~(a majority of the committee) (the committee)~~ reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Ed Lebwohl
Townsend

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 9
Title An Act relating to taxes on business; & providing for an effective date.
Requested by Senate State Affairs Committee Date 1/24/79

II. FISCAL DETAIL
Agency Affected Revenue
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Administrative Services
(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 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	Ø	1.0	1.0	1.0	1.0	1.0
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	Ø	1.0	1.0	1.0	1.0	1.0

FUNDING (Thousands of Dollars)

GENERAL FUND	Ø	1.0	1.0	1.0	1.0	1.0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

The business license would be revised to list all the taxes that might be required to be paid by the taxpayer. Effective January 1, 1980, this new business license, which would contain a list of all taxes that might be required to be paid, would be mailed to all licensees.

IV. DATE January 24, 1978 PREPARED BY Philip A. Wall
AGENCY Revenue
PHONE 465-2313

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

33-001 (Rev. 12/78)

SB

28

COMMITTEE REPORT

SENATE

1/16/79

FURTHER: None

Date: _____

Mr. President:

The Committee on Judiciary has had SB 28
criminal mischief

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

Senate Bill NO. 28 Senator Ray: An Act Relating To Criminal Mischief; and Providing for an Effectivew date.

Section 1. AS 11.46.484 (a) is amended by adding a new paragraph which charges a person with "criminal mischief in the third degree if he tampers with a fire protection or other safty device in a building which is a public place.

AS 11. 46 484, which is part of the new criminal code, effective January 1, 1980, is entitled "Criminal Mischief in the Third Degree", and (a) states "a person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe he has such a right.

(1) with intent to damage property of another, he damages property of another in an amount of $50 or more, but less than $500;

(2) he drives, tows away, or takes the propelled vehicle of another; or

(3) having custody of a propelled vehicle under written agreement with the owner of the vehicle by which he has agreed to return the vehicle to the owner at a specified time, he knowingly retains or withholds possession of the vehicle without the consent of the woner for so long a period beyond the time specified as to render the retention or possession of the vehicle an unreasonable deviation from the agreement.

PERSONS WHO SHOULD TESTIFY

Senator Ray
A representative from Dept. of Public Safety and/or Fire Marshalls' office.

SB

32

COMMITTEE REPORT

SENATE

FURTHER: None

2/20/79

Date: _____

Mr. President:

The Committee on JUDICIARY has had SB 32
adopting the Interstate Corrections Compact

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 32

Title An act adopting the Interstate Corrections Compact

Requested by Legislative Finance Date 3/2/79

II. FISCAL DETAIL

Agency Affected The Department of Public Safety

Program Category Affected Administration of Justice

BRU, Program, or Subprogram(s) Affected Judicial Services

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

IV. DATE 3/2/79 PREPARED BY Jos Maparanth, Budget Analyst

AGENCY Public Safety

PHONE 465-4368

Original: Legislative Finance

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

33-001 (Rev. 12/78)

SB 32 Adopting the interstate corrections compact.

The bill adopts the Interstate Corrections Compact. The compact which is included in the body of the bill, is the same for every member state.

The compact will allow out-of-state placement of prisoners in sixteen states. The compact was initiated in order to allow an exchange of prisoners for the purposes of treatment, long-range release planning, and, if necessary, protection purposes.

The Health and Social Services fiscal note shows zero, however, there will be a fiscal impact for:

(1) the cost of transporting a prisoner to the out-of-state facility and the round-trip fare and expenses for the officer accompanying the prisoner. This would be an expense incurred by the Department of Public Safety;

(2) the cost of the state correction officer traveling to the out-of-state facility fro hearing purposes, if necessary;

(3) The cost of the state for the services provided by the receiving state.

There is no way of determining the amount of expenses which will be incurred, however, since there is no way of knowing how many inmates will be sent out-of-state on this program.

At the present time, prisoners who are incarcerated out of state are done so at Federal Facilities. The reason for introduction of SB 32, is, if all the space allocated for Alaskan prisoners in Federal prisons is used the state will have other space available. If Alaska is not a member of this compact, it can not use the space in member states.

At present the <u>average</u> charge for an Alaska inmate in a Federal prison is $26.00 per day. Should the use of other state's facilities become necessary, the cost will be approximately the same.

The Division of Corrections has stated that they only intend to participate in the compact in the event that there is no room in Federal prisons for Alaskan prisoners, but do want to become part of the pact in cases that happens.

<u>THE BILL</u>

Section 1. Enacts into law the Interstate Corrections Compact which has been adopted by sixteen (16) states thus far.

ARTICLE I

<u>Establishes Purpose and Policy</u>

1. Improve and fully utilize correctional facilities, rehabilitation programs, confinement and treatment of prisoners.

2. Provides for mutual development and execution of programs of cooperation among the member states.

ARTICLE II

Definitions

ARTICLE III

Contracts

1. Provides that each state which is a party to this compact may make one or more contracts for the confinement of prisoners stating:
   (a) duration
   (b) payments and amounts
   (c) participation in various programs
   (d) delivery and returning of inmates
   (e) other matters necessary to both parties

ARTICLE IV

Procedures and Rights

1. Allows receiving state to act as agent for sending state
2. Allows sending state to inspect facilities.
3. Provides that inmates are subject to the jurisdiction of the sending state and may be removed from any institution or changed to any institution at the request of the sending state.
4. Provides that the receiving state shall send reports on the inmate to the sending state.
5. Provides that all inmates shall be treated equally regardless of where they are from and treated in a humane manner.
6. Provides that for any hearing regarding the inmate, the receiving state may hold the hearing if given written permission by the sending state, or, if the hearing is to be conducted by the sending state, the receiving state shall provide facilities. The governing law over the inmate shall be that of the sending state.
7. Provides that an inmate confined in another state shall be released within the territory of the sending state unless the inmate, sending and receiving state agree upon release in some other place. The sending state assumes all transportation costs.
8. A person confined in another state hass all rights to participate in and derive any benefits he would have received in the sending state.
9. Persons entitled to act for the inmate in the sending state shall have the same rights in the receiving state.

ARTICLE V

Acts Not Reviewable in Receiving State: Extradition

1. Decisions made by the sending state are not reviewable in the receiving state, however, if the inmate commits a criminal offense in the receiving state, the inmate may not be returned to the sending state without consent of the receiving state.
2. In the event of escape, an inmate is considered a fugitive from the sending state and from the receiving state.

ARTICLE VI

Federal Aid

1. Allows state to accept Federal aid.

ARTICLE VII

Effective Date of Compact

1. States that this compact becomes effective and binding when inacted into law.

ARTICLE VIII

Withdrawal and Termination

1. Compact remains effective and binding until a state enact a statute repealing the compact and sends written formal notice of withdrawal to appropriate officials of all other party states.
2. Actual withdrawal does not take effect until one (1) year after notice of withdrawal has been sent.
3. Sending state must fulfill any obligations assumed under the compact prior to withdrawal and all inmates must be removed to the sending state.

ARTICLE IX

Other Arrangements Unaffected

1. This compact does not abrogate or impair any other correctional agreements a state may have.

ARTICLE X

Construction and Severability

1. Provides that provisions of the compact are liberally constured and severable, and, if any phrases, clauses, ect., are in violation of a state constitution, the applicability is invalid, but the rest of the compact applies.

Sec. 33.27.020- Allows inmate to be transferred under this compact.

Sec. 33.27.030- Provides that the courts, departments, agencies, and officers shall enforce the compact.

Sec. 33.27.040- Provides the Commissioner of Health and Social Services or designee shall implement the compact, however, no contract with any other state is of any force or effect until approved by the Commissioner of Administration.

SB 32 Adopting the interstate corrections compact.

The bill adopts the Interstate Corrections Compact. The compact which is included in the body of the bill, is the same for every member state.

The compact will allow out-of-state placement of prisoners in sixteen states. The compact was initiated in order to allow an exchange of prisoners for the purposes of treatment, long-range release planning, and, if necessary, protection purposes.

The Health and Social Services fiscal note shows zero, however, there will be a fiscal impact for:

(1) the cost of transporting a prisoner to the out-of-state facility and the round-trip fare and expenses for the officer accompanying the prisoner. This would be an expense incurred by the Department of Public Safety;

(2) the cost of the state correction officer traveling to the out-of-state facility fro hearing purposes, if necessary;

(3) The cost of the state for the services provided by the receiving state.

There is no way of determining the amount of expenses which will be incurred, however, since there is no way of knowing how many inmates will be sent out-of-state on this program.

At the present time, prisoners who are incarcerated out of state are done so at Federal Facilities. The reason for introduction of SB 32, is, if all the space allocated for Alaskan prisoners in Federal prisons is used the state will have other space available. If Alaska is not a member of this compact, it can not use the space in member states.

At present the <u>average</u> charge for an Alaska inmate in a Federal prison is $26.00 per day. Should the use of other state's facilities become necessary, the cost will be approximately the same.

The Division of Corrections has stated that they only intend to participate in the compact in the event that there is no room in Federal prisons for Alaskan prisoners, but do want to become part of the pact in cases that happens.

<u>THE BILL</u>

Section 1. Enacts into law the Interstate Corrections Compact which has been adopted by sixteen (16) states thus far.

ARTICLE I

<u>Establishes Purpose and Policy</u>

1. Improve and fully utilize correctional facilities, rehabilitation programs, confinement and treatment of prisoners.

2. Provides for mutual development and execution of programs of cooperation among the member states.

ARTICLE II

Definitions

ARTICLE III

Contracts

1. Provides that each state which is a party to this compact may make one or more contracts for the confinement of prisoners stating:
   (a) duration
   (b) payments and amounts
   (c) participation in various programs
   (d) delivery and returning of inmates
   (e) other matters necessary to both parties

ARTICLE IV

Procedures and Rights

1. Allows receiving state to act as agent for sending state
2. Allows sending state to inspect facilities.
3. Provides that inmates are subject to the jurisdiction of the sending state and may be removed from any institution or changed to any institution at the request of the sending state.
4. Provides that the receiving state shall send reports on the inmate to the sending state.
5. Provides that all inmates shall be treated equally regardless of where they are from and treated in a humane manner.
6. Provides that for any hearing regarding the inmate, the receiving state may hold the hearing if given written permission by the sending state, or, if the hearing is to be conducted by the sending sending state, the receiving state shall provide facilities. The governing law over the inmate shall be that of the sending state.
7. Provides that an inmate confined in another state shall be released within the territory of the sending state unless the inmate, sending and receiving state agree upon release in some other place. The sending state assumes all transportation costs.
8. A person confined in another state hass all rights to participate in and derive any benefits he would have received in the sending state.
9. Persons entitled to act for the inmate in the sending state shall have the same rights in the receiving state.

ARTICLE V

Acts Not Reviewable in Receiving State: Extradition

1. Decisions made by the sending state are not reviewable in the receiving state, however, if the inmate commits a criminal offense in the receiving state, the inmate may not be returned to the sending state without consent of the receiving state.
2. In the event of escape, an inmate is considered a fugitive from the sending state and from the receiving state.

ARTICLE VI

Federal Aid

1. Allows state to accept Federal aid.

ARTICLE VII

Effective Date of Compact

1. States that this compact becomes effective and binding when inacted into law.

ARTICLE VIII

Withdrawal and Termination

1. Compact remains effective and binding until a state enact a statute repealing the compact and sends written formal notice of withdrawal to appropriate officials of all other party states.
2. Actual withdrawal does not take effect until one (1) year after notice of withdrawal has been sent.
3. Sending state must fulfill any obligations assumed under the compact prior to withdrawal and all inmates must be removed to the sending state.

ARTICLE IX

Other Arrangements Unaffected

1. This compact does not abrogate or impair any other correctional agreemer s a state may have.

ARTICLE X

Construction and Severability

1. Provides that provisions of the compact are liberally constured and severable, and, if any phrases, clauses, ect., are in violation of a state constitution, the applicability is invalid, but the rest of the compact applies.

Sec. 33.27.020- Allows inmate to be transferred under this compact.

Sec. 33.27.030- Provides that the courts, departments, agencies, and officers shall enforce the compact.

Sec. 33.27.040- Provides the Commissioner of Health and Social Services or designee shall implement the compact, however, no contract with any other state is of any force or effect until approved by the Commissioner of Administration.

POSITION PAPER/Department of Health and Social Services

POSITION PAPER

SENATE BILL NO. 32

"An Act adopting the Interstate Corrections Compact; and providing for an effective date."

The Department of Health and Social Services and the Division of Corrections are in support of Senate Bill No. 32.

Alaska is presently a party to the Western Interstate Corrections Compact along with 11 other states. There are presently 16 member states to the Interstate Corrections Compact; 5 of those states are also parties to the Western Corrections Compact. In effect, joining the Interstate Corrections Compact would increase Alaska's out-of-state placement resources for prisoners by 50 percent; 11 additional states.

The Interstate Corrections Compact was initiated in order to allow an exchange of prisoners for the purpose of treatment and long-range release planning. Also, the Compact provides a means of placing prisoners out of state for protective purposes.

Alaska has prisoners with special needs. Membership in the Interstate Corrections Compact would expand the Division of Corrections ability to meet these special needs, and provide the most effective rehabilitation programs on an individual basis without increasing the cost of care.

Alaska would maintain jurisdiction over prisoners confined out of state. Alaska would also have the authority to inspect out-of-state facilities and to communicate with Alaska inmates.

Recommended by: _____ 1/26/79
Charles E. Sothan, Acting Director — Date
Division of Corrections

Approved by: _____ 2/1/79
Helen D. Beirne, Commissioner — Date
Department of Health & Social Services

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Proposed Legislation
Title An Act Adopting Interstate Corrections Compact
Requested by Department of Health & Social Services Date 1/9/79

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected Administration of Justice
Budget Request Unit(s) Affected Adult Confinement

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

IV. DATE January 9, 1979 PREPARED BY Leland Dalby
AGENCY Division of Corrections
PHONE 465-3376

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

33-001 (Rev. 10/78)

SB

42

COMMITTEE REPORT

SENATE

FURTHER: None

3/14/79 Date: 1/28/80

Mr. President:

The Committee on JUDICIARY has had SB 42
repealing the restriction of grounds upon which a mobile home park operator may evict a mobile home park dweller

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Be Placed on the Pink Ray DO NOT PASS

CHAIRMAN

S 60 (Rev. 12/78)

INTRODUCED: 2/20/79
REFERRED: COMMERCE AND JUDICIARY

IN THE HOUSE

BY THE RESOURCES COMMITTEE
BY REQUEST

CS FOR HOUSE BILL NO. 258
IN THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

FOR AN ACT ENTITLED: " AN ACT REPEALING THE RESTRICTION OF GROUNDS UPON WHICH A MOBILE HOME PARK OPERATOR MAY EVICT A MOBILE HOME PARK DWELLER."

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

SECTION 1. AS 34.03.225 (3) IS AMENDED TO READ:

(3) THE MOBILE HOME DWELLER OR TENANT HAS VIOLATED A PROVISION OF THE RENT AGREEMENT OR LEASE SIGNED BY BOTH PARTIES AND NOT PROHIBITED BY THIS CHAPTER OR BY LAW, INCLUDING RENT, TERMS OF AGREEMENT, OR OTHER PROVISIONS COVERING THE RIGHTS AND OBLIGATIONS OF THE PARTIES.

SECTION 2. THIS ACT SHALL TAKE EFFECT ON THE DAY AFTER ITS PASSAGE AND APPROVAL OR ON THE DAY IT BECOMES LAW WITHOUT APPROVAL.

February 4, 1980

Mr. and Mrs. Jay Coon
Mountain View Trailer Court
and Sales
P.O. Box 2327
Ketchikan, Alaska 99901

Dear Stella Beth and Jay:

Funny how coincidental the arrival of your January 30 letter was!

It just so happens that the Senate Judiciary Committee reported SB 42 out of Judiciary Committee a day or so before.

There were three "Do Passes" on the committee report, and I was one of them. When the bill is placed on the calendar, I shall be supportive, but it is touch and go on the question of final passage.

Thank you for your non-related kind comments.

Regards to you both,

Robert H. Ziegler, Sr.

RHZ:lk



Mountain View Trailer Court & Sales

P. O. Box 2327 -:- Ketchikan, Alaska 99901

JAY and STELLA BETH COON, Owners

907/225-4707

January 30, 1980

Senator Robert H. Ziegler, Sr.
Alaska State Senate
Juneau, Alaska

Dear Bob,

Enclosed is a copy of the bill that was presented to the legislature last year in hopes of changing some of the problems we are having with Section 1. AS 34. 03.225. We received this copy from the Alaska Trailer Court Assn. and we would surely like to see something changed to help us landlords out.

As you know we have been having alot of trouble here in our court with this same law restricting eviction to only 4 things, and unless one plans to change or do away with the court, there are only 3 reasons and except for the non-payment of rent the other two are rather obscure.

You stated in a letter to us dated July 20, 1979. "Although it may be a scant consolation to you two, I will endeavor to have enacted legislation next year which will cure the problem. It seems to me the statute discriminates against the mobile home park operator, because all other landlords who have people renting their properties on a month-to-month tenancy can follow the thirty (30) day route." That letter was a consolation to us, because we believe and trust in you to do something for us this legislature. It was like a light at the end of a long dark tunnel.

We had deep personal regrets in leaving your law firm. We have always held and still do that you are the best lawyer in Ketchikan and in times past you have always shown us that this was true. But in these last troubles we have had, you said that you didn't want to handle them because you didn't want to go to court. (We can see why after we've been there, what a hassle!!) So you sent us to Mary Guss, and while Mary is a nice gal and we liked her personally, she could not take care of the problems and finally admitted that it was over her and we were getting in deeper and deeper until Blasco wanted to have a jury trial and all we wanted was our due rent!! Mary had been confering with memebers of your firm and it seemed that noone was interested in solving our problem, so we had to find someone who would. We have no hard feelings to you, Mary, or anyone in your office and hope that the feelings are mutual.

We see you on T.V. every once in awhile when we watch the Alaska Session on Channel 3. We hope that you have a good session and good things happen for the State of Alaska, and closer to our hearts - to the Alaska Statute 34.03.225.

Very sincerely,

Stella Beth

Stella Beth Coon

HOME LIVING IS HAPPY LIVING

(Jay's not playing around!)

LAW OFFICES OF

ALASKA LEGAL SERVICES CORPORATION

[redacted]

TELEPHONE 586-6425

419 Sixth Street, Suite 322
Juneau, Alaska 99801

January 23, 1980

Honorable Robert H. Ziegler
Senator
Pouch V, State Capitol
Juneau, Alaska 99811

RE: CS for House Bill 258

Dear Senator Ziegler:

Pursuant to the suggestion of the Senate Judiciary Committee Chairperson, on January 22, 1980, I spoke with Senator Bradley and with Mr. Ben Marsh concerning the proposed Committee Substitute for House Bill 258. From what I could gather, the proposed CS would no longer be a repealer bill, it would, instead, modify the scope of AS 34.03.225(3) in two ways. First, it would further limit the bases upon which a mobile home park operator may evict a mobile home or a mobile home park dweller or tenant, because, unlike the present statutory provision covering rules and regulations properly established by the operator, the amendment covers only violations of the rental agreement or lease signed by both parties. In other words, the proposed amendment would not cover reasonable rules or regulations of the mobile home park which were not signed by "both parties."

On the other hand, and more importantly, the amendment removes the limitation on eviction that the rule or regulation being violated be a "reasonable" one. Mr. Marsh expressed his belief that mobile home park operators would not attempt to evict anyone for violating an unreasonable or insignificant rule. I can well believe that Mr. Marsh would not do such a thing, but I am aware of too many other cases in which landlords have attempted to evict tenants on the basis of violations of insignificant rules or regulations. The proposed amendment to AS 34.03.225(3) would allow the unscrupulous landlord to evict an innocent tenant upon frivolous grounds.

I am aware that the Senate Judiciary Committee has received more than enough testimony and information concerning the difficulties encountered by owners of mobile homes living in

mobile home parks. The vacancy situation has changed little if any from that time during which the legislature passed the act limiting the eviction rights of mobile home park operators. I believe that in Juneau the situation has worsened. The reasons that the act was passed in 1974 remain valid. The amendment proposed by Mr. Marsh would undo the basic protection of the 1974 amendments to the Uniform Residential Landlord and Tenant Act.

Mr. Marsh mentioned one or two specific instances of which he was aware in which a person whom everyone knew to be a criminal could not be evicted from a mobile home park because he could not get convicted in a court of law. Although I can perhaps understand the frustration of a mobile home park owner under those circumstances, I believe that if the individual was committing a crime on the grounds of the mobile home park detrimental to other residents in the park, he would most likely be violating some "reasonable" regulation of the park. If he were not violating such a regulation or causing injury to other tenants, then perhaps he should not be punished by eviction by a private party where the State has failed to prove the commission of a crime.

Of course, an extreme example might be conceptualized or may have even occurred in this state. However, the protection of the vast majority of mobile home owners from unreasonable eviction outweighs the possibility that someone may slip through this very minute loophole in the law.

Furthermore if the legislature acts to delete the "reasonable rule or regulation", the courts of the state might interpret in that action that they have no discretion within their equitable powers to formulate a remedy other than the eviction.

If the committee decides that AS 34.03.225 must be changed to protect mobile home owners and park operators from criminals who are too crafty to be convicted, then perhaps the language in Subsection 2 of Section 225 should be modified to the following:

> (2) the mobile home dweller or tenant [has been convicted of violating] <u>has violated</u> a federal or state law or local ordinance, and that violation is continuing and is detrimental to the health, safety, or welfare of other dwellers or tenants in the mobile home park[.]

I believe that, however, that the section concerning limitations on mobile home park operator's right to terminate should not be amended or repealed, and I do not believe the amendment to Subsection (2) is necessary.

I respect the opinions and feelings of the sponsor of HB 258 and those of Mr. Marsh; but before the legal protections for mobile home owners living in mobile home parks are diminished, there should be hearings to discover the actual effects of the present statute.

I will be glad to aid the committee as it sees fit in this matter.

Sincerely,

ALASKA LEGAL SERVICES CORPORATION

Bruce Horowitz

BRUCE HOROWITZ
Supervising Attorney

cc: Senator Bradley
Mr. Marsh

be terminated for that reason. Vozar v. Francis, Sup. Ct. Op. No. 1634 (File No. 3173), 579 P.2d 1056 (1978).

Sec. 34.03.130. Rules and regulations.

(c) A mobile home park operator may determine by rule or regulation the style or quality of the equipment, including but not limited to underskirting and tie-downs, to be purchased by the tenant from the vendor of the tenant's choice; however, the operator may not require that the equipment be purchased from the operator.
(am § 4 ch 138 SLA 1976)

Effect of amendment. — The 1976 amendment added subsection (c).

As the rest of the section was not affected by the amendment, it is not set out.

Legislative committee report. — For report on ch. 138, SLA 1976 (SCS CSHB 829 Am S [re-engrossed]), see 1976 Senate Journal, p. 1368.

Article 5. Tenant Remedies.

Sec. 34.03.160. Noncompliance by the landlord: General.

Stated in McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Sec. 34.03.180. Wrongful failure to supply heat, water, hot water or essential services.

Cited in McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Article 6. Landlord Remedies.

Section

225. Limitations on mobile home park operator's right to terminate

Sec. 34.03.220. Noncompliance with rental agreement: Failure to pay rent.

Ten-day period dates from receipt of notice. — The period of 10 days in which to cure breaches in the rental agreement should be 10 days after receipt of the notice and not from the date of the notice. Vozar v. Francis, Sup. Ct. Op. No. 1634 (File No. 3173), 579 P.2d 1056 (1978).

Where the tenants cleaned up the premises within 10 days from the date they were served with notice of noncompliance with the rental agreement, the rental agreement could not be terminated for that reason. Vozar v. Francis, Sup. Ct. Op. No. 1634 (File No. 3173), 579 P.2d 1056 (1978).

Sec. 34.03.225. Limitations on mobile home park operator's right to terminate. A mobile home park operator may evict a mobile home or

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a mobile home park dweller or tenant only for one of the following reasons:

(1) the mobile home dweller or tenant has defaulted in the payment of rent owed;

(2) the mobile home dweller or tenant has been convicted of violating a federal or state law or local ordinance, and that violation is continuing and is detrimental to the health, safety or welfare of other dwellers or tenants in the mobile home park;

(3) the mobile home dweller or tenant has violated a reasonable rule or regu' tion properly established by the operator; and

(4) a change in the use of the land comprising the mobile home park, or the portion of it on which the mobile home to be evicted is located; however, all dwellers or tenants so affected by a change in land use shall be given at least 90 days notice, or 'onger if a longer notice period is provided in a valid lease. (§ 5 ch 138 SLA 1976)

Legislative committee report. — For report on ch. 138, SLA 1976 (SCS CSHB 829 am S [re-engrossed]), see 1976 Senate Journal, p. 1368.

Sec. 34.03.240. Waiver of landlord's right to terminate.

Section is limitation on remedies of landlord. — Rather than giving a right or remedy to the tenant, this section acts as a limitation upon the remedies of the landlord. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Rights which may be waived. — This section should be so interpreted that waiver of the "right to terminate" a rental agreement refers to rights which arise as a consequence of a breach, and does not concern rights of termination which exist regardless of whether or not a tenant breached a condition of the agreement. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Right to terminate month-to-month agreement not waived. — Since a landlord always has the right to terminate the month-to-month rental agreement with the tenant, even without cause, by giving a month's notice, he does not waive this right by accepting the late rental payment. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Sec. 34.03.270. Remedy after termination.

Landlord could bring action for forcible entry and detainer seeking restitution of trailer space from tenants. — See McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Quoted in McDowell v. Lenarduzzi, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

Article 7. Periodic Tenancy, Holdover, and Abuse of Access.

Sec. 34.03.290. Periodic tenancy and holdover.

This chapter treats month-to-month tenancies separately from arrangements involving longer fixed terms. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Month-to-month tenancies constitute a special class, not necessarily governed by all provisions of the uniform act. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

BROOKE MARSTON, Broker
WILEY S. BROOKS, Property Manager
LINDA J. ENCELEWSKI, Assistant Manager

Marston Property Management, Inc.

PROFESSIONAL MANAGEMENT IS OUR BUSINESS

2804 W. NORTHERN LIGHTS BLVD
ANCHORAGE, ALASKA 99503
TELEPHONE: (907) 274-5504

BRAD BRADLEY

February 17, 1979

Mr. George Oliver
President
Anchorage Board of Realtors
301 E. Fireweed
Anchorage, Alaska 99503

Dear Mr. Oliver:

It has come to my attention that certain requirements of the Alaska Statutes and Regulations relating to Real Estate Brokers and salesmen are not in the best interest of property owners. In fact, specific statutes act to prevent property owners from effectively managing their own investments. Other statutes hinder those having a fudiciary responsibility from managing an owner's property by the most efficient and ecomonical means.

Below are some specific statutes which I urge the Real Estate Board to carefully study and seek legislative change which will be more in the interest of real estate owners:

1. Article 2 Section 08.88.161 (1) which reads, "unless licensed as a real estate broker, associate real estate broker, or real estate salesman, no natural person, foreign or domestic corporation, or partnership, or limited partnership, or other entity may sell, exchange, rent, lease, auction, or purchase real estate."

   Comment: The intent of this part of the statutes is undoubtedly to protect an owner against persons not having proper training and qualifications. But, literally interpreted, the words rent and lease prevent an owner from employing an unlicensed person from renting or leasing real estate in the owners behalf. I feel quite certain many owners absent from Alaska, or simply involved with their own enterprises authorize resident managers to sign rental and lease agreements for the owner. The owner should certainly have this right without placing an unlicensed resident manager in violation of the statutes. The exceptions found in Section 08.88.421 are not explicit enough to prevent some from insisting that an unlicensed non-owner is unauthorized to sign a rent or lease agreement.

   Subparagraph (3) of the above reference section reads, "Collect rent for the use of real estate;"

REALTOR®

Comment: This part of the statute is very specific and less subject to interpretation. It prohibits an owner or a professional management firm from including collecting rent monies as part of the duties assigned to an on-site manager. This is over regulation for the following reasons:

1) It is normally cost prohibitive to employ a licansed individual to work as a resident manager.

2) Residents of an apartment complex without a qualified (licensed) resident manager to collect rents are inconvenienced and incur travel expenses to pay rent monies.

3) It is a real estate owner's risk and right to employ a resident manager to collect rents in the owner's behalf.

4) Professional property management firms routinely provide a fidelity bond on employees to protect their client's interest. (See our own enclosed management agreement). Even though we are providing fidelity bonds on our employees, we are unable to utilize on-site managers to collect rents.

2. Article 3, Section 8.88.331 states:
"All transactions in real estate by a real estate salesman or associate real estate broker shall be processed through his employing real estate broker's office, whether the transactions are for the real estate salesman's or associate real estate broker's own use or the use of a client."

Article 3, Section 8.88.341 (1) states:
"A real estate broker shall (1) keep a complete record of all real estate transactions made by himself or persons in his employ for at least three years" etc.

Comment: While I am in complete agreement agreement that the statute, as it relates to the real estate client is very appropriate, to deny the real estate salesman or associate real estate broker the freedom and privacy of renting, leasing and maintaining records on their own investments is very inappropriate.

RECOMMENDATIONS:

1. That Article 4 of Section 08.88.421 be amended as follows:
Subparagraph (10) be added:
(10) A person employed by a real estate owner or licensed owner's agent, whose responsibilities are limited to "on-site" management, office

administration, or bookkeeping.

2. That article 4, of section 8.88.421 (1) be amended as follows: Subparagraph (11) be added - a person, though licenced, who rents leases, and maintains records or property he owns.

3. That a subparagraph (c) be added to Chapter 64 12 AAC 64.230 to read: (c) a licensee engaged in property management must provide a fidelity bond in adequate amounts on all employees who handle or are responsible for owner's monies.

I am certain you will insure the above recommendations will be given early study and action by the Anchorage Real Estate Board.
Thank you for your interest and dedication in these matters.

Sincerely,

Wiley S. Brooks
Manager

CC: Bernard L. Marsh, Executive Secretary
Alaska Landlord & Property Managers Association

MEMORANDUM

TO: Senate Commerce Committee

FROM: Don Clocksin

SUBJECT: SB 42 - Mobile Home Owner Evictions

DATE: January 25, 1979

1. What The Bill Would Do

Present law (Ch. 138, SLA 1976) allows a mobile home park operator to evict a mobile home from the park only for good cause (failure to pay rent, violating a law or park regulation, or when the park is to be closed). This bill would repeal that law and allow eviction of mobile homes for any reason.

2. Discussion

The present law was adopted because of the inbalance of bargaining position between the mobile home park operator (landlord) and the mobile home owner (tenant). There were two reasons why mobile home evictions were restricted. First, there were very few vacant mobile home spaces available in the urban areas. If a mobile home owner had to leave a park, there was almost no where else to go, considering zoning restrictions and the lack of empty spaces. Second, the cost of moving a mobile home is substantial - as sometimes as much as several thousand dollars. By evicting a mobile home from a park, the landlord could receive the expenditure of that amount of money.

Therefore, the Legislature felt that the policy of free use of one's property (i.e. unrestricted evictions) had to yield to the more important social policy of eviction only for good cause. The only evictions which are not now allowed are arbitrary and unnecessary evictions - if there is a good reason, the law allows the eviction.

DC/jf

ALASKA TRAILER COURT ASSOCIATION
505 W. Northern Lights Blvd., Suite 120
Anchorage, Alaska 99503

MARCH 5, 1979

MEMORANDUM

TO: SENATE COMMERCE COMMITTEE
FROM: BEN MARSH (ATCA)
SUBJ: SB 42 - RESPONSE TO DON CLOCKSIN

1. WHAT THE BILL WOULD DO

Present law (CH. 138, SLA 1976) makes it difficult or impossible for a mobile home park operator to evict a space tenant, no matter how undesirable he may be. In practice, the law has prevented park owners from maintaining clean parks and high performance standards, and the result has been a general deterioration of mobile home parks.

2. DISCUSSION

Mr. Clocksin states the law was adopted for two reasons; there were very few spaces available for an evicted home owner to go to, and moving from one park to another is very expensive. Alaska Trailer Court Association conducted a phone survey of its membership in Anchorage during the week of February 26, and located 295 vacant and rentable spaces.

It is probably no more costly to move a mobile home than to move an apartment full of furniture. Transporting by a commercial towing company is about $250 in the same city. Blocking and skirting can be done by the owner at no cost. Utilities must be connected by others. If done entirely by others, it is estimated to cost $900 to $1100 for the average mobile home.

Mr. Clocksin is incorrect in his contention that only arbitrary and unnecessary evictions are prevented. The law promotes litigation; and the owner finds himself not only proving that a rent agreement was breached, but also that the agreement, which was signed by both parties, was "reasonable". Some judges apparently feel that the agreement is not reasonable if it is challenged by the tenant.

WHEREAS THE STATE OF ALASKA ENACTED AS. 34.03.225 WHICH HANDICAPS MOBILE HOME COURT OWNERS IN SUCH A MANNER THAT IT IS CREATING JUNK YARDS OUT OF MOBILE HOME COURTS. WE THE UNDERSIGNED REQUEST THE ALASKA STATE LEGISLATURE TO PASS SB 570, WHICH WILL ALLOW THE MOBILE HOME COURT OWNER TO SEE THAT TENANTS CLEAN UP MOBILE HOME COURT SPACES, AND MAKE MOBILE HOME COURTS A DESIRABLE PLACE TO LIVE AGAIN.

	NAME	COURT NAME	SPACE NO
1.	Jean P Gentry	Glencaren	#522
2.	Juli R. McLaughlan	"	# 105
3.	Roy C McLaughlan	"	# 105
4.	Ellie Graber	"	#548
5.	Billie L. Sullivan	"	# 67
6.	Hil Hylton	"	# 44
7.	[illegible] Veil	Glencaren	#396
8.	Hazel L Watts	"	525
9.	Minnie Townsend	"	195
10.	Lydia Pearson	"	101
11.	Shirley Bilby	"	155
12.	James Graber	"	548
13.	Irene Goodman	Glencaren	558
14.	Orlin H. Craft	"	85
15.	Jordan D Crenshaw	Glencaren	592
16.	Mae M Mayo	" "	370
17.	Mrs. Leo Bernal	" "	#39
18.	Frank Brothers	" "	72
19.	[illegible] Deamon	" "	278
20.	Clark L Hall	"	112
21.	Patrick M. McKay	"	#313
22.	Carl Chandler	"	# 111
23.	Robert L Hunter	"	277
24.	Chas L Wakefield	"	581
25.	Irene L Reid	"	#553
26.	Carl A Russell	"	321
27.	Barbara C Lara	"	#13
28.	Virginia	"	143
29.	Ted Miller	"	165
30.	Ruth M. Kegley	Glencaren	141

WHEREAS THE STATE OF ALASKA ENACTED AS. 34.03.225 WHICH HANDICAPS MOBILE HOME COURT OWNERS IN SUCH A MANNER THAT IT IS CREATING JUNK YARDS OUT OF MOBILE HOME COURTS. WE THE UNDERSIGNED REQUEST THE ALASKA STATE LEGISLATURE TO PASS SB 570, WHICH WILL ALLOW THE MOBILE HOME COURT OWNER TO SEE THAT TENANTS CLEAN UP MOBILE HOME COURT SPACES, AND MAKE MOBILE HOME COURTS A DESIRABLE PLACE TO LIVE AGAIN.

	NAME	COURT NAME	SPACE NO
1.	Jack Weldt	GLENCAREN	#133
2.	Carolyn J. Walker	Glencaren	#18
3.	Susan M. Hoon	Glencaren	#99
4.	Donna Wrean	Glencaren	#257
5.	Gordon F Wilder	Glencaren	#95
6.	Mrs Ward Wheeler	Glencaren	#514
7.	Mr. James J Dennison	Glencaren	#45
8.	Peggy H Pennington	"	#70
9.	Mike Duncanson	Glencaren	#551
10.	Greg Shipton	Glencaren	#33
11.	Mrs Ralph Friedly	Glencaren	#290
12.	Nora B Fowler	Glencaren	#247
13.	Don Scholle	Glencaren	#150
14.	Gene Olson	Glencaren	#30
15.	Peggy Olson	Glencaren	#30
16.	Diane Fields	Glencaren	#160
17.	Mary E Patton	Glencaren	#539
18.	Robin Davis	Glencaren	#555
19.	Manuel Davis	Glencaren	#555
20.	Edie Schiller	Glencaren	#77
21.	Dale L Wooten	Glencaren	#73
22.	Donna Kronlein	Glencaren	#87
23.	Ricky Doty	Glencaren	#599
24.	Don Odell	Glencaren	#33
25.	Jay Ellis	"	#5
26.	Bill Donato	"	604
27.	[illegible]	"	542
28.	[illegible]	"	153
29.	Walter Kegley	"	179
30.	[illegible]	"	151

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	NAME	COURT NAME	SPACE NO
1.	Robert M. Hughes	Glencaren	43
2.	Molly G. Edwards	Glencaren	517
3.	Alan W. Thompson	Glencaren	311
4.	Pam Hudson	Glencaren	24
5.	Joseph A. Corazzini	Glencaren	159
6.	Peter Smith	Glencaren	294
7.	Bill Adams	Glencaren	20
8.	Jim Moody	Glencaren	563
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	NAME	COURT NAME	SPACE NO
1.	J. R. Lewis	Four Seasons	OFFICE
2.	Marie Sampson	" "	31
3.	Richard Hall	" "	195
4.	Gilbert	"	23
5.	Mrs. D. Grigsby	"	27
6.	Charles Johnson	"	C-40
7.	R C Smith	"	143
8.	Paula R. [illegible]	"	209
9.	Mrs Mary Christiansen	"	30
10.	Mr Ed Holloman	"	253
11.	[illegible]	"	A44
12.	[illegible]	"	118
13.	Phyllis A Arson	"	155
14.	Patricia A Eckert	"	214
15.	Wallace Sidle	Four Seasons	148
16.	[illegible]	" "	152
17.	Harold Lewis	" "	186
18.	Connie Brown	Four Seasons	252
19.	[illegible]	"	25D
20.	Cynthia Knifer	Four Seasons	A46
21.	Isabelle Mustain	Four Seasons	158
22.	Willie J Foley	"	264
23.	[illegible]	"	254
24.	R L Thompson	"	A-15
25.	Mrs D Williamson	"	32
26.	Ina Wilson	"	139
27.	Wallace E Hardy	"	23
28.	Elaine Stevens	"	226
29.	Mrs E A Lyon	Four Seasons	116
30.	Mrs Shirley Hawley	"	

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	NAME	COURT NAME	SPACE NO
1.	Pat Higgs	Four Seasons	59
2.	John Higgs	Four Seasons	74
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	NAME	COURT NAME	SPACE NO
1.	Fred Griffin	Mayflower	14E
2.	[illegible]	Mayflower	14E
3.	Michael Pelston	Mayflower	11G
4.	O. Rambill	Mayflower	3F
5.	Brent O'Falcon	Mayflower	8E
6.	Ruby Hitchcock	Mayflower	8E
7.	Roger Hitchcock	" "	11-C
8.	Dave Cruse	" "	2-F
9.	E. W. Cornell		12 F
10.	Debbie Allen	Mayflower	G-2
11.	Glen Sandy		13 B
12.	Paul B. Fryer		16 C
13.	Viola Hitchcock		11-C
14.	Mrs Sam Weibert		19-B
15.	Vic Ferguson		3-E
16.	[illegible]		10-E-1
17.	Charles T. Hammond		11-A
18.	[illegible]		[illegible]
19.	Louis L. DeMotte	Mayflower	20B
20.	Ed Swearingen	Mayflower	21B
21.	R. E. Forsi	"	6F
22.	R. Gary Jones	"	22E1
23.	Ed Owens	Mayflower	13G
24.	Deanna Owens	Mayflower	13G
25.	Clara Kambluk	"	C-5
26.	Brathering	"	A-15
27.	Ronald V Hanish	Mayflower	9K
28.	Ann Krysakowski	Mayflower	10F
29.	Carla Weaver		F1 [illegible]6
30.	Katrina McCoy	Mayflower	13F

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	NAME	COURT NAME	SPACE NO
1.	Michael Finn	Mayflower	3-B
2.	Peggy Rock	Mayflower	6B
3.	Ronald Lahr	mayflower	7H
4.	Dustin w Ripley	Mayflower	G-1
5.	[illegible]	"	25A
6.	Jean Adams	Mayflower	8H
7.	[illegible]	Mayflower	2E1
8.	Richard E Clemmons	Mayflower	101H
9.	Helen D. Crum	Mayflower	20A
10.	Linda Bath	"	17A
11.	Paul A. Bermuda	Mayflower	24C
12.	Alfred Kenkenfeld	"	31-C
13.	Punkie Durk		5-F
14.	Julie Easley	Mayflowers	2-E
15.	[illegible] Barber	Mayflowers	9A
16.	Robert Cross	Mayflower	17-F
17.	Calvin Bryant	" "	18-A
18.	Elaine Sagot	" "	2-B
19.	[illegible] Hathcock	Mayflowers	21A
20.	Curtis & Dorothy Reed	Mayflowers	10E
21.	Charles D Berry	"	7C
22.	Mrs Lawrence	"	17E1
23.	Dawn Barnetto	"	24B
24.	Mr Billy Barber	"	1-H
25.	David D. Nye	"	13C
26.	Gail L Jones	"	2E
27.	Owen Phipps	"	2E-1
28.	[illegible]	" "	8-D
29.	Shirley B Hathcock	Mayflower	2-A
30.	Beverly Sandoval	Mayflower	6A

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	NAME	COURT NAME	SPACE NO
1.	Mr. Wm E L Warman	Mayflower Circle Park	10-C
2.	Ms. Cassa C Hunter	" " "	23E1
3.	Helen Lee	Mayflower Circle Park	7E1
4.	Mr & Mrs. Shawn Griffith	Mayflower Circle Park	2D
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	NAME	COURT NAME	SPACE NO
1.	Georgie Heland	FAR NORTH TRAILER PARKS Gene Roselius (owner)	5A
2.	Gene Roselius	Far North Park	office
3.	Mildred [illegible]	Far North Park	18
4.	Elaine Holbrook	Far North Park	9
5.	Dandy Clemons	Far North Park	15
6.	Barbara M Hamilton	Far North Park	33
7.	Edie Williams	" " "	50
8.	Stephanie Ross	Far North Park	51
9.	[illegible] Bell	" " "	20
10.	Mary Witten		21
11.	[illegible] McCall	" " "	25
12.	Everett L Winters	Far North Park	3
13.	Bill Jackson & Shirley	Far North	55
14.	[illegible] Marjorie Gibson	Far North	38
15.	[illegible]		47
16.	David Crump	Far North	32
17.	Julia Brown	"	36
18.	Carl Brooks	Far North	29
19.	[illegible]	Far North	30
20.	[illegible]	Far North	#23
21.	[illegible]	Far North	#23
22.	Tom Rollins	Far North	#4
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WHEREAS THE STATE OF ALASKA ENACTED AS. 34.03.125 WHICH HANDICAPS MOBILE HOME COURT OWNERS IN SUCH A MANNER THAT IT IS CREATING JUNK YARDS OUT OF MOBILE HOME COURTS. WE THE UNDERSIGNED REQUEST THE ALASKA STATE LEGISLATURE TO PASS SB 570, WHICH WILL ALLOW THE MOBILE HOME COURT OWNER TO SEE THAT TENANTS CLEAN UP MOBILE HOME COURT SPACES, AND MAKE MOBILE HOME COURTS A DESIRABLE PLACE TO LIVE AGAIN.

	NAME	COURT NAME	SPACE NO
1.	Linda Gilbert	Kathy-O-Estates	54
2.	[illegible]	Kathy O Estates	37
3.	[illegible]	"	65
4.	[illegible]		51
5.	[illegible]		68
6.	Carol Lambert	Kathy 'O Estates	85
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	NAME	COURT NAME	SPACE NO
1.	Henry P Burke	South Park Estates	48
2.	Dorothy M Lane	" " "	59
3.	Jeannette Tessore	" " "	15
4.	Thomas W Cahill	" " "	36
5.	Hugh E. Burton	" " "	39
6.	Elida Kinnee	" " "	41
7.	Victor Starkey	" " "	2
8.	Jos. Roggenbuck	" " "	1
9.	Tyne L Shiz Wan	" " "	4
10.	Hildgarde Sargent	" " "	13
11.	Mr. + Mrs. Fred + anna Tolwaty	" " "	16
12.	Mary Louise Crawford	South Park Estates	27
13.	Nancy O. Austin	" " "	30
14.	Everett Travis	" " "	14
15.	E Jo Schupp	South Park Estates	12
16.	Margaretta H. Harmon	" "	32
17.	Janice Anderson	" " "	32
18.	[illegible]	" " "	34
19.	Shirley K. Hewett	" " "	39
20.	Mary King	" " "	18
21.	Roger L Jenkins	" " "	3
22.	Margie D Travis	South Park Estates	19
23.	[illegible]	" " "	26
24.	Robert J Schultz	" " "	24
25.	Dianne McClung	South Park Estates	28
26.	[illegible]	" " "	37
27.	David C. Murphy	" " "	38
28.	Mary E. Murphy	" " "	38
29.	Darlene Spalding	" " "	67
30.	Calvin Hunter	" " "	64

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	NAME	COURT NAME	SPACE NO
1.	Elizabeth M. Roberts	South Park Estates	69
2.	Donald & Roberts	South Park Estates	69
3.	W H Manning	SOUTH PARK ESTATES	77
4.	F T Manning	" " "	77
5.	Robert D. Leigh	" " "	52
6.	Lawrence Leigh	" " "	52
7.	Lu L. McDonald	" " "	63
8.	Paul Cook		70
9.	Maleen Harris	South Park Estates	72
10.	Lolney N. Burk	" "	73
11.	Ardis L. Burk	" "	73
12.	Mr Mrs Maurice Hayslip		74
13.	Marie L Homer	South Park Estates	78
14.	Francine H Kapsis	South Park Estates	80
15.	M. J. McDermott	" "	81
16.	Cliff Gould	" "	85
17.	Erik Lowe	" "	83
18.	Margaret B Burke	" "	48
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	NAME	COURT NAME	SPACE NO
1.	Kenneth Martine	Manoogs	7-K
2.	Lucile Bellamy	Manoogs	D-1
3.	Jan Sabati	Manoogs	18-B
4.	Mary T. Wilt	"	16-F
5.	Alice Dexter	"	4A
6.	Harold J Robling	"	20-A
7.	B R Smith	"	39C
8.	Joseph Benvenuto	"	1-2B
9.	McNaughton Chernesky	Manoogs	4F
10.	Sylvia M Bennett	"	35-C
11.	Patricia Brown	"	38C
12.	Millie Harding	"	5-H
13.	R D Painter	"	7-D
14.	Lola Frederick	"	23-C
15.	Vaudie Spiegman	"	37C
16.	Maureen Meier	Manoogs	25J
17.	John F Forbes	"	15B
18.	Mrs. E. O. Potter	Manoogs Isle	12E
19.	Ronald W Frey Jr	Manoogs Isle	9K
20.	Carlton W Hooker III	Manoogs Isle	14C
21.	Hazel C. Page	"	7-H
22.	Veronica K. Jenney	Manoogs Isle	3-H
23.	Thomas Broom	Manoogs Isle	11-B
24.	V. Barrios	" "	10-L
25.	Bill Sohn	Manoogs isle	24C
26.	Paula Hall	"	21A
27.	Phyllis Brooks	Manoogs Isle	11F
28.	Linda Ackerman	Manoogs Isle	16C
29.	Kathy Drachuk	"	5F
30.	Richard W. Dyson	"	19C

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	NAME	COURT NAME	SPACE NO
1.	Mrs Linda A. Mason	Manoogs Isle	19C
2.	Jerry L Kalitka	Manoogs Isle	9G
3.	Edward Adkins	Manoogs Isle	2-L
4.	Jacqueline Malmrose	Manoogs Isle	8E
5.	Tim J Keyser	" "	4G
6.	Jay R Hale Jr.	" "	24B
7.	Jack Glenn	MANOOG ISLE	17G
8.	Debra S Thomas	" "	30K
9.	Sandra J Beel	Manoogs Isle	28J
10.	Glen Engstrom	Manoogs Isle	6B
11.	Shirley E Lyon	Manoogs Isle	20L
12.	Clem Kelly	" "	23-E
13.	Patricia M Coleman	Manoogs Isle	5-D
14.	Della L Nesbitt	Manoogs Isle	15K
15.	Becki Harrison	Manoogs Isle	19B
16.	Mac Davis	Manoogs Isle	27J
17.	Virginia Wooten	Manoogs Isle	11C
18.	Paul [illegible]	" "	31C
19.	Maggie Midyett	"	29L
20.	Darlene Brooks	" "	10-K
21.	Donald R Dixon	" "	12-C
22.	Alice M. Cross	" "	5-E
23.	Robert A Hayworth	" "	22K
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	NAME	COURT NAME	SPACE NO
1.	Mrs Bernice Carver	Dimond Estates	1201
2.	Violet M. Hedley	Dimond Estates	531
3.	James W Vaughn	Dimond Estates	1411D
4.	Mrs Wayne Underwood	Dimond Estates	404
5.	Lu M M Lee	Dimond Estates	1405
6.	Linda C Finley	Dimond Estates	1204
7.	Glenn Bodeen	Dimond Estates	1473
8.	Wm M Watterson	" "	1065
9.	W E Douglas	Dimond Estates	715
10.	R Harper	Dimond Est	407
11.	Earl Wood	Dimond Estates	1460
12.	C Baker	" "	719
13.	Ted Ott	" "	1416
14.	M Miller	" "	1010
15.	Del E Hollen	Dimond Estates	105
16.	Nicholas R Haney	Dimond Estates	1018
17.	Rita Hueco Cummins	Dimond Estate	604
18.	L W Purdy	"	"
19.	Mrs Ted Gregory	Dimond Estates	1107
20.	Jim Thacker	" "	307
21.	F M Williams	" "	1316
22.	E F Potts	" "	840
23.	Mrs Duane Sprinkle	" "	1111
24.	Dennis Abel	" "	1416
25.	Vicki L Perkins	" "	913
26.	Shirley J Bowers	" "	1461
27.	Jerry Kelley	" "	1037
28.	Norma D. Vaughn	" "	705
29.	Jeffery Wilson	" "	411
30.	Carl D Lee	" "	1117

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	NAME	COURT NAME	SPACE NO
1.	Michelle Trejo	Dimond Estates	1483
2.	W.A. Clarke	Dimond Estates	1425
3.	Janice M. Billman	Dimond Estates	128
4.	Dean W. Parker	Dimond Estates	1005
5.	Wayne Cherry	Dimond Estates	304
6.	Oscar Hayes	Dimond Estates	1431
7.	Cesar Hernandez Sr.	Dimond Estates	810
8.	W F Sparks	Dimond Estates	145
9.	Donna Van Vleet	Dimond Estates	1498
10.	Emily McFarland	Dimond Estates	# 914
11.	Jose Lopez	Dimond Estates	# 1476
12.	R Kalita	Dimond Estates	# 611
13.	P Gilbert	Dimond Estates	# 818
14.	Kelly Mobley	Dimond Estates	# 120
15.	Kamil Ayub	DIMOND ESTATES	# 1423
16.	C Smith	Dimond Estates	# 841
17.	Lynn Elders	Dimond Estates	# 728
18.	Frank C Schaffl	Dimond Estates	# 623
19.	Mr & Mrs L Ranew	Dimond Estates	# 1109
20.	Dorothy Pettey	Dimond Estates	# 1019
21.	Chris Wesolowski	Dimond Estates	# 1031
22.	Stefanie Weltmeyer	" "	# 836
23.	Mr & Mrs Hollie Humphrey	Dimond Estates	# 108
24.	Gary O. Chase	Dimond Estates,	# 1406
25.	Ryanne Guerra	Dimond Estates	
26.	Barbara McFarlane	Dimond Estates	1465
27.	Frank Mabry	Dimond Estates	# 224
28.	Nadia Hart	Dimond Estates	Sp 129
29.	Dawn Ann Terry	Dimond Estate	R. 1027
30.	Harold M Ward	Dimond Estates	SP 1101

WHEREAS THE STATE OF ALASKA ENACTED AS. 34.03.225 WHICH HANDICAPS MOBILE HOME COURT OWNERS IN SUCH A MANNER THAT IT IS CREATING JUNK YARDS OUT OF MOBILE HOME COURTS. WE THE UNDERSIGNED REQUEST THE ALASKA STATE LEGISLATURE TO PASS SB 570. WHICH WILL ALLOW THE MOBILE HOME COURT OWNER TO SEE THAT TENANTS CLEAN UP MOBILE HOME COURT SPACES, AND MAKE MOBILE HOME COURTS A DESIRABLE PLACE TO LIVE AGAIN.

	NAME	COURT NAME	SPACE NO
1.	Erin Bamwater	Dimond Estates	608
2.	Earl W Trice	" "	1051
3.	Allen A. Beamer	" "	717
4.	Bob Lucas	" "	1401
5.	Carolyn Pickard	" "	310
6.	Jewell Matthews	" "	1451
7.	Bea Crowl	" "	1438
8.	Judith Wahrenbrock	" "	412
9.	W.W. Anderson	" "	1468
10.	Linda Rodebaugh	Dimond Estates	704
11.	Mrs Paul Bunyan	" "	547
12.	Cecelia Glover		1317
13.	Alvin R Leonard	" "	805
14.	M.L. Jones	" "	1435
15.	Fred Gombe	" "	1404
16.	Fred H Reich	DIAMOND ESTATES	145
17.	Keith A Ash	DIAMOND ESTATES	521
18.	Carl V. Anderson	" "	548
19.	J Bridges	" "	839
20.	H.W. Brown	" "	813
21.	D. Davis	Diamond Estates	117
22.	Cynthia Law		414
23.	Carolyn Spencer		812
24.	Mark Moore		1414
25.	Herman C. Stiles	Dimond Estates	1040
26.	Jos. Dec Ennis	Diamond Estates	1210
27.	Bill Schmidt	" "	1205
28.	Willis Bork	" "	1325
29.	Karen Hagen	Diamond Estates	1136
30.	Kenneth Harris	" "	1112

WHEREAS THE STATE OF ALASKA ENACTED AS. 34.03.225 WHICH HANDICAPS MOBILE HOME COURT OWNERS IN SUCH A MANNER THAT IT IS CREATING JUNK YARDS OUT OF MOBILE HOME COURTS. WE THE UNDERSIGNED REQUEST THE ALASKA STATE LEGISLATURE TO PASS SB 570. WHICH WILL ALLOW THE MOBILE HOME COURT OWNER TO SEE THAT TENANTS CLEAN UP MOBILE HOME COURT SPACES, AND MAKE MOBILE HOME COURTS A DESI ABLE PLACE TO LIVE .GAIN.

	NAME	COURT NAME	SPACE NO
1.	Mrs. Richard Lambrecht	Alaskan Village	# 333
2.	MARTIN Stevens	"	# 79
3.	Larry Pote	"	#56
4.	DeWayne Carson	"	# 105
5.	Donald Peters Jr.	"	# 146
6.	Eileen Abel	"	60
7.	Jerry Fleming	"	#252
8.	Robert L Liginski	"	# 306
9.	James Tuck	"	# 224
10.	Dave Skellie	"	#515
11.	Gary Wyckoff	"	# 97
12.	Deborah Watkins	"	# 408
13.	Carrie Brooks	"	# 419
14.	Deb. Lambrecht	"	#158
15.	Arnold W. Nielsen	"	# 29
16.	Debbie Lee Raleigh	"	# 35
17.	Wendi Cook	"	413
18.	Diane Yates	"	413
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28.			
29.			
30.			

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER _____

DEPARTMENT Senator Ziegler

ATTENTION Chairman, S. Judiciary

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

FROM:
MAIL STATION NUMBER _____

DEPARTMENT Senator Bradley

BY _____ DATE _____

02-002 (REV.10/73)

Alaska State Legislature

Senate

JUNEAU, ALASKA

TO: Senator Ziegler, Chairman,
and all members of the Senate Judiciary Committee

FROM: Senator Brad Bradley, Chairman
Senate Commerce Committee

DATE: January 23, 1980

SUBJECT: Senate Bill 42

In consonance with my conversation with the Senate Judiciary Committee on January 22, enclosed please find a copy of Senate Bill 42, an amendment to Senate Bill 42, and the appropriate Statute (Sec. 34.03.225).

Enclosures

Amendment to Senate Bill 42:

Line 10: Section 1. AS 34.03.225 (3) is amended to read:

(3) The mobile home dweller or tenant has violated a provision of the rent agreement or lease signed by both parties and not prohibited by this chapter or by law, including rent, terms of agreement, or other provisions covering the rights and obligations of the parties.

REF: CSSB 570
Sen. A. L. (Brad) Bradley

Article 6. Landlord Remedies.

Section
225. Limitations on mobile home park operator's right to terminate

Sec. 34.03.225. Limitations on mobile home park operator's right to terminate. A mobile home park operator may evict a mobile home or a mobile home park dweller or tenant only for one of the following reasons:

(1) the mobile home dweller or tenant has defaulted in the payment of rent owed;

(2) the mobile home dweller or tenant has been convicted of violating a federal or state law or local ordinance, and that violation is continuing and is detrimental to the health, safety or welfare of other dwellers or tenants in the mobile home park;

(3) the mobile home dweller or tenant has violated a ~~reasonable~~ rule or regulation properly established by the operator; and

(4) a change in the use of the land comprising the mobile home park, or the portion of it on which the mobile home to be evicted is located; however, all dwellers or tenants so affected by a change in land use shall be given at least 90 days notice, or longer if a longer notice period is provided in a valid lease. (§ 5 ch 138 SLA 1976)

Legislative committee report. — For report on ch. 138, SLA 1976 (SCS CSHB 829 am S (re-engrossed)), see 1976 Senate Journal, p. 1368.

Sec. 34.03.240. Waiver of landlord's right to terminate.

Section is limitation on remedies of landlord. — Rather than giving a right or remedy to the tenant, this section acts as a limitation upon the remedies of the landlord. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Rights which may be waived. — This section should be so interpreted that waiver of the "right to terminate" a rental agreement refers to rights which arise as a consequence of a breach, and does not concern rights of termination which exist regardless of whether or not a tenant breached a condition of the agreement. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Right to terminate month-to-month agreement not waived. — Since a landlord always has the right to terminate the month-to-month rental agreement with the tenant, even without cause, by giving a month's notice, he does not waive this right by accepting the late rental payment. McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Sec. 34.03.270. Remedy after termination.

Landlord could bring action for forcible entry and detainer seeking restitution of trailer space from tenants. — See McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

Quoted in McDowell v. Lenarduzzi, Sup. Ct. Op. No. 1242 (File No. 2413), 546 P.2d 1315 (1976).

SB

52

COMMITTEE REPORT

SENATE

1/16/79

FURTHER: None

Date: _____

Mr. President:

The Committee on JUDICIARY has had SB 52

relating to float planes under Fish and Game Code

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

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_____

MEMBERS HAVING OTHER RECOMMENDATIONS:

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_____

_____

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_____

CHAIRMAN

S 60 (Rev. 12/78)

SB 52 Governor's transmittal letter accompanying SENATE BILL NO. 52 follows:

"January 15, 1979

President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill amending the definition of vessel in the Fish and Game Code (AS 16.05) to exclude float planes. The bill would eliminate the present requirement for commercial fishing vessel licenses for float planes used for delivering fish. The general consensus is that this requirement is unnecessary, burdensome, and unintended.

Sincerely,

Jay S. Hammond
Governor"

UNFINISHED BUSINESS

Senator Sackett requested an additional referral to the Finance Committee on the following bills:

SB 8 SENATE BILL NO. 8 (creating the technical services contract fund)

SB 13 SENATE BILL NO. 13 (creating the Department of Renewable Resources)

SB 14 SENATE BILL NO. 14 (relating to agricultural development)

Without objection, it was so ordered.

SB

54

COMMITTEE REPORT

SENATE

FURTHER:

1/17/79

Date: 3/4/80

Mr. President:

The Committee on JUDICIARY has had SB 54
international wills under the Uniform Probate Code

under consideration and (a majority of the committee) (the committee)
reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[✓] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

COMMISSIONER
JOHN W. ABBOTT - CHAIRMAN
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ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

December 5, 1978

M E M O R A N D U M

SUBJECT: International Wills Act

TO: Representative Mike Miller, Chairman
Alaska Legislative Council

FROM: John W. Abbott, Chairman
Code Revision Commission

Pursuant to the authority granted in AS 24.20.075(c), the Code Revision Commission has prepared the attached International Wills Act for introduction at the next session of the legislature. The Act was drafted by the National Conference of Commissions on Uniform State Laws in 1977, and is intended to be a part of the Uniform Probate Code, AS 13.06. - 13.36. It is intended to prescribe the form a will must take in order to be valid in all countries that are party to the "Convention Providing a Uniform Law on the Form of an International Will", to which the United States is a party. At the present time, only North Dakota has enacted the International Wills Act.

JWA/bb/jms

Attachment

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 29, 1979

SUBJECT: SB 54 -- International Wills under the Uniform Probate Code -- Sectional Analysis (Work order No. 6160)

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel

The Uniform International Wills Act is an addition to the Uniform Probate Code (UPC) and is intended to prescribe the form that a will must have in order to be valid in all countries signatory to the Washington Convention of 1973. The U.S Senate has not yet ratified this international agreement.

Sec. 13.11.350 (UPC §2-1002) provides that a will executed in compliance with Secs. 13.11.350 -- 13.11.440 is valid as an international will, i.e., without regard to the place where the will is executed, the location of the testator's assets, or his nationality, domicile, or residence. A will that is invalid as an international will may still be valid as some other type of will so long as it conforms to the requirements of that type of will. Lastly, a joint will may not be an international will.

Sec. 13.11.360 (UPC §2-1003) prescribes the formal requirements of an international will. To be valid as an international will it must be (1) in writing; (2) declared by the testator, before two witnesses and a person authorized to supervise the execution of international wills, to be his will (he must also acknowledge its contents); (3) signed by the testator, and (4) attested to by the witnesses and by the authorized person.

Sec. 13.11.370 (UPC §2-1004) prescribes additional formal requirements. The testator must sign each page and at the end of the will. The signatures of the witnesses and authorized person must be at the end of the will. The will must be dated with the date it was signed by the authorized person. The authorized person must ask the testator if he wishes to make a declaration concerning the safekeeping of the will, and if so, the place where he intends to keep it.

Sec. 13.11.380 (UPC §2-1005) provides that the authorized person shall attach to the will a certificate signed by him that establishes that the will has been executed in accordance with the requirements of an international will.

Sec. 13.11.390 (UPC §2-1006) provides that the certificate issued under sec. 380 shall presumptively establish the validity of the will to which it is attached as an international will. Absence of or a defect in the certificate does not affect the validity of the will as an international will.

Sec. 13.11.400 (UPC §2-1007) provides that an international will is subject to the ordinary rules relating to revocation of wills.

Sec. 13.11.410 (UPC §2-1008) cites the source of the previous section as the Annex to the Washington Convention of 1973. This is intended to avoid an interpretation of the International Wills Act solely in terms of the internal law of the interpreting jurisdiction, since this would prejudice the international unification sought by the act.

Sec.13.11.420 (UPC §2-1009) establishes who may act as authorized persons with regard to the execution of international wills.

Sec. 13.11.430 (UPC §2-1010) requires the lieutenant governor to establish a registry in which authorized persons may submit information regarding the execution of international wills. Such information is limited to the name, address, place and date of birth, and individual identification number of the testator, and the intended place of safe-keeping of the will, if any. This information is to be kept strictly confidential until the time of testator's death. It may then be released to any person desiring information about any will upon the presentation of a death certificate or other satisfactory evidence of the testator's death.

Sec. 13.11.440 (UPC §2-1020) defines the terms "authorized person" and "international will." An authorized person is a person who, under sec. 420 or a provision of federal law, is authorized to supervise the execution of international wills. An international will is a will executed under the provisions of the act.

KMR:nem

CODE REVISION COMMISSION

COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
SUSAN A. BURKE - VICE CHAIRMAN
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WM. GRANT CALLOW

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4678

EXECUTIVE SECRETARY
BILLY G. BERRIER

March 5, 1980

MEMORANDUM

TO: Senator Patrick M. Rodey

FROM: Joyce M. Roloff, Secretary
Code Revision Commission

RE: SB 54 -- International Wills Act (UPC)
SB 58 -- Uniform Disposition of Community Property Rights at Death Act

This is in further reference to the exchange of correspondence between Senator Ziegler and I regarding the above bills. Another copy of that exchange is enclosed for speedy reference.

The Senate Judiciary Committee reported out these two bills yesterday. Art Peterson, former commissioner, testified on behalf of the commission. As a favor to the commission, Chairman Ziegler signed do-pass on both of these bills. However, as the enclosed communication reflects and further discussion with Chairman Ziegler confirms, he has not committed himself to support the bills once they reach the Senate floor. Adversely, he has several problems with the bills that Art was not able to respond to at the time and we anticipate that these questions might possibly be raised during floor debate.

It was suggested that you, on whom the fate of the bill now lies, get in touch with Senator Colletta requesting that he withhold scheduling these bills until I can get further information to you from the National Conference of Commissioners on Uniform State Laws concerning the problem areas. [A request for this information has already been made.]

This resistance does come as a surprise to the commission as the bills were considered to be noncontroversial at the time of introduction. Hopefully, by the time these bills reach the Senate floor you will have enough ammunition to defend them.

JMSR/s
Enclosures

cc: Code Revision Commission
Senator Robert Ziegler

SB

56

COMMITTEE REPORT

SENATE

FURTHER: None

1/17/79

Date: 1/17/79

Mr. President:

The Committee on JUDICIARY has had SB 56

effect of homicide under the Uniform Probate Code

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

CODE REVISION COMMISSION

COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
SUSAN A. BURKE - VICE CHAIRMAN
PATRICK M. RODEY
FRED E. BROWN
_ S. KURTZ, JR.
WM. GRANT CALLOW

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4678

EXECUTIVE SECRETARY
BILLY G. BERRIER

March 5, 1980

MEMORANDUM

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Code Revision Commission

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SB 58 -- Uniform Disposition of Community Property Rights at Death Act

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This resistance does come as a surprise to the commission as the bills were considered to be noncontroversial at the time of introduction. Hopefully, by the time these bills reach the Senate floor you will have enough ammunition to defend them.

JMSR/s
Enclosures

cc: Code Revision Commission
Senator Robert Ziegler

HUGHES THORSNESS GANTZ POWELL & BRUNDIN
Attorneys at Law

JOHN C. HUGHES
DAVID H. THORSNESS
RICHARD O. GANTZ
JAMES M. POWELL
BRIAN J. BRUNDIN
* MARCUS R. C. APP
KENNETH P. JACOBUS
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SIGURD E. MURPHY
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CARL J. D. BAUMAN
FRED B. ARVIDSON
ROBERT T. PRICE
* DENNIS M. BUMP
MARY HUGHES PATCH
FRANK A. PFIFFNER
* RALPH R. BEISTLINE
RANALD H. JARVELL
GORDON J. TANS
R. CRAIG HESSER
ROBERT L. MANLEY
* DORIS R. [illegible]HRENS
JAMES M. GORSKI
TIMOTHY R. BYRNES
JAMES M. SEEDORF

* Fairbanks Office

509 WEST THIRD AVENUE
ANCHORAGE, ALASKA 99501
Telephone (907) 274-7522
Cable Address: DENALI

3550 AIRPORT WAY
FAIRBANKS, ALASKA 99701
Telephone (907) 479-2273
Cable Address: DENALI

Please reply to ANCHORAGE

March 8, 1979

Trigg T. Davis, Esq.
Davis & Goehrig
301 West Northern Lights Boulevard
Anchorage, Alaska 99503

Re: Senate Bills Nos. 54, 56 ad 58

Dear Mr. Davis:

This is to acknowledge the receipt of the three above-mentioned bills, along with your letter of February 21, 1979.

I do not take exception to Senate Bills 56 or 58 and I expect over the years there will be considerable more of this type of legislation which will define the rights of the husband and wife either before or after death.

As has been frequently observed, the Uniform Probate Code is premised upon the proposition that there would be one husband, one wife and one set of children and this does not seem to be borne out in the crucible of legal experience and practical living. It is to be expected that the legislature will from time to time recognize this fact, although, I suspect that it was quite obvious at the time the Uniform Probate Code was enacted.

Senate Bill 54, dealing with international wills, may be justified and to the extent that it takes us back to the 1949 Code, I suspect that it is useful. Under the 1949 Code, we used to have a Section 59.2.6, which provided in effect that a last will and testament executed outside of the Territory of Alaska and which complied with the laws of the place where it was executed or with the testator's domicile was deemed to be legally executed and was given the same force and effect as if it was executed in the mode prescribed by the Territory of Alaska provided that the last

will and testament was in writing and subscribed by the testator.

It would appear to me that Senate Bill 54, in part, turns back to that concept and then goes a little bit further and provides for execution by persons under disability of one kind or another, including those who are unable to write, conceivably as a result of physical disability. To the extent that the statute clarifies or enlarges on the right of a person to make a will who is under limited disability, I think the enlargement on our 1949 law is appropriate. The over-kill of Senate Bill 54 appears to me to be in Section 13.11.430 where the lieutenant governor is directed to establish a registry system by which authorized persons may register in a central information center their international wills. This is the type of tripe that bureaucrats love and inexperienced legislators think is the greatest thing since sliced bread. Bureaucrats love registration because it means the setting up of another office and filling a set of file cabinets with paper, which they may guard zealously for a number of years, hopefully, until the time they can attain early retirement through some generous disability clause in their contract of employment with the state or federal government. The legislators probably think that they have performed a noble function in that they have provided a depository for the world travelers who have cast in stone their last will and testatment and should be protected because they have no suitable office, home or safety deposit mechanism where they can take care of their own personal papers. This world guardianship of irresponsible world travelers is in keeping with our national guilt complex which requires us to correct the sins and indiscretions of the human animal.

Any lawyer who has had the experience of managing a wills file over a period of years in a legal office will have discovered a great number of things that they should have known upon thought and reflection rather than being compelled to learn it by a repeat of the experience obtained by others. Some of those items are as follows:

A will is a document that is made based upon the facts of today and might very well be changed tomorrow and has a very good likelihood of being obsolete or changed within a very few years and, therefore, must be considered as a temporary document.

The holder of a will never knows when the maker of that will has changed his mind and has written a new will and, therefore, the longer the older will is on file the more doubtful its validity becomes and the more likely it becomes that it has been superceded by a subsequent document.

Unless there is established some type of uniform vital statistic act which incorporates the filing or the nonfiling of a will in a person's social security number, and we would expect that this would be some years away, there is a grave question as to whether the will will be found upon the death of the testator. If the testator keeps accurate records of where he has filed his wills during his life, it would probably be just as easy for him to keep his will on his person and pass that information on instead of the written memorandum advising as to where his filed or recorded will of the most recent date might be located.

One also learns that once you have a will on file, there is always the possibility that the will is valid even though you know not the address of testator nor whether he is living or dead and, therefore, once you have a will on file, presumably, you would have to keep it on file for the better part of one hundred years or so until you could safely assume that the person had died. You would thus have an accumulation of documents that reasonable people would conclude would have little or no value after ten years from the date of filing, yet, the possibility might exist for twenty-five or fifty years that they were in fact the last will and testament of the maker of the will.

The question then gets to be; why should any federal or state government burden itself with the guardianship of documents that they won't be able to get rid of and will have difficulty in determining whether they are valid or invalid.

My experience in maintaining wills files and attempting to contact persons whose wills have been prepared by lawyers now deceased lead me to believe that those few people who need service, either on an international basis or a local basis, for the filing of their wills are mislead and would, in fact, be better served had they maintained their own documents.

I am taking the liberty of sending a copy of this rambling letter on to Bob Zigler in the senate for what it may be worth.

Very truly yours,

John C. Hughes

JCH:jb

cc: Robert Zigler

CODE REVISION COMMISSION SB 56

COMMISSIONER
JOHN W. ABBOTT - CHAIRMAN
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ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

December 5, 1978

M E M O R A N D U M

SUBJECT: Uniform Probate Code - Effect of Homicide

TO: Representative Mike Miller, Chairman
Alaska Legislative Council

FROM: John W. Abbott, Chairman
Code Revision Commission

Pursuant to the authority granted in AS 24.20.075(c), the Code Revision Commission has determined that the Alaska version of the Uniform Probate Code is not consistent with the official Uniform Act in a portion relating to homicide. The commission has determined that in order to make the code consistent with the most recent version adopted by the National Conference of Commissioners on Uniform State Laws, the attached bill should be introduced at the next session of the legislature. The bill would amend AS 13.11 .305(b), relating to the effect of homicide on the succession of a decedent's assets, by making the section applicable to all multiple party accounts in any financial institution. The section does not purport to create any forms of property ownership new to Alaska, such as a joint tenancy; it serves only to eliminate whatever survivorship rights, if any, regardless of where or how created, a killer might have in his victim's property.

JWA/bb/jms

Attachment

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM August 1, 1978

SUBJECT: Uniform Probate Code

TO: Alaska Code Revision Commission

FROM: Kenneth M. Rosenstein, Legislative Counsel KMR

The following is a compilation of the differences between the latest version of the Uniform Probate Code as approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the version of the UPC enacted in Alaska (AS 13). Relevant history and provisions from the UPC and the Alaska Statutes are reproduced in the Appendices.

1. The NCCUSL approved a reversal of the original order of the subsections of UPC §2-608. This was done to prevent an unintended interpretation of the section that it had effect only when the testator was under a conservatorship. While such an interpretation appears possible, it also appears to be strained. An amendment to accomplish this change in the equivalent Alaska section, AS 13.11.255, was not included in the 1976 amendatory legislation because a statement of legislative intent was thought to be sufficient. (See 1976 Senate Journal Supplement No. 9, Appendix H.) A statement of legislative intent was never issued. Thus, the subsections of AS 13.11.255 are in reverse order to those of UPC §2-608. (See Appendix A.)

2. UPC §2-803(b), relating to the effect of homicide on the succession of the decedent's assets, refers to "joint and multiple-party accounts" in various financial institutions. The Alaska version, AS 13.11.305(b), refers only to "joint accounts." (See Appendix B.) Multiple-party account is defined in UPC §6-101 and AS 13.31.005 and includes joint accounts, P.O.D. (pay on death) accounts and trust accounts. The UPC provision is intended to eliminate a person's survivorship rights in any type of multiple-party account when he feloniously and intentionally kills a joint interest holder whose death would otherwise give the killer a present right to the decedent's share of the account. In Alaska multiple-party accounts other than joint accounts may come under the

umbrella term "any other form of co-ownership with survivorship incidents" included in both the Alaska and UPC provisions. Whether or not this would be so in Alaska, the practical effect of the non-uniformity of the Alaska provision may be minimal in that a court faced with this situation would probably apply the modern common law rule that bars a person from profitting from his wrongdoing and would either not recognize the killer's survivorship rights or apply a constructive trust in favor of the decedent's heirs.

3. In 1977 the NCCUSL adopted the Uniform International Wills Act (UIWA) as Part 10 of Article 2 of the UPC entitled "Will Registration." The UIWA may be incorporated into the UPC or enacted separately. It is intended to prescribe the form a will must be in so as to be valid in all countries that are party to the "Convention Providing a Uniform Law on the Form of an International Will." This has not been included in the Alaska version.

4. The 1973 amendatory legislation changed the language of AS 13.16.115(b) from "this or another judicial district" to "a judicial district." A Senate Judiciary Committee letter of intent (See 1973 Senate Journal Supplement No. 9, Appendix I) states that the change is intended to make clear the fact that the appointment of the personal representative may take place in any judicial district of the state. This difference should have no practical effect.

5. In AS 13.16.145(a)(2) the cross-reference should read "sec. 80(1)(A) - (F)" instead of "sec. 80(1)(A) - (E)." This is an apparent drafting oversight resulting from the addition of paragraph (F) to AS 13.16.080(1).

6. The 1973 amendatory legislation substituted new and non-uniform language in AS 13.16.255 which prior to that time was identical to UPC §3-603. (See Appendix C.) The new language requires the execution and filing of a bond by a personal representative unless (1) the estate is testate and the will expressly waives the filing of such bond, (2) the devisees or heirs waive the bond requirement, (3) a corporate fiduciary is the personal representative, or (4) the personal representative has deposited cash or other collateral with a state agency in order to secure the performance of his duties.

UPC §3-603 exempts a personal representative appointed in informal proceedings from the filing of a bond unless (1) a special administrator has been appointed, (2) an executor or personal representative is appointed to administer under a will containing an express requirement of a bond, (3) a

bond is required by UPC §3-605 (AS 13.16.265). UPC §2-503 gives the court discretion to require a bond when the personal representative is appointed in a formal proceeding. The testator's waiver of the bond requirement will be recognized unless an interested party requests one and the court is satisfied that it is desirable. The court is also given discretion to dispense with the bond if it determines that it is not necessary. Additionally, no bond is required of a personal representative who has deposited cash or other collateral with a state agency in order to secure the performance of his duties.

Clearly, the Alaska provision represents a complete departure from the policy of the UPC of doing away with a mandatory bonding requirement. The UPC philosophy is that it is not the court's responsibility to see that personal representatives perform properly. That burden is upon the persons with various interests in the decedent's estate and the UPC provides adequate protective mechanisms and remedies for those persons to insure proper performance by a personal representative.

7. The 1973 amendatory legislation changed the word "receipts" to "gives a receipt" in the second sentence of AS 13.16.420 (UPC §3-717). This change was suggested by the revisor based upon his estimation that the original language, "receipt", used correctly as a verb, was meaningless. (See 1973 Senate Journal Supplement No. 9, Appendix I.) This difference should have no practical effect.

8. In UPC §3-910 was rewritten in 1975 by the NCCUSL so as to strengthen the protection given to bona fide purchasers of decedent's property from a distributee of the estate. The changes were not made to AS 13.16.580. (See Appendix D.)

9. UPC §3-916(e)(5) has been changed by substituting "purpose" for "gift or devisee" after "charitable, public or similar" in the first sentence. The equivalent Alaska provision, AS 13.16.610(m), has not been changed. (See Appendix E.) This difference would appear to have no practical effect.

10. In UPC §3-916(g) the phrase "person interested in the state" in the second sentence has been changed to read "person interested in the estate." The former has no real meaning under the UPC, while the letter is defined in UPC §3-916(a)(3) and AS 13.16.610(a)(3). This appears to be a

correction of a typographical error in the original text. The equivalent Alaska section, AS 13.16.610(o), has not been changed. (See Appendix F.)

11. AS 13.16.700 permits a judge, on his own motion, to direct the settlement of the estate of a person dying in his judicial district and leaving an estate of not more than $6,000 with no qualified person having appeared to take charge of the assets. There is no equivalent provision in the UPC. (See Appendix G.)

12. AS 13.16.705 relates to the inheritance of stock in Alaska corporations organized under the Alaska Native Claims Settlement Act, and is necessary due to the special character of such stock existing until December 18, 1991. There is no equivalent provision in the UPC. (See Appendix G.)

KMR:hjd

...conservator; unpaid proceeds of sale, condemnation or insurance. (a) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under (b) of this section.

(b) A specific devisee has the right to the remaining specifically devised property and

(1) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on the property; and

(4) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation. (§ 1 ch 78 SLA 1972)

Section 2-603. [Nonadempt on of Specific Devises in Certain Cases; Unpaid Proceeds of Sale, Condemnation or Insurance; Sale by Conservator]

(a) A specific devisee has the right to the remaining specifically devised property and:

(1) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on the property; and

(4) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure of the security for a specifically devised obligation

(b) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if after the sale, condemnation or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (a).

Comment

In 1975, the Joint Editorial Board recommended a [illegible] of the title of this section and a reversal of the original order of the subsections. The recommendation was designed to correct an unintended interpretation of the section to the effect that all of the [illegible] only when the [illegible] was under a conservatorship. The original intent of the section, made more apparent by this recodification, was to prevent ademption in all cases involving sale, condemnation or destruction of specifically devised assets where testator's death occurred before the proceeds of the sale, condemnation or any insurance had been paid to the testator.

* * * * * * * * * * * *

(b) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies [and tenancies by the entirety] in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

* * * * * * * * * * * *

Sec. 13.11.305. Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations.

* * * * *

(b) A joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies and tenancies by the entirety in real and personal property, joint accounts in banks, saving and loan associations, credit unions and other institutions, and any other form of co-ownership with survivors' ip incidents.

* * * * *

Section 6-101. [Definitions.] (Identical to AS 13.31.005

In this part, unless the context otherwise requires:

* * * * *

(4) "joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship;

(5) a "multiple-party account" is any of the following types of account: (i) a joint account, (ii) a P.O.D. account, or (iii) a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement;

* * * * *

No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator; (2) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond or (3) when bond is required under Section 3-605. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the Court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the Court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

COMMENT

This section must be read with the next three sections. The purpose of these provisions is to move away from the idea that bond always should be required of a probate fiduciary, or required unless a will excuses it. Also, it is designed to keep the registrar acting pursuant to applications in informal proceedings, from passing judgment in each case on the need for bond. The point is that the court and registrar are not responsible for seeing that personal representatives perform as they are supposed to perform. Rather, performance is secured by the remedies available to interested persons. Interested persons are protected by their ability to demand prior notice of informal proceedings (Section 3-201), to contest a requested appointment by use of a formal testacy proceeding or by use of a formal proceeding seeking the appointment of another person. Section 3-105 gives general authority to the court in a formal proceeding to make appropriate orders as desirable incident to estate administration. This should be sufficient to make it clear that an informal application may be blocked by a formal petition which disputes the matters stated in the petition. Furthermore, an interested person has the remedies provided in Sections 3-605 and 3-607. Finally, interested persons have assurance under this Code that their rights in respect to the values of a decedent's estate cannot be terminated without a judicial order after notice or before the passage of three years from the decedent's death.

It is believed that the total package of protection thus afforded may represent more real protection than a blanket requirement of bond. Surely, it permits a reduction in the procedures which must occur in uncomplicated estates where interested persons are perfectly willing to trust each other and the fiduciary.

Sec. 13.16.255. Bond required; exceptions. A personal representative shall execute and file a bond with the registrar unless

(1) the estate is testate and the will expressly waives surety bond as to the person qualifying as personal representative;

(2) the devisees or the heirs file written waiver of surety bond;

(3) the personal representative is a qualified corporate fiduciary; or

(4) the personal representative, pursuant to statute, has deposited cash or collateral with an agency of the state to secure performance of his duties. (§ 1 ch 78 SLA 1972, am § 14 ch 56 SLA 1973)

Effect of amendment. — The 1973 amendment [illegible]

Legislative committee report. — For [illegible] see 1973 Senate Journal Supplement No. 3, 1973 House Journal, p. [illegible]

Section 3-910. [Purchasers from Distributees Protected]

If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which a state documentary fee is noted pursuant to [insert appropriate reference] shall be prima facie evidence that such transfer was made for value.

Comment

The words "instrument or deed of distribution" are explained in Section 3-907. The effect of this section may be to make an instrument or deed of distribution a very desirable link in a chain of title involving succession of land. Cf. Section 3-901.

In 1975, the Joint Editorial Board recommended additions that strengthen the protection extended by this section to bona fide purchasers from distributees. The additional language was derived from recommendations evolved with respect to the Colorado version of the Code by probate and title authorities who agreed on language to relieve title insurers of doubts they had identified in relation to some cases.

Sec. 13.16.580. Purchasers from distributees protected. If property distributed in kind or a security interest in it is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order and whether or not the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any instrument described in this section which is recorded under AS 31.15 or AS 45.05 and which bears a notation of that recordation is prima facie evidence that the transfer described in it was made for value. (§ 1 ch 78 SLA 1972; am § 17 ch 154 SLA 1975)

Effect of amendment. — The 1975 amendment, in the first sentence, substituted "by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee" for "by a purchaser from or lender to a transferee from a distributee who has received an instrument or deed of distribution from the personal representative" and "rights of any interested person in the estate" for "rights of any person interested in the estate" in the first sentence, added the second sentence, substituted "a purchaser from or lender to any other distributee or his transferee" for "a transferee from a distributee" in the third sentence, and added the last sentence.

Legislative committee report. — For [illegible] ch 154, SLA 1975 see 1975 House Journal, p. 1599.

Section 3-915. [Apportionment of Estate Taxes]

• • • • • • • • • • • • • •

(c)(1) • • • • •

• • • • • • • • • • • • • •

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

• • • • • • • • • • • • • •

Sec. 13.16.610. Apportionment of estate taxes.

(m) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or devisee is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in (b) of this section, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the 3 months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

Sec. 13.16.610. Apportionment of estate taxes. (a) For purposes of this section

(3) "person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest in the property included in the decedent's estate; it includes a personal representative, conservator, and trustee;

(Identical to UPC §3-916(a)(3))

(o) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the state was collectable at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

Sec. 13.16.700. Settlement directed by court. When a judge receives information that a person has died in his judicial district leaving an estate of $6,000 or less and no qualified person has appeared to take charge of the assets, the judge may immediately appoint some person, corporation, or attorney to settle the estate in the manner provided for in §§ 630—695 of this chapter. (§ 1 ch 78 SLA 1972)

Sec. 13.16.705. Inheritance of certain stock. (a) Until December 18, 1991, stock in a corporation organized under the laws of Alaska under the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.) which is inalienable under either that Act or its articles of incorporation is not subject to probate nor shall its value be considered in determining the value of an estate or allowance under this title. Upon death of the holder, if the stock does not pass by the testamentary disposition clause on the stock certificate, properly executed, it passes by will or intestate succession. In such a case, the determination of the person entitled to the stock shall be made by the appropriate regional corporation on the basis of an affidavit, furnished to it and to the corporation which issued the stock, showing the right of the person entitled to the stock to receive it and to have a new certificate issued to him. The affidavit, accepted in good faith by a corporation, has the same effect as an affidavit under § 685 of this chapter, and the person entitled to the stock, if the affidavit is not accepted, has the remedy set out in § 685 of this chapter. In case of dispute as to the person entitled to receive the stock, a person claiming ownership may bring an independent action in the superior court.

(b) Unless a separate form is provided which substantially satisfies the requirements of this subsection and which is distributed to the same extent as the certificate, each certificate representing stock in a corporation organized under the Alaska Native Claims Settlement Act shall bear provisions, on its reverse side, containing blanks to be filled in by the owner, constituting a last will and testament for the purposes of this section and sec. 7(h)(2) of the Alaska Native Claims Settlement Act insofar as the shares represented by that certificate are concerned during the period of its inalienability. The clause may be signed by the owner, dated and notarized. This testamentary disposition may be changed from time to time or revoked, and it governs unless there is a subsequently executed formal will making the specific disposition of the stock.

(f) Where appropriate, terms used in this section have the meanings set out in AS 13.06.050. In this section "stock" includes membership in a corporation organized under AS 10.20 and inchoate rights to stock. (am §§ 17, 18 ch 53 SLA 1973; am § 1 ch 83 SLA 1973; am §§ 1, 2 ch 97 SLA 1974)

DEPARTMENT OF LAW
Office of the Attorney General
Fourth F - State Capitol
Juneau 99811

March 25, 1976

The Honorable Robert Ziegler
Chairman
Senate Judiciary Committee
Alaska State Legislature
[illegible]
Juneau, Alaska 99811

Re: 1975 Uniform Probate Code Amendments

Bob

Dear Senator Ziegler:

In my role as a Uniform Law Commissioner for Alaska, and because of your interest in the Uniform Probate Code (UPC), I am writing to you for your committee's consideration and possible introduction the amendments to the UPC promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1975. A bill proposing enactment of these amendments is attached, as is a copy of the amendments and "official commentary" as distributed by the NCCUSL.

You may find the information in this letter and in the attached statement to me by Professors Edward W. Kelliher, educational director for the Joint Editorial Board for the Uniform Probate Code, helpful in preparing a committee report to be printed in the Senate Journal. Such a report, including reference to the NCCUSL official commentary, would provide an indication of legislative intent and a guide to future interpretation.

In preparing the attached bill, I have omitted or modified some of the sections included in the attached NCCUSL draft, as follows:

1. AS 13.11.045(a)(2) (U.P.C. section 2-109) is not proposed for amendment in this bill because the NCCUSL change was intended to provide an option for states which had enacted the Uniform Parentage Act (promulgated by the NCCUSL in 1973). Alaska has not enacted that Act. (That, incidentally, is another matter which your committee may wish to consider; I have information available should you wish to see it at this time.)

2. AS 13.11.325 (U.P.C. section 2-602) was amended in 1973, adopting the same change now promulgated by the NCCUSL. See ch. 16 SLA 1973; 1973 Senate Journal Supplement No. 9; and 1973 House Journal, page 616.

3. AS 13.11.355 (U.P.C. section 2-608) is not proposed for change here because an intent statement in your committee report should suffice. The NCCUSL change would merely have reorganized the existing language of the section to forestall a possible interpretation question. I assume that Alaska would agree with the interpretation intended by the NCCUSL.

4. AS 13.11.370 (U.P.C. section 2-611) is not proposed for amendment because the proposed change is also one merely intended to provide an option for states which have enacted the Uniform Parentage Act.

5. AS 13.11.380 (U.P.C. section 2-612) was amended in 1973 in the manner suggested by the NCCUSL (see item 2, above).

6. In AS 13.16.010 (U.P.C. section 3-101), I have slightly changed the NCCUSL wording for clarity; no substantive difference from the intent expressed by the NCCUSL is intended.

7. AS 13.16.105(b) (U.P.C. section 3-106) is offered for legislative consideration, although the NCCUSL merely presents it as an optional provision.

8. The following statutes were amended in 1973 in the way currently recommended by the NCCUSL (see item 2, above), and therefore are not proposed for amendment in the attached bill:

AS 13.16.490 (U.P.C. section 3-605)
AS 13.21.055 (U.P.C. section 4-301)
AS 13.26.035 (U.P.C. section 5-202)
AS 13.26.040 (U.P.C. section 5-203)
AS 13.26.170 (U.P.C. section 5-306)
AS 13.26.300 (U.P.C. section 5-428)
AS 13.26.320 (U.P.C. section 5-432)

In addition to the statutory amendments prepared by the NCCUSL in the attached material, that organization is proposing additions to the "official commentary" accompanying the U.P.C. See the last few pages of the attached material.

Yours truly,

Arthur H. Peterson
Assistant Attorney General
Uniform Law Commissioner
for Alaska

AHP:md

JOURNAL

SUPPLEMENT

March 7, 1973 SENATE No. 9

Following is a letter of intent from the Judiciary Committee and a memorandum from the Legislative Affairs Agency which accompanied the Judiciary Committee report on SENATE BILL NO. 140:

"March 1, 1973

LETTER OF LEGISLATIVE INTENT

Re: Senate Bill 140 (Uniform Probate Code)

This bill is essentially a revisor's bill which rectifies some oversights and defects in the Uniform Probate Code which the legislature adopted last year.

It is the intent of the Judiciary Committee to request that the Legislative Affairs Agency analysis of the bill be spread upon the supplemental journal in order that a section by section review will be available to everyone; said memo bears date of February 27, 1973.

Robert H. Ziegler, Sr.
Chairman
Senate Judiciary Committee"

"February 27, 1973

MEMORANDUM

TO: Senator Ziegler, Chairman
Senate Judiciary Committee

FROM: Russell E. Mulder, Deputy Director

SUBJECT: Amendments to Uniform Probate Code (SB 140)

Pursuant to your request, the following sectional [illegible]

of correcting some technical drafting and printing errors that crept into the original approved Uniform Probate Code (UPC). These changes have been approved and suggested by the Joint Editorial Board for the UPC (JEB). The remaining amendments are aimed at correcting some problems, inconsistencies, and technical errors which were made while the legislature considered the UPC last session. These latter amendments are suggested by Professor Richard V. Wellman, University of Michigan Law School (and chief reporter for the UPC), the Revisor of Statutes, and the Legislative Affairs Agency (LAA) staff.

Section 1: Substituting "includes" for "means all of" in AS 13.06.050(11), merely corrects an original drafting error (suggested by JEB).

Section 2: Inserting "first" before "publication" in AS 13.11.090(a) clarifies which publication date is referred to (suggested by JEB).

Section 3: Deletes the "mobile home" provisions from the Homestead Allowance section. The reason behind this is that the homestead allowance applies to all surviving spouses whether or not the decedent left real property. It is, as amended, a dwelling or housing allowance and applies evenly to all people. In fact, to not make the change will cause confusion and resulting litigation. On this point Professor Wellman states:

> The change made by adding express reference to up to $8,000 in value in a trailer home may be unobjectionable, but I wonder how it relates to the rest of the section and to sections 13.11.125 and 13.11.135. Is it the intent to create exemptions of $3,500 plus $8,000 in a trailer home plus the $12,000 homestead allowance, plus $500 per month for twelve months? As the statute stands, it appears to me that a surviving spouse of an Alaskan decedent who owned an $8,000 trailer home, is entitled to $30,500 off the top of the estate, ahead of the terms of the decedent's will and ahead of his creditors.
>
> Part of the problem may result from the view of the U.P.C. framers that the homestead allowance in 13.11.125 and the exempt property concept in 13.11.130 are both dollar charges against any assets of an estate. The right to homestead allowance is not contingent upon whether the decedent had an interest in homestead land; the exempt chattel idea includes the point that cash from any source may be due to satisfy the $3,500 allowance if there are not sufficient chattels to cover the item.

(Suggested by Professor Wellman and LAA staff).

Sections 4, 5 and 6: Change "personal" property to "exempt" property in three sections in the Exempt Property and Allowances article of chapter 11. Professor Wellman explains why the word "personal" should not be used here:

> ... the statute permits delivery of personal property but says nothing of intangible property. The words "personal property" are frequently used to include "intangible property", but the words deleted suggest that the Legislature wanted to eliminate intangibles

from the assets that would be turned over orally to a personal representative from another state where the decedent was domiciled.

(Suggested by Professor Wellman and LAA staff)

Section 7: Under the UPC the age of majority is 21 and the legal age for making a will is 18. It seems obvious that the UPC drafters thought it wise for a person to be able to write a will before he reaches majority. The change made in this section which would allow a person 18 to make a will reflects the same thinking (suggested by the Revisor of Statutes and LAA staff).

Section 8: AS 13.11.173 (Proof of Wills) conflicts with AS 13.16.-050(c) and AS 13.16.155. The latter two sections are original UPC provisions and it would seem for the sake of uniformity they should prevail (suggested by Professor Wellman and LAA staff).

Section 9: Since the Official Text of the UPC was published, the drafters have come to the conclusion that the reference to "public policy of this state" in AS 13.11.225 is unnecessarily vague. The new language inserted is taken from the Idaho UPC and resolves the vagueness question (suggested by JEU).

Section 10: This amendment extends the definition of "spouse" contained in AS 13.11.300(b) so that it applies to determine priorities to serve as personal representatives (suggested by JEU).

Section 11: The context in which this age reference appears shows that it should not refer to the minor/major cutoff line. In addition, the phrase "minor under the age of 19" does not mean anything because, by definition in Alaska, all minors are under 19, at which age they reach majority (suggested by the Revisor of Statutes and LAA staff).

Section 12: This amendment deletes the word "ancillary" because it is not used anywhere else in the code (suggested by JEU and LAA staff).

Section 13: Removing "this or another" and inserting instead "a" before "judicial district" in AS 13.16.115(b) is intended to clarify the fact that the personal representative's appointment can be in any district in the state (suggested by the Revisor of Statutes).

Section 14: Substituting "gives a receipt" for "receipts" in AS 13.16.420 was made because "receipts" is meaningless in the context of the sentence (suggested by the Revisor of Statutes and LAA staff).

Section 15: By preferring claims of those who rendered services to the decedent in his last illness, the section runs against federal law (31 USCA sec. 191) which directs that claims of the federal government have priority over "debts due from the decedent" (suggested by JEU).

Section 16: The Revisor of Statutes originally changed "shall be" to "is" and now believes it should perhaps be changed back to its original language.

Sections 17, 18 and 19: These amendments are an attempt to bring the Alaska probate procedures back in line with the Uniform Probate Code in an important area. Last year the House Judiciary Committee amendments (which are reflected in existing law) tried to throw up a barrier to a foreign domiciliary personal representative's use of the affidavit procedure to collect local assets of a decedent. Later consultation with Professor Wellman revealed that the amendments failed to accomplish their intended purpose. Because of the ineffectiveness of last year's amendments, it is suggested that the original UPC language be restored. Such action would have the effect of bringing Alaska's Probate Code back into conformity with the Uniform Code and further providing for the more expedient and inexpensive handling of decedents' estates (suggested by LAA staff).

Section 20: The changes made in AS 13.21.055 were done because of the existing lack of parallel language in this section and AS 13.16.250, leading to the implication that consent to jurisdiction by specific acts of a foreign personal representative is broader than consent involved by acceptance of appointment by a local personal representative (suggested by Professor Wellman and LAA staff).

Sections 21 and 22: The testamentary guardianship provisions are defective because no notice to the minor is required of one who accepts a testamentary appointment. Therefore, the ability of a minor of 14 or older to object to a particular person as his guardian, if he acts within a short time after the person accepts the nomination, is useless. The new language added to AS 13.26.035 and AS 13.26.040 will eliminate this problem (suggested by Professor Wellman and LAA staff).

Section 23: This amendment is offered for two reasons. First, the court should not appoint a guardian where a testamentary guardian has "failed to properly exercise his duties as a guardian." The court should await the institution of removal proceedings under AS 13.26.085. Second, the existing section makes an unfortunate distinction between a testamentary guardian and a court-appointed guardian in relation to a replacement appointment. It would seem that both should have equivalent status (suggested by Professor Wellman and LAA staff).

Section 24: Change made because it seems unnecessary to require a guardian to file a report every year. The new language is that of the original UPC (suggested by Professor Wellman).

Section 25: The new language in AS 13.26.120 was added to establish parallel language in AS 13.16.300 and this section (suggested by JEU).

Section 26: The word "incompetent" should be removed from AS 13.-26.190(a)(4)(B) because it is not used elsewhere in the code (suggested by JEU).

Section 27: The change from 19 to 18 is necessary because the context in which this age reference appears shows that it should not refer to the minor/major cutoff line. In addition, the phrase "minor under the age of 19" doesn't mean anything because, by definition in Alaska, all minors are under 19, at which age they reach majority (suggested by the Revisor of Statutes and LAA staff).

Section 28: The language deleted from AS 13.26.250(c)(7) should be deleted because it is senseless. The changes to AS 13.26.-250(c)(22) were made because the word "minor" is not necessary and the word "incompetent" is not defined or used elsewhere in the code (suggested by JEB).

Section 29: AS 13.26.300(a) was repealed and re-enacted in order to define when a claim against a conservator is considered filed and allowed and to establish parallel treatment in this section and AS 13.16.465 (suggested by JEB).

Section 30: AS 13.26.320 was added to establish parallel treatment of foreign conservators and foreign personal representatives (suggested by JEB).

Section 31: The words "and this statute" are unnecessarily vague and therefore should be deleted (suggested by LAA staff).

Section 32: Because under the UPC there are no longer "executors or administrators" who administer decedents' estates but "personal representatives", the terminology must be changed (suggested by the Revisor of Statutes and LAA staff).

Section 33: The deletion of the language in AS 13.11.045(1) would mean that for purposes of intestate succession an adopted child is only the child of the adopting parents. Under existing law a child can inherit in intestate succession situations both from his natural and adopting parents unless the decree of adoption provides that the child cannot inherit from his natural parents (suggested by Alaska Supreme Court).

Section 34: This section adds needed transitional provisions (suggested by Alaska Supreme Court)."

The following letter of intent from the Judiciary Committee accompanied the committee's report on SENATE BILL NO. 141:

"March 1, 1973

LETTER OF LEGISLATIVE INTENT

Re: Senate Bill 141 (relating to the residence exemptions)

Senate Bill 141 clarifies problems which arise in interpreting the provisions of AS 09.35.090 and AS 34.35.050 (c).

By amending AS 09.35.090, as this bill would purport to do, we are protecting, as the law intends, the rights of laborers and materialmen.

Robert H. Ziegler, Sr.
Chairman
Senate Judiciary Committee"

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 January 29, 1979

SUBJECT: Analysis of SB 56 - Effect of homicide under the Uniform Probate Code (Work Order No.6160)

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel KMR

AS 13.11.305(b) is Alaska's version of Uniform Probate Code (UPC) §2-803(b). It relates to the effect of homicide on succession of a decedent's assets. Currently AS 13.11.305(b) refers only to "joint accounts" whereas the latest version of UPC §2-803(b) refers to "joint and multiple-party accounts." SB 56 conforms the Alaska Statute with the UPC version.

Multiple-party account is defined in UPC §6-101 and AS 13.31.005 and includes joint accounts, P.O.D., (pay on death) accounts, and trust accounts. The UPC provision is intended to eliminate a person's survivorship rights in any type of multiple-party account when that person feloniously and intentionally kills a joint interest holder whose death would otherwise give the killer a present right to the decedent's share of the account. In Alaska multiple-party accounts other than joint accounts may come under the umbrella term "any other form of co-ownership with survivorship incidents" included in both the Alaska and UPC provisions. Whether or not this would be so, the practical effect of the non-uniformity of the Alaska provision may be minimal in that a court faced with this situation would probably apply the modern common law rule that bars a person from profitting from his wrongdoing, and would either not recognize the killer's survivorship rights or apply a constructive trust in favor of the decedent's heirs.

KMR:nem

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM January 29, 1979

SUBJECT: Analysis of SB 56 - Effect of homicide under the Uniform Probate Code (W Order No.6160)

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel KMR

AS 13.11.305(b) is Alaska's version of Uniform Probate Code (UPC) §2-803(b). It relates to the effect of homicide on succession of a decedent's assets. Currently AS 13.11.305(b) refers only to "joint accounts" whereas the latest version of UPC §2-803(b) refers to "joint and multiple-party accounts." SB 56 conforms the Alaska Statute with the UPC version.

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KMR:nem

SB

58

COMMITTEE REPORT

SENATE

FURTHER: None

1/17/79

Date: 3/4/80

Mr. President:

The Committee on JUDICIARY has had SB 58
uniform diposition of community property rights at death

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 29, 1979

SUBJECT: Sectional Analysis of SB 58 -- Uniform Disposition Community Property Rights of Death Act (Work Order No.6160)

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel KMR

This act is intended to prescribe the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska, or which is traceable to community property, where the spouses have not indicated an intention that their community rights be severed.

AS 13.41.005 defines the property which is subject to disposition under chapter 41. Subsection 1 covers all personal property acquired by the spouses while domiciled in a community property state to the extent that property would have been treated as community property at the time of acquisition under the laws of that state and in which the spouses have expressed no intent to sever their community rights. Also included would be property which the spouses have agreed to treat as community property. Subsection 2 covers real property in the state (real property located in other states would be treated under the laws of those states) to the extent that it can be traced to a community source.

AS 13.41.010 establishes rebuttable presumptions intended to assist a court in applying the definitions of sec. 5. The presumptions are that (1) property acquired by a married person while domiciled in a community property state is and remains community property, and (2) property acquired by a married person while domiciled in a common law state, title to which included a right of survivorship, is not community property.

AS 13.41.015 requires that one-half of a deceased married person's property to which the chapter applies, (i.e., community property or property traceable to it), becomes the property of the surviving spouse and is not subject to testamentary or intestate disposition. The other half is subject to the applicable manner of disposition. The one-half of the property to which the chapter applies is made not subject to the surviving spouse's elective share.

AS 13.41.020 provides a method for the perfection, by means of a court order, of the title to property passing to the surviving spouse under the provisions of this chapter. It is intended to protect the personal representative from liability for failing to search the decedant's estate for property to which the chapter applies. The personal representative's duty may be reinstated by written demand of the surviving spouse or his successor in interest.

AS 13.41.025 provides a method whereby the personal representative, heir, or devisee may institute an action to perfect the surviving spouse's title to property to which the chapter applies. It is a corrollary to sec. 20.

AS 13.41.030 protects purchasers and lenders taking a security interest, who acquire such interest for value, after the spouse's death, from liability to a person who appears to have title to property to which the chapter applies. It is intended to permit reliance upon apparent title and facilitate both ascertainment of title and disposition of assets where adequate consideration is paid.

AS 13.41.040 makes clear that the rights of spouses to sever their community property interest or to create a form of ownership not subject to this chapter are in no way limited by the chapter.

AS 13.41.045 provides that the chapter does not authorize the testamentary disposition of property which is otherwise prevented from such disposition.

AS 13.41.050 and 13.31.055 provide for uniform construction and application and for citation for short title respectively.

KMR:nem

CODE REVISION COMMISSION

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EXECUTIVE SECRETARY
BILLY G. BERRIER

February 27, 1980

Robert E. Ziegler, Sr., Chairman
Senate Judiciary Committee
Room 128 -- Capitol Building
Juneau, Alaska 99811

Dear Mr. Chairman:

First, thank you for taking the time to attend the commission luncheon last Thursday to discuss commission bills pending in your committee and future projects. As you know, the commission is certainly receptive to future directions from the Legislature.

I have received your letter and enclosure of February 22 and it has been distributed to commission members. We appreciate your prompt attention to scheduling hearings on SB 54 -- International Wills Act (Uniform Probate Code) and SB 58 -- Uniform Disposition of Community Property Rights at Death Act. Assistant Attorney General Arthur Peterson, formerly the Vice Chairman of the commission, will be attending the hearings on March 4 to present testimony on behalf of the commission.

I am enclosing, for your information, additional background material on SB 58. Enclosed are (1) a memorandum prepared by the Division of Legal Services reflecting changes that would be made to Alaska law; (2) a copy of the official version of the draft as prepared by the National Conference of Commissioners on Uniform State Laws, including the official commentary; and (3) a copy of the galley proof of an article from the Winter 1977/1978 edition of the Uniform Law Memo discussing community property conflicts.

Your office should have on hand copies of both bills and transmittal letters from the commission to Legislative Council. This material was distributed to your office prior to the luncheon.

Another commission bill that was discussed at the luncheon and is to be considered by your committee is SB 55 -- Uniform Commercial Code, Articles 8 and 9. However, this bill is still pending in the Senate Commerce Committee awaiting action. We are hopeful that that bill will be reported out of the Commerce Committee. Once that action has been taken, I will again be in touch with you regarding additional background information.

With regard to SB 339 -- guardians and conservators, I have already started gathering material on this bill. At your convenience I would appreciate getting copies of any information you have available for future distribution to the commission.

If you need further information regarding our work or find that we can be of any other assistance, please do not hesitate to let us know.

Sincerely,

Joyce M. Roloff, Secretary
Code Revision Commission

JMSR/s
Enclosures

cc: Code Revision Commission
Arthur H. Peterson

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM November 16, 1978

SUBJECT: Uniform Disposition Community Property Rights at Death Act (Work Order #5748)

TO: Code Revision Commission

FROM: Kenneth M. Rosenstein
Legislative Counsel

Attached please find a draft of the Uniform Disposition of Community Property Rights at Death Act prepared for introduction at the next session of the legislature. The act is intended to prescribe the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska, or which is traceable to community property, where the spouses have not indicated an intention that their community rights be severed.

AS 13.41.005 defines the property which is subject to disposition under chapter 41. Subsection 1 covers all personal property acquired by the spouses while domiciled in a community property state to the extent that property would have been treated as community property at the time of acquisition under the laws of that state and in which the spouses have expressed no intent to sever their community rights. Also included would be property which the spouses have agreed to treat as community property. Subsection 2 covers real property in the state (real property located in other states would be treated under the laws of those states) to the extent that it can be traced to a community source.

AS 13.41.010 establishes rebuttable presumptions intended to assist a court in applying the definitions of sec. 5. The

presumptions are that (1) property acquired by a married person while domiciled in a community property state is and remains community property, and (2) property acquired by a married person while domiciled in a common law state, title to which included a right of survivorship, is not community property.

AS 13.41.015 requires that one-half of a deceased married person's property to which the chapter applies, i.e. community property or property traceable to it, becomes the property of the surviving spouse and is not subject to testamentary or intestate disposition. The other half is subject to the applicable manner of disposition. The one-half of the property to which the chapter applies is made not subject to the surviving spouse's elective share.

AS 13.41.020 provides a method for the perfection, by means of a court order, of the title to property passing to the surviving spouse under the provisions of this chapter. It is intended to protect the personal representative from liability for failing to search the decedant's estate for property to which the chapter applies. The personal representative's duty may be reinstated by written demand of the surviving spouse or his successor in interest.

AS 13.41.025 provides a method whereby the personal representative, heir, or devisee may institute an action to perfect the surviving spouse's title to property to which the chapter applies. It is a corrollary to sec. 20.

AS 13.41.030 protects purchasers and lenders taking a security interest, who acquire such interest for value, after the spouse's death, from liability to a person who appears to have title to property to which the chapter applies. It is intended to permit reliance upon apparent title and facilitate both ascertainment of title and disposition of assets where adequate consideration is paid.

AS 13.41.035 merely states that the rights of creditors in property to which the chapter applies is not affected.

AS 13.41.040 makes clear that the rights of spouses to sever their community property interests or to create a form of ownership not subject to this chapter are in no way limited by the chapter.

AS 13.41.045 provides that the chapter does not authorize the testamentary disposition of property which is otherwise prevented from such disposition.

AS 13.41.050 and 13.41.055 provide for uniform construction and application and for citation for short title, respectively.

KMR:jdm

Attachment

UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

Prefatory Note

Frequently spouses, who have been domiciled in a jurisdiction which has a type of community property regime, move to a jurisdiction which has no such system of marital rights. As a matter of policy, and probably as a matter of constitutional law, the move should not be deemed (in and of itself) to deprive the spouses of any preexisting property rights. A common law state may, of course, prescribe the *dispositive* rights of its domiciliaries both as to personal property and real property located in the state. California's development of its "quasi-community property" laws illustrates the distinction.

The common law states, as contrasted to California, have not developed a statutory pattern for disposition of estates consisting of both *separate* property of spouses and property which was community property (or derived from community property) in which both spouses have an interest. In these states there have been relatively few reported cases (although the number has been increasing in recent years); the decisions to date show no consistent pattern and the increasing importance of the questions posed suggests the desirability of uniform legislation to minimize potential litigation and to facilitate the planning of estates.

This Act has a very limited scope. If enacted by a common law state, it will only define the dispositive rights, at death, of a married person as to his interests at death in property "subject to the Act" and is limited to real property, located in the enacting state, and personal property of a person domiciled in the enacting state. The purpose of the Act is to preserve the rights of each spouse in property which was community property prior to change of domicile, as well as in property substituted therefor where the spouses have not indicated an intention to sever or alter their "community" rights. It thus follows the typical pattern of community property which permits the deceased spouse to dispose of "his half" of the community property, while confirming the title of the surviving spouse in "her half."

It is intended to have no effect on the rights of creditors who become such before the death of a spouse; neither does it affect the rights of spouses or other persons prior to the death of a spouse. While problems may arise prior to the death of a spouse they are believed to be of

relatively less importance than the delineation of dispositive rights (and the correlative effect on planning of estates). The prescription of uniform treatment in other contexts poses somewhat greater difficulties, thus this Act is designed solely to cover dispositive rights at death, as an initial step.

The key operative section of the Act is Section 3 which sets forth the dispositive rights in that property defined in Section 1, which is subject to the Act. Section 2 follows Section 1's definition of covered property and is designed to provide aid, through a limited number of rebuttable presumptions, in determining whether property is subject to the Act. No negative implications were intended to be raised by lack of inclusion of other presumptions in Section 2; areas not covered were simply left to the normal process of ascertainment of rights in property.

The first three sections form the heart of the Act; the succeeding sections might almost be described as precatory and have been added to clarify situations which would probably follow from the first three sections but which might raise questions. Thus, Section 8 makes it clear that nothing in the Act prevents the spouses from severing any interest in community property or creating any other form of ownership of property during their joint lives; and, such action on their part will effectively remove any property from classification as property subject to this Act. Similarly, Section 9 makes it clear that the Act confers no rights upon a spouse where, by virtue of the property interests existing during the joint lives of the spouses, that spouse had no right to dispose of such property at death. By way of illustration, in at least one community property jurisdiction, the wife has no right to dispose of any part of the community property if she predeceases her husband. If the law of that jurisdiction is construed so as to treat this as a rule of property, then the move to the common law state should not alter the "property interest" of the spouses by conferring a right on the wife which she did not previously possess. On the other hand, if the provision is treated as simply establishing a pattern of dispositive rights on death of a wife who predeceases her husband, rather than a property right, the common law state of new domicile could prescribe an alternative pattern of dispositive rights. The Act does not resolve this question; rather it simply makes clear that it does not affect existing "property rights," leaving to the courts the interpretation of the effect of the community property state's law.

UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT

Sec. 13.41.005 Caps

~~Section 1.~~ [*Application.*] This Act applies to the disposition at death of the following property acquired by a married person:

(1) all personal property, wherever situated:

(i) which was acquired as or became, and remained, community property under the laws of another jurisdiction; or,

(ii) all or the proportionate part of that property acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or

(iii) traceable to that community property;

(2) all or the proportionate part of any real property situated in this state which was acquired with the rents, issues or income of, the proceeds from, or in exchange for, property acquired as or which became, and remained, community property under the laws of another jurisdiction, or property traceable to that community property.

COMMENT

This section defines property subject to the Act.

Subsection (1): Personal Property

Subsection (1) is designed to cover all personal property which was acquired while the spouses were domiciled in a community property state, to the extent that it would have been treated as community property by that state at the time of acquisition and that no further action terminated the community character of the property. It also includes any property which was not originally community property but became such by agreement and, further, brings within the Act any personal property which can be traced back to a community source. Again, the Act only applies if there was no severance of the community interests [Section 8]. [While Section 3 applies to the dispositive rights of persons domiciled in the enacting state, the Act, as a practical matter, may be effective as to property located outside the state only to the extent that the state of the situs of the property is willing to recognize the policy of the domiciliary state.]

Example 1. H and W, while domiciled in California, purchased 100 shares each of A Co., B Co. and C Co. stock with community property (earnings of H). H and W were transferred to a common law state which had not enacted this Act; while domiciled there H sold the 100 shares of A stock and with the proceeds purchased 100 shares of D stock. Subsequently H and W became domiciled in Michigan which had enacted this Act; H sold the B stock and 50 shares of D Co. stock and purchased 150 shares of E stock. H died domiciled in Michigan with 100 shares of C Co., 50 shares of D Co. and 150 shares of E Co. stock; all

of the stock had always been registered in H's name. All of the shares, traceable to community property or the proceeds therefrom, constitute property subject to this Act.

Subsection (2): Real Property

Subsection (2) deals with real property and is confined to real property located within the enacting state (since presumably the law of the situs of the property will govern dispositive rights). The policy and operation of this subsection are intended to be the same as those set forth in subsection (1).

Example 2. H and W, while domiciled in California, purchased a residence in California. They retained the residence in California when they were transferred to Wisconsin. After becoming domiciled in Wisconsin they used community funds, drawn from a bank account in California, to purchase a Wisconsin cottage. H and W subsequently became domiciled in Michigan; they then purchased a condominium in Michigan for $20,000 using $15,000 of community property funds drawn from their bank account in California and $5,000 earned by H after the move to Michigan. H died domiciled in Michigan; title to all of the real property was in H's name. Assuming Michigan had enacted this Act, three-fourths of the Michigan condominium would be property subject to this Act; the Michigan statute would not, however, apply to either the Wisconsin or California real estate. If Wisconsin had enacted this Act, the Wisconsin statute would apply to the Wisconsin cottage.

Subsections (1) and (2): Apportionment

In both subsections (1) and (2) an apportionment is required by the phrase "all or the proportionate part" where personal property, or real property situated in the enacting state, has been acquired partly with property described as subject to the Act and partly with other (separate) property. To put it succinctly, the phrase represents a condensation of an idea covered by many pages in a prior draft and is simply a statement of policy; it leaves to the courts the difficult task of working out the precise interest which will be treated as the "proportionate part" of the property subject to the dispositive formula of Section 3. Simply by way of illustration, assume that a single man (domiciled in a community property state) purchased a life insurance policy with a face amount of $100,000 and an annual premium of $1,000. Assume further that he paid three premiums and then entered into marriage. Further assume that the next seven premiums were paid with his earnings while domiciled in the community property state and that he and his wife then moved to a common law state where the next ten premiums were paid from his earnings in that common law state; he then died after the payment of the twenty premiums. Under one interpretation of the law of Texas the contract would remain the separate property of the insured; the community would have a claim for community funds advanced to pay premiums and, during interest, it would appear that $7,000 of the proceeds would be treated as community property and the remaining $93,000 would be treated as the separate property of the deceased spouse. On the other hand, a state like California would probably treat the proceeds as being 85% separate and 15% community (being the allocation of proceeds upon the percentage of separate and community funds contributed). Further variations could be mentioned. The illustration is one of the simpler problems. Much more difficult problems are encountered where benefits under a qualified pension and profit-sharing plan are involved and the employee has been domiciled in both community property and common law jurisdictions during the period in which benefits have accrued. Attempts to discuss the various types of situations which could arise and the

varying approaches which could be taken, depending upon the state, suggest that the matter simply be left to court decision as to what portion would, under applicable choice of law rules, be treated as community property. The principle suggested is that at least a portion should be treated as community, if the appropriate law so treated it. Ordinarily, such questions should not arise if the problem is foreseen and effective planning takes place prior to death of a spouse.

SECTION 2. [*Rebuttable Presumptions.*] In determining whether this Act applies to specific property the following rebuttable presumptions apply:

(1) property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as or to have become, and remained, property to which this Act applies; and

(2) real property situated in this State and personal property wherever situated acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which this Act applies.

COMMENT

The purposes of the rebuttable presumptions are simply to assist a court in applying the definitions in Section 1, through a process of tracing the property to a community property origin.

Subsection (1)

Subsection (1) of Section 2 deals with property acquired by the spouses while domiciled in a community property state. It thus provides that if one of the spouses acquired property while so domiciled, such property is "presumed" (a rebuttable presumption) to have been and remained community. It may be shown, of course, that such property was the separate property of the spouse and the law of the state of domicile may furnish the rule. For example the law of community domicile may provide the rule that property acquired in the name of the wife shall be deemed to be her separate property or that a particular subsequent act effectively severed the community property interests.

Example 1. H, married to W and domiciled in California, acquired stock; later H and W became domiciled in Michigan. Such property, if retained, is presumed to be property subject to this Act. By operation of Section 1 the proceeds of sale or exchange of such stock, and property acquired with the proceeds or income of such stock, would be deemed subject to the Act. If, however, upon the death of H, H's personal representative rebutted the presumption by evidence that the stock was acquired by H with his separate property (or by inheritance) neither the stock nor property acquired with that property or the income therefrom (unless the income itself would be subject to the Act because, under the applicable law, income from separate property is deemed to be community property) would be subject to this Act. Similarly the presumption may be rebutted by showing that such property, though originally community property, was effectively severed by an act of the spouses. It should be emphasized that the

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presumption is simply one of procedural convenience and neither changes the nature of the property interests nor prevents an interested person from showing the separate nature of the property.

Subsection (2)

Subsection (2) sets up a rebuttable presumption that where a domiciliary of a common law state acquired property in such form as to indicate that title was in joint tenancy, tenancy by the entireties, or some other form of joint ownership with right of survivorship, it will be presumed that the property is not subject to the Act. This presumption was deemed appropriate as expressing the normal expectations of the spouses and to facilitate ascertainment of title to real property located in the enacting state, as well as personal property wherever located.

Example 5. John and Mary Jones, formerly domiciled in California, became domiciled in Illinois and purchased a residence, taking title in the names of "John and Mary Jones as joint tenants, and not as tenants in common, with right of survivorship." Regardless of the source of the funds, the Illinois residence would be presumed to be held in joint tenancy and not subject to this Act.

Section 8. [*Disposition upon Death.*] Upon death of a married person, one-half of the property to which this Act applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this State. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Act applies, the one-half of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will [and no estate of curtesy or curtesy exists in the property of the decedent.]

Comment

This section deals with the dispositive rights at death of (1) a married person domiciled in the enacting state as to personal property and (2) of any married person domiciled in a noncommunity property state, as to real property owned in the enacting state; it also sets forth rules for intestate succession to property subject to this Act.

Testate Disposition

The dispositive pattern is the usual one encountered in the community property states: the deceased spouse may dispose of his one-half of the community property subject to the provisions of Section 9.

Example 1. H and W were formerly domiciled in California and are now domiciled in Michigan. All of their property was community property prior to the move from California to Michigan. At H's death he held title to a home in Michigan which had been purchased with the proceeds of the sale of a home [illegible] and was community property. Stock acquired as community property was held in his name in safety deposit boxes located in Michigan. H and W had acquired a cottage in California as community property held in the name of H, and it was so held at the time of his death. H had acquired a Nevada resort condominium, taking title as tenants by the

entireties. H acquired bonds issued by his employer with earnings in Michigan and held title in his own name.

The Michigan residence and the stock would be deemed property subject to this Act and H would have the right under Section 3 to dispose of half of that property by his will. The remaining property would not be deemed subject to this Act.

Intestate Succession

If the property subject to this Act passes by intestate succession, the law of the enacting state applies to the decedent's one-half, again subject to Section 9. If under the law of the enacting state, a surviving spouse is entitled to one-third of the decedent's property by intestate succession, the result of the Act is to give to her two-thirds of the property subject to the Act. For example, if the spouses had recently moved to a common law state and owned $300,000 of property (all being personal property held in the husband's name and acquired as community property), the wife would be entitled to one-half of the property ($150,000) and would receive a ⅓ share of the husband's half ($50,000) for a total of $200,000. It is clearly within the power of the enacting state to prescribe any pattern of intestate succession deemed appropriate, and views may differ. In some community property states, the surviving spouse receives all of the decedent's community property upon intestate succession; in another she would receive none. Similarly, the common law state may alter the pattern to fit its own policy determination.

Dower, Curtesy, Elective Share

Dower and curtesy do not exist in community property and have been abolished in many common law states; policy considerations suggest that no such interest should exist in property subject to this Act, since the surviving spouse already has a one-half interest in such property. Similar reasons suggest a denial of any right to the surviving spouse to elect a statutory share in the one-half of the property over which the decedent had a power of disposition.

SECTION 4. [*Perfection of Title of Surviving Spouse.*] If the title to any property to which this Act applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the [court] or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the [court]. Neither the personal representative nor the court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which this Act applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

Comment

This section simply provides for perfection of title interests of the surviving spouse (e.g. where title was in the name of the deceased spouse) by order of the court of appropriate jurisdiction (e.g. the probate court) in the enacting state. This section is designed to eliminate any liability of the personal representative for a breach of his fiduciary duty by failing to search for or to discover whether property held by the decedent is property defined in Section 1, unless a written

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demand is made by the surviving spouse or the spouse's successor in interest. In several states the Court administering a decedent's estate has a duty or undertakes to advise parties in interest of their legal and equitable rights, and this section is similarly designed to eliminate such Court's liability for failing to discover the community rights and to advise the interested party of his rights. Nothing contained in this section is to be construed to interfere with the Court's jurisdiction in a proper proceeding to perfect the title of the surviving spouse in and to property to which this Act applies.

13.41.025

SECTION 5. *[Perfection of Title of Personal Representative, Heir or Devisee.]* If the title to any property to which this Act applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which this Act applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.

COMMENT

This section is a corollary to Section 4. Since title is apparently in the surviving spouse, the section simply provides for an action by the personal representative, heirs, or devisees and is again designed to eliminate any liability of the personal representative for a breach of his fiduciary duty by failing to discover or to attempt to discover whether property held by the surviving spouse is property subject to this Act, absent a written demand by an heir, devisee or creditor of the decedent.

13.41.030

SECTION 6. *[Purchaser for Value or Lender.]*

(a) If a surviving spouse has apparent title to property to which this Act applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

(b) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this Act applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

(c) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(d) The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.

COMMENT

This section is designed to protect purchasers and lenders taking a security interest, who acquire such interest for value, after the death of the decedent, from a person who appears to have title to property to which this Act applies. The

only requirement is that the purchaser or lender have acquired his interest for value; there is no requirement of good faith absence of notice. The purpose of the section is to permit reliance upon apparent title and facilitate both ascertainment of title and disposition of assets where adequate consideration is paid. Since, during the joint lives of the spouses, the spouse with apparent title would have been able to convey title (at least as to community property) though being held accountable to the other spouse for an appropriate allocation of the proceeds or any breach of fiduciary obligation, the Act simply extends this treatment to disposition of the assets after the death of a spouse.

13.41.035 CAPS

SECTION 7. [*Creditor's Rights.*] This Act does not affect rights of creditors with respect to property to which this Act applies.

13.41.040 CAPS

SECTION 8. [*Acts of Married Persons.*] This Act does not prevent married persons from severing or altering their interests in property to which this Act applies.

COMMENT

The rights, and procedures, with respect to severance of community property vary markedly among the community property states. The Act simply makes clear that nothing in the Act itself in any way limits the rights of the spouses to sever community property or to create a form of ownership not subject to this Act.

13.41.045 CAPS

SECTION 9. [*Limitations on Testamentary Disposition.*] This Act does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

13.41.050 CAPS

SECTION 10. [*Uniformity of Application and Construction.*] This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

13.41.055 CAPS

SECTION 11. [*Short Title.*] This Act may be cited as the Uniform Disposition of Community Property Rights at Death Act.

SECTION 12. [*Repeal and Effective Date.*] The following acts and laws are repealed as of the effective date of this Act:

(1)

(2)

SECTION 13. [*Time of Taking Effect.*] This Act shall take effect

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From
Winter 1977/1978
Uniform Law Ma
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Community property conflicts

When deciding if uniform legislation is needed to solve a problem common to all states, the Conference places major emphasis on the legal problems of that increasing number of Americans who move from one state to another.

For example, the Uniform Disposition of Community Property Rights at Death Act is aimed at the problems of spouses moving from the eight "community property" states to one of the 42 "common law" states. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.

In those states, all property owned by married persons is classified as either "separate" or "community" property. Separate property is the exclusive possession of one spouse. This would include property acquired before marriage or during marriage through a personal gift, bequest, devise or descent. Separate property is "owned" by one spouse who has the right—except for the forced heirship statutes of Louisiana—to decide who to "leave" it to.

Community property

All other property acquired by the spouses during the marriage relationship becomes community property of both spouses without regard to whose name is on the title or bank account. From the date of acquisition, each spouse has a "present existing and equal interest" which can be characterized as a "vested interest."

In community property states, the law provides equal management and control of community property. In most cases, they manage and control property each owns if single. In some cases, joint management of community property is required.

heirs of his choice, but the surviving spouse retains complete control over the other half interest. In most community property states, if the spouse makes no formal arrangements through a will or trust and dies intestate, the half interest passes to the other spouse.

Problem illustrated

W.S. McClanahan, chairman of the Committee on Property Problems of the Migrant Client of the American Bar Association's Section of Real Property, Probate and Trust Law, used this illustration to show why the act is needed.

A husband and wife, married 20 years and having two children, acquire $300,000 worth of personal property while they live in California. All of it is community property held in the name of the husband. If he should die while living in California, he could bequeath only his half interest in that property and only that half would be subject to federal and California taxes.

But if the husband were transferred by his firm to Illinois—a common law state—still thinking all community property along while continuing to hold it only in his name, the rules would change. But the husband probably wouldn't realize that the will, made in California leaving a substantial share of his estate—half of the community property—to heirs other than his wife, would take on new meaning in Illinois. There she would be "left out" and Illinois law would grant her only a right to opt for a "statutory share" of a third of the estate—$100,000. This would deprive her of a portion of the property which she had earned as a "present, existing and equal interest" and the entire estate would be subject to federal and Illinois taxes.

Surviving Spouse shortchanged

Details would vary. But in most common law states the results would be the same. McClanahan said. The surviving spouse would receive substantially less than her vested half-interest.

The Uniform Act solves this problem by providing that:

"Upon the death of a married person, one-half of the property to which this act applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state." A spouse can't claim a common law right—such as dower, courtesy or statutory interests—in addition to the half interest.

McClanahan said enactment of the Uniform Disposition of Community Property Rights at Death Act in a common law state eliminates "inequitable results which flow from non-recognition of the nature of community property and the rights and interests of the spouses in that property during life and at death."

Some states act

Colorado, Hawaii, Kentucky, Michigan and Oregon have adopted the act since it was completed by the Conference in 1972. Legislative interest is reported in a number of states including New York, Pennsylvania, Wisconsin and Arkansas.

"While few situations involving this problem have reached the reviewing courts in common law states, recognition of the problem will probably cause increasing litigation," McClanahan said. "More than 20 per cent of the population of the U.S. now lives in the eight community property states, which means that one of every five families is acquiring and accumulating its property under the community property system. Considering the increasing mobility of American families, it seems certain that this problem will be presented to the trial courts and the reviewing courts of the common law states with increasing frequency. Enactment of this act in all common law states would avoid this antici-

CODE REVISION COMMISSION

128

Senate Judiciary Comte
Re: SB 58
FYI

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ALASKA STATE LEGISLATURE
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JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

December 5, 1978

M E M O R A N D U M

SUBJECT: Uniform Disposition of Community Property Rights at Death Act

TO: Representative Mike Miller, Chairman
Alaska Legislative Council

FROM: John W. Abbott, Chairman
Code Revision Commission

Pursuant to the authority granted in AS 24.20.075(c), the Code Revision Commission has reviewed the proposed Uniform Disposition of Community Property Rights at Death Act. The proposed Act does not create community property in Alaska. It prescribes the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska or property which is traceable to community property where the spouses have not indicated an intention that the community property rights be severed. Many Alaskans resided in a state which has community property rights before moving to Alaska. In order to have specific, uniform provisions for dealing with this property at death the Code Revision Commission recommends that the attached bill be introduced.

JWA/bb/jms

Attachment

Re: Senate Bills Nos. 54, 56 ad 58

Dear Mr. Davis:

This is to acknowledge the receipt of the three above-mentioned bills, along with your letter of February 21, 1979.

I do not take exception to Senate Bills 56 or 58 and I expect over the years there will be considerable more of this type of legislation which will define the rights of the husband and wife either before or after death.

As has been frequently observed, the Uniform Probate Code is premised upon the proposition that there would be one husband, one wife and one set of children and this does not seem to be borne out in the crucible of legal experience and practical living. It is to be expected that the legislature will from time to time recognize this fact, although, I suspect that it was quite obvious at the time the Uniform Probate Code was enacted.

Senate Bill 54, dealing with international wills, may be justified and to the extent that it takes us back to the 1949 Code, I suspect that it is useful. Under the 1949 Code, we used to have a Section 59.2.6, which provided in effect that a last will and testament executed outside of the Territory of Alaska and which complied with the laws of the place where it was executed or with the testator's domicile was deemed to be legally executed and was given the same force and effect as if it was executed in the mode prescribed by the Territory of Alaska provided that the last

will and testament was in writing and subscribed by the testator.

It would appear to me that Senate Bill 54, in part, turns back to that concept and then goes a little bit further and provides for execution by persons under disability of one kind or another, including those who are unable to write, conceivably as a result of physical disability. To the extent that the statute clarifies or enlarges on the right of a person to make a will who is under limited disability, I think the enlargement on our 1949 law is appropriate. The over-kill of Senate Bill 54 appears to me to be in Section 13.11.430 where the lieutenant governor is directed to establish a registry system by which authorized persons may register in a central information center their international wills. This is the type of tripe that bureaucrats love and inexperienced legislators think is the greatest thing since sliced bread. Bureaucrats love registration because it means the setting up of another office and filling a set of file cabinets with paper, which they may guard zealously for a number of years, hopefully, until the time they can attain early retirement through some generous disability clause in their contract of employment with the state or federal government. The legislators probably think that they have performed a noble function in that they have provided a depository for the world travelers who have cast in stone their last will and testatment and should be protected because they have no suitable office, home or safety deposit mechanism where they can take care of their own personal papers. This world guardianship of irresponsible world travelers is in keeping with our national guilt complex which requires us to correct the sins and indiscretions of the human animal.

Any lawyer who has had the experience of managing a wills file over a period of years in a legal office will have discovered a great number of things that they should have known upon thought and reflection rather than being compelled to learn it by a repeat of the experience obtained by others. Some of those items are as follows:

A will is a document that is made based upon the facts of today and might very well be changed tomorrow and has a very good likelihood of being obsolete or changed within a very few years and, therefore, must be considered as a temporary document.

The holder of a will never knows when the maker of that will has changed his mind and has written a new will and, therefore, the longer the older will is on file the more doubtful its validity becomes and the more likely it becomes that it has been superceded by a subsequent document.

Unless there is established some type of uniform vital statistic act which incorporates the filing or the nonfiling of a will in a person's social security number, and we would expect that this would be some years away, there is a grave question as to whether the will will be found upon the death of the testator. If the testator keeps accurate records of where he has filed his wills during his life, it would probably be just as easy for him to keep his will on his person and pass that information on instead of the written memorandum advising as to where his filed or recorded will of the most recent date might be located.

One also learns that once you have a will on file, there is always the possibility that the will is valid even though you know not the address of testator nor whether he is living or dead and, therefore, once you have a will on file, presumably, you would have to keep it on file for the better part of one hundred years or so until you could safely assume that the person had died. You would thus have an accumulation of documents that reasonable people would conclude would have little or no value after ten years from the date of filing, yet, the possibility might exist for twenty-five or fifty years that they were in fact the last will and testament of the maker of the will.

The question then gets to be; why should any federal or state government burden itself with the guardianship of documents that they won't be able to get rid of and will have difficulty in determining whether they are valid or invalid.

My experience in maintaining wills files and attempting to contact persons whose wills have been prepared by lawyers now deceased lead me to believe that those few people who need service, either on an international basis or a local basis, for the filing of their wills are mislead and would, in fact, be better served had they maintained their own documents.

I am taking the liberty of sending a copy of this rambling letter on to Bob Zigler in the senate for what it may be worth.

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3830

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 29, 1979

SUBJECT: Sectional Analysis of SB 58 -- Uniform Disposition Community Property Rights of Death Act (Work Order No.6160)

TO: Senator Robert H. Ziegler, Sr.

FROM: Kenneth M. Rosenstein, Legislative Counsel KMR

This act is intended to prescribe the rights, at death, of a married person who has community property acquired prior to a change in domicile to Alaska, or which is traceable to community property, where the spouses have not indicated an intention that their community rights be severed.

AS 13.41.005 defines the property which is subject to disposition under chapter 41. Subsection 1 covers all personal property acquired by the spouses while domiciled in a community property state to the extent that property would have been treated as community property at the time of acquisition under the laws of that state and in which the spouses have expressed no intent to sever their community rights. Also included would be property which the spouses have agreed to treat as community property. Subsection 2 covers real property in the state (real property located in other states would be treated under the laws of those states) to the extent that it can be traced to a community source.

AS 13.41.010 establishes rebuttable presumptions intended to assist a court in applying the definitions of sec. 5. The presumptions are that (1) property acquired by a married person while domiciled in a community property state is and remains community property, and (2) property acquired by a married person while domiciled in a common law state, title to which included a right of survivorship, is not community property.

AS 13.41.015 requires that one-half of a deceased married person's property to which the chapter applies, (i.e., community property or property traceable to it), becomes the property of the surviving spouse and is not subject to testamentary or intestate disposition. The other half is subject to the applicable manner of disposition. The one-half of the property to which the chapter applies is made not subject to the surviving spouse's elective share.

AS 13.41.020 provides a method for the perfection, by means of a court order, of the title to property passing to the surviving spouse under the provisions of this chapter. It is intended to protect the personal representative from liability for failing to search the decedant's estate for property to which the chapter applies. The personal representative's duty may be reinstated by written demand of the surviving spouse or his successor in interest.

AS 13.41.025 provides a method whereby the personal representative, heir, or devisee may institute an action to perfect the surviving spouse's title to property to which the chapter applies. It is a corrollary to sec. 20.

AS 13.41.030 protects purchasers and lenders taking a security interest, who acquire such interest for value, after the spouse's death, from liability to a person who appears to have title to property to which the chapter applies. It is intended to permit reliance upon apparent title and facilitate both ascertainment of title and disposition of assets where adequate consideration is paid.

AS 13.41.040 makes clear that the rights of spouses to sever their community property interest or to create a form of ownership not subject to this chapter are in no way limited by the chapter.

AS 13.41.045 provides that the chapter does not authorize the testamentary disposition of property which is otherwise prevented from such disposition.

AS 13.41.050 and 13.31.055 provide for uniform construction and application and for citation for short title respectively.

KMR:nem

SB

77

COMMITTEE REPORT

SENATE

1/26/79

FURTHER: Finance

Date: 2-1-79

Mr. President:

The Committee on JUdiciary has had SB 77

relating to compensation for criminal injuries

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

VIOLENT CRIMES COMPENSATION BOARD



Fifth Annual Report

STATE OF ALASKA

STATE OF ALASKA

VIOLENT CRIMES COMPENSATION BOARD

FIFTH ANNUAL REPORT

1978



Mrs. Patricia Moore
Chairman

Russellyn S. Carruth
Member

Dr. Alistair C. Chalmers
Member

Nola K. Capp
Administrator

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
VIOLENT CRIMES COMPENSATION BOARD
POUCH H02A
Juneau, Alaska 99811

THE HONORABLE JAY HAMMOND
GOVERNOR OF THE STATE OF ALASKA

MEMBERS OF THE ALASKA STATE LEGISLATURE

Ladies and Gentlemen:

I have the honor to submit the Fifth Annual Report of the Violent Crimes Compensation Board for the period July 1, 1977 through June 30, 1978. Annual Reports are required under the provisions of Section 18.67.170 of the Laws of Alaska.

Respectfully,

Patricia Moore

(Mrs.) Patricia Moore
Chairman

BOARD MEMBERS

Mrs. Patricia Moore, Chairman
Alistair C. Chalmers, M.D.
Russellyn S. Carruth, Attorney
Nola K. Capp, Administrator

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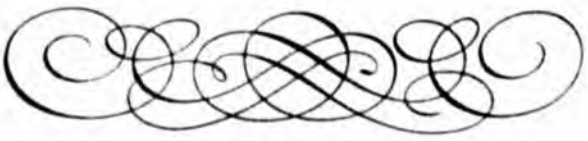
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THE FIFTH ANNUAL REPORT OF THE VIOLENT CRIMES COMPENSATION BOARD

AS 18.67.010 PURPOSE

It is the purpose of this chapter to facilitate and permit the payment of compensation to innocent persons injured, to dependents of persons killed, and to certain other persons who by virtue of their relationship to the victim of a crime incur actual and reasonable expense as a result of certain serious crimes or in attempts to prevent the commission of crime or to apprehend suspected criminals.

GENERAL INFORMATION

Alaska Statute 18.67, establishing a Violent Crimes Compensation Board, was adopted by the State Legislature in 1972. Its purpose was to alleviate the financial hardships caused by crime related medical expenses or loss of income sustained by innocent victims of violent crimes in Alaska. Additionally, it provides for the payment of pecuniary loss to dependents of deceased victims to mitigate the loss of a loved one.

The need for this legislation is reflected in the fact that almost daily there is a report of some act of violence against a person in this State. If the offender is apprehended, the concern for his dignity and rights as an accused are not forgotten and, after

his imprisonment, the concern continues as to his rehabilitation and training programs. The efforts are praiseworthy, however, the problems and needs of the victim are overlooked. To address this need, the Violent Crimes Compensation Board was established.

The Board is appointed by the Governor and consists of three members who are compensated on a per diem basis for meetings only. It is mandatory to have a licensed medical doctor and an attorney on the Board thus providing the expertise in these fields necessary to determine claims.

The original statute provided a maximum payment of $10,000 and other collateral source receipts were required to be deducted from any award the Board determined. Other collateral receipts were defined as life insurance payments, medical and hospital insurance, VA benefits, Social Security, Workmen's Compensation, to mention just a few. Due to this restriction, many needy victims received only a partial award, or, in some cases, no award because they had already received benefits in excess of the $10,000. The Ninth Legislature recognized the inadequacy in this area of the statute and remedied it through an amendment permitting the payment of expenses or losses over and above the amount received from other sources to the maximum allowable under the amendment and exempted consideration of life insurance proceeds.

The amendment further provides for the increase in the maximum award allowable per victim per incident to $25,000; however, in the case of the death of a victim who has numerous eligible dependents, the maximum allowable is $40,000. The Board feels that the increase in the maximums is compatible with today's increased medical expenses, increased earnings and the general increase in the cost of daily living.

The additional compensation for multiple dependents of deceased victims is most commendable. In the majority of claims involving minor dependents, the Board suggests that, if necessary, the award be used for support and maintenance or any medical emergencies that might arise but the primary purpose of the award is for future education and, if not so used, that it be given to each child upon reaching the age of majority.

Modifications included in the amendment:

(a) Attorney fees to be paid in addition to an award rather than deducted from the award;

(b) An increase in the Emergency Award from $500 to $1,500;

(c) Exemption of life insurance proceeds received by the survivors of deceased victims,

(d) Compulsory display of information by hospitals and law enforcement agencies;

(e) Requirement of law enforcement agencies to advise victims of the availability of compensation;

(f) Reimbursement of expenses incurred because of the death of a victim to persons who were responsible for his support;

(g) The Board was given the discretion of making or denying an award without hearing on the claim but allowing the claimant the right to request a hearing if he disagrees with the determination.

PROCESSING OF APPLICATIONS

Upon receipt of a claim, it is necessary to initially determine minimal eligibility. Therefore, compliance with the following statutory requirements must be in evidence within the claim application:

(1) A crime, as defined in Section AS 18.67.100, must have been committed.

(2) The crime must have been reported to proper authorities within the time period designated in Section AS 18.67.130.

(3) The claim must have been filed within the two-year limit set by the law in Section AS 18.67.130.

If the claim does not meet the above standards, it is determined to be ineligible and the claimant is so notified.

When a claim meets these initial tests, it is then necessary to:

(1) acknowledge receipt of the claim and request any additional documentation which the claimant did not attach, such as doctor's reports, hospital reports, and employment information, and advise the claimant that such material must be received prior to any action on the claim;

(2) check with the respective District Attorney's office to determine if proceedings against the offender are imminent and, if so, to determine the advisability of a request to suspend the Violent Crimes Compensation Board investigation until the case is adjudicated, and, if the case has been adjudicated, request copies of the judgement;

(3) obtain a detailed description of the incident from police records to determine if any provocation by the victim is indicated and, if so, to contact any witnesses to the incident for their statements. (If the offender has been prosecuted, a review of the transcript of the trial might be advisable.);

(4) verify the victim's relationship, if any, to the alleged offender;

(5) verify the dependence of the claimant as well as his relationship to the victim, in the case of the death of the victim, to determine eligibility; and, finally, to

(6) consider other collateral sources reported as received by the claimant as a result of the incident, for example, Workmen's Compensation, Social Security, private insurance, etc.

Upon receipt of the requested information, further investigation is necessary to verify:

(1) the employment of the victim and/or the claimant;

(2) the income reported and documentation, if the victim is/was self-employed;

(3) hospital and doctor bills which were paid by insurance and their relevance to the claim;

(4) that a crime as defined in Section AS 18.67.100 is the basis for the claim and the applicant is an innocent victim thereof.

When the Administrator certifies the claim complete, the file is copied and submitted to the Board for their review and recommendations. They, in turn, may:

(a) find the claim cannot be determined due to lack of documentation or information which the Board feels necessary to make a decision.

(b) find the claim eligible under the statute for the award requested and advise a warrant be issued.

(c) find the claim eligible under the statute for a lesser amount than requested and advise that the claimant be so notified indicating that he may request a hearing.

(d) find the claim cannot be determined due to conflicting data therein and advise that a hearing is required prior to a final decision.

(e) find the claim ineligible under the statute and advise that the claimant be so notified indicating that he may request a hearing.

Upon being informed of the Board's actions, the Administrator carries out their request through:

(1) making the additional contacts in order to obtain further documentation.

(2) requesting a warrant, if an award is determined, in the amount specified, or upon the Board's recommendation, if outstanding balances are due a hospital, doctor or other service agency as a result of the incident, requests joint warrants. The Board feels that any services provided the claimant due to the incident upon which the claim is based should be cleared or arrangements made between the claimant and the obligee for a satisfactory settlement.

(3) In the event the award granted is less than was requested by the claimant, a letter is written enclosing the warrant and explaining the Board's decision noting the claimant's right to request a hearing.

(4) If the Board finds conflicting data in a claim or is in doubt about any part of the claim, a hearing is scheduled.

(5) If the claim is found ineligible, the claimant is so notified by letter stating the reason for ineligibility and advising him of the opportunity to request a hearing. The request for a hearing is to be received in the Board office within thirty days.

In order to schedule a hearing, the volunteer hearing officer is contacted to establish a date to his convenience. Arrangements are made and all parties are notified of the date and location of the hearing twenty days prior to the date set. Subpoenas are issued if witness testimony is necessary to establish eligibility or to clear up any contradictions.

Within seven days after the hearing, the Administrator furnishes the hearing officer with a transcript of the hearing and he has a reasonable time (within thirty days) to submit his findings and conclusions to the Board. The Board reviews the hearing officer's report and makes a final decision on the claim.

The Board is subrogated to the cause of action of the applicant against the person responsible for the injury or death of the victim and can also bring an action against the offender for the amount of the damages sustained by the applicant. The Board encourages claimants to institute civil proceedings where, if after investigation, it appears there may be a chance of recovery; however, very few recoveries are made due to the financial position of the offender.

Few claims are received that can be immediately determined as eligible. Many perplexing situations have to be considered by the Board in arriving at their decision; for example: Should a person who has sustained permanent disability through a criminal incident in which he bears some of the responsibility of provocation be considered for an award? Did the actual provocation warrant the final results of permanent disability? These are just a few of the problems encountered by the Board.

It is not difficult to reach an immediate decision as to eligibility on a claim where a widow and her children have lost their main support through an entirely innocent set of circumstances, but the amount of the award to be given poses a problem. All factors must be considered to be certain that the award will be helpful in maintaining an adequate living standard as a supplement to receipts from other sources. The Board must always bear in mind the appropriation available and the cost to the State, but if the program is to fulfill its objectives, compensation must be more than nominal.

The Board soon realized that it would be unfair as well as very costly to reimburse for actual wages lost, therefore, a set of Standards of Compensation was developed. The standards are based on a percentage of the rates established under Workmen's Compensation, applicable to permanent partial,

temporary partial or total disability. Reimbursement of loss of wages is based on a percentage of the average weekly wage for Alaska as established periodically by the Department of Labor. As all awards are required to be paid in a lump sum, there is no opportunity for re-evaluation after the award is granted should circumstances change. Those states with statutes allowing periodic payments can modify their awards as conditions change.

STATISTICAL AND ANALYTICAL INFORMATION

The growth in the awareness of Violent Crimes Compensation is evidence by the number of applications received in this fiscal year. Each inquiry and letter requesting application forms is handled individually and personally answered explaining the program and enclosing a copy of the statute or an application form and a brochure which simply explains the eligibility requirements. In instances wherein the writer has described the incident and other relevant facts surrounding the crime and it is determined from these facts that the claim might be ineligible, if filed, the Administrator replies and cites the particular requirement of the statute which may cause ineligibility but still encourages the writer to send in a claim.

In all cases, a claimant is instructed to attach all the necessary documentation to support his claim, explaining that in so doing it will expedite his claim to an early Board decision.

COST OF ADMINISTRATION

The costs to administer the Act for FY78 were as follows:

Staff salaries (2 persons) and benefits:	$57,315.37
Travel includes Board Member travel and per diem:	5,195.44
Attorney fees, office expenses, equipment, etc.:	11,372.97
Total Costs:	$73,883.78

TYPES OF CRIMES *NUMBER OF CLAIMS FILED						
TYPE OF CRIME	FY73	FY74	FY75	FY76	FY77	FY78
Homicide	8	15	17	14	31	23
ADW (Stabbing)	4	7	6	7	14	5
Armed Robbery	1	1	5	-0-	1	2
ADW (Shooting)	2	17	11	5	5	16
Other Assault	-0-	2	24	34	30	38
Rape	-0-	4	7	5	9	9
No Evidence of a Crime	-0-	4	1	3	3	7

*The foregoing chart merely indicates the trend in crime by the applications filed. It is difficult to compare and relate claims against crimes as claimants have two years to file claims and our statistics are on a fiscal year basis while crime figures are on a calendar year basis.

APPLICATIONS AND AWARDS

	FY73	FY74	FY75	FY76	FY77	FY78
Applications Received	15	50	71	68	93	100
Applications Heard	-0-	37	51	82	81	99
Total Amount Awards Granted	-0-	36,025.60	125,266.20	272,948.29	120,968.07	285,672.63*
Pending Claims At End Of FY	13	38	44	8	28	33

*The Legislature approved a supplemental appropriation of $75,000.00 for awards for FY78. $94,379.30 of the FY78 award money was spent on prior year claims.

ACTUAL NUMBER OF CRIMES REPORTED IN ALASKA (Based on a Calendar Year)					
Type of Crimes	1973	1974	1975	1976	1977
Homicide	33	46	39	41	43
Rape	147	166	177	192	211
Aggravated Assaults	868	1,017	1,176	1,264	1,147
Robbery	221	298	467	486	394

PUBLIC AWARENESS

The Board has stressed publicity of the program through the continued distribution of brochures and posters throughout the state. With the additional requirement placed on law enforcement agencies to alert victims of crimes to the program and the requirement that ' itals display information, it is encouraging that the actual receipt of applications has increased over last year.

The Board will continue to inform the public, setting as their goal statewide awareness of the program.

ACKNOWLEDGEMENTS

In the past year the Board has enjoyed the help and support of many individuals and agencies.

To make a final determination on any claim, the direct help of the law enforcement agency is vital and the Board has had excellent cooperation from the many municipal police departments throughout the state and the Alaska State Troopers. Special recognition is given to the Alaska State Troopers in Anchorage and Fairbanks and the municipal police departments of these two cities as the majority of claims originate in these areas.

Special recognition is also given to the Social Service Directors of Providence Hospital, Alaska Hospital and the Fairbanks Memorial Hospital who have referred victims to the program and have, in many instances, aided the victim in completing the application. They have been most accommodating in responding to requests for medical records, following those requests through the various departments to insure that they are sent to the Board office.

The Department of Law, through the Attorney General's office and the District Attorneys throughout the State, has been most cooperative in informing innocent victims of the program and in responding to the Board's many requests for legal interpretation and basic information necessary to make final determinations on claims.

Further, The Board recognizes the services of the following attorneys who have served as hearing officers on a voluntary basis from July 1, 1977 to June 30, 1978:

Mr. William H. Bittner, Anchorage
Mr. James E. Fisher, Kenai
Mr. Joe M. Huddleston, Anchorage
Ms. Mary A. Nordale, Fairbanks
Mr. Samuel J. Roser, Anchorage
Ms. Sandra K. Saville, Anchorage

Without the help of the above people, the program would be seriously hindered. The Board would be required to hold the hearings as, thus far, the appropriation level of the program does not support the engagement of attorneys on their regular fee basis.

There are numerous other agencies, both State and Federal, as well as individuals who have given their time and support to the Board informing victims of crime and helping to publicize the program. The Board, through this report, expresses their appreciation to them.

CLAIMS



SUMMARY OF DECISIONS

7/1/77 - 6/30/78

All awards are made under Section 18.67.110

(1) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;

(2) loss of earning power as a result of total or partial incapacity of the victim, and reasonable expenses of job retraining of or similar employment-oriented rehabilitative services for the victim;

(3) pecuniary loss to the dependents of the deceased victim; and

(4) any other loss resulting from the personal injury or death of the victim which the board determines to be reasonable.

In the summary of each case, one or more of the above numbers will be used to signify the authority under which the award was granted. Please refer to the above for a full explanation.

Claim No. 76-057

The claimant, a 24 year old female, was working in an all night cafe when a male came in with a drink in his hand. The claimant requested he leave the cafe and, at this point, he slapped her, causing her to hit her head on a metal waitress stand. The claim had been pending for some time awaiting a decision from Workmen's Compensation. It was the decision of the Board to deny the claim on the grounds that (1) the claimant had not exhausted her Workmen's Compensation remedy, (2) she is receiving S.S.I. of $259.00 per month, and (3) the information does not clearly establish the causal relationship between the attack and the disability, nor the extent of the disability. The Board denied the claim under Section 18.67.080(c).

Award: Denied

Claim No. 77-025

The claimant, a 24 year old male, arrived at a car wash and pulled around a car which was in line but had no driver. Apparently, the driver returned and attacked the claimant leaving him with a broken nose, facial lacerations and a bruised eye. The claimant requested compensation for his loss of earnings. He was sent several letters requesting further information but did not respond. The claim was left open for quite some time but, as the claimant did not pursue the claim, the case was closed.

Award: Case Closed

Claim No. 77-026

The claimant, a 26 year old female, was involved in an incident whereby she left her husband in a hotel and walked down the street to get something to eat. She was allegedly assaulted by an unknown assailant and

sustained a fractured jaw. Because of the conflicting evidence, the Board ordered a hearing prior to making a determination. A hearing was held and the Board reviewed the hearing officer's Findings and Conclusions. It was the decision of the Board to concur with the hearing officer' findings and deny the claim under Section 18.67.080(c) on the grounds that there were inconsistencies with the police report which led to lack of conclusive evidence and insufficient proof to show the claimant was an innocent victim of an unprovoked criminal attack.

Award: Denied

Claim No. 77 J30

The claimant, a 26 year old male, was involved in an incident where he entered a bar in the early hours of the morning and, before ordering a drink, went to the restroom. When he was about to leave the restroom, three men rushed in and attacked him. He suffered two knife wounds in the chest and lungs. It was the determination of the Board that he was an innocent victim of a violent crime and it was their decision to award loss of earnings under Section 18.67.110(2).

Award: $1,610.00

Claim No. 77-036

The claimant, a male (unknown age), was allegedly assaulted by four men and received a cut above the nose and a blackened eye. The application was not completed and, after several letters were written with no reply, the case was closed.

Award: Case Closed

Claim No. 77-039

The victim, a 27 year old male, was apparently asleep when an assailant entered and killed him with one shot from a .22 caliber pistol. The claimant is the wife of the victim and requested compensation for herself and five children because of the death of her husband. It was the determination of the Board that the husband was an innocent victim of a violent crime and the claimant was eligible for compensation. The Board granted an award for loss of support under Section 18.67.110(3).

Award: $23,400.00

Claim No. 77-040

The claimant, a 16 year old female, was attacked and raped while walking to a girlfriend's house. As the claimant was a minor, the claim was filed on her behalf by her parent. It was the determination of the Board that the claimant was an innocent victim of a violent crime and it was their decision to grand an award for medical expenses under Section 18.67.110(1).

Award: $336.00

Claim No. 77-045

The claimant, a 42 year old male, alleged that an assailant tried to break into his home. The claimant turned on the outside light and opened the door, at which time, the assailant shot him in the hand. The claimant returned fire, hitting the assailant in the head and killing him. It was the decision of the Board to deny the claim on the grounds that there was lack of information to establish that the claimant was an innocent victim. The claimant failed to appear at a hearing to produce any information which might aid the Board. The claim was denied under Section 18.67.080(c).

Award: Denied

Claim No. 77-046

The victim, a 36 year old male, was shot to death in the home of his wife's uncle by the uncle. The claimant was the wife of the victim and mother of their four children. The Board had previously denied the claim on the grounds that the evidence was conflicting and the Board was not convinced that he was an innocent victim. It particularly appeared that the social history could have provided provocation for the shooting. A hearing was held and the Board reviewed the hearing officer's findings. It was the decision of the Board to concur with the hearing officer's findings and award the claimant and her children loss of support under Section 18.67.110(3) and to pay the out of pocket funeral expenses under Section 18.67.110(1).

Award: $31,516.80

Claim No. 77-048

The victim, a 23 year old male, was found in his trailer dead from a gunshot wound. The claimant is the ex-wife of the victim filing on behalf of their small son. The Board denied the claim on the grounds that the weight of the evidence indicated it was a self inflicted gunshot wound. The attorney for the claimant submitted a copy of the inquest proceedings in lieu of a hearing. It was the Board's decision to reaffirm the denial under Section 18.67.130(a) on the grounds that the weight of the evidence indicated it was a self inflicted gunshot wound.

Award: Denied

Claim No. 77-049

The claimant, a 29 year old male, alleged he was injured when he was struck in the face with a chair by a woman. The police report indicated that the claimant had bumped into an elderly couple who advised him to watch where he was going. The older man and a female got into an argument with the claimant. It was the decision of the Board to deny the claim under Section 18.67.080(c) on the grounds that the victim appeared to be engaged in a fight and there appeared to be provocation on his part. The claimant requested a hearing on his claim but, as he did not pursue his claim, the case was closed.

Award: Denied

Claim No. 77-051

The claimant, a 22 year old male, was involved in an altercation in a bar and was taken to the hospital with head injuries and multiple bruises. It was the decision of the Board to deny the claim under Section 18.67-.080(c) on the grounds that there was an indication of consent to the fight. There was no evidence, even if it were an unprovoked attack, that it is a crime covered under Section 18.67.100.

Award: Denied

Claim No. 77-054

The victim, a 31 year old male, was found dead of a massive skull injury caused by a tremendous blow. The claimant, mother of the victim, requested compensation for funeral expenses. It was the determination of the Board that he was an innocent victim of a violent crime and awarded the claimant funeral expenses under Section 18.67.110(1).

Award: $1,058.50

Claim No. 77-055

The victim, a 24 year old female, was found dead in her apartment of a single gunshot wound to the abdomen. The claimant was the husband of the victim and father of their young daughter. There was a question of whether the gunshot wound was self inflicted or by an unknown assailant. The Board requested more information from the claimant and a copy of the coroner's report. After reviewing the information and transcript, it was the decision of the Board to deny the claim under Section 18.67.130(a) on the grounds that the weight of the evidence indicated that it was a self inflicted gunshot wound.

Award: Denied

Claim No. 77-069

The victim, a 44 year old male, was shot and killed in an incident where two children were throwing snowballs at a man's window when the man came out of the apartment with a gun and threatened to shoot the children. The victim attempted to talk to the man and the man shot and killed the victim. The claimant was the brother of the victim and requested funeral expenses. It was the determination of the Board that the victim was an innocent victim of a violent crime and it was their decision to award the claimant funeral expenses under Section 18.67.110(1).

Award: $1,848.69

Claim No. 77-071

The claimant, a 31 year old male, was involved in an incident wherein a truck stopped in front of him. He got out to see what was the matter and a man got out of the truck and hit him. The victim suffered the loss of

an eye. It was the determination of the Board that the claimant was an innocent victim of a violent crime and it was their decision to award loss of earnings under Section 18.67.110(2).

Award: $8,510.00

Claim No. 77-072

The claimant, a 21 year old female, was a passenger in a vehicle that struck the rear of another vehicle. An argument ensued and the claimant was struck about the face and head. It was the decision of the Board to deny the claim under Section 18.67.080(c) on the grounds that the evidence was controverted and the weight of the evidence does not go in either direction.

Award: Denied

Claim No. 77-073

The claimant, a 22 year old male, alleged that he came around the corner of a house and a man started shooting. He was shot once in the stomach and once in the leg. Further information was needed and several letters were sent to the claimant. All of the letters were returned and, as no contact could be made with the claimant, the case was closed.

Award: Case Closed

Claim No. 77-077

The victim, a 25 year old male, was shot to death by a man who thought the victim had stolen his snowmobile keys. The claimant was the mother of the victim and requested compensation as a dependent. It was the determination of the Board that the claimant was a depen-

dent and entitled to loss of support. It was the decision of the Board to award the claimant for loss of support under Section 18.67.110(3).

Award. $10,000.00

Claim No. 77-078/079

The victim, a 31 year old male, was found dead with a massive injury to the head caused by a tremendous blow. The victim in this claim is the same as in the incident described in Claim No. 77-054. As the claimants are the minor children of the victim and in the custody of their mother, ex-wife of the victim, the claim was filed by the mother on their behalf. It was the determination of the Board that the victim was an innocent victim of a violent crime and it was their decision to award each child $7,500.00 under Section 18.67-.110(3).

Award: $15,000.00

Claim No. 77-081

The claimant, a 24 year old male, took a girl to his apartment. An altercation took place and the girl shot him nine times. It was the decision of the Board to deny the claim under Section 18.67.130(b)(2) and (3) on the grounds that (1) he was engaged in an act of prostitution which is a crime, (2) he was engaged in a sexual encounter, while it might not be considered maintaining a sexual relationship, it was a sexual encounter, and (3) there was some evidence that he was engaged in an attempted rape.

Award: Denied

Cla m No. 77-082

The claimant, a 36 year old male, was involved in an incident wherein a person had antagonized the claimant and a Spanish speaking friend. There was an altercation in which the claimant was attacked and stabbed in the back. It was the decision of the Board that the claimant was an innocent victim of a violent crime and was compensated for loss of earnings during the last fiscal year. The claimant's attorney submitted billings for medical expenses which had not been paid on the original claim as the claimant felt his insurance would cover them. It was the determination of the Board that the billings were legitimate and awarded the claimant the medical expenses under Section 18.67.110(1).

Award: $127.18

Claim No. 77-083

The victim, a 24 year old male, was found lying in a ditch. He had been shot and died at the hospital several weeks later. The claimant, father of the victim, requested funeral expenses and out of pocket expenses. It was the determination of the Board that the victim was an innocent victim of a violent crime and awarded the claimant funeral and out of pocket expenses under Section 18.67.110(1).

Award: $3,472.13

X Claim No. 77-084

The claimant, a 42 year old female, was involved in an incident in which she stated her ex-boyfriend came to her apartment and hit her, breaking her jaw and, in a separate incident, broke her hip. There was conflicting information given by the claimant on different occasions and it was the decision of the Board to deny the

claim on the grounds that there was a relationship between the claimant and the assailant and it was a case of simple assault which does not qualify under Section 18.67.100. The claim was denied under Section 18.67-.130(a) and (b)(2). A hearing was scheduled at the request of the claimant but the claimant did not appear. It was the recommendation of the hearing officer that the claim be dismissed with prejudice. The Board concurred with the hearing officer and reaffirmed their denial.

Award: Denied

Claim No. 77-085

The claimant, a 51 year old male, was assaulted by several individuals while on duty as a Security Guard. It was the determination of the Board that he was an innocent victim of a violent crime but denied an award under Section 18.67.080(c) on the grounds that he received Workmen's Compensation for all of his medical expenses and loss of earnings.

Award: Denied

Claim No. 77-086

The victim, a 26 year old male, was shot to death while visiting friends. The claimant was the wife of the victim. It was the decision of the Board to deny the claim under Section 18.67.080(c) on the grounds that there was some question of provocation and it was not clearly established that the victim was an innocent victim of a violent crime.

Award: Denied

Claim No. 77-087

The claimant, a 61 year old male, was arrested by a village policeman who was intoxicated. The claimant had committed no offense. However, in route to the jail, the policeman shot the claimant four times with a .38 special revolver in the arms, legs and chest. It was the determination of the Board that the claimant was an innocent victim of a violent crime and granted an award for permanent partial disability under Section 18.67-.110(2).

Award: $7,500.00

Claim No. 77-088/089/090

The victim, a 31 year old male, was shot and killed outside an apartment building by a former friend of his. There had apparently been some sort of altercation and the friend felt that the victim had taken unfair advantage of him. The assailant plead nolo contendre and was sentenced to thirty years with fifteen years suspended. As the claimants are the minor children of the victim, the claims were filed on their behalf by their mother. It was the determination of the Board that the victim was an innocent victim of a violent crime and the claimants were eligible for compensation. It was the decision of the Board that, although, the mother is getting collateral sources from Social Security and the Veteran's Administration greater than the support she had received from the father, the children had suffered a loss, including a pecuniary loss as a result of the death of their father. It was the decision of the Board to award $5,000.00 to each of the children to be paid to the conservator in trust for the children. The Board suggested that, if necessary, the money be used for the support and maintenance or any emergency medical needs that might arise but the primary purpose of the award is for future education and, if not so used, that it be given to each child upon reaching the age of 21. This was awarded under Section 18.67.110(3).

Awarded: $15,000.00

Claim No. 77-091

The claimant is the sister of the deceased victim described in Claims No. 77-088/089/090. It was the determination of the Board that the victim was an innocent victim of a violent crime. It was the decision of the Board to award the claimant funeral expenses incurred as a result of the death of her brother under Section 18.67.110(1).

Award: $493.24

Claim No. 78-001

The claimant, a 15 year old female, was on her way to school when she was attacked from behind, dragged into the graveyard and raped. As the claimant was a minor, the claim was filed by her parent on her behalf. It was the determination of the Board that she was an innocent victim of a violent crime. It was the decision of the Board to award medical expenses and other out of pocket expenses which the Board determined reasonable under Section 18.67.110(1).

Award: $683.00

Claim No. 78-002

The claimant, a 16 year old male, was involved in an incident where he was walking home from town when a man he knew slightly joined him. The man forced the boy to walk around for quite awhile, while he hit and abused the boy. The assailant then sexually assaulted the boy and stabbed him in the throat. As the claimant was a minor, the claim was filed on his behalf by his parent. It was the determination of the Board that the claimant was an innocent victim of a violent crime and awarded medical expenses, out of pocket expenses and other expenses the Board determined reasonable under Section 18.67.110(1) and (4).

Award: $2,337.80

Claim No. 78-003

The claimant, a 36 year old male, was involved in an incident where he and several other friends went to a bar. As they were leaving, the claimant stated that several men harrassed him. The claimant and his friends started to leave in a car but the other men stopped the car. The claimant and his friend got out to see what was the matter. The claimant stated he was beat on the head with a club. It was the decision of the Board to deny the claim under Section 18.67.080(c) on the grounds that there was conflicting evidence and there was not conclusive evidence that he was an innocent victim of a violent crime.

Award: Denied

Claim No. 78-004

The claimant, a 45 year old male, went into the restroom at a bar. He was apparently mugged as he was found by the police with serious injuries to his face and eye and his billfold had been stolen. As more information was needed and several letters were written to the claimant with no response, the case was closed.

Award: Case Closed

Claim No. 78-005

The claimant, a 31 year old male, entered a bar looking for a friend. He was assaulted by a man with a knife and, while trying to get away, was stabbed. It was the determination of the Board that the claimant was an innocent victim of a violent crime and it was their decision to award medical expenses and loss of earnings under Section 18.67.110(1) and (2).

Award: $1,044.50

Claim No. 78-006

The claimant, a 46 year old male, stated he was hit by a car from behind while he was driving and the accident left him unable to work for approximately four months because of the injury to his back and legs. The claim was denied under Section 18.67.130(4) as the program does not cover injuries as a result of the operation of a motor vehicle, boat or airplane unless the vehicle was used as a weapon in a deliberate attempt to injure or kill the victim.

Award: Denied

Claim No. 78-007

The claimant, a 21 year old male, alleged that he was struck on the head at a bar by an unknown assailant. All witnesses in the bar stated that it was an accident as the claimant was intoxicated and fell, hitting his head. It was the decision of the Board to deny the claim under Section 18.67.130(a) on the grounds that he was not a victim of a violent crime.

Award: Denied

Claim No. 78-008

The claimant, a 22 year old male, was involved in an incident at a cannery where he and the nightwatchman asked two young males to keep the noise down. Apparently, there was some words and the claimant threw several rocks at the men's skiff. The two men came back with a third man and struck the claimant several times in the back with a piece of pipe. It was the decision of the Board to deny the claim under Section 18.67.080(c) on the grounds that there was conflicting

evidence as to whether there was provocation or actions which contributed to the incident. There was also no medical confirmation of disability although the claimant was requesting disability for a rather extended length of time.

Award: Denied

Claim No. 78-009

The claimant, a 47 year old male, was making a phone call from a pay phone when a man approached him and asked him for a ride to a nearby apartment building. When they had arrived at the apartment, the man asked him to get out of the car and help him find his sister's car. The man then got behind the claimant, struck him behind the left ear, robbed him of his wallet and stole his car. Because of this incident, the claimant has a permanent partial hearing loss. It was the determination of the Board that he was an innocent victim of a violent crime and awarded him permanent partial disability and medical expenses under Section 18.67.110(1) and (2).

Award: $6,030.00

Claim No. 78-010

The claimant, a 17 year old male, was standing outside a drinking establishment with a group of young men when several other young men came out of the bar. One of the men pulled a gun out of the trunk of a car and started shooting. The victim was shot in the buttock. As the claimant was a minor, the claim was filed on his behalf by his guardian. It was the determination of the Board that the claimant was an innocent victim of a violent crime and it was their decision to award loss of earnings under Section 18.67.110(2).

Award: $1,625.40

Claim No. 78-011

The victim, a 25 year old female, was beaten to death with a club. The claimant, husband of the victim, requested compensation for funeral expenses plus one week's loss of earnings. It was the determination of the Board that the victim was an innocent victim of a violent crime and awarded the claimant funeral expenses plus loss of earnings under Section 18.67.110(1) and (2).

Award: $1,363.13

Claim No. 78-012

The claimant, a 34 year old male, was driving cab when two men reportedly robbed the claimant, shot him in the head and shoulder and drove off in his cab. It was the determination of the Board that the claimant was an innocent victim of a violent crime and eligible for compensation. It was their decision to compensate the claimant for loss of earnings and out of pocket expenses under Section 18.67.110(1) and (2).

Award: $2,095.00

Claim No. 78-013

The claimant, a 42 year old female, stated that persons unknown had set a fire resulting in the complete loss of business and personal property. The claim was denied as the program does not cover property damage but relates specifically to personal injury or death of a victim through a violent crime as listed under Section 18.67.010 and 18.67.100.

Award: Denied

Claim No. 78-014

The claimant, a 37 year old male, had been celebrating his birthday and drinking with his brother. On the way home, he and his brother were apparently jumped by several other individuals and the claimant suffered a broken jaw and bruises. The application was not complete and letters were written requesting further information. As the claimant did not respond, the case was closed.

Award: Case Closed

Claim No. 78-015

The claimant, a 36 year old male, went into a bar to pick up his girlfriend who was working in the bar. There was an altercation and the claimant received a gunshot wound to the face. The Board originally denied the claim under Section 18.67.080(c) on the grounds there was provocation/consent. A hearing was held and the Board reviewed the hearing officer's findings. It was the decision of the Board to again deny the claim on the grounds that to some extent there was provocation on the part of the claimant as he had voluntarily injected himself into a potentially violent situation

Award: Denied

Claim No. 78-016

The claimant, a 64 year old male, was sitting in the lobby of an apartment building when an elderly woman started shooting. The claimant was badly injured after being hit in the leg with a bullet. His medical expenses were covered by Medicare. It was the determination of the Board that the claimant was an innocent victim of a violent crime. The Board awarded loss of earnings and the part of the Homemaker service which could not be covered by Medicare, under Section 18.67.110(1) and (2).

Award: $1,946.24

Claim No. 78-017

The claimant, a 22 year old male, was drinking at a local bar. He believed he was attacked from behind, dragged into the street and beaten by an unknown assailant but he had no recollection of the incident. More information was required to complete the claim but, as no contact could be made with the claimant, the case was closed.

Award: Case Closed

Claim No. 78-018

The claimant, a 20 year old female, was sexually assaulted while walking home from her place of employment. It was the determination of the Board that the claimant was an innocent victim of a violent crime and awarded loss of earnings, medical expenses and counselling under Section 18.67.110(1), (2) and (4).

Award: $1,650.00

Claim No. 78-019

The claimant, a 25 year old male, and other members of a motorcycle club entered a bar and there was an altercation between the local workers and the motorcycle club. During the incident, the claimant was shot. It was the decision of the Board to deny the claim under Section 18.67.080(c) on the grounds that there was conflicting evidence, some of which indicated consent and/or provocation.

Award: Denied

Claim No. 78-021

The claimant, a 22 year old female, was in her apartment when her ex-boyfriend came in and, following an argument, started striking her. It was the decision of the Board to deny the claim as there appeared to be a boyfriend/girlfriend relationship and it did not appear to be a crime under Section 18.67.100. This was denied under Section 18.67.130(a) and (b)(2).

Award: Denied

Claim No. 78-022

The victim, a 28 year old female, was awakened by a commotion in front of her home and by a rock which was thrown through the window. She stepped outside the house onto the porch to see what had happened and, while standing there, incurred a fatal gunshot wound to the chest. The claimant is the husband of the victim and requested compensation for himself and their three children based on the death of his wife. It was the determination of the Board that the victim was an innocent victim of a violent crime and the claimant was eligible for compensation. It was the decision of the Board to award out of pocket expenses for the funeral and to award the claimant and the dependents pecuniary loss under Section 18.67.110(1) and (3).

Award: $25,580.00

Claim No. 78-025

The claimant, a 28 year old female, made a derrogatory remark to her girlfriend about the man her girlfriend had just married. The man came up and struck the claimant in the face with a drinking glass. It was the determination of the Board that the claimant was an innocent victim of a violent crime and the Board awarded medical expenses and loss of earnings under Section 18.67.110(1) and (2).

Award: $1,276.23

Claim No. 78-026

The claimant, a 55 year old female, was the night clerk in an apartment building when she was shot in the back of the head and left leg by two assailants. It was the determination of the Board that the claimant was an innocent victim of a violent crime but denied an award under Section 18.67.080(c) on the grounds that collateral sources, namely Workmen's Compensation, covered all of her expenses and her disability as she is unable to work.

Award: Denied

Claim No. 78-027

The victim, a 37 year old male, entered the men's lavatory and was shot for no apparent reason. The victim ran from the lavatory and was shot a second time and killed. The claimant, mother of the victim, requested compensation for funeral expenses. It was the determination of the Board that the victim was an innocent victim of a violent crime and awarded the claimant funeral expenses under Section 18.67.110(1).

Award: $695.50

Claim No. 78-028

The claimant, a 23 year old male, had his apartment broken into by friends, who chased him out of the apartment, struck him about the head and body, causing a severe concussion and other injuries. The Board denied the claim on the grounds there was an indication he was engaged in criminal activities and did not explore any collateral sources. The claimant requested a hearing and the Board reviewed the hearing officer's findings. It was the decision of the Board to again deny the claim under Section 18.67.080(c) on the grounds there was

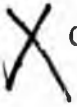
evidence of provocation through the claimant's threats to the assailants during a telephone call. The denial was also based on the grounds that this incident arose in connection with the claimant's own criminal activities. As he voluntarily associated with this group in these activities, he voluntarily subjected himself to a high risk element.

Award: Denied

Claim No. 78-029

The claimant, a 26 year old male, was involved in an altercation in a parking lot. The claimant states that the offender threatened him with a gun, pulled him out of his vehicle and started beating him. It was the decision of the Board to deny the claim under Section 18.67-.080(c) on the grounds that (1) there was evidence of provocation, (2) the claimant changed his story in the course of testifying on different occasions, and (3) the information the Board had was not adequate to convince them that the claimant was an innocent victim of a violent crime compensable under the program.

Award: Denied



Claim No. 78-030

The claimant, a 20 year old male, became involved in an altercation while trying to help his brother, whom he states was being assaulted. When the claimant tried to break up the fight, he was knocked down and kicked repeatedly by several people. It was the decision of the Board to deny the claim under Section 18.67.130(a) on the grounds that the injuries did not result from a crime encompassed under Section 100 of the statute. As it was not one of the crimes covered under the statute, the Board did not reach the question as to whether the claimant was an innocent victim.

Award: Denied

Claim No. 78-031

The victim, a 37 year old male, was murdered in a bar when he entered the men's lavatory and was shot for no apparent reason. The victim ran from the lavatory and was shot a second time and killed. The victim in this claim is the same as in the incident described in Claim No. 78-027. The claimant, father of the victim, requested compensation for funeral expenses. It was the decision of the Board to grant the award under Section 18.67.110(1).

Award: $810.15

Claim No. 78-032

The claimant a 20 year old male, was walking home when he was struck on the back of the head with a large piece of wood and was robbed. The claimant suffered a concussion. It was the determination of the Board that the claimant was an innocent victim of a violent crime and awarded loss of earnings under Section 18.67-.110(2).

Award: $609.00

X Claim No. 78-033

The claimant, a 29 year old female, was involved in an altercation with her roommate. The roommate's boyfriend entered the argument and struck the claimant. It was the decision of the Board to deny the claim under Section 18.67.130(a) on the grounds it was a simple assault and not a crime compensable under Section 18.67.100 of the statute.

Award: Denied

Claim No. 78-035

The claimant, a 52 year old male, was robbed at gunpoint in a parking lot. The claimant tried to grab the man with the gun after handing him his money and, in the process, the gun went off and the claimant was wounded in the shoulder. It was the determination of the Board that the claimant was an innocent victim of a violent crime and awarded medical expenses and loss of earnings under Section 18.67.110(1) and (2). An Emergency Award in the Amount of $1,200.00 had previously been granted.

Award: $1,410.50

Claim No. 78-037

The victim, a 21 year old male, was sitting in the back seat of a car when another young man came up and exchanged angry words with the victim. At that point, the man outside the car stabbed the victim in the chest. The victim died as a result of the wound later the same day. The claimant is the ex-wife of the victim and requested compensation for loss of support for their daughter. It was the decision of the Board that the victim was an innocent victim of a violent crime and awarded the claimant on behalf of the daughter for loss of support under Section 18.67.110(3).

Award: $11,200.00

Claim No. 78-038

The claimant, a 19 year old male, was struck down by a hit and run driver. The application was denied under Section 18.67.130(b)(4) as the program does not cover personal injuries or death as the result of the operation of a motor vehicle unless the vehicle was used as a weapon in a deliberate attempt to injure or kill the victim.

Award: Denied

Claim No. 78-039

The claimant, a 58 year old male, was attacked in his apartment by three men. He was beaten severely and lost all of his lower teeth and some of his upper teeth. It was the decision of the Board to deny the claim on the grounds that there was nothing compensable under the statute. The medicals were paid by the Veteran's Administration and the Board cannot compensate for money stolen and this was all the claimant requested. The claim was denied under Section 18.67.080(c) and the Board did not reach the issue of eligibility as to whether the claimant was an innocent victim.

Award. Denied

Claim No. 78-040

The claimant, a 24 year old male, was standing by his truck while a man was pouring gas into the truck. The man turned and threw the remaining gas on the claimant's legs and then invited him into his trailer for the purpose of changing clothes. The claimant, after waiting about five minutes for the change of clothes, approached the man who stuck a cigarette lighter at his legs and ignited the claimant's pants. The claimant suffered burns on both of his legs. He was transferred out of state for grafting of the non-healing burn wounds on his right foreleg. It was the determination of the Board that he was an innocent victim of a violent crime and awarded medical expenses and loss of earnings under Section 18.67.110(1) and (2). An Emergency Award of $1,500.00 had previously been granted.

Award: $8,624.26

Claim No. 78-041

The claimant, a 49 year old male, who lived and worked at a lodge, had closed the lodge for the night when he heard a knock at the door. He opened the door and saw

three men standing there. As one man had a gun, he quickly slammed the door shut. Four shots were fired through the door and two bullets struck the claimant in the back, one lodging next to his heart. It was the determination of the Board that the claimant was an innocent victim of a violent crime and awarded him loss of earnings and medical expenses under Section 18.67-.110(1) and (2).

Award: $1,277.75

Claim No. 78-042

The claimant, a 21 year old male, states that he was assaulted and threatened with a gun, however, the application was incomplete and gave no dates. After several letters were written and there was no reply, the case was closed.

Award: Case Closed

Claim No. 78-043

The claimant, a 52 year old male, alleged he was assaulted at the airport. His application was denied as there was no evidence of a crime committed, no medical reports or verification as is necessary under Section 18.67.030(b) and Section 18.67.130(a). The same application had been submitted in a prior year and had been denied.

Award: Denied

Claim No. 78-044

The claimant, a 25 year old female, picked up a male hitchhiker. He pulled a small caliber pistol on her, directed her to an area off the road and raped her. It was the determination of the Board that the claimant was an innocent victim of a violent crime and eligible

for compensation. It was the decision of the Board to compensate the claimant for out of pocket expenses, loss of earnings and future counselling under Section 18.67.110(1), (2) and (4).

Award: $2,307.90

Claim No. 78-049

The claimant, a 49 year old male, was attacked in a friend's apartment by three men. He was shot in the buttocks and beaten severely about the head causing lacerations and broken teeth. Several letters were written requesting information and, as there was no reply, the case was closed.

Award: Case Closed

Claim No. 78-050

The claimant, a 49 year old female, suffered injuries to her back and eye when the car in which she was riding was struck by another vehicle. The application was denied under Section 18.67.130(b)(4) as the program does not cover personal injury as a result of the operation of a motor vehicle unless the vehicle was used as a weapon in a deliberate attempt to injure or kill the victim.

Award: Denied

Claim No. 78-053

The victim, a 36 year old male, was shot and killed when a man walked into a market and started shooting with a .357 magnum. The assailant was later convicted of First Degree Murder and sentenced to life in prison.

The claimant, wife of the victim, requested compensation for herself and six children. It was the determination of the Board that the claimant and her children were eligible for compensation under Section 18.67-.110(3) and the Board awarded the maximum amount, $40,000.00, for the dependents of the deceased victim. An Emergency Award of $1,500.00 had previously been granted and was deducted from the final award.

Award: $40,000.00

Claim No. 78-054

The claimant, a 29 year old male, was home with his wife and new baby when the landlord entered the house and accused the claimant of hiding the landlord's girlfriend. The landlord picked up a part from a handyman jack and beat the claimant, breaking the claimant's arm, in addition to giving him severe cuts, bruising the claimant's wife, threatening harm to the baby and destroying several articles of furniture. A hearing was held and the Board, after reviewing the hearing officer's report, made the decision to award out of pocket expenses and loss of earnings under Section 18.67-110(1) and (2).

Award: $1,387.50

Claim No. 78-055

The victim, a 39 year old female, was found by the side of the road over an embankment with numerous injuries. She had already expired and was identified at a later date. The claimant is the mother of the victim and requested compensation for funeral expenses. It was the decision of the Board to deny the claim on the grounds there was lack of evidence that she was an innocent victim of a violent crime. There was evidence

that indicated a hit and run accident. There was the possibility that someone attacked her, however, the evidence was not conclusive to prove she was a victim of a violent crime compensable under this program. The claim was denied under Section 18.67.080(c).

Award: Denied

Claim No. 78-056

The claimant, a 52 year old female, alleged she was assaulted and raped in her apartment. After several letters were written requesting information, the claimant advised that she no longer wished to pursue her claim because of the amount of paperwork and loss of privacy involved.

Award: Case Closed

Claim No. 78-057/058

The victim, a 30 year old male, entered a bar with a friend and sat on a bar stool. There was a slight discussion with the offender regarding the bar stool but nothing of any magnitude. The offender left the bar and returned a while later and killed the victim by shooting him in the head. As the claimants are the two minor children of the victim and in the custody of their mother, the claims were filed on their behalf by their mother. It was the determination of the Board that the victim was an innocent victim of a violent crime and the children were eligible for compensation under Section 18.67.110(3). It was the decision of the Board to award each of the children $10,000.00. The Board suggested that, if necessary, the money be used for the support and maintenance or any emergency medical needs that might arise but that the primary purpose of the award was for future education and, if not so used, that it be given to each child upon reaching the age of maturity.

Award: $20,000.00

Claim No. 78-059

The claimant, an 18 year old female, was confronted by three females whom she knew and a fight ensued. The claimant was struck on the head with a pair of numchucks. It was the decision of the Board to deny the claim under Section 18.67.080(c) on the grounds there was evidence that indicated consent and/or provocation.

Award: Denied

Claim No. 78-062

The claimant, a 21 year old male, received a gunshot wound in the thigh after an argument with the offender. It was the decision of the Board to deny the claim under Section 18.67.080(c) on the grounds that there was not enough evidence to establish that the claimant was an innocent victim of a violent crime and the Board felt there was some indication of provocation/consent on the part of the claimant.

Award: Denied

Claim No. 78-063

The claimant, a 30 year old male, was waiting outside an apartment building when he noticed a fight in progress. He and a friend walked over and broke up the fight. The offender walked away and came back a few minutes later, pulled out a revolver and shot the claimant. The claimant was in the hospital for approximately a month and a half and had not been able to work for three months after the hospitalization. The Board granted an Emergency Award of $1,500.00 and requested more information before making a final determination on the claim. The Emergency Award was granted under Section 18.67.120(1).

Emergency Award: $1,500.00

Claim No. 78-065

The claimant, a 25 year old male, was in his apartment when two men forced their way into the apartment and beat the claimant severely. It was the decision of the Board to deny the claim under Section 18.67.130(a) on the grounds that the injuries did not result from a crime encompassed under Section 18.67.100 of the statute.

Award: Denied

Claim No. 78-066

The claimant, a 22 year old male, was involved in an altercation in a bar and states that he was severely beaten. It was the decision of the Board to deny the claim under Section 18.67.130(a) on the grounds that the injuries did not result from a crime encompassed under Section 18.67.100 of the statute, therefore, the Board did not reach the question as to whether the claimant was an innocent victim.

Award: Denied

Claim No. 78-068

The victim, a 29 year old male, was hitchhiking when he was picked up by a male and female who later beat him brutally and then shot him to death. The claimant is the foster mother of the victim and requested compensation for funeral expenses. It was the determination of the Board that the claimant was eligible for compensation and awarded funeral expenses under Section 18.67.110(1).

Award: $697.00

Claim No. 78-069

The claimant, a 26 year old male, stated he was helping the management of a bar evict a man and he was jumped by three or four other men and received several blows to the head requiring approximately thirty-five stitches. It was the decision of the Board to deny the claim under Section 18.67.130(a) on the grounds that there was no report to the police as is required in the statute.

Award: Denied

Claim No. 78-071

The claimant, a 31 year old male, went to an apartment to pick up a person who needed to go to the Emergency Clinic. He walked into the person's house and was attacked by a guard dog. The police reported that the claimant had leaned down to pet the dog and the dog attacked him. The claimant lost the sight in one eye. The Board ruled that the claim was ineligible under Section 18.67.130(a) on the grounds that it was not a crime encompassed under Section 18.67.100 of the statute.

Award: Denied

Claim No. 78-073

The claimant, a 31 year old male, was critically injured when a man walked into a market where the claimant was working and started shooting with a .357 magnum. Another victim was shot and killed at the same time. The assailant was convicted of First Degree Murder and sentenced to life in prison. It was the decision of the Board to award the claimant the maximum allowable under their Standards of Compensation for vocational retraining and rehabilitation in the amount of

$10,000.00 under Section 18.67.110(2) and out of pocket expenses under Section 18.67.110(1). An Emergency Award of $1,500.00 had previously been granted and was deducted from the final award.

Award: $10,939.34

Claim No. 78-074

The claimant, a 21 year old male, was involved in a scuffle in a bar. The claimant and offender reconciled their differences and left the bar together. A short time later the offender stabbed the claimant in the arm. By the claimant's own statement, he provoked the incident through name calling. The claimant voluntarily injected himself into a situation that was volatile and violent thereby consenting to the incident. It was the decision of the Board to deny the claim under Section 18.67-.080(c) on the grounds that there was provocation and consent.

Award: Denied

Claim No. 78-077

The claimant, a 44 year old male, was involved in an altercation in the parking lot of a bar. The claimant produced a rifle from his vehicle and several men started beating the claimant until he lost consciousness. It was the decision of the Board to deny the claim under Section 18.67.080(c) on the grounds that there was evidence that the claimant's use of the rifle and possible verbal exchange contributed to or provoked the incident. The Board did not feel they had enough evidence to establish the claimant as an innocent victim of a violent crime.

Award: Denied

Claim No. 78-078

The victim, a 9 year old female, was sexually assaulted and brutally murdered. The claimant is the mother of the victim. It was the determination of the Board that the girl was an innocent victim of a violent crime and the claimant was eligible for compensation for out of pocket expenses, funeral expenses and loss of earnings under Section 18.67.110(1), (2) and (4).

Award: $4,954.99

Claim No. 78-080

The claimant, a 28 year old female, was involved in an incident where she was raped, the offender deliberately drove her car in the ditch, proceeded to beat her severely and left her lying in the snow. Injuries included severe frostbite of both hands and feet, which resulted in the loss of multiple falanges of both hands, residual stiffness of both hands and amputation of multiple falanges of one foot. It was the determination of the Board that the claimant was an innocent victim of a violent crime and eligible for compensation. The Board awarded the claimant under Section 18.67.110(2) for permanent partial disability according to the Board's Standards of Compensation.

Award: $7,500.00

Claim No. 78-081

The claimant, a 34 year old male, alleged he suffered emotional injury due to a divorce. The application was denied as it did not meet any of the eligibility requirements under the statute.

Award: Denied

Claim No. 78-082

The claimant, a 13 year old male, requested compensation as his bicycle was stolen from the schoc' bicycle rack. The application was denied as the program does not cover monetary loss or property damage but relates specifically to personal injury or death of the victim through a violent crime under Section 18.67.100.

Award: Denied

Claim No. 78-083

The claimant, a 24 year old female, was riding her motorcycle when she was struck by a car and suffered a compound fracture to her right leg. The application was denied under Section 18.67.130(b)(4) as the program does not cover personal injury or death as a result of the operation of a motor vehicle unless the vehicle was used as a weapon in a deliberate attempt to injure or kill the victim.

Award: Denied

Claim No. 78-084

The claimant, a 39 year old female, stated she received a broken nose in an altercation over an alleged trespassing incident. The feud between the claimant and offender had been ongoing for some time as to whether a road was private or public. It was the decision of the Board to deny the claim on the grounds that (1) it was a simple assault not compensable under the statute as the crimes compensable are listed under Section 18.67.100, (2) the incident was attributable to the claimant's own actions and would be ineligible because of provocation and consent under Section 18.67.080(c), and (3) there was no police report filed which is required under Section 18.67.130(a).

Award: Denied

Claim No. 78-086

The claimant, a 20 year old male, was sitting in a bar when he was confronted by a complete stranger who started beating him with a pool cue. It was discovered that the offender thought the claimant was someone else. It was the determination of the Board that the claimant was an innocent victim of a violent crime and eligible for compensation. The Board awarded medical expenses under Section 18.67.110(1).

Award: $950.00

Claim No. 78-088

The claimant, a 34 year old female, was sexually assaulted. It was the determination of the Board that the claimant was an innocent victim of a violent crime and eligible for compensation. It was the decision of the Board to award out of pocket expenses and future counselling under Section 18.67.110(1) and (4).

Award: $4,904.90

Claim No. 78-093

The victim, a 58 year old male, was visiting in the home of a friend. They were drinking when the friend pulled a gun and shot and killed the victim. The claimant is the wife of the victim. It was the decision of the Board to deny the claim under Section 18.67.080(c) on the grounds that there was inadequate evidence that the victim was an innocent victim of a violent crime.

Award: Denied

MEMORANDUM State of Alaska

TO: Jos Mapranath
Budget Analyst
Department of Public Safety

DATE: January 29, 1979

FILE NO:

TELEPHONE NO:

FROM: Nola K. Capp, Administrator
Violent Crimes Compensation Board

SUBJECT: Senate Bill 77

Based on the historical data at our disposal, we do not feel there will be a fiscal impact over and above the appropriated funds.

The Honorable Robert Ziegler
Alaska State Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

The Violent Crimes Compensation Board, at their November meeting, requested I write asking your assistance with a problem in the statute that has arisen several times during the past year.

Several claims have been submitted where the claimant was kicked and beaten causing severe injuries. The Board has had to deny the claims because Aggravated Assault doesn't qualify as a compensable crime under Section 100 of the statute.

The Board would like your assistance in amending Section 100 of the statute to include Aggravated Assault as a qualifying crime so innocent victims of brutal attacks can be compensated.

The Board does not feel this would have a great fiscal impact on the program as claims of this nature do not request large sums of money so no fiscal note would be required.

Your assistance in this matter and your support of the program is appreciated.

Sincerely,

(Mrs.) Nola K. Capp
Administrator

NKC:mmg

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB77
Title An act relating to compensation for criminal injuries.....
Requested by Legislative Finance Date 1-29-79

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
BRU, Program, or Subprogram(s) Affected Violent Crime Compensation Board/Due Process
(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 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-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)

Aggravated assault claims usually involve no large sum of money and the program manager estimates no fiscal impact at all.

IV. DATE 1/29/79 PREPARED BY Jos Mapranath, Budget Analyst
AGENCY Department of Public Safety
PHONE 465-4368

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

33-001 (Rev. 12/78)

A M E N D M E N T

Offered in the SENATE By the Judiciary Committee

TO: SENATE BILL NO. 77

Page 2, lines 4 - 10:

Delete all material and insert the following:

"(2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses: murder in any degree, manslaughter, criminally negligent homicide, assault in the first or second degree, kidnapping, sexual assault in any degree, sexual abuse of a minor, contributing to the delinquency of a minor under AS 11.51.130(a)(4), threats to do bodily harm, or lewd, indecent, or obscene acts."

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 31, 1979

SUBJECT: Proposed amendment to Senate Bill No. 77

TO: Members of the Senate Judiciary Committee

FROM: James A. McKenzie, Legislative Counsel

The purpose of Senate Bill No. 77 is to allow the Violent Crimes Compensation Board to compensate victims of aggravated assault. This is provided for in sec. 1 by adding aggravated assault to the list of offenses for which compensation may be paid. This list of offenses, however, will be obsolete when the new criminal code takes effect on January 1, 1980. Section 2 of the bill is an attempt to translate the list of offenses, including aggravated assault, into the language of the new criminal code. The difficulty is in translating the terms "threats to do bodily harm" and "lewd, indecent, or obscene acts." (Page 2, lines 22-23). Threats to do bodily harm and lewd, indecent, or obscene acts are not, as such, crimes under the present criminal code or under the new criminal code. I had thought it best to eliminate these general terms and replace them with specific crimes under the new criminal code. Upon reviewing the bill, however, I believe that it is better to leave these terms as they are. There are a number of crimes under the new criminal code which could, in some circumstances, involve threats to do bodily harm or lewd, indecent, or obscene acts. For example, harrassment under AS 11.61.120(a)(4) involves anonymous phone calls, obscene phone calls, and phone calls that threaten physical injury. If this were added to the list, it would read, "harrassment under AS 11.61.120(a)(4) which involves an obscene phone call or a phone call that threatens physical injury."

Use of the general terms in the existing law eliminates the complexity and confusion of listing, with appropriate qualifications, every crime which might come under those terms and helps to insure that new crimes coming under those terms will be covered. The proposed amendment translates the specific crimes listed in sec. 1 into their counterparts under the new criminal code and retains the general terms "threats to do bodily harm" and 'lewd, indecent, or obscene acts."

JAMcK:nem

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

VIOLENT CRIMES COMPENSATION BOARD

POUCH N
JUNEAU, ALASKA 99811

January 30, 1979

The Honorable Robert F. Ziegler, Sr.
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

The Violent Crimes Compensation Board requests passage of SB 77 amending Section 100 of the statute to include Aggravated Assault.

Five claims were submitted in FY78 which had to be denied because the injuries did not result from a crime encompassed under Section 100. While the number does not seem large, the Board believes innocent victims should be compensated for medical expenses and loss of earnings due to injuries received at the hands of assailants.

For example, one claimant was at home when two men forced their way into the apartment and beat and kicked the claimant severely. The claimant incurred fractured nasal bones and multiple abrasions and contusions about the head, neck, arms and upper chest. The claimant's medical expenses were $2,157.00 of which the insurance company paid $1,561.50, leaving the claimant owing a balance of $645.50. Since the claimant was in the hospital eight days and unable to work for a period of three weeks total, loss of earnings were incurred in the amount of $880.55.

As the amount of compensation for each of the claims would be approximately $2,000.00, the Board does not feel there would be a fiscal impact on the program over and above the appropriated funds.

The Crime of Aggravated Assault appears to be within the intent of the original statute therefore the Violent Crimes Compensation Board supports this bill.

As a Board meeting was previously scheduled in Anchorage on February 1, 1979, it is impossible to personally testify at the hearing. However, your thoughtful consideration will be appreciated.

Sincerely,

Nola Capp

(Mrs.) Nola K. Capp
Administrator

NKC:mmg

12-L6LH

SB 77 JUDICIARY BY REQUEST.....RELATING TO COMPENSATION FOR CRIMINAL INJURIES.

THE PURPOSE OF THIS BILL IS TO ADD " AGGRAVATED ASSAULT" TO THE CRIMES WHICH A PERSON MAY APPLY FOR COMPENSATION FROM THE VIOLENT CRIMES COMPENSATION BOARD.

SECTION 1. Adds "aggraveted assault" to the current offenses under which a person may apply for compensation.

SECTIONS 2-6 These sections have been rewritten and amended in order to include the new term for aggravated assault and to conform to internal cross references under the new criminal code, which will be effective January, 1980.

*NOTE: Only section 1 will take effect immediately, all other sections will take effect January 1980.

SR

78

COMMITTEE REPORT

SENATE

1/29/79

FURTHER: None

Date: 2-13-79

Mr. President:

The Committee on JUDICIARY has had SB 78

immunity and protection of witnesses

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the Finance Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Formerly NO Rec

CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM February 7, 1979

SUBJECT: Immunity of Witnesses:
SB 78

TO: Senator Robert Ziegler, Chairman
Judiciary Committee

FROM: Richard A. Bradley, Legislative Counsel RB

You recently requested our comments on the constitutional and policy implications of SB 78. I regret that the press of other business prevented my delivery of these comments before the hearing held on February 1.

The Fifth Amendment to the U.S. Constitution establishes protection to a witness for testimony given which may implicate him criminally; the provision declares:

> No person ... shall be compelled in any criminal case to be a witness against himself.

While the Fifth Amendment applies to cases in both State and Federal court, the Alaska Constitution duplicates almost verbatim the privilege in Section 9 of the Declaration of Rights [Article 1]:

> No person shall be compelled in any criminal proceeding to be a witness against himself.

While courts typically view the privilege to be essentially absolute, if the testimony cannot incriminate the witness, then the privilege cannot be asserted. Thus, if effective immunity has been granted, the witness can properly be ordered to testify and he may linger in prison for contempt so long as he refuses to comply.

But the question that typically, almost uniformly, arises is whether the grant of immunity under a statute [such as SB 78] is coxtensive with the privilege granted by the Fifth Amendment; if it is not, then the privilege granted by the amendment will override any obligation to testify mandated by the statute. This occurs, of course, because

> legislation cannot detract from the privilege afforded by the constitution. Counselman v. Hitchcock, 142 U.S. 547 (1892).

Because the Counselman decision is so significant a statement of the law on immunity, it is useful to examine the case closely.

Counselman was a grain dealer in the Midwest. He transported his grain by train. A grand jury was investigating the question whether he had received rebates from railroads which reduced the amounts he paid for the transfer of his grain below the tariffs published by the railroads. When he was asked these questions, he declined to answer on the grounds that the answers would tend to incriminate him. The grand jury asked the federal court to order him to testify and, relying on a provision of federal law, the court ordered him to testify, and when he refused, held him in contempt and jailed him. On a habeas corpus petition, the circuit court affirmed. The United States Supreme Court reversed.

The statute under which the immunity was allegedly granted provided:

> "That no pleading of a party, nor any discovery or evidence obtained from any party or witness by means of any judicial proceeding in this or any foreign country, shall be given in evidence, or in any manner used against him or his property or estate, in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture: ... [R.S., §860].

The Court's language is significant:

> It remains to consider whether §860 of the Revised Statutes removes the protection of the constitutional provision for Counselman. That section must be construed as declaring that no evidence obtained from a witness by means of a judicial proceeding shall be given in evidence, or in any manner used against him or his property or estate, in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture. It follows, that any evidence that might have been obtained from Counselman by means of his examination before the grand jury could not be given in evidence or used against him or his property, in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture. This, of course, protected him against the use of his testimony against him or his property in any prosecution against him or his property, in any criminal proceeding, in a court of the United States. But it had only that effect. It could not, and would not prevent the use of his testimony to search out other testimony to be used in evidence against him or his property in a criminal proceeding in such court. It could not prevent the obtaining and use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer he could not possibly have been convicted.
>
> The constitutional provision distinctly declares that a person shall not "be compelled in any criminal case to be a witness against himself;" and the protection of §860 is not co-extensive with the constitutional provision. Legislation cannot detract from the privilege afforded by the Constitution. Counselman v. Hitchcock, 142 U.S. 547, 35 L. ed 1110, 1114-1115 [Emphasis added].

The Court then proceeded to examine the decision of other American courts on the Fifth Amendment and similar state constitutional provisions.

After an exhaustive discussion, the Court stated:

> We are clearly of the opinion that no statute which leaves the party or witness subject to prosecution after he answers the criminating questions put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States. Section 860 of the Revised Statutes does not supply a complete protection from all the perils against which the constitutional prohibition was designed to guard, and is not a full substitute for that prohibition. In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates. ***Section 860, moreover, affords no protection against that use of compelled testimony which consists of gaining there from a knowledge of the details of a crime, and of sources of information which may supply other means of convicting the witness or party.
>
> ***
>
> From a consideration of the language of the constitutional provision, and of all the authorities referred to, we are clearly of opinion that the appellant was entitled to refuse, as he did, to answer.

Two subsequent decisions of the United States Supreme Court on collateral points may be noted relatively briefly. In Murphy v. Waterfront Commission, 378 U.S. 52 (1963) a witness had been called before a state investigating commission. He declined to answer questions after a grant of immunity that was viewed as effective to protect him from prosecution under State law. He answered, however, that the answers would tend to incriminate him under Federal law and the State could offer him no immunity as to that prosecution.

Moreover, previous Supreme Court decisions had agreed that (1) the Federal government could compel a witness to give evidence that would incriminate under state law [United States v. Murdoch, 284 U.S. 141]; (2) that a state could force a witness to testify to evidence that would incriminate him under Federal law [Knapp v. Schweitzer, 357 U.S. 371] and (3) that testimony compelled by a state could be introduced into the federal courts [Feldman v. United States, 322 U.S.487]. The condition of the law led the Supreme Court to reconsider its decisions; it rejected all three:

> We hold that the constitutional privilege against self-incrimination protects a state witness against incrimination under federal law as well as under state law and a federal witness against incrimination under state as well as under federal law.

And

> Applying the holding of that case [Counselman] to our holdings today, that the privilege against self-incrimination protects a state witness against federal prosecution *** and that "the same standards must determine whether [a witness'] silence in either a federal or state proceeding is justified, *** we hold the constitutional rule to be that a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him. We conclude, moreover, that in order to implement this constitutional rule and accommodate the interests of the State and Federal Governments in investigating and prosecuting crime, the Federal Government must be prohibited from making any such use of compelled testimony and its fruits. This exclusionary rule, while permitting the States to secure information necessary for effective law enforcement, leaves the witness and the Federal Government in substantially the same position as if the witness had claimed his privilege in the absense of a state grant of immunity.

> It follows that petitioners here may now be compelled to answer the questions propounded to them. Murphy v. Waterfront Commission, 378 U.S. at 79.

And in a footnote to the quote above, the Court noted that "[o]nce a defendant demonstrates that he has testified, under a state grant of immunity, to matters related to a federal prosecution, the federal authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent, legitimate source for the disputed evidence."

The final case examined in some detail is Kastigar v. United States, 406 U.S. 441 (1972). That case examined the question whether the testimony may be compelled in the face of a Fifth Amendment claim by granting immunity from the use of compelled testimony and evidence derived there from (use and derivative use immunity) or whether it is necessary to grant immunity from prosecution for offenses to which compelled testimony relates (transactional immunity).

The Court reviewed the history of efforts to compel testimony. Quite apart from instances where the witness claims some possibility of incrimination resulting from the evidence, the general rule has long been recognized that a person possessing information may be compelled to disclose the information to a court. Accordingly, a Statute of Elizabeth, 5 Eliz. 1, c. 9, §12 (1562) granted courts the power to compel testimony and Lord Bacon observed in 1612 that all subjects owed their King their "knowledge and discovery." And the general common law principle that "the public has the right to every man's evidence" was considered an "indubitable certainty" by 1742. 12 T Hansard, Parliamentary History of England 675, 693 (1812) [cited in Kastigar at 443].

These rights are recognized in the Sixth Amendment requirements that an accused be confronted with witnesses against him and have compulsory process for obtaining witnesses in his favor. And the Judiciary Act of 1789 provided for compulsory attendance of witnesses in federal courts. 1 Stat. 73, 88-89.

The power to compel testimony is qualified by the Fifth Amendment. The Kastigar court described that right as a "privilege [that] reflects a complex of our fundamental values and aspirations, and marks an important advance in the development of our liberty. ***This Court has been zealous to safeguard the values that underlie the privilege.

It continued:

> Immunity statutes ... are not incompatible with these values. Rather, they seek a rational accommodation between the imperatives of the privilege and the legitimate demands of government to compel citizens to testify. The existence of these statutes reflects the importance of testimony, and the fact that many offenses are of such a character that the only persons capable of giving useful testimony are those implicated in the crime. Indeed, their origins were in the context of such offenses, and their primary use has been to investigate such offenses. ***As Mr. Justice Frankfurter observed, speaking for the Court in Ullmann v. United States, 350 U.S. 422 (1956), such statutes have "become part of our constitutional fabric."

The Court noted that every State in the Union has such laws as do Puerto Rico and the District of Columbia. Alaska presently has several such laws that have narrow application. AS 45.55.190(d) is useful in security act violations and AS 06.05.020 is useful in banking act violations. Other such Alaskan immunity laws may exist.

Initially, I note that the Court summarily rejected the suggestion that the Fifth Amendment prevents the enactment of immunity acts; the Court found "no merit" to this contention.

The second question examined is the classic question: is the scope of the immunity granted co-extensive with the scope of the protection afforded by the Amendment? Petitioner urged the Court to conclude that "transactional immunity" is the minimum immunity co-extensive with the privilege. In that suggestion, the petitioners rely on Counselman. The Court agreed that Counselman had in fact established the scope of immunity acts from its decision in 1892 until the adoption of the present Organized Crime Control Act of 1970, Pub. L. 91-452.

> The new statute, which does not "afford [the] absolute immunity against future prosecution" referred to in Counselman, was drafted to meet what Congress judges to be the conceptual basis of Counselman, as elaborated in subsequent decisions of the Court, namely, that immunity from the use of compelled testimony and evidence derived therefrom is coextensive with the scope of the privilege. Kastigar, 406 U.S. 452-453.

The 1970 Act explicitly prescribes the use in any criminal case of "testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information)....."

> We hold that such immunity from use and derivative use is coextensive with the scope of the privilege against self-incrimination, and therefore is sufficient to compel testimony over the claim of the privilege. While a grant of immunity must afford protection commensurate with that afforded by the privilege, it need not be broader. Transactional immunity, which accords full immunity from prosecution for the offense to which the compelled testimony relates, affords the witness considerably broader protection than does the Fifth Amendment privilege. The privilege has never been construed to mean that one who invokes it cannot subsequently be prosecuted. Its sole concern is to afford protection against being "being forced to give testimony leading to the infliction of 'penalties affixed to...criminal acts.'" Immunity from the use of compelled testimony, as well as evidence derived directly and indirectly therefrom, affords this protection. It prohibits the prosecutorial authorities from using the compelled testimony in any respect, and it therefore insures that the testimony cannot lead to the infliction of criminal penalties on the witness. [Emphasis in original].

The Court recognized that the "use and derivative use" doctrine appears to depend upon the good-will of prosecutors. The Court denied that this is so. Citing the footnote in Murphy quoted above.

> Once a defendant demonstrates that he has testified, under a state grant of immunity, to matters related to the federal prosecution, the federal authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent, legitimate source for the disputed evidence. 798 U.S., at 79, n.18.

And the Court stated that this "burden of proof" imposes on the prosecution the "affirmative duty" to indicate that the evidence it proposes to use is derived from a "legitimate source wholly independent of the compelled testimony." The Court noted the analogy to "coerced confessions." A "coerced confession" and its fruits may not be used in a criminal case. Jackson v. Denno, 378 U.S. 368 (1964). A prosecution untainted by the confession may continue.*

With these threshold issues before us, it is now appropriate to examine SB 78.

I. Section 1 of the Act establishes a new article in AS 12.50 relating to the immunity of witnesses; it takes effect with the new criminal code, on January 1, 1980. Section 110 establishes the legislative purpose. Section 120 provides that a prosecutor may, with the concurrence of the attorney general, execute a grant of immunity to a witness on terms mutually agreeable to the prosecutor and the witness.

Section 130 establishes a nonconsensual grant of immunity. It allows for an "in camera, ex parte application" to a superior court judge. In the application, the prosecutor has the burden of demonstrating to the court, "through clear and convincing evidence" that the testimony or evidence sought relates to crimes involving a specified list of felony offenses; the offenses are stated in §130; the prosecutor must also show that the witness has refused to testify or is likely to refuse to testify. Notwithstanding the quoted language, the burden should not be heavy.

The most unusual aspect of §130, and perhaps its most conservative aspect, relates to the provisions of §130(a)(3): the prosecutor is obliged to seal with the court "all evidence, which the state may seek to introduce into a criminal proceeding [subsequently] brought against a witness...compelled to testify under this section, which relates to any transaction about which he is compelled to testify."

Section 130(b) provides that the privilege is not available if a grant of immunity has been issued under §130(a); Sec. 130(c) provides that information responsive to a §130(a) order or "any evidence directly or indirectly derived from the testimony or other evidence or information compelled, may be used" against the witness. The immunity grant does not insulate the witness in any case for perjury. And under the logic and the mandate of §130(a)(3), no prosecution except a perjury prosecution can be filed against a witness except on evidence deposited with the court and sealed before the witness testifies. And additionally, before the superior court issues an order under §130(a) compelling testimony, it shall require the assurance that the witness, his immediate family and household have been offered protection from retribution under new AS 12.50.150.

It will be noted that the subtleties of the requirement of Kastigar that the government maintain its burden of providng that the evidence compelled was not the source of evidence used in a subsequent prosecution against the witness was dissenting Justice Marshall's main concern; he felt that the burden was illusary as a protection to the witness.

It seems that if the prosecutor files complete evidence in his possession prior to his access to compelled testimony, and only that evidence is available in a subsequent prosecution against the witness, then, as to the witness, no evidence compelled from the witness is used against the witness and the policy of the Fifth Amendment is not violated.

On the other hand, if the "evidence" filed under §130(a)(3) is not complete and in such detail as to be itself introduced into the evidence in the trial against the witness, [the term "other evidence or information" is defined in §130(g)] then the reasonable language of §130(a)(3) should require the exclusion of that evidence from the trial.

In any case, §130(a)(3) should be viewed and interpreted as a rule different than the Kastigar rule; §130(a)(3) does not establish a "burden" on the government, as Kastigar does, to show that the source of the evidence is untainted; rather, §130(a)(3) establishes a burden on the prosecution to point to evidence sought to introduced and indicate its location in the sealed deposit. Failing its location, it may not be used.

This provision does appear to be an improvement on the Kastigar rule. While a witness may not know what evidence the prosecutor has against him before compelled evidence is sought, there seems to be reasonable assurance that the evidence he gives will not be used against him.

II. The substantial judicial role in §130 appears to be somewhat unique in immunity statutes. While the Federal statute [18 USC §6003(a)] is designed to grant the District Court minimum discretion to deny a request filed by the U.S. Attorney for immunity [though the courts recognize that they retain discretion: In re Baldinger, 356 F. Supp. 153, 169-170 (C.D. Cal. 1973)], the judges of the superior court would be granted substantial discretion to determine whether the investigation is of a character to qualify for immunity [§130(a)(1)] and to seal the evidence that can be used subsequently against the witness [§130(a)(3)].

III. If the witness persists in his refusal to testify, notwithstanding the safeguards described in I, supra, then the usual sanctions can be imposed for the refusal.

A refusal "without [a] lawful excuse" constitutes civil contempt. The implicit threshold of such a finding is a judicial determination that the immunity granted is coextensive with the privilege. If the court finds that the grant is coextensive, the witness may be imprisoned until he complies or "until it is no longer within his power to comply." [§140(a) This latter phrase apparently is intended to mean that if, for example, the 120-day rule on trials intervenes, then the witness no longer has it "within his power" to comply. The concept could be stated more clearly].

When a person found in civil contempt under §140 o longer has it within his power to comply," he is g y of criminal contempt and is punishable under the penalties of §140(b). An indictment, a separate trial and conviction on the matter would be required.

IV. Secs. 3-6 of the Act constitute temporary law, effective only until §1 can take effect. It largely, if not literally, duplicates the provisions of §1 and, as such, merits no independent analysis.

V. While SB 78 appears to be of broad application, note that it is not of general application. It only applies to a list of crimes listed specifically in §130(a)(1).

VI. Transactional immunity statutes, following Counselman, were heavily criticized [and perhaps, therefore, infrequently used] for granting an "immunity bath." Note: Federal witness immunity problems and practices under 18 USC §§6002-6003, 14 American Crim. L. Rev., 275, 278 (1976). But the author of the note recognizes that "use-derivative use" statutes, such as SB 78 may well "exact the same" price from society, in light of the formidable obstacles facing on any prosecutor who seeks to prosecute an immunized witness. Note, supra, at 275, n.19.

VII. SB 78 follows the example of Federal law [18 USC §§ 6002-6003]: it denies the judiciary any role in initiating a grant of immunity and denies a witness any role in seeking protection for himself.

VIII.SB 78 follows Federal law [18 USC §6003(b)] in requiring the approval of a request by the Attorney General. [But see comment at XII].

IX. The Justice Department has made extensive use of its powers. "More witnesses were immunized under the Witness Immunity Act of 1970 during its first ten months of availability than were immunized in the preceding fifty years,..." Note, supra, at 275, n.18. More than 5,000 requests for immunity were made to the Department of Justice in the 18 months following Kastigar. Id., at 279, n.27.

Yet the number of immunized witnesses who are prosecuted appears few: While the Department of Justice does not maintain statistics on the question, "if any such instances exist, they are rare." Id., at 282, n.46. Apparently this result occurs as much because of cooperation between the Department of Justice and the witness as it does because of the procedural burdens Kastigar imposes on a prosecutor. The burden of the sealed evidence under §130(a)(3) may be expected to have a similar result.

The note indicates that the procedures required by §130(a)(3) have been actually used by the United States with success. Special Watergate Prosecutor Cox used a sealed and dated deposit to preserve evidence against John Dean. Id., p.284, n.54; see also United States v. Henderson, 406 F. Supp. 417 (D. Del. 1975).

X. On the other hand, even if a jurisdiction grants transactional immunity to a witness, he can be prosecuted in a different jurisdiction if the prosecution does not make direct or indirect use of the immunized testimony. United States v. De Diego, 511, F.2d 818, 822 (D.C. Cir. 1975); United States v. First Western State Bank, 491 F.2d 780 (8th Cir.), cert. den., 419 U.S. 825 (1974). The Fifth Amendment does not seem to require a different result.

XI. The Fifth Amendment does not prohibit use of immunized testimony in civil proceedings. Prosecutors concerned that a witness may prefer the penalties of silence to immunized testimony have sought to protect such testimony in specified non-criminal proceedings. For example, testimony was barred against bar owners in license revocation proceedings [United States v. Braasch, 505 F.2d 139, 146 (7th Cir. 1974), Cert. den., 421 U S., 910 (1975) and against lawyers in disbarment proceedings [In re John Daley, cited in 7 Layola U.L.J. (Chic.) 58 (1976)]. The Seventh Circuit noted the "difficult question such orders present" but no decision on appeal reviewing them appears yet in the legal literature. Id., at 288.

XII. One specific policy argument against broad immunity statutes should be noted. These statutes allow prosecutors to immunize politically prominent officials while prosecuting other officials arguably no more culpable. These charges were "widespread" during the trial of former Illinois governor and Federal judge Otto Kerner, who was convicted during the administration of political opponents while "co-conspirators of arguably equal culpability were immunized and compelled to testify against [him]." Id., at 294. The note also notes other examples of the problem that immunity grants create for a perception of "unequal enforcement of the law."

In fairness to the immunity statutes, the end result can occur under other procedures. Consider, for example, selective prosecutious or prosecutious and convictions with the sentencing deferred until after the testimony [no Fifth Amendment rights would be present here after a conviction]; the severity of the sentence could be reviewed as dependent on the effectiveness of the testimony.

XIII. The approval of the Attorney General is of possibly little significance as an effective monitor of the law's use. It will obviously vary with the prejudices and biases of the incumbent officer; its parallel existance in the Federal Act [18 UCS §6003(b)] is viewed by the author of the note as ineffective. See Id., at 294 et seq.

XIV. SB 78 will not vary one rule consistent through all immunity statutes. Though the defense can obtain compelled testimony by way of the Sixth Amendment, if a witness brought into court by the defense refuses to testify because of the Fifth Amendment, the defense is stymied: it cannot grant immunity.

One case, Earl v. United States, 361 F.2d 531, rehn. den, 364 F.2d 666 (D.C. Cir. 1966), cert. den., 388 U.S. 921 (1967), see note, Right of the Criminal Defendent to the Compelled Testimony of Witnesses, 67 Colum. L. Rev. 953 (1967) raised this issue, though ineffectively for that defendant. The prosecution did not use immunized testimony; the defense called a witness who claimed the privilege of the Fifth Amendment: A three judge panel of the D.C. Circuit treated the defense argument as raising arguments by the defense of evidence suppression; the court found no evidence that the prosecution had suppressed evidence. The court suggested, however, that if the government utilized immunized testimony while refusing defense requests for immunity grants for its witnesses, a serious due process question could arise. 361 F.2d 531, 534 n.1.

United States v. Allessio, 528 F.2d 1079 (9th Cir. 1976) raised similar questions. The decision of conviction was upheld because the testimony sought from defense witnesses who claimed the privilege was not viewed as critical but rather cumulative. The court suggested one answer to the question. The court sought to avoid a situation whereby the District Court was involved in complex trial strategies; it similarly sought to avoid conferring on the defense the prerogative of immunizing witnesses. What it suggested, however, was that if a grant of immunity is necessary to ensure a fair trial for the defense, the prosecutor may be faced with the alternative of immunizing defense witnesses or having a conviction reversed. See Note, 14 Am. Crim. L. Rev. at 301.

In conclusion, I can say only that the enactment of SB 78 may present a solution to certain difficulties presently hampering State prosecutors in serious, complex criminal cases. It is, however, absolutely clear that SB 78 will if enacted, merely transfer to the judiciary the resolution of the difficult question whether use and derivative use immunity in Alaska, is coextensive with the privilege against self-incrimination. Other courts have held that statutes similar to SB 78, statutes that may in fact offer less protection to Fifth Amendment rights, have met that test.

If I may assist further, please advise.

Enclosure: Note, Federal Witness Immunity Problems and Practices under 18 USC §§ 6002-6003, 14 Am. Crim., L. Rev., 275

RAB:nem

FOOTNOTE

*Kastigar was written by Justice Powell. I note that Justice Douglas dissented: "[T]he immunity granted is adequate if it operates as a complete pardon for the offense. Brown v. Walker, 161 U.S. at 595. That is the true measure of the Self-Incrimination Clause." Justice Brennan, who did not participate in Kastigar, was quoted by Douglas: "Transactional immunity...provides the individual with an assurance that he is not testifying about matters for which he may be later prosecuted. No question arises about tracing the use or non-use of information gleaned from the witness' compelled testimony. ***Respect for the law is furthered when the individual knows his position and is not left suspicious that a later prosecution was actually the fruit of his compelled testimony. Piccirillo v. New York, 400 U.S. at 568-569 (dissenting). Justice Marshall also dissented. "I do not see how it can suffice merely to put the burden of proof on the government. First, contrary to the Court's assertion, the Court's rule does leave the witness "dependent for the preservation of his rights upon the integrity and good faith of the prosecuting authorities." ***For the information relative to the question of taint is uniquely within the knowledge of the prosecuting authorities. They alone are in a position to trace the chains of information and investigation that lead to the evidence to be used in a criminal prosecution. A witness who suspects that his compelled testimony was used to develop a lead will be hard pressed indeed to ferret out the evidence necessary to prove it. ***[T]hough the Court puts the burden of proof on the government, the government will have no difficulty in meeting its burden by mere assertion if the witness produces no contrary evidence. The good faith of the prosecuting authorities is thus the sole safeguard of the witness' rights. Second, even their good faith is not a sufficient safeguard. For the paths of information through the investigative bureaucracy may well be long and winding, and even a prosecutor acting in the best of faith cannot be certain that somewhere in the depths of his investigative apparatus, often including hundreds of employees, there was not some prohibited use of the compelled testimony. Cf. Giglio v. United States, 405 U.S. 150 (1972); Santobello v. New York, 404 U.S. 257, (1971."

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NOTE

FEDERAL WITNESS IMMUNITY PROBLEMS AND PRACTICES UNDER 18 U.S.C. §§ 6002-6003

[The sovereign's power to compel individuals to testify before courts, grand juries, and other bodies is firmly rooted in Anglo-American jurisprudence, with statutory authority dating as far back as 1562.[1] Yet it is also well-settled that this power is not without limits. The law has long recognized a number of testimonial privileges, the most important of which is the privilege against compulsory self-incrimination, which cannot be violated no matter how great the government's need for the witness' testimony.[2]]

[Statutes authorizing compulsory testimony in the United States have sought to accommodate the Government's legitimate need to compel vital testimony from unwilling sources, without abrogating the guarantee of freedom from compulsory self-incrimination recognized in the fifth amendment.[3] For nearly 200 years, state and federal authorities in this country have attempted to strike this delicate balance by way of legislative enactments commonly known as "witness immunity statutes."[4]]

Congress' most recent legislation in this field, the Witness Immunity Act of 1970,[5] has generated more than its share of problems and criticisms. The purpose of this Note is to examine present-day federal witness immunity practices under 18 U.S.C. §§ 6002–6003—the provisions of

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[1] Statute of Elizabeth, 5 Eliz. 1, c. 9, § 12 (1562). *See generally* 8 WIGMORE, EVIDENCE § 2190 (McNaughton rev. 1961).

[2] *See* 8 WIGMORE, EVIDENCE § 2250 (McNaughton rev. 1961).

[3] "No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V.

[4] For a concise history of early colonial, state and federal immunity legislation, see *Kastigar v. United States*, 406 U.S. 441, 445 n.13 (1972). For a more thorough history, see Comment, *The Federal Witness Immunity Acts in Theory and Practice: Treading the Constitutional Tightrope*, 72 YALE L.J. 1568 (1963).

[5] 18 U.S.C. §§ 6001–6005 (1970). This paper will deal primarily with the provisions of sections 6002 and 6003 which read as follows:

> § 6002. Immunity generally.
>
> Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—
>
> (1) a court or grand jury of the United States,
>
> (2) an agency of the United States, or
>
> (3) either House of Congress, a joint committee of the two Houses, or a committee or a subcommittee of either House, and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against

the Witness Immunity Act of 1970 relevant to the investigation and prosecution of criminal activity—with particular emphasis on the use, abuse and importance of witness immunity grants in the enforcement of federal criminal law.

I. BACKGROUND

A. *Development of the Present Statutory Scheme*

As a practical matter, the only way to compel a witness to testify about self-incriminating matters without violating his fifth amendment privilege is to purge the desired testimony of its self-incriminatory character. Historically, federal witness immunity legislation has sought to accomplish this goal by following one of two basic approaches.

Under the first, the legislature authorizes a grant of "transactional immunity," which will prohibit prosecution of an immunized witness for any crimes disclosed in his compelled testimony.[6] With prosecution of the witness for the otherwise self-incriminating disclosures in his compelled testimony thus barred, the potential fifth amendment violation is circumvented.[7]

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the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

§ 6003. Court and grand jury proceedings.

(a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

(b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, request an order under subsection (a) of this section when in his judgment—

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

Section 6001 contains definitions of terms used in the Act, section 6004 authorizes grants of immunity to witnesses in certain administrative proceedings, and section 6005 authorizes grants of immunity to individuals who testify in Congressional hearings.

[6] *See, e.g.*, the transactional immunity provisions cited in notes 9 & 16 *infra*.

[7] In Brown v. Walker, 161 U.S. 591 (1896), the transactional immunity conferred by the Compulsory Testimony Act of 1893 (quoted in note 16 *infra*) was held constitutionally sufficient to compel a witness to testify over an assertion of the fifth amendment privilege.

Under the second approach, the legislature authorizes a grant of "use immunity," which will prohibit the use of a witness' compelled testimony against him in a subsequent criminal prosecution.[8] Although the witness granted use immunity may still be prosecuted for crimes referred to in his testimony, all prosecutive use of his testimony is barred, and he will be no worse off than he would have been had he been allowed to remain silent. Therefore, no violation of his fifth amendment privilege will have occurred.]

Although Congress' first immunity statute,[9] passed in 1857, made use of the "transactional" approach, within ten years "use immunity" had become the dominant mode. Because a grant of transactional immunity barred prosecution of an immunized witness for crimes disclosed in his testimony, witnesses who testified under grants of transactional immunity received "immunity baths" which rid them of criminal liability for any wrongful acts described in their testimony. This undesirable feature of the 1857 transactional immunity statute led Congress to first adopt the use immunity approach[10] in an 1862 compulsory testimony statue.[11] This statute provided that a witness' compelled testimony could not be used as evidence against the witness in a subsequent criminal proceeding, but permitted prosecution of the "immunized" witness as long as his compelled testimony was not introduced into evidence at his trial.[12]

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[8] *E.g.*, Act of Feb 25, 1868, ch. 13, § 1, 15 Stat. 37, which provided that the witness' testimony "shall not be used as evidence in any criminal prosecution against such witness."

[9] Act of Jan. 24, 1857, ch. 19, § 2, 11 Stat. 155. This statute was enacted to facilitate investigation of charges of vote-buying in the U.S. House of Representatives and provided that: "[N]o person examined and testifying before either House of Congress, or any committee of either House, shall be held to answer criminally in any court of justice, or subject [sic] to any penalty or forfeiture for any fact or act touching which he shall be required to testify. . . ."

[10] The problems arising under Congress' 1857 immunity statute were aggravated by the fact that under its provisions, immunity attached automatically to all witnesses who testified before Congress, and its various committees. Individuals seeking the benefits of an "immunity bath" grossly abused the 1857 statute, leading Congress to experiment with a narrower form of immunity—albeit still in an "automatic" immunity grant statute—in its 1862 immunity legislation. Comment, *Federal Witness Immunity Act: Expanding The Scope of Pre-Testimony Judicial Review*, 5 LOYOLA U.L.J. (CHIC.) 470, 475–76 n.30 (1974). For a discussion of a modern "automatic" immunity statute, see notes 136–146 *infra* and accompanying text.

[11] Act of [illegible]n. 24, 1862, ch. 11, 12 Stat. 333. This statute was also applicable only to Congressional testimony: "[T]he testimony of a witness examined and testifying before either House of Congress, or any committee of either House of Congress, shall not be used as evidence in any criminal proceedings against such witness in any court of justice. . . ."

[12] Comment, *Federal Witness Immunity Act: Expanding the Scope of Pre-Testimony Judicial Review*, 5 LOYOLA U.L.J. (CHIC.) 470, 476 n.30 (1974).

However, in 1892 the United States Supreme Court, ruling on the constitutionality of these statutes, struck down a use immunity provision in *Counselman v. Hitchcock*[13] because it failed to protect the witness from indirect use of his testimony to the same extent as would the fifth amendment privilege.[14] The Court declared that a witness could not be compelled to testify unless granted immunity co-extensive with the scope of the fifth amendment privilege,[15] and found "use immunity" deficient in this regard. In light of *Counselman*, Congress reverted to the transactional immunity approach in all its subsequent immunity legislation[16] until 1970.

Although transactional immunity grants received approval from the Supreme Court,[17] they were infrequently used as a prosecutive tool.[18] Prosecutors apparently felt that the wholesale "immunity baths" afforded witnesses who were granted transactional immunity exacted too dear a price from the criminal justice system, since a transactionally-immunized witness could never be prosecuted for crimes disclosed in his testimony, no matter how numerous or heinous.[19]

This pattern was broken in 1970, when acting on the recommendation of the National Commission on Reform of Federal Criminal Laws,[20]

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[13] 142 U.S. 547 (1892).

[14] *Id.* at 585. *Counselman* involved the 1868 use immunity statute cited in note 8 *supra*.

[15] The Court held that no grant of immunity could replace or supplant the constitutional privilege against self-incrimination "unless it is so broad as to have the same extent in scope and effect." 142 U.S. at 585.

[16] The *Counselman* decision was followed by Congress' speedy enactment of the Compulsory Testimony Act of 1893, ch. 83, 27 Stat. 443, which served as the model for many state as well as federal statutes: "[N]o person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise. . . ."

[17] *See* note 7 *supra*.

[18] More witnesses were immunized under the Witness Immunity Act of 1970 during its first ten months of availability than were immunized in the preceding fifty years, during which transactional immunity grants were the only form of witness immunity grants. NATIONAL LAWYERS GUILD, REPRESENTATION OF WITNESSES BEFORE FEDERAL GRAND JURIES: A MANUAL FOR ATTORNEYS 13–52 (1974). *See also* note 27 *infra*.

[19] But it may be that grants of use-derivative use immunity under 18 U.S.C. § 6002 exact the same "price" from society, in light of the formidable obstacles facing any prosecutor who seeks to prosecute an immunized witness. *See* notes 43–59 *infra* and accompanying text.

[20] As part of its suggested general overhaul of federal criminal law, the National Commission on Reform of Federal Criminal Laws prepared a comprehensive study of federal witness immunity law and submitted a model immunity act to Congress which served as the prototype for 18 U.S.C. §§ 6001–6005. The Commission's principal recommendation was that a grant of use-derivative use immunity would meet the *Counselman* test for constitutional sufficiency—a position later adopted by the U.S. Supreme Court in Kastigar v. United States, 406 U.S. 441 (1972). Report of the National Comm'n

Congress enacted the present immunity statute.[21] The new law repealed all statutory authority for grants of transactional witness immunity[22] and made available a new form of immunity—"use-derivative use immunity." Designed to avoid the "immunity baths" prevalent under transactional immunity grants, the 1970 legislation focused on immunization of testimony rather than on immunization of witnesses, and sought to overcome the constitutional objections raised in *Counselman* by prohibiting indirect exploitation of the compelled testimony ("derivative use") as well as "direct use."[23]

Although there was some cause for apprehension that this more narrowly-drawn protection would be found constitutionally insufficient,[24] in *Kastigar v. United States*[25] the United States Supreme Court held that grants of "use-derivative use immunity" under 18 U.S.C. § 6002 were co-extensive with the scope of the fifth amendment privilege, and were therefore sufficient to compel testimony from witnesses over a claim of that privilege.[26] Since the decision in *Kastigar*, federal prosecutors have made extensive use of immunity grants in investigating all types of criminal activity,[27] and immunity orders have become one of the most valuable resources at the prosecutor's disposal.

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on Reform of Federal Criminal Laws (2d Interim Report, Mar. 19, 1969), in *Hearings on H.R. 11157 and H.R. 12041 Before Subcomm. No. 3 of the House Comm. on the Judiciary*, 91st Cong., 1st Sess., ser. 14 at 36 (1969).

[21] 18 U.S.C. §§ 6001–6005 (1970). *See* note 5 *supra*.

[22] Although the Witness Immunity Act of 1970 repealed all statutory authority for transactional immunity grants, this repeal did not become complete until December 15, 1974, the effective date for the repeal of Act of June 19, 1968, Pub. L. No. 90-351, § 802, 82 Stat. 216, a frequently-used transactional immunity provision. *See* Act of Oct. 15, 1970, Pub. L. No. 91–452, § 227(a), 84 Stat. 930–31.

[23] Reading portions of the witness' immunized testimony to a jury in a criminal prosecution is an example of a "direct use" of immunized testimony. Utilization of information disclosed in immunized testimony as a means of tracking down other undisclosed evidence is an example of a "derivative" or "indirect" use. See notes 56–59 *infra* and accompanying text for a discussion of "non-evidentiary use" of immunized testimony.

[24] In the course of its opinion in *Counselman* the Court had stated:

> We are clearly of the opinion that no statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States. . . . [A] statutory enactment to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates.

142 U.S. at 585–86.

[25] 406 U.S. 441 (1972).

[26] *Id.* at 462.

[27] Over 5,000 requests for immunity were submitted for Department of Justice approval in the eighteen months immediately following the *Kastigar* decision. THE NEW YORKER, Apr. 19, 1976, at 42. *See also* note 18 *supra*.

B. *Procedural Considerations Under the Present Statutory Scheme*

Pursuant to 18 U.S.C. §§ 6002–6003, all grants of statutory witness immunity[28] in criminal matters[29] are effected by District Court order issued upon written request by the United States Attorney for the judicial district in which the proceeding is being held.[30] Since the statute authorizes grants of immunity only when requested by the United States Attorney,[31] the courts are powerless to issue immunity orders on their own motion[32] or at the request of a defendant,[33] leaving the United States Attorney with exclusive power to initiate grants of witness immunity.

[28] For a discussion of non-statutory "limited immunity arrangements," see note 30 *infra*.

[29] Grants of immunity in administrative proceedings and Congressional hearings are authorized by 18 U.S.C. § 6004 and § 6005 respectively.

[30] 18 U.S.C. § 6003(a) (1970).

Although §§ 6002–6003 constitutes the exclusive statutory authority for federal grants of immunity in criminal matters, it should be noted that arrangements roughly analogous to immunity grants may be freely made without resort to the statute. As recognized by the National Commission on Reform of Federal Criminal Laws:

> Immunity is also conferred when . . . the United States Attorney refrains from prosecuting in order to secure a witness' cooperation. . . . This kind of immunity grant seemingly has been held valid, even though not authorized by statute.

2 WORKING PAPERS OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS 1419–20 (1970). The wide discretion in criminal matters possessed by the United States Attorney leaves him free to enter into agreements promising various prosecutorial concessions in exchange for an individual's full co-operation and testimony against his criminal co-conspirators. These concessions may take the form of a promise not to prosecute the individual for his involvement in the particular criminal acts being investigated, in exchange for his testimony. *Id.* Thus in effect a limited form of transactional immunity is available as a prosecutorial tool despite the repeal of all statutory authority for transactional immunity grants.

Arrangements of this type are frequently used when the coercion of a statutory immunity order is deemed unnecessary, because of the bargaining flexibility they give the prosecutor in dealing with a prospective Government witness. *See, e.g.*, United States v. Kurzer, 534 F.2d 511, 513 n.3 (2d Cir. 1976). As is the case with other prosecutorial promises, these agreements tend to be strictly enforced. *See, e.g.*, United States v. Kurzer, *supra.*, United States v. Carter, 454 F.2d 426 (4th Cir.), *cert. denied*, 417 U.S. 933 (1974); *In re* Kelly, 350 F. Supp. 1198 (E.D. Ark. 1972); United States v. Paiva, 294 F. Supp. 742 (D.D.C. 1969). However, problems may arise in asserting one district attorney's promise of freedom from prosecution when prosecution is initiated by a prosecutor in another federal district. *See* United States v. Carter, *supra* (agreements are binding on all federal prosecutors); United States v. Boulier, 359 F. Supp. 165, 170–71 (E.D.N.Y. 1972) United States Attorney in one federal district cannot bind federal prosecutors in other districts).

[31] 18 U.S.C. § 6003(b) (1970). *See* United States v. Allstate Mortgage Corp., 507 F.2d 492, 495 (7th Cir. 1974), *cert. denied*, 421 U.S. 999 (1975).

[32] Thompson v. Garrison, 516 F.2d 986, 988 (4th Cir. 1975), *cert. denied*, ___ U.S. ___ (1976); United States v. Jenkins, 470 F.2d 1061 (9th Cir. 1972), *cert. denied*, 411 U.S. 920 (1973).

[33] United States v. Allstate Mortgage Corp., 507 F.2d 492, 495 (7th Cir. 1974), *cert.*

[Before an immunity application can be granted, it must meet the technical requirements of section 6003(b).[34] The immunity request must have approval from a high-ranking Department of Justice official.[35] It must assert that the testimony sought from the subject of the immunity request "may be necessary to the public interest,"[36] and that the witness to be immunized "has refused or is likely to refuse to testify" on the basis of the fifth amendment privilege.[37] Where a technically sufficient immunity request has been submitted by the United States Attorney, the statute explicitly requires that the district court "shall issue" the requested order.[38]]

[Once the immunity order has been issued, the witness will be called, or recalled[39] to testify. If the witness refuses on fifth amendment grounds to respond to any questions put to him, he will be called before the district court judge who issued the immunity order, and asked to show cause for his refusal to testify.]

[Typically, the court will then issue a second order directing the witness to testify, cautioning him that continued refusal to answer any question on fifth amendment grounds will result in his being cited for contempt. If the witness persists in his refusal to answer any question, he will again be brought before the district court and adjudged in contempt of the court's orders.] Although criminal contempt charges may be brought,[40] civil contempt proceedings pursuant to 28 U.S.C. § 1826[41] are generally insti-

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denied, 421 U.S. 999 (1975); United States v. Ramsey, 503 F.2d 524, 532 (7th Cir. 1974), *cert. denied*, 420 U.S. 932 (1975); Cerda v. United States, 488 F.2d 720, 723 (9th Cir. 1973); United States v. Berrigan, 482 F.2d 171, 190 (3d Cir. 1973); United States v. Jenkins, 470 F.2d 1061, 1063-64 (9th Cir. 1972), *cert. denied*, 411 U.S. 920 (1973). For a discussion of the defense witness immunity problem, see notes 119-135 *infra* and accompanying text.

[34] *See* note 5 *supra*.

[35] The Assistant Attorney General in charge of the Criminal Division of the Department of Justice is specifically empowered to authorize requests for immunity orders under section 6003 by 28 C.F.R. § 0.175 (1970). In order to receive Department of Justice approval, a two-page form ("Request for Immunity Authorization, Form USA-167") must be submitted. This form calls for clerical information and short answers to eleven questions about the relevant investigation or prosecution. See notes 102-105 *infra* and accompanying text for a discussion of the sufficiency of this information.

[36] 18 U.S.C. § 6003(b)(1) (1970). *See* note 5 *supra*.

[37] 18 U.S.C. § 6003(b)(2) (1970). *See* note 5 *supra*.

[38] 18 U.S.C. § 6003(a) (1970). *See* note 5 *supra*.

[39] Section 6003(b)(2) authorizes the United States Attorney to obtain an immunity grant for a witness either before or after he is called upon to testify. *See* note 5 *supra*.

[40] 18 U.S.C. § 3691; *See also* United States v. Wilson, 421 U.S. 309 (1975).

[41] § 1826. Recalcitrant witnesses

> (a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other informa-

tuted, resulting in the witness' confinement until such time as he is willing to comply with the court's order to testify. Confinement under 28 U.S.C. § 1826 may be for as long as eighteen months.[42]

II. SUBSEQUENT PROCEEDINGS AGAINST IMMUNIZED WITNESSES

A. *Barriers to Future Criminal Prosecution*

Section 6002 of Title 18 of the United States Code directs only that testimony compelled from a witness pursuant to an immunity order may not subsequently be used against that witness in any[43] criminal proceeding. Thus, unlike grants of transactional immunity which barred prosecution of immunized witnesses for crimes disclosed in their compelled testimony,[44] section 6002 immunity grants permit the prosecution of immunized witnesses as long as the statutory prohibition on exploitation of compelled testimony is honored.[45]

In practice, however, few immunized witnesses are subsequently prosecuted for crimes described in their immunized testimony.[46] While this may in part reflect a policy of non-prosecution to promote the co-opera-

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tion, including any book, paper, document, record, recording or other material, the Court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of—

(1) the court proceeding, or

(2) the term of the grand jury, including extensions, before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

28 U.S.C. § 1826 (1970).

[42] *Id. See also* United States *ex rel.* Womack v. United States Attorney for the Northern District of Illinois, 348 F. Supp. 1331 (N.D. Ill. 1972), where uncooperative grand jury witnesses were confined for over fourteen months for their failure to testify after having been granted immunity.

[43] Immunized testimony may, however, be used against its declarant in "a prosecution for perjury, giving a false statement, or otherwise failing to comply with the terms of an immunity order." 18 U.S.C. § 6002 (1970).

[44] *See* text accompanying note 6 *supra*.

[45] As the Supreme Court has pointed out, "The statute, like the Fifth Amendment, grants neither pardon nor amnesty. Both the statute and the Fifth Amendment allow the government to prosecute using evidence from legitimate independent sources." Kastigar v. United States, 406 U.S. 441, 461 (1972).

[46] The United States Department of Justice has reported that, while its Immunity Unit does not maintain statistics on the number of times witnesses have been subsequently prosecuted for matters disclosed in their immunized testimony, "if any such instances exist, they are rare." Letter from E. Ross Buckley, Attorney-in-Charge, Freedom of Information Privacy Unit, Criminal Division, Department of Justice, to David J. Sugar, October 1, 1976, on file in the offices of the *American Criminal Law Review*, Washington, D.C.

tion of immunized witnesses, there is little doubt that strict judicial enforcement of the "use" prohibition has done much to deter such prosecutions. In particular, close judicial scrutiny of the Government's case, aimed at detecting two distinct forms of "use," has made successful prosecution of immunized witnesses exceedingly difficult and increasingly rare.

First, to determine if the prosecution has made derivative use of the defendant's immunized testimony in obtaining its evidence, all evidence the Government intends to introduce against the previously immunized witness is judicially examined, usually at a special pre-trial evidentiary hearing.[47] This effort to ferret out "tainted evidence" (i.e., evidence obtained through impermissible derivative use of the defendant's prior immunized testimony), is the judicial response to the rule established in *Kastigar*, that a "[a] person accorded this immunity under 18 U.S.C. § 6002, and subsequently prosecuted . . . need only show that he testified under a grant of immunity in order to shift to the government the heavy burden of proving that all of the evidence it proposes to use was derived from legitimate independent sources."[48]

This procedural shield has proven hard to penetrate, as the prosecution's burden of proof at these so-called "taint hearings" is not satisfied by a mere negation of taint.[49] Rather, the Government must establish by a preponderance[50] that its evidence was derived from legitimate[51] sources

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[47] Although this evidentiary hearing is usually conducted prior to or at trial, appellate courts have remanded cases with instructions to conduct this type of hearing where the possibility of derivative use was not properly investigated at trial. *See, e.g.*, United States v. Seiffert, 463 F.2d 1089 (5th Cir. 1972).

Typically these evidentiary hearings are precipitated by a pre-trial motion to dismiss, charging that all of the Government's evidence has been obtained through derivative use of the defendant's prior immunized testimony. *See, e.g.*, United States v. Catalano, 491 F.2d 268 (2d Cir.), *cert. denied*, 419 U.S. 825 (1974); United States v. McDaniel, 482 F.2d 305 (8th Cir. 1973); United States v. DeDiego, 511 F.2d 818 (D.D.C. 1971).

Where the alleged exploitation is limited to a particular piece of evidence, a motion to suppress the evidence in question will trigger an evidentiary examination into the evidence's source. *See, e.g.*, United States v. First Western State Bank, 491 F.2d 780 (8th Cir.), *cert. denied*, 419 U.S. 827 (1974).

[48] Kastigar v. United States, 406 U.S. 441, 460–61 (1972).

[49] *Id.* at 460.

[50] The "preponderance of the evidence" standard of proof at taint hearings was applied in United States v. Seiffert, 357 F. Supp. 801, 804–05 (S.D. Tex. 1973), *affirmed*, 501 F.2d 974, 982 (5th Cir. 1974). *But see* United States v. Henderson, 406 F. Supp. 417, 423 (D. Del. 1975), where the court for the purposes of argument used "proof beyond a reasonable doubt" as the appropriate standard of proof at taint hearings.

[51] Evidence obtained from sources wholly apart from the immunized testimony will, of course, be suppressed if obtained illegally (*e.g.*, through use of illegal wiretaps or illegal searches and seizures). *See* Gelbard v. United States, 408 U.S. 41 (1972).

wholly independent of the defendant's immunized testimony. Failure to sustain this burden of proof as to any Government evidence will result in its suppression. If the prosecution's case depends largely on evidence found to be tainted, dismissal of the charges may be necessary. Even untainted evidence may be suppressed at a taint hearing if the prosecutor is unable to establish the sources of his evidence to the court's satisfaction.

Because of these difficulties, a prosecutor will rarely proceed knowingly against an individual who has previously testified under an immunity grant, unless special precautions have been taken by his office in anticipation of the inevitable taint problems. To illustrate, if the United States Attorney's files include transcripts containing the immunized testimony of an individual presently under investigation, access to such transcripts should be restricted.[82] The sources of all evidentiary leads should be recorded for later presentation at a taint hearing, and all informants should be questioned as to the sources of their information to prevent unknowing receipt of immunized information.[83] Moreover, when the Government intends to prosecute a prospective immunity grant recipient, all available incriminating evidence and investigatory leads may be sealed in a dated envelope and filed with the court before the witness begins his immunized testimony. When the witness is subsequently prosecuted, the date on which the evidence envelope was filed can be used to establish that the evidence and leads contained therein were obtained prior to—and therefore independent of—the witness' immunized disclosures, effectively negating any claim of taint.[84]

However, in most cases, little or no incriminating evidence is in the Government's possession prior to an immunized witness' compelled disclosures, and such techniques are of little value. Indeed, in many cases the United States Attorney initiates investigation and prosecution of a

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[82] *Cf.* Kastigar v. United States, 406 U.S. 441, 449 (1972) (dissenting opinion); Zimmett, *The Federal Use Immunity Statute Since* Kastigar, 1973/1974 ANNUAL SURVEY OF AMERICAN LAW 343, 356 (N.Y.U. School of Law 1974).

[83] *Cf.* United States v. McDaniel, 482 F.2d 305 (8th Cir. 1973). This is necessary to prevent the tainting of an entire investigation through unintentional receipt of the contents of an individual's immunized testimony by way of a well-meaning courtroom observer who was present when the immunized testimony was given.

[84] This procedure was first used by Special Watergate Prosecutor Archibold Cox to preserve evidence against John Dean. *See* Zimmett, *The Federal Use Immunity Statute Since* Kastigar, 1973/1974 ANNUAL SURVEY OF AMERICAN LAW 343, 359 (N.Y.U. School of Law 1974). It has also been used with success in other cases; *See, e.g.*, United States v. Henderson, 406 F. Supp. 417 (D. Del. 1975).

Despite the courts' reliance on this prophylactic procedure, a careful reading of *Kastigar* suggests that this alone will be insufficient to sustain the Government's burden of proof at a taint hearing unless independent sources for the contents of the sealed envelope are also established. *See* text accompanying notes 47–51 *supra*.

given individual, completely unaware of the fact that the suspect has previously given immunized testimony with regard to the very matters for which he is being prosecuted.[55] In such cases, it is unlikely that the prosecutor will have carefully questioned all would-be informants about the sources of their knowledge, or that he will have investigated the sources of other investigative leads. As a result, an investigation initiated solely on the basis of information which is protected by an undiscovered immunity order should cause all of the Government's evidence to be suppressed because of the tainted investigative lead from which it was derived.

A second deterrent to the prosecution of a previously immunized witness is the possible bar against "non-evidentiary use" of testimony by the prosecutor as background information in preparation for trial. Emphasizing that *Kastigar* prohibited *any* use of immunized testimony,[56] the Eighth Circuit in *United States v. McDaniel*[57] vacated the conviction of a previously immunized witness, where the Assistant United States Attorney trying the case had examined transcripts of the defendant's prior immunized testimony relating to the very matters for which he was being prosecuted. Although the Government was apparently able to establish independent, legitimate sources for the evidence it sought to introduce against the defendant, the court ruled that significant use of the immunized testimony had been made in ways other than in obtaining its evidence.[58] While the courts have not enforced the prohibition on "non-evidentiary use" of immunized testimony as strictly as they have treated instances of derivative evidentiary use,[59] growing concern for the protec-

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[55] *Cf.* United States v. McDaniel, 482 F.2d 305, 307 (8th Cir. 1973). The suspect may have given immunized testimony before a local court or grand jury without the federal prosecutor's knowledge. Similarly, federal prosecutors may not be aware that an individual has given immunized testimony in a Bankruptcy Act proceeding. For a discussion of the Bankruptcy Act immunity provision, see notes 136–146 *infra* and accompanying text.

[56] The *Kastigar* Court characterized section 6002 as providing "a sweeping proscription of any use, direct or indirect, of the compelled testimony and any information derived therefrom." Kastigar v. United States, 406 U.S. 441, 460 (1972).

[57] 482 F.2d 305 (8th Cir. 1973).

[58] *Id.* at 311.

Under facts similar to those in *McDaniel*, the district court in United States v. Dornau, 359 F. Supp. 684 (S.D.N.Y. 1973), granted a motion to dismiss certain charges, holding that a virtually irrebuttable presumption of improper derivative use arises whenever the prosecutor has, prior to trial, read transcripts of the defendant's prior immunized testimony relating to the charged offenses. However, the Second Circuit reversed the lower court's decision, not because of any disagreement with the finding that derivative use of the immunized testimony had been made, but rather because the statute under which the defendant had been immunized only provided immunity from direct use. United States v. Dornau, 491 F.2d 473, 479–80 (2d Cir.), *cert. denied*, 419 U.S. 872 (1974).

[59] The courts have been particularly lax in recognizing "nonevidentiary use" in grand jury situations. In United States v. Henderson, 406 F. Supp. 417, 427 (D. Del. 1975),

tion of immunized witnesses as prosecutors increasingly resort to immunity grants suggests that a prohibition on "non-evidentiary use" might be more strictly enforced in the future.

Taken together, these barriers to successful prosecution of immunized witnesses are formidable. Under a strict reading of *Kastigar*, not only must the prosecution sustain its heavy burden of establishing independent sources for all its evidence, but *all* exposure to immunized information must be avoided regardless of whether or not such contact generates evidence. Clearly, prosecution is not impossible. As a rule, however, a witness once immunized is unlikely to face subsequent prosecution.

B. *Effect Of Local Transactional Immunity Grants On Federal Criminal Proceedings*

Although transactional immunity may no longer be granted within the federal system,[60] state courts are not similarly constrained. Several states have statutes authorizing grants of transactional immunity to witnesses before local courts and grand juries.[61]

The treatment accorded these local transactional immunity grants in the federal courts is governed by constitutional principles. Under *Kastigar*, the fifth amendment privilege against compelled self-incrimination requires only that prosecutive use of testimony compelled from a witness

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the court recognized the "non-evidentiary use" problem, but still refused to find that a defendant's compelled testimony had been "used" against him, even though he was indicted in a grand jury proceeding conducted by a prosecutor who had personally heard the defendant give immunized testimony with regard to the very crimes charged in the indictment. *See also* United States v. Catalano, 491 F.2d 268 (2d Cir.), *cert. denied*, 419 U.S. 825 (1974), where the court affirmed the conviction of a previously immunized grand jury witness, even though the trial prosecutor had heard—indeed elicited—the defendant's prior immunized testimony with regard to crimes for which the defendant was convicted.

[60] *See* note 22 *supra*.

[61] For example, ILL. ANN. STAT., ch. 38, § 106–1 (Smith-Hurd 1970), provides: "In any investigation before a Grand Jury, or trial in any court of record, the court on motion of the State may order that any material witness be released from all liability to be prosecuted or punished on account of any testimony or other evidence he may be required to produce."

Similarly, 3 N.D. CENT. CODE § 16–20–10 (1970) provides:

> No person shall be excused from attending and testifying or producing any books, papers, or other documents before any court upon any investigation, proceeding, or trial for a violation of any of the provisions of section 16-20-08, (illegal campaign contributions) upon the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him. No person shall be prosecuted nor subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding.

be barred. Measured by this standard, local grants or transactional immunity provide state court witnesses with protections in excess of the federal Constitution's requirements. Of course, any state is free to statutorily or constitutionally require that its citizens be accorded broader protections, and the courts of these jurisdictions must honor such grants. However, when the federal Government or a sister state seeks to prosecute the recipient of a broad immunity grant of this type, only the fifth amendment's requirements need be obeyed, and any "extraneous" protections may be disregarded.[62] The federal Government thus guards its right to effectively enforce federal laws unhampered by overly protective gr ts of immunity by any state.[63]

C. *Use Of Immunized Testimony In Non-Criminal Proceedings*

Although testimony elicited under a grant of immunity may not be used against the witness in a subsequent criminal prosecution, that testimony may be freely used against him in any non-criminal proceeding. Because the scope of protection under 18 U.S.C. § 6002 is co-extensive with that under the fifth amendment—which permits a witness to withhold only information which might subject him to *criminal* liability—it follows that grants of immunity under section 6002 afford no protection against the use of the testimony in any proceeding other than a criminal prosecution.[64] Courts have thus held that civil penalties may be based on testimony given pursuant to a grant of section 6002 immunity,[65] and that a witness's immunized testimony may properly be used against him in civil actions[66] and administrative proceedings,[67] whether held before state or federal bodies.

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[62] Murphy v. Waterfront Comm'n, 378 U.S. 52, 79 (1964); United States v. First Western State Bank, 491 F.2d 780, 786 (8th Cir.), *cert. denied*, 419 U.S. 825 (1974).

[63] United States v. Del go, 511 F.2d 818, 822 (D.C. Cir. 1975). This situation is well-illustrated by United States v. First Western State Bank, 491 F.2d 780 (8th Cir.), *cert. denied*, 419 U.S. 825 (1974). In that case, federal criminal defendants sought to have indictments against them quashed because they had previously testified under a North Dakota statutory grant of transactional immunity with regard to the very transactions on which the federal indictment was based. *See* note 61 *supra*. Despite their claims of absolute immunity from prosecution for crimes disclosed in their compelled testimony, the court refused to block the federal prosecution, holding that as long as the federal prosecutors did not make direct or derivative use of the defendants' locally-immunized testimony, federal prosecution of the defendants for the crimes disclosed therein was constitutionally permissible. 491 F.2d at 786.

[64] Patrick v. United States, 524 F.2d 1109, 1120–21 (7th Cir. 1975); United States v. Cappetto, 502 F.2d 1351, 1359 (7th Cir.), *cert. denied*, 420 U.S. 925 (1975).

[65] Patrick v. United States, 524 F.2d 1109, 1118 (7th Cir. 1975).

[66] United States v. Cappetto, 502 F.2d 1351, 1359 (7th Cir.), *cert. denied*, 420 U.S. 925 (1975).

[67] In Segretti v. State Bar, 15 Cal. 3d 878, 544 P.2d 929, 126 Cal. Rptr. 793 (1976),

Prosecutors concerned with the possibility that a key witness, though immunized, will nonetheless remain silent and suffer imprisonment for contempt rather than incur the serious non-criminal consequences which might attend disclosure of his own criminal activities, have in some instances requested immunity orders prohibiting use of a witness's testimony in specified non-criminal proceedings as well as in any criminal prosecution. Although section 6002 in no way authorizes these additional protections, the courts have occasionally granted them. For example, an immunity order which purported to prohibit use of immunized testimony against bar-owners in liquor license revocation proceedings[68] was issued by one court, as was an order to prohibit similar use in disbarment proceedings.[69]

Although the Seventh Circuit has recognized the "difficult question" posed by the issuance of such non-statutory orders,[70] their propriety has not yet been reviewed. And while local administrative bodies have felt compelled to honor their terms, there is no evident reason why the additional protections contained in these supplemented federal immunity grants should not be disregarded, much as the federal courts disregard "constitutionally unnecessary" protections in local immunity grants.[71] As in the case of over-broad state immunity grants, such treatment may be justified as necessary to prevent federal infringement of a sovereign state's power to enforce its own laws.[72]

D. *Threat Of Foreign Prosecution As A Basis For The Underlying Fifth Amendment Claim*

Since *Counselman v. Hitchcock*,[73] the constitutional sufficiency of all immunity grants has turned on the scope of the fifth amendment priv-

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and Maryland State Bar Ass'n, Inc. v. Sugarman, 273 Md. 306, 329 A.2d 1 (1974), *cert. denied*, 420 U.S. 974 (1975), federally-immunized testimony given by lawyers was later used against them in disbarment proceedings. *See also* Napolitano v. Ward, 457 F.2d 279 (7th Cir. 1972), *cert. denied*, 409 U.S. 1037, *reh. denied*, 410 U.S. 947 (1973), where a federal judge's immunized testimony was used against him in a federal proceeding for his removal as a judge.

[68] *See* United States v. Braasch, 505 F.2d 139, 146 (7th Cir. 1974), *cert. denied*, 421 U.S. 910 (1975).

[69] *In re* John Daley, No. 71 GJ 3567 (N.D. Ill., July 18, 1974), *reproduced in* Note, *The Intrusion of Federal Immunity Protection into State Disbarment Proceedings*, 7 LOYOLA U.L.J. (CHIC.) 58 (1976).

[70] United States v. Braasch, 505 F.2d 139, 146 (7th Cir. 1974), *cert. denied*, 421 U.S. 910 (1975).

[71] *See* notes 62-63 *supra* and accompanying text.

[72] *Id.*

[73] 142 U.S. 547 (1892). *See* text accompanying notes 13-15 *supra*.

ilege. Unless at least co-extensive with that privilege, no grant of immunity is adequate to compel an unwilling witness to testify.[74]

While it has been established that the fifth amendment privilege protects testimony which incriminates the witness under either federal or local law,[75] whether or not it affords similar protection to testimony that is incriminating under foreign law is an unresolved question of increasing practical significance.[76] As it relates to witness immunity, the question posed is whether or not a section 6003 use-derivative use immunity order is constitutionally sufficient to compel testimony which might later be used against the witness in a foreign criminal proceeding.

The Supreme Court has offered little guidance in this regard. While noting probable jurisdiction to decide the question in *Zicarelli v. New Jersey Commission of Investigation*,[77] the Court disposed of the issue on other grounds, expressly leaving it unresolved.[78]

In the lower federal courts, witnesses' inability to satisfy the heavy burden of proving real or substantial danger of foreign prosecution[79] has provided an avenue to sidestep the question.[80] Some courts[81] have avoided ruling on the constitutional sufficiency of an immunity grant where danger of foreign prosecution has been adequately shown, by noting that insofar as grand jury testimony is concerned, the cloak of secrecy

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[74] *See* note 15 *supra*.

[75] In Murphy v. Waterfront Comm'n, 378 U.S. 52 (1964), the U.S. Supreme Court held that "the constitutional privilege against self-incrimination protects a state witness against incrimination under federal as well as state law and a federal witness against incrimination under state as well as federal law." *Id.* at 77–78.

[76] Particularly in view of the significant number of narcotics smuggling cases presently before the courts, applicability of the fifth amendment to foreign incrimination in domestic courts has important implications under 18 U.S.C. §§ 6002–6003. For an excellent treatment of this question, see Zimmett, *The Federal Use Immunity Statute Since* Kastigar, 1973/1974 ANNUAL SURVEY OF AMERICAN LAW 343, 349–56 (N.Y.U. School of Law 1974).

[77] 401 U.S. 933, 934 (1972).

[78] 406 U.S. 472 (1972). Resolution of the foreign self-incrimination question was deemed unnecessary because the questions asked of the witness were not viewed by the Court as calling for answers that gave the witness a reasonable basis for fearing foreign prosecution. 406 U.S. at 478–81.

[79] In *Zicarelli*, the Court announced that no problem of foreign self-incrimination would be raised unless the witness has a "real and substantial fear of foreign prosecution" as opposed to a "remote or speculative" fear. *Id.* at 478.

[80] *In re* Quinn, 525 F.2d 222, 223 (1st Cir. 1975); United States v. Doe, 361 F. Supp. 226, 227 (E.D. Pa. 1973), *aff'd*, 485 F.2d 682 (3d Cir.), *cert. denied*, 415 U.S. 989 (1974). *See also in re* Morahan, 359 F. Supp. 858, 874 (N.D. Tex), *aff'd. sub nom. In re* Tierney, 465 F.2d 806 (5th Cir. 1972), *cert. denied*, 410 U.S. 914 (1973).

[81] *In re* Weir, 495 F.2d 879, 881 (9th Cir.), *cert. denied*, 419 U.S. 1038 (1974); *In re* Tierney, 465 F.2d 806, 811 (5th Cir. 1972), *cert. denied*, 410 U.S. 914 (1973).

imposed by Rule 6(e) of the *Federal Rules of Criminal Procedure*[82] will supposedly bar disclosure of the witness' testimony to foreign authorities.[83]

The only two cases which have squarely confronted this problem reached contrary results. In *In re Parker*,[84] decided prior to both *Kastigar* and *Zicarelli*, the Tenth Circuit found the fifth amendment's protections inapplicable to foreign self-incrimination. Without direct citation of authority the court concluded that "the fifth amendment was intended to protect against self-incrimination for crimes committed against the United States and the several states, but need not and should not be interpreted as applying to acts made criminal by the laws of a foreign nation."[85] Thus, the court ruled that a witness in danger of foreign pros-

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[82] FED. R. CRIM. P. 6(e):

> Secrecy of Proceedings and Disclosure. Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the government for use in the performance of their duties. Otherwise a juror, attorney, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of a defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No obligation of secrecy may be imposed upon any person except in accordance with this rule. . . .

[83] In rejecting this solution, the district court in *In re* Cardassi, 351 F. Supp. 1080 (D. Conn. 1972), observed that

> [The Rule 6(e) argument] rests on the assumption that all law enforcement officials with access to grand jury minutes can be relied upon to abide by the disclosure requirements of Rule 6(e). While there is no reason to believe that any enforcement officials presently involved in this grand jury proceeding would not honor the rule, the constitutional protection of the witness must rest on more than faith. If in fact a law enforcement official wanted to make the witness' answers known to foreign prosecuting officials, it is unlikely that he would apply to this Court for disclosure of the grand jury minutes. He would simply send the transcript. It may well be that such conduct would render the official subject to disciplinary powers of this Court, if the conduct and the identity of the person responsible ever became known, but such an after-the-fact sanction would provide no protection for the witness.
>
> The inability of American courts to use Rule 6(e) as an effective protection for the witness against foreign use of her compelled testimony is highlighted by comparison with the ability the courts have to enforce within this country the derivative use prohibition of 18 U.S.C. § 6002.

Id. at 1082.

Of course, Rule 6(e) will afford absolutely no protection to testimony given in open court by witnesses fearing foreign prosecution.

[84] 411 F.2d 1067 (10th Cir. 1969), *vacated as moot sub nom.* Parker v. United States, 397 U.S. 96 (1970)

[85] *Id.* at 1070.

ecution could not properly refuse to testify on fifth amendment grounds once granted domestic immunity.[86]

The opposite view was taken by the federal district court for Connecticut in *In re Cardassi*.[87] There a grand jury witness had been granted section 6002 immunity, but had persisted in refusing to answer questions concerning her alleged dealings in marijuana in Mexico on the grounds that her answers to these questions could later be used against her in a criminal prosecution in Mexico. Extending the Supreme Court's rationale in *Murphy v. Waterfront Commission*,[88] the district court held that a witness could not be ordered to answer any question which could lead to foreign prosecution, since the fifth amendment privilege "clearly" affords protection from foreign incrimination.[89]

If *Cardassi* is correct in its reasoning, and the fifth amendment privilege does extend to witnesses threatened with foreign prosecution, then it follows that a prosecutor's request for immunity in such a case must be denied. Because the domestic court would be powerless to enforce its sanction against the use of compelled testimony in the foreign forum, any grant would fall short of the mandate that immunity be co-extensive with the protections of the privilege.

Denial of a request for a section 6002 immunity order deemed constitutionally inadequate to protect the witness' fifth amendment privilege is not without precedent. In *In re Baldinger*,[90] the court flatly refused to issue an immunity order because it felt that the protection afforded by a section 6002 immunity grant was not fully co-extensive with the scope of the witness' fifth amendment privilege.[91] Although the *Baldinger* court erred in holding that a section 6002 immunity grant would be insufficient

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[86] *Id.*

[87] 351 F. Supp. 1080 (D. Conn. 1972).

[88] 378 U.S. 52 (1964). In *Murphy*, the Court held that the fifth amendment privilege can properly be asserted in the courts of one sovereign to guard against prosecution in the courts of another sovereign. While the two sovereigns involved in *Murphy* were a state government and the U.S. federal government, the *Cardassi* court extended the same principle to the foreign sovereign-domestic sovereign situation.

[89] 351 F. Supp. at 1086.

[90] 356 F. Supp. 153 (C.D. Cal. 1973).

[91] The court ruled that a grant of section 6002 immunity could not be co-extensive with the fifth amendment privilege because the statute appeared to leave the witness open to prosecution for having previously made false statements (the falsity of which would be disclosed in the witness' compelled testimony) to the F.B.I. *Id.* at 171. This interpretation of the statute's perjury/false statement exception was erroneous, since the exception refers only to false statements made after immunity has attached. To the extent that the *Baldinger* case suggests that section 6002 is constitutionally insufficient because of the perjury/false statement exception, *Baldinger* was overruled *sub silentio* in United States v. Alter, 482 F.2d 1016, 1028 (9th Cir. 1973). *See also* United States v. Watkins, 505 F.2d 545, 546 (7th Cir. 1974).

on the facts of that case, the court's analysis of its duty to protect the constitutional rights of citizens in immunity matters is cogent. Both on constitutional grounds and as a matter of statutory construction of section 6003, the court rejected the proposition that it was powerless to deny immunity orders affording constitutionally inadequate protections to a given witness:

> Congress cannot compel the courts to issue orders which violate the Constitutional privileges of this nation's citizens. . . . The court cannot engage in any action which deprives a party before it of his Constitutional rights. It has long been recognized that it is a proper function of courts to act as a check on improper use of both executive and legislative investigatory powers. . . . [T]he court concludes that it is not relegated to a ministerial role, but that it can, and hereby does exercise discretion to decline to issue the immunity order in the face of a violation of the witness' Constitutional rights.[92]

It should be noted that a blanket denial of immunity would make it impossible to compel testimony relating to matters other than activities for which the witness might be prosecuted abroad. However, this undesirable side-effect could be avoided by granting the request for immunity while specifying that the witness retains the right to refuse to answer any question which might incriminate him in a foreign jurisdiction. If the witness refuses to answer any question, the United States Attorney will as usual seek an order specifically directing the witness to answer upon threat of contempt.[93] If the question is directed to matters wholly unrelated to the witness' foreign activities, the court should issue an enforcing order. But if the question calls for a response that might be incriminating under foreign law, the court should not enforce its order to testify. In this way, testimony adequately protected by the immunity order may still be compelled, without violating the witness' possible fifth amendment privilege against foreign self-incrimination.[94]

III. DEFICIENCIES UNDER THE PRESENT STATUTORY SCHEME

A. *Prosecutorial Control and the Potential for Abuse*

1. *Ineffective Judicial Restraints.* One of the most frequently voiced criticisms of 18 U.S.C. §§ 6002-6003 focuses on the seemingly limitless powers vested in the United States Attorney in witness immunity matters. The prosecutor has exclusive statutory authority to initiate grants of im-

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[92] 356 F. Supp. at 169–70.

[93] For a discussion of immunity grant procedures, see notes 28–42 *supra* and accompanying text.

[94] This procedure was employed in *In re* Cardassi, 351 F. Supp. 1080 (D. Conn. 1972).

munity under section 6003,[95] and issuance, under present judicial practice, is virtually automatic upon receipt by the courts of an immunity application which conforms to section 6003's pleading requirements.[96] Judges have felt compelled to adopt this course in light of the unqualified directive in § 6003(a), that the court "shall issue" an immunity order upon receipt of a technically sufficient written request from the United States Attorney. Relying on § 6003(a), courts have repeatedy held that they are wholly without discretion to deny technically adequate immunity requests,[97] and have limited their inquiries accordingly.[98]

This policy, evident in the statute and implemented in the courts, has two justifications. First, only the prosecutor can intelligently weigh the necessity of compelling a witness to testify under a grant of immunity, against the resulting impediments to subsequent prosecution of the witness for crimes he may disclose, and his judgment should not be subject to judicial second-guessing. Second, judicial involvement in matters within the discretion of the Executive Branch might give rise to separation of powers problems.[99]

This reliance on the prosecutor's *bona fides* invites prosecutorial abuse. The most blatant way in which the court's co-operation might be exploited by a corrupt prosecutor would be to seek grants of immunity for the testimony of friends or influential individuals involved in criminal activity.[100] Conversely, should the United States Attorney decide to "get" an individual suspected of criminal involvement with others, he would be free to exercise his immunity powers with respect to affiliates to achieve

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[95] 18 U.S.C. § 6003(a) (1970).

[96] United States v. Leyva, 513 F.2d 774 (5th Cir. 1975); *In re* Grand Jury Investigation, 486 F.2d 1013 (3d Cir. 1973), *cert. denied sub nom.* Testa v. United States, 417 U.S. 919 (1974).

[97] See cases cited in note 96 *supra*.

[98] Thompson v. Garrison, 516 F.2d 986 (4th Cir. 1975), *cert. denied*, ___ U.S. ___ (1976); Urasaki v. United States District Court, 504 F.2d 513 (9th Cir. 1974); *In re* Kilgo, 484 F.2d 1215 (4th Cir. 1973).

[99] *See generally* Dixon, *The Doctrine of Separation of Powers and Federal Immunity Statutes*, 23 GEO. WASH. L. REV. 501, 627 (1955).

[100] A recently concluded bribery trial in the Northern District of Illinois, United States v. Craig, No. 74 CR 879 (N.D. Ill., June 25, 1976), has raised charges that a form of cronyism resulted in grants of immunity to a wealthy and politically influential corporate president and eight of his officers who were involved in an alleged scheme to bribe Illinois state legislators for the passage of favorable legislation. One of the defense counsel first raised the issue in an opening statement that characterized the immunized corporation president as an "elitist" whose immunity was secured through the intervention of influential law firms on his behalf with the United States Attorney. Subsequently, an obviously upset juror passed a note to the trial judge, asking if the prosecution intended to explain the circumstances surrounding the immunity grants. Chicago Tribune, April 30, 1976, § 1, at 1, col. 3. Subsequently, Samuel K. Skinner, U.S. Attorney for the Northern District of Illinois, personally took the stand at trial to explain his office's immunity practices in that case.

this end. The target suspect might be singled out on the basis of race, sex, political affiliation, or any other improper considerations. Charges of this very tenor have recently surfaced with regard to official corruption prosecutions, where it has been claimed that politically prominent individuals were singled out for prosecution, while co-conspirators of arguably equal culpability were immunized and compelled to testify against the target.[101]

2. *Ineffective Administrative Restraints.* The statutory requirement that all immunity requests have prior authorization from the Department of Justice[102] is largely ineffective against these abuses. Although the Department of Justice requires the United States Attorney to answer eleven general questions about the circumstances surrounding his decision to seek immunity,[103] none calls for the kind of detailed information necessary to uncover improperly motivated immunity requests. Moreover, the Department of Justice does not verify the accuracy of any of the information submitted and authorizes virtually all of the immunity requests submitted for its approval.[104] This necessarily perfunctory administrative review[105] is not a substitute for effective judicial supervision.

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[101] Charges of this tenor were particularly widespread during the trial of former federal judge and Illinois governor Otto Kerner, who was convicted for his part in a race track scandal on the strength of testimony from individuals involved in the scheme who were granted immunity and produced as Government witnesses.

[102] 18 U.S.C. § 6003(b) (1970).

[103] Requests for Department of Justice immunity authorization are made by completing a two-page questionnaire ("Request for Immunity Authorization," Form USA-167). Part A of this form calls for clerical information such as the witness' name, address, birthplace, birthdate and the name of the case for which his testimony is being sought.

Part B of this form calls for brief answers to the following questions:

1. Relative importance of the witness in criminal activity in the area.
2. Pertinent Federal and local offices have been notified. (Check box)
3. Are any current Federal or local charges pending against witness? If so, give details.
4. If witness is presently incarcerated, state circumstances.
5. Give brief resume of background of case or proceeding.
6. Witness' part in the case or matter under investigation.
7. Summary of the witness' anticipated testimony or information.
8. How testimony or information sought may be necessary to the public interest.
9. Why witness is likely to invoke Fifth Amendment privilege.
10. Is witness likely to testify or produce information if immunity is granted?
11. What Federal or state offenses on the part of the witness may be disclosed if the witness testifies under a grant of immunity?

[104] During a three and one-half month period in 1973, the Department of Justice authorized federal prosecutors to obtain immunity grants in all but seven of 785 instances in which they were requested. NEWSWEEK, Oct. 29, 1973, at 68. The United States Department of Justice has reported that from December 14, 1970 to June 30, 1976, formal immunity requests for 170 witnesses were denied, whereas 15,505 witnesses were immunized between July 1, 1971 and June 30, 1976. Letter from E. Ross Buckley, *supra* note 46.

[105] In light of the tremendous number of requests for immunity authorization sub-

So-called practical safeguards against oppressive immunity tactics have only limited impact.[106] While it is true that trial jurors may sympathize with a target defendant whom they perceive to be a "fall guy" being victimized by his own co-conspirators as well as by the prosecutor, if the prosecutor feels he can make a sufficiently strong case based on immunized testimony he will not be likely to refrain from overzealous immunity tactics.

Allegations of discriminatory prosecution will also be of little concern to the prosecutor, in light of the defendant's burden in raising this defense. Not only must the defendant present *prima facie* proof that he was singled out for prosecution because of racial, religious, or other impermissible considerations,[107] but he must also establish that "others similarly situated" have generally not been prosecuted for committing the same acts which form the basis for the charges against him.[108] Aside from the formidable evidentiary difficulties in establishing even the first element of proof, it will be impossible to prove the second element unless the defendant can convince the court to construe "others similarly situated" to refer to his co-conspirators who are immunized rather than prosecuted. In light of the court's broad construction of this phrase in discriminatory prosecution cases,[109] the threat of such an allegation is a hollow one, and prosecutors are unlikely to be deterred by it.

3. *Statutory Construction As A Guide To More Effective Restraints.* In adopting the view that the directive in 18 U.S.C. 6003(a), that the judge "shall issue" the immunity grant, is absolute in the face of a technically sufficient request, the courts have not adequately reviewed the genesis of the Witness Immunity Act of 1970. The Act was based on a prototype developed by the National Commission on Reform of Federal Criminal Laws and presented to Congress for its consideration.[110] The

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mitted to the Department of Justice (*see* notes 18 and 104 *supra*), more extensive review does not seem feasible.

[106] A position paper issued by Americans for Effective Law Enforcement, Inc. argues that juror response at trial serves as a significant safeguard against abuse of the prosecutor's discretion in immunity matters. AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., GRANTS OF IMMUNITY TO WITNESSES: POSITION PAPER No. 6 (1975).

[107] United States v. Berrios, 501 F.2d 1207, 1211 (2d Cir. 1974).

[108] *Id.*

[109] This phrase has generally been held to refer to that class of individuals who have previously committed the same acts as the discriminatorily prosecuted defendant, but have not been prosecuted. *See* United States v. Falk, 479 F.2d 616 (7th Cir. 1973).

[110] "[18 U.S.C. §§ 6002-6003] is the product of careful study and consideration by the National Commission on Reform of Federal Criminal Laws, as well as by Congress. The Commission recommended legislation to reform the federal immunity laws. The recommendation served as the model for this statute." *Kastigar v. United States*, 406 U.S. 441, 452 n.36 (1972).

Commission's extensive report accompanying this proposed immunity act[111] was relied upon heavily by both the House and Senate in their deliberations.

Examination of the Commission's Working Papers provides considerable insight into the district courts' powers and duties as originally conceived. As envisioned by the Commission, the United States Attorney's assessment of the tactical advantages and disadvantages of granting immunity to a particular witness would be controlling. Judicial second-guessing of the prosecutor's decision to immunize would not be tolerated because

> [I]mmunity is the fixed price which the government must pay to obtain certain kinds of information, and only the government can determine how much information it wants to "buy" in light of the fixed price. Viewed thusly, a court has nothing on which to base a determination whether a given immunity grant is "right" or "wrong," whether it should be made, or whether it should not be made.[112]

However, the Commission also recognized that immunity grants could easily become a tool for prosecutorial corruption and abuse either through the prosecutor's immunization of criminally-involved friends ("cronyism") or through other unspecified forms of "abuse of authority by prosecutors."[113] Because of this potential for abuse, the Commission sought to formulate statutory language which would preclude judicial interference with the prosecutor's decision to immunize a given witness without leaving the courts powerless to reject immunity requests submitted for corrupt purposes. Noting a prior report which suggested that the courts would have "inherent power" to deny immunity requests submitted for corrupt purposes,[114] the Commission concluded that an immunity provision with language virtually identical to the "shall issue" directive in 18 U.S.C. § 6003(a) would be appropriate.[115] The Commission made it clear that

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[111] The report was prepared by Professor Robert G. Dixon, Jr., of the George Washington University Law Center for the Commission. It appears, with appendices, in 2 WORKING PAPERS OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS 1405–48 (1970) [hereinafter cited as WORKING PAPERS].

[112] WORKING PAPERS at 1434.

[113] WORKING PAPERS at 1435.

[114] Blakey, *Aspects of Evidence Gathering Process in Organized Crime Cases: A Preliminary Analysis*, in THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: ORGANIZED CRIME 87 (1967).

[115] 18 U.S.C. § 6003(a) uses the active voice ("the court . . . shall issue . . . an order"), while the Commission's proposed statute was drafted in the passive voice ("The direction to testify . . . shall be issued by the United States District Court"). The Commission's proposed immunity act appears in WORKING PAPERS at 1447–48.

> . . . the proposed language, while clearly negating a full policy review, would not prevent a Federal district court from finding sufficient reserve authority to deny a request for an immunity order [in an instance of abuse]. . . . This approach leaves open the question of residual inherent power of the court in [instances of immunity grant abuse].[116]

Once the intrinsic power of the judiciary to withhold its cooperation from efforts to subvert justice is recognized, it becomes unnecessary to expressly provide the courts with discretionary power to effect the same result. At the same time, judicial interference with the prosecutor's tactical decision to immunize a given witness will be precluded except where a finding of impropriety triggers the court's duty to withhold its cooperation and deny issuance of the immunity order sought by the prosecutor.

No court has yet exercised this inherent power, and current immunity grant procedures suggest none will. Because they assume that all technically competent applications must be granted, the courts never even inquire into the circumstances surrounding immunity requests.[117]

[Given the potential for abuse, change in the judicial handling of immunity requests is essential. The courts must take cognizance of the fact that they are not powerless to deny immunity requests where there are improper motives underlying the application. Judges must therefore inquire into the circumstances surrounding each immunity request, and refuse cooperation where the underlying motive is a corrupt one.]

This inquiry need not be burdensome for either the judge or the prosecutor. A list of questions could be submitted to the United States Attorney in charge of the case, calling for written responses under affirmation[118] which would be kept secret from the public. Matters of relevance might include:

1. The existence of any familial, personal, or business relationship between the witness for whom immunity is being sought and any prosecutor involved in the grand jury investigation or prosecution at which the witness will be called to testify.

2. The existence and nature of any federal or local charges presently pending against the witness.

3. Whether the Government expects to subsequently prosecute the witness for his involvement in the matter under investigation.

4. Where the Government does not intend to prosecute the witness

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[116] WORKING PAPERS at 1435–36.

[117] *See* cases cited at note 98 *supra*.

[118] This would make the prosecutor liable for any false or materially incomplete and misleading answers.

at a later date, the reasons behind the Government's decision not to prosecute this individual.

5. The number of other individuals with significant criminal involvement in the matters under investigation who have been granted immunity or have agreed to testify in exchange for prosecutive concessions.

6. If more than one witness has already been immunized or promised freedom from prosecution, the reasons for the Government's decision to seek immunity for the subject of the immunity grant rather than for any of the remaining unimmunized conspirators.

Should the prosecutor's responses to any of these questions raise serious doubts about the propriety of issuing an immunity order, the judge should seek additional information. If convinced that issuance of the requested immunity order would be inappropriate, it should be refused as against the best interests of justice.

B. *Disparity in the Treatment of Defense Witnesses: Due Process Problems*

Section 6003(a) directs the court to issue orders compelling witnesses to testify, upon the request of the United States Attorney.[119] There is no comparable provision for the issuance of immunity orders on the request of the defense. This reflects the traditional view that only the Government can compel witnesses to testify.[120] Nor can the court command the United States Attorney to submit immunity requests on the defense's behalf.[121] Thus, criminal defendants are not able to obtain section 6002 orders to compel their witnesses to testify, even though the prosecution has ready access to them for its own witnesses.

The consequences of this disparity can be devastating to the defense. A defendant who sits powerless to compel a key witness to give vital exculpatory testimony may well be indicted and convicted solely on the strength of testimony compelled by the prosecution through use of an immunity order. Yet, Congress' reluctance to make section 6002 orders available to the defense is not without reason. Since the subsequent prosecution of a witness is greatly impeded if he testifies under a grant of immunity,[122] defendants thus privileged could entice their colleagues, themselves threatened with prosecution, to give perjured exculpatory testimony under a grant of immunity. Such an offer might prove irre-

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[119] 18 U.S.C. § 6003(a) and (b) (1970).

[120] *See* note 1 *supra*.

[121] United States v. Bautista, 509 F.2d 675, 677 (9th Cir.), *cert. denied*, 421 U.S. 5,6 (1975); United States v. Jenkins, 470 F.2d 1061 (9th Cir. 1972), *cert. denied*, 411 U.S. 920 (1973); *cf.* Cerda v. United States, 488 F.2d 720 (9th Cir. 1973).

[122] *See* notes 43-59 *supra* and accompanying text.

sistible. With the scope of the immunized witness' testimony controlled by the defense rather than by the prosecution, the witness could conveniently divulge the details of his own past criminal involvements, assured that the more he disclosed, the less likely that he could be successfully prosecuted.[123]

[Judicial authority to issue defense witness immunity grants as a matter of discretion might limit the potential for abuse, but serious problems of judicial administration would be presented. Informed decisions as to which requests were worthy would necessitate a time-consuming "mini-trial" whenever a defense request for immunity was made. In light of the courts' already overburdened dockets, this solution may be impractical.]

Still, if the search for truth justifies grants of immunity to compel witnesses to divulge otherwise self-incriminatory information, that search must not be one-sided, or it may well mistake the object it seeks. Judicial treatment of this problem, under both 18 U.S.C. § 6003 and its predecessors, has been somewhat myopic. Despite the manifest unfairness of leaving the defense totally without access to immunity orders, the courts have steadfastly refused to recognize any defense right to obtain them[124] in all but two cases.

The first of these cases, *Earl v. United States*,[125] was decided in 1966, and involved a transactional immunity statute[126] which, like section 6002, made witness immunity grants available exclusively to the prosecution. On appeal of a narcotics conviction, Earl argued that the unavailability of defense witness immunity grants under the statute, coupled with the prosecutor's refusal to seek immunity for a key defense witness who refused on fifth amendment grounds to testify at trial, deprived him of a fair trial, in violation of the Due Process Clause of the fifth amendment.[127] Although this argument was clearly framed as a challenge to the fairness of his trial, a three-judge District of Columbia Circuit panel affirmed Earl's conviction in an opinion that treated his claim as one of

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[123] Once a crin inal act has been revealed in a witness' immunized testimony, prosecution of the witness for that act is automatically hamstrung by problems of evidentiary use, non-evidentiary use, and proof of investigative sources. *See* notes 43-59 *supra* and accompanying text.

[124] *See, e.g.*, Thompson v. Garrison, 516 F.2d 986 (4th Cir. 1975), *cert. denied*, 423 U.S. 933 (1976); United States v. Allstate Mortgage Corp., 507 F.2d 492 (7th Cir. 1974), *cert. denied*, 421 U.S. 999 (1975), United States v. Ramsey, 503 F.2d 524 (7th Cir. 1974), *cert. denied*, 420 U.S. 932 (1975).

[125] 361 F.2d 531, *reh. denied*, 364 F.2d 666 (D.C. Cir. 1966), *cert. denied*, 388 U.S. 921 (1967). The case is analyzed in Note, *Right of the Criminal Defendant to the Compelled Testimony of Witnesses*, 67 COLUM. L. REV. 953 (1967).

[126] Act of July 18, 1956, ch. 924, § 201, 70 Stat. 574 (repealed by Act of Oct. 15, 1970, Pub. L. No. 91-452, § 224(a), 84 Stat. 929).

[127] 361 F.2d at 534.

evidence suppression by the prosecution.[128] However, the court went on to suggest in a footnote that a serious due process problem could arise where the prosecution avails itself of an immunity grant while declining to seek immunity grants at the defense's request.[129] Because no Government witnesses were immunized in *Earl*, this footnote had no bearing on the disposition of the case.[130]

United States v. Alessio[131] similarly involved a defendant who asked the United States Attorney to request an immunity order (under 18 U.S.C. § 6002) to compel the testimony of three prospective defense witnesses who threatened to remain silent on fifth amendment grounds if called to testify on his behalf. The prosecution refused, although an immunity grant had been sought and obtained for one of its own witnesses, and Alessio was convicted in a trial at which the three defense witnesses relied on their right to remain silent.

On appeal, the defendant charged that the prosecutor's failure to seek immunity for his witnesses deprived him of vital exculpatory testimony, resulting in a denial of "important Fifth and Sixth Amendment rights."[132] Recognizing that these facts presented the situation raised hypothetically in the footnote to *Earl*, the court's analysis focused on the fairness issue:

> To interpret the Fifth and Sixth Amendments as conferring on the defendant the power to demand immunity for co-defendants, potential co-defendants, or others whom the government might in its discretion wish to prosecute would unacceptably alter the historic role of the Executive Branch in criminal prosecutions. Of course, whatever power the government possesses may not be exercised in a manner which denies the defendant the due process guaranteed by the Fifth Amendment. . . . The key question, then, is whether appellant was denied a fair trial because of the government's refusal to seek immunity for the defense's witnesses.[133]

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[128] The court stated:

> "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. State of Maryland . . . . No such suppression is involved here, however. Here the prosecution has not affirmatively withheld a witness or concealed evidence. . . .

Id.

[129] *Id.* at 534 n.1.

[130] Although four judges on the District of Columbia Circuit recognized the inadequacy of the panel's treatment on the fairness issue, Earl's petition for a rehearing *en banc* was denied. 364 F.2d 666 (D.C. Cir. 1966).

[131] 528 F.2d 1079 (9th Cir. 1976).

[132] *Id.* at 1080.

[133] *Id.* at 1082.

Although the Ninth Circuit was unable to find that Alessio's right to a fair trial had been violated under the facts of the case,[134] the court's acknowledgment of the constitutional violations which might result from the disparate treatment accorded defendants under the immunity statutes signals that some new accommodation may have to be developed if the procedure is to survive at all.

By implication, *Alessio* suggests one workable method of making immunity grants available to defense witnesses. This approach would charge the prosecutor with a duty to seek immunity grants on the defense's behalf, or face reversal of any conviction, whenever it appears that a grant of defense witness immunity is necessary to ensure a fair trial. Leaving this decision to the prosecution is appropriate, since the prosecutor's familiarity with the case should enable him to intelligently assess whether the unavailability of a particular witness' testimony would prejudice the defendant's case. As with the prosecutor's duty to disclose evidence tending to exculpate the defendant,[135] an error in judgment might be grounds for reversal.

Of course, this mechanism will not preclude any of the abuses inherent in grants of immunity to defense witnesses. One solution would be to restrict the scope of the witness' immunized testimony to relevant matters by requesting immunity orders whose protections would be limited to the witness' responses to a list of questions submitted by the defense and approved by the prosecution prior to trial. However, such a procedure would unfairly force the defense to reveal its case to the prosecution in advance of its presentation, and would improperly circumscribe the defense in the conduct of its case. Nonetheless, *Alessio* indicates that the potential for abuse of immunity grants to defense witnesses cannot offset the constitutional violations which might occur under the present immunity scheme.

C. *The Automatic Immunity Anomaly in 11 U.S.C. § 25(a) 10*

Before Congress' enactment of the present immunity provision in 1970, there existed a number of federal statutes which automatically conferred either transactional or use immunity on testimony given in diverse federal administrative and investigatory proceedings.[136] It was thought that

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[134] The court held that the evidence being sought by Alessio from his key witnesses was cumulative of testimony presented to the jury by other defense witnesses. Because all the facts and claims Alessio intended to elicit from these witnesses were presented to the jury through other witnesses, the absence of these witnesses' testimony did not deprive the defendant of a fair trial. *Id.*

[135] *See* Brady v. Maryland, 373 U.S. 83 (1963).

[136] *E.g.*, Act of Feb. 25, 1903, ch. 755, § 1, 32 Stat. 904 (repealed in 1970 by Act of

witnesses could thereby be compelled to testify, without resorting to time-consuming formalities which required that a witness assert his fifth amendment privilege and that he then be brought before a district court judge to receive a grant of immunity.

Under the Witness Immunity Act of 1970, considerations of convenience were preempted by considerations of uniformity, both of type[137] and of method, in that an "assertion of the privilege would be required in all instances, thus preventing an unwitting, automatic grant of immunity as may presently occur under some existing federal statutes."[138]

With these objectives in mind, Congress repealed all existing automatic immunity statutes, with one conspicuous exception. That exception is 11 U.S.C. § 25(a)10,[139] a provision of the Bankruptcy Act applicable to both corporate and individual bankruptcy.[140] Typically, once an adjudication of bankruptcy has been made, the efficient and orderly settlement of the bankrupt's estate makes it necessary for him to testify fully and completely at various discovery proceedings with regard to the conduct of his business, the cause of bankruptcy, and all other matters affecting the administration of his estate or the granting of a discharge. In order to ensure that this information will not be withheld on the basis of the fifth amendment privilege against self-incrimination, the present

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Oct. 15, 1970, Pub. L. No. 91–452, § 209, 84 Stat. 929) which provided:

> No person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under sections 1–7 of [the Sherman Antitrust Act].

[137] After all of Congress' 1970 immunity legislation became effective, all statutory grants of witness immunity were restricted to use-derivative use immunity grants.

[138] WORKING PAPERS, *supra* note 111, at 1405. *See also* H.R. REP. No. 1549, 91st Cong., 2d Sess. 32–33 (1970).

[139] Although this statute was amended by the Witness Immunity Act of 1970 to confer use-derivative use immunity in conformity with the provisions of 18 U.S.C. § 6002, the amendment did not affect the automatic immunity aspect of 11 U.S.C. § 25(a)10. *See* Act of Oct. 15, 1970, Pub. L. No. 91–452, tit. II, § 207.

As amended, 11 U.S.C. § 25(a)10 (1970) provides:

> The bankrupt shall . . . at the first meeting of his creditors, at the hearing on objections, if any, to his discharge and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, and in addition, all matters which may affect the administration and settlement of his estate or the granting of his discharge; but no testimony or any evidence which is directly or indirectly derived from such testimony, given by him shall be offered in evidence against him in any criminal proceeding. . . .

[140] The House and Senate reports are silent as to their reasons for not repealing the automatic immunity aspect of 11 U.S.C. § 25(a)10 as was recommended by the National Commission on Reform of Federal Criminal Laws. *See* H.R. REP. No. 1188, 91st Cong., 2d Sess. (1970); SENATE COMM. ON THE JUDICIARY, REPORT ON ORGANIZED CRIME CONTROL ACT OF 1970, S. REP. No. 617, 91st Cong., 1st Sess. (1969); WORKING PAPERS, *supra* note 111, at 1442, 1446.

version of section 25(a)10 automatically provides a grant of use-derivative use immunity covering all testimony given by a bankrupt at the first meeting of creditors and at any other bankruptcy hearings at which his testimony is pursuant to court order. By immunizing the bankrupt's testimony, the bankrupt cannot refuse to answer any question put to him by creditors or the bankruptcy judge without being cited for contempt.[141]

Thus, while all other grants of immunity are preceded by an administrative determination that the testimony being sought is sufficiently vital to warrant an immunity grant to compel its production,[142] section 25(a)10 allows immunity to automatically attach to testimony provided by the bankrupt at the statutorily specified hearings without such a determination. The most disturbing aspect of this provision is the unique opportunity it presents for bankrupts to help themselves to grants of immunity which will impede or even prevent their prosecution for past criminal acts. All testimony given by the bankrupt under section 25(a)10 is automatically immunized, regardless of whether it is relevant to the bankruptcy proceeding.[143] Witnesses are apparently free to disclose all their prior misdeeds and thereby severely hamper any subsequent efforts to prosecute them for those crimes.[144] Problems of taint are particularly troublesome with respect to immunized Bankruptcy Act testimony because the prosecution may well be unaware that the defendant has testified under a section 25(a)10 immunity grant.[145]

To make this situation even more distressing, it is possible for witnesses to reap the benefits of testifying under section 25(a)10's protections without being adjudged in bankruptcy. Since the section applies to corporate as well as personal bankruptcy proceedings, any knowledgeable official of a bankrupt corporation designated to testify under section 25(a)10 with regard to the corporate bankrupt's business activities will automatically have immunity attached to his disclosures.[146]

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[141] *See* Block v. Consino, 535 F.2d 1165, 1167–1169 (9th Cir. 1976).

[142] *See* 18 U.S.C. § 6003(b)(1) and (2), 18 U.S.C. § 6004(b)(1) and (2), and 18 U.S.C. § 6005(b)(1)(2) and (3).

[143] In Goldberg v. Weiner, 480 F.2d 1067 (9th Cir. 1973), the court held: "[Section 25(a)10] provides that 'no testimony' given by the bankrupt shall be used in subsequent criminal proceedings, not merely 'relevant' testimony, or only testimony within the proper scope of examination authorized by the statute." *Id.* at 1070.

[144] *See* notes 43–59 *supra* and accompanying text. For a more complete examination of these problems under section 25(a) 10, *see* Keeney & Serino, *The Effect of the Organized Crime Control Act of 1970 in Bankruptcy Proceedings*, 46 AM. BANK. L.J. 1 (1972); McGuire, *Immunity under the Bankruptcy Act, Automatic or Controlled?*, 48 AM. BANK. L.J. 159 (1974); Note, *The Future of Testimonial Immunity in Bankruptcy Proceedings*, 48 S. CAL. L. REV. 92 (1974).

[145] *See* Block v. Consino, *supra* note 141 at 1169.

[146] This designation is made by the Bankruptcy Judge pursuant to 11 U.S.C. § 25(b). The designated individual typically is an officer of the bankrupt corporation since a

Under proposed revisions of the Bankruptcy Act, automatic immunity would be repealed and testimony in such proceedings would become subject to the uniform provisions of the Witness Immunity Act of 1970.[147] These reforms have been pending for three years,[148] and are long overdue.

IV. CONCLUSION

The Witness Immunity Act of 1970 is a relatively new statute, and while it attempts to deal with difficulties encountered under its predecessors, it has created several problem areas of its own. Some, such as the automatic immunity anomaly in bankruptcy proceedings, may be easily remedied by Congressional action. Others, such as the constitutional questions raised where a witness is threatened with prosecution abroad, are less susceptible to legislative solutions and will require action by the Supreme Court before the scope of the statutory scheme is fully defined.

These problems aside, it is not at all clear that the shift from transactional to use-derivative use immunity has proven to be as great a boon to effective law enforcement as had originally been hoped. Although much employed, the formidable barriers to subsequent prosecution of immunized witnesses have prompted at least one key prosecutor's office to sharply curtail its use.[149] Apart from uniformity, this most recent statutory immunity scheme appears to have made questionable practical improvements over those that came before.

DAVID SUGAR*

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corporate official will best be able to assist in the administration of the bankrupt's assets by providing information about the corporation's business affairs. For a more thorough discussion of Bankruptcy Act practices, see Note, *The Future of Testimonial Immunity in Bankruptcy Proceedings*, 48 S. CAL. L. REV. 92, 92–103 (1974).

[147] H.R. 10792, 93d Cong., 1st Sess. § 4–313 (1973) *See generally* Note, *The Future of Testimonial Immunity in Bankruptcy Proceedings*, 48 S. CAL. L. REV. 92, 109–14.

[148] The Bankruptcy Act reform bill (S. 234–236, H.R. 31–32, 94th Cong., 1st Sess. (1975)) was still in committee as of June 1, 1976.

[149] Mr. Samuel K. Skinner, the United States Attorney for the Northern District of Illinois, has publicly announced his intention to abandon broad use of immunity grants in order to compel witnesses to testify. *See* Chicago Tribune, Apr. 30, 1976, § 1, at 21, col. 6.

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FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 78

Title "An Act relating to immunity and protection of witnesses . . ."

Requested by Senate Judiciary Committee Date Feb. 6, 1979

II. FISCAL DETAIL

Agency Affected LAW

Program Category Affected Administration of Justice

Budget Request Unit(s) Affected Prosecution

EXPENDITURES (Thousands of Dollars)

		FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL		25.0	26.5	28.1	29.8	31.6
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		25.0	26.5	28.1	29.8	31.6

FUNDING (Thousands of Dollars)

GENERAL FUND		25.0	26.5	28.1	29.8	31.6
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

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

Granting of immunity as proposed by Article 3 will have little, if any, financial impact and any changes which might occur therefrom would be slight. The proposed Article 4 will cause a financial impact estimated at $25,000 for the first year. This figure represents a minimum amount necessary for short-term, two or three week periods, when witnesses would be placed in safe housing. Obviously, there will be years when much if not all of the appropriation will lapse. Ongoing costs have been projected using a 6% inflation factor.

IV. DATE February 6, 1979 PREPARED BY Richard I. Pegues, Admin Officer

AGENCY LAW

PHONE 465-3695

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/78)

SB

88

COMMITTEE REPORT

SENATE

FURTHER:

3/15/79

Date: 3/30/79

Mr. President:

The Committee on JUDICIARY has had SB 88
relating to truant children

under consideration and (a majority of the committee) ~~(the comm'ttee)~~
reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] reports it back without recommendations

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

Zuckerman - No Rec.

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Zuckerman
CHAIRMAN

S 60 (Rev. 12/78)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 88
Title An Act relating to truant children.
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Health and Social Services
Program Category Affected Social Services
BRU, Program, or Subprogram(s) Affected Social Services BRU
(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 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL						

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)

When the original fiscal note was prepared for the bill the Department understood that the intent of the bill was to involve the Department in broad attendance problems in school districts. Subsequent discussions with the Department of Education indicated that the intent of the bill is only to deal with a small number of severe cases of habitual truancy.

If this is in fact the case there would be no significant fiscal impact. If, however, the intent of the bill is to address routine truancy problems it would have a large fiscal impact on the Department.

IV. DATE 3/20/79 PREPARED BY Art Holmberg, Director
AGENCY Division of Social Services
PHONE 465-3170

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

33-001 (Rev. 12/78)

(4) "committee" means the Catastrophic Illness Committee, created under § 20 of this chapter;

(5) "elective medical or surgical procedures" means treatment which is not essential to the life or health of a pers

(6) "family" means two or more persons related by blood or marriage or adoption living as one economic unit;

(7) "liquid assets" means assets which can be readily converted to cash;

(8) "medical expense" means any financial obligation incurred in the course of treatment of illness as prescribed by a physician, including bills for ancillary services, patient transportation, transportation of a medical or family escort when reasonably necessary, or living expenses while receiving outpatient treatment in a community to which the applicant is not reasonably able to commute from his permanent place of abode;

(9) "nonliquid assets" means all assets whi .i are not liquid assets;

(10) "permanent place of abode" means a dwelling, or a dwelling unit in a multiple dwelling, including lots and outbuildings or an appropriate portion of these, which are necessary to convenient use of the dwelling unit;

(11) "provider" means a licensed physician, pharmacist, dentist, or other health service worker or a licensed hospital, clinic, skilled nursing home, intermediate care facility or health maintenance organization which has provided services not excluded by § 50 of this chapter to an applicant as a result of a catastrophic illness;

(12) "third-party payments" means payments of medical expenses related to a catastrophic illness by sources other than the applicant or the committee, including but not limited to state and federal medical assistance programs, private health insurance, employment-related health insurance, military health insurance, workmen's compensation, violent crimes compensation, Indian Health Service of the United States Department of Health, Education and Welfare, and awards in legal actions. (§ 1 ch 107 SLA 1978)

Chapter 10. Delinquents and Wards of the Court.

Article 1. Juvenile Courts.

Section
10. Jurisdiction
30. Summons and custody of minor
40. Release of minor
50. Appointment of guardian ad litem or attorney
60. Waiver of jurisdiction
80. Judgments and orders
81. Predisposition hearing reports
82. Best interests of the child
8. Review hearing information
84. Legal custody, guardianship, and residual parental rights and responsibilities
85. Child in need of aid; religious treatment
90. Records
100. Retention of jurisdiction over minor
110. Appointment of guardian or custodian
120. Support of minor
142. Emergency custody and temporary placement hearing

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Sec. 47.10.010. Jurisdiction. (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or of a municipality of the state; or

(2) to be a child in need of aid as a result of

(A) the child being habitually absent from his home or refusing to accept available care, or having no parent, guardian, custodian or relative caring or willing to care for him, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

(iii) one parent if the other parent's rights and responsibilities have been terminated under § 80 of this chapter or voluntarily relinquished;

(B) the child being in need of medical treatment to cure, alleviate, or prevent his suffering substantial physical harm, or mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and his parents are unwilling to provide the medical treatment;

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by his parent, guardian or custodian or the failure of his parent, guardian or custodian adequately to supervise him;

(D) the child having been sexually abused either by his parent, guardian or custodian, or as a result of conditions created by his parent, guardian or custodian, or by the failure of his parent, guardian or custodian adequately to supervise him;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from his parents, guardian or custodian.

(b) When a minor is accused of violating a traffic statute or regulation, a traffic ordinance or regulation of an incorporated municipality, a fish and game statute or regulation under AS 16 or a parks and recreational facilities statute or regulation under AS 41.20, excepting a statute the violation of which is a felony, the procedure prescribed in §§ 20 — 90 of this chapter may not be followed, except that a parent, guardian or legal custodian shall be present at all proceedings. The minor accused of a traffic offense, a fish and game statute or regulation violation under AS 16 or parks and recreational facilities violation under AS 41.20 shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult.

(am §§ 7, 8 ch 63 SLA 1977)

Effect of amendments.

The 1977 amendment rewrote subsection (a), and in subsection (b), deleted "or" following "traffic statute or regulation" and inserted the language beginning "a fish and game statute" and ending "AS

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 88

"An Act relating to truant children."

This Bill would amend AS 47.10.010(a)(2)(A) to include habitual truancy from school as a reason for adjudication of a child as a "child in need of aid."

The Governor's Children's Code Task Force, after considerable study and deliberation, recommended that truancy be eliminated as a reason justifying adjudication of a child as a child in need of aid. The Department supported this recommendation which was accepted by the Legislature and became law in 1977.

The Department does not consider truancy alone as sufficient justification for it to intervene in a family and to initiate court action. If the Department is required to assume this additional responsibility it would be very costly, requiring the hiring of staff to deal with this problem area.

In addition, if a child protection situation such as abuse, neglect, or abandonment exists in addition to habitual truancy, the Department can intervene and initiate court action under AS 47.10.010(a) as it presently reads. Under AS 47.17.020, schools are required to report child abuse and neglect situations to the Department of Health and Social Services.

RECOMMENDED BY: Art Holmberg DATE: 3/5/79

Art Holmberg, Director
Division of Social Services

APPROVED BY: Helen D Beirne DATE: _____

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

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 88
Title An Act relating to truant children.
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Health and Social Services
Program Category Affected Social Services
BRU, Program, or Subprogram(s) Affected Social Services BRU
(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 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES		$1894.6	$1989.3	$2088.8	$2193.2	$2302.9
200	TRAVEL		4.6	4.8	5.1	5.3	5.6
300	CONTRACTUAL		6.1	6.4	6.7	7.1	7.4
400	COMMODITIES		15.3	16.1	16.9	17.7	18.6
500	EQUIPMENT		25.5				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		$1946.1	$2016.6	$2117.3	$2223.3	$2334.5

FUNDING (Thousands of Dollars)

GENERAL FUND		$1946.1	$2016.6	$2117.3	$2223.3	$2334.5
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		51	51	51	51	51
PART TIME						
TEMPORARY						

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

Enactment of this bill would essentially remove the responsibility for truancy investigation from the various school districts throughout the state. It is difficult, at this time, to determine exactly how many social workers would be required to meet this obligation. In all, districts would require part of one social worker's time, larger districts more than one worker. We have taken, therefore, an average of one per district, with the exception of Anchorage, where we have established six. The salary costs are based on current salary schedules, plus the additional FY 79 4% increase and an estimated 5% salary increase for FY 80. Reimbursement of mileage at $.25 a mile x an average of 30 miles a month x 51 workers would minimally be required. Telephone rental would be necessary at an average of $10 a month for each worker; general office supplies at an average of $300 a year each; and a desk and chair, at an average of $500 each.

IV. DATE 2/20/79 PREPARED BY Art Holmberg, Director
AGENCY Division of Social Services
PHONE 465-3170

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

33-001 (Rev. 12/78)

(4) "committee" means the Catastrophic Illness Committee, created under § 20 of this chapter;

(5) "elective medical or surgical procedures" means treatment which is not essential to the life or health of a person;

(6) "family" means two or more persons related by blood or marriage or adoption living as one economic unit;

(7) "liquid assets" means assets which can be readily converted to cash;

(8) "medical expense" means any financial obligation incurred in the course of treatment of illness as prescribed by a physician, including bills for ancillary services, patient transportation, transportation of a medical or family escort when reasonably necessary, or living expenses while receiving outpatient treatment in a community to which the applicant is not reasonably able to commute from his permanent place of abode;

(9) "nonliquid assets" means all assets which are not liquid assets;

(10) "permanent place of abode" means a dwelling, or a dwelling unit in a multiple dwelling, including lots and outbuildings or an appropriate portion of these, which are necessary to convenient use of the dwelling unit;

(11) "provider" means a licensed physician, pharmacist, dentist, or other health service worker or a licensed hospital, clinic, skilled nursing home, intermediate care facility or health maintenance organization which has provided services not excluded by § 50 of this chapter to an applicant as a result of a catastrophic illness;

(12) "third-party payments" means payments of medical expenses related to a catastrophic illness by sources other than the applicant or the committee, including but not limited to state and federal medical assistance programs, private health insurance, employment-related health insurance, military health insurance, workmen's compensation, violent crimes compensation, Indian Health Service of the United States Department of Health, Education and Welfare, and awards in legal actions. (§ 1 ch 107 SLA 1978)

Chapter 10. Delinquents and Wards of the Court.

Article 1. Juvenile Courts.

Section

10. Jurisdiction
30. Summons and custody of minor
40. Release of minor
50. Appointment of guardian ad litem or attorney
60. Waiver of jurisdiction
80. Judgments and orders
81. Predisposition hearing reports
82. Best interests of the child
83. Review hearing information
84. Legal custody, guardianship, and residual parental rights and responsibilities
85. Child in need of aid; religious treatment
90. Records
100. Retention of jurisdiction over minor
110. Appointment of guardian or custodian
120. Support of minor
142. Emergency custody and temporary placement hearing

Sec. 47.10.010. Jurisdiction. (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or of a municipality of the state; or

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(A) the child being habitually absent from his home or refusing to accept available care, or having no parent, guardian, custodian or relative caring or willing to care for him, including physical abandonment by

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(am §§ 7, 8 ch 63 SLA 1977)

Effect of amendments.

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Alaska State Legislature

Senate

Committee on

Health, Education & Social Services

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Glenn Hackney, Chairman
Frank Ferguson, Vice Chairman
Mike Colletta
Bettye Fahrenkamp
Arliss Sturgulewski

LETTER OF INTENT FOR SB 88

It is the intent of the Senate Health, Education and Social Services Committee that those rare cases of need with which the School District cannot cope would be addressed by SB 88. It is not the intent that this would remove from the School Districts their present role in enforcing attendance.

Glenn Hackney
Chairman

Date: March 14, 1979

INTRODUCTION OF BILLS (Senate) (Cont'd)

Truant Children

SENATE BILL NO. 88, by Senator Meland. Amends AS 47.10.010(a)(2)(A), under Art. I "Jurisdiction of the Juvenile Courts," to add "habitually truant from school" to conditions which bring a minor under the jurisdiction of the Juvenile Courts. (1977 amendment re-wrote (a) and omitted this condition.) Does not provide for effective date.

Introduced January 31 and referred to HESS, then to Judiciary.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 88

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RECOMMENDED BY: Art Holmberg DATE: 3/5/79
Art Holmberg, Director
Division of Social Services

APPROVED BY: Helen D Beirne DATE:
Helen D. Beirne, Commissioner
Department of Health and Social Services

Title An Act relating to truant children.

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Health and Social Services

Program Category Affected Social Services

BRU, Program, or Subprogram(s) Affected Social Services BRU

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IV. DATE 2/20/79 PREPARED BY Art Holmberg, Director

AGENCY Division of Social Services

PHONE 465-3170

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES

P. O. BOX 179 SITKA, ALASKA 99835

NELAND J. HAAVIG
SUPERINTENDENT

February 1, 1979

Senator Glenn Hackney, Chairman
Health Education and Social Services Committee
Pouch V
Juneau, AK 99811

Dear Senator Hackney,

I am writing in support of Senate Bill number 88 relating to truant children.

The juvenile statutes which were adopted a couple of years ago took out any specific wording regarding truancy. Thus no one wants to touch the problem. What we have in effect is a compulsory attendance law with no effective way to enforce it. I have been advised by both our school attorney, Mr. Randy Weddle of Juneau, and the Assistant District Attorney, Mr. Jim Hanley, that it is virtually impossible to use the compulsory attendance law as one must prove "willful intent" on the part of the parent.

These are not situations where we wish to see anyone punished and I never saw anyone punished under the old statute unless other things were brought into the case besides truancy. It seems to be sufficient to have a couple or three cases a year brought before a judge and have him lay out the alternatives to discourage further truancy. This also acts as a deterrent to others who might be tempted to be truant from school. In some of my past cases the judge determined that it was not the fault of the child but that of the parents. In either case it brings the situation to the attention of someone who has the power to do something about it.

It has been my experience that when students are habitually truant from school they end up getting into other trouble with the law when they should have been in school.

I urge passage of Senate Bill 88 so that schools again have an effective tool to see that children are in school attendance as they should be to become productive citizens.

Sincerely,

Daniel D. Dunsing

Daniel D. Dunsing, Principal
Blatchley Junior High School

DDD/ll

cc: Senator Meland

Box 1732
Sitka, Alaska
February 15, 1979

Senator Hackney:

I would like to express my concern over the too frequent situation of children under the age of 16 years who attend school only sporadically and whose education is then severely limited. Many of these children begin having serious attendance problems in fifth or sixth grade - sometimes earlier. At this time the Courts has been unwilling to give attention to this problem, even after unsuccessful efforts to work with the family.

I hope that Senate Bill #88, presently in committee, will help by providing one more alternative in working with these students and their parents. Please support this bill.

Thank you

Susan White

Gateway Borough School District

SCHOENBAR JUNIOR HIGH SCHOOL
217 Schoenbar Road
KETCHIKAN, ALASKA
99901

CHARLES MARKSHEFFEL, Principal

February 27, 1979

Senator Glen Hackney, chairman
Health Education and Social Services Committee
Pouch V
Juneau Alaska 99811

Dear Senator Hackney:

This is to ask your support of Senate Bill 88.

Without teeth in a truancy law we will continue to lose students who at 13 and 14 years of age make their own decisions as to school attendance.

Thank you.

Sincerely,

C Marksheffel

C. Marksheffel

CC: Pete Meland

P. O. BOX 179 SITKA, ALASKA 99835

KELAND J. HAAVIG
SUPERINTENDENT

Etolin Street School
February 7, 1979

Senator Glenn Hackney
Chairman
Health, Education, and Social Services Commission
Pouch V
Juneau, Alaska 99811

Dear Senator Hackney:

Ever since the "child in need of supervision" category was wiped off the books several years ago, there have been no teeth in the compulsory school attendance laws of this state. As an elementary school principal in Sitka, I have observed numerous occurrences of habitual absence from school on the part of young school-age children. In all of these cases there was neglect on the part of the parents of these children, in my opinion, and the state is doing nothing to correct this bad situation.

I go to a lot of effort to document cases, then turn the information over to Division of Family Services or to the State Division of Corrections. They try, in many cases, to help, by contacting the parents and talking to them. But there seems to be little they can do based on poor attendance at school, alone.

It is not my wish that the schools take over the affairs of parents. But when those parents violate the laws of the state by not seeing to it that their children get to school regularly, or when a parent cannot handle a child and the child will not go to school or do anything else his or her parents tell him to do, that child needs some kind of supervision.

I therefore support Senate Bill 88 and urge that your committee recommend it to the full Senate.

Very truly yours,

Ronald A. Rhodes

Ronald A. Rhodes
(Principal)

RAR:dem
Encolsure
Copy to Senator Pete Meland

STATE OF ALASKA

JAY S. HAMMOND
GOVERNOR

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

POUCH F-ALASKA OFFICE BUILDING
JUNEAU 99811

March 7, 1979

Senator H.D. Meland
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Meland:

Re: Our Telephone Conversation
Concerning SB-88

After discussing your bill with some attorneys, it appears that enactment of the legislation proposed in the above referenced bill could facilitate the remediation of habitual truancy problems.

I would be willing to testify in favor of the bill should it come up for hearing in a legislative committee.

Sincerely,

Steve Hole
Education Administrator

P. O. BOX 179 SITKA, ALASKA 99835

HAROLD J. HAVIG
SUPERINTENDENT

December 15, 1978

Senator Pete Meland
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Pete,

Time is rolling by and I wanted to make contact with you on the truancy matter one more time before the 1979 Legislature gets under way.

I asked Robert Schell, Baranof Elementary Principal, to bring the truancy subject up at the Alaska Elementary Principals' meeting this year. He reported back to me that he didn't have to as others had the same concern and trought up the subject. He assures me that there will be a letter coming from the Elementary Principals' Association supporting our proposed legislation. Perhaps you can advise us as to where such a letter should be directed and what other kinds of support would be helpful.

Also, enclosed is a letter from the school attorney outlining an interesting problem due to the new statutes.

Have a pleasant Holiday.

Sincerely,

Daniel D. Dunsing, Principal
Blatchley Junior High School

DDD/ll

Enclosure

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
SUITE 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801
(907) 586-2210
TELEX 090-45-335

ANCHORAGE OFFICE
810 FIRST NATIONAL BANK BLDG
425 G STREET
ANCHORAGE, ALASKA 99501
(907) 274-0666
TELEX 090 25-425

NORMAN C. BANFIELD
MICHAEL M. HOLMES
RANDALL J. WEDDLE
WILLIAM B. ROSELL
LAWRENCE T. FEENEY
CHARLES N. BRENNAN
TOM BATCHELOR
ANTHONY M. SMOLTY
JAMES R. WEBB
*JAMES N. REEVES
HERBERT L. FAULKNER (1882-1972)
FRANK M. DOOGAN (1923-1977)
*ANCHORAGE OFFICE

November 29, 1978

Neil Haavig Superintendent
Greater Sitka Borough School District
P. O. Box 179
Sitka, Alaska 99835

Dear Neil:

The California Supreme Court has recently handed down a decision of some importance to school districts. Since there is no Alaska case law directly on this point and since the Alaska Supreme Court often looks to the California Supreme Court as new law develops, this decision could have an impact on the potential liability of school districts in this state.

In Hoyem v. Manhattan Beach City School District, the ten year old plaintiff had left the school grounds, apparently without the knowledge of the administration, while classes were still in session. He was thereafter struck by a motorcycle at a public intersection and was seriously injured.

He sued the school district on the grounds that the accident was a proximate result of the school district's negligent supervision of him in failure to keep him on the school premises. The school district moved to dismiss the Complaint on the grounds that they could not be liable for his leaving the school premises contrary to regulations and a resulting accident which occurred off the school grounds.

The California Supreme Court ruled that the Complaint did state a claim against the district and that it was a jury question as to whether the district had been negligent in failing to properly supervise the plaintiff and whether the accident was a proximate result of that failure. The case has now been sent back for a jury trial on these issues.

Although this was a decision by a narrowly divided Court (4-3), it poses a potential expansion of district liability if it is to be followed in this state. It is particularly troubling since, given the recent amendments to the Children's Code which make truancy prosecutions exceedingly difficult if not impossible, districts will have their truancy procedures strictly scrutinized if they ever find themselves in a case such as this one. Although there may well be cause for frustration as to the effectiveness of procedures to restrict truancy problems, it would appear that just from the potential liability standpoint it is important that district personnel continue to advise parents of truancy problems and follow the other procedures which the district may specify in this regard.

Yours very truly,

Lawrence T. Feeney

LTF:am

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
JUNEAU COURT and OFFICE BUILDING
POUCH U
JUNEAU, ALASKA
99811

CHAMBERS OF
THOMAS B. STEWART, JUDGE

May 9, 1978

The Honorable H. D. "Pete" Meland
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Pete:

This is in response to your letter of May 3, 1978, asking my comments on Senate Bill 490, concerning truant children. At the outset I should note that whatever is said in this letter constitutes only my own views and does not in any way reflect the views of any other judges or of the court system at large. I cannot speak officially on behalf of the court system concerning any legislation.

Among the materials you forwarded was a memorandum from Joseph A. Guthrie of the Legislative Affairs Agency which purports to state that I have refused to exercise any jurisdiction at all over truants. This is not a correct statement, and I do not know where Mr. Guthrie may have obtained it. In fact, no one has sought to charge a minor before me as a delinquent because of truancy, and accordingly I have never had any occasion to rule on the question judicially. It is possible his comment came at second or third hand because of some discussions in which I and other judges informally raised questions about the meaning of various provisions of the children's code as substantially amended in 1977.

It seems apparent from those revisions of last year that the major effort at revision of the juvenile code, which was largely sponsored by an active group in Anchorage, included an intent to take truant children, and others who were not delinquent in the sense

of violating criminal laws, completely out of treatment by the juvenile justice system. In other words the intent appeared to be to have problems such as truancy, alcoholism and other matters handled by agencies not connected with the police, district attorneys, or courts. This is a view that has affected the juvenile laws in many states throughout the nation in recent years. Without commenting on the overall merits of this view, I would at least express concern that this removal of so-called "status offenders" from the justice system leaves a void, unless some other societal agencies are prepared to address the problems and needs of these minors in some meaningful way. Many hold the view, for example, that truancy is a matter that should be handled within the confines of the school system and their relationships with parents, and this view seemed to be reflected in the amendments to the juvenile code that were adopted last year. You may be able to confirm this in more detail, if you wish, by contacting Andrew Brown, the attorney who prepared the language at the behest of the group which sponsored the amendments. Another person knowledgeable in this area would be Betsy McGuire, who was executive director of the office of child advocacy (since abolished) that coordinated the efforts.

Senate Bill 490 as drafted would of course make clear that truancy is a matter that should be handled through the courts, and the language proposed would seem to be fully sufficient for that purpose.

With respect to the amendment that suggests some changes in AS 14.30.045 and .030, it appears that this language would broaden the utility of the compulsory school attendance law to enable prosecution, or the threat of prosecution, of parents who are not responding when their children are truant. I am in general inclined to view that this statute is addressed to parents and is not a suitable vehicle for finding a child delinquent. Again, however, this is a view not determined from any case brought against a child to find him or her delinquent as a result of truancy. Accordingly, I would not want any statements made here to suggest the position I might take in a case where that issue is appropriately argued and submitted for judicial treatment. I am generally in accord with the views expressed to you by others that intent to violate the statute must be found before a conviction could occur, and this complicates the enforcement of these provisions of the law. The language offered would appear to be suitable to accomplish the purpose apparently intended.

Please let me know if I can be of any further assistance on this subject, which I would be glad to discuss with you informally if you wish to call.

With personal regards,

Very truly yours,

Thomas B. Stewart
Presiding Judge

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M February 3, 1978

SUBJECT: Court Jurisdiction over Truant Children (W.O. 4818)

TO: Senator H.D. Meland

FROM: Joseph A. Guthrie, Legislative Counsel

Mr. Dunsing's problem arises from a legal dispute over the coverage of AS 47.10.010(a), following its amendment last year by sec. 32, ch. 63, SLA 1977. AS 47.10.010(a) lists those acts committed by children, or situations in which children may find themselves, which if established by proof, give the court "jurisdiction" over a minor child. In this context, jurisdiction refers to a legal relationship between the court and the child whereby the court has the power to impose any of the number of dispositions (e.g. institutionalization, probation, termination of parental rights) on a child found to be under the court's jurisdiction.

Prior to last year's amendment, AS 47.10.010 provided that a court could exercise jurisdiction where a child was proven to be "habitually truant." That phrase was removed by sec. 32, ch. 63, SLA 1977.

The legal dispute is over whether a court can still exercise jurisdiction over a truant. The district attorneys and Judge Craske say that jurisdiction can still be exercised by finding a child to have violated AS 14.30.010 and AS 14.30.020 (the compulsory school law) and thus by virtue of those violations of laws, a delinquent under AS 47.10.010(a)(1). Judge Stewart, on the other hand, argues that the intent of the legislature in enacting sec. 32, ch. 63, SLA 1977 would be violated in finding a truant delinquent and therefore refuses to exercise any jurisdiction at all over truants.

This ambiguity could be solved by adding the words "habitually truant from school" to AS 47.10.010(a)(2)(A), thereby making it read:

> Sec. 47.10.010. JURISDICTION. (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor
>
> (2) to be a child in need of aid as a result of
>
> (A) the child being habitually absent from his home, habitually truant from his school, or refusing to accept available care, or having no parent, guardian, custodian, or relative caring or willing to care for him, including physical abandonment by...

Please let me know what you want to do.

JAG:hjd

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

June 5, 1978

The Honorable H. D. "Pete" Meland
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 490

Dear Senator Meland:

Your letter of May 3, 1978, to Juneau District Attorney Larry Weeks concerning the problem of children truant from school has been referred to my office for response. Please accept my apologies for the delay but we have been tied up until just the other day in work with Senate Judiciary on the proposed revision to the criminal code.

As I understand it, what you wish to accomplish through the referenced legislation is to permit the superior court to become involved in serious truancy matters without the necessity of proving that a crime under AS 14.30.090-.040 (the compulsory education provisions) has been committed.

Your question is whether the bill as originally introduced or the proposed amendment attached to your letter would adequately address the issue. It is our opinion that the better approach is embodied in the original version of SB 490.

The original version of the bill directly and concisely clarifies the jurisdictional question concerning habitual truants and would clearly permit court intervention without resorting to criminal proceedings and attaching the stigma of delinquency to the child. An habitually truant child would be deemed as a "child in need of aid" under AS 47.10.010(1)(2) and would be treated in a similar manner as the other statutory categories of runaway and abandoned children.

The proposed amendment attached to your letter would accomplish two things unrelated to the goal of the original version of the bill. First, section 1 of the amendment would permit an habitually truant child to be suspended from school. It is our imprsssion from the supporting materials attached to your letter that the desired result is to require children to attend school and not to prohibit them from doing so. Second, section 2 of the amendment merely makes specific what has always been apparent from the face of the statute, that parents and guardians may be criminally charged with a violation of the compulsory education law.

I trust that we have been responsive to your inquiry. If you have any further questions, please do not hesitate to let us know.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Daniel W. Hickey
Daniel W. Hickey
Chief Prosecutor

D.WH/mt

SB

96

COMMITTEE REPORT

SENATE

FURTHER:

3/7/79

Date: 3/13/79

Mr. President:

The Committee on JUDICIARY has had SB 96

relating to registration fees for special request, personalized license plates

under conside ation and ~~(a majority of the committee)~~ (the committee) reports it back with the following recommendations:

[X] do pass [ ] do not pass

~~[X]~~ do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

April 11, 1979

Penelope J. Cornelius
Box 2668
Fairbanks, Alaska 99707

Dear Mrs. Cornelius:

Senate Bill 90 left the Senate Judiciary committee several weeks ago and is now in Senate Rules. Senate Bill 105 is in the Senate State Affairs committee still; it has a further referral to Senate Finance, but not to Judiciary. I can think of no reason at this time why I would not vote for any or all of these bills if they come to the Senate floor.

It is not clear from the material you sent me whether you received a reply to your November 27th letter to the Division of Motor Vehicles. THedirector of that division, Mr. Vern Roberts, is a very competent individual and if he could not grant you any relief, then your only recourse would be passage of legislation.

Regards,

Robert H. ZIgêêr, Sr.

RHZ/pkz

Penelope J. Cornelius
P. O. Box 2668
Fairbanks, Alaska 99707
(907) 488-2912

April 4, 1979

The Honorable Robert Ziegler
Alaska State Senate
Juneau, Alaska 99801

Dear Senator Ziegler:

As you can see by the enclosed correspondence, I am writing in regards to Senate Bill 105, Senate Bill 96, and House Bill 105 dealing with the special license plate fees.

I have been corresponding with Representative Sally Smith about this issue and I am enclosing my first letter, as well as the last letter I have received from Sally.

I am extremely upset about this whole business, not because of the money amount involved, but the principle of the entire issue. I understand that Sally sent a copy of my last letter to her which dealt with the Galena resident's issue, which according to the news paper here in Fairbanks, is suppose to be holding up the passage of the resoluation to change the special license plates. You should have a copy of that letter.

I have often felt that "getting on my soap box" and complaining about legislative actions does no good. This time I refuse to give up and am rattling your chain to see what good it might do. Your efforts to pass this bill are extremely important to me, as well as many others who are in the same boat at this time. May 31st is comi g up quickly and I do not intend to pay the $20.00 special fee, but without your help it looks like I may well have to because of the vehicle registration deadline.

Please let me know what your stand is on this issue and what your intentions are.

Sincerely yours,

Penelope J. Cornelius

Penelope J. Cornelius

PJC

Penelope J. Cornelius
P. O. Box 2668
Fairbanks, Alaska 99707
(907) 488-2912

November 27, 1978

State of Alaska
Department of Public Safety
Division of Motor Vehicles
Special Programs Unit
P. O. Box 960
Anchorage, Alaska 99510

ATTENTION: Jean

Gentlemen:

On March 17, 1978 I contacted your department because I had recently purchased a new vehicle which I intended to transfer my personalized license plates to. I discovered that my plates were damaged beyond repair and requested a new set of plates for my new vehicle. I sent you a check in the amount of $4.00 and you promptly sent me the replacement plates.

Recently I received your form letter stating that I would be required to pay an additional $20.00 per year for special handling of my license plates, in addition to the $30.00 renewal fees previously established. When I began using my personalized plates, four years ago, I was told that there would be a one-time charge of $20.00 for the original plates and the reoccuring charge of $30.00 per year. This has been true for the last four years. In your form letter you explained that if I did not desire to pay the additional $20.00 per year to retain my personalized plates that I could sign a "release of interest authorization" which was enclosed with the letter. If I did so, you would send me a new set of regular license plates and I would have to relinquish my personalized plates.

Although your explaination for the additional $20.00 per year charge was for "special handling", I still don't quite understand this reasoning. If a new set of plates cost me $4.00 in March, and the special handling charge for the first set of new plates is $20.00, what is the extra $16.00 per year additional charge for? Not only are my plates EASIER to handle for the state -- because I don't have to wait in lines, etc. and I would get a small plastic renewal sticker just like everyone else, but when new plates are issued -- the cost is only a mere $4.00 for my plates.

I would appreciate a full explaination of the actual reason for this governmental rip-off, with a copy of such a letter sent to the below mentioned so they may also be enlightened as to the additional costs.

Although I realize that personalized plates are not required by the State of Alaska and that they are the choice of the owner of the vehicle -- I don't believe that this additional $20.00 per year is justified. Just what is the so called special handling, when new plates are issued only once every three years? The $20.00 additional charges results in $36.00 every three years overcharges and FOR WHAT? I computed the $36.00 as follows:

$20.00 --	previous charge for personalized plates, first year
30.00 --	Renewal fee, first year
20.00 --	Additional special handling charge, second year
30.00 --	Renewal fee, second year
20.00 --	Additional special handling charge, third year
30.00 --	Renewal fee, third year
$150.00	TOTAL
90.00	Regular renewal fees
20.00	Previous charge for personalized plates
4.00	Actual cost of plates
$ 36.00	"SPECIAL HANDLING CHARGES"

Does it cost the state of Alaska $36.00 to send me a smal. plastic sticker each year it does not produce new license plates? What is this $36.00 for? What special handling does the state have to exert toward personalized license plate owners other than the usual expenses incurred toward REGULAR license plate holders?

Thank you for your expedient reply to this request. I will await your reply.

Sincerely yours,

Penelope J. (Kaiser) Cornelius

cc: Jay S. Hammond, Governor

Fairbanks Daily News Miner
ATTEN: Letters to the Editor

ALASKA STATE LEGISLATURE HOUSE OF REPRESENTATIVES

REPRESENTATIVE SALLY SMITH • 321 CHURCH STREET • FAIRBANKS, ALASKA 99701 • IN JUNEAU: POUCH V • JUNEAU, ALASKA 99811

March 22, 1979

Penelope J. Cornelius
P.O. Box 2668
Fairbanks, Alaska 99707

Dear Ms. Cornelius:

We have looked into some of the questions you have expressed about special license plate fees and were able to find out just where the bills are sitting right now. We have taken the liberty of forwarding your letter to the Senate State Affairs Committee which is chaired by Senator Bob Mulcahy. They requested a copy of the letter because they were unaware of some of the problems you outlined.

Other members of the committee, should you wish to write to them individually are: Senator Tim Kelly, Senator Brad Bradley, Senator Pat Rodey, Senator Bob Ziegler.

That committee presently has before it HB 147 and SB 105, both of which deal with this issue. Another bill in which you may be interested, SB 96, is presently in the Senate Judiciary Committee, which is chaired by Senator Ziegler. Other members are: Senator Ed Dankworth, Senator Don Bennett, Senator Pete Meland and Senator Bill Ray.

I hope you don't feel that you're getting the runaround on this issue. We are trying to direct your comments where they will do the most good. Thanks for taking the time and effort to communicate your opinions on this issue.

Sincerely,

Sally

Sally Smith
Alaska State Representative

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES AND DRIVERS SERVICES

P. O. BOX 960
ANCHORAGE, ALASKA 99510

March 9, 1979

Senator Bob Ziegler, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Subject: Senate Bill #96

Dear Senator Ziegler:

This will confirm the telephone conversation between Guy Van Doren of your staff and myself on March 9, 1979 regarding Senate Bill 96, as amended by the Senate Finance Committee.

The language contained in this piece of legislation provides for the payment of twenty dollars upon the issuance and subsequent re-issuance of personalized license plates to the citizens of Alaska. This fee will, in most instances, cover the cost of the State operating the program of personalized plates. The language which was added to Senate Bill 96, previously contained in Senate Bill #117, was language suggested by the Division of Motor Vehicles in response to inquiry from the Senate, as language required to correct deficiencies or oversights in Chapter 178, SLA 1978.

You will recall that Chapter 178, SLA 1978 was the re-writing of Title 28 of Alaska Statutes and moved very rapidly at the close of the 1978 session of the Alaska State Legislature. The speed with which that piece of legislation moved inhibited the legislators' ability to give it the review that it deserved. The result of this hasty review was that certain oversights were left in that Bill which are now causing problems for Alaska citizens. Senate Bill #117 was designed to address and correct some of those problems.

12-L10LH

It is the position of the Alaska Division of Motor Vehicles that Senate Bill #96 as amended by the Senate Finance Committee should be passed and become law as it will result in reducing the inconvenience and excessive fees that are currently being paid by many of Alaska's citizens. If I can be of further assistance to you in your deliberations on this area of legislation, please do not hesitate to contact me.

Sincerely,

Vern Roberts
Director

cc: William Nix, Commissioner
Department of Public Safety

SB 96 and CSSB 96 RELATING TO REGISTRATION FEES FOR SPECIAL REQUEST, PERSONALIZED LICENSE PLATES.

The origional bill sponsored by Senator Bradley changed existing law which required annual*payment of $20.00 in addition to the regular license plate fee for personalized license plates, to state that the person need pay the additional $20.00 only if the license has been replaced by the department, i.e. new issue of plates, damaged plates, or lost plates.

The committee substitute was origionally SB 117 by Senator Dankworth amending the motor vehicle code. The two bills have been combined in CSSB 96.

SECTION 1. Changes the requirement that every evhicle in the state must be registered. This requirement causes hardship in the rural areas of the state and for persons who use off-the-road vehicles (trail bikes, dune buggies etc.). Under the new language, only vehicles used on the highway system or other public parking places need to be registered.

SECTION 2. Provides that the department may issue a special license* for occasional users of the highways.

Section 3. Provides that...(a) the department may register a vehicle even if it it is not satisfied as to the ownership of the vehicle, but shall either

(1) withhold issuance of a certificate of title until the applicant proves;
  (A) Ownership and,
  (B) proves there is no undisclosed security interest or,
(2) require applicant to file with the department wither;
  (A) a bond prescribed by the department or,
  (B) a deposit of cash.

(b) The cash deposit or bond shall be equal to one and on-half times the value of the vehicle.

(c) The cash deposit or bond shall be returned at the end of three years or when the vehicle is no longer registered in the state.

Sec. 28.10.493- Provides that if the owner of the vehicle fails to comply, he is guilty of a misdemeanor.

SECTION 4. Relates to special license plates (origional SB 96)

SECTION 5. Sets the fee for occasional use license

SECTION 6. Makes it a felony to make a false statement regarding a vehicle title, title transfer, or certificate.

SECTION 7. Provides that law enforcement officers and employees of the department designated by the commissioner (i.e. workers who are responsible for title transfers and registration) may enforce this title and the regulations promulgated thereunder.

* Emphasis added

Bob: I requested a definition of Hwy So we won't have any problem. As you can see by the enclosed Memo "highway" as used in this bill is O K.
I have Not copied the memo but will keep it in our files.

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

March 9, 1979

SUBJECT: Definition of the term "highway" in CSSB 96

TO: Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

Guy van Doren asked that I offer a meaning for the term "highway" as it is used in CSSB 96. His concern derived from the term's use in §1 of the bill.

The term "highway" is defined in AS 28; AS 28.35.260(a)(6) provides:

> (6) "highway" means the entire width between the boundary lines of every way that is publicly maintained when a part of it is open to the public for purposes of vehicular traffic, including but not limited to every street and the Alaska state marine highway system but not vehicular ways or areas;

The term "vehicular way or area" is defined by AS 28.35.260(a)(18) as

> (18) "vehicular way or area" means a way, path or area, other than a highway or private property, which is designated by official traffic control devices or customary usage and which is open to the public for purposes of pedestrian or vehicular travel, and which way or area may be restricted in use to pedestrians, bicycles, or other specific types of vehicles as determined by the depar ment or other agency having jurisdiction over the way, path, or area.

Since the definitions in AS 28.35.260 apply generally to AS 28, they would be used in construing any amendments to the law within AS 28.

Reading the two definitions together, I conclude that the term "highways" comprehends a "way" that is publicly maintained for vehicular traffic. On the other hand, a "vehicular way or area" will comprehend a "way" that is neither a "highway" nor private property; what a "vehicular way or area" will include, therefore, are those "ways" that are dedicated to a public use [thus excluding private property] but which are not publicly maintained.

Dedication is the process typically occurring when a subdivisional plat is accepted; the roadways that exist on the plat are "dedicated" by the acceptance of the plat to a public use. They cease by that act to be private property even though the subdivided lots may not have been disposed of; if they are not maintained by a public authority, then they have not become "highways."

If I can assist further, please advise.

RAB:jdn

13-AAC 10.115 Dpt Hgy

Section 28.10.181 (c) is amended to read Special Request Plates. Upon application and payment of $20.00 by the owner of a passenger vehicle, non-commercial van or pick-up truck, or motor home the Department may design and issue registration plates containing a series of not more than six letters or numbers or combination of letters and numbers as requested by the owner. The Department may in its discretion, disapprove the issuance of registration plates under this sub-section when the requested symbols are a duplication of an existing registration or when the symbo's are considered uracceptable by the Department. An additional payment of $20.00 shall be paid for each replacement of such plates.

Section 28.10.421 (d)(2) is repealed.

REASON

Existing law for an annual payment of $20.00 in addition to regular registration fees for specialized plates is repugnent to the general public and has been mandated that it be repealed. The new law will now state, if passed, that the individual applicant for a specialized plate shall pay $20.00 initially for the application and privilege of using the personalized plate, the same as in prior years, and will pay $20.00 every time the plate is replaced due to loss, damage or replacement for a new license plate year.

Section 28.10.011 is amended to read VEHICLES SUBJECT TO REGISTRATION. Every vehicle [in the State] when driven or moved or parked upon a highway or in a public parking place in the State shall be registered under this chapter except when the vehicle is

(1) driven or moved on a highway only for the purpose of crossing the highway from one private property to another, including an implement of husbandry as defined by regulations;

(2) driven or moved on a highway under a dealer's plate or temporary permit as provided in Sec. 31 and 181 (k) of this chapter;

(3) special mobile equipment as defined by regulation;

(4) owned by the United States;

(5) moved by human or animal power;

(6) exempt under the Soldiers and Sailers Civil Release Act (50 U.S.C.A. Appr. 501 et seq.);

(7) driven or parked only on private property;

(8) a vehicle of a nonresident as provided under Section 121 of this chapter;

(9) a commercial inter-state vehicle under Sec. 141 of this chapter; or

(10) transported under a special permit under Sec. 151 of this chapter.

REASON

Existing statute states that with certain specific exceptions, every vehicle in this State is subject to registration and thus would be subject to title requirements. Under this law the way it currently reads places u. hardship upon a certain percentage of vehicle owners in the State, that is, owners of vehicles that have not been subject to vehicle registration in the past. Example: trail bikes, dune buggies, and other off highway type vehicles, etc. Also, vehicles owned or possessed by people in the bush and non-urban areas who have come by their vehicles in the past through methods that are neither legal or illegal but have no way to prove their ownership to the vehicles in a manner prescribed by law. When these people become subject to registration, that is, subject to title requirements, they will be forced by statute to provide the same documentation as any other vehicle owner in order for them to comply to the law. They will be unable to do so. They will also in most cases be unable to provide proper bonding procedures because of lack of insurance agencies in these areas.

AS 28.10 is amended by adding a new section to read:
WHEN NO SUPPORTING EVIDENCE OF OWNERSHIP.

(a) In addition to the other requirements of this chapter, an applicant for title and registration who has no supporting evidence of ownership, as stipulated in this chapter must:

(1) submit an affidavit affirming that he is the owner of the vehicle and that no liens or encumbrances exist on it;

(2) submit a surety bond, executed by a corporate surety, approved by the Department, posted with the State and held by it for at least two years, in the amount of the retail value of the vehicle as determined from a departmental listing, and

(3) submit a statement signed by the applicant holding the State harmless in all suits concerning questions of title and ownership to the vehicle and promising to indemnify the State for all judgements against it arising out of these actions.

(b) The applicant, in lieu of a surety bond, may file suit in district or magistrate court to mandate the Department to issue title in his name. The court may accept evidence including but not limited to affidavits, bills of sale, and oral testimony. The court, when satisfied that

the applicant is the rightful possessor and that there are no liens or encumbrances on the vehicle, may order the Department to issue title showing that the applicant is the registered and legal owner of vehicle title.

Section 28.10.491 (a) is amended by adding a new sub-section

(9) makes a false statement or who otherwise conceals or withholds a material fact in an application for registration or certificate of title or who affirms falsely with respect to a matter required to be sworn to, affirmed or furnished under this chapter, or regulations adopted under this chapter.

Section 28.10 is amended by adding a new section Failure to Deliver Title.

(a) A seller of a vehicle who fails to comply to Secs. 271 and 291 of this chapter is guilty of a misdemeanor.

(b) A seller of a vehicle who with intent to defraud fails to comply to Secs. 271 and 291 of this chapter is guilty of a felony, and upon conviction is punishable by imprisonment of not less than 1 year nor more than 2 years or by a fine of not more than $2,000 or both.

Section 28.10 is amended by adding a new section, Unlawful To Park or Operate Unregistered Vehicle. No person may

drive or move or park upon a highway or in a public parking place, nor may an owner permit to be driven or parked, upon a highway or in a public parking place a vehicle which has not been registered under this chapter.

Section 28.05 is amended by adding a new section. Enforcement of Title. Peace officers and employees of the Department designated by the Commissioner shall enforce this title.

Section 28.10 is amended by adding the new section LICENSES FOR OCCASIONAL USERS OF HIGHWAYS.

(a) Upon application by the owner and under regulations adopted by the Commissioner of Public Safety, the Department shall issue a license to the owner of a vehicle used in relation to the operation of commercial fishing, mining, hunting, or farming operations and used only occasionally on the highway.

(b) In addition to the other requirements in this chapter, an applicant for occcasional use registration must submit an affidavit affirming that the vehicle is used in relation to commercial fishing, mining, hunting or farming operations and travels upon the State highways are less than 5% of its total hours of operation.

(c) No person may transfer an occasional use registration license plate to another vehicle. Upon tranfer or assignment of title to an occasional use vehicle, the registration plates remain with the vehicle if it continues to be an occasional use vehicle or must otherwise be returned to the Department by the new owner.

(d) The license shall be valid for 12 months.

(e) No person or company may possess more than 2 licenses at one time.

(f) The Department shall charge the owner an annual registration fee of $15.00.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSB 96

Title An Act amending the Motor Vehicle Code and providing for an effective date

Requested by Senate Finance Date

II. FISCAL DETAIL

Agency Affected Division of Motor Vehicles - Department of Public Safety

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected N/A - Revenue to General Fund only

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

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
	-0-					

POSITIONS

FULL TIME	-0-					
PART TIME						
TEMPORARY						

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

The passage of CSSB 96 will result in a reduction in revenue to the general fund based on the following assumptions:

4000 personalized plates x $20 reduction : $80,000
350 occasional use plates x $20 reduction : $ 7,000
$87,000

These estimates use the class of pickup trucks as being the primary vehicles to obtain occasional use plates.

IV. DATE 3/5/79 PREPARED BY Vern Roberts, Director

AGENCY Division of Motor Vehicles

PHONE 264-5551

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

33-001 (Rev. 12/78)

SB 96 and CSSB 96 RELATING TO REGISTRATION FEES FOR SPECIAL REQUEST, PERSONALIZED LICENSE PLATES.

The origional bill sponsored by Senator Bradley changed existing law which required annual*payment of $20.00 in addition to the regular license plate fee for personalized license plates, to state that the person need pay the additional $20.00 only if the license has been replaced by the department, i.e. new issue of plates, damaged plates, or lost plates.

The committee substitute was origionally SB 117 by Senator Dankworth amending the motor vehicle code. The two bills have been combined in CSSB 96.

SECTION 1. Changes the requirement that every evhicle in the state must be registered. This requirement causes hardship in the rural areas of the state and for persons who use off-the-road vehicles (trail bikes, dune buggies etc.). Under the new language, only vehicles used on the highway system or other public parki _ places need to be registered.

SECTION 2. Provides that the department may issue a special license* for occasional users of the highways.

Section 3. Provides that...(a) the department may register a vehicle even if it it is not satisfied as to the ownership of the vehicle, but shall either

(1) withhold issuance of a certificate of title until the applicant proves;
  (A) Ownership and,
  (B) proves there is no undisclosed security interest or,
(2) require applicant to file with the department wither;
  (A) a bond prescribed by the department or,
  (B) a deposit of cash.

(b) The cash deposit or bond shall be equal to one and on-half times the value of the vehicle.

(c) The cash deposit or bond shall be returned at the end of three years or when the vehicle is no longer registered in the state.

Sec. 28.10.493- Provides that if the owner of the vehicle fails to comply, he is guilty of a misdemeanor.

SECTION 4. Relates to special license plates (origional SB 96)

SECTION 5. Sets the fee for occasional use license

SECTION 6. Makes it a felony to make a false statement regarding a vehicle title, title transfer, or certificate.

SECTION 7. Provides that law enforcement officers and employees of the department designated by the commissioner (i.e. workers who are responsible for title transfers and registration) may enforce this title and the regulations promulgated thereunder.

* Emphasis added

PROPOSED AMENDMENTS

* Section 3. AS 28.10.216 should be changed by adding a new subsection (d).

(d) the department shall place security deposited with it in the custody of the Department of Revenue.

* Section 3. AS 28.10.216 should be changed by adding (e).

(e) the applicant, in lieu of a cash deposit or bond, may file suit in district or magistrate court to mandate the department to issue title in his name. The court may accept evidence including, but not limited to affidavits, bills of sale, and oral testimony. The court, when satisfied that there are no liens or encumbrances on the vehicle may order the department to issue title showing the plaintif as the legal owner of vehicle title.

SB

101

COMMITTEE REPORT

SENATE

FURTHER: None

2/1/79

Date: 2-15-79

Mr. President:

The Committee on JUDICIARY has had SB 101
discipling of a licensed guide

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SB101 [X] same title [ ] new title

and recommends CSSB101 DO PASS

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

RON HAYES
ALASKAN GUIDE
Box 1711, Anchorage, Alaska 99510
Phone: (907) 272-0051

Dear Sir:

I am a guide, concerned with what I foresee happening to our profession, and I am writing you this letter to ask your opinion.

The Guide Law set up the Guide Board to perform two primary functions, that is, (1) to serve as an impartial, independent arbitrator regulating guides, and (2) to allocate guiding area permits.

I think any guide who attended the last disciplinary session of the Guide Board came away less than satisfied with its performance. The Attorney General's office seems to have so taken over the proceedings that the Board doesn't function as an independent body exercising a judgment separate from the desires of the enforcement officers. Succumbing to the Department pressure to punish a guide even though the guide has been acquitted by a jury after a full trial goes beyond fairness and due process. These disciplinary functions might better be left with the court system which is set up to handle such things.

It is obvious to me that the results under this Board system are unfair, and that our livelihood exists at the whim of the prosecutor so long as the Guide Board has these powers. Don't think it can't happen to you, especially in view of all of the restrictive, technical and over detailed regulation which cover guiding like a double blanket.

Repealing the guide law will put license proceedings back in court where a jury stands between you and the power of the State.

Furthermore, in allocating guide areas, some guides got nothing, some not enough to make a living, and some appear to have done well. While I was one of the more fortunate ones, the land withdrawals by the Federal government have made the Guide Board allocations obsolete and the whole system of area allocation no longer appears feasible.

Besides, almost no Native guides were able to qualify for areas under the regulations established by the Board, and the Native groups rightfully feel they got a raw deal. As a result, they are mounting an effort to repeal the guide law, and for the reasons set forth in this letter I urge you to join with them.

Although the few guides who still have adequate areas may favor retaining the whole guide law, I think they may be taking a short sighted position. First of all, the Native groups will shortly be controlling much of the land and access to it, and secondly, the State is transferring greater powers to the local regional game boards which will be controlled by the Native groups. So whether you presently have a guide area or not, you will not be able to guide without cooperating with the Native organizations directly involved.

Do you want to fight with them over the guide laws, and antagonize the people we will have to work with in the future? Suppose in retaliation they set up subsistance hunting provisions that virtually eliminate guiding? Suppose a local game board adopts a regulation prohibiting the removal of meat, antlers, skins and capes from the game management unit where the animal was taken? This has already been proposed in one unit! What good will a guiding area be then?

We must cooperate and work with these groups if we expect them to cooperate with us in the future for the best conservation and utilization of these resources.

I therefore urge you to join with the Native effort to repeal the guide law, and I'm enclosing herein a ballot for a straw poll among the guides, asking you to let me know your opinion.

Joining the Native effort to repeal the guide law will abolish the Guide Board, returning to the courts the license revocation and suspension questions, and will also show the Native groups that we are ready, and willing to join with them in the management of these wild game resources.

Thank you for reading through this, and double thanks for marking the ballot and mailing it back to me.

Very truly yours,

Ron Hayes

RON HAYES

02-0018 (Rev. 10/78)

STATE
of ALASKA

MEMORANDUM

TO: Mark Jensen
Guide Licensing and Control Board
Box 2220
Juneau 99803

DATE: February 7, 1979

FILE NO:

TELEPHONE NO:

FROM: Sarah Elizabeth Fussner Liza
Assistant Attorney General
AGO - Anchorage

SUBJECT: Guide Board Disciplinary Actions: Senate Committee Review

The House Judiciary Committee just cancelled a hearing that I had intended to be present at on Tuesday, February 6; I therefore am not going to be able to make it to Juneau until the 13th of February. However, I am sending a brief outline of some of the arguments for keeping guide disciplinary hearings as they presently exist under AS 08.54.200(a). I also include a list of those guide board cases that resulted in revocation or suspension of licenses, although this list is probably incomplete.

The Guide Licensing and Control Board is presently required to hold a hearing to determine whether disciplinary action shall be taken against a guide whenever a guide is charged with or convicted of a state or federal sport fish, game or guide statute or regulation, or if the board receives complaints concerning the licensee from three or more clients of separate parties. AS 08.54.200(a). The "charge" may be made by the board or Department of Commerce, based on an administrative investigation.

The Guide Board's duty as an administrative body is to determine whether a person is morally fit to be a guide and to continue to engage in lawful guiding. Alaska Board of Fish & Game v. Loesche, 537 P.2d 1122, 1125 (Alaska 1975). "Morally" is used in the broad sense of the word - whether the guide is ethically competent. The board does not determine criminality, and its disciplinary function is primarily remedial. Hence the board is not bound by a criminal burden of proof, criminal rules, or the results of criminal prosecutions. Agency action is civil, remedial and bound by administrative procedures.

If the guide board were limited to disciplining only guides convicted of criminal conduct, the board would be placed in the implausible and indefensible position at times, of licensing a guide, and holding him out to the world as qualified to guide, even though he may have engaged

in the most egregious kind of unethical conduct imaginable. For example, a guide could have hunted and harrassed game with airplanes, wasted game meat, and taken an over-limit of species; because of a technical or procedural error in obtaining evidence resulting in a suppression order in the criminal case, or because out-of-state witnesses refuse to or are unable to testify against the guide in a criminal action, or simply because of the vagaries of a jury, the guide may not be convicted. The board would be bound to allow a guide to continue to be licensed, even though it knew, by a preponderance of evidence, that the guide was not fit for the profession. Game violation cases are difficult to establish; they often occur in remote areas where they are difficult to detect. They also often do not receive the same attention of prosecuting attorneys that is given to robbery, murder and other cases.

Limiting the guide board to hearing only cases based on criminal convictions is also inconsistent with the guide chapter as a whole. The guide board is charged, in AS 08.54.040 with establishing guide performance standards and with prohibiting unsportsmanlike, unethical or unsafe guiding activities, and activities against conservation principles or degrading to the guiding profession. The board is authorized to revoke or suspend a guide's license for unethical or unsafe conduct or conduct that adversely affects natural resources. AS 08.54.200. In order to accomplish these ends the board must be able to hear a case even absent a criminal conviction.

Other licensing boards and agencies are not limited to cases involving a criminal conviction before they can inquire as to the fitness of the individual to be licensed for that profession. For example, disciplinary action may be taken against a lawyer even though he may have not been convicted of any crime. Ex parte Wall, 107 U.S. 265 (1883). A guide must be accorded due process in a discplinary hearing, since his guide license has some proprietary value (Herscher v. State, Department of Commerce, 568 P.2d 996 (Alaska 1977)); however disciplinary action against a guide regardless of criminal conviction is not only appropriate but is the only way realistically to maintain the high standards of professional conduct that are demanded of guides in the State of Alaska.

The Guide Board has taken disciplinary action against several guides, sometimes based on unethical conduct and other times based on criminal convictions.

In Re Richard Herscher - Resulted in revocation of Mr. Herscher's guide license based on two criminal convictions. The board also heard evidence of unethical conduct, wherein Mr. Herscher had endangered the life of an Alaska State Trooper, but the consideration of this unethical activity was stricken in the Supreme Court of Alaska because at the time the board did not have any regulations defining the term "unethical activity" and the Alaska Supreme Court ruled that without such regulations the unethical activity language of the statute was too broad. The board has, subsequent to the Herscher case, adopted substantive regulations defining unethical conduct. 12 AAC 38.180.

In Re John Pangborn - Mr. Pangborn's license was revoked in 1978, the revocation being based in part on convictions of taking a cub bear, and burying the carcass on a guided hunt, while he was already on probation for an earlier violation.

In Re Martin Kasser - Mr. Kasser's guide license was revoked in 1978 based on two criminal convictions.

In Re Erickson - A 1974 case in which Mr. Erickson lost his guide license as a result of an illegal moose hunt with Garner Ted Armstrong.

In Re Edward L. Stevenson - Resulted in a suspended suspension i.e. probation, as a result of improper bear hide sealing (1977).

In Re Richard L. Lusk (1977) - Resulted in a two year denial or renewal of his license for taking big game same day as airborne.

In Re Harry Morton - The board decided to deny renewal of Mr. Morton's assistant guide license based on non-residencey (1978).

In Re Eugene Kempf - This case resulted in a one year suspension for illegal sport fishing (1977).

In Re Phillip Esai - The board put Mr. Esai on probation for one year upon a finding that he had failed to be present when his assistant guide was guiding (1977).

In Re Blankenship - License revocation based on two convictions (1977).

In Re Warren - Resulted in a one year probation for Mr. Warren upon a finding that he had guided in a district for which he was not certified (1977).

In Re Wilder Rice - Two years suspended license in 1978 for one state game regulation violation and unethical conduct.

In Re Loesche - License revoked by Fish and Game Board, predecessor of the Guide Board, for criminal and unethical conduct.

In Re Ramstad - License revoked for criminal violations.

I do recommend that the statute be changed in one regard: delete the requirement that the board revoke a license when a guide has been convicted of two fish and game or guiding statutes or regulations. I do not believe that this provision of the statute is legally defensible, because it takes any discretionary authority out of the board, and would require it, technically, to revoke a guide's license for two minor sport fishing violations that may have occurred at any time in the guide's career. I believe that this statute should be amended in this regard only.

SEF:ln
cc: Bill Bellingar
Fred Wolstad

Sec. 08.54.190. Expiration and renewal. (a) A master guide, registered guide, class-A assistant guide, assistant guide or transporter license expires on December 31, following issuance.

(b) No license may be issued to a class-A assistant guide or assistant guide who has failed to renew his license for two consecutive years unless he again meets the qualifications for initial issuance of the license.

(c) A master or registered guide who fails to renew a license is not required to requalify under § 100(2) or § 110(8) of this chapter, respectively. (§ 1 ch 17 SLA 1973; am § 12 ch 127 SLA 1974; am § 4 ch 106 SLA 1976)

Effect of amendments. — The 1974 amendment substituted "class-A assistant guide" for "class-A guide" in subsection (b).

The 1976 amendment substituted "assistant guide or transporter license" for "assistant guide license" in subsection (b) and added "following issuance" to the end of that subsection.

Editor's note. — Section 10, ch. 106, SLA 1976, provides: "Nothing in this Act gives a person licensed as a transporter a right as an air carrier which he does not otherwise hold under law."

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.54.200. Grounds for disciplining a licensee. (a) The board shall hold a hearing to determine if disciplinary action is necessary if

(1) complaints concerning the licensee have been filed with the board from three or more clients of separate parties; or

(2) a licensee has been charged with a violation of federal or state sport fish, game or guide statutes or regulations; or

(3) a licensee has been convicted of a violation of federal or state sport fish, game or guide statute or regulation.

(b) After a hearing, the board may revoke, suspend, or deny renewal of a license if the board finds that the licensee

(1) engaged in unethical activity, unsafe activity, or activity which adversely affects the natural resources of the state when such activity is unrelated to the legal and legitimate purposes of the contract hunt; or

(2) violated a provision of a federal or state sport fish, game or guide statute or regulation.

(c) After a hearing, the board shall revoke a license if the board finds that the licensee

(1) does not meet the qualifications specified by statute or regulation for the class of license held;

(2) is incompetent as a master guide, registered guide, class-A assistant guide, or assistant guide;

(3) has been convicted of two violations of federal or state sport fish, game or guide statutes or regulations.

(d) No person who is disciplined under this section may engage in any guiding or transporting activity during the period of license revocation

SB

104

COMMITTEE REPORT

SENATE

FURTHER: None

2/2/79

Date: 2/2/79

Mr. President:

The Committee on JUDICIARY has had SB 104

establishing the court of appeals

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

AMENDMENT

OFFERED IN THE SENATE: BY: Senate Judiciary Committee

TO: Amend SENATE BILL No. SB 104

HOUSE BILL No. _____

PAGE: 13 LINE: 3

(1) Page 13, line 3, insert new Sec. 23 to read:

*Sec 23. AS 39.50.200 (200) is amended to read:

"(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court."

(2) Renumber subsequent sections accordingly.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

The new state court

IF ALL PLANS proceed as it now appears they will, a new three-member state Court of Appeals will be in operation in July.

There will be those who are upset by the soaring cost of government who will be unhappy by this expansion in the Alaska Court System. After all, $600,000 or $700,000 for initial annual operating costs is no small item — and that, sorry to say, is just the beginning. There soon will be need to construct a new courthouse. The staff will grow, support costs will increase, and almost as surely as night follows day, the three-member court eventually will grow to four or five.

But lay all of that aside. The establishment of the court has been approved by the House and Senate and Gov. Jay Hammond soon will sign the legislation. That will make the new court a fact. Already court system officials are busy with the behind-the-scenes details required to put the court in business. Within a matter of days the process of accepting applications for the new judgeships will be getting under way.

So for all practical purposes, the court is a reality. The time is past for any arguments about its merits or its initial costs.

For Alaskans to consider now is what the new court might do and what it might accomplish.

IT SHOULD BE kept in mind that the new court will hear only criminal appeals. All appeals from Superior Court decisions in civil cases will go directly to the Supreme Court, bypassing the new court.

At the same time, however, those involved in criminal cases are not barred from final review by the Supreme Court if there is a strong issue of constitutionality involved.

For example, a person convicted of a crime after a trial in Superior Court would have an automatic right to an appeal to be heard by the new appellate court. If the Court of Appeals sustains the conviction, the defendent then would have the right to petition to the Supreme Court for a further review. The Supreme Court could then grant or reject the petition. In other words, the high court hereafter will have discretionary authority whether or not to hear a criminal appeal.

HOWEVER, THE COURT of Appeals generally will be the final court of review for criminal cases. By assuming this function, the new court will reduce by perhaps as much as 40 percent the caseload now before the five justices of the Supreme Court. The caseload has been heavy because in the past the Supreme Court had been required to consider every criminal case which was appealed, regardless of whether any constitutional issues were at stake.

It's true the cost of the new court will be high. But if the ends of justice are better served — in both criminal and civil matters — then the expense surely is justified for a state that apparently has more than enough money to spend on projects the goals of which are far less noble.

MAJOR CHANGES IN SENATE BILL 104 House and Senate Versions

1. House version allows a defendent to choose whether to appeal to the Superior court or Court of Appeals.

2. House version allows a magistrate to become a district court judge after serving as a magistrate for seven years.

3. House version allows justices and judges to file as delegates to constitutional conventions.

4. Changes residency requirements for justices and judges from three (3) to five (5) years.

5. Allows Supreme Court to review cases, on application, of the superior court.

6. Senate version allowed the supreme court to review in its discretion, a final decision of the court of appeals on its own motion or upon application of a party.

House version : The supreme court may review a final decision of the court of appeals on application of a party.

The supreme court may take jurisdiction of a case pending before the court of appeals if the court of appeals certifies to the supreme court that the case involves a significant question of law under the Constitution of the U.S. or under the state constitution or involves an issue of substantial public interest that should be determined by the supreme court.

COMPARISON -SENATE AND HOUSE VERSIONS OF SB 104

SENATE VERSION	HOUSE VERSION
TITLE Establishing the Court of Appeals	adds: amending the jurisdiction of the supreme court, the superior court, and the district court, clarifying and amending the sentence appeal and other appellate jurisdiction of the superior court; changing the qualifications of justices and judges; providing that justices and judges may serve as delegates to constitutional conventions; amending the time period in which the judicial council is to provide information to the public concerning judicial officers standing for retention election; changing Rule 21 Rules of Appellate Procedure and Rule 7, District Court Criminal Rules
22.07.010	22.07.010 Makes the court of appeals a court of record. Left out: appeal to the superior court from a decision of an administrative agency.
22.07.020 (b) The court of appeals has appellate jurisdiction in all actions and proceedings commenced in the district court and may, in its discretion, remand a district court matter to the superior court for a trial de nova in whole or part.	22.07.020 (c) The court of appeals has jurisdiction to review (1) a final decision of the district court in an action or proceeding involving criminal prosecution, post conviction relief, extradition, probation and parole, habeas corpus or bail; and (2) the final decision of the district court on a sentence imposed by it. In this subsection "final decision" means a decision or order other than dismissal by consent of all parties, that closes a matter in the district court.
(e) An appeal to the court of appeals is a matter of right in all actions and proceedings within its jurisdiction except that, (1) there is no right of appeal to the court of appeals in a case for which direct review by the supreme court has beer provided by rule.	(d) The court of appeals may in its discretion (1) review a final decision of the superior court on an appeal from a district court in an action or proceeding involving criminal prosecution, post-conviction relief, extradition, probation and parol, habeas corpus or bail (2) review the final decision of the superior court on appeal of a sentence imposed by the district court. In this subsection final decision" means a decision or order other than a dismissal by consent of all parties, that closes a matter in the superior court. (g) A final decision of the court of appeals is binding on the superior court and and on the district court unless superseded by a decision of the supreme court.

SENATE VERSION	HOUSE VERSION
22.07.030 REVIEW BY SUPREME COURT ,	22.07.030 REVIEW BY SUPREME COURT Added: Review is in the discretion of the supreme court as set out in AS 22.05.010(c).
22.07.040 QUALIFICATIONS OF JUDGES	22.07.040 changed the residnecy requirements from three (3) to five (5) years.
22,07.050 OATH OF OFFICE	22.07.050 language change nothing substantial
22.07.060 APPROVAL OR REJECTION	22.07.060..House changed the time previous to the election the public must be informed of judicial council recommendations from 30 days to 60.
22.07.070 VACANCIES	NO CHANGES
22.07.080 RESTRICTIONS	22.07.080..Allows a judge to file for candidacy as a delegate to a constitutional convention.
22.07.090 COMPENSATION (a) Each judge of the court of appeals is entitled to receive annual compensation prescribed in accordance with AS 39.23	22.07.090 The monthly salary of a judge of the court of appeals is equal to Step E, Range 29 of the salary schedule in AS 39.27.011 (a) for Juneau, Alaska.
22.07.100 PROCESS	NO CHANGES
22.05.010 JURISDICTION (a) The supreme court has final appellate jurisdiction in all actions and proceedings. (b) Appeal to the supreme court is a matter of right only in those actions and proceedings from which there is no right of appeal to the court of appeals under AS 22.07.020. (c) The supreme court may in its discretion review a final decision of the court of appeals on its own motion or on application of a party under AS 22.07.030.	22.05.010 JURISDICTION (a)The supreme court has final appellate jurisdiction in all actions and proceedings. However, a party has only one appeal as a matter of right from an action or proceeding commenced in either the district court or the superior court. (b)adds to the senate language after AS 22.07.020: "or to the superior court under AS 22.10.020 or AS 22.15.240." (c) adds a new subsection: a decision of the superior court on an appeal from administrative agency decision may be appealed to the supreme court as a matter of right. (d) Changes subsection (c) in the Senate version to read: "The supreme court may in its discretion review a final decision of the court of appeals on application of a party under AS 22.07.030. The supreme court may in its discretion review a final decision of the superior court on an appeal of a civil case commenced in the district court. In this subsection "final decision" means a decision or order other than dismissal by consent of all parties, that closes a matter in the court of appeals.

SENATE	HOUSE
22.05.015 TRANSFER OF APPELLATE CASES	22.05.015 TRANSFER OF APPELLATE CASES
(a)	(a) NO CHANGES
(b) (1) (2) (c) (d)	(b) (1) NO CHANGES (2) House deleted "the transfer will further the efficient administration of justice". (c) House deleted "The supreme court may provide by rule that review of an appeal to the superior court from an administrative agency be by the supreme court rather than by the court of appeals under AS 22.07.020 (8). (d) NO CHANGE
22.05.060 SEALS OF THE COURT	22.05.060 SEALS OF THE COURT NO CHANGES
22.05.070 QUALIFICATIONS OF JUSTICES	22.05.070 QUALIFICATIONS OF JUSTICES
The Senate does not address this	The House changed the residency requirements from "three" to"five " years.
22.05.100 APPROVAL OR REJECTION	22.05.100 APPROVAL OR REJECTION
Senate version...." he shall not be appointed to fill any vacancy in the supreme court, court of appeals....."	House changed the time period for recommendations of the Judicial Council to be made public from 30 days prior to an election, to 60 days. House changed this section as compared to the Senate version as follows. "....he shall not be appointed to fill any vacancy in the supreme court, court of appeals, [OR] superior court, or district courts [COURTS] of the state....."
22.05.130 RESTRICTIONS	22.05.130 RESTRICTIONS
Senate does not address this	The House inserted language which allows a justice to file for a delegate to a state or national Constitutional Convention.
22.10.020 (a)	22.10.020 (a)
The Senate version repealed the language which stated that an appeal from a subordinate court is not allowed after a plea of guilty except in cases of excessive sentencing, and no appeal by the state except to test the sufficiency of an indictment or information. It also repealed the language which allowed an appeal to the superior court on the ground that a sentence of imprisonmnet of 180 days or more was excessive	The House version left most of the existing language in tact, inserted "the state has no right to appeal in criminal cases except to test the sufficiency of an indictment or information or to appeal a sentence on the ground it is too lenient." They also reduced the number of days an excessive appeal my be made from "180" days to "90", and gives the superior court under this jurisdiction the ability to reduce rather than [MODIFY] the sentence.

SENATE	HOUSE
22.10.020 (a) Continued from last page	22.10.020 (a) Continued from previous page. House inserted the following language: "When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.
22.10.090 QUALIFICATIONS OF JUDGES The Senate does not address this question.	22.10.090 QUALIFICATIONS OF JUDGES The House changed the residency requirements from three (3) to "five" (5) years, and inserts "The active practice of law shall be as defined for justices of the the supreme court in AS 22.05.070.
22.10.150 APPROVAL OR REJECTION	22.10.150 APPROVAL OR REJECTION House version requires the judicial council recommendations to be made public 60 days prior to election rather than 30 days.
22.10.180 RESTRICTIONS The Senate does not address this question	22.10.180 RESTRICTIONS The House version allows judges to file for a delegate to a state or U.S. Constitutional Convention.
22.15.160 (a) The Senate does not address this question	22.15.160 (a) House version changes the residency requirements for district judge from "three" (3) to "five" (5) years and, inserts: (1) have been engaged in the active practice of law for not less than three years immediately preceeding his appointment.....or (2) have served for at least seven years as a magistrate in the state.
22.15.195 APPROVAL OR REJECTION	22.15.195 APPROVAL OR REJECTION House version requires the jucicial council recommendations to be made public 60 days prior to election rather than 30 days.
22.15.210 The Senate does not address this question	22.15.210 House version allows a district judge to file as a delegate to a state or U.S. Constitutional Convention.

SENATE	HOUSE
22.15.240 APPEAL	22.15.240 APPEAL
(a)	(a) House version gives either party the right to appeal a judgement of the district court in a civil case regardless of the sum involved.
(b) changes the amount of days a person may appeal an sentence on the basis of excessiveness from [180] to 45.	(b) changes the excessive sentence days from [180] to 90 and makes the same changes in the District Court appeal section as it did in the Superior Court section. (AS 22.10. 020)
(c) (d)	(c) and (d) NO CHANGES
22.20.010 JUCICIAL OFFICER DEFINED.	22.20.010 JUDICIAL OFFICER DEFINED
	NO CHANGES
22.20.110 DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS, THE SUPERIOR COURT AND DISTRICT COURTS	22.20.110 DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS, THE SUPERIOR COURT AND DISTRICT COURTS.
	NO CHANGES
22.25.010 (g) and 22.30.080 (2) 15.56.900 (2) ; 15.15.030 (10)	22.25.010 (g) and 22.30.080 (2) , 15.56.900 (2), 15.15.030 (10) NO CHANGES
15.35.140 APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS.	15. 35.140 APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS.
	NO CHANGES
15.35.150, 15.35.160, 15.35.170, 15.57.025, 15.57.040 (2), 24.55.330 (2), 39.20.310 (1),	NO CHANGES
39.23.130 (2) Senate inserted: "Judiciary" means justic of the supreme court and judges of t court of appeals, the superior court and th district court , and de eted: [THE SUPERIOR AND DISTRICT COURTS]	39.23.130 (2) The House did not address this matter.
39.35.680 (21) (c)(vi) and 39.50.200(2)	NO CHANGES
12.55.120(a) A sentence of imprisonment lawfully imposed by the superior for a term or for aggregate terms of 45 days or more [EXCEEDING ONE YEAR] may be appealed to the court of appeals [SUPREME COURT]	12.55.120(a)..A sentence of imprisonment lawfully imposed by the superior court for a term or or for aggregate terms of [EXCEEDING] one year or more may be appealed to the court of appeals. [SUPREME COURT]
(b)	(b) NO CHANGES

SENATE	HOUSE
12.55.120 (d)	12.55.120 (d)
The Senate does not address this question	The House added a new subsection (d): A sentence of imprisonment lawfully imposed by the district court for a term or for aggregate terms exceeding 90 days may be appealed to the superior court by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendent waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense. A sentence of imprisonment lawfully imposed by the district court may be appealed to the superior court by the state on the ground that the sentence is too lenient; however, when a sentence is appealed by the state, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.
A judge of the court of appeals is entitled to receive annual compensation equal to 95 per cent of the annual compensation of a supreme court justice, payable in equal monthly installments, from the date upon which he takes office until superseded by payment of compensation resulting from the first salary recommendations made under AS 39.23 for judges of the court of appeals.	The House does not address this question.
The Senate does not address this question.	A judge of the court of appeals is not required to contribute to the retirement system under AS 22.25.011 if, at the time of his appointment to the court of appeals, he holds a judicial office to which the retirement benefits of AS 22.25 apply and to which he was appointed before July 1,1978.
Notwithstanding the effective date of this Act, operations of the court of appeals shall commence on a date determined by the supreme court after all judges of the court of appeals have taken office.	NO CHANGES
The superior court has concurrent appellate jurisdiction with the court of appeals in actions and proceedings commenced in the district court and filed in the superior court before the date on which operations of the court of appeals commence. The supreme court may transfer to the court of appeals an appellate matter involving an action or proceeding commenced in the district court which is pending in the superior court on the date on which	Cases pending in the supreme court on the date on which operations of the court of appeals begin which have been heard by or submitted to the supreme court on briefs shall be retained by the supreme court for decision. The supreme court may transfer to the court of appeals all other pending cases within the jurisdiction of the court of appeals

SENATE	HOUSE
operations of the court of appeals commence, including a matter filed before the effective date of this Act. An appellate matter not so transferred shall be decided by the superior court. Before commencement of operations in the court of appeals, a decision of the superior court under this section may be appealed to the supreme court and thereafter to the court of appeals. The supreme court may transfer to the court of appeals any matter within the jurisdiction of the court of appeals which is pending in the supreme court on the date on which operations of the court of appeals commence, including matters filed in the supreme court before the effective date of this Act.	
It is the intent of the legislature that the court of appeals commence operations as soon as possible after the effective date of this Act. The administrative director of courts shall immediately take necessary action to provide suitable facilities for the court of appeals. When advised by the supreme court, the judicial council shall meet and submit nominations to the governor for all initial vacancies for judge of the court of appeals.	NO CHANGES
Not addressed by the Senate	The amends enacted in secs. 5,9,and 12 of this Act apply only to justices and judges appointed on or after the effective date of this Act.
Not addressed by the Senate	Secs. 8 15 and 31 of this Act have the effect of changing Rule 21, Rules of Appellate Procedure and Rule 7, District Court Criminal Rules by amending AS 22.10.020(a), AS 22.15.240, and AS 12.55 to provide that a sentence of 90 days or more imposed by the district court may be appealed.
Not addressed by the Senate	Section 29 of this Act has the effect of changing Rule 21, Rules of Appellate Procedure by enacting and amending AS 12.55.120(a) to provide that a sentence of one year or more may be appealed.

SUPREME COURT WORKLOAD:
Analysis of Proposed Solutions

Prepared by:
Office of Staff Counsel
Office of Administrative Director
September 16, 1977

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INTRODUCTION

The caseload of the Alaska Supreme Court has increased sharply over the past three years. While the Court has also increased its disposition of cases over this period, the increase in dispositions has not kept pace with the increase in filings.

In a memorandum dated May 24, 1977, the Chief Justice requested that the Administrative Director obtain data from other states relating to the workload of the supreme court. This same memorandum mentioned three possible methods of dealing with increased caseloads: (1) handling some cases by panels, (2) increasing the size of the court and (3) establishing an intermediate appellate court.

In response to this request the Administrative Office has undertaken a preliminary study of the supreme court workload. This report will present comparative data on the Alaska Supreme Court and the supreme courts in other comparable states. The report will also review several possible methods of dealing with increased caseloads and will discuss the advantages and disadvantages of the various possibilities.

Unfortunately, the report must begin with three caveats. First, it is very difficult to compare the data from various states as there is no widely-used standard method of defining and stating the pertinent information. Every effort has been made to compare only those figures which are truly comparable,

but, at best, the comparative figures in this report are a "good approximation" of the facts. Secondly, the discussions of the various possible methods of dealing with increasing caseloads are not intended to be exhaustive and conclusive. It would require a much more extended study in order to determine the likely effect in Alaska of adopting any one solution, and even the conclusions of such an extended study would necessarily be less than absolutely reliable. This report then attempts to present the alternatives and some of the more likely effects of each possible solution. Finally, although statistics can be gathered from other states and compared with Alaska, this report cannot answer the fundamental question of whether the Alaska Supreme Court is approaching or has reached its limit in terms of the number of cases it can handle without adopting one or more of the alternatives discussed here. There are no standards by which to measure overwork, and the answer ultimately must be the Court's judgment as to whether it can handle more cases without sacrificing quality.

I. STATISTICAL COMPARISON OF ALASKA WITH OTHER STATES

The memo which initiated this study expressed some concern about the relationship of the size and number of appellate courts to the population of the state and information on this relationship provides an interesting backdrop to the other statistical comparisons which follow.

The Court Administrator in Louisiana recently surveyed 52 jurisdictions (50 states plus Puerto Rico and the District of Columbia) to obtain data on the number of appellate judges in relation to population.[1] The corrected[2] data on Alaska is as follows:

Trial judges per 100,000 population 4.46

Appellate judges per 100,000 population . . . 1.24

Appellate judges per 100 trial judges 27.77

These ratios are based on the following figures:

Trial court judges (general jurisdiction in 1975) 18

Intermediate appellate court judges 0

Supreme court justices. 5

Population (estimated 1975) 403,000

Of the 46 jurisdictions for which data is available, Alaska ranks tenth from the highest for trial judges per 100,000 population.[3] Alaska is in a three-way tie for second place for appellate judges per 100,000 population.[4] Alaska ranks sixth,

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1/ See Appendix I for charts prepared by Louisiana.

2/ The ratios calculated by Louisiana were based on an incorrect number of trial court judges (37) and on an incorrect population figure (330,000).

3/ The states ranking higher than Alaska are Illinois (5.4), Indiana (4.6), Kansas (5.7), Michigan (5.6), Minnesota (5.5), Nevada (4.7), Oklahoma (5.3), Puerto Rico (6.3) and the District of Columbia (5.9).

4/ Alaska is tied with Delaware and the District of Columbia. Only Wyoming ranks higher (1.4).

along with Hawaii, for appellate judges per 100 trial judges.5/

These figures indicate that Alaska already ranks among those states with the highest number of appellate judges in relation to the population. If Alaska should increase the number of appellate judges, either by increasing the size of the supreme court or by creating a new intermediate appellate court, it, of course, would rank even higher. For example, if the size of the supreme court were increased to seven justices, the number of appellate judges per 100,000 population would be 1.73, rather than the current 1.24. Alaska would then have more appellate judges in relation to its population than any of the other 45 jurisdictions included in the chart in Appendix I. If the supreme court remained as it is with five justices and a three-judge intermediate appellate court were created, the ratio would be even higher--1.98 per 100,000 rather than the current 1.24.

It is obvious that the unusually small population of Alaska skews these ratios to some extent, but it is equally obvious that, by any standards, Alaska already has a high number of appellate judges in relation to the population.

5/ The states ranking higher than Alaska and Hawaii are Delaware (38.8), Maine (50), New Hampshire (38.4), North Carolina (29) and Wyoming (33.3).

Such a high ratio may not be inappropriate, however, if the number of appellate judges is not high in relation to the amount of litigation in the state. For example, in 1976 in Alaska, 364 new appeals were filed with the supreme court. This is a ratio of 90.32 appeals per 100,000 population. In Idaho, for the same period, 295 new appeals were filed, which is a ratio of only 38.26 appeals per 100,000 population.6/ The ratio of appeals in Alaska to the population is more than twice the ratio in Idaho. While the ratio of appellate judges in Alaska to population is about twice the ratio in Idaho, the disparity is offset by the higher ratio of appeals to population.

Some tentative conclusions may be drawn from these figures. First, although the number of appellate judges in Alaska when compared to other states appears to be extremely high in relation to the population, the number is not so high when the amount of litigation in the state is taken into consideration. Secondly, the amount of litigation in Alaska is relatively large in relation to the size of the population.

Without regard to population figures, the charts in Appendix II present comparative data on the workloads of the supreme court

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6/ Perhaps more interesting is the comparison of appeals to trial court filings. In Idaho for this period there were 262,419 trial court filings, and one appeal for every 889 trial court cases. In Alaska, there were 102,239 trial court filings, or one appeal for every 280 trial court cases. In other words, three times as many cases are appealed in Alaska as in Idaho.

in Alaska and in eight other states.[7] These particular states were selected for comparison because, like Alaska, they have no intermediate appeallate court, and each of them has a five-justice court except for Maine, which has six justices. Based on the data in Appendix II, the 1976 workload of the Alaska Supreme Court, in comparison with other relatively similar states, appears to be about average.

During 1976, 364 appeals were filed with the Alaska Supreme Court, and 133 opinions were issued. Of the eight other supreme courts reviewed, only Nevada and New Hampshire reported having issued significantly more opinions than did Alaska during 1976.[8] The Nevada court issued 252 opinions and had 607 appeals filed during 1976. New Hampshire reported having issued 205 opinions from July 1, 1974, through June 30, 1975.

Three of the eight courts appear to have workloads much lighter than Alaska's. Hawaii reported 253 appeals filed from July 1, 1975 to June 30, 1976, with opinions issued in 84 cases. North Dakota reported for calendar year 1975 that 128 appeals and original proceedings were filed, and 93 opinions were issued. The Wyoming court issued 75 opinions during 1976, with 138 appeals having been filed.

7/ Hawaii, Idaho, Maine, New Hampshire, Nevada, North Dakota, Vermont, and Wyoming.

8/ The New Hampshire statistics cover fiscal year 1975, the North Dakota statistics cover calendar year 1975, and the Hawaii statistics cover fiscal year 1976. All others cover calendar year 1976.

The three states having apparent caseloads and dispositions nearest to Alaska's were Idaho, Maine and Vermont. During 1976, 351 appeals were filed in the Vermont Supreme Court, and opinions were issued in 141 cases. Idaho reported 295 appeals filed during 1976, and 136 opinions issued. The Maine Supreme Court issued 168 opinions during 1976, but as the following chart indicates, the average number of opinions per justice in Maine was quite comparable to the Alaska average:

STATE	TOTAL OPINIONS	AVERAGE PER JUSTICE
Nevada	252	50.4
New Hampshire	205	41
Maine	168	28
Vermont	141	28.2
Idaho	136	27.2
Alaska	133	26.6
North Dakota	93	18.6
Hawaii	84	16.8
Wyoming	75	15

It is noteworthy, however, that for the first eight months of 1977, the Alaska Supreme Court published 128 opinions. If the court continues to publish opinions at this rate for the remainder of 1977, it could reach a total for the year of over 190 opinions.

Of the states included in this review, six of them have supreme courts which, like Alaska's, have both administrative and rule-making authority.[9] Of the remaining two, Nevada has no administrative responsibilities, but does have rule-making authority. The Vermont court, conversely, has administrative responsibilities, but no rule-making authority. The data in Appendix II shows that the Maine and New Hampshire courts, with both administrative and rule-making authority, issued more opinions than did the Vermont court, which lacks rule-making authority. While we know intuitively that a court which does not exercise either administrative or rule-making authority should be able to handle a higher number of cases than a court that does, this data does not tell us to what degree the absence of such responsibilities increases a court's capacity to handle cases.

Furthermore, the comparative data is insufficient to provide an answer to the question of whether the Alaska Supreme Court is approaching or has reached its limit in terms of the number of cases it can handle, or whether the Alaska court could be producing as many opinions as does the Nevada court, for example. Extensive research would be required to determine whether the Alaska Supreme Court is faced with a greater number of complex cases than are the courts that issue more opinions. Even more difficult to determine is the question of whether the quality of the opinions issued by these courts is up to the

present standard of the Alaska court, and whether our court would be willing to sacrifice some quality to increase substantially its rate of dispositions.

II. POSSIBLE SOLUTION TO THE CASELOAD PROBLEM

Although the workload of the Alaska Supreme Court has increased substantially over the last several years, neither the size of the court itself nor the number of law clerks has increased at all.[10/] During 1976, a total of 364 appeals were filed with the court, as compared to 249 in 1975. This represents an increase in appeal filings of 46% in one year. Because the increase in filings for petitions for review and original applications was not so high, the overall percentage increase in filings from 1975 to 1976 was 38%. Further, a recent statistical report by the Clerk of the Supreme Court showed that the number of pending cases in the "awaiting decision" category as of April 30, 1977, was nearly double the number in that category on the same date in 1976.[11/] It is therefore understandable that the staff and court are feeling burdened by the workload.

10/ Memo dated May 20, 1977, from Donna Spragg Pegues to Chief Justice Boochever.

11/ The number in that category on April 30, 1977 was 125, and on April 30, 1976, the number was 64. See, Memorandum to the Justices from Donna S. Pegues, 5/24/77.

The solutions which come most readily to mind and which have been used by other states to cope with increasing appellate caseloads are the following:

1. Increase the size of the supreme court.
2. Establish panels of the supreme court.
3. Limit appeals of right to the supreme court.
4. Establish central research and screening staff.
5. Establish intermediate court of appeals.

This report will review each of these solutions generally:

1. Increase the size of the supreme court. In many ways court expansion appears to be the simplest solution to the caseload problem. Increasing the number of justices on the court would obviously divide the workload among more people, so that the opinion writing burden on each person is reduced--and this is one of the important goals of any change in the appellate system. Court expansion is an attractive solution also in that it would not necessitate any change in appellate procedures.

The use of either a seven-justice or five-justice court would be compatible with the American Bar Association Standards relating to Court Organization, which state in part:

> A supreme court should be constituted of an odd number of judges, so the decisions can be reached by majority vote. The number most common and generally satisfactory is seven. This number facilitates the working relationships required to establish concurrence of opinion on difficult legal questions, while at the same time being large enough to provide breadth of viewpoint and the manpower to prepare the opinions that

are the principal work product of appellate courts. Nevertheless, some appellate courts have operated effectively with five judges . . . [EMPHASIS ADDED]12/

A change in the size of the court could be achieved by an amendment to A.S. 22.05.020, which establishes the composition of the court.13/ No constitutional amendment would be necessary, since article IV, section 2(a), of the Alaska Constitution, authorizes the legislature to increase the number of justices upon the request of the supreme court.14/

However, the efficacy of court expansion as a solution to the caseload problem may be illusory. As stated in the American Bar Association Standards on Court Organization, "Adding additional judges to a highest court may actually slow down its operation rather than speeding it up."15/ The additional justices

12/ American Bar Association Standards Relating to Court Organization, Standard 1.13, at 34 [hereinafter cited as ABA Standards on Court Organization].

13/ A.S. 22.05.020 provides: "Composition and general powers. The supreme court is a court of record and consists of three justices including the chief justice. On December 1, 1968, the total number of justices shall be increased to five The supreme court is vested with all power and authority necessary to carry into complete execution all its judgments, decrees and determinations in all matters within its jurisdiction, according to the constitution, the laws of the state, and the common law. It may prescribe by rule the fees to be charged by all courts for judicial justices."

14/ Alaska Constitution, article IV, section 2(a) provides: "The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court."

15/ ABA Standards on Court Organization at 35.

would certainly make it possible for the court to increase its outpout of opinions, but, at the same time, each case might take somewhat longer to decide because there would be additional points of view to be dealt with and more justices among whom draft opinions and memoranda would have to circulate. Additionally, each justice would still have to review each draft opinion. Assuming that seven justices would produce more opinions in a given year than would five, the workload on each justice with respect to the opinion review function would actually increase with seven justices. One commentator has described the situation as follows:

> [W]hatever added work can be done by the extra judges is dissipated by the increased consultation time, by the difficulties inherent in drafting opinions to accommodate multiple points of view, and by the administrative problems involved in increased personnel.16/

Increasing the size of the supreme court has not been a widely-used method of dealing with appellate caseload problems. In fact, the National Center for State Courts reported to the Idaho committee that no state judiciary had expanded the size of its supreme court in recent years.17/

16/ Hufstedler, Constitutional Revision and Appellate Court Decongestants, 44 Wash. L. Rev. 577, 594 (1969), quoted in Donaldson, A Crisis in the Idaho Court System: An "Appealing Remedy, 13 Idaho L. Rev. 1, 4 (1976).

17/ An Investigation into the Problems Created by the growing Appellate Caseloads in Idaho, Report of the Supreme Court Appellate Court Committee, August 1977, Draft Report of June 29, 1977, at 37. [Hereafter cited as Draft Idaho Appellate Court Report.]

The projected cost of adding two justices to the supreme court, including staff, space and equipment requirements, would be approximately $300,000 the first year and $285,000 each subsequent year.

2. Establish panels of the supreme court. Another possible solution to the caseload problem is to divide the supreme court into panels of three. The advantage of sitting in panels is that, while three judges are hearing arguments or deliberating on or writing opinions relating to certain cases, the other two justices would be free to tend to other work of the court. The use of panels would necessitate some change in the internal procedures of the supreme court, but this solution does have the advantage of not requiring procedural changes for the attorneys or litigants.

There is no constitutional, statutory or administrative requirement that the supreme court sit en banc,[18] and Appellate Rule 16 does provide that three justices shall constitute a quorum.[19]

18/ A.S. 22.05.010(b) does include the following provision: "For the purpose of considering appeals of sentences on [the grounds that the sentence is excessive or too lenient], the supreme court may sit in divisions." [Emphasis added.] It is at least arguable that the principle of statutory construction inclusio unius est exclusio alterius would apply, and, if so, the use of divisions would be valid only for the specified sentence appeals.

19/ Appellate Rule 16(a) provides: "A quorum shall consist of a minimum of 3 justices or judges designated to sit on the supreme court."

It therefore appears that the change to panels could be made by internal administrative action, without the necessity of constitutional amendment or legislative action.

The commentators, however, are uniformly opposed to the use of panels by a state's highest appellate court. The American Bar Association Standards on Court Organization, for example, contend that the use of panels dilutes the appellate function, "particularly that of developing the law."[20/] The American Bar Association Standards Relating to Appellate Courts state a more emphatic position against the use of panels. The Standard itself reads as follows:

> 3.01 Internal Organization of Appellate Courts.
> (a) Supreme Court. In hearing and determining the merits of cases before it, the supreme court should sit en banc. Except for those who may be disqualified for cause or unavoidably absent, all members of the court should participate in the decision of each case. The court should not sit in panels or divisions, whether fixed or rotating, or delegate its deliberative and decisional functions to officers such as commissioners.[21/]

The Commentary explains the rationale behind this position.

> The internal organization of an appellate court should be designed to permit the court to fulfill its functions in the court system. The primary responsibility of a supreme court is that of developing and maintaining the consistency of the

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20/ ABA Standards on Court Organization at 35.

21/ American Bar Association Standards Relating to Appellate Courts, Standard 3.01, at 7-8 [hereinafter cited as ABA Standards on Appellate Courts]

> law to be applied in subordinate courts in the system... In deliberating upon and deciding the legal questions that come before it, the supreme court's entire membership should participate so that its collective professional and intellectual resources are brought to bear in the development of the law. To the extent that such a court subdivides itself into panels or divisions, it creates possibilities of conflict or inconsistency in its decisions, which can be resolved only through en banc hearings.
>
> In some states having no intermediate appellate court, the supreme court sits in divisions in order to cope with a caseload which would be too large to handle if the court were to sit en banc in every case. This arrangement has often been used as a means of transition to the establishment of an intermediate appellate court. The result of such an arrangement is that the court functions simultaneouly as a court of intermediate review when it sits in divisions and as a court of subsequent review when it sits en banc. If the court's docket in such a system is carefully administered, so that important or difficult cases are identified before being heard and assigned directly for en banc hearing, a single supreme court can handle the system's appellate responsibilities in an effective way. Experience indicates, however, that such an arrangement may persist long after the point has been reached when an intermediate appellate court should have been established.
>
> Moreover, internal inconsistency in the court's decisional product may be ignored or tolerated to an excessive degree in the hope of avoiding the cost of establishing an intermediate court.[22/]

The blue-ribbon committee which recently studied appellate caseload problems in Idaho considered the possibility of using panels of the supreme court, but the committee finally rejected that alternative:

> [T]here seemed to be more arguments against the use of panels than arguments in favor: both of the "outside experts" who testified before the committee, Chief Judge Schwab and Chief Justice

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22/ Id. at 8-9.

> Cameron, urged that any Supreme Court has a law-stating function, and that this function is weakened by the operation of panels within a supreme court. Other committee members felt that decisions by panels should be final only if they are unanimous--meaning that a panel which developed disagreement would then have to return an appeal to the entire appellate body or to another panel, causing further delay. Other committee members felt that panels placed too much emphasis on the luck of the draw, and that panels are not appropriate for decisions of a court of last resort, although they would be useful for an intermediate appellate court. Committee members seemed to take the view that the function of a court of last resort is to take a broad and balanced view of the law and the needs of society, and that dividing any court of last resort into smaller units of decision would interfere with this basic role. The committee finally determined that the use of panels, either in connection with increasing the size of the Supreme Court or within the present structure, is not desirable.[23/]

In Nevada the legislature in 1976 gave final approval to a constitutional amendment which would permit the supreme court to sit in panels if there are more than five justices on the court. There are currently only five justices on the Nevada court, and this amendment has had no effect in practice, since no implementing legislation has been sought.[24/]

With the assistance of the Clerk of the Supreme Court, we have attempted to determine how panels might actually operate and to quantify to some extent the reduction in workload that

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23/ Draft Idaho Appellate Court Report, supra, note 17, at 31-32.

24/ David Frank, Legal Assistant to the Nevada Supreme Court, telephone conversation on June 16, 1977.

a panel system could be expected to produce.

By use of a standard mathematical formula, it was determined that in order to have the five justices sit in all possible combinations of three justices each, a total of ten panels would be required. The composition of each panel would be as follows:

Panel 1:	Boochever/Rabinowitz/Connor
Panel 2:	Rabinowitz/Connor/Burke
Panel 3:	Connor/Burke/Matthews
Panel 4:	Burke/Matthews/Boochever
Panel 5:	Matthews/Boochever/Rabinowitz
Panel 6:	Boochever/Connor/Burke
Panel 7:	Connor/Matthews/Boochever
Panel 8:	Matthews/Rabinowitz/Burke
Panel 9:	Burke/Rabinowitz/Boochever
Panel 10:	Matthews/Connor/Rabinowitz

It must be remembered that even if panels are utilized, each justice will still have the responsibility for drafting the same number of opinions each year as he would if panels were not used. The two areas in which the use of panels would reduce the workload of individual justices are in the preparation for oral argument and in the review of draft opinions from other justices. Since each justice will not be participating in four of the ten panels, the time he spends presently on preparation for oral argument and on reviewing drafts would be

reduced by a maximum of 40 percent. Assuming for purposes of illustration that a justice devotes 40 percent of his total time to these two tasks, then the panel system would theoretically reduce his overall workload by 16 percent.25/

In practice, however, the 40 percent reduction figure is unrealistically high when applied to total workload because a certain percentage of the total appeals will be heard by the Court en banc. For example, if the Court had an annual caseload of 200 appeals, and 50 of the 200 were heard en banc, then the workload reduction in the preparation and review functions would be diminished from the maximum 40 percent to 30 percent.26/ Again assuming that a justice devotes 40 percent of his total time to these two tasks, the overall savings in workload for that justice would be 12 percent, or 4.8 hours per 40 hour week. And as the ratio of en banc cases to panel cases increases, the workload reductions are further diminished.

Even if the philosophical objections were set aside, the use of panels is generally agreed to be a temporary solution to the workload problem at best. The following chart illustrates that if the caselo continues to increase, then the actual

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25/ This figure is arrived at by multiplying the 40% reduction by the percent of total time spent on preparation for argument and review of opinions.

26/ If only 150 of the total 200 cases are heard by panels, then each justice would not be required to participate in 40% of the 150 panel cases, or 60 cases. These 60 cases represent 30% of the total 200.

workload of each justice under a panel system will approach and finally increase beyond the present actual workload within a relatively short period of time.

Year One

It is assumed that 200 cases will be filed, ready for argument, and decided during the year. It is also assumed that 25% of the total, or 50 cases, will be heard en banc.27/

Each justice must write opinions in	40 cases
Each justice must fully participate in	140 cases*

*50 cases en banc plus 90 cases in panels.

Year Two

It is assumed that the caseload increases by 25%, for a total of 250 cases. 25% of the total, or 63 cases, will be heard en banc.

Each justice must write opinions in	50 cases
Each justice must fully participate in	175 cases*

*63 cases en banc plus 112 cases in panels.

Year Three

It is assumed that the caseload will again increase by 25%, for a total of 325 cases. 25% of the total, or 81 cases, will be heard en banc.

Each justice must write opinions in	65 cases
Each justice must fully participate in	227 cases*

*81 cases en banc plus 146 cases in panels.

27/ The estimate of 25% en banc cases was somewhat arbitrary, since a more accurate figure could not be determined. It does, however, take into account the 1976 experience of dissenting opinions filed in 17% of the opinions, with the additional 8% intended to reflect those cases involving important questions of law requiring full court participation. It may be that the estimate is too low to adequately take into account the number of these cases.

Thus after two years, the actual number of cases that each justice must fully participate in will exceed the number of total cases from the hypothetical "Year One."

This chart also illustrates the problems attending the adoption of a solution that is geared toward percentage reductions in workload as is the panel system. At some point along the graph of caseload rise, a court will reach its saturation point. A justice has time to write only a certain number of opinions each year and can participate fully in only a certain number of cases each year without seriously sacrificing the quality of the court's work product. When the saturation point is reached, it hardly matters in practical terms that next year's workload will be reduced by 15 or 20 percent by the use of panels if the actual workload will exceed the capacity of the justices. The court will continue to fall behind, whether panels are utilized or not. At the trial court level, when a court reaches this saturation point, the solution is to add another judge so that judicial capacity is increased. It has been suggested that the panel system will provide real relief only if pro tempore appointments of superior court judges are included on the panels. The inclusion of pro tem justices on panels could be accomplished in at least two different ways.

If an extra judicial position were assumed to exist on the Supreme Court (to be filled each time with a different pro tem justice), then the judicial capacity for use on panels would

increase from 5 to 6. By using the same mathematical formula discussed above, 20 panels would be required to have the six positions combined into panels of three without repeating a combination. While this would certainly augment any workload reductions that would otherwise be achieved by panels, it would be administratively too unwieldy to attempt to manage 20 panels. If additional pro tempore assistance were to be used in concert with the panel system, it would be preferable to keep the same ten panels described above, and substitute a pro tem justice for each of the five sitting justices periodically and on a rotating basis.

There are, however, both philosophical and practical limitations on the frequent use of superior court judges on the panels as justices pro tempore. In order to achieve a significant additional workload reduction by use of pro tem assistance, a fairly large number of cases would have to be heard by panels made up of two justices and one pro tem justice. With only two of the five justices sitting on a large number of panel calendars, the Supreme Court's law-making function is even more diluted. The predictability of results declines, and the potential for conflicts among the panels increases greatly, necessitating further hearing by the Court en banc.

There is also a limit to the amount of time that a superior court judge can be expected to divert from his trial court duties. In this vein, it must be remembered as well that the

pro tem justice cannot work as efficiently as a full time justice. He may have one law clerk at the most, and will not have the level of assistance for preparation of pre-argument memoranda and draft opinions that a sitting justice has. Further, he lacks the advantage of being able to devote full time to appellate matters and thereby develop a routine for efficient disposition of these types of cases.

Some further problems should also be noted. It has been suggested that one way of meeting the objection concerning the dilution of the law-making function is to provide that in any case where the panel decision were not unanimous, or if a non-participating justice disagreed with the draft opinion, then the case would be referred to the court for en banc resolution. While this requirement would to some extent reduce the problems concerning the dilution of the law-making function, it would also mean that such a case would probably have to be argued again before the full court and certainly would require another conference. This would result in inconvenience and delay to counsel and litigants, and a duplication of effort for the members of the panel who initially considered the case.

As another means of safeguarding the lawmaking function, it has been suggested that before argument, a single justice on a panel should be empowered to order any case before the panel moved to the en banc calendar. Again, this would provide some additional safeguards. However, while it is impossible,

without some experience to draw upon, to predict how frequently this prerogative might be exercised, it would certainly be exercised to some extent, and this would result in further diminishing the overall percentage workload reduction that a panel system might achieve, by increasing the number of en banc cases.

Finally, in order for a panel system to operate efficiently, there must be a mechanism for identifying those cases that will be menable to panel treatment. If unanimity on the panels is required, this means in addition that the identification process must include the ability to predict with some accuracy those cases that will be likely to result in a unanimous decision. (Otherwise delay and duplication of effort will be increased). It is unlikely that the recently established central staff attorney position will be able, without additional attorney assistance, to perform this screening function adequately and also provide substantial assistance to the court on motions and petitions. Additionally, the Clerk of the Supreme Court has expressed the concern that the initiation of a ten-panel system would require the hiring of an additional calendar clerk to coordinate the assignments and the calendaring of cases for the ten panels and for the en banc calendars.28/

28/ It would be possible, of course, to reduce the number of panels from ten to five, with each justice sitting on three different panels. The number of panels could not be fewer than five, however, and still maintain an equal distribution of panel assignments. In this event, it is estimated by the Clerk that an additional one-half time calendar clerk would be required. Five panels would achieve the same percentage workload reductions as would ten panels, but such a system would not be fully rotating.

It is anticipated that an additional central staff attorney and an additional calendar clerk would be required to implement the panel system. The approximate cost for the first year of an attorney, secretary, and equipment would be $69,000 and for each year thereafter $65,000. If a calendar clerk were added the total cost would be $90,000 for the first year and $74,000 each year thereafter.

Limit appeals of right to the supreme court. Since the primary goal of these changes in the appellate system is to reduce the workload of the supreme court, one direct method of dealing with the problem would be to permit fewer appeals. This could be done by abolishing appeals of right to the supreme court in certain types of cases or by totally eliminating appeals of right and authorizing the supreme court to grant writs of certiorari for those cases which it wishes to hear. The primary advantage of such a system is that it would produce an immediate reduction in the caseload of the supreme court and would enable the court itself to exercise control over the size of its caseload.

Although the right to at least one appeal is traditional in the American judicial system, such a right is not conferred by the United States Constitution. The American Bar Association Standards on Court Organization include the following statement: "[I]t should be recognized that a litigant has no unqualified right to an appeal..."29/

29/ ABA Standards on Court Organization at 35.

A limitation or abolition of appeals of right to the supreme court would require an amendment to A.S. 22.05.010(a), which currently reads in part:

> The supreme court has final appellate jurisdiction in all actions and proceedings. ...An appeal to the supreme court is a matter of right. ...

Article IV, section 1, of the Alaska Constitution grants to the legislature the authority to prescribe the jurisdiction of courts: "The jurisdiction of courts shall be prescribed by law." This would seem to preclude any constitutional problems with the elimination of appeals of right, but article IV, section 2, may place some limitation on the legislature's power to prescribe jurisdiction. Article IV, section 2(a), provides in part: "The supreme court shall be the highest court of the State, with final appellate jurisdiction." [Emphasis added.] Thus, although under section 1 the legislature has the authority to "prescribe jurisdiction", under section 2 it may not have the authority to grant final appellate jurisdiction to any court other than the supreme court.

Since no legislative attempt has been made to limit appeals of right to the supreme court, the Alaska Supreme Court obviously has had no opportunity to consider the constitutionality of such a limitation. However, if appeals of right were limited or abolished, the supreme court would retain the power to accept cases by certiorari, and the Alaska Supreme Court has indicated that the exercise of such a power is equivalent to the exercise of "final appellate jurisdiction". In State v. Browder[30/] the court stated:

30/ 486 P. 2d 925 (Alaska 1971).

> We think it significant that the legislature in prescribing this court's jurisdiction specifically provided that "The supreme court may issue injunctions, writs of review, mandamus, certiorari, prohibition, habeas corpus, and all other writs necessary or proper to the complete exercise of its jurisdiction." In our view this provision is a clear manifestation of the legislature's intent that the supreme court would be able to exercise its final appellate jurisdiction other than by appeal.31/

It is possible then that the limitation or abolition of appeals of right could be construed as a legitimate exercise of the legislature's power to prescribe jurisdiction and not as an unconstitutional grant of final appellate jurisdiction to a lower court. The resolution of this constitutional question, however, is far from clear, and it would have to be given serious consideration if an attempt is to be made to obtain an amendment of A.S. 22.05.010(a) so as to limit or abolish appeals of right to the supreme court.

The consensus of the commentators appears to be that limiting the right to appeal is not a desirable solution to the caseload problem. Hufstedler, for example, is strongly opposed to this approach:

> There are direct and indirect ways to trim an appellate docket. The direct way is to cut off or limit the right to appeal. The indirect way is to create a series of procedural or financial impediments which discourage appeals. We can dispose of the indirect methods summarily.

31/ Id. at 930.

> Entwining the appellate process in even more red tape than there is at present or making appeals even more expensive is a vigorous step backwards. There remains the direct route. The amputation method will undoubtedly cure congestion, but the treatment may be worse than the disease. [FOOTNOTE OMITTED.]32/

The American Bar Association Standards on Appellate Courts take the position that litigants generally should have at least one appeal of right.33/ The Commentary to Standard 3.10, Opportunity for Appellate Review, states in part:

> The right of appeal, while never held to be within the Due Process guaranty of the United States Constitution, is a fundamental element of procedural fairness as generally understood in this country. That right should be accorded an aggrieved party to a trial court proceeding.34/

Even if there are no legal problems with limiting the right of appeal, such a limitation does raise serious policy questions. Indeed, the Idaho committee rejected this approach solely for policy reasons:

> Ultimately, the suggestion that the right of appeal should be limited was rejected by the committee, but not on legal grounds. Overwhelmingly, committee members felt that in a state such as Idaho with a strong western tradition of independence, persons should have the right to at least one appeal from a trial judge's decision to allow for correction of error. Limiting the right to appeal in any way would not be popular with Idaho citizens and would be opposed. Thus, this alternative was discarded.35/

32/ Hufstedler, Constitutional Revision, supra, note 15, at 586-87.

33/ ABA Standards on Appellate Courts at 14.

34/ Id. at 15.

35/ Draft Idaho Appellate Court Report, supra, note 17, at 28.

The limitation of the right of appeal would create no significant new costs to the court system, and would probably result in a reduction of costs.

A less drastic alternative to direct limitation on the right to appeal would be to devise some disincentives to appealing. One possible disincentive would be to provide for substantially higher awards of attorney fees to the prevailing party. The criticisms of such an approach are identical to those surrounding the continuing Rule 82 controversy. Primarily, the objection is that meritorious appeals as well as unmeritorious ones are discouraged, and access to the court is denied on the basis of one's financial ability to take the risk of losing.

While Alaska's ratio of appeals to trial court cases is substantially higher than Idaho's, it may be that this higher ratio is more appropriate. (In fact, the relatively high reversal rate in Alaska suggests that at least in Alaska this may be the case.) Before any disincentives should be adopted as a method of reducing caseload, the Court must conclude that a substantial number of the appeals coming before it should not have been brought. And the particular disincentive chosen must be directed at discouraging only those that should not be brought. It might be appropriate, for example, to award substantial attorney fees to a prevailing appellee in a clearly frivolous appeal. Of course, the truly difficult question (and one that

goes beyond the scope of this study) is whether Alaskan litigants do in fact appeal "too many" cases, and if so, why they do. For until the cases that should not be appealed can be identified, and the reasons for appealing them divined, then disincentives cannot be fashioned that will discourage only these sorts of cases.

It has also been suggested that the Court consider limiting the right to oral argument. The advantage of such an approach is that the Court would spend less time preparing for and hearing oral arguments in cases that do not warrant it. For example, in the First District of the Court of Appeals in California, the central screening staff identifies the more routine cases that are amenable to summary disposition. If the panel assigned to the case agrees with the staff conclusion, then counsel are notified that the case will not be placed on the argument calendar unless the request for argument is renewed within a certain period of time. Such a procedure requires, of course, an operating central screening staff, but it does permit the Court to handle the more routine cases in a truly summary fashion. A similar approach (and more effective in terms of controlling workload) would be to permit oral argument generally only at the discretion of the court. This approach would also require careful review and recommendations from a central staff if substantial savings in

judicial time were to be achieved.36/

Finally, it has been suggested that the Court adopt a procedure whereby counsel can stipulate to disposition of their appeal without opinion. It is impossible to predict how many parties would choose this approach, but even a few such stipulations would provide some relief. Adoption of this suggestion would require a preliminary decision as to whether such a stipulation would require a waiver of oral argument, and procedures setting out time limitations would need to be drafted. Finally, the Court should retain discretion to disapprove the stipulation.

4. Establish central research and screening staff. There are currently several states which have established a central staff of attorneys to perform research and screening duties in an attempt to deal with the problem of increasing caseload. As outlined in the American Bar Association Standards on Appellate Courts, the duties of such a staff may include the following:

> (1) Monitoring and reviewing cases coming before the court to assure compliance with procedural rules, and making recommendations for disposition of routine procedural matters in accordance with criteria established by the court;

36/ Limiting the opportunity for oral argument may result in increasing the average time to dispose of cases. The addendum to the 1976 Appellate Delay Study prepared by the Administrative Office (6/21/76) showed that the average time from the assignment of a case on the briefs to the publication of the opinion was 218 days, while the average time from oral argument to publication was 159 days. This disparity may have lessened since the publication of that study, and the use of central staff to recommend dispositions in more routine cases would further alleviate this problem.

(2) Preparing case summaries, including procedural history, facts, and principal issues and authorities, for the court's use in managing its caseflow and conducting its deliberations;

(3) Reviewing all matters presented in propria persona and taking measures necessary to put them in correct and intelligible form;

(4) Supplementing the research of the judges' individual law clerks; and

(5) Acting for the court in supervising preparation of complex records...37/

In 1971 the National Center for State Courts began the Appellate Justice Project which established experimental central research staffs in Nebraska, Virginia, New Jersey and Illinois.38/ The evidence accumulated during these projects supported the following initial hypotheses of the project:

1. That a central staff of lawyers can increase an appellate court's productivity.

2. That a court with a staff can retain effective control over the decisional process and the final decisions.

3. That a substantial number of appeals are "routine" and can be decided appropriately by short, unsigned opinions.

4. That in such a routine case a central staff memorandum is helpful to the judges and makes it feasible to utilize a short, unsigned opinion.

37/ ABA Standards on Appellate Courts at 98-99.

38/ D. Meador, Appellate Courts: Staff and Process in the Crisis of Volume (1974). This book is the official report on the Appellate Justice Project and contains detailed discussions on how the staff functioned in each project state.

5. That appellate staff assistance of this sort is acceptable to the practicing bar.[39]

However, for three other initial hypotheses, the evidence either did not support the hypothesis or the evidence was too ambiguous to permit a conclusion:

1. That adding a central staff would increase productivity more than providing additional law clerks for the judges.

2. That adding a central staff would increase productivity and preserve collegiality more effectively than adding judges to the court.

3. That adding a central staff would allow more judge time to be devoted to difficult cases.[40]

The report on the project emphasizes the project did not disprove these unsupported hypotheses; it only failed to verify them.[41] The conclusion of the report which is most pertinent to this study is the following:

> Among the positive showings perhaps the most important point is that central staff lawyers do contribute to appellate productivity and expedition. A staff allows a court to handle a heavier caseload than the court could handle without it. Precisely how much a staff can step up the court's capacity depends on a number of variables, including the size of the staff and the court's internal procedures for deciding the staff processed cases.[42]

A single staff attorney position was recently requested by the Alaska Supreme Court and funded by the legislature. Recruitment

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39/ Id. at 163.

40/ Id. at 163-64.

41/ Id. at 164.

42/ Id.

for this position closed July 5, 1977, and the position will be staffed by November 1, 1977. As proposed and currently contemplated, the central staff will consist of one attorney, who will report to and work with the Clerk of the Supreme Court. The Clerk of the Court will serve as staff director for the central staff. Temporary secretarial staff will be provided for the remainder of this fiscal year, and the request for permanent support staff will be renewed in the FY 1979 budget request. The proposed duties of the staff attorney are as follows:

1. Perform legal research on matters filed with the supreme court.
2. Review all appeals once all briefs are in and propose possible disposition of routine cases.
3. Recommend consolidation of appeals for argument.
4. Review petitions for review and prepare memoranda recommending appropriate disposition.
5. Review and research complex motions presented to the court.
6. Review and research briefs and records in sentence appeals and prepare memoranda recommending possible disposition.
7. Assist clerk in scheduling expedited appeals before the court.
8. Assist clerk in preparing complicated records on appeal.
9. Develop systems for operation of the staff attorney position.43/

43/ Recruitment Bulletin dated June 4, 1977. See Appendix III.

While the establishment of this one position may contribute to the administrative efficiency of the court's operations, as currently staffed it is by no means the equivalent of a full-scale program of central staff research and screening designed to increase significantly the court's capacity to process cases.[44] The experimental staffs which were established by the Appellate Justice Project included several staff attorneys, who worked under the supervision of a senior attorney functioning as the staff director. Of course, the courts participating in the project were much larger, higher volume courts than Alaska's.

In 1976 the Idaho Supreme Court established the position of central research attorney with the primary duties of screening petitions and motions and carrying out specialized research projects for the court.[45] In a telephone conversation on July 29, 1977, Carl Bianchi, Administrative Director of the Courts for the State of Idaho, indicated that the central staff approach is working very well and has been of particular benefit in the

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44/ The Administrative Office is currently developing a federal grant under which two additional clerical support positions for the central staff would be funded. The request for clerical support in the FY 1978 budget was denied by the Legislature.

45/ Draft Idaho Appellate Court Report, supra, note 17, at 21. This action was taken in accord with a proposal prepared by Carl Bianchi, Administrative Director of the Courts for the State of Idaho. A copy of this proposal has been forwarded to Donna Pegues, Clerk of the Supreme Court.

area of petitions for review and motions. The court currently has one staff attorney and is considering hiring an assistant staff research attorney in the near future.

The only real disadvantage of a central staff approach to the caseload problem is the risk that the staff may assume judicial responsibilities which properly should be performed by the justices. The Commentary to Standard 3.62, Legal Staff, of the American Bar Association Standards on Appellate Courts, comments on this problem:

> The problem created by use of a central legal staff is that judicial responsibility may be diffused among the staff to the detriment of the appellate process. Where a court employs a central staff, it must be continually alert to the risk of internal bureaucratization and guard against any tendency to rely on staff for decisions that should be made only by judges personally. Some arrangements involving central staff....seem to involve excessive delegation to staff.46/

Since the use of a central staff is purely a matter of internal operating procedure, such a system could be adopted by administrative action. No constitutional or statutory amendments would be required.

It is extremely difficult to quantify the workload reductions that a central research staff would achieve for the court. Cer-

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46/ ABA Standards on Appellate Courts at 100.

tainly the use of central staff for researching and making recommendations for disposition in petitions for review, complex motions, sentence appeals, and other routine appeals will free the justices' personal law clerks for work on draft opinions and bench memoranda. There is also some advantage to be gained from a permanent central staff in terms of both experience and the development of an efficient routine.

It has been suggested that the Court may wish to consider pooling five of the ten existing law clerk positions and relocating these five positions in the central staff, leaving each justice with one personal law clerk. While this suggestion may have some merit, it cannot be said conclusively that this would permit the Court to handle its caseload more effectively. As noted above, the National Center's Appellate Justice Project failed to demonstrate that the addition of central staff would increase productivity more than additional law clerks. Further, five additional attorneys are probably more than this Court requires for a central staff, although internal procedures could be designed to re-distribute some existing law clerk functions to such an augmented central staff.47/

47/ For example, the augmented central staff might be assigned all bench memoranda, leaving the personal law clerks only with the tasks of drafting opinions and preparing substantive and technical comments.

It appears in addition that centralizing law clerk positions would permit a more even distribution of workload among the non-judicial legal assistance and might well result in increased productivity for the Court overall. It is debatable, however, whether this redistribution of positions and workload would result in a sufficient increase in productivity to warrant the upheaval involved in making the change.

The projected cost of establishing a minimal central staff of two attorneys and one secretary, including space and equipment requirements, would be approximately $138,000 the first year and $130,000 each subsequent year. This includes the cost of the existing staff position, so the additional cost would be substantially less.

5. Establish intermediate appellate court. The commentators are uniformly in agreement that the most desirable method of dealing with increasing appellate caseloads is the establishment of an intermediate court of appeals. Several recent articles have advocated this solution,[48/] and the American Bar Association Standards on Court Organization are emphatic in their

48/ See e.g., Hopkins, The Role of an Intermediate Appellate Court, 41 Brooklyn L. Rev. 459 (1975); Hufstedler, Constitutional Revision and Appellate Court Decongestants, 44 Washington L. Rev., 577 (1969); and Appellate Court Reform, 45 Miss. L. J. 121 (1974). Appendix IV to this report contains summaries of these articles prepared by the Idaho Administrative Office.

support of this solution:

> Where a supreme court by reason of workload is unable to perform both its principal functions, some additional mechanism of appellate review becomes necessary. This situation has long since prevailed in states with large population, and is becoming increasingly prevalent in states of smaller population. The immediate necessity for an intermediate appellate court may be met or postponed by such devices as use of per curiam and memorandum decisions in cases having limited general significance, by limiting oral argument in appropriate circumstances, and by improved efficiency in management of the highest appellate court's work... Since there seems little prospect for a long run decline in the volume of appellate litigation, once the surge of appellate cases has been felt in a state having only one appellate court, steps should be taken forthwith to establish an intermediate appellate court rather than temporizing with substitute arrangements. [EMPHASIS ADDED.] 49/

In addition to being the solution most often advocated by the commentators, the creation of an intermediate appellate court is the solution which has been chosen most frequently to relieve congestion in a single appellate court. 50/ Twenty-eight states now have intermediate appellate courts, and several states are studying their need for such a court. 51/ The following table 52/ indicates the status of intermediate appellate courts in the western states:

49/ ABA Standards on Court Organization at 35.

50/ Hopkins, supra, note 48, at 462.

51/ Draft Idaho Appellate Court Report, supra note 17, at 25.

52/ Id. at 26.

INTERMEDIATE APPELLATE COURTS IN WESTERN STATES

States With Intermediate Appellate Courts	States Without Intermediate Appellate Courts	States Considering Establishing Intermediate Appellate Courts
Oregon	North Dakota	North Dakota
Washington	South Dakota	
California	Montana	
Arizona	Wyoming	
New Mexico	Idaho	Idaho
Oklahoma	Utah	Utah
Texas	Hawaii	Hawaii
	Alaska	
	Nebraska	
	Nevada*	Nevada

* A constitutional amendment is pending in Nevada to create an intermediate appellate court. The amendment has passed one session of the Nevada Legislature.53/

Although the creation of an intermediate appellate court is the most often recommended solution as well as the most frequently adopted solution, the creation of such a court in Alaska would raise some of the same constitutional questions which were discussed above54/ in connection with limiting appeals of right to the supreme court.

The basic question which must be resolved is whether article IV, section 2, of the Alaska Constitution, which specifies that the supreme court has "final appellate jurisdiction", prevents the

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53/ See Appendix V for a copy of the Nevada Legislation.

54/ See p. 25-26, supra.

exercise of final appellate jurisdiction by lower courts. Since no intermediate appellate court exists in Alaska, the Alaska Supreme Court obviously has had no opportunity to consider the question of the jurisdiction which may be exercised by such a court under the constitution. However, an analogous question did arise in State v. Marathon Oil Company.[55] In that case the criminal defendant had appealed a district court decision to the superior court, and the supreme court then had to consider whether the state could appeal the superior court's decision to the supreme court. In concluding that the state did have the right to such an appeal, the court treated the superior court as an intermediate appellate court and found that final appellate jurisdiction could not lie in that court:

> In this matter the superior court must be recognized as an intermediate appellate court since final appellate jurisdiction by reason of Article IV, Section 2, of the Alaska state constitution rests in this court:
>
> > "The supreme court shall be the highest court of the State, with final appellate jurisdiction."
>
> Once the appellate process is properly invoked, final appellate jurisdiction is in the Supreme Court; for to hold otherwise would contravene the explicit constitutional provision. [Emphasis added.][56]

55/ 528 P. 2d 293 (Alaska 1974).

56/ Id. at 295.

If the right to appeal to the supreme court from decisions of an intermediate court of appeals is retained in all cases, no constitutional question would arise. However, the primary purpose of establishing an intermediate court of appeals would be to reduce the caseload of the supreme court, and retention of appeals of right to the supreme court in all cases would defeat that purpose. On the other hand, of course, if appeals of right to the supreme court are abolished, the intermediate court of appeals would then be the court of final appellate jurisdiction, and arguably this would be a direct contravention of article IV, section 2, of the constitution, as interpreted in Marathon.

It is more likely, however, that the abolition of appeals of right to the supreme court would be found not to contravene the constitution. Any statute establishing an intermediate appellate court and abolishing appeals of right to the supreme court would most likely grant to the supreme court the authority to accept petitions for writs of certiorari and to hear cases on that basis at its discretion. Since the supreme court could exercise its discretion to hear any case, it could be found that final appellate jurisdiction still lies in the supreme court, although it may choose not to exercise that jurisdiction.[57/]

57/ As discussed above at p. 25-26, it appears that the supreme court in State v. Browder, 486 P. 2d 925 (Alaska 1971), interpreted the exercise of the power to grant certiorari to be equivalent to the exercise of final appellate jurisdiction. Such an interpretation would eliminate any constitutional problem with a grant of "final" appellate jurisdiction to an intermediate appellate court.

The primary benefits which can be expected to result from the creation of an intermediate court of appeals are a reduction in the court's backlog of cases and a reduction in the elapsed time between the submission of briefs and final disposition. In Oregon, for example, the average number of days from submission of briefs to a final decision dropped from 221 days to 130 days following the creation of an intermediate appellate court in 1969.

If a decision is made to create an intermediate appellate court, decisions must then be made on several subsidiary issues relating to such a court. We have not attempted in this report to resolve or make recommendations concerning these subsidiary issues, but the following are illustrative of some of the major issues. The primary question which must be resolved is what the jurisdiction of an intermediate court of appeals should be.58/ The American Bar Association Standards on Court Organization make the following recommendation relating to jurisdiction:

58/ In the Draft Idaho Appellate Court Report, supra, note 17, no specific recommendations were made as to the jurisdiction of the proposed intermediate appellate court. However, at its meeting on July 26, 1977, the committee decided to include a definite jurisdictional statement in its final report, and that statement is expected to receive final committee approval on September 16, 1977. Carol Bianchi, Administrative Director of the Courts for the State of Idaho, telephone conversation on July 29, 1977.

> Every level and division of appellate court should have authority to hear all types of cases; appellate courts of specialized subject-matter jurisdiction should not be established. An appellate court should have jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies, comparable but subordinate to that of the Supreme Court, to protect its supervisory authority.59/

The primary reason stated in the Commentary for not establishing courts of specialized subject-matter jurisdiction is that "the appellate court function of developing the law cannot be performed in a coherent and consistent way if jurisdictional divisions compel the law's fabric to be made in a decisional patchwork."60/

Another issue which must be resolved is how appeals should be lodged with the intermediate court. The American Bar Association standard on this point reads as follows:

> Appellate review should be initiated by a single filing procedure effective for the appellate court as a whole. Docketing of cases within the appellate court and transfer of cases between levels or divisions of the court should be by simple motion or order.61/

In line with the American Bar Association recommendations, a one-filing/one-fee procedure has been recommended for the proposed intermediate appellate court in Idaho.62/

59/ ABA Standards on Court Organization at 33.

60/ Id. at 37.

61/ Id. at 33.

62/ Draft Idaho Appellate Court Report, supra, note 16, at 41-42.

Still another matter about which decisions must be made is the process of appealing cases from the intermediate appellate court to the supreme court. The American Bar Association standard on this point reads as follows:

> Appeal as of right should be to the intermediate appellate court only. Review by the Supreme Court should be available only at the discretion or with the permission of that court, by certiorari or similar procedure, including discretion to allow an appeal directly from the trial court in cases of great emergency and importance.63/

The Commentary explains the rationale for this position:

> [A] litigant should have only one appeal of right, to the intermediate appellate court. Review by the highest appellate court is designed to serve the general public in the proper administration and development of the law and only secondarily the interest of litigants in having their cases considered by the highest judicial authority. Accordingly, review by the highest appellate court should be available only with its permission. There should be no category of cases in which such review is mandatory, even--as is now required in some states--in capital cases. At the same time, the highest court should have authority to permit an appeal to bypass the intermediate appellate court where there is urgent public necessity to do so--for example in litigation involving impending elections or deadlocked disputes as to the authority of government officials.64/

The Idaho committee approved this concept of discretionary appeals with this comment: "If a court system provides for automatic

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63/ ABA Standards on Court Organization at 33.

64/ Id. at 37.

review both at an intermediate level and before the court of last resort, no useful purpose is served by an intermediate appellate court."65/

Other matters which also would require attention are the number of judges on an intermediate court, how those judges would be selected, and what staff would be required for an intermediate court.

The clear advantage of establishing an intermediate appeals court is that it permits the Supreme Court to control its caseload via the exercise of discretionary review. The following table is an excerpt from a report provided by the Arizona Supreme Court, and illustrates how that court has kept pace from 1965 to the present, while during the same period experiencing an increase in filings of nearly 300%:66/

	FILINGS	DISPOSITIONS				
		OPINIONS			TERM. W/O WRITTEN	CASES PENDING
YEAR	FILED	WRITTEN	MEMORANDUM	TOTAL	OPINIONS	DEC. 31
1965	321	176	0	176	262	462
1966	449	192	0	192	313	373
1967	448	158	0	158	401	258
1968	531	164	0	164	347	269
1969	575	205	0	205	360	320
1970	709	224	0	224	493	331
1971	688	186	0	196	482	383
1972	701	191	0	191	528	385
1973	714	230	56	286	478	341
1974	713	210	109	319	437	350
1975	799	222	68	290	659	307
1976	921	185	84	269	774	327

65/ Draft Idaho Appellate Court Report, supra, note 17, at 42.

66/ The Arizona Court of Appeals was established in 1965.

An intermediate court of appeals will bring long term and substantial relief to the Supreme Court's workload problems. The cost of establishing an intermediate court of appeals consisting of three judges, and including two law clerks and a secretary for each judge would be $440,000 for the first year and $425,000 for each year thereafter.[67/]

III. CONCLUSIONS AND RECOMMENDATIONS

If the appellate caseload continues to increase at the rate of recent years, an intermediate court of appeals is the most desirable long term solution. Panels may provide some short term relief, but as the report demonstrates, the workload reductions are probably not going to be as significant in practice as they appear to be in theory. Further, while the effect of the dilution of the law-making function cannot be quantified, it is nonetheless a serious concern and should not be set aside lightly. And as noted in the report, the procedures suggested for meeting this concern (by permitting individual justices to transfer any case from a panel to the full court) not only diminish the overall advantages of using panels, but are likely to result in an increase in the amount of work spent on a case that is considered once by a panel and again by the full court.

67/ These figures do not take space requirements into account.

Based on the National Center's appellate project, it is safe to conclude that the use of central research staff will contribute to the more efficient and expeditious dispatch of the court's business, whether combined with one or more of the other suggested solutions discussed, or by itself. Unfortunately, the workload reductions that can be expected from the use of central staff cannot be quantified, as can the use of panels, without some experience to draw upon. Similarly, until this experiential base can be established, the optimum size of central staff cannot be determined or related statistically to caseload figures. While the court might understandably choose to experiment with panels because of the estimates of workload reduction are to some degree quanitifiable rather than await the results of the use of central staff, the use of panels cannot be recommended as a desirable solution.

As a final note, the solutions discussed in the report are not mutually exclusive, and obviously a large variety of compatible combinations of solutions could be considered. (For example, it would be possible to increase the size of the court as well as institute panels, and this combination might be instituted either with or without a central research staff.) However, because of the number of such combinations, and in order to keep the report a manageable size, we have dealt with each solution individually. The recommendations that follow do assume that combinations of solutions will be chosen.

Recommendations

1. The Supreme Court should not seek to increase the size of the court.

2. The Court should not establish a panel system. However, if the Court chooses to establish panels, it is recommended:

(a) For ease of administration, five panels should be used rather than ten unless the court believes it is important to have all possible combinations of justices sitting on the panels.

(b) For the reasons discussed earlier in the report, superior court judges should not be used initially on the panels except when necessary to replace a disqualified justice. If experience demonstrates that the panels are considering a fair number of cases that involve no significant new statements of law, then superior court judges might appropriately be assigned to panels for these types of cases.

(c) To insure maximum benefit in workload reductions from the use of panels, the Court should not implement the system until it has developed standards for identifying cases that should be heard by panels and until the newly established central research position has developed its screening capabilities.

(d) The Court should establish procedures for transferring cases from the panels to the full court and include these in the previously adopted internal operating procedures.

3. The Court should not seek to limit the right of appeal. However, the Court should consider adoption of the following:

(a) a rule amendment to permit the parties to stipulate to a disposition without opinion, subject to the Court's approval;

(b) a rule amendment limiting the right to oral argument in routine cases (along the lines of the procedure followed by the First District Court of Appeals of California);

(c) a firm policy of awarding substantial attorney fees to the prevailing appellee in a frivolous appeal.

4. The Clerk of the Supreme Court should carefully monitor the work of the newly established central research position and attempt to develop a quantifiable measure of the workload reductions achieved by the position. Preferably, such a measure should be calculated in a way that the number of central staff positions needed can be directly related to caseload.

5. The Court should request the Administrative Director to begin planning for the establishment of an intermediate court of appeals as soon as possible. Recommendations should be prepared for the Court's consideration concerning the following matters:

(a) The number of justices and personal staff required;

(b) Jurisdiction of the intermediate court and the supreme court;

(c) Requirements relating to the clerk's office staff, including recommendations for consolidated versus separate offices;

(d) Facilities requirements and alternatives for providing necessary space;

(e) Transitional measures to deal with cases already filed in the supreme court when the intermediate court is ready to begin operat. ; and

(f) A detailed analysis of the fiscal impact of the recommendations and any alternative recommendations.

APPENDIX I

Louisiana Survey on Number of Appellate Judges

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
ALABAMA	108 0	8 0	9 0	3.0	0.4	15.7
ALASKA	37 0	0 0	5 0	5.4	1.5	27.8
ARIZONA	72 0	12 0	5 0	3.4	0.8	23.6
ARKANSAS	56 0	0 0	7 0	2.7	0.3	12.5
CALIFORNIA	520 0	56 0	7 0	2.5	0.3	12.1
COLORADO	94 0	10 0	7 0	3.8	0.6	18.0
CONNECTICUT	40 0	4 0	6 0	1.3	0.3	25.0
DELAWARE	18 0	4 0	3 0	3.1	1.2	38.8
FLORIDA	287 0	25 0	7 0	3.7	0.4	11.1
GEORGIA	91 0	9 0	7 0	1.9	0.3	17.5
HAWAII	18 0	0 0	5 0	2.1	0.6	27.7
IDAHO	27 0	0 0	5 0	3.5	0.6	18.5
ILLINOIS	610 0	34 0	7 0	5.4	0.3	6.7

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
INDIANA	248 0	9 0	5 0	4.6	0.2	5.6
IOWA	92 0	5 0	9 0	3.1	0.4	15.2
KANSAS	131 0	7 0	7 0	5.7	0.6	10.6
KENTUCKY	87 0	14 0	7 0	2.6	0.6	24.1
LOUISIANA	152 0	30 CIV 0	7 0	4.0	0.9	24.3
MAINE	14 0	0 0	7 0	1.3	0.6	50.0
MARYLAND	90 0	13 0	7 0	2.2	0.4	22.2
MASSACHUSETTS	0 0	0 0	0 0	0.0	0.0	0.0
MICHIGAN	512 0	18 0	7 0	5.6	0.2	4.8
MINNESOTA	215 0	0 0	9 0	5.5	0.2	4.1
MISSISSIPPI	65 0	0 0	9 C	2.8	0.3	13.8
MISSOURI	115 0	22 0	7 0	2.4	0.6	25.2
MONTANA	29 0	0 0	5 0	4.0	0.6	17.2

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
NEBRASKA	45 0	0 0	7 0	2.9	0.4	15.5
NEVADA	26 0	0 0	5 0	4.7	0.9	19.2
NEW HAMPSHIRE	13 0	0 0	5 0	1.6	0.6	38.4
NEW JERSEY	271 0	21 0	7 0	3.6	0.3	10.3
NEW MEXICO	0 0	0 0	0 0	0.0	0.0	0.0
NEW YORK	0 0	0 0	0 0	0.0	0.0	0.0
NORTH CAROLINA	55 0	9 0	7 0	1.0	0.3	29.0
NORTH DAKOTA	19 0	0 0	5 0	2.9	0.7	26.3
OHIO	184 0	38 0	7 0	1.7	0.4	24.4
OKLAHOMA	143 0	6 0	9 CIV 3 CRI	5.3	0.6	12.5
OREGON	70 0	6 0	7 0	3.1	0.5	18.5
PENNSYLVANIA	0 0	0 0	0 0	0.0	0.0	0.0
PUERTO RICO	187 0	0 0	8 0	6.3	0.2	4.2

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
RHODE ISLAND	17 0	0 0	5 0	1.7	0.5	29.4
SOUTH CAROLINA	25 0	0 0	5 0	0.9	0.1	20.0
SOUTH DAKOTA	0 0	0 0	0 0	0.0	0.0	0.0
TENNESSEE	117 0	18 0	5 0	2.8	0.5	19.6
TEXAS	261 0	42 CIV 0	9 CIV 5 CRI	2.2	0.4	21.4
UTAH	24 0	0 0	5 0	2.0	0.4	20.8
VERMONT	19 0	0 0	5 0	4.0	1.0	26.3
VIRGINIA	107 0	0 0	7 0	2.2	0.1	6.5
WASHINGTON	101 0	12 0	9 0	2.9	0.6	20.7
WEST VIRGINIA	57 0	0 0	5 0	3.1	0.2	8.7
WISCONSIN	0 0	0 0	0 0	0.0	0.0	0.0
WYOMING	15 0	0 0	5 0	4.2	1.4	33.3
WASHINGTON DC	44 0	0 0	9 0	5.9	1.2	20.4

APPENDIX II

Comparative Data on Workloads

ALASKA SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS (Including Sentence Appeals)		
Pending at Start		241
Filed		364
Terminated		241
**Opinions Filed	123	
Other Dispositions	118	
	241	

Petitions for Review and Original Proceedings		
Pending at Start		17
Filed		102
Terminated		94
**Opinions Filed	25	
Review Denied	52	
Other Dispositions	17	
	94	

***Motions and Petitions for Rehearing	
Pending at Start	Not Available
Filed and Terminated	340

*Source: Clerk of the Alaska Supreme Court

**Opinions filed include total of 16 per curium opinions and 2 cases disposed of by special summary order of the Court. The total number opinions filed in 1976 was 133. The total shown here is greater because of the separate Court of cross-appeals disposed of by same opinion as the first appeal.

***Estimated. Excludes approximately 500 routine motions for extension of time, etc.

Count

25
123
148

HAWAII SUPREME COURT
July 1, 1975-June 30, 1976*

APPEALS		
Pending at start		218
Filed		253
Terminated		155
Opinions Filed	84	
Withdrawn or discontinued	50	
Dismissed on Motion	14	
Other	7	
	155	
ORIGINAL PROCEEDINGS		
Pending at start		3
Filed		12
Terminated		11
Opinion Filed	5	
Other	6	
	11	
MOTIONS/PETITIONS FOR REHEARING		
Pending at start		7
Filed		375
Terminated		354
Opinion Filed	6	
Other	348	
	354	

*Source: Hawaii 1976 Annual Report

IDAHO SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS		
Pending at start		312
Filed		295
Terminated		
Opinions filed (Includes 29 P.C.'s)	136	228
Other	92	
	228	
ORIGINAL PROCEEDINGS		
Pending at start		3
Filed		32
Terminated		20
Opinion filed	4	
Other	16	
MOTIONS/PETITIONS FOR REH		
Pending at start		823
Filed		794
Terminated		Not Available

*Source: Idaho Administrative Director of Courts

MAINE SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS		
Pending at start		246
Filed		262
Terminated		236
Opinion (Includes 11 P.C. and 2 "advisory" opinions)	168	
Dismissed	68	
	236	

ORIGINAL PROCEEDINGS
Not available

MOTIONS/PETITIONS FOR REHEARING
Not available

*Source: State of Maine, Administrative Office of Courts, 1977 Annual Report.

NEVADA SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS		
Pending at start		256
Filed		607
Terminated**		
ORIGINAL PROCEEDINGS		
Pending at start		(Included in 256 above)
Filed		120
Terminated**		
MOTIONS/PETITIONS FOR REHEARING		
Pending at start		(Included in 256 above)
Filed		59
Terminated**		
TOTAL DISPOSITIONS		803
By order of court	535	
By opinion	252	
Consolidated cases	16	
	803	

*Source: Statistics provided by Nevada Supreme Court

**The number of each type of proceedings terminated was not broken out from total dispositions.

NEW HAMPSHIRE SUPREME COURT
July 11, 1974-June 30, 1975*

APPEALS

Pending at start	Not Available
Filed	Not Available
Terminated by opinion	205
Includes 38 P.C.	
15 Memorandum	
15 "Opinions of Justices"	

ORIGINAL PROCEEDINGS
Not Available

MOTIONS/PETITIONS FOR REH.
Not Available

*Source: 17 New Hampshire Bar Journal 3 (1976)

NORTH DAKOTA SUPREME COURT
January 1, 1975-December 31, 1975*

APPEALS		
Pending at start		0
Filed		128
Terminated		128
Opinion	93	
Dismissed	10	
Other	25	
	128	

ORIGINAL PROCEEDINGS
(Original Proceedings are included in the appeals.)

MOTIONS/PETITIONS FOR REHEARING		
(Includes only Petitions for Rehearing)		
Pending at start		0
Filed		20
Terminated		20
(Denied apparently without opinion)	20	

*Source: National Center for State Courts--Williamsburg Project.

VERMONT SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS		
Pending at start		286
Filed		351
Terminated		346
Opinion (Includes 21 P.C.)	141	
Withdrawn or Discontinued	112	
Dismissed on motion	93	
Other	-	
	346	
ORIGINAL PROCEEDINGS		
Pending at start		1
Filed		15
Terminated		14
Opinion (Includes 2 P.C.)	3	
Withdrawn	1	
Dismissed by Court	10	
	14	
MOTIONS/PETITIONS FOR REHEARING**		
Pending at start		3
Filed		12
Terminated		15

*Source: "Judicial Statistics, State of Vermont," Office of the Court Administrator 1976.

**Includes Petitions for Rehearing only.

WYOMING SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS

Pending at start		Not Available
Filed		138
Terminated		116
By Opinion	75	
Dismissed	34	
Other	7	
	116	

ORIGINAL PROCEEDINGS
Not Available

MOTIONS/PETITIONS FOR REHEARING
Not Available

*Source: National Center for State Courts - Williamsburg Project.

APPENDIX III

Recruitment Bulletin for Staff Attorney Position

ALASKA COURT SYSTEM

AN EQUAL OPPORTUNITY EMPLOYER

RECRUITMENT BULLETIN

JOB TITLE	SALARY	LOCATION
SUPREME COURT STAFF ATTORNEY	$2,296./mo. to start (Range 20/22*)	JUNEAU

Job Duties:

Under the general direction of the Clerk of the Supreme Court performs legal research related to cases and other matters filed in Supreme Court. Reviews all appeals which have been fully triefed. Recommends consolidation for argument of appeals which involve similar legal issues. Proposes possible disposition of routine cases. Reviews Petitions for Review, requiring extensive legal research and preparation of memoranda recommending appropriate disposition. Reviews, researches and makes preliminary analysis of complex motions presented to the court. Reviews and researches the briefs and records in sentence appeals and prepares memoranda for the Court concerning possible disposition. Assists Clerk of Court in scheduling expedited, complicated appeals before the Supreme Court. Works with the Clerk of Court in the preparation of complicated records on appeal. Develops appropriate systems for efficiently accomplishing the duties of the position.

Minimum Requirements:

Graduation from an accredited law school and either membership in a state bar or current active pursuit of membership. Previous legal experience would be valuable.

* This position is flexibly-staffed, salary range 20/22. The successful applicant will be hired at salary range 20. After six months of successful job performance and admission to the Alaska Bar Association the employee may be promoted to a salary range 22.

Selection Process:

Applicants must meet the minimum requirements as stated above. The most qualified applicants will be invited to a personal interview.

How to Apply:

Applicants should submit an Alaska Court System application to the Personnel Office at 303 "K" Street, Anchorage, Alaska 99501. Applications may also be submitted to the Personnel Clerk, Room 241 at the Juneau court building. Applications must be filed no later than July 5, 1977.

APPLICATIONS FROM MINORITIES ARE ENCOURAGED

Date of Bulletin: 6/24/77

APPENDIX IV

Summaries of Articles

APPELLATE COURT REFORM
45 Mississippi Law Journal 121 (1974)

The function of the highest court of any state is to fold: To correct errors made in the determination of the rights of the litigants and, more importantly, to determine the standards by which persons within the jurisdiction are to conduct their affairs. Where such a court is delayed in the performance of these two duties, the ends of justice are not served. Increases in the workload of a highest court of a jurisdiction either reduce the amount of time which may be spent on a case or increase the time required to dispose of all cases before the court. An increase in appellate workload ultimately causes delay which is regarded by most judicial reformers as inherently evil.

The workload of nearly every high court has substantially increased and shows no signs of subsiding. Two methods of reducing the workload and congestion of appellate courts are: (1) Those which increase the efficiency of the court and (2) those which reduce the amount of work required of the judges of the highest court.

I. INCREASE IN EFFICIENCY

Efficiency of the court can be dramatically improved by the use of a professional court administrator. This is a generally accepted technique and is utilized by the majority of all of the states. Another method is for the highest court to exercise its

rulemaking power in order to increase the efficiency of judicial operation. Controlling oral arguments and the expeditious use of law clerks are also means of increasing the efficiency of the high court. Other methods are the reduction in the size of records and briefs and use of merit selection in judges.

II. REDUCTION IN THE WORKLOAD PER JUSTICE

Another solution to case overload problems is to reduce the number of cases handled by each justice. This can be accomplished by: (1) Increasing the number of justices on the court; (2) hearing cases in panels; (3) using court commissioners; (4) taking legislative action to reduce the number of cases eligible for appeal. All of the above methods have numerous disadvantages but with modifications can be used in certain circumstances.

III. CREATION OF A PERMANENT LOWER APPELLATE COURT

The most permanent and effective way of reducing the workload of a highest level of a state court system is the creation of a lower appellate court. As of 1971, at least 23 states had a lower appellate level in their court system. This method of workload reduction is greatly favored by both judges and commentators. The benefits of introduction of a lower appellate court into a court system are: (1) The lower appellate court can reduce the workload of the highest appellate court thus allowing an improved work product; (2) it allows a division of the workload

between the lower and highest appellate court keeping both from being overworked; (3) it allows the traditional American concept of the right to one appeal in every case to be retained; and (4) in some cases allows the appellate court to accommodate more litigants. Objectionable characteristics to the creation of an intermediate appellate court are: (1) Increased expense to the taxpayer for additional courts; (2) instances of double appeals causing increased delay and expense to the litigants and (3) the creation of additional work for the highest level in settling disputes over original appellate jurisdiction.

CONCLUSIONS AND RECOMMENDATION

Many of the measures which were discussed to relieve court congestion have been implemented and are helpful, however they have not proven to be solutions but merely forestall the burden under which the courts labor. The establishment of a lower appellate court could greatly relieve the congestion in the appellate system.

CONSTITUTIONAL REVISION AND APPELLATE COURT DECONGESTANTS
(Shirley M. Hufstedler 44 Washington Law Review 577 (1969)

The most venerable criticism of the courts is delay. Delay is the offspring of court congestion caused by surging urban population growth, by inadequate court systems, by cumbersome and archaic judicial and administration procedures, and by the rising expectation of all of our people about the availability and quality of justice.

Successful judicial reformation comes in two packages, constitutional revision and implementing legislation. A judicial article should include no more than is absolutely necessary to create the essential structure of the judicial system. All details should be filled in by statutes and rules which are more easily changed when the need arises.

Individuals studying state judicial articles have generally devoted their attention to three major topics: (1) The structure of the judicial system; (2) selection, tenure and removal of judges; and (3) court administration. The structure of the judicial system considers such questions as whether there should be one trial court or two, should there be a single appellate court or should there be a court of last resort and an intermediate appellate court. Plans for the selection, tenure and removal of judges are generally divided into two categories: (1) Those in which a panel of nominees is initially selected by a commission, from whose number the governor must appoint and (2) those

in which the nominees are selected by the governor who thereafter submits their name to a council which has a veto power. Tenure of judges varies from lifetime appointments, to short term, partisan, terms of office. The creation and maintenance of an adequate and efficient system of court administration is essential for the effective administration of justice. Not only should the courts be subject to the same management standards as industry, but judges should not have to spend their time on non-judicial duties.

APPELLATE COURT DECONGESTANTS

The capacity of an appellate court to handle its caseload depends upon the number of cases docketed in a given year, the number of judicial hours which must be devoted to each case, and the number of judicial hours available during the year. Reducing a backlog and thus reducing court congestion requires treatment of the following: (1) The size of the docket, (2) the judicial time expended per case, and (3) the judicial time available.

Dockets can be reduced directly by cutting off or limiting the right to appeal and indirectly, by creating a series of procedural impediments to discourage appeals. However, as appellate courts exist to formulate policy and precedent, to assure uniformity in the administration of justice, and to provide executive direction and assistance to trial courts, such is not an adequate solution.

No one has suggested that judges reduce their backlog of cases by giving less than an adequate time to each case. Although efficient time saving techniques should be employed by appellate court judges, they still must have adequate time to ponder and consider each case.

One solution somes states have used in order to reduce the backlog of cases is to divide the court in two departments or divisions consisting of three or more judges. However, divisional sitting only modestly increases the productive capacity of a court and may create more administrative problems which ultimately eliminate any advantage to the divisional sittings.

Another way to alleviate appellate court congestion is to increase the number of appellate judges. However, this has practical application only within very narrow limits. Whatever additional work can be done by the extra judges is dissipated by the increased consultation times, by the difficulties inherent in drafting opinions to accommodate multiple points of view, and by the administrative problems involved in increased personnel.

The most practical solution presently available to decongest a supreme court is to create a new tier of appellate courts to undertake the caseload. As of 1969 there were 21 states with intermediate appellate courts.

The jurisdiction of the supreme court and the intermediate courts of appeal is usually established by provisions of the judicial article of the state constitution. Certain threshhold questions need to be determined such as whether the appellate courts shall have any original jurisdiction, and whether there is an appeal to the supreme court from the appellate court as a matter of right.

The modern trend in structuring a two-tiered appellate system is to eliminate all direct appeals as a matter of right to the supreme court except in cases where the death penalty or life imprisonment has been imposed. Critics of the development of the two-tiered system have often raised the specter of the waste of judicial resource by creating the potential of double appeals. However, if the supreme court judiciously exercises its power to order transfer of causes to the supreme court, and if there is no appeal from the intermediate appeal as a matter of right, that problem is eliminated. Additionally, double appeals are by no means necessarily wasteful and it is often thought that the double appeal actually presents a better opportunity for a true consideration of the issues involved in the case.

A final consideration is the composition and structure of the intermediate appellate court. There are two general types: (1) Those in which there is more than one intermediate appellate court, each of which occupies its exclusive geographical territory and (2) those in which there is a single state-wide

appellate court. The most desirable organization is a single intermediate appellate court with state-wide jurisdiction. This not only can be more efficiently administered, but eliminates the problems of lack of uniformity within the divisions of the appellate court.

THE ROLE OF AN INTERMEDIATE APPELLATE COURT

(James D. Hopkins)
41 Brooklyn Law Review 459 (1975)

Intermediate appellate courts are initially the products of increased judicial business. Although there are various alternatives available to relieve the congested appellate court calendar such as dividing the court into panels, use of commissioners, reducing jurisdiction, and reducing the right of appeal, the method which has been most often employed and most effectively used is the two-tier system of appellate courts.

The advantage of the two-tiered system of appellate courts is that it permits an integrated procedure with supervision of the process placed in the highest appellate court. The assistance to the highest court from the appellate court assumes two forms: (1) It reduces the sheer number of appeals and (2) it releases the highest court to address itself solely to determination of questions of law with a particular view toward the development of the law as a whole.

Intermediate appellate courts have fulfilled their initial role of relieving supreme court congestion and freeing the highest court to exercise its primary rulemaking and decision making function. However, as the full flow of litigation shifts to and converges upon the intermediate appellate court, that court in turn has assumed an additional role, of: Assisting the highest court in its ultimate determination by rendering thorough expositions of the relative merits of alternative solutions to novel or controversial questions of law; and, to function as the court of last resort for the majority of cases.

APPENDIX V

Nevada Legislation Creating an Intermediate Appellate Court

NEVADA

Assembly Joint Resolution No. 2--Assemblymen Barengo, Mann, Hickey, Wagner and Schofield

FILE NUMBER-----

ASSEMBLY JOINT RESOLUTION--Proposing to amend the Nevada constitution to create an intermediate appellate court.

Resolved by the Assembly and Senate of the State of Nevada, jointly, That a new section be added to article 6 and sections 1, 4, 7, 11, 15, 20 and 21 of article 6, section 3 of article 7, and section 22 of article 17 of the constitution of the State of Nevada be amended to read respectively as follows:

1. The court of appeals consist of three judges or such greater number as the legislature may provide by law. If the number of judges is so enlarged, the supreme court shall provide by rule for the assignment of each appeal to a panel of three judges for decision.

2. Except as otherwise provided in this subsection, the judges of the court of appeals shall be elected by the qualified electors of the state, at the general election, for terms of 6 years beginning on the 1st Monday of January next after the election. The terms of the first three judges elected are 2 years, 4 years and 6 years respectively, which shall be separately specified for their election, and in any increase or reduction of the number of judges, the legislature shall provide initial terms of 6 or fewer years such that one-third of the total number of judges, as nearly as may be, is elected every 2 years.

3. The judges of the court of appeals shall elect a chief judge from among their number. The term of office of the chief judge is 2 years, beginning on the 1st Monday of January of each odd-numbered year. A chief judge may succeed himself.

4. The legislature may provide by law, or may authorize the supreme court to provide by rule, for the assignment of one or more judges of the court of appeals to devote a part of their time to service as supplemental district judges where needed.

Section 1. The Judicial power of this State [shall be] is vested in a court system, comprising a Supreme Court, a Court of Appeals, District Courts, and Justices of the Peace. The Legislature may also establish, as part of the system, Courts for municipal purposes only in incorporated cities and towns.

Section 4. The supreme court [shall] and the court of appeals have appellate jurisdiction in all [cases in equity; also in all cases at law in which is involved the title, or the right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, or in which the demand (exclusive of interest) or the value of the property in controversy, exceeds three hundred dollars; also in all other civil cases not included in the general subdivisions of law and equity,] civil cases arising-in district courts, and also on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. [The court shall] The legislature shall apportion this jurisdiction between them by law, and shall provide for the review by the supreme court, where appropriate, of appeals decided by the court of appeals. These courts also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and also all writs necessary or proper to the complete exercise of [its] their appellate jurisdiction. Each of the justices [shall have] and judges has power to issue writs of habeas corpus to any part of the state, upon petition by, or on behalf of, any person held an actual custody, and may make such writs returnable [.] before himself or the [supreme] court, or before any district court in the state or before any judge of [said] those courts.

In case of the disability or disqualification, for any cause, of [the chief justice or one of the associate] one or more justices of the supreme court [, or any two of them,] or judges of the court of appeals

the governor [is authorized and empowered to] may designate any district judge or judges to sit in the place or places of such disqualified or disabled justice, [or] justices, judge or judges, and [said] the district judge or judges so designated [shall] are entitled to receive their actual expense of travel and otherwise while sitting in [said] the supreme court[.] or court of appeals; or the governor may designate any judge of the court of appeals to sit in the place of any disabled or disqualified justice of the supreme court.

Section 7. The times of holding the Supreme Court and District Courts shall be as fixed by law. The terms of the Supreme Court shall be held at the seat of Government unless the Legislature otherwise provides by law, except that the Supreme Court may hear oral argument at other places in the state. The terms of the Court of Appeals shall be held where provided by law. The terms of the District Courts shall be held at the County seats of their respective countries; Provided, that in case any county shall be hereafter divided into two or more districts, the Legislature may by law, designate the places of holding Courts in such Districts.

Section 11. The justices of the supreme court, the judges of the court of appeals and the district judges [shall be] are ineligible to any office, other than a judicial office, during the term for which they [shall] have been elected or appointed; and all elections or appointments of any such judges by the people, legislature, or otherwise, during [said] that period, to any office other than judicial, [shall be] are void.

[Sec:] Section 15. The Justices of the Supreme Court, the Judges of the Court of Appeals and District Judges [shall each] are each entitled to receive for their services a compensation to be fixed by law and paid in the manner provided by law, which shall not be increased or diminished during the term for which they [shall] have been elected, unless a Vacancy occurs, in which case the successor of the former incumbent [shall] is entitled to receive only such salary as may be provided by law at the time of his election or appointment; and provision shall be made by law for setting apart from each year's revenue a sufficient amount of Money, to pay such compensation.

Section 20. 1. When a vacancy occurs before the expiration of any term of office in the supreme court or the court of appeals or among the district judges, the governor shall appoint a justice or judge from among three nominees selected for such individual vacancy by the commission or judicial selection.

2. The term of office of any justice or judge so appointed expires on the first Monday of January following the next general election.

3. Each nomination for the supreme court or the court of appeals shall be made by the permanent commission, composed of:

(a) The chief justice or an associate justice designated by him;
(b) Three members of the State Bar of Nevada, a public corporation created by statute, appointed by its board of governors; and
(c) Three persons, not members of the legal profession, appointed by the governor.

4. Each nomination for the district court shall be made by a temporary commission composed of:

(a) The permanent commission;
(b) A member of the State Bar of Nevada resident in the judicial district in which the vacancy occurs, appointed by the board of governors of the State Bar of Nevada; and
(c) A resident of such judicial district, not a member of the legal profession, appointed by the governor.

5. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this state, the legislature shall provide by law, or if it fails to do so the court shall provide by rule, for the appointment of attorneys at law to the petitions designated in this section to be occupied by members of the State Bar of Nevada.

6. The term of office of each appointive member of the permanent commission, except the first members, is 4 years. Each appointing authority shall

appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. The additional members of a temporary commission shall be appointed when a vacancy occurs, and their terms shall expire when the nominations for such vacancy have been transmitted to the governor.

7. An appointing authority shall not appoint to the permanent commission more than:

(a) One resident of any county.
(b) Two members of the same political party.

No member of the permanent commission may be a member of a commission on judicial discipline.

8. After the expiration of 30 days from the date on which the commission on judicial selection has delivered to him its list of nominees for any vacancy, if the governor has not made the appointment required by this section, he shall make no other appointment to any public office until he has appointed a justice or judge from the list submitted. [If a commission on judicial selection is established by another section of this constitution to nominate persons to fill vacancies on the supreme court, such commission shall serve as the permanent commission established by subsection 3 of this section.]

Section 21. 1. A justice of the supreme court, a judge of the court of appeals or a district judge may, in addition to the provision of article 7 for impeachment, be censured, retired or removed by the commission on judicial discipline. A justice or judge may appeal from the action of the commission to the supreme court, which may reverse such action or take any alternative action provided in this subsection.

2. The commission is composed of:

(a) Two justices or judges appointed by the supreme court;
(b) Two members of the State Bar of Nevada, a public corporation created by statute, appointed by its board of governors; and
(c) Three persons, not members of the legal profession, appointed by the governor.

The commission shall elect a chairman from among its three lay members.

3. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this state, the legislature shall provide by law, or if it fails to do so the court shall provide by rule, for the appointment of attorneys at law to the positions designated in this section to be occupied by members of the State Bar of Nevada.

4. The term of office of each appointive member of the commission, except the first members, is 4 years. Each appointing authority shall appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. An appointing authority shall not appoint more than one resident of any county. The governor shall not appoint more than two members of the same political party. No member may be a member of a commission on judicial selection.

5. The supreme court shall make appropriate rules for:

(a) The confidentiality of all proceedings before the commission, except a decision to censure, retire or remove a justice or judge.
(b) The grounds of censure.
(c) The conduct of investigations and hearings.

6. No justice or judge may by virtue of this section be:

(a) Removed except for willful misconduct, willful or persistent failure to perform the duties of his office or habitual intemperance; or
(b) Retired except for advanced age which interferes with the proper performance of his judicial duties and which is likely to be permanent in nature.

7. Any person may bring to the attention of the commission any matter relating to the fitness of a justice or judge. The commission shall, after preliminary investigation, dismiss the matter or order a hearing to be held before it. If a hearing

is ordered, a statement of the matter shall be served upon the justice or judge against whom the proceeding is brought. The commission in its discretion may suspend a justice or judge from the exercise of his office pending the determination of the proceedings before the commission. Any justice or judge whose removal is sought is liable to indictment and punishment according to law. A justice or judge retired for disability in accordance with this section is entitled thereafter to receive such compensation as the legislature may provide.

8. If a proceeding is brought against a justice of the supreme court, no justice may sit on the commission for that proceeding. If a proceeding is brought against a judge of the court of appeals, no judge of that court may sit on the commission for that proceeding. If a proceeding is brought against a district judge, no judge from the same judicial district may sit on the commission for that proceeding. If an appeal is taken from an action of the commission to the supreme court, any justice who sat on the commission for that proceeding is disqualified from participating in the consideration or decision of the appeal. When any member of the commission is disqualified by this subsection, the supreme court shall appoint a substitute from among the eligible judges.

9. The commission may:

(a) Designate for each hearing an attorney or attorneys at law to act as counsel to conduct the proceeding;
(b) Summon witnesses to appear and testify under oath and compel the production of books, papers, documents and records;
(c) Grant immunity from prosecution or punishment when the commission deems it necessary and proper in order to compel the giving of testimony under oath and the production of books, papers, documents and records; and
(d) Exercise such further powers as the legislature may from time to time confer upon it.

[Sec:] Section 3. For any reasonable cause to be entered on the journals of each House, which may [,] or may not be sufficient grounds for impeachment, the [Chief

Justice and Associate] Justices of the Supreme Court, Judges of the Court of Appeals and Judges of the District Courts shall be removed from Office on the vote of two thirds of the Members elected to each branch of the Legislature, and the Justice or Judge complained of [,] shall be served with a copy of the complaint against him [,] and shall have an opportunity of being heard in person or by counsel in his defense, Provided, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

[Sec:] Section 22. In case the office of any Justice of the Supreme Court, Judge of the Court of Appeals, District Judge or other State officer [shall become] becomes vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor until it-[shall be] is supplied at the next general election, when it shall be filled by election for the residue of the unexpired term.

and be it further

Resolved, That the secretary of state shall assign a number to the new section added to article 6 according to the number of section contained in that article when the addition of the new section becomes effective.

M E M O R A N D U M January 3, 1979

TO: Chief Justice Rabinowitz
Justice Connor
Justice Boochever
Justice Burke
Justice Matthews
Justice Dimond
Arthur H. Snowden, II
Susan Burke
Connie Staska
Jim Babb
Merle Martin
Caroline Hudnall

FROM: Robert D. Bacon, Clerk

SUBJECT: December 1978 Statistics

Attached are preliminary statistical tables for the month of December, 1978.

In a few weeks, this office will issue a more detailed annual statistical report containing information for the full year 1978, including average times that various classes of cases are pending, and making comparisons to prior years.

Some preliminary information revealed by this report: during 1978, there were 630 cases filed or reinstated, up from 613 in 1977. However, the number of appeals declined from 470 to 447, the number of petitions and original applications increased from 143 to 183. During 1978, the court disposed of 560 cases, including 302 on the merits. The comparable figures for 1977 are 450 and 231. At the end of 1978 there were 624 cases pending, an all-time high, and a 12.6% increase over the 554 cases pending on the docket one year ago.

During December, only 24 cases were closed, including only 11 on the merits. These are the smallest numbers for any month in more than two years. The 129 cases under submission and awaiting a draft opinion appears to be the largest number ever.

Bth for
RDB

TABLE II

ALASKA SUPREME COURT December 31, 1978	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
PENDING DECEMBER 31, 1977	265	207	36	508	41	5	554
FILED OR REINSTATED THRU November 30, 1978	230	118	55	403	1	24	568
FILED OR REINSTATED THIS MONTH	26	17	1	44	15	3	62
TOTAL FILED YEAR-TO-DATE	256	135	56	447	156	27	630
Adjustments	+ 1	- 2	+ 1	+ 1		- 1	0
DISPOSITIONS							
A. By Opinion and Mandate/Published							
Affirmed	42	56	23	121	8	2	131
Affirmed in Part/Reversed or Remanded in Part	24	7	2	33	1		34
Reversed	2	7		9	2	1	12
Reversed and Remanded	26	19	2	47	2		49
Remanded Only	11	5	3	19			19
Sentence Too Lenient			1	1			1
For Disciplinary Action						2	2
B. By Memorandum Opinion & Judgment							
Affirmed	6	5	1	12			12
Reversed	1	1		2			2
C. By Summary Order							
Affirmed	2	1		3	3		6
Reversed or Reversed & Remanded	8			8	12		20
Other	1	2		3	6	5	14
TOTAL DISPOSITIONS ON MERITS	123	103	32	258	34	10	302
D. Petitions for Review/Originals Denied					85	14	99
E. Dismissals							
By Agreement or by Appellant	69	18	8	95	4		99
By Court	27	9	3	39	12	1	52
On Motion	6	1		7	1		8
TOTAL DENIALS AND DISMISSALS	102	28	11	141	102	15	258
TOTAL CASE DISPOSITION	225	131	43	399	136	25	560
Reasons for Cases Pending December 31, 1978							
Awaiting Record	67	50	8	125			125
Awaiting Briefs	78	70	12	160	14	5	179
With Central Staff	5	3		8			8
Awaiting Hearing/Submission	33	10	1	44	2		46
Awaiting Draft Opinion	54	40	22	116	13		129
Draft Opinion Circulating	38	24	6	68	11		79
Awaiting Decision on Granting P/R or Orig					16	1	17
Awaiting Mandate or Decision on Rehearing	11	4	2	17	2		19
Stayed or Remanded	11	8		19	3		22
TOTAL CASES PENDING December 31, 1978	297	209	51	557	61	6	624

TABLE I

ALASKA SUPREME COURT

1978 STATISTICAL SUMMARY

Total Cases Pending: December 31, 1977	554
Cases Filed or Reinstated, 1978	630
Dispositions on Merits to Dec. 31, 1978	
By Opinion and Mandate	248[1]
By Memorandum Opinion & Judgment	14
By Summary Order	40
Total Dispositions on Merits	302
Other Dispositions to Dec. 31, 1978	
Dismissals	159
Petition or Application Denied	99
Total Other Dispositions	258
Cases Pending Dec. 31, 1978	624
Reasons for Cases Pending	
Awaiting Record	125
Awaiting Briefs	179
Awaiting Hearing or Submission	54[2]
Submitted/Awaiting Draft Opinion	129
Submitted/Draft Opinion Circulating	79
Awaiting Decision on Granting Petition for Review	17
Awaiting Mandate or Decision on Rehearing	19
Stayed or Remanded	22
Total Pending Dec. 31, 1978	624

225 total awaiting decision

1 237 opinions have been published to date. The numbers differ because in consolidated cases and cross-appeals, more than one case is often disposed of in a single opinion. Moreover, opinions published late in December of one year do not produce case dispositions until the following year.

2 Of these cases, eight were pending with the Central Staff.

TABLE I

ALASKA SUPREME COURT CASE FILINGS 1970-1977

	1970	1971	1972	1973	1974	1975	1976	1977
Regular Appeals and Senterce Appeals Filed	172	197	188	195	208	249	364	470
Petitions for Review Filed	33	12	45	49	60	81	86	126
Original Applications Filed	12	6	16	11	22	7	16	17
Total Filings	217	215	249	255	290	337	466	613

INCREASES

		NUMERICAL	PERCENTAGE
Increase all Categories	1970-71	-2	--
	1971-72	+34	16%
	1972-73	+6	2%
	1973-74	+35	14%
	1974-75	+47	16%
	1975-76	+129	38%
	1976-77	+147	32%
Increase Appeals and Sentence Appeals	1973-74	+13	7%
	1974-75	+41	20%
	1975-76	+115	46%
	1976-77	+106	29%

TABLE II

ALASKA SUPREME COURT CASE FILINGS 1975-1977

	1975	1976	1977	% Increase 1975-1977	%Increase 1976-1977
Appeals					
Civil	151	214	251		
Criminal & Juvenile	76	119	156		
Sentence	22	31	63		
Total Appeals	249	364	470	90%	29%
Petitions for Review	81	86	126		
Original Applications	7	16	17		
Total Filings	337	466	613*	73%	32%

*Case filings for 1977 include 22 reinstated cases.

TABLE III

ALASKA SUPREME COURT DISPOSITION OF CASES 1977

	Opinion and Mandate	Summary Disposition by Order	Dismissed by Court or Parties	Review Denied	Total
Appeals					
Civil	120	5	76		201
Criminal & Juvenile	54	1	33		88
Sentence	21		19		40
Total Appeals	195	6	128		329
Petitions for Review	16	7	13	67	103
Original Applications	3	4	11		18
Total	214	17	152	67	450

TABLE IV

ALASKA SUPREME COURT
FILINGS, DISPOSITIONS AND PENDING CASELOAD 1977

Civil Appeals and Cross Appeals	
Pending 12/31/76	218
Filed or Reinstated 1977	251
Total	469
Disposition	
By Opinion and Mandate	120
By Summary Order	5
Dismissed	76
Total	201
Pending 12/31/77	268
Criminal and Juvenile Appeals	
Pending 12/31/76	132
Filed or Reinstated 1977	156
Total	288
Disposition	
By Opinion and Mandate	54
By Summary Order	1
Dismissed	33
Total	88
Pending 12/31/77	200

Sentence Appeals	
Pending 12/31/76	16
Filed or Reinstated 1977	63
Total	79
Disposition	
By Opinion and Mandate	21
Dismissed	19
Total	40
Pending 12/31/77	39
Petitions for Review	
Pending 12/31/76	20
Filed 1977	126
Total	146
Disposition	
Opinion and Mandate	16
By Summary Order	7
Dismissed or Withdrawn	13
Review Denied	67
otal	103
Ponding 12/31/77	43

TABLE IV (Continued)

Original Applications		
Pending 12/31/76	5	
Filed or Reinstated 1977	17	
Total	22	
Disposition		
Opinion and Mandate	3	
By Summary Order	4	
Dismissed	11	
Total	18	
Pending 12/31/77	4	
Total Pending Cases December 31, 1976		391
Total Filings and Reinstatements 1977		613
Total		1004
Total Dispositions 1977		450
Total Pending December 31, 1977		554

TABLE V

ALASKA SUPREME COURT
REASON FOR CASES PENDING DECEMBER 31, 1977

	CASES AWAITING					STAYED	TOTAL
	RECORDS	BRIEFS	HEARING	DECISION	MANDATE		
Appeals							
Civil Appeals	84	54	22	94	4	10	268
Criminal and Juvenile Appeals	47	62	14	70	1	6	200
Sentence Appeals	6	9		19	1	4	39
Total Appeals	137	125	36	183	6	20	507
Petitions for Review		12	1	26	2	2	43
Original Applications			1	3			4
TOTAL	137	137	38	212	8	22	554
% of Total	24.6	24.6	6.9	38.3	1.6	4.0	100%

ALASKA SUPREME COURT PENDING CASELOAD 1961-1977

	Total Cases Pending at Year End	Regular and Sentence Appeals	Petitions for Review	Other	Increase or Decrease
1961	78	76	1	1	
1962	75	73	1	1	-3
1963	99	96	2	1	+24
1964	66	57	2	7	-33
1965	85	78	5	2	+19
1966	93	85	2	6	+8
1967	100	91	5	4	+7
1968	122	107	3	12	+22
1969	114	100	11	3	-8
1970	165	145	15	5	+51
1971	182	175	3	4	+17
1972	211	188	18	5	+29
1973	188	172	14	2	-23
1974	216	193	20	3	+28
1975	258	241	16	1	+42
1976	391	366	20	5	+133
1977	554	507	43	4	+163

Percent of Increase	1961-1977	600%
Percent of Increase	1968-1977	354%
Percent of Increase	1976-1977	41%

TABLE VII

ALASKA SUPREME COURT
MOTION PRACTICE 1977

	TOTAL 1977
Stay Applications Determined by Single Justices	65
Routine Motions Determined by Single Justices	192
Routine Unopposed Motions Determined by Clerk (estimated)*	800
Substantive Motions Determined by Full Court	182
Petitions for Rehearing [Full Court]	35
TOTAL MOTIONS	1274

*Almost all were unopposed motions to extend time to file briefs and other papers.

Clerk's file
1976 Filings should be 468 not 466

SUPREME COURT ACTIVITY, 1977

The following is the Clerk's annual report of the activity of the Alaska Supreme Court.

I. FILINGS

Total Filings. The total filings in the Alaska Supreme Court increased from 466 in 1976 to 613 in 1977, or an overall increase of 32 per cent. (See Tables I and II for further comparisons.)[1]

Appeal Filings. Of the 613 cases filed or reinstated in 1977, 470 were appeals. Of this number, 251 or 53 per cent were civil appeals or cross-appeals. Criminal and juvenile appeals accounted for 156 filings. There were 63 sentence appeals filed.

Petitions for Review and Originals. A total of 126 petitions for review were filed in 1977 as compared to 86 filed in 1976. There were 17 applications for original relief filed in 1977 as compared to 16 filed in 1976.

II. DISPOSITIONS

A total of 450 cases were disposed of by the Supreme Court in 1977. In 1976, 335 cases were disposed of during the year. (See Tables III and IV for details on 1977 case dispositions.)

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1 The increase in filings is a continuing trend. For example, 337 cases were filed in 1975. The 1977 filings mark a 73 per cent increase over 1975.

Of the total 450 cases, 214 (or nearly 50 per cent of dispositions) were disposed of by opinion or mandate.[2] This figure may be compared with 148 cases disposed of by opinion and mandate in 1976. A total of 17 cases were disposed of by summary order in 1977.

Of the total dispositions in 1977, 152 were cases dismissed by the Court or by the parties. These dismissals represent about one-third of all dispositions and about one-fourth of all 1977 filings. Other dispositions include 67 (or about one-half of filings) petitions for review denied without opinion.

III. PENDING CASELOAD

The pending caseload of the Supreme Court at the end of 1977 was 554 cases. This figure may be compared with 391 cases pending at the end of 1976 and 258 pending at the end of 1975. The pending caseload has almost doubled in two years. (See Tables IV, V, and VI for further analysis of the pending caseload.) The 1976-77 increase in pending cases is more than 40 per cent.

Of the 554 cases pending at the end of 1977, 212 or 38 per cent were awaiting decision. About 25 per cent were awaiting record and another 25 per cent were awaiting briefs. (See Table V for more detail.)

IV. MOTIONS

Over 1,200 motions were processed by the Court in 1977. (See Table VII) Of this number, 182 were substantive motions determined by the full Court and 35 were petitions for rehearing determined by the full Court. A total of 65 stay applications were assigned to individual justices during 1977. The balance of the motions were routine motions determined by a single justice or by the Clerk under the authority of Appellate Rule 14(c).

---

[2] The total of 214 case dispositions by opinion does not match the figure of 189 actual opinions filed in 1977. (See Clerk's report of "Opinions by Justice" dated January 17, 1978.) This is true because the 214 dispositions include a separate accounting of appeals and cross-appeals disposed of in single opinions. Also, the 214 dispositions include some opinions filed in 1976 on which mandates did not issue until 1977.

V. TIME PERIODS FOR DISPOSITION OF APPEALS

For 1977 we have attempted to analyze the time periods for bringing appeals to issue and to decision.

Civil Appeals. For 1977, 101 civil appeal opinions were analyzed. The analysis follows:

1. Number of Days From Notice of Appeal to Mandate[3]

Greatest Number	1,006 days
Least Number	150 days
Average Number	485 days (or one year, 120 days)

---

[3] The time periods for resolving appeals in Alaska may be compared to the standards of timely disposition proposed by the American Bar Association in its Standards Relating to Appellate Courts:

Record Preparation	30 days
Briefing	70 days
Argument	(promptly)
Decision	90 days
Total	190 days

The actual time periods may also be compared to the time limits set by appellate rule and by internal procedures:

Record Preparation	40 days
Briefing	80 days
Argument	30 days
Decision	120 days
Total	270 days

2. Number of Days From Notice of Appeal to Certification of Record (Commencement of Briefing)

Greatest Number	497 days
Least Number	1 day
Average Number	120 days
Median	103 days

3. Number of Days From Certification of Record to Completion of Briefing

Greatest Number	354 days
Least Number	5 days
Average Number	135 days

4. Number of Days From Completion of Briefing to Hearing or Submission

Greatest Number	199 days
Least Number	1 day
Average Number	70 days

5. Number of Days From Hearing or Submission to Mandate

A. Number of Days From Hearing or Submission to Circulating Draft Opinion:

Greatest Number	233 days
Least Number	0 days
Average Number	85 days

B. Number of Days From Circulating Draft Opinion to Publication Date:

Greatest Number	189 days
Least Number	6 days
Average Number	65 days

C. Number of Days From Publication Date to Mandate:

Greatest Number	173 days
Least Number	10 days
Average Number	18 days

Criminal Appeals. A less extensive analysis of 54 1977 criminal and juvenile appeals follows:

1. Total Number of Days From Notice of Appeal to Mandate:

Greatest Number	1,076 days
Least Number	294 days
Average Number (or 1 year, 288 days)	593 days
Median Number	578 days

2. Number of Days From Notice of Appeal to Certification of Record (Commencement of Briefing):

Greatest Number	411 days
Least Number	20 days
Average Number	153 days
Median Number	142 days

3. Number of Days From Certification of Record to Completion of Briefing:

Greatest Number	528 days
Least Number	22 days
Average Number	193 days
Median Number	173 days

4. Number of Days From Completion of Briefing to Hearing or Submission:

Greatest Number	220 days
Least Number	4 days
Average Number	65 days
Median Number	49 days

5. Number of Days From Hearing and Submission to Opinion Publication:

Greates' Number	334 days
Least Number	47 days
Average Number	169 days
Median Number	165 days

Sentence Appeals: A total of 21 sentence appeals were classified as follows:

Number of Days From Notice of Appeal to Opinion Publication:

Greatest Number	662 days
Least Number	130 days
Average Number	304 days
Median Number	263 days

VI. TYPE OF DISPOSITION

Civil Appeals. For 1977, 101 civil appeal opinions were classified as to type of disposition. The classification follows:

Cases Affirmed	48
Cases Affirmed in Part, Reversed in Part	18
Cases Reversed	8
Cases Reversed and Remanded	23
Cases Remanded	4
Total	101

Criminal Appeals. For 1977, 54 criminal and juvenile appeal opinions were classified as to type of disposition. The classification follows:

Cases Affirmed	38
Cases Reversed and Remanded	13
Cases Reversed	3
Total	54

Sentence Appeals. The classification of 21 sentence appeal opinions follows:

Sentences Affirmed	15
Sentences Affirmed in Part, Reversed in Part	1
Sentences Reversed and Remanded	4
Sentences Too Lenient	1
Total	21

January 30, 1979

M E M O R A N D U M

TO: Ms. Susan Burke
Deputy Administrative Director

INFO: Mr. Mel Martin
Technical Operations

FROM: Robert D. Bacon
Clerk, Supreme Court

SUBJECT: Caseload of New Intermediate Appellate Court

As you requested, I have brought down to the end of 1978 the statistics which I sent you on December 1, 1978.

	Pending 12/31/78		Filed 1978	
CIVIL		297		256
Extradition	3		8	
Habeas other than extradition	2		2	
Criminal Rule 35	3		3	
Civil forfeiture of property used to commi crime	3		3	
Civil suit re conditions in prison	1		0	
Review proceeding re criminal contempt of District Court	1		1	
Other civil	284		239	
CRIMINAL		209		135
SENTENCE		51		56
PETITION FOR REVIEW		51		156
Civil	34		104	
Criminal	27		52	
ORIGINAL		6		27
Civil	4		17	
Criminal	2		10	
TOTAL		624		630
Within jurisdiction of Court of Appeals*		302		270
Within new jurisdiction of Supreme Court*	322		360	

* We do NOT at the present time have an accurate count of matters pending in the Supreme Court which originated in the District Court. Furthermore, this would not be the statistic required for these purposes, since it includes only District Court cases which are appealed a second time from the Superior Court to the Supreme Court. The number of "other civil" cases in this

table, all of which are included in the last item on the table as within the new jurisdiction of the Supreme Court, includes a small number of cases which originated in the District Court and would not in fact be within the new jurisdiction of the Supreme Court. If you or Mel is able to get from the Superior Court the number of appeals filed with them, it would be a more useful statistic than any that this office might be able to provide on District Court cases.

RDB RDB

M E M O R A N D U M

January 31, 1979

TO: Susan Burke
Merle Martin

FROM: Beverly Haywood

SUBJECT: Annual Report Preview

Bob Bacon asked me to send along the attached copies of statistics which will form part of our annual report. Sort of a sneak preview!

34

BH

TABLE I

1978 RECAPITULATION

	Civil Appeals	Criminal Appeals	Sentence Appeals	Total Appeals	Petitions for Review	Originals	TOTAL
Pending Jan. 1, 1978	268	200	39	507	43	4	554
Filed	253	133	53	439	156	27	622
Reinstated	3	2	3	8	0	0	8
Adjustments[a]	-2	+5	-1	+2	-2	0	0
Closed	225	131	43	399	136	25	560
Pending Dec. 31, 1978	297	209	51	557	61	6	624

a Accounts for cases converted from one category to another during 1978, and for correction of erroneous classifications of certain cases pending January 1, 1978.

TABLE II

1978 DISPOSITIONS

	Civil Appeals	Criminal Appeals	Sentence Appeals	Total Appeals	Petitions for Review	Originals	TOTAL
A. By Opinion & Mandate:							
Affirmed	42	56	23	121	8	2	131
Affirmed in part/reversed or remanded in part	24	7	2	33	1		34
Reversed	2	7		9	2	1	12
Reversed and remanded	26	19	2	47	2		49
Remanded only	11	5	3	19			19
Sentence too lenient			1	1			1
Bar disciplinary action						2	2
Total Dispositions by Opinion & Mandate	105	94	31	230	13	5	248
P. By Memorandum Opinion and Judgment:							
Affirmed	6	5	1	12			12
Reversed	1	1		2			2
C. By Summary Order:							
Affirmed	2	1		3	3		6
Reversed or reversed and remanded	8			8	12		20
Other	1	2		3	6	5	14
TOTAL DISPOSITIONS ON MERITS	123	103	32	258	34	10	302
D. Petitions for Review/ Originals denied					85	14	99
E. Dismissals:							
By Agreement or by appellant	69	18	8	95	4		99
By court	27	9	3	39	12	1	52
On motion	6	1		7	1		8
TOTAL DENIALS & DISMISSALS	102	28	11	141	102	15	258
TOTAL CASE DISPOSITIONS	225	131	43	399	136	25	560

TABLE III - HISTORICAL[a]

		1975	1976	1977	1978
A.	FILINGS[b]				
	Civil Appeals	151	214	251	256
	Criminal Appeals	76	120	156	135
	Sentence Appeals	22	32	63	56
	Total Appeals	249	366	470	447
	Petitions for Review	81	86	126	156
	Originals	7	16	17	27
	TOTAL	337	468	613	630
B.	DISPOSITIONS				
	Civil Appeals	193	141	201	225
	Criminal Appeals		67	88	131
	Sentence Appeals	12	33	40	43
	Total Appeals	203	241	329	399
	Petitions for Review	84	82	103	136
	Originals	10	12	18	25
	TOTAL	299	335	450	560
C.	DISPOSITIONS				
	On Merits	c	148	231	302
	P/R and Orig. Denied	c	52	67	99
	Dismissals	c	135	152	159
	TOTAL	299	335	450	560
D.	OPINIONS PUBLISHED	122	142	189	237
E.	PENDING END OF YEAR				
	Civil Appeals	148	218	268	297
	Criminal Appeals	76	132	200	209
	Sentence Appeals	17	16	39	51
	Total Appeals	241	366	507	557
	Petitions for Review	16	20	43	61
	Originals	1	5	4	6
	TOTAL	258	391	554	624

a The figures for cases pending at the end of 1977 plus 1978 filings minus 1978 dispositions do not equal cases pending at the end of 1978 due to reclassifications and corrections. See footnote a to Table I. The same is true from 1975 to 1976.

b Includes reinstatements.

c Breakdown unavailable.

TABLE IV

CASES PENDING: DECEMBER 31, 1978

	Civil Appeals	Criminal Appeals	Sentence Appeals	Total Appeals	Petitions for Review	Originals	TOTAL
Awaiting Record	67	50	8	125			125
Awaiting Briefs	7[illegible]	70	12	160	14	5	179
With Central Staff	5	3		8			8
Awaiting Hearing/Submission	33	10	1	44	2		46
Awaiting Draft Opinion	54	40	22	116	13		129
Draft Opinion Circulating	38	24	6	68	11		79
Awaiting Decision on Granting Petition for Review or Original					16	1	17
Awaiting Mandate or Decision On Rehearing	11	4	2	17	2		19
Stayed or Remanded	11	8	—	19	3	—	22
TOTAL	297	209	51	557	61	6	624

Alaska Court System

State of Alaska

SUSAN BURKE
Staff Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K STREET
ANCHORAGE, ALASKA 99501

March 12, 1979

Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 104--Court of Appeals

Dear Senator Ziegler:

This is in response to your request for a brief memorandum on the question of whether an intermediate appellate court may be established by the Legislature without an amendment to the state constitution.

Obviously our Supreme Court has never had the opportunity to rule on this precise question, so the primary source of authority is in the language of the constitution itself.

Article IV, sec. 1, provides in part:

> The judicial power of the state is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. (Emphasis added).

The only constitutional language that may be viewed as limiting the Legislature's authority to establish courts is the language of Article IV, sec. 2, which provides in part that the supreme court shall be the "highest court of the State, with final appellate jurisdiction". This language would preclude the establishment of a state court with jurisdiction to review supreme court decisions. There is no other language in the constitution that would appear to preclude the establishment of an intermediate appellate court.

It has been suggested that the constitution's placement of "final appellate jurisdiction" in the supreme court would require the supreme court to exercise that jurisdiction in all cases decided by an intermediate court of appeals. However, in State v. Browder, 486 P.2d 925 (Alaska 1971), the court strongly suggested that it may properly exercise its final appellate jurisdiction not only through appeals, but through discretionary review as well. The specific question in that case was whether the statute limiting the state's right to appeal in criminal cases also precluded the state from invoking the supreme court's discretionary review jurisdiction. The court held that the state was not barred from invoking the court's discretionary review jurisdiction, first because the statutory limitation appeared to govern only appeals and not an application for discretionary review. Second, the court reasoned that if the statute were construed as barring the state from invoking such review, it would be in conflict with the constitution's grant of "final appellate jurisdiction" to the supreme court.

Implicit in this holding is the proposition that the Legislature may limit the right to direct appeal to the supreme court* and this limitation will be constitutional so long as the supreme court retains discretionary review authority in all cases. This is precisely the mechanism that is provided for in Senate Bill 104. Finally, although it is not an official statement by the supreme court, the Chief Justice did mention in his recent State of the Judiciary address that the court believed that the establishment of a court of appeals would be permissible under the Alaska Constitution.

I hope this brief review is satisfactory.

Very truly yours,

Susan Burke

Susan Burke
Deputy Administrative Director

SB/pmr

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*The Alaska Constitution does not grant a right to appeal to the supreme court or to any other court. Nor has a right to appeal ever been held to be a requirement under the U.S. Constitution.

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 2, 1979

Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: The Court of Appeals

Dear Senator Ziegler:

This is in response to your request for background information concerning the proposed intermediate appellate court.

In 1977 the supreme court became increasingly aware that the appellate workload was growing beyond the court's ability to handle it effectively and efficiently. Since 1970, following the increase in the supreme court's membership from three to five justices, the court's case filings have risen from 217 to 630, an increase of 300%. Though there have been slight increases in clerical staff, and two central legal staff assistants added, the supreme court is operating with essentially the same personnel it had in 1972 when the case filings were only 249.

During recent years the court has instituted a number of improvements designed to speed up the appellate process and to allow the court to handle better the increasing caseload.[1] Yet even with these improvements, the backlog of cases awaiting decision by the court continues to rise. In 1977 the chief justice requested the administrative office to explore additional solutions to the workload problems. A copy of the report prepared by this office is enclosed, but the report may be briefly summarized here.

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1. These improvements include delegating routine motions to the Clerk of the Court for decision, establishing a strict policy concerning extensions of time for filing briefs, providing a mechanism for parties to agree to a summary decision of their appeals, establishing a screening function for identifying cases that are amenable to summary decision, improving the case status monitoring capabilities, and increased use of per curiam and memorandum decisions.

Among the possible solutions identified in the report were to (1) increase the membership of the supreme court to seven; (2) limit the right of appeal; (3) have the supreme court hear cases in panels of three, with assistance from superior court judges; (4) increase the law clerk staff; and (5) establish an intermediate court of appeals. After reviewing the report, the supreme court determined that increasing the size of the court would not add significantly to its ability to decide more cases. The increased time required to achieve consensus of among more justices and the time required to review more draft opinions would nearly offset the advantage to be gained by having two more justices writing opinions. Limiting the right of appeal was rejecte. because it was believed that fairness requires that a party be entitled to one appeal. The court also agreed that the use of panels would not provide a significant workload savings and that such savings as would be achieved would only offer a temporary respite. Additionally, the use of panels, particularly if superior court judges were used on the panels, would unduly dilute the supreme court's law-making function. The court decided that an augmented central legal staff could provide some assistance,[2] but it also recognized that placing too much reliance on legal assistants is not desirable and runs the risk of having appeals decided essentially by law clerks and not by the court.

At the time the supreme court reviewed the report in September of 1977 it agreed that an intermediate appellate court was the one solution that offered the best hope of relieving the court's workload while maintaining the supreme court's essential law making function. The court, however, decided to wait one more year before making a final decision whether to seek the establishment of an intermediate appellate court. In the fall of 1978, it was clear that the workload situation on the court had not altered significantly, even though the appellate filings for 1978 increased only slightly over 1977. The court was deciding more cases than in 1977, writing more opinions, and generally working at a killing pace. Yet the backlog was still rising and at the end of 1978 the court had more cases under advisement and awaiting decision than ever before. The inevitable conclusion to be drawn from this is that even at the current rate of appellate filings, the court cannot keep pace. The backlog of cases awaiting

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[2] The court now has two central staff attorneys working under the direction of the Clerk of the Supreme Court.

decision will continue to rise and the already significant delay in obtaining a decision on appeal will increase even further, even if appellate filings do not increase. Litigants will find themselves waiting not months, but years, for a decision.

A recent study by this office moreover, shows that there will undoubtedly be an increase in appellate filings over the next ten years. This study found an extremely high historical correlation between population growth and increases in appellate filings. Using the most conservative estimates for population growth (i.e., assuming there is no gas pipeline construction, no increase in litigation from the criminal code, etc.), the appellate filings in the supreme court are projected as follows:

	Expected	High
1981	673	844
1982	729	800
1983	784	856
1984	843	915
1985	906	979
1986	969	1043
1987	1013	1106
1988	1098	1174

Clearly the supreme court cannot handle these anticipated future increases.

We have also recently compared the Alaska Supreme Court's current workload with that of several other supreme courts in the nation at the time that those courts sought and obtained legislation in their states to establish intermediate appellate courts. Although such comparisons are less than totally accurate because courts tend not to measure precisely the same things, it does appear that our supreme court is in very close to the same circumstances as these other courts.

For example, Arizona's intermediate appellate court was established in 1965. During 1964, the Arizona Supreme Court had total appellate filings of 672, slightly more than our court's during 1978. However, the Arizona court, with five justices, terminated only 47? cases in 1964, many fewer than the 560 terminated by our court, and wrote only 177 opinions compared to 237 opinions by the Alaska court last year. Similarly, New Mexico's intermediate court was also established in 1965. During 1964 the New Mexico Supreme Court, also with five justices, disposed of 163 cases by written opinion and terminated a total of 435 cases.

Although the supreme court clerk's office is still completing its 1978 statistical report, we have attached some preliminary 1978 figures and should have a more complete report shortly. Also attached are reports showing the court's activity during recent years, and a report showing a breakdown of how the 1978 case filings would have been distributed between the proposed court of appeals and the supreme court, based on the proposed criminal jurisdiction of the court of appeals.

The final point of discussion concerning the creation of the court of appeals is its cost versus its benefit to litigants. The projected startup expense for this court for the six month period of January 1, 1980 to June 30, 1980, is $325,000. The annual operating expense is projected at $555,000.

Other than the judicial positions and immediate supporting staff, no additional positions are needed, as the clerk's office of the court of appeals will be combined with that of the supreme court.

To a large extent the additional expense associated with the court of appeals will be minimized through cost savings in the supreme court and trial courts. For example, the reduction in workload in the supreme court will eliminate the need for the additional legal research personnel requested in the Fiscal Year 1980 budget. By expediting the appeal process, litigants will experience savings in direct expenses as well as benefiting from the prompt final determination of their cases.

We appreciate very much your assistance with the court of appeals bill. If you wish further information, please let us know.

Sincerely,

Arthur H. Snowden, II

AS/pmr

104

DUNN, BAILY AND MASON
LAWYERS
LOUSSAC-SOGN BUILDING
428 D STREET
ANCHORAGE, ALASKA 99501

THEODORE RUSS DUNN
DOUGLAS B. BAILY
JULIAN L. MASON III
ROBERT J. BUCKALEW
CABOT CHRISTIANSON

TELEPHONE
AREA CODE 907
276-4331

March 27, 1979

Mr. Arthur Snowden
Administrative Director
303 "K" Street
Anchorage, Alaska 99501

Dear Art:

I appreciate your letter concerning the proposed intermediate court of appeals. Fortunately, there is no problem which must be resolved.

I wrote Senator Ziegler to express my opinion that administrative appeals (I was primarily concerned with appeals from the Public Utilities Commission, the Transportation Commission, and the Pipeline Commission) should not be subjected to an additional level of appeal as they will be under Senate Bill 104. It was and is my feeling that it would be best for administrative appeals to either skip the superior court and go directly to the new appellate court or continue to go to the superior court as they do now and then skip the appellate court. I sent copies of my letter to the Public Utilities Commission since I appear before the Commission regularly and thought that it would be courteous to make them aware of my feelings about the Bill. I did not realize that the Bill had actually been drafted in your office and therefore did not send you a copy of my letter.

I talked last week with Susan Burke and she pointed out to me that the Bill contains a "transfer" provision which will allow the supreme court by rule to relieve the new appellate court of the burden of administrative appeals. She indicated that the court will, in fact, make such a rule if the Bill is passed. We both agreed that it would be nice for administrative appeals to skip the superior court and go directly to the appellate court and we also agreed that that is a problem for another day.

Again, I appreciate your letter and I appreciate your interest in my comments concerning the Bill.

Sincerely,

DAILY & MASON

Julian L. Mason

JLM/ln

cc: Senator Robert Ziegler

ALASKA ACADEMY OF TRIAL LAWYERS
1015 West 7th Avenue, Anchorage, Alaska 99501
(907) 279 9571

OFFICERS

President
L. AMES LUCE

Vice - President, Civil
SANDRA SAVILLE

Vice - President, Criminal
PAUL DAVIS

Secretary
DOUGLAS J. SERDAHELY

Treasurer
WILLIAM M. ERWIN

April 4, 1979

Representative Fred E. Brown
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: SB 104 am.

Dear Representative Brown:

It has come to our attention that you are interested in the views of the Alaska Academy on the proposed legislation creating an intermediate court of appeals.

I have reviewed, with great interest the text of SB 104 am. and offer the following comments:

1) The case load currently placed upon the Supreme Court is far in excess of the capabilities of any five men, regardless of how hard they work at their task.

2) Increasing the number of Supreme Court Justices would, in our opinion, create more rather than less delay in the appeal system. It has been our experience that a smaller committee can reach agreement with far less time expenditure than a larger one. The idea of panels of Justices, all from one court, has the added inherent problem of conflicting rulings.

3) The proposed jurisdiction of the "appellate" court would take many of the more time consuming tasks currently performed by the Supreme Court, i.e., sentence review, appeal from administrative agencies.

4) The discretionary power of the Supreme Court to grant a further review under Sec. 22.07.030 is a method that has been followed by nearly all states with intermediate courts of appeal, and has allowed the Supreme Court to concentrate on more serious legal issues. We believe it should be made part of any bill.

5) We have some problems with Sec. 22.05.015: While it is obvious that there will be cases that obviously are going to proceed to the Supreme Court, for example the recently contested primary election, we believe the better procedure would be for the new "appellate" court to certify such cases up to the Supreme Court for decision. This would be in line with the standard chain of appeal and further, would be more efficient in the use of the Court's time. If a case is permitted to go to the Supreme Court for a hearing as to whether the appeal should skip the "appellate" court -- that hearing, the briefs, the arguments and the Supreme Court's deliberations would take almost as much time as an appeal.

6) Other than the criticism of the Transfer of Appellate Case section of SB 104 am., we believe the bill would greatly benefit the citizens of Alaska.

While endorsing the creation of an intermediate court of appeals, we do not view such a court as a cure for all of the ills of the delay in the courts which results in great injustice to our citizens. There is a great need for both a more efficient use of the time of trial court judges and for additional judges- It currently requires nearly two years to bring a civil case to trial under the most ideal circumstances. Then the appeal process requires another two years or more. This bill would greatly reduce the appeal time and you are to be applauded for your efforts in that regard. The two plus year delay in the trial courts would, however, still be with us.

In the near future the delay at the trial court level must be reduced. We believe that such steps as a specific designation of a certain number of Superior Court Judges as civil and a certain number as criminal would be one step which should be considered. Funding of new judgeships, we believe, should at least weigh this as an alternative.

On behalf of all of our clients, we wish to thank you for your efforts, through the proposed creation of an intermediate court of appeals, to provide them with a true access to the courts.

ALASKA ACADEMY OF TRIAL LAWYERS

L. Ames Luce
President

LAL/cb

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

February 15, 1979

SUBJECT: Senate Bill 104 (Court of Appeals)

TO: Senator Robert H. Ziegler, Sr.

FROM: Donna Spragg Pegues
Revisor of Statutes

The need for an additional amendment has come to my attention. It should be inserted as a new Sec. 23 and the subsequent sections renumbered as follows.

AMENDMENT

TO: Senate Bill 104

(1) Page 13, line 3 insert new Sec. 23 to read:

*Sec. 23. AS 39.50.200(2) is amended to read:

"(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court."

(2) Renumber subsequent sections accordingly.

DSP:jdn

You asked me about an intermediate appellate court. My observations are:

1. We don't need it, and can save money if:(a) you withdraw the statutory authority for the S.Ct. to review all sentences; (b(Cut the public defender budget in half (which will eliminate frivolous appeals in the vast majority of cases) or (c) eliminate the P.D. Office and return the system to court appointed private counsel. Retain the PD office only for appeals to the Supreme Court.

Attached is new S.Ct. Order 339 which establishes a right of appeal for EVERYTHING INCLUDING PARKING TICKETS, the court has to inform him of the appeal right, and the Clerk of the Court is obliged to prepare and file the notice of appeal. The S.Ct. is apparently attempting to justify the requirement for an intermediate appellate court by generating more appeal business on every level of the court system.

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 339

Amending Appellate
Rule 19(b).

IT IS ORDERED:

Rule 19(b) of the Rules of Appellate Procedure is amended to read as follows:

(b) Time for Taking Appeal. An appeal by a defendant may be taken within 30 days after entry of the judgment in accordance with Criminal Rule 32(b). If a motion for a new trial or an arrest of judgment or a motion for reduction, correction, or suspension of sentence pursuant to Criminal Rule 35 has been made within the 30-day period, an appeal from a judgment of conviction may be entered within 30 days after entry of the order deciding the motion. When after trial a court imposes sentence upon a defendant not represented by counsel, the defendant shall be advised of his right to appeal and if he so requests, the clerk shall prepare and file forthwith a notice of appeal on behalf of the defendant. An appeal by the state when authorized by law may be taken within 30 days after entry of the judgment or order appealed from.

DATED: November 28, 1978

EFFECTIVE DATE: January 1, 1979

Jay A. Rabinowitz
Chief Justice

Roger H. Connor
Justice

Robert Boochever
Justice

Edmund W. Burke
Justice

Justice

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3600

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 22, 1979

SUBJECT: Court of Appeals:
(SB 104)

TO: Senator Robert H. Ziegler

FROM: Billy G. Berrier, Director
Division of Legal Services

You have asked that if the legislature adopted the Court of Appeals bill (SB 104), whether this would preclude changing the court to a constitutional court at a later date. In my opinion establishing the court by law would have no legal effect on later constitutional establishment.

The relevant constitutional provision is Art. IV, Sec. 1, which provides:

> "The judicial power of the State is vested in a supreme court, a superior court and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law."

While this is clear authority for establishment of courts by the legislature if this authority were exercised by establishing the Court of Appeals' full power to give the court constitutional status by amendment to the institution would remain.

BGB:nem

SB 104

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 21, 1979

Mr. Julian L. Mason
429 D Street
Anchorage, Alaska 99501

Dear Julian:

I have received in the mail, copies of two pieces of correspondence sent to you by Senator Ziegler which alluded to some possible problem with the proposed Court of Appeals. Inasmuch as I don't have the original correspondence on this matter, I don't know what the nature of this problem is.

If you can contact me at your convenience I would be more than willing to try to resolve any problem you may have to your satisfaction.

Warmest personal regards,

Arthur H. Snowden, II
Administrative Director

AHS:cm

cc: Senator Robert H. Ziegler, Sr.

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 16, 1979

Mr. Julian L. Mason
429 D Street
Anchorage,Alaska 99501

Dear Julian:

Since I wrote you on March 1st, I have not heard word one from anyonce concerned.

As a suggestion if you still have problems with SB 104, you should get in touch with your contacts in the House; the bill, in the form in which you have read it, passed the Senate on March 14th on a fifteen to five vote.

I am sure that if you and the court system can iron out your differences, and I hope you can, Representative Charlie Parr, who chairs the House Judiciary committee, will do his best to accomodate you.

Regards,

Robert H. Ziegler, Sr.

RHZ/pkz

cc - Justices, Alaska Supreme Court
Commissioners, APUC
Mr. Arthur Snowden

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 1, 1979

Mr. Julian L. Mason
429 D Street
Anchorage, Alaska 99501

Re: SB 104

Dear Julian:

If you want to have a problem rectified, address your comments to me as a person in a position to do something about it, instead of copying half the people in the country.

The captioned bill was introduced at the request of the Supreme Court. I don't think that anybody in his right mind can argue about the fact that the intermediate, appellate or buffer court, call it what you will, is desperately needed at this time.

Presupposing I am correct in that assertion and presupposing there is something you don't like about the bill, why don't you go see Art Snowden and see if you can't resolve your differences and thereafter advise me as to the terms of your agreement. Then the bill can be easily amended in the Senate Finance committee or on the floor without causing or necessitating the legislature to have to be the ultimate arbitrator to the ultimate detriment of one warring faction or the other.

More simply put, why not iron out all your problems between or among the parties involved and thereafter advise us as to your consensus.

Regards,

Robert H. Ziegler, Sr.

RHZ/pkz

cc - Justices, Alaska Supreme Court
Commissioners, APUC
Mr. Arthur Snowden
Senators Bradley, Meland, Rodey, Sturgulewski and Stimson

DUNN, BAILY AND MASON
LAWYERS
LOUSSAC-SOGN BUILDING
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ROBERT J. BUCKALEW
CABOT CHRISTIANSON

TELEPHONE
AREA CODE 907
276-4331

February 17, 1979

Senator Robert H. Ziegler
Pouch V
State Capitol
Juneau, Alaska 99811

Re: Senate Bill No. 104 (Court of Appeals)

Dear Senator Ziegler:

Section 22.07.020(a)(8) of Senate Bill No. 104 provides that the court of appeals established by the Bill will hear appeals from decisions of administrative agencies. I strongly oppose this provision for the following reasons:

1. Administrative law in Alaska is embryonic and there are literally only a handful of Supreme Court decisions interpreting the powers and duties of our administrative agencies. While the law is in this development state, administrative appeals should be determined by the Supreme Court rather than an intermediate appellate court.

2. The appellate court which would be created by Senate Bill 104 will, as a practical matter, deal primarily with criminal appeals. It will be highly inefficient to ask that court to deal also with the very specialized area of administrative law.

3. Most administrative appeals involve enormous amounts of money and need to be resolved quickly in order to protect both the consumers and the utilities. Senate Bill 104 adds an additional appeal step to what is already a lengthy and tedious appellate process. Although the Supreme Court will not be required to hear appeals from decisions of the intermediate appellate court, it will normally feel compelled to do so because of the large number of people and dollars involved. Consequently, the effect of Bill 104 will be to slow the administrative appeal process without reducing significantly the workload of the Supreme Court.

It is my belief that paragraph 8 should be deleted from Section 22.07.020 of the bill. Alternatively, I recommend

that A.S. 44.62 et.seq. be amended to provide that administrative appeals bypass the Superior Court and go directly to the intermediate appellate court.

As you know, I have practiced extensively before the Alaska Public Utilities Commission and represent both utilities and customers of utilities. The opinions expressed in this letter are my own and I have not been compensated by any individual or business to express those views. I sincerely appreciate this opportunity to express my opinion and will be happy to respond to any questions which you or members of your committee may have.

Sincerely,

DUNN, BAILY & MASON

Julian L. Mason

JLM/ln
cc: Senator W.E. Bradley
Senator H. D. Meland
Senator Patrick Rodey
Senator Arliss Sturgulewski
Senator Terry Stimson
Commissioner Stuart Hall, APUC
Commissioner Marvin Weatherly, APUC
Commissioner Gordon Zerbetz, APUC
Commissioner Susan Knowles, APUC
Commissioner Carolyn Guess, APUC

Supreme Court
State of Alaska

CHIEF JUSTICE
JAY A. RABINOWITZ

JUSTICES
ROGER G. CONNOR
ROBERT BOOCHEVER
EDMOND W. BURKE
WARREN W. MATTHEWS, JR

P. O. BOX 850
FAIRBANKS, ALASKA
99707
907-452-1550
907-456-5201

January 29, 1979

Honorable Robert H. Ziegler, Sr.
Senator, State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

On behalf of my colleagues and myself, I want to thank you for taking the time to meet with us last week. We all are deeply appreciative of your understanding of the need for an intermediate appellate court and delighted that you have agreed to sponsor this legislation. In short, our profound thanks for your continued understanding and sensitivity to the problems of Alaska's Judicial System.

Best wishes.

Sincerely,

Jay A. Rabinowitz
Chief Justice
Supreme Court of Alaska

JAR:dw
P.S. I should also convey my thanks for sending copies of SJR's 3 and 4.

Committee copy

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST SB 104
Bill/Resolution No.
Title An Act Establishing the Intermediate Court of Appeals
Requested by Senate Judiciary Committee Date 2/9/79

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected Due Process
Budget Request Unit(s) Affected Alaska Court System

EXPENDITURES (Thousands of Dollars)

		FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES		177.5	376.2	398.8	422.7	448.1
200	TRAVEL		15.0	31.8	33.7	35.7	37.9
300	CONTRACTUAL		57.2	121.3	128.5	136.3	144.4
400	COMMODITIES		5.0	10.6	11.2	11.9	12.6
500	EQUIPMENT		25.0				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		279.7	539.9	572.2	606.6	643.0

FUNDING (Thousands of Dollars)

GENERAL FUND		279.7	539.9	572.2	606.6	643.0
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		10	10	10	10	10
PART TIME						
TEMPORARY						

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

Attachment I - FY 80 Budget Detail

IV. DATE February 12, 1979 PREPARED BY Richard Barrier
AGENCY Alaska Court System
PHONE 264-0545

Original Legislative Finance
cc Budget and Management

ATTACHMENT I - FY 80 BUDGET DETAIL

This budget detail for FY 80 is based on the assumption that the effective date of this bill will be July 1, 1979 and that the intermediate court will be operational on January 1, 1980. The fiscal note incorporates all new costs associated with the intermediate court.

With the creation of the intermediate court, and the lessening of the Supreme Court caseload, it will be possible to reduce the FY 80 Supreme Court budget in a number of areas. The request for legal externs, $30,078, can be deleted, travel expenses reduced by $20,000, and contractual costs reduced by $15,000 on an annual basis. Additionally, the Supreme Court is considering reductions in other budget areas, including the deletion of the central legal staff positions in the Supreme Court office, $85,493, and several budget items in the Trial Court and Administration components.

Personnel:	3 judges: $54,370 + $5,900 benefits		$180,810
	3 secretaries, range 13: $17,940 + $5,971 benefits		71,733
	3 law clerks, range 15: $20,796 + $6,652 benefits		82,344
	1 court clerk, range 10: $14,820 + $5,227 benefits		20,047
			$354,934
Travel:			$30,000
Contractual:	Space rental - 4,500 sq. ft. at $1.10	$59,400	
	Phone, postage	20,000	
	Equipment rental	30,000	
	Other misc.	5,000	
			114,400
Commodities:			10,000
Equipment:			25,000
			534,334

FY 80 EXPENSE

One-time costs:	Equipment	$ 25,000
Operating Costs:	(1/2 year)	254,667
		$279,667

AMENDMENT #1

OFFERED IN THE SENATE: BY: Senate Judiciary Committee

To: Amend SENATE BILL No. SB 104

HOUSE BILL No. _____

PAGE: 13 LINE: 3

(1) Page 13, line 3, insert new Sec. 23 to read:

"Sec 23. AS 39.50.200 (200) is amended to read:

"(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court."

(2) Renumber subsequent sections accordingly.

AMENDMENT #1

OFFERED IN THE SENATE: BY: Commerce Committee

TO: _____ SENATE BILL No. 164

HOUSE BILL No. _____

PAGE: 1 LINE: 14

pg1, line 14:
After the word "phone", delete the word "and" and insert the words "or electric"

After the word "transmission", insert the words "and distribution"

Page 2, Line 3:

After the word "transmission", insert the words "or distribution"

Q. What is waste heat?

A. Waste heat is the term commonly used for energy that is rejected from various industrial sources. It usually results from the burning or other consumption of fossil fuels; however, it may also result from nuclear power plants or represent the unused heat from geothermal sources. The waste heat rejected from a process using fossil fuel usually exceeds the amount of the energy that is put to useful work such as the production of electricity. For example, most electrical power generation facilities that operate with fossil fuels have only a 30 per cent efficiency and the remainder is rejected as hot water or hot air.

Q. What is the extent of unused heat in Alaska?

A. The quantity is enormous at the present time and it will increase greatly as the pipelines, refinery and other power plants are placed into operation. It is estimated that each pumping station along the Trans-Alaska Pipeline could heat 2000 homes. The estimate for the North Pole Petroleum refinery is that 10,000 homes could be heated. Canadian sources estimate that each pumping station associated with their Mackenzie Valley Pipeline will produce enough clean waste heat to meet the requirements for 15 to 20 acres of greenhouse vegetable production. However, there has not been an inventory made of the present and future status of the waste heat that will be rejected and that could be used in the state.

Q. What are some proposed uses?

A. Agriculture, fisheries and aquaculture, forestry, processing and district heating in commercial and domestic areas. High temperature waste heat also may be useful in some cases for the generation of electricity where uses can be found for the remaining lower temperature heat so that vapor and thermal pollution is not a problem. For example, it would be technically possible to generate electricity from the high temperature waste from the North Pole Petroleum refinery. However, if this is done the reject energy would be in a form that could not be injected into the upper atmosphere and would create a vapor or ice fog problem during winter months. Agriculture and district heating could provide a use for this remaining low temperature reject energy.

Agriculture

The high temperature reject heat could be useful for forage and grain drying and may provide the necessary component that would make potato processing feasible in the state and therefore, expand potato production.

Heat energy consisting of hot air, hot water or steam and at temperatures ranging from 80°F to 800°F would be useful for greenhouse

production and vegetable and plant production in areas that would support horticulture crop production resulting from soil warming. The use of the heat in greenhouses and then during the summer months in the soil for crop production is necessary to all wise proposals that suggest a near total use for the energy. This crop use is probably necessary because it can utilize the low temperature energy and would utilize the heat as less is needed for other uses. It appears to be an important part of every systems approach to utilizing this resource because the near total use of the resource will make the collection and distribution more economical for each use.

Aquaculture, Forestry Processing and District Heating

The use of heat to improve production of fisheries through hatchery rearing and in fish production ponds is suggested. The heat requirement for forestry, processing industries and in district heating of homes and businesses is obvious if the heat can be collected and distributed. The more complete use that would result by greenhouse and soil heat use would provide a better economic picture for the above uses.

Q. Is our environment suitable for the types of intensive crop production that is suggested?

A. During the four summer months it is superior to most other areas of the nation. The northern latitudes are recognized to have the highest photosynthetic production rate in the world during these four summer months. If the season can be lengthened and/or the soil warmed, the productive capacity can be further increased, and this photosynthetic advantage further exploited.

Q. Why hasn't the greenhouse industry developed without the waste heat use?

A. It is one of Alaska's major agricultural industries at the present time, but it has been developed through the use of fossil fuels which are even higher in cost than they are in the rest of the nation.

Q. There are indications that hundreds of acres of greenhouse and soil heated vegetable production is possible. Could all of these products be marketed in Alaska?

A. No. Besides providing Alaskans with vegetables and ornamental plants, it would be necessary to market cut flowers such as roses, carnations, chrysanthemums and etc. on national and world markets. It is proposed that this could be done competively during 5-6 months of the year because of Alaska's superior environment for greenhouse production and through the use of waste energy.

Q. Why do you feel that it is important to examine national and world markets for cutflowers?

A. Because it appears to be necessary at the present time in order to make more complete use of our unused resource. It also would add to the stability of our economy to have a renewable resource such as this contributing to the state's economy. It would also decrease the nation's consumption of fossil fuels now used for this purpose in the present greenhouse growing areas.

Q. What will be the temperature of the Waste Heat?

A. The temperature of the reject heat energy will vary with the type of industry and will range from about 80°F to above 800°F. It will be exhausted as hot air, hot water or steam.

It is expected that not all reject energy could be utilized at this time because of accessibility problems, th lack of adjacent growing areas and the lack of technology. A systems approach with agriculture as a major user appears to give the best potential.

Q. What is the urgency in the legislation now in process?

A. We must promote the use or it will not happen. The potential for use must be designed into the system in the beginning in order to develop the most economical recovery system. For example the oil pipeline pumping stations were not designed with reject heat use in mind,and, therefore, it will cost more to recover the heat.

Although the technology appears to be available at the present time to make economical use of the energy, it is necessary to demonstrate this and to improve this technology.

ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House CS for Senate Bill No. 104 (Judiciary) am H
Title Intermediate Appellate Court
Requested by Alaska Judicial Council Date March 14, 1980

II. FISCAL DETAIL
Agency Affected Alaska Judicial Council
Program Category Affected same
BRU, Program, or Subprogram(s) Affected same
(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 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES	----	----	-0-	----	----	-----
200	TRAVEL	-----	$15,190	-----	----	----	-----
300	CONTRACTUAL	----	1,024	-----	----	----	-----
400	COMMODITIES	----	----	-0-	----	----	----
500	EQUIPMENT	----	----	-0-	----	----	----
600	LAND & STRUCTURES	---	----	-0-	----	----	---
700	GRANTS, CLAIMS, ETC.	----	----	-0-	---	-----	----
	TOTAL		$16,214				

FUNDING (Thousands of Dollars)

GENERAL FUND	-----	$16.2	-----	----	-----	----
FEDERAL FUNDS	----	----	----	----	-----	----
OTHER (Specify Fund Source)	---	----	----	-----	----	-----

POSITIONS Not Applicable

FULL TIME						
PART TIME						
TEMPORARY						

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

Judicial Selection Process, Appellate Court

This fiscal note is prepared for expenses expected to be incurred during May and June of FY'80. Should the timing of the judgeship application process be such that it moves into FY'81, it will be essential to have the balance of funds in this note available during that fiscal year.

A. Assumptions

The amount of funding requested is based upon the assumption that one additional Judicial Council meeting will be required to select the new candidates for positions created by this bill, and that 2 of the appointees to the new positions will come from existing judges thus creating the need for a second additional Council meeting to fill those vacancies.

(see continuation sheets)

IV. DATE March 14, 1980 PREPARED BY Sarah J. White
AGENCY Alaska Judicial Council
PHONE Anchorage 279-2526

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

33 001 (Rev. 12/78)

B. Program Summary

1. Positions: No positions.

2. Other Expenditures

a) Travel. Creation of the intermediate appellate court will require two additional Council meetings, one to select the nominees for the appellate court itself, and the other to replace any appointees who come from the existing judges (it is expected that at least one and perhaps two appointees may be trial court judges). The average costs per Council meeting are:

John Longworth (Petersburg)	$500.00
Marcus R. Clapp (Fairbanks)	300.00
Robert Moss (Homer)	220.00
W. Carpeneti (Juneau)	450.00
Total, travel & per diem per meeting	$1,470.00
x 2 meetings	x 2
Total, meetings	$2,940.00

In addition to Council member expenses, it is expected that some applicants may travel to Anchorage to be interviewed. The Council also pays expenses for applicants. It is estimated that as many as 7 applicants per available position will travel, at an average cost of $350/trip. Since it is possible that 5 vacancies are likely to exist, the total costs are:

$350/applicant x 5 vacancies
x 7 applicants/vacancy = 35 x $350 = $12,250

Total travel expenses necessitated by creation of the new court:

Council meetings	$2,940.00
Applicants	$12,250.00
	$15,190.00

b) Contractual.

Each vacancy will require a peer evaluation survey of applicants conducted among Bar Association members. The Judicial Council presently contracts with the Urban Observatory in Anchorage to perform this survey at a cost of $512.00 per survey. Since several applicants can be included in each survey, it should only be necessary to perform two (one for each Council meeting).

Total cost for peer evaluation survey:

2 surveys at $512.00/survey= $1,024.00

3. Funding. Funds are requested from the state general fund for this purpose.

C. Computations.

See above.

D. Economic Impact. Not applicable.

E. Attachments. None.

SB

110

COMMITTEE REPORT

SENATE

FURTHER: None

2/6/79

Date: _____

Mr. President:

The Committee on JUDICIARY has had SB 110
availability of an abstract of a driver's record

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Jon Bennett - No

"Do Pass"

CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER_____

DEPARTMENT_____

ATTENTION_____

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

Sen. Zeugler
Judiciary Com.
#104 cop.

FROM:
MAIL STATION NUMBER_____

DEPARTMENT_____

BY_____ DATE_____

02-002 (REV.10/73)

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Commerce Committee	CS SB 110

DEPARTMENT POSITION

Support - With amendment

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Robert Rowan	4/21/80	William R. Nix	4/21/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING) None

(2) OTHER AGENCIES AFFECTED BY BILL Division of Insurance

(2) a. ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Insurance Industry	

(3) PROGRAM EFFECTS OF BILL

Would have to set up procedures, possibly by regulation, to verify an individual had given authorization to have his driving record released prior to providing same to anyone who inquires, generally an insurance company.

Would make accident reports received by DMV confidential.

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

Attached. Copy of proposed amendment given to Senator Bennett 3/6/80.

(6) COMMENTS:

Fully support intent of the bill, which is to allow insurance companies to continue to receive driving records necessary for equitable insurance rates. If insurance companies could not receive driving records, the automobile insurance rates for most of the general motoring public would increase by a considerable amount.

Reason for proposed amendment is to allow smoother operation for designation of who can obtain driving record. Would require less paperwork and be easier to manage by DMV, and easier for general motoring public when applying for insurance.

DMV had fiscal note attached, however, has agreed to withdraw same. If not amended, will attempt to handle insurance companies by administrative regulation.

PROPOSED AMENDMENT TO CSSB 110

*Section 1. AS 28.15.151(d) is amended to read:

(d) The department shall, upon request and payment of a fee determined by the commissioner, furnish a driver or a person designated by the driver with an abstract of the driver's record as provided in (c) of this section. Further provided however, that when motor vehicle insurance is applied for by a person or on his behalf, and such application contains a statement that a traffic violation report may be obtained by the insurer, then such person shall be deemed to have given his or her consent for the insurer to obtain a traffic violation report on the applicant or any person named in the application as a driver of the insured motor vehicle. The department shall provide a method to determine that licensees have given their consent for traffic violation reports to be obtained by insurers as herein provided.

Eliminate Section 3 (effective date), and remove "and providing for an effective date" from the title. This will allow DMV time to prepare for change, which includes printing of authorization cards, establishing regulations, etc.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSSB 110
Title Act relating to the availability of an abstract of a driver's record
Requested by Senator John Sackett Date 2=20=80

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Life and Property Protection
BRU, Program, or Subprogram(s) Affected Driver Services
(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		19.0	19.0	19.0	19.0	19.0
200	TRAVEL		0	0	0	0	0
300	CONTRACTUAL		8.3	8.3	8.3	8.3	8.3
400	COMMODITIES		.5	.5	.5	.5	.5
500	EQUIPMENT		0	0	0	0	0
600	LAND & STRUCTURES		0	0	0	0	0
700	GRANTS, CLAIMS, ETC.		0	0	0	0	0
	TOTAL		27.8	27.8	27.8	27.8	27.8

FY80*=Bill has immediate effective date - FY80 cost would be 1/12 of FY81 per month after effective date.
FY82/83/84/85+ - Cost of living increase not included.

FUNDING (Thousands of Dollars)

GENERAL FUND		27.8	27.8	27.8	27.8	27.8
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		1	1	1	1	1
PART TIME						
TEMPORARY						

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

A: Each request for driving record must be accompanied by release authorization card unless request is from driver.

B: 100 - One position, Document Processing Clerk I, to review all requests (approx. 72,000 annually), and return all without authorization cards. Must then film authorizations and update microfilm index.
Salary - $15,156; Benefits - $3,789 = $18,945

300 - Print forms for release authorization (100,000) - $350
Postage $1,100
Terminal to update microfilm: terminal lease 2,040
DP Chargeback 4,800
$8,290

400 - Microfilm and office supplies $500

IV. DATE 2-21-80 PREPARED BY Bill Brown
AGENCY Motor Vehicles, Public Safety
PHONE 465-4335

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

33-001 (Rev. 12/79)

Sec. 28.15.121. Restricted driver's license. (a) The department, upon issuing a driver's license, may for good cause impose restrictions suitable to the licensee's driving ability with respect to special mechanical control devices required on a motor vehicle which the licensee drives. The department may impose other restrictions applicable to the licensee that it determines to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The department may issue a special restricted license or may set out restrictions on the usual license form.

(c) The department may, upon receiving satisfactory evidence of a violation of the restrictions on a license restricted or issued under this section, suspend the restricted license for a period not to exceed 30 days.

(d) No person may drive a motor vehicle in violation of the restrictions imposed on a restricted license. (§ 19 ch 178 SLA 1978)

Sec. 28.15.131. License to be carried and exhibited on demand. Every licensee shall have his driver's license in his immediate possession at all times when driving a motor vehicle, and shall present for inspection his license upon the demand of a peace officer or other authorized representative of the department who identifies himself as such. However, a person charged with violating this section may not be convicted if he produces in court or in the office of the arresting or citing officer, a driver's license previously issued to him which was valid at the time of his arrest or citation. (§ 19 ch 178 SLA 1978)

A licensing statute cannot be used as a means for obtaining information or evidence not related to the licensing requirement. Schraff v. State, Sup. Ct. Op. No. 1223 (File No. 2263), 544 P.2d 834 (1975), decided under former AS 28.15.090.

Sec. 28.15.141. Duplicate driver's license. If a valid driver's license issued under this chapter is lost or destroyed, the person to whom the license was issued may, upon payment of the required fee, obtain a duplicate license. A person who recovers an original license for which a duplicate has been issued shall immediately surrender the duplicate to the department. (§ 19 ch 178 SLA 1978)

Sec. 28.15.151. Records to be kept by the department. (a) The department may maintain a file of

(1) every driver's license application, license or permit and duplicate driver's license issued by it;

(2) every license which has been suspended, revoked, canceled, limited, restricted, or denied, and the reasons for those actions; and

(3) all accident reports required to be forwarded to the department under this title.

(b) The department may also maintain a file of all accident reports, abstracts of court records of convictions of vehicle, driver and traffic offenses, and other information which the department considers necessary to carry out the purposes of this chapter.

(c) The department shall, upon request, subject to the applicable provisions of AS 12.62 and (f) of this section and without charging a fee,

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Section
161. Cancellatio
171. Suspending licensed reporting and revoc
181. Court sus; limitation

Sec. 28.15.
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Knudsen v. City
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State, Sup. Ct. (

furnish a municipal, state or federal administrative or judicial agency with a certified abstract of the driving record of a driver. The abstract shall include a listing of accidents in which the driver has been determined by the department or a court of competent jurisdiction to have been liable, convictions of vehicle, driver and traffic offenses, any actions taken upon his license, and information relating to financial responsibility.

(d) The department shall, upon request and payment of a fee determined by the commissioner, furnish a driver with an abstract of the driver's record as provided in (c) of this section.

(e) An insurance carrier may not require a person to furnish an abstract of his driving record to the carrier as a condition for providing the person with motor vehicle insurance.

(f) Except as provided otherwise in this section, information and records under this section are declared confidential and private. (§ 19 ch 178 SLA 1978)

Article 2. Cancellation, Suspension, Revocation or Limitation of Drivers' Licenses.

Section
161. Cancellation of driver's license
171. Suspending privileges of a person licensed in another jurisdiction; reporting convictions, suspensions, and revocations
181. Court suspensions, revocations, and limitations
191. Court reports to department
201. Limitation of driver's license
211. Periods of limitation, suspension or revocation; opportunity for hearing and surrender of license

Sec. 28.15.161. Cancellation of driver's license. (a) The department shall cancel a driver's license upon determination that

(1) the licensee is not medically or otherwise entitled to the issuance or retention of the license, or has been adjudged incompetent to drive a motor vehicle;

(2) there is an error or defect in the license;

(3) the licensee failed to give the required or correct information in his application; or

(4) the license was obtained fraudulently.

(b) The licensee may apply for a new license at any time after cancellation upon removal of the cause for the cancellation. (§ 19 ch 178 SLA 1978)

Intent of act. — This act plainly expresses the intent that all revocations and suspensions of operators' licenses be the act of the Department of Public Safety. Knudsen v. City of Anchorage, Sup. Ct. Op. No. 21 (File No. 58), 358 P.2d 375 (1960), overruled on other points in Roberts v. State, Sup. Ct. Op. No. 574 (File No. 992), 458 P.2d 340 (1969), Glasgow v. State, Sup. Ct. Op. No. 616 (File No. 1049), 469 P.2d 682 (1970), and Baker v. City of Fairbanks, Sup. Ct. Op. No. 618 (File No. 1141), 471 P.2d 386 (1970). These cases were decided under former AS 28.15.170.

Am. Jur., ALR and C.J.S. references. — 5 Am. Jur., Automobiles, § 157 et seq.; 5A

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES AND DRIVERS SERVICES

P. O. BOX 960
ANCHORAGE, ALASKA 99507

January 31, 1980

The Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

RE: SB 110

Dear Senator Ziegler:

The Division of Motor Vehicles, Department of Public Safety, fully supports the intent of Senate Bill 110. This bill will allow insurance companies to continue to receive abstracts of individuals driving records necessary for equitable insurance rates.

The passage of Senate Bill 110 will not have any fiscal impact on the operating expense of this division. We were furnishing this information to the insurance companies prior to passage of Chapter 178, SLA 1978 and we have continued to furnish the information to insurance companies under court injunction since that time.

To the best of my knowledge, driving records are a basic element in determining insurance ratings. Without this information being available to the insurance companies I am sure the automobile insurance rates for most of us would increase by a considerable amount.

I hope that you will consider the need for passage of this bill. We would be happy to present testimony before your committee and would be happy to furnish you with further information on this subject at any time.

Sincerely,

Robert J. Rowan

Robert J. Rowan
Director

cc: William Nix, Commissioner
Kenneth C. Moore, Div. of Insurance
Bill Brown

12-L10LH

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

POUCH D
JUNEAU, ALASKA 99811

January 29, 1980

Honorable Robert Ziegler
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

Senate Bill 110, which is currently in the Senate Judiciary Committee, has our full support. It will allow insurance companies to continue to obtain vital insurance underwriting information necessary for orderly and fair application of insurance rates.

If the bill fails to pass and insurance companies are prohibited from obtaining the records, we foresee several possible results which will adversely affect many citizens who have been careful and safe drivers. First, lack of driving records may result in a knee jerk reaction which causes insurers to discontinue new business. It may result in heavy industry reliance on other criteria such as age, sex, and marital status. It may cause certain companies to withdraw their preferred driver programs thus throwing excellent drivers into standard or substandard markets.

Throughout the country, insurance regulators are seeking the most reliable rating criteria. To my knowledge each of them has retained driving records as a basic element in insurance rating. Frankly, I find it hard to conceive of auto insurance not based on driving records.

I hope you will consider the urgent need for the early passage of this bill and schedule it for hearings in the very near future. We look forward to presenting testimony before your committee and would be happy to furnish you with further information on this subject at any time.

Sincerely,

Kenneth C. Moore
Director

KCM/val2/4

08-H11LH

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April 5, 1979

The Honorable Robert Ziegler
Chairman, Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 110

Dear Senator Ziegler:

This letter is written on behalf of the American Insurance Association, in support of SB 110 or any substitute for that bill which would assure reasonable access to drivers' records by insurance companies.

The background of this legislation and an explanation of its necessity are set out briefly in the attached statement, and in the statements of Richard Block and Roger Grummett.

The current bill would make drivers' records a public record. The bill was drafted that way in response to concerns by the Department of Public Safety that limiting access would burden the department with a substantial record-keeping responsiblity. We are not sure that is necessarily so, and we recognize that unfettered access to records may not be desireable. The insurance companies do not need the records to be totally open - only open to review if a person is an applicant for insurance.

We are also aware that others have legitimate need for access. For example, certificated motor carriers must review drivers' records as part of a mandatory federal safety program.

With these things in mind, we submit a draft of a bill which could be substituted for the present SB 110 language. The effect of this bill would be to leave it to the driver to ascertain who will have access. It would, however, recognize that insurance carriers and others do depend on access for decisions they make, and should not be forced to take a particular action - such as issue a policy - without the facts disclosed by the record.

I would be pleased to provide any other information you and the committee may desire. We know the deadline has passed for action by the full Senate this year, but would greatly appreciate a hearing in your committee at your earliest opportunity.

Sincerely,

M. T. Thomas

MTT/pl

cc: Senator Dankworth
Senatory Meland
Senator Bennett
Senator Ray

STATEMENT OF MIKE THOMAS
(REPRESENTING THE AMERICAN INSURANCE ASSOCIATION)
CONCERNING SB 110

On the last day of the Tenth Legislature, FCCS CSSB 471 was passed by both houses of the Legislature. That bill had gone to Free Conference as a 3-page bill dealing with motor vehicle fees, and came back as an 84-page bill made up of what had been SB 471, SB 321 (a revision of the Motor Vehicle Code) and SB 594 (extending an industrial incentive tax credit). SB 321 had been referred to Senate Judiciary and Finance Committees, and on the last day of the Session it was still in Senate Judiciary.

Within SB 321, and therefore in the version of SB 471 that passed, was a new AS 28.15.151, a copy of which is attached as Exhibit A. That section limits access to drivers' records maintained by DMV, to certain other agencies and to the driver himself. It expressly forbids insurance companies from requiring access to the records as a condition of selling insurance to the driver.

Insurance companies, of course, rely heavily on the drivers' record to determine whom to insure and what rates to charge. All their rating plans depend on access to those records. In fact, in other states, companies are criticized heavily for using factors other than driving records, such as age, sex or neighborhood, as underwriting criteria. If companies don't know who are good drivers and who are not, they will have to set rates assuming that some unknown number of applicants will be risks that are so bad they would not be written voluntarily, or would be written only with a substantial surcharge, as in the assigned risk pool. The rates that would result would of course be higher, and very unfair to those with good records. They could lead in turn to more uninsured motorists (now estimated at 25-40%), and less competition by insurers in Alaska.

The application of AS 28.15.151 has been enjoined by the Superior Court, pending reconsideration of that provision by the Legislature. In entering the injunction, the Court found that there were "serious and substantial" questions concerning the manner in which SB 471 was passed, and further found that an injunction was in the public interest. The Court had before it affidavits of Richard L. Block, then Director of Insurance, and Roger Grummett, then President of the Alaska Independent Insurance Agents and

Brokers, Inc., a trade association of most of the independent agents and brokers in the State. Pertinent excerpts from those affidavits are attached as Exhibits B and C. (Full copies of all pleadings are available).

Nobody wants or intends to go forward with the lawsuit, since it raises questions that would go to the validity of all of SB 471, and not just the section we are concerned with here.

What we ask is only that insurance companies - and perhaps others with legitimate need - be given access to the drivers' records. As set out more fully in the statements of Mr. Block and Mr. Grummett, we think that such access is essential if we are to try to keep insurance rates rationally related to the risk insured, and if we are to encourage competition in the Alaska insurance markets.

EXCERPT FROM AFFIDAVIT OF RICHARD L. BLOCK

The effect of Section 28.15.151 of Chapter 178, SLA 1978, and particularly subparagraphs (e) and (f) of that section, is to deny access by insurance companies to drivers' records maintained on drivers licensed in the State of Alaska, either directly or indirectly. That denial of access would have predictable and adverse effects upon large numbers of persons buying insurance in the State of Alaska, and upon the insurance industry itself.

Most rating plans for the sale of automobile insurance within the State of Alaska which are presently approved by my Division and in effect assume access to driving records as a basis for underwriting. The driving records are used both to screen for acceptable risks and to set rates. Companies set their own internal policies as to what risks they will voluntarily write, and drivers with records reflecting traffic violations or traffic accidents are often required to procure insurance from alternate insurance programs offered by the insurer or pay scheduled surcharges. Many companies also offer a range of rates depending on driving records, offering premium credits for the same coverage in the event the driver has a clean driving record.

There is in operation in the State of Alaska an "assigned risk plan" for private passenger automobiles and an "assigned risk pool" for commercial automobile risks, to insure that persons that want automobile insurance but do not meet underwriting criteria of the carriers are able to buy insurance. Risks are allocated to the companies who write automobile insurance in the State, and those companies are allowed to charge a substantially higher rate, recognizing the increased risk that persons who do not meet company underwriting standards present.

The effect of Section 151 would be to prohibit the use of driving records as a criteria for underwriting and thereby to invalidate the underlying assumptions in the rating plans presently approved. The indirect effect would be to force the companies to write insurance for an unknown number of persons who did not meet their underwriting criteria, persons who would normally be placed in the assigned risk pool. Some companies, especially those who now as a matter of company underwriting policy, write only better risks, would have to consider whether they could or would write on this completely different basis in the State of Alaska. All companies would be forced to file new rating plans taking into consideration the lack of access to driving records.

Predictably, companies would seek approval of rates which would be high enough to provide for the inclusion of risks which the companies have found by experience to be unprofitable at any rate lower than the assigned risk pool rates. Should the Division approve these rate filings, substantial numbers of insureds would be forced to pay substantially in excess of current rates and substantially in excess of what the experience of their hazard class dictates, thus making the rate unfairly discriminatory and violative of AS 21.36.080. If the Division disaproves, many insurers could be expected to withdraw from writing in this State further exacerbating the now tenuous automobile insurance market in this State.

The enforcement of Section 151 would have a definite tendency to make automobile insurance less competitive and more expensive within the State of Alaska, particularly for those persons who have average or better than average driving records.

EXCERPTS FROM AFFIDAVIT OF ROGER GRUMMETT

The principals of my company, and indeed all insurance agents actively engaged in the business in this State, are quite concerned about the impact of Section 21.13.151 of Chapter 178, SLA 1978. If it goes into effect on October 15, 1978, it will have a severe impact on all facets of automobile insurance in the State.

There will undoubtedly be a severe restriction in available market, since virtually all companies writing private passenger automobile insurance base their underwriting and rating on past driving experience and motor vehicle reports. Denial of access to those reports will result in a substantial loss of business to the companies presently in the market, and therefore will result in very restricted markets for the consumer. It is likely that the restricted market will mean overall higher rates for those consumers that are still able to obtain automobile insurance through standard companies. As a matter of fact, we have already received notice from one of our major underwriters, indicating that because of the passage of the statute, they will not accept any new private passenger automobile business. The restriction in market, which has already begun, will also undoubtedly have adverse impact on those drivers who have clean records, not only because of the restriction in markets and lessening of competition, but also because the carriers will have to charge higher rates to cover the unknown risks.

There will also be a substantial amount of lost revenue to the brokers and agents in the State of Alaska. Attempting to market any individual private passenger automobile risk will become very time consuming and expensive for the brokers. Further, many accounts that are not written in standard markets will undoubtedly wind up in the assigned risk pool, which charges a higher rate to the insured but develops a lower commission rate. It is also quite likely that a number of individuals will choose to do without insurance due to the higher rates, which is not only a poor result for the remainder of the driving public, but will result in additional lost revenue to agents and brokers.

EXHIBIT C

SB 110

TESTIMONY OF THE DIVISION OF INSURANCE

BEFORE THE SENATE JUDICIARY COMMITTEE

FEBRUARY 12, 1980

The Division of Insurance supports this legislation. AS 28.15.151 was added to the statutes with 19 Ch. 178 SLA 1978. That statute bars access to motor vehicle records by insurance companies. The effect of the statutes is presently under a temporary restraining order issued by the court. The proposal before you would, again, permit insurers access to motor vehicle records.

Almost all automobile insurance rating plans used in Alaska and, indeed in most other states, use motor vehicle data in the rating plan as a means to distribute their auto insurance premium needs. The driver with moving violations is likely to be paying a higher premium for his insurance than is the driver with no moving violations, and we view that as appropriate. If the motor vehicle records are denied insurers, then all of the automobile rating structures on file with the Division of Insurance will have to be replaced with one that no longer considers that information. The effect of this will be to redistribute those surcharge premiums, currently being applied to drivers with violations, to all drivers, resulting in an increase of premium for the driver with no violations on record. Additionally, most carriers utilize motor vehicle record information in their selection of business, even aside from the rating of that selection. This selection has generally resulted in some wide variations in rates amongst insurers. With removal of this tool of selectivity, it is expected that the companies with lower rate structures will have increases in their rate structures as the experience on the new selection is felt. We do not believe that this result is desirable. We would urge that the committee act to continue availability of this data to insurers.

Failure to pass this or a similar bill will result in a vacation of the temporary restraining order already mentioned by the court. The impact of that on our program will be substantial since many new rating proposals will have to be reviewed for propriety, compliance with statute and waiting of new forms of discrimation for fairness. Further, the statistical studies and data available for previous years in Alaska will no longer be usable. This will leave Alaska automobile rate levels in doubt for at least three or four years to come. Passage of this particular legislation is very important.

PROPOSED AMENDMENT TO SB 110

* Section 2. AS 28.15.151(d) is amended to read:

(d) The department shall, upon request and payment of a fee determined by the Commissioner, furnish a driver or any person or firm designated by the driver, with an abstract of the driver's record as provided in (c) of this section.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES AND DRIVERS SERVICES

P. O. BOX 960
ANCHORAGE, ALASKA 99507

January 31, 1980

The Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

RE: SB 110

Dear Senator Ziegler:

The Division of Motor Vehicles, Department of Public Safety, fully supports the intent of Senate Bill 110. This bill will allow insurance companies to continue to receive abstracts of individuals driving records necessary for equitable insurance rates.

The passage of Senate Bill 110 will not have any fiscal impact on the operating expense of this division. We were furnishing this information to the insurance companies prior to passage of Chapter 178, SLA 1978 and we have continued to furnish the information to insurance companies under court injunction since that time.

To the best of my knowledge, driving records are a basic element in determining insurance ratings. Without this information being available to the insurance companies I am sure the automobile insurance rates for most of us would increase by a considerable amount.

I hope that you will consider the need for passage of this bill. We would be happy to present testimony before your committee and would be happy to furnish you with further information on this subject at any time.

Sincerely,

Robert J. Rowan

Robert J. Rowan
Director

cc: William Nix, Commissioner
Kenneth C. Moore, Div. of Insurance
Bill Brown

12-L10LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

POUCH D
JUNEAU, ALASKA 99811

January 29, 1980

Honorable Robert Ziegler
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

Senate Bill 110, which is currently in the Senate Judiciary Committee, has our full support. It will allow insurance companies to continue to obtain vital insurance underwriting information necessary for orderly and fair application of insurance rates.

If the bill fails to pass and insurance companies are prohibited from obtaining the records, we foresee several possible results which will adversely affect many citizens who have been careful and safe drivers. First, lack of driving records may result in a knee jerk reaction which causes insurers to discontinue new business. It may result in heavy industry reliance on other criteria such as age, sex, and marital status. It may cause certain companies to withdraw their preferred driver programs thus throwing excellent drivers into standard or substandard markets.

Throughout the country, insurance regulators are seeking the most reliable rating criteria. To my knowledge each of them has retained driving records as a basic element in insurance rating. Frankly, I find it hard to conceive of auto insurance not based on driving records.

I hope you will consider the urgent need for the early passage of this bill and schedule it for hearings in the very near future. We look forward to presenting testimony before your committee and would be happy to furnish you with further information on this subject at any time.

Sincerely,

Kenneth C. Moore
Director

KCM/val2/4

OB-H11LH

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April 5, 1979

The Honorable Robert Ziegler
Chairman, Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 110

Dear Senator Ziegler:

This letter is written on behalf of the American Insurance Association, in support of SB 110 or any substitute for that bill which would assure reasonable access to drivers' records by insurance companies.

The background of this legislation and an explanation of its necessity are set out briefly in the attached statement, and in the statements of Richard Block and Roger Grummett.

The current bill would make drivers' records a public record. The bill was drafted that way in response to concerns by the Department of Public Safety that limiting access would burden the department with a substantial record-keeping responsiblity. We are not sure that is necessarily so, and we recognize that unfettered access to records may not be desireable. The insurance companies do not need the records to be totally open - only open to review if a person is an applicant for insurance.

We are also aware that others have legitimate need for access. For example, certificated motor carriers must review drivers' records as part of a mandatory federal safety program.

With these things in mind, we submit a draft of a bill which could be substituted for the present SB 110 language. The effect of this bill would be to leave it to the driver to ascertain who will have access. It would, however, recognize that insurance carriers and others do depend on access for decisions they make, and should not be forced to take a particular action - such as issue a policy - without the facts disclosed by the record.

I would be pleased to provide any other information you and the committee may desire. We know the deadline has passed for action by the full Senate this year, but would greatly appreciate a hearing in your committee at your earliest opportunity.

Sincerely,

M. T. Thomas

MTT/pl

cc: Senator Dankworth
Senatory Meland
Senator Bennett
Senator Ray

STATEMENT OF MIKE THOMAS
(REPRESENTING THE AMERICAN INSURANCE ASSOCIATION)
CONCERNING SB 110

On the last day of the Tenth Legislature, FCCS CSSB 471 was passed by both houses of the Legislature. That bill had gone to Free Conference as a 3-page bill dealing with motor vehicle fees, and came back as an 84-page bill made up of what had been SB 471, SB 321 (a revision of the Motor Vehicle Code) and SB 594 (extending an industrial incentive tax credit). SB 321 had been referred to Senate Judiciary and Finance Committees, and on the last day of the Session it was still in Senate Judiciary.

Within SB 321, and therefore in the version of SB 471 that passed, was a new AS 28.15.151, a copy of which is attached as Exhibit A. That section limits access to drivers' records maintained by DMV, to certain other agencies and to the driver himself. It expressly forbids insurance companies from requiring access to the records as a condition of selling insurance to the driver.

Insurance companies, of course, rely heavily on the drivers' record to determine whom to insure and what rates to charge. All their rating plans depend on access to those records. In fact, in other states, companies are criticized heavily for using factors other than driving records, such as age, sex or neighborhood, as underwriting criteria. If companies don't know who are good drivers and who are not, they will have to set rates assuming that some unknown number of applicants will be risks that are so bad they would not be written voluntarily, or would be written only with a substantial surcharge, as in the assigned risk pool. The rates that would result would of course be higher, and very unfair to those with good records. They could lead in turn to more uninsured motorists (now estimated at 25-40%), and less competition by insurers in Alaska.

The application of AS 28.15.151 has been enjoined by the Superior Court, pending reconsideration of that provision by the Legislature. In entering the injunction, the Court found that there were "serious and substantial" questions concerning the manner in which SB 471 was passed, and further found that an injunction was in the public interest. The Court had before it affidavits of Richard L. Block, then Director of Insurance, and Roger Grummett, then President of the Alaska Independent Insurance Agents and

Brokers, Inc., a trade association of most of the independent agents and brokers in the State. Pertinent excerpts from those affidavits are attached as Exhibits B and C. (Full copies of all pleadings are available).

Nobody wants or intends to go forward with the lawsuit, since it raises questions that would go to the validity of all of SB 471, and not just the section we are concerned with here.

What we ask is only that insurance companies - and perhaps others with legitimate need - be given access to the drivers' records. As set out more fully in the statements of Mr. Block and Mr. Grummett, we think that such access is essential if we are to try to keep insurance rates rationally related to the risk insured, and if we are to encourage competition in the Alaska insurance markets.

EXCERPT FROM AFFIDAVIT OF RICHARD L. BLOCK

The effect of Section 28.15.151 of Chapter 178, SLA 1978, and particularly subparagraphs (e) and (f) of that section, is to deny access by insurance companies to drivers' records maintained on drivers licensed in the State of Alaska, either directly or indirectly. That denial of access would have predictable and adverse effects upon large numbers of persons buying insurance in the State of Alaska, and upon the insurance industry itself.

Most rating plans for the sale of automobile insurance within the State of Alaska which are presently approved by my Division and in effect assume access to driving records as a basis for underwriting. The driving records are used both to screen for acceptable risks and to set rates. Companies set their own internal policies as to what risks they will voluntarily write, and drivers with records reflecting traffic violations or traffic accidents are often required to procure insurance from alternate insurance programs offered by the insurer or pay scheduled surcharges. Many companies also offer a range of rates depending on driving records, offering premium credits for the same coverage in the event the driver has a clean driving record.

There is in operation in the State of Alaska an "assigned risk plan" for private passenger automobiles and an "assigned risk pool" for commercial automobile risks, to insure that persons that want automobile insurance but do not meet underwriting criteria of the carriers are able to buy insurance. Risks are allocated to the companies who write automobile insurance in the State, and those companies are allowed to charge a substantially higher rate, recognizing the increased risk that persons who do not meet company underwriting standards present.

The effect of Section 151 would be to prohibit the use of driving records as a criteria for underwriting and thereby to invalidate the underlying assumptions in the rating plans presently approved. The indirect effect would be to force the companies to write insurance for an unknown number of persons who did not meet their underwriting criteria, persons who would normally be placed in the assigned risk pool. Some companies, especially those who now as a matter of company underwriting policy, write only better risks, would have to consider whether they could or would write on this completely different basis in the State of Alaska. All companies would be forced to file new rating plans taking into consideration the lack of access to driving records.

Predictably, companies would seek approval of rates which would be high enough to provide for the inclusion of risks which the companies have found by experience to be unprofitable at any rate lower than the assigned risk pool rates. Should the Division approve these rate filings, substantial numbers of insureds would be forced to pay substantially in excess of current rates and substantially in excess of what the experience of their hazard class dictates, thus making the rate unfairly discriminatory and violative of AS 21.36.080. If the Division disaproves, many insurers could be expected to withdraw from writing in this State further exacerbating the now tenuous automobile insurance market in this State.

The enforcement of Section 151 would have a definite tendency to make automobile insurance less competitive and more expensive within the State of Alaska, particularly for those persons who have average or better than average driving records.

EXCERPTS FROM AFFIDAVIT OF ROGER GRUMMETT

The principals of my company, and indeed all insurance agents actively engaged in the business in this State, are quite concerned about the impact of Section 21.13.151 of Chapter 178, SLA 1978. If it goes into effect on October 15, 1978, it will have a severe impact on all facets of automobile insurance in the State.

There will undoubtedly be a severe restriction in available market, since virtually all companies writing private passenger automobile insurance base their underwriting and rating on past driving experience and motor vehicle reports. Denial of access to those reports will result in a substantial loss of business to the companies presently in the market, and therefore will result in very restricted markets for the consumer. It is likely that the restricted market will mean overall higher rates for those consumers that are still able to obtain automobile insurance through standard companies. As a matter of fact, we have already received notice from one of our major underwriters, indicating that because of the passage of the statute, they will not accept any new private passenger automobile business. The restriction in market, which has already begun, will also undoubtedly have adverse impact on those drivers who have clean records, not only because of the restriction in markets and lessening of competition, but also because the carriers will have to charge higher rates to cover the unknown risks.

There will also be a substantial amount of lost revenue to the brokers and agents in the State of Alaska. Attempting to market any individual private passenger automobile risk will become very time consuming and expensive for the brokers. Further, many accounts that are not written in standard markets will undoubtedly wind up in the assigned risk pool, which charges a higher rate to the insured but develops a lower commission rate. It is also quite likely that a number of individuals will choose to do without insurance due to the higher rates, which is not only a poor result for the remainder of the driving public, but will result in additional lost revenue to agents and brokers.

EXHIBIT C

SB 110

TESTIMONY OF THE DIVISION OF INSURANCE

BEFORE THE SENATE JUDICIARY COMMITTEE

FEBRUARY 12, 1980

The Division of Insurance supports this legislation. AS 28.15.151 was added to the statutes with 19 Ch. 178 SLA 1978. That statute bars access to motor vehicle records by insurance companies. The effect of the statutes is presently under a temporary restraining order issued by the court. The proposal before you would, again, permit insurers access to motor vehicle records.

Almost all automobile insurance rating plans used in Alaska and, indeed in most other states, use motor vehicle data in the rating plan as a means to distribute their auto insurance premium needs. The driver with moving violations is likely to be paying a higher premium for his insurance than is the driver with no moving violations, and we view that as appropriate. If the motor vehicle records are denied insurers, then all of the automobile rating structures on file with the Division of Insurance will have to be replaced with one that no longer considers that information. The effect of this will be to redistribute those surcharge premiums, currently being applied to drivers with violations, to all drivers, resulting in an increase of premium for the driver with no violations on record. Additionally, most carriers utilize motor vehicle record information in their selection of business, even aside from the rating of that selection. This selection has generally resulted in some wide variations in rates amongst insurers. With removal of this tool of selectivity, it is expected that the companies with lower rate structures will have increases in their rate structures as the experience on the new selection is felt. We do not believe that this result is desirable. We would urge that the committee act to continue availability of this data to insurers.

Failure to pass this or a similar bill will result in a vacation of the temporary restraining order already mentioned by the court. The impact of that on our program will be substantial since many new rating proposals will have to be reviewed for propriety, compliance with statute and waiting of new forms of discrimation for fairness. Further, the statistical studies and data available for previous years in Alaska will no longer be usable. This will leave Alaska automobile rate levels in doubt for at least three or four years to come. Passage of this particular legislation is very important.

SB

115

COMMITTEE REPORT

SENATE

2/7/79

FURTHER: None

Date: _____

Mr. President:

The Committee on JUDICIARY has had SB 115

civil liability of gratuitous servers of alcoholic beverages

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SB 115 [X] same title [ ] new title

and recommends [illegible]

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[illegible]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[illegible]

[illegible]
CHAIRMAN

S 60 (Rev. 12/78)

March 10, 1980

The Honorable Samuel R. Cotten,
Alaska State Representative
Room 208 Capitol Building
Juneau, Alaska

Dear Sam:

What you propose to do to good old SB 115 meets with my approbation.

I only wish you could carry it one step further and provide protection for non-commercial purveyors like you and me when we pour in our homes.

However, protecting the owner/operator is a step in the right direction.

Regards,

Robert H. Ziegler, Sr.

RHZ:lk

Alaska State Legislature

House of Representatives

Committee on Rules

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

DATE: March 6, 1980

TO: Rep. Buchholdt
Rep. Meekins
Rep. Parr
Sen. Rodey
Sen. Ziegler

FROM: Rep. Cotten

RE: House Rules Committee Substitute for HCS CSSB 115

The Rules Committee is considering a committee substitute for HCS CSSB 115. I would appreciate your comments on it. The following is the proposed change:

> Sec. LIMITATION ON CIVIL LIABILITY. A licensee, or the employee or agent of a licensee, who furnishes an alcoholic beverage to an individual on premises licensed under this title may not be held civilly liable for injuries resulting from the intoxication of that individual unless the furnishing of alcohol beverages occurred in violation of AS 04.15.020(a) and (d), 04.15.060(e), or 04.15.080.

The statutes that deal with th exceptions are listed below:

> AS 04.15.020. Restrictions on sale or disposition of liquor. (a) Sale to minors or intoxicated persons. It is unlawful to give, barter or sell any intoxicating liquors, including beer and wine, to a person under the age of 19 years or to an intoxicated person, and it is unlawful for a licensee to permit the giving, selling, bartering or drinking of any intoxicating liquor within the premises covered by a license to or by either of the forbidden classes, nor shall the licensee permit the drinking of hard or distilled liquors by any person upon the premises covered by his license, unless it is permitted under the classification of his license.
>
> (d) Presence of minors on premises. It is unlawful for a person under the age of 19 years to enter or remain upon licenses premises unless he is accompanied by his parent, guardian or spouse who has attained the age of 19 years. A person under the age of 19 years may enter and remain upon licensed premises which are also recognized as a restaurant for the purpose of dining or dancing if accompanied

by his parent, guardian, or spouse who has attained the age of 19 years, or by the parent or guardian of any other minor also present, or by any other adult with the consent of the minor's parent or guardian. The Alcoholic Beverage Control Bo.., with the approval of the city council if the premises are within the city or with the approval of the borough assembly if the premises are outside the city but within a borough, shall designate which premises are restaurants for the purposes of this section. Licensed premises are premises holding licenses under AS 04.10.020(a)-04.10.020(d). The Alcoholic Beverage Control Board shall promulgate regulations for the designation of restaurants and the continuation or withdrawal of the designation. No establishment may be designated as a restaurant for the purposes of dining without the consent of the licensee.

AS 04.15.060. Purchases by Minors. (e) A licensee, or his employee, who allows to remain upon licensed premises where intoxicating liquor is sold, a person under the age of 19 years not in company of his parent or legal guardian or spouse who has attained the age of 19 years, or sells, gives or serves intoxicating liquor to a person under the age of 19 years without having procured the signature of the person upon a statement as provided in this section, or who knowingly sells, gives, or serves intoxicating liquor to or allows the person to remain on licensed premises where intoxicating liquor is sold, is guilty of a misdemeanor.

AS 04.15.080. Giving of intoxicating liquor to persons under the age of 19 years. (a) A person or firm, company, corporation or an employee thereof who sells, barters, gives or delivers to a person under the age of 19 years, any intoxicating liquor is guilty of a misdemeanor, and upon conviction is punishable by imprisonment of not more than one year, or by a fine of not more than $500, or by both.

(b) The term "person" as used in this section does not include parent as to his own child, a guardian as to his ward or a licensed physician or nurse in giving medical treatment.

Intoxicated person is defined under AS 47.37.270(10) as:

"Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

A definition for "drunken person" is suggested in SSSB 239 which is:

"Drunken person" means a person exhibiting those plain and easily observed or discovered outward manifestations of behavior commonly known to be produced by the use of intoxicating liquor.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

April 2, 1979

The Honorable Bill Ray
The Honorable Mike Colletta
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Re: Dram Shop Liability Question
Our File #J-66-569-79

Dear Senators Ray and Colletta:

You requested our opinion whether removal of the word "lawfully" from CSSB 115 (Rules) would shield a tavern keeper from liability for injuries resulting from the tavern keeper serving liquor to an intoxicated adult or a minor in violation of AS 04.15.020(a). For the reasons which follow, we believe removing the word "lawfully" from that measure would have the effect of shielding a tavern k .per from civil liability for injuries resulting from the tavern keeper serving an intoxicated individual or a minor in violation of the statute.

Section 2 of CSSB 115 (Rules) would add a new section to the Alaska Statutes to read:

> Section 09.65.097. LIMITATIONS ON THE CIVIL LIABILITY OF LAWFULL BEVERAGE PROVIDERS. A person who lawfully provides an alcoholic beverage to an individual may not be held

> civilly liable for injuries resulting from the intoxication of that individual.

This Statute would codify the general common law rule:

> [I]t is not a tort to either sell or give intoxicating liquor to ordinary able-bodied men, and it has been frequently held that in the absence of statute, there can be no cause of action against one furnishing liquor in favor of those injured by the intoxication of the person so furnished. The reason usually given for this rule is that the drinking of the liquor, not the furnishing of it, is the proximate cause of the injury. The rule is based on the obvious fact that one cannot become intoxicated by reason of liquor furnished if he does not drink it.
>
> 45 Am. Jr. 2d, INTOXICATING LIQUORS §553 at pp. 852-853 (footnotes omitted).

However, some jurisdictions do afford a cause of action against a provider of liquor for injuries resulting from intoxication. This frequently is accomplished by legislative enactments known as "dram shop acts" which place statutory liability on the person selling or furnishing the liquor which caused the intoxication. 45 Am. Jur. 2d, INTOXICATING LIQUORS, §§561 et seq. Occasionally, liability has been found in the absence of a dram shop act "where the liquor was given or sold to a person who is in such a condition as to be deprived of his will-power or responsibility for his behavior, or to a habitual drunkard, or in violation of a prohibitory statute." 45 Am. Jr. 2d, INTOXICATING LIQUORS, §554 at page 853 (footnote omitted).

In Alaska, AS 04.15.020(a) prohibits furnishing intoxicating liquor to minors and to intoxicated persons. The Alaska Supreme Court has not ruled on the precise issue whether furnishing liquor to a minor or intoxicated person in violation of AS 04.15.020(a) gives a third person injured as a result of intoxication a cause of action against the person furnishing the liquor. However, there are strong indications that the court would hold that a violation of AS 04.15.020(a) gives an injured party such a cause of action against the provider of the liquor.

The Federal District Court for Alaska has held that under Alaska law, a violation of AS 04.15.020(a) is negligence per se, giving the injured party a cause of action against the tavern keeper. Vance v. United States, 355 F. Supp. 756 (D. Alaska 1973).*/

In Barton v. Lund, 563 P. 2d 875, 877 n.6 (Alaska 1977), a three-justice Alaska Supreme Court expressly refused to reach the issue of liability resulting from a violation of AS 04.15.020(a) in holding that such a violation would not support a cause of action against a liquor licensee under AS 04.15.180 who had no control over the actual operation of the tavern. The majority noted that the

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*/ The Court in Vance did not discuss the pre-statehood case of Cherbonnier v. Rafalovich, 88 F. Supp. 900 (D. Alaska 1950), which reached an opposite result under the Territorial predecessor to AS 04.15.020(a).

Federal District Court had found such liability under Alaska law in Vance, supra, and that the California Supreme Court found such liability based on a violation of a criminal statute similar to AS 04.15.020(a), Vesely v. Sager, 46 P. 2d 151 (California 1971), and based purely on the common law without reliance on the statute. Bernhard v. Harrah's Club, 546 P. 2d 719 (California), Cert. denied, 429 U.S. 859 (1976).*/ The majority did cite Bachner v. Rich, 554 P. 2d 430 (Alaska 1976), and Farrell v. Baxter, 44 P. 2d 250 (Alaska 1971), cases not involving intoxicating liquor, in both of which the court held that a statute established a standard of care which, when violated, constituted negligence as a matter of law. Extending the holding of those cases to the intoxicating liquor situation would result in a finding of liability, the result reached by Federal District Court in Vance.

Justices Boochever and Rabinowitz, dissenting in Barton, not only appeared to approve the Federal District Court's holding in Vance but would have imposed vicarious

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*/ In response to these cases, the California legislature amended Cal. Bus. & Prof. Code §25602 and Cal. Civ. Code §1714 to abrogate the results of those decisions in favor of the traditional common law rule holding that the consumption, not the furnishing, of intoxicating liquor is the proximate cause of injuries resulting from intoxication. Ch. 929, 1978 Cal. Adv. Legis. Serv. A copy of that enactment is attached for your information.

liability for violations of AS 04.15.020(a) on licensees under AS 04.15.180 who take no active part in the conduct of the tavern's business. They appeared to assume that a violation of AS 04.15.020(a) gives rise to a cause of action against the provider of liquor, the result reached in Vance.

Enactment of CSSB 115 (Rules), as it now reads, would not appear to change the law in Alaska (as it appears in the cited cases) one way or the other. It might raise a question regarding liability where liquor was furnished in a matter which was technically unlawful--e.g., liquor sold on election day in violation of AS 04.15.020(c) but lawfully sold in all other respects--but that question currently exists in the absence of such a statute. Enactment of CSSB 115 (Rules) with the word "lawfully" removed, however, would appear to absolve any provider of an alcoholic beverage from any liability for injuries resulting from the consumer's intoxication. This would be true regardless of whether the provider of the liquor violated AS 04.15.020(a) by furnishing the liquor to a minor or an intoxicated person or violated any other statute dealing with the furnishing of liquor. In other words, it would preclude the court from finding any provider of intoxicating liquor liable for injuries suffered as a result of intoxication, even when the liquor was fur-

nished to an intoxicated person or a minor in violation of AS 04.15.020(a).

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: G. Thomas Koester
Thomas G. Koester
Assistant Attorney General

TGK:bwb

Enclosure

Chapter 929

An act to amend Section 25602 of the Business and Professions Code, and to amend Section 1714 of the Civil Code, relating to proximate cause.

LEGISLATIVE COUNSEL'S DIGEST

SB 1645, Ayala. Alcoholic beverage liability: proximate cause.

The California courts have recently interpreted existing law as imposing civil liability upon persons who sell, furnish, give or cause to be given alcoholic beverages to an intoxicated person when such person inflicts injury upon a third party.

This bill would specifically prohibit the imposition of civil liability in such instance.

This bill would also state a legislative declaration that prior judicial interpretation shall be reinstated so that such civil liability to a third party is incurred solely by the intoxicated person. The bill would also provide specifically that no social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages.

The people of the State of California do enact as follows:

SECTION 1. Section 25602 of the Business and Professions Code is amended to read:

25602. (a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor.

(b) No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to subdivision (a) of this section shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage.

(c) The Legislature hereby declares that this section shall be interpreted so that the holdings in cases such as Vesely v. Sager (5 Cal. 3d 153), Bernhard v. Harrah's Club (16 Cal. 3d 313) and Coulter v. Superior Court (_____ Cal. 3d _____) be abrogated in favor of prior judicial interpretation, finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person.

SEC. 2. Section 1714 of the Civil Code is amended to read:

1714. (a) Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the Title on Compensatory Relief.

(b) It is the intent of the Legislature to abrogate the holdings in cases such as Vesely v. Sager (5 Cal. 3d 153), Bernhard v. Harrah's Club (16 Cal. 3d 313), and Coulter v. Superior Court (_____ Cal. 3d _____) and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

(c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages.

An act to amend Section 25602 of the Business and Professions Code, and to amend Section 1714 of the Civil Code, relating to proximate cause.

LEGISLATIVE COUNSEL'S DIGEST

SB 1645, Ayala. Alcoholic beverage liability: proximate cause.

The California courts have recently interpreted existing law as imposing civil liability upon persons who sell, furnish, give or cause to be given alcoholic beverages to an intoxicated person when such person inflicts injury upon a third party.

This bill would specifically prohibit the imposition of civil liability in such instance.

This bill would also state a legislative declaration that prior judicial interpretation shall be reinstated so that such civil liability to a third party is incurred solely by the intoxicated person. The bill would also provide specifically that no social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages.

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(c) The Legislature hereby declares that this section shall be interpreted so that the holdings in cases such as Vesely v. Sager (5 Cal. 3d 153), Bernhard v. Harrah's Club (16 Cal. 3d 313) and Coulter v. Superior Court (_____ Cal. 3d _____) be abrogated in favor of prior judicial interpretation, finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person.

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(c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

April 11, 1979

The Honorable Bill Ray
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Dram Shop Liability Question
Our File J-66-569-79

Dear Senator Ray:

In a phone conversation earlier today, you indicated that our letter of April 2, 1979 did not completely answer your question regarding the effect of CSSB 115 (Rules) on third-person liability for injuries suffered as a result of that third person furnishing intoxicating liquor to another. You indicated that your question was whether enactment of CSSB 115 (Rules) would shield third persons from liability for injuries resulting from another's intoxication if the intoxicating liquor was furnished lawfully. For the reasons which follow, we believe it would provide such a shield.

Section 2 of CSSB 115 (Rules) would add a new section to the Alaska Statutes to read:

> Section 09.65.097. LIMITATIONS ON THE CIVIL LIABILITY OF LAWFUL BEVERAGE PROVIDERS. A person who lawfully provides an alcoholic beverage to an individual may not be held civilly liable for injuries resulting from the intoxication of that individual.

This statute would codify the rule which seems to be rather universal: A third person who lawfully furnishes liquor is not liable for injuries resulting from the consumption of that liquor. This appears to be the rule even in states like California where a third person will be liable for such injuries if he unlawfully provides liquor.

We hope this answers your question. However, it is possible that it does not. It appears that there are two

possible sources for any confusion which remains: (1) Differences of opinion regarding the existing law of third-person liability in Alaska; and (2) differences of opinion regarding the effect of the language in CSSB 115 (Rules). We must point out that this is a developing area of law, and we cannot predict with absolute certainty what result our Court will reach under any given statutory enactment. However, we believe our Court would hold that the language of CSSB 115 (Rules), as it now appears, would shield third persons furnishing intoxicating liquor from liability for injuries suffered as a result of intoxication where the furnishing of that liquor was not in violation of existing law. We will work with you and/or other legislators in drafting appropriate language to accomplish whatever policy that the legislature determines is appropriate in this area if further amendment to SB 115 is desired.

In the meantime, we hope you find this of some assistance.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: G. Thomas Koester
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator Mike Colletta
Senator Patrick Rodey

VIOLATION OF STATUTES

Runge v. Watts, 589 P.2d 145 (Mont. 1979):

Plaintiff was injured in collision with car driven by intoxicated minor. Minor was furnished alcoholic beverages by defendant, a private individual, in violation of a state statute. In holding that complaint was properly dismissed, court states at 589 P.2d 147:

> Traditionally, there has been greater justification for imposing liability on a commercial purveyor than on a social purveyor. There is a greater need for some check on the pecuniary motives of those engaged in the business of selling alcoholic beverages. In addition a commercial vendor is in a better position to observe his customers and monitor their level of intoxication by virtue of the fact that the seller is more likely to communicate with the patron each time he serves a new drink.
>
> Taking this into consideration, we are reluctant to extend the liability of persons serving alcoholic beverages to a social setting when the legislature has to date failed to extend that liability to commercial vendors by virtue of dramshop legislation.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 9981[illegible]
907 465-3800

MEMORANDUM February 8, 1979

SUBJECT: Court cases in California and Alaska regarding liability of provider of intoxicating beverages for damages caused by intoxicated person: (Work Order No. 6060)

TO: Senator Robert Ziegler

FROM: Joseph A. Guthrie, Legislative Counsel

Attached you will find the California cases you requested. Also, you will find a federal case construing Alaska law, Vance v. United States, 355 F Supp. 756 (1973) which finds (1) that violation of Alaska's law prohibiting service to intoxicated persons is negligence per se; and (2) that public policy requires that a provider of alcoholic beverages, whether liquor licensee or social host, be held to be the proximate cause of damages caused by the person he serves liquor to.

Attachment

JAG:nem

George D. Cary as Register of Copyrights is null and void;

2. That the defendant Mumford is enjoined from appointing a Register of Copyrights unless and until he follows the procedures of the Library of Congress governing that appointment;

3. That the defendant Mumford be required to implement corrective action to remedy the findings of discrimination against the plaintiff, in accordance with the regulations of the Library of Congress as construed in the Opinion filed in this case;

4. Nothing in this Order shall prevent the defendant Mumford from making a temporary or interim appointment of an Acting Register of Copyrights during the period in which the procedures of the Library of Congress are being complied with, but any such interim or temporary appointment shall be without prejudice to plaintiff's rights to be considered for the position of Register of Copyrights; and

5. That the defendants' motion for summary judgment be and is hereby denied.

Mrs. John C. VANCE, Individually and as Guardian Ad Litem for John C. Vance, et al., Plaintiffs,

v.

UNITED STATES of America, Defendant.

Civ. No. A-84-71.

United States District Court, D. Alaska.

March 16, 1973.

Action was brought against the United States under the Federal Tort Claims Act on theory that plaintiff's husband was negligently served intoxicating liquors at noncommissioned officers' club at Alaskan air force station. On defendant's motion for summary judgment, the District Court, Plummer, Chief Judge, held that agent of the United States had a duty to the husband to exercise reasonable care in dispensing intoxicants, and a breach of that duty could be found to have been the proximate cause of his injuries; further, such a breach occurred if defendant violated Alaskan statute which makes it a crime to give or sell liquor to minors or intoxicated persons, and a breach could also be found if defendant failed to take additional reasonable precautions; and contributory negligence would be a defense only if the statute was not violated.

Motion denied.

1. Negligence ⇐6

Under Alaskan law, an unexcused violation of a statute of regulation is negligence in itself if court adopts the statute as defining the conduct of a reasonable man, and if the statute is not so adopted, a violation may be considered as evidence of negligence; and court may and usually must adopt the statute as the minimum standard of care if purpose thereof is at least in part to protect class of persons which includes the one whose interest is invaded, and to protect particular interest invaded, and to protect that interest against the kind of harm which resulted, and to protect that interest against particular hazard from which harm resulted.

2. Intoxicating Liquors ⇐159(1), 161

Statute which makes it a crime to give or sell liquor to minors or intoxicated persons applies to private clubs. AS 04.15.020(a).

3. Intoxicating Liquors ⇐286

Alaskan statute making it a crime to give or sell liquor to minors or intoxicated persons represented the minimum standard of conduct to be observed by agent of the United States, against which Federal Tort Claims Act suit was brought on theory that plaintiff's husband had been negligently served intoxicating liquors at noncommissioned officers' club at Alaskan air force station.

AS 04.15.020(a); 28 U.S.C.A. §§ 1346(b), 2674.

4. Negligence ⇐6, 80

Where plaintiff's claim is grounded on alleged negligence of defendant's agent, contributory negligence would ordinarily be a defense, and this is true even though the negligence may be proved by comparing defendant's conduct to a statutory norm rather than to the hypothetical conduct of a reasonable man; however, there are exceptional statutes which are intended to protect persons from their own misconduct and to place the entire responsibility for the harm upon the one who has violated the statute.

5. Intoxicating Liquors ⇐295

Contributory negligence is not a defense to negligence per se based upon a violation of Alaskan statute which makes it a crime to give or sell liquor to minors or intoxicated persons. AS 04.15.020(a).

6. United States ⇐78(8)

Holding that claim against United States on theory that plaintiff's husband was negligently served intoxicating liquors at noncommissioned officers' club at Alaskan air force station was cognizable under the Federal Tort Claims Act was not impaired by later holding that contributory negligence is not a defense to negligence per se based upon a violation by defendant's agent of Alaskan statute making it a crime to give or sell liquor to intoxicated persons. AS 04.15.020(a); 28 U.S.C.A. §§ 1346(b), 2674.

7. Intoxicating Liquors ⇐285, 295

In action brought against the United States under Federal Tort Claims Act on theory that plaintiff's husband was negligently served intoxicating liquors at noncommissioned officers' club at Alaskan air force station, Alaskan statute making it a crime to give or sell liquor to minors or intoxicated persons merely set the minimum standard of care, and compliance therewith did not relieve defendant from liability if its agent was negligent in failing to take additional precautions; and if the agent were found to have been negligent even though he did not violate the statute, then contributory negligence would become a defense. AS 04.15.020(a); 28 U.S.C.A. §§ 1346(b), 2674.

8. Negligence ⇐142

Under Alaskan law, it is error for trial court to dismiss a claim on the ground of contributory negligence prior to a determination on the issue of negligence.

9. Intoxicating Liquors ⇐295

Unless and until agent of the United States, against which suit was brought under the Federal Tort Claims Act on theory that plaintiff's husband was negligently served intoxicating liquors at noncommissioned officers' club at Alaskan air force station, was found to have complied with Alaskan statute making it crime to give or sell liquor to minors or intoxicated persons, but to have nevertheless failed to take further reasonable precautions, a determination on the question of contributory negligence by plaintiff's husband would be premature. AS 04.15.020(a); 28 U.S.C.A. §§ 1346(b), 2674.

10. Federal Civil Procedure ⇐2155

Both duty and proximate causation are issues of law to be decided by the court.

11. Federal Civil Procedure ⇐709

Unlike contributory negligence, duty and proximate causation are elements of plaintiff's cause of action, in the absence of either of which plaintiff has failed to state a claim upon which relief can be granted. Fed.Rules Civ.Proc. rule 12(b), 28 U.S.C.A.

12. Negligence ⇐56(1)

Proximate causation is a matter of public policy and therefore subject to the changing attitudes and needs of society.

13. Intoxicating Liquors ⇐291

If a liquor vendor's conduct may, under the modern view, be the proximate cause of injuries to third persons,

a fortiori it may be the proximate cause of injuries to the customer himself. AS 04.15.020(a).

14. Intoxicating Liquors ⇨286, 291

Agent of United States, against which action was brought under Federal Tort Claims Act on theory that plaintiff's husband was negligently served intoxicating liquors at noncommissioned officers' club at Alaskan air force station, had duty to husband to exercise reasonable care in dispensing intoxicants, and a breach of that duty could be found to have been proximate cause of his injuries; further, such a breach occurred if defendant violated Alaskan statute making it a crime to give or sell liquor to intoxicated persons, and a breach could also be found if defendant failed to take additional reasonable precautions. 28 U.S.C.A. §§ 1346(b), 2674; AS 04.15.020(a).

Leroy J. Barker, of Robison, McCaskey, Strachan & Hoge, Anchorage, Alaska, for plaintiffs.

A. Lee Petersen, Asst. U. S. Atty., Anchorage, Alaska, for defendant.

MEMORANDUM AND ORDER

PLUMMER, Chief Judge.

This case comes before the court on defendant's second motion for summary judgment. Plaintiff is seeking recovery in this action for injuries to John C. Vance and his dependents resulting from injuries sustained by Mr. Vance while he was intoxicated. Plaintiff's action is brought against the United States under the Federal Tort Claims Act, 28 U.S.C. A. §§ 1346(b) and 2674, on the theory that Mr. Vance was negligently served intoxicating liquors at the Non-Commissioned Officers' Club at Clear Air Force Station, Alaska.

Defendant's first motion for summary judgment was denied on June 21, 1972, but defendant has renewed its motion in light of two recent decisions from California, Carlisle v. Kanayer, 24 Cal.App. 3d 587, 101 Cal.Rptr. 246 (1972), and Sargent v. Goldberg, 25 Cal.App.3d 940, 102 Cal.Rptr. 300 (1972). In these cases the California Court of Appeals held that contributory negligence is a defense where the claim is based upon injuries to an intoxicated person as it is in the present case. Defendant contends that by becoming intoxicated Mr. Vance was contributorily negligent as a matter of law and that a trial is therefore unnecessary.

In its order of June 21, 1972, the court held that plaintiff's claim is cognizable under the law of Alaska and the Federal Tort Claims Act, but the court did not discuss the effect of contributory negligence.

It is necessary to begin with an examination of the effect on this case of A.S. 04.15.020(a), which makes it a crime to give or sell liquor to minors or intoxicated persons. Plaintiff does not contend that this statute creates a new civil cause of action. *Compare, e. g.*: Campbell v. Village of Silver Bay, 315 F.2d 568 (8th Cir. 1963); Konsler v. United States, 288 F.Supp. 895 (N.D.Ill.1968). Rather, plaintiff contends that this statute sets a minimum standard of care for purposes of the common law cause of action based upon ordinary negligence.[1] That is, plaintiff is contending that a violation of this statute is negligence *per se*.

In Ferrell v. Baxter, 484 P.2d 250 (Alaska 1971), the Alaska Supreme Court approved the rules of negligence *per se* found in Restatement (2d) of Torts at sections 286 and 288. Although *Ferrell* involved the violation of a traffic regulation, the court clearly did not

1. Defendant has characterized this issue as whether the statute "extends" civil liability. This terminology can only lead to confusion. In contexts such as this, a statute either *creates a cause of action* or it *sets a standard of care* (which standard may or may not be adopted by the court as defining the conduct of a reasonable man, pursuant to the rules set forth in Restatement (2d) of Torts at sections 286 and 288).

intend to limit the doctrine to traffic cases. *See generally* Comment, 2 UCLA-Alaska Law Review 54, 63–67 (1972).

[1] Under the Restatement rule followed in Alaska, an unexcused violation of a statute or regulation is negligence in itself if the court adopts the statute as defining the conduct of a reasonable man. (If the statute is not so adopted, a violation may be considered as evidence of negligence.) The court may and usually must adopt the statute as the minimum standard of care if the purpose of the statute is at least in part: (a) to protect a class of persons which includes the one whose interest is invaded, and (b) to protect the particular interest which is invaded, and (c) to protect that interest against the kind of harm which has resulted, and (d) to protect that interest against the particular hazard from which the harm results.

Applying this test to the statute in question, it is clear that requirements (b), (c) and (d) are satisfied; the statute unquestionably is designed at least in part to protect against personal injuries caused by intoxication. The principal issue is whether requirement (a) is met; that is, whether the consumer himself is within the protected class.

[2, 3] Defendant first contends that the statute does not apply to a private club such as the Non-Commissioned Officers' Club involved in this case since drinking in such clubs is tantamount to drinking in one's own home. The short answer to this contention is that the statute proscribes not only selling liquor to an intoxicated person but also *giving* liquor to such a person. The statute draws no distinctions among the places where liquor might be served. Turning to the nub of the issue, it is apparent that, although the principal purpose of the statute may have been to protect innocent third parties from the negligence of an intoxicated consumer, the purpose at least in part was also to protect the consumer himself. If the consumer involved in this case were a minor rather than an alleged intoxicated person, it would be logical to conclude that the statute was enacted by the Legislature to protect minors. The statute does not purport to discriminate between minors and intoxicated persons and therefore it should logically follow that both are protected. Accordingly, the court adopts A.S. 04.15.020(a) as the minimum standard of conduct for defendant's agent in the present case.

[4] Since plaintiff's claim is grounded upon the alleged negligence of defendant's agent, contributory negligence would ordinarily be a defense. This is true even though the negligence may be proved by comparing the defendant's conduct to a statutory norm rather than to the hypothetical conduct of a reasonable man.[2] See Restatement (2d) of Torts section 483. However, as section 483 also points out, there are exceptional statutes which are intended to protect persons from their own misconduct and to place the entire responsibility for the harm upon the one who has violated the statute. The Restatement cites the following example:

> "Thus a statute which prohibits the sale of firearms to minors may be clearly intended, among other purposes, to protect them against their own inexperience, lack of judgment, and tendency toward negligence, and to make the seller solely responsible for any harm to them resulting from the sale. In such a case the purpose of the statute would be defeated if the contributory negligence of the minor were permitted to bar his recovery."

[5] A.S. 04.15.020(a) presents an even more compelling example of a statute intended to place the entire responsi-

2. Plaintiff has argued that since a consumer is within the protected class his contributory negligence can not be a defense. This simply does not follow. For example, no one would contend that contributory negligence is not a defense in an automobile collision case where the defendant violated a traffic regulation, notwithstanding that the plaintiff was in the protected class.

bility for resulting harm upon the violator, for it is virtually impossible for the statute to be violated without contributory negligence on the part of the plaintiff-consumer. Also, like the example in the Restatement, the statute is clearly intended to protect minors from their own misconduct. Since the statute does not purport to treat sales to minors differently from sales to intoxicated persons, it should logically follow that both are protected to the same extent. The two California cases cited by defendant as the basis for renewing its motion for summary judgment, *supra*, did not take into account section 483 of the Restatement. In fact, the Restatement rules of negligence *per se* have not been adopted in California as they have in Alaska. *See* Vesely v. Sager, 5 Cal.3d 153, 95 Cal.Rptr. 623, 486 P.2d 151 (1971), applying a legislative codification of the common law rule of negligence *per se*. Nor can it be said that Mr. Vance was contributorily negligent *per se* if he is found to have violated A.S. 11.45.032 (making certain drunkenness a crime), for the purpose of that statute is obviously to prevent annoyance and not to protect one who serves liquor to an intoxicated person against civil liability. The court therefore holds that contributory negligence is not a defense to negligence *per se* based upon a violation of A.S. 04.15.020(a).

[6] Defendant contends that if contributory negligence is not a defense then the case becomes one of "strict liability," and that strict liability is not consented to in the Federal Tort Claims Act. Defendant relies upon Konsler v. United States, 288 F.Supp. 895 (N.D.Ill. 1968). However, the government's liability in that case was predicated upon a Dram Shop Act which created a new civil cause of action without regard to fault. Here, plaintiff does not contend that the statute creates a new cause of action but that the statute merely sets the minimum standard of care for purposes of ordinary negligence liability. Therefore removing the defense of contributory negligence does not result in strict liability, because negligence is still required. Plaintiff's claim is still based upon an allegedly "negligent or wrongful act or omission" of a federal employee within the meaning of 28 U.S.C. § 1346(b). Compare Dalehite v. United States, 346 U.S. 15, 45, 73 S.Ct. 956, 97 L.Ed. 1427 (1953). Thus, the court's holding of June 21, 1972, that this claim is cognizable under the Federal Tort Claims Act is not impaired by its holding today that contributory negligence is not a defense to negligence *per se* based upon a violation of A.S. 04.15.020(a).

[7] It is important to remember that A.S. 04.15.020(a) merely sets the *minimum* standard of care. Compliance with the statute does not relieve defendant from liability if defendant was negligent in failing to take additional precautions. Restatement (2d) of Torts section 288(c); Prosser, Law of Torts (4th Ed.) at p. 203. And if defendant's agent is found to have been negligent even though he did not violate the statute, then contributory negligence becomes a defense. Since the statutory minimum has been met, no longer is it proper to place the entire responsibility for the harm upon the violator pursuant to Restatement section 483. To this extent, then, contributory negligence remains a defense.

[8, 9] Defendant seeks to have the court hold that Mr. Vance was contributorily negligent as a matter of law. However, the defense of contributory negligence may not be adjudicated at this state of the proceedings. In Young v. State, 491 P.2d 122 (Alaska 1971), the Alaska Supreme Court held that it is error for the trial court to dismiss a claim on the ground of contributory negligence prior to a determination on the issue of negligence. Although this rule might be characterized as one of procedure and therefore not binding upon this court in a diversity case, the reasoning of the Alaska Supreme Court convinces this court that such a rule is salutary and should be followed in this case. Accordingly, unless and until defendant is found to have complied with

the statute but nevertheless to have failed to take further reasonable precautions, a determination on the question of contributory negligence would be premature.

[10, 11] Dismissal at this state would be proper, however, if defendant owed no *duty* to Mr. Vance or if defendant's acts were not the *proximate cause* of plaintiff's injuries. Both duty and proximate causation are issues of law to be decided by the court and not by the trier of fact. Prosser, Law of Torts (4th Ed.) at 206 n. 7 and 244 nn. 61–62. And unlike contributory negligence, duty and proximate causation are elements of plaintiff's cause of action, in the absence of either of which plaintiff has failed to state a claim upon which relief can be granted. Disposition on this ground by motion prior to trial is authorized by Rule 12(b) of the Federal Rules of Civil Procedure. It is therefore appropriate to examine the merits of a contention that these elements of plaintiff's case are absent.

[12, 13] At common law, the consumer of intoxicants was generally unable to recover against the person furnishing the drinks for personal injuries to the consumer resulting from intoxication. *See* Annotation, 54 A.L.R.2d 1152. The rationale of these cases was that the defendant's acts were not the proximate cause of the plaintiff's injuries. In a related group of cases, involving injuries caused by, rather than to, a consumer of intoxicants, the same rule historically protected the vendor from liability to such third persons, again based on the absence of proximate cause. *See* Annotation, 75 A.L.R.2d 833. However, proximate causation is a matter of public policy and therefore subject to the changing attitudes and needs of society. *See* Prosser, Law of Torts, at p. 244 et seq. The modern view, and probably the majority view, in cases involving a liquor vendor's liability to third persons is that the furnishing of intoxicants may be the proximate cause of the injuries. *See* Vesely v. Sager, 5 Cal.3d 153, 95 Cal.Rptr. 623, 486 P.2d 151 (1971), and authorities there cited. If a vendor's conduct may be the proximate cause of injuries to third persons, *a fortiori* it may be the proximate cause of injuries to the customer himself. This conclusion also refutes the alternative contention that no duty exists in these cases, for the two concepts—duty and proximate causation—involve identical questions and in cases like this are really just two ways of phrasing the same determinations of law and public policy. Prosser, Law of Torts at p. 244–245. The court therefore holds that defendant owed a duty to Mr. Vance to exercise reasonable care in dispensing intoxicating liquors and that a breach of this duty may be found to be the proximate cause of plaintiff's injuries.

[14] In summary, the court holds as follows. Defendant had a duty to Mr. Vance to exercise reasonable care in dispensing intoxicants, and a breach of this duty may be found to have been the proximate cause of plaintiff's injuries. Such a breach occurred if defendant violated A.S. 04.15.020(a), but a breach may also be found if defendant failed to take additional reasonable precautions. Contributory negligence is a defense only if the statute was not violated.

The court expresses no opinion on whether Mr. Vance was contributorily negligent, for to do so would be premature at this point. Nor does the court express an opinion on whether the statute was violated, whether defendant was otherwise negligent, or whether defendant's conduct was a proximate cause of plaintiff's injuries under the circumstances of this case.

It is hereby ordered that plaintiff's second motion for summary judgment is denied.

546 P.2d 719
16 Cal.3d 313

Richard A. BERNHARD, Plaintiff and Appellant,

v.

HARRAH'S CLUB, Defendant and Respondent.

S. F. 23242.

Supreme Court of California, In Bank.
March 2, 1976.
Rehearing Denied April 22, 1976.

California resident brought action for personal injuries against Nevada tavern owners alleging that their sale of intoxicating beverages to patrons was proximate cause of his injury. The Superior Court, Sacramento County, Joseph G. Babich, J., entered judgment of dismissal, and plaintiff appealed. The Supreme Court, Sullivan, J., held that tavern owners who actively solicited California business were liable for injuries which were proximately caused by sale of alcoholic beverages to intoxicated patrons who inflicted injuries upon California resident in automobile accident occurring in California, notwithstanding fact that Nevada law did not permit such recovery.

Reversed and remanded.

1. Torts ⇐2

Choice of law in tort actions is determined by analysis of respective interests of states involved in order to decide which law is most appropriately applied to issues involved.

2. Intoxicating Liquors ⇐302

Tavern owner may be civilly liable to third person for injuries proximately caused by former by selling or furnishing alcoholic beverages to intoxicated patron who inflicts injuries on latter. West's Ann.Bus. & Prof.Code, § 25602.

3. Intoxicating Liquors ⇐302

Nevada law denies recovery against tavern owner by third person for injuries proximately caused by former by selling or furnishing alcoholic beverages to intoxicated patron who inflicts injuries on latter.

4. Torts ⇐2

Although two involved states may have different laws governing issue presented in tort action, there is a problem in selecting applicable rule of law only if both states have interest in having their respective law applied.

5. Action ⇐17
Intoxicating Liquors ⇐288

California law would be applied to determine whether Nevada tavern owners who actively solicited California business would be liable to California resident for injuries which were proximately caused by tavern owner's selling alcoholic beverages to intoxicated patrons who subsequently caused automobile accident in California resulting in injuries to California resident. West's Ann.Bus. & Prof.Code, § 25602.

6. Intoxicating Liquors ⇐302

Nevada tavern owners who actively solicited California business would be liable to California resident for injuries which were proximately caused by tavern owner's selling alcoholic beverages to intoxicated patrons who subsequently inflicted injuries upon California resident in automobile accident occurring in California, notwithstanding fact that Nevada law did not permit such recovery. West's Ann.Bus. & Prof.Code, § 25602.

7. Courts ⇐29

Section of Business and Professions Code providing that sale of alcoholic beverage to intoxicated person is misdemeanor has no extraterritorial effect that would be applicable to Nevada tavern owners. West's Ann.Bus. & Prof.Code, § 25602.

8. Intoxicating Liquors ⇐285

Fact that section of Business and Professions Code providing that sale of alcoholic beverages to intoxicated persons is misdemeanor was not applicable to Nevada tavern owners so as to warrant imposition of civil liability on basis of its violation, did not preclude recovery on basis of negli-

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gence apart from the statute. West's Ann.Bus. & Prof.Code, § 25602.

Frederick W. Stephenson, Sacramento, for plaintiff and appellant.

Hardy, Erich & Brown and Leo H. Schuering, Jr., Sacramento, for defendant and respondent.

[215] SULLIVAN, Justice.

Plaintiff appeals from a judgment of dismissal entered upon an order sustaining without leave to amend the general demurrer of defendant Harrah's Club to plaintiff's first amended complaint.

Plaintiff's complaint, containing only one count, alleged in substance the following: Defendant Harrah's Club, a Nevada corporation, owned and operated gambling establishments in the State of Nevada in which intoxicating liquors were sold, furnished to the public and given away for consumption on the premises. Defendant advertised for and solicited in California the business of California residents at such establishments knowing and expecting that many California residents would use the public highways in going to and from defendant's drinking and gambling establishments.

On July 24, 1971, Fern and Philip Myers, in response to defendant's advertisements and solicitations, drove from their California residence to defendant's gambling and drinking club in Nevada, where they stayed until the early morning hours of July 25, 1971. During their stay, the Myers were served numerous alcoholic beverages by defendant's employees, progressively reaching a point of obvious intoxication rendering them incapable of safely driving a car. Nonetheless defendant continued to serve and furnish the Myers alcoholic beverages.

[216] While still in this intoxicated state, the Myers drove their car back to California. Proceeding in a northeasterly direction on Highway 49, near Nevada City, California, the Myers' car, driven negligently by a still intoxicated Fern Myers, drifted across the center line into the lane of oncoming traffic and collided head-on with plaintiff Richard A. Bernhard, a resident of California, who was then driving his motorcycle along said highway. As a result of the collision plaintiff suffered severe injuries. Defendant's sale and furnishing of alcoholic beverages to the Myers, who were intoxicated to the point of being unable to drive safely, was negligent and was the proximate cause of the plaintiff's injuries in the ensuing automobile accident in California for which plaintiff prayed $100,000 in damages.

Defendant filed a general demurrer to the first amended complaint. In essence it was grounded on the following contentions: that Nevada law denies recovery against a tavern keeper by a third person for injuries proximately caused by the former by selling or furnishing alcoholic beverages to an intoxicated patron who inflicts the injuries on the latter; that Nevada law governed since the alleged tort was committed by defendant in Nevada; and that section 25602 of the California Business and Professions Code which established the duty necessary for liability under our decision in *Vesely v. Sager* (1971) 5 Cal.3d 153, 95 Cal.Rptr. 623, 486 P.2d 151, was inapplicable to a Nevada tavern. The trial court sustained the demurrer without leave to amend and entered a judgment of dismissal. This appeal followed.

[1] We face a problem in the choice of law governing a tort action. As we have made clear on other occasions, we no longer adhere to the rule that the law of the place of the wrong is applicable in a California forum regardless of the issues before the court. (*Hurtado v. Superior Court* (1974) 11 Cal.3d 574, 579, 114 Cal.Rptr. 106, 522 P.2d 666; *Reich v. Purcell* (1967) 67 Cal.2d 551, 555, 63 Cal.Rptr. 31, 432 P.2d 727.) Rather we have adopted in its place a rule requiring an analysis of the respective interests of the states involved —the objective of which is "to determine the law that most appropriately applies to

the issue involved." (*Hurtado, supra*, 11 Cal.3d at pp. 579-580, 114 Cal.Rptr. 106, 522 P.2d 666, quoting from *Reich, supra*, 67 Cal.2d at p. 555, 63 Cal.Rptr. 31, 34, 432 P.2d 727, 730.)

The issue involved in the case at bench is the civil liability of defendant tavern keeper to plaintiff, a third person, for injuries allegedly caused by the former by selling and furnishing alcoholic beverages in Nevada to intoxicated patrons who subsequently injured plaintiff in California. Two states are involved: (1) California—the place of plaintiff's residence and domicile, the place where he was injured, and the forum; and (2) Nevada—the place of defendant's residence and the place of the wrong.

[2, 3] We observe at the start that the laws of the two states—California and Nevada—applicable to the issue involved are not identical. California imposes liability on tavern keepers in this state for conduct such as here alleged. In *Vesely v. Sager, supra*, 5 Cal.3d 153, 166, 95 Cal.Rptr. 623, 632, 486 P.2d 151, 160, this court rejected the contention that "civil liability for tavern keepers should be left to future legislative action . . . . First, liability has been denied in cases such as the one before us solely because of the judicially created rule that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication. As demonstrated, *supra*, this rule is patently unsound and totally inconsistent with the principles of proximate cause established in other areas of negligence law . . . . Second, the Legislature has expressed its intention in this area with the adoption of Evidence Code section 669, and Business and Professions Code section 25602 . . . . It is clear that Business and Professions Code section 25602 [making it a misdemeanor to sell to an obviously intoxicated person] is a statute to which this presumption [of negligence, Evidence Code section 669] applies and that the policy expressed in the statute is to promote the safety of the people of California . . . ." Nevada on the other hand refuses to impose such liability. In *Hamm v. Carson City Nuggett, Inc.* (1969) 85 N. W. 99, 450 P.2d 358, 359, the court held it would create neither common law liability nor liability based on the criminal statute banning sale of alcoholic beverages to a person who is drunk, because "if civil liability is to be imposed, it should be accomplished by legislative act after appropriate surveys, hearings, and investigations to ascertain the need for it and the expected consequences to follow." It is noteworthy that in *Hamm* the Nevada court in relying on the common law rule denying liability cited our decision in *Cole v. Rush* (1955) 45 Cal.2d 345, 289 P.2d 450, later overruled by us in *Vesely* to the extent that it was inconsistent with that decision. (See *Vesely v. Sager, supra*, 5 Cal.3d at p. 167, 95 Cal. Rptr. 623, 486 P.2d 151.)

[4] Although California and Nevada, the two "involved states" (*Reich v. Purcell, supra*, 67 Cal.2d 551, 553, 63 Cal.Rptr. 31, 432 P.2d 727; see also *Hurtado v. Superior Court, supra*, 11 Cal.3d 574, 579, 114 Cal.Rptr. 106, 522 P.2d 666), have different laws governing the issue presented in the case at bench, we encounter a problem in selecting the applicable rule of law only if *both* states have an interest in having their respective laws applied. "[G]enerally speaking the forum will apply its own rule 1318
of decision unless a party litigant timely invokes the law of a foreign state. In such event he must demonstrate that the latter rule of decision will further the interest of the foreign state and therefore that it is an appropriate one for the forum to apply to the case before it. [Citations.]" (*Hurtado, supra*, 11 Cal.3d at p. 581, 114 Cal.Rptr. at p. 110, 522 P.2d at p. 670.)

Defendant contends that Nevada has a definite interest in having its rule of decision applied in this case in order to protect its resident tavern keepers like defendant from being subjected to a civil liability which Nevada has not imposed either by legislative enactment or decisional law. It is urged that in *Hamm v. Carson City*

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Nuggett, supra, 85 Nev. 99, 450 P.2d 358, 359, the Supreme Court of Nevada clearly delineated the policy underlying denial of civil liability of tavern keepers who sell to obviously intoxicated patrons: "Those opposed to extending liability point out that to hold otherwise would subject the tavern owner to ruinous exposure everytime he poured a drink and would multiply litigation endlessly in a claim-conscious society. Every liquor vendor visited by the patron who became intoxicated would be a likely defendant in subsequent litigation flowing from the patron's wrongful conduct . . . . Judicial restraint is a worthwhile practice when the proposed new doctrine [has] implications far beyond the perception of the court asked to declare it. They urge that if civil liability is to be imposed, it should be accomplished by legislative act after appropriate surveys, hearings, and investigations . . . . We prefer this point of view." Accordingly defendant argues that the Nevada rule of decision is the appropriate one for the forum to apply.

Plaintiff on the other hand points out that California also has an interest in applying its own rule of decision to the case at bench. California imposes on tavern keepers civil liability to third parties injured by persons to whom the tavern keeper has sold alcoholic beverages when they are obviously intoxicated "for the purpose of protecting members of the general public from injuries to person and damage to property resulting from the excessive use of intoxicating liquor," (*Vesely v. Sager, supra*, 5 Cal.3d 153, 165, 95 Cal.Rptr. 623, 631, 486 P.2d 151, 159.) California, it is urged, has a special interest in affording this protection to all California residents injured in California.

[5] Thus, since the case at bench involves a California resident (plaintiff) injured in this state by intoxicated drivers and a Nevada resident tavern keeper (defendant) which served alcoholic beverages to them in Nevada, it is clear that each state has an interest in the application of its respective law of liability and nonliability. It goes without saying that these interests conflict. Therefore, unlike *Reich v. Purcell, supra*, 67 Cal.2d 551, 63 Cal.Rptr. 31, 432 P.2d 727, and *Hurtado v. Superior Court, supra*, 11 Cal.3d 574, 114 Cal.Rptr. 106, 522 P.2d 666, where we were faced with "false conflicts," in the instant case for the first time since applying a governmental interest analysis as a choice of law doctrine in *Reich*, we are confronted with a "true" conflicts case. We must therefore determine the appropriate rule of decision in a controversy where each of the states involved has a legitimate but conflicting interest in applying its own law in respect to the civil liability of tavern keepers.

The search for the proper resolution of a true conflicts case, while proceeding within orthodox parameters of governmental interest analysis, has generated much scholarly examination and discussion.[1] The father of the governmental interest approach,[2] Professor Brainerd Currie,

1. Baxter, *Choice of Law and the Federal System* (1963) 16 Stan.L.Rev. 1; Cavers, The Choice of Law Process (1965) 114-224; Horowitz, *The Law of Choice of Law in California—A Restatement* (1974) 21 U.C.L.A. L.Rev. 719, 748-758; *Conflict of Laws Round Table: A Symposium* (1972) 57 Iowa L.Rev. 1219-1270; *Symposium, Conflict of Laws Round Table* (1971) 49 Texas L.Rev. 211-245; Sedler, *Reviews-Conflicts Commentary* 50 Texas L.Rev. 1064-1083; Weintraub, Commentary on the Conflict of Laws (1971). We note that no case has been called to our attention, nor are we aware of one, which has discussed this problem in a context relevant to the case at bench.

2. Traditionally the search for choice of law rules focused upon the interests of the immediate parties to the action in terms of their private rights. Thus, it concentrated "upon the same factors that would be dispositive in a similar case wholly internal to a single state. I cannot escape the conclusion that a search so oriented must prove unrewarding. Every choice-of-law case involves several parties, each of whom would prevail if the interested law of one rather than another state were applied. Each party is 'right,' 'worthy,' and

originally took the position that in a true conflicts situation the law of the forum should always be applied. (Currie, Selected Essays on Conflicts of Laws (1963) p. 184.) However, upon further reflection, Currie suggested that when under the governmental interest approach a preliminary analysis reveals an apparent conflict of interest upon the forum's assertion of its own rule of decision, the forum should reexamine its policy to determine if a more restrained interpretation of it is more appropriate. "To assert a conflict between the interests of the forum and the foreign state is a serious matter; the mere fact that a suggested broad conception of a local interest will conflict with that of a foreign state is a sound reason why the conception should be reexamined, with a view to a more moderate and restrained interpretation both of the policy and of the circumstances in which it must be applied to effectuate the forum's legitimate purpose . . . . An analysis of this kind . . . was brilliantly performed by Justice Traynor in *Bernkrant v. Fowler* (1961) 55 Cal.2d 588, 12 Cal.Rptr. 266, 360 P.2d 906." (Currie, *The Disinterested Third State* (1963) 28 Law & Contemp. Prob., pp. 754, 757; see also Sedler in *Symposium, Conflict of Laws Round Table, supra*, 49 Texas L.Rev. 211, at pp. 224-225.) This process of reexamination requires identification of a "real interest as opposed to a hypothetical interest" on the part of the forum (Sedler, *Value of Principled Preferences*, 49 Texas L.Rev. 224) and can be approached under principles of "comparative impairment." (Baxter, *Choice of Law and the Federal System, supra*, 16 Stan.L.Rev. 1-22; Horowitz, *The Law of Choice of Law in California—A Restatement, supra*, 21 U.C.L.A.L.Rev. 719, 748-758.)

Once this preliminary analysis has identified a true conflict of the governmental interests involved as applied to the parties under the particular circumstances of the case, the "comparative impairment" approach to the resolution of such conflict seeks to determine which state's interest would be more impaired if its policy were subordinated to the policy of the other state. This analysis proceeds on the principle that true conflicts should be resolved by applying the law of the state whose interest would be the more impaired if its law were not applied. Exponents of this process of analysis emphasize that it is very different from a weighing process. The court does not " 'weigh' the conflicting governmental interests in the sense of determining which conflicting law manifested the 'better' or the 'worthier' social policy on the specific issue. An attempted balancing of conflicting state policies in that sense . . . is difficult to justify in the context of a federal system in which, within constitutional limits, states are empowered to mold their policies as they wish

'deserving' and 'ought in all fairness' to prevail under one of the competing bodies of law and in the view of one of the competing groups of lawmakers. Fact situations which differ only in that they are internal to a single state have been assessed by the different groups of lawmakers, and each has reached a different value judgment on the rule best calculated to serve the overall interest of its community. If attention is confined to the circumstances of the immediate parties, the conflict between the internal laws and between the value judgments they are intended to implement cannot be resolved by the judge unless he is prepared to impose still another value judgment upon the controversy. . . . [¶] These difficulties can be avoided if normative criteria can be found which relate to the very aspects of a conflicts case that distinguish it from an analogous internal case. That such criteria can be elaborated in many, if not all, conflicts cases has been demonstrated by several writers who have urged that conflicts cases be resolved on the basis of the governmental interests involved. . . . [¶] [T]he process of resolving choice cases is necessarily one of allocating spheres of legal control among states. His [Professor Currie] thesis, like mine, is that the process of allocation should not be performed unconsciously, that the private interests in choice cases are necessarily in balance, and that the cases can be decided by viewing them as instances of conflicting states interests rather than of conflicting private interests." (Baxter, *Choice of Law and the Federal System, supra*, 16 Stan.L.Rev. 1, 5, 6, 22, fn. omitted.)

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. . . . [The process] can accurately be described as . . . accommodation of conflicting state policies, as a problem of allocating domains of law-making power in multi-state contexts—limitations on the reach of [1321] state policies as distinguished from evaluating the wisdom of those policies . . . . [E]mphasis is placed on the appropriate scope of conflicting state policies rather than on the 'quality of those policies . . . .'" (Horowitz, *The Law of Choice of Law in California—A Restatement*, *supra*, 21 U.C.L.A.L.Rev. 719, 753; see also Baxter, *Choice of Law and the Federal System*, *supra*, 16 Stan.L.Rev. 1, 18–19.) However, the true function of this methodology can probably be appreciated only casuistically in its application to an endless variety of choice of law problems. (See, e. g., the hypothetical situations set forth in *Baxter*, *op. cit.*, pp. 10-17.)

Although the concept and nomenclature of this methodology may have received fuller recognition at a later time, it is noteworthy that the core of its rationale was applied by Justice Traynor in his opinion for this court in *People v. One 1953 Ford Victoria* (1957) 48 Cal.2d 595, 311 P.2d 480. There in a proceeding to forfeit an automobile for unlawful transportation of narcotics we dealt with the question whether a chattel mortgage of the vehicle given in Texas and, admittedly valid both in that state and this, succumbed to the forfeiture proceedings. The purchaser of the car, having executed a note and chattel mortgage for the unpaid purchase price, without the consent of the mortgagee drove the vehicle to California where he used it to transport marijuana. Applicable California statutes made it clear that they did not contemplate the forfeiture of the interest of an innocent mortgagee, that is a person whose "interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser, and without any knowledge that the vehicle was being, or was to be, used for the purpose charged . . . ." Texas had no similar statute; nor had the mortgagee, though proving that the mortgage was bona fide, also proved that he had made the above reasonable investigation of the mortgagor.

It was clear that Texas had an interest in seeing that valid security interests created upon the lawful purchase of automobiles in Texas be enforceable and recognized. California had an interest in controlling the transportation of narcotics. Each interest was at stake in the case, since the chattel mortgage had been validly created in Texas and the car was used to transport narcotics in California. The crucial question confronting the court was whether the "reasonable investigation" required by statute of a California mortgagee applied to the Texas mortgagee. Employing what was in substance a "comparative impairment" approach, the court answered the question in the negative. "It is contended that a holding that the 'reasonable investigation' requirement is not applicable to respondent will subvert the enforcement of California narcotics laws. We are not persuaded . . . that such dire consequences will ensue. The state may still forfeit the interest of the wrongdoer. It has done so in this case. Moreover, the Legislature has made plain its purpose not to forfeit the interests of innocent mortgagees. It has not made plain that 'reasonable investigation' of the purchaser is such an essential element of innocence that it must be made even by an out-of-state mortgagee although such mortgagee could not reasonably be expected to make such investigation." (*Id.* 48 Cal.2d at p. 599, 311 P.2d at p. 482.)

[6] Mindful of the above principles governing our choice of law, we proceed to examine the California policy underlying the imposition of civil liability upon tavern keepers. At its broadest limits this policy would afford protection to all persons injured in California by intoxicated persons who have been sold or furnished alcoholic beverages while intoxicated regardless of where such beverages were sold or furnished. Such a broad policy would natu-

ally embrace situations where the intoxicated actor had been provided with liquor by out-of-state tavern keepers. Although the State of Nevada does not impose such civil liability on its tavern keepers, nevertheless they are subject to *criminal* penalties under a statute making it unlawful to sell or give intoxicating liquor to any person who is drunk or known to be an habitual drunkard. (See Nev.Rev.Stats. 202.-30), see *Hamm v. Carson City Nuggett, Inc., supra*, 85 Nev. 99, 450 P.2d 358.)

We need not, and accordingly do not here determine the outer limits to which California's policy should be extended, for it appears clear to us that it must encompass defendant, who as alleged in the complaint, "advertis[es] for and otherwise solicit[s] in California the business of California residents at defendant HARRAH'S CLUB Nevada drinking and gambling establishments, knowing and expecting said California residents, in response to said advertising and solicitation, to use the public highways of the State of California in going and coming from defendant HARRAH'S CLUB Nevada drinking and gambling establishments." Defendant by the course of its chosen commercial practice has put itself at the heart of California's regulatory interest, namely to prevent tavern keepers from selling alcoholic beverages to obviously intoxicated persons who are likely to act in California in the intoxicated state. It seems clear that California cannot reasonably effectuate its policy if it does not extend its regulation to include out-of-state tavern keepers such as defendant who regularly and purposely sell intoxicating beverages to California residents in places and under conditions in which it is reasonably certain these residents will return to California and act therein while still in an intoxicated state. California's interest would be very significantly impaired if its policy were not applied to defendant. 1 323

Since the act of selling alcoholic beverages to obviously intoxicated persons is already proscribed in Nevada, the application of California's rule of civil liability would not impose an entirely new duty requiring the ability to distinguish between California residents and other patrons. Rather the imposition of such liability involves an increased economic exposure, which, at least for businesses which actively solicit extensive California patronage, is a foreseeable and coverable business expense. Moreover, Nevada's interest in protecting its tavern keepers from civil liability of a boundless and unrestricted nature will not be significantly impaired when as in the instant case liability is imposed only on those tavern keepers who actively solicit California business.[3]

Therefore, upon reexamining the policy underlying California's rule of decision and giving such policy a more restrained interpretation for the purpose of this case pursuant to the principles of the law of choice of law discussed above, we conclude that California has an important and abiding interest in applying its rule of decision to the case at bench, that the policy of this state would be more significantly impaired

1. Defendant asserts that Nevada's law must be applied because it is the law of the place of sale and cites three cases in support of that proposition, *Trapp v. 5-10 Investment Corporation* (1970) 8 Cir., 424 F.2d 1261; *Zucker v. Vogt* (1961) D.C.Conn., 200 F.Supp. 340; and *Schmidt v. Driscol Hotel* (1937) 249 Minn. 376, 82 N.W.2d 365. It is true that all three cases applied the law of the place of sale of the alcohol, but not for that reason. In *Trapp* and *Zucker* all the states involved had dram shop acts which would permit civil liability and the federal courts determined that the applicable forum state would give effect to the common policy of liability for sale to intoxicated persons regardless of traditional tort conflict rules. *Schmidt* is the only case where one state, Wisconsin, did not have a dram shop act and the other state, Minnesota, did. However, in that case even though the injury occurred in Wisconsin, the alcohol was sold and consumed in Minnesota and all the parties involved were from Minnesota. Moreover, none of these cases involved a case of true conflict between two state interests where the court endeavored to resolve the conflict by resort to the principles of governmental interest analysis. They are therefore inapposite.

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if such rule were not applied and that the trial court erred in not applying California law.

Defendant argues, however, that even if California law is applied, the demurrer was nonetheless properly sustained because the tavern keeper's duty stated in *Vesely v. Sager, supra,* 5 Cal.3d 153, 95 Cal.Rptr. 623, 486 P.2d 151, is based on Business and Professions Code section 25602, which is a criminal statute and thus without extraterritorial effect. It is quite true, as defendant argues, that in *Vesely* we determined "that civil liability results when a vendor furnishes alcoholic beverages to a customer in violation of Business and Professions Code section 25602 and each of the conditions set forth in Evidence Code section 669, subdivision (a) is established." (5 Cal.3d at p. 157, 95 Cal.Rptr. at p. 625, 486 P.2d at p. 153.)

[7] It is also clear, as defendant's argument points out, that since, unlike the California vendor in *Vesely,* defendant was a Nevada resident which furnished the alcoholic beverage to the Myers in that state, the above California statute had no extraterritorial effect and that civil liability could not be posited on defendant's violation of a California criminal law. We recognize, therefore, that we cannot make the same determination as quoted above with respect to defendant that we made with repect to the defendant vendor in *Vesely.*

However, our decision in *Vesely* was much broader than defendant would have it. There, at the very outset of our opinion, we declared that the traditional common law rule denying recovery on the ground that the furnishing of alcoholic beverage is not the proximate cause of the injuries inflicted on a third person by an intoxicated individual "is patently unsound." (5 Cal.3d at p. 157, 95 Cal.Rptr. 623, 486 P.2d 151.) Observing that "[u]ntil fairly recently, it was uniformly held that [such] an action could not be maintained at common law" (*id.* 5 Cal.3d at p. 158, 95 Cal.Rptr. at p. 627, 486 P.2d at p. 155) and reviewing in detail the common law rule (*id.* 5 Cal.3d at pp. 158-164, 95 Cal.Rptr. at p. 631, 486 P.2d at p. 159) we concluded that "the furnishing of an alcoholic beverage to an intoxicated person may be a proximate cause of injuries inflicted by that individual upon a third person." We reasoned: "If such furnishing is a proximate cause, it is so because the consumption, resulting intoxication, and injury-producing conduct are foreseeable intervening causes, or at least the injury-producing conduct is one of the hazards which makes such furnishing negligent." (*Id.* 5 Cal.3d at p. 164, 95 Cal. Rptr. at p. 627, 486 P.2d at p. 155.)

Proceeding to the question of the tavern keeper's duty in this respect and rejecting his contention that civil liability for tavern keepers should be left to future legislative action, we noted that "liability has been denied in cases such as the one before us solely because of the judicially created rule that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication. As demonstrated, *supra,* this rule is patently unsound and totally inconsistent with the principles of proximate cause established in other areas of negligence law. Other common law tort rules which were determined to be lacking in validity have been abrogated by this court (see *Gibson v. Gibson* (1971) 3 Cal. 3d 914, 92 Cal.Rptr. 288, 479 P.2d 648; *Muskopf v. Corning Hospital Dist.* (1961) 55 Cal.2d 211, 11 Cal.Rptr. 89, 359 P.2d 457), and there is no sound reason for retaining the common law rule presented in this case." (5 Cal.3d at p. 166, 95 Cal. Rptr. at p. 632, 486 P.2d at p. 160.)

[8] In sum, our opinion in *Vesely* struck down the old common law rule of nonliability constructed on the basis that the consumption, not the sale, of alcoholic beverages was the proximate cause of the injuries inflicted by the intoxicated person. Although we chose to impose liability on the *Vesely* defendant on the basis of his violating the applicable statute, the clear import of our decision was that there was no bar to civil liability under modern negligence law. Certainly, we said nothing in *Vesely* indicative of an intention to retain

the former rule that an action at common law does not lie. The fact then, that in the case at bench, section 25602 of the Business and Professions Code is not applicable to this defendant in Nevada so as to warrant the imposition of civil liability on the basis of its violation, does not preclude recovery on the basis of negligence apart from the statute. Pertinent here is our observation in *Rowland v. Christian* (1968) 69 Cal.2d 108, 118–119, 70 Cal.Rptr. 97, 104, 443 P.2d 561, 568: "It bears repetition that the basic policy of this state set forth by the Legislature in section 1714 of the Civil Code is that everyone is responsible for an injury caused to another by his want of ordinary care or skill in the management of his property."

The judgment is reversed and the cause is remanded to the trial court with directions to overrule the demurrer and to allow defendant a reasonable time within which to answer.

WRIGHT, C. J., and McCOMB, TOBRINER, MOSK, CLARK and MOLINARI, JJ.*, concur.

Rehearing denied; RICHARDSON, J., did not participate.



546 P.2d 727

16 Cal.3d 341

[Sup] Bertram S. GRIGGS, as Superintendent, etc., Petitioner,

v.

The SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent;

Robert B. HEDBERG et al., Real Parties in Interest.

L. A. 30524.

Supreme Court of California, In Bank.

March 3, 1976.

Superintendent of the California institution for men sought writ of mandate to compel respondent superior court to quash orders to show cause and to dismiss proceedings in each of matters wherein real parties in interest, while inmates at institution, made applications for habeas corpus relief. The Supreme Court, Wrig[illegible], C. J., held that 1966 constitutional revision eliminated territorial limitation on power of superior court to entertain petition for habeas corpus relief; that Supreme Court could provide rules of judicial procedure to be followed by superior courts in exercise of that unlimited jurisdiction; that generally where habeas corpus challenge is to particular judgment or sentence, petition should be transferred to court which rendered judgment; that if habeas corpus challenge is to conditions of inmate's confinement, petition should be transferred to superior court of county wherein inmate is confined; and that habeas corpus claim that Department of Corrections' records erroneously reflected prior conviction which precluded inmate from assignment to work camp could properly be heard by superior court wherein inmate was confined when his petition was filed.

Petition for peremptory writ denied.

McComb J., concurred in part and dissented in part with opinion.

Opinion, 50 Cal.App.3d 738, 123 Cal. Rptr. 583, vacated.

1. Courts ⇐24
Stipulations ⇐3

Parties to judicial proceeding cannot, either jointly or severally, effectively stipulate or concede that court either has or lacks jurisdiction to act in particular matter.

2. Constitutional Law ⇐14

Court is obligated to accord reasonable meaning to revision of any constitutional provisio .

3. Habeas Corpus ⇐48

Constitutional revision of 1966 eliminated territorial limitation on power of a superior court to entertain petitions for ha-

* Assigned by the Chairman of the Judicial Council.

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which caused the accident had been transferred to Strong pursuant to a contract of sale, it is clear that the language of the endorsement specifically excludes Strong from the class of persons insured under such endorsement.

Fourth: In summary, the insurance contract without the Garage Endorsement clearly covers the accident and insures Strong to its limits of $250,000 and $500,000. The accident falls within the defined hazards of the endorsement; but Strong is excluded as a person insured because he took possession under a contract of sale. However, it is not clear what effect Strong's exclusion from coverage under the endorsement was intended to have upon his coverage under the general policy. As discussed in the majority opinion (see mimeo opn. pp. 10–11), the policy is ambiguous as to whether the exclusion from the endorsement is meant to exclude Strong *only* from coverage under the endorsement or to exclude him from coverage under *both* the general policy *and* the endorsement.

Under settled principles, this ambiguity must be resolved in favor of the insured. (Gray v. Zurich Insurance Co. (1966) 65 Cal.2d 263, 269, 54 Cal.Rptr. 104, 419 P.2d 168.) Therefore, I am of the view that Strong is excluded only from coverage under the endorsement; he continues to be covered under the general provisions of the policy.[5] Consequently, I agree with the majority that the appropriate policy limits are $250,000 per person and $500,000 per accident, and that the judgment must be affirmed.

WRIGHT, C. J., and PETERS, J., concur.

5. Since I find that Strong was covered under the basic insuring agreements of the policy, I find it unnecessary to discuss the applicability of the Comprehensive Liability Policy—General Automobile Endorsement (UU 3050). That endorsement applies only where the policy is certified as proof of financial responsibility or where a person not insured under the terms of the policy becomes an insured by operation of a financial responsibility law. Neither condition exists in the present case; hence, the UU 3050 endorsement is inapplicable.

486 P.2d 151
5 Cal.3d 153

Miles A. VESELY, Plaintiff and Appellant, 153

v.

William A. SAGER, Defendant and Respondent.

L. A. 29836.

Supreme Court of California, In Bank.

June 24, 1971.

Injured motorist brought action against tavern owner and others for injuries sustained when motorist's automobile was struck by automobile driven by allegedly intoxicated tavern patron. The Superior Court, San Bernardino County, A. D. Mitchell, J., dismissed the complaint as to the tavern owner and the motorist appealed. The Supreme Court, Wright, C. J., held that motorist was within the class of persons for whose protection statute which makes it a misdemeanor to sell liquor to an intoxicated person was enacted and the injuries motorist suffered resulted from occurrence that statute is designed to prevent thereby fastening liability upon tavern owner in event of adequate proof.

Reversed.

Opinion in 11 Cal.App.3d 1104, 90 Cal. Rptr. 387, vacated.

1. Appeal and Error ⇐102, 103

Order sustaining demurrer without leave to amend and order granting motion to strike are nonappealable.

2. Appeal and Error ⇐422

Although plaintiff's notice of appeal stated that the same was from nonappealable order sustaining demurrer without leave to amend and granting motion to strike, where trial court, after notice of appeal was filed, entered order dismissing

action as to defendant and no prejudice would accrue to defendant, Supreme Court would treat notice of appeal as applying to order dismissing action and would treat notice as having been filed after entry of order of dismissal. West's Ann.Bus. & Prof.Code, § 25602; West's Ann.Code Civ. Proc. § 437c.

3. Negligence ⇐56(1.9), 62(3)

Actor may be liable if his negligence is a substantial factor in causing injury and he is not relieved of liability because of intervening act of third person if such act was reasonably foreseeable at time of his negligent conduct.

4. Intoxicating Liquors ⇐291

Furnishing of alcoholic beverage to intoxicated person may be proximate cause of injuries inflicted by that individual upon a third person, and if furnishing is a proximate cause it is because consumption, resulting intoxication, and injury producing conduct are foreseeable intervening causes, or at least injury producing conduct is one of the hazards which makes such furnishing negligence.

5. Negligence ⇐2

Duty of care and attendant standard of conduct required of a reasonable man may be found in legislative enactment which does not provide for civil liability.

6. Negligence ⇐121(1)

Presumption of negligence arises from violation of statute which was enacted to protect class of persons of which plaintiff is a member against type of harm which plaintiff suffered as a result of violation of statute. West's Ann.Evid.Code, § 669.

7. Intoxicating Liquors ⇐161

Statute making person who sells or furnishes alcoholic beverages to any habitual or common drunkard or to any obviously intoxicated person guilty of misdemeanor is enacted for the purpose of protecting members of general public from injuries to person and danger to property resulting from excessive use of intoxicating liquor. West's Ann.Bus. & Prof.Code, §§ 23001, 25602.

8. Intoxicating Liquors ⇐283

Motorist on highway whose vehicle was struck by an allegedly intoxicated driver to whom defendant tavern owner had sold liquor was within the class of persons for whose protection statute which makes it a misdemeanor to sell liquor to an intoxicated person was enacted and the injuries plaintiff driver suffered resulted from occurrence that statute is designed to prevent, thereby fastening liability on tavern owner in event of proper proof. West's Ann.Bus. & Prof.Code, § 25602.

9. Intoxicating Liquors ⇐308

If defendant tavern owner sold liquor to patron who was in an intoxicated condition, patron drove from tavern and veered across to other lane of highway and struck automobile operated by plaintiff who was injured as a result of collision, sale was in violation of statute making sale of liquor to intoxicated persons a misdemeanor and the violation proximately caused plaintiff's injuries, a presumption would arise that tavern owner was negligent in furnishing alcoholic beverages to patron. West's Ann. Bus. & Prof.Code, § 25602; West's Ann. Evid.Code, § 669(a).

10 Intoxicating Liquors ⇐306

Complaint of motorist asserting that defendant tavern owner sold liquor to intoxicated patron in violation of statute and that such patron then drove from tavern and veered into wrong lane of highway and struck plaintiff's automobile resulting in injuries to plaintiff was sufficient to state a cause of action against tavern owner. West's Ann.Bus. & Prof.Code, § 25602; West's Ann.Evid.Code, § 669(a).

11. Intoxicating Liquors ⇐308

Statute making it a misdemeanor to furnish or sell liquor to an intoxicated person is a statute to which the statutory presumption of a failure of a person to exercise due care arising from violation of statute, ordinance or regulation of public entity applies. West's Ann.Bus. & Prof. Code, § 25602; West's Ann.Evid.Code, § 669(a).

12. Pleading ⇐360(1, 3), 365(1)

A "speaking motion" to dismiss or strike is one which is supported by facts outside the pleadings and such facts are ordinarily set forth in affidavit or declaration.

See publication Words and Phrases for other judicial constructions and definitions.

13. Judgment ⇐183

Nonstatutory speaking motion to strike or dismiss allegations of complaint would be treated as a motion for summary judgment. West's Ann.Code Civ.Proc. § 437c.

14. Judgment ⇐185.1(4)

Statements of defendant tavern owner, sued by injured motorist operating vehicle struck by allegedly intoxicated tavern patron, to effect that his codefendants were not in his employment on the date of accident and that he had no ownership interest or any other interest in the vehicle being driven by defendant were not mere conclusions of law as contended by plaintiff claiming error in granting defendant tavern owner's motion to strike as a sham, treated as a motion for summary judgment, that portion of complaint alleging that patron was driving automobile with the consent of the other defendants who were agents and employee of the others acting within scope of agency and employment, and plaintiff could not rely on allegations of his complaint to controvert statements in defendant's declaration.

15. Judgment ⇐185.2(9)

Failure of opposing party to file counter-affidavits or declaration does not relieve party moving for summary judgment of burden of establishing evidentiary facts of every element necessary to entitle him to a judgment.

16. Judgment ⇐185.3(21)

Defendant tavern owner, sued by motorist for injuries sustained when motorist's automobile was struck by vehicle being driven by allegedly intoxicated tavern patron, through the filing of his declaration that his codefendants were not in his employment on date of accident and that he had no ownership interest or any other interest in vehicle being driven by patron failed to discharge burden of establishing evidentiary facts entitling him to summary judgment with respect to causes of action based on theories of respondeat superior or the imputed negligence provisions of Vehicle Code. West's Ann.Vehicle Code, §§ 17150 et seq., 17154.

Hafif & Shernoff and Stephen L. Odgers, Claremont, for plaintiff and appellant.

Murchison, Cumming, Baker & Velpmen and Ronald R. McQuoid, Los Angeles, for defendant and respondent.

WRIGHT, Chief Justice. 157

In this case we are called upon to decide whether civil liability may be imposed upon a vendor of alcoholic beverages for providing alcoholic drinks to a customer who, as a result of intoxication, injures a third person. The traditional common law rule would deny recovery on the ground that the furnishing of alcoholic beverages is not the proximate cause of the injuries suffered by the third person. We have determined that this rule is patently unsound and that civil liability results when a vendor furnishes alcoholic beverages to a customer in violation of Business and Professions Code section 25602 and each of the conditions set forth in Evidence Code section 669, subdivision (a) is established. Since neither issue is presented in the instant case, we do not decide whether a noncommercial furnisher of alcoholic beverages may be subject to civil liability under section 25602 or whether a person who is served alcoholic beverages in violation of the statute may recover for injuries suffered as a result of that violation. Additionally, we reaffirm our decision in Pianka v. State of California (1956) 46 Cal.2d 208, 293 P.2d 458, and hold that a nonstatutory speaking motion to strike or dismiss a complaint should be treated as a motion for summary judgment. (Code Civ.Proc., § 437c.)

Plaintiff Miles Vesely brought this action to recover for personal injuries and property damage sustained in an automobile accident. The only defendant involved on this appeal is William A. Sager, individually and doing business as the Buckhorn Lodge. Other defendants are James G. O'Connell, the driver of the vehicle which collided with plaintiff's automobile, and Earl Dirks, the owner of the car driven by O'Connell. The facts which are alleged in the complaint and which we must accept for the purposes of this appeal [1] are as follows:

Defendant Sager owned and operated the Buckhorn Lodge, a roadhouse located near the top of Mount Baldy in San Bernardino County, and was engaged in the business of selling alcoholic beverages to the general public. Beginning about 10 p. m. on April 8, 1968, Sager served or permitted defendant O'Connell to be served large quantities of alcoholic beverages. At the time the beverages were served, Sager knew that O'Connell was becoming excessively intoxicated and that O'Connell was "incapable of exercising the same degree
1158 of volitional control over his consumption of intoxicants as the average reasonable person." Sager also knew that the only route leaving the Buckhorn Lodge was a very steep, winding, and narrow mountain road and that O'Connell was going to drive down that road. Nevertheless, Sager continued to serve O'Connell alcoholic drinks past the normal closing time of 2 a. m. until 5:15 a. m. on April 9. After leaving the lodge, O'Connell drove down the road, veered into the opposite lane, and struck plaintiff's vehicle. The complaint also alleges that O'Connell drove the automobile with the consent, permission, and knowledge of the remaining defendants, that each defendant was the employee and agent of the other defendants, and that each of the defendants "was at all times acting within the purpose and scope of said agency and employment."

Defendant Sager demurred to the complaint on the ground that a "seller of intoxicating liquors is not liable for injuries resulting from intoxication" of a buyer thereof, and he moved to strike as sham those allegations of the complaint which alleged that O'Connell drove the automobile with the permission of the other defendants and that each defendant was the employee and agent of the remaining defendants. In support of the motion to strike, Sager submitted his declaration in which he stated that O'Connell and Dirk "were not in [his] employment on the date of the accident" and that he never had any ownership interest or any other interest in the automobile driven by O'Connell.

[1,2] The trial court sustained the demurrer without leave to amend, granted the motion to strike, and dismissed the complaint as to defendant Sager. Plaintiff appeals.[2]

1. Endler v. Schutzbank (1968) 68 Cal.2d 162, 165, 65 Cal.Rptr. 297, 436 P.2d 297; Rosenfield v. Malcolm (1967) 65 Cal.2d 559, 563, 55 Cal.Rptr. 505, 421 P.2d 697; Stanton v. Dumke (1966) 64 Cal.2d 199, 201, 49 Cal.Rptr. 389, 411 P.2d 108; Stigall v. City of Taft (1962) 58 Cal.2d 565, 567–568, 25 Cal.Rptr. 441, 375 P.2d 289.

2. Plaintiff's notice of appeal states that the appeal is from the order sustaining the demurrer without leave to amend and from the order granting the motion to strike, both of which are nonappealable orders. (Daar v. Yellow Cab Co. (1967) 67 Cal.2d 695, 699, 62 Cal.Rptr. 724, 433 P.2d 732; Lavine v. Jessup (1957) 48 Cal.2d 611, 614, 311 P.2d 8; Henry v. Law Firm of Hillyer, Crake, & Irwin (1969) 183 Cal.App.2d 798, 799, 6 Cal.Rptr. 877; 3 Witkin, Cal.Procedure, Appeal, § 19.) After the notice of appeal was filed, the trial court entered an order dismissing the action as to defendant Sager. Since no prejudice would accrue to defendant Sager, we treat the notice of appeal as applying to the order dismissing the action. (See Vibert v. Berger (1966) 64 Cal.2d 63, 68-69, 48 Cal.Rptr. 886, 410 P.2d 350; Evola v. Wendt Construction Co. (1958) 158 Cal.App.2d 658, 660-661, 323 P.2d 158.) In addition we treat the notice as having been filed after the entry of the order of dismissal in accordance with rule 2(c) of the California Rules of Court. (See Windsor Mills v. Richard Smith, Inc. (1969) 272 Cal.App.2d 334,

Until fairly recently, it was uniformly held that an action could not be maintained at common law against the vendor of alcoholic beverages for furnishing such beverages to a customer who, as a result of being intoxicated, injured himself or a third person.[3] (Collier v. Stamatis (1945) 63 Ariz. 285, 162 P.2d 125; Howlett v. Doglio (1949) 402 Ill. 311, 83 N.E.2d 708; State for Use of Joyce v. Hatfield (1951) 197 Md. 249, 78 A.2d 754; Seibel v. Leach (1939) 233 Wis. 66, 288 N.W. 774; see 45 Am.Jur.2d, Intoxicating Liquors, § 553; 48 C.J.S. Intoxicating Liquors § 430; Joyce on Intoxicating Liquors, § 421; Comment, Dramshop Liability—A Judicial Response (1969) 57 Cal.L.Rev. 995, 1000-1001; Annot. 130 A.L.R. 357.) The rationale for the common law rule was that the consumption and not the sale of liquor was the proximate cause of injuries sustained as a result of intoxication. (See, Pratt v. Daly (1940) 55 Ariz. 535, 538, 104 P.2d 147; 45 Am.Jur.2d, Intoxicating Liquors, § 553.) "The rule was based on the obvious fact that one cannot be intoxicated by reason of liquor furnished him if he does not drink it." (Nolan v. Morelli (1967) 154 Conn. 432, 226 A.2d 383; 45 Am.Jur.2d, Intoxicating Liquors, supra, at p. 853; see King v. Henkie (1886) 80 Ala. 505, 511; Pratt v. Daly, supra, 55 Ariz. 535, at p. 538, 104 P.2d 147.) The common law rule has been substantially abrogated in many states by statutes which specifically impose civil liability upon a furnisher of intoxicating liquor under specified circumstances. (See Comment, 57 Cal.L.Rev. 995, 996, fn. 6, listing the 20 states that have such statutes.) California, however, has not enacted similar legislation.

The common law doctrine that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication was first mentioned in this state in Lammers v. Pacific Electric Railway Company (1921) 186 Cal. 379, 199 P. 523. In that case the defendant railroad ejected the plaintiff, a passenger who was unable to find his fare, from one of its trains while the plaintiff was quite helpless from intoxication and mental deficiency. The plaintiff, who apparently had been struck by a train, was discovered more than six hours later, lying badly maimed on another set of railroad tracks some three quarters of a mile from the point where he had been ejected from the defendant's train. The court held that the defendant's 160
action in ejecting the plaintiff from its train was not the proximate cause of the injuries sustained thereafter. In dictum the court stated that "The sale of whiskey to the plaintiff would come nearer being a proximate cause of the injury than the ejection from the railway train. • • • [Y]et it has been uniformly held, in the absence of statute to the contrary, that the sale of intoxicating liquor is not the proximate cause of injuries subsequently received by the purchaser because of his intoxication. Joyce on Intoxicating Liquors,

339, 77 Cal.Rptr. 300; Levy v. Bellmar Enterprises (1966) 241 Cal.App.2d 686, 688, fn. 1, 50 Cal.Rptr. 842; Evola v. Wendt Construction Co., supra, 158 Cal. App.2d at pp. 609-610, 323 P.2d 158.)

1. Several exceptions have been created to this general rule. Thus, it has been held that a spouse can maintain an action for loss of consortium against a distributor of alcoholic beverages who sells intoxicants to his or her spouse, knowing that the latter lacks control over his or her consumption of intoxicants (Pratt v. Daly (1940) 55 Ariz. 535, 104 P.2d 147), or after repeated warnings not to furnish alcoholic beverages to such spouse (Swanson v. Ball (1940) 67 S.D. 91, 290 N.W. 482). It has also been [illegible] that an action can be maintained for death or injuries sustained by a customer who has been induced to drink alcoholic beverages when his "mental faculties [were] suspended by intoxication." (McCue v. Klein (1883) 60 Tex. 168; Ibach v. Jackson (1934) 148 Or. 92, 35 P.2d 6[illegible].) In addition it was held that a master could bring an action against a person who sold liquor to a slave without the master's consent. (Skinner v. Hughes (1850) 13 Mo. 440; Harrison v. Berkley (1847) 32 S.C.L. (1 Strob.) 525.)

§ 421; Cruse v. Aden, 127 Ill. 231, 234, [20 N.E. 73, 3 L.R.A. 327]." (186 Cal. at p. 384, 199 P. at p. 525.)

The dictum in *Lammers* was relied upon in Hitson v. Dwyer (1943) 61 Cal.App.2d 803, 143 P.2d 952. There the plaintiff alleged that while obviously intoxicated and sitting on a movable stool at the defendant's bar, he was served alcoholic beverages in violation of section [illegible] of the Alcoholic Beverage Control Act. (Now Bus. & Prof.Code, § 25602.) The plaintiff claimed that as a result of the wrongful sale of intoxicants, he fell from the stool; that the defendants negligently dragged him from his position on the floor; and that the fall or the dragging or both, caused him to suffer various bodily injuries. The court rejected the plaintiff's contention that the defendants' violation of the Alcoholic Beverage Control Act constituted negligence per se. The court reasoned that the statute was not enacted for the purpose of protecting an obviously intoxicated person who had been served alcoholic beverages in violation of its provisions. Moreover, the court stated that violation of the act could not result in liability since "the proximate cause [of injury resulting from intoxication] is not the wrongful sale of the liquor but the drinking of the liquor so purchased." (61 Cal.App.2d at p. 809, 143 P.2d at p. 955.)

Thereafter, in Fleckner v. Dionne (1949) 94 Cal.App.2d 246, 210 P.2d 530, the court affirmed a judgment for the defendant tavern keeper in an action by a person who had been injured in an automobile accident caused by a minor who had purchased alcoholic beverages in the defendant's establishment. The complaint alleged that the defendant knew that the purchaser was a minor; that the defendant sold liquor to the minor "while he was already under the severe influence of intoxicating liquors;" that the defendant knew that the minor had an automobile on the premises which he was going to drive; and that defendant knew that the driving of the car by the minor while intoxicated would result in harm to others on the highway. The trial court sustained a demurrer and entered judgment for the defendant. In affirming the judgment, the court relied upon the dictum in *Lammers*, the decision in *Hitson*, and various out-of-state decisions.

Finally, in Cole v. Rush (1955) 45 Cal.2d 345, 289 P.2d 450, this court held that the wife and children of a customer who died as the result of injuries sustained in a barroom brawl could not maintain a wrongful death action against the owners of a tavern for furnishing intoxicating liquor to the decedent. The complaint alleged that the decedent had patronized the defendants' tavern on numerous occasions; that the decedent was well-known to the defendants; and that the defendants knew that the decedent was "normally of quiet demeanor but that when * * * intoxicated he became belligerent, pugnacious and quarrelsome." The complaint further alleged that the plaintiff widow on numerous occasions had requested that the defendants not sell the decedent sufficient liquor to allow him to become intoxicated; that the defendants furnished the decedent with liquor until and after he became intoxicated; and that as a result of being intoxicated, the decedent became belligerent, engaged in a brawl, and died from injuries sustained in a fall during the fight. In ruling that the complaint failed to state a cause of action, the court noted the existing common law rule and discussed the decisions in *Lammers*, *Hitson*, and *Fleckner*. It concluded that "as to a competent person it is the voluntary consumption, not the sale or gift, of intoxicating liquor which is the proximate cause of injury from its use." (Cole v. Rush, supra, 45 Cal.2d at p. 356, 289 P.2d at p. 457.) The court also held that the plaintiffs were barred from recovery under the wrongful death act by the decedent's contributory negligence in voluntarily consuming the liquor furnished by the defendants and stated that any change in the common law rule concerning a tavern keeper's liability under such circumstances should be made by the Legislature.

Since *Cole*, various courts in other jurisdictions have reevaluated the common law rule that the vendor of intoxicating liquor cannot be held liable for injuries resulting from intoxication, and in particular the rule that the seller cannot be held liable for furnishing alcoholic beverages to a customer who injures a third person. A substantial number, if not a majority, have decided that the sale of alcoholic beverages may be the proximate cause of such injuries and that liability may be imposed upon the vendor in favor of the injured third person. (Waynick v. Chicago's Last Department Store (7th Cir. 1959) 269 F.2d 322, cert. denied 362 U.S. 903, 80 S.Ct. 611, 4 L.Ed.2d 554; Deeds v. United States (D.Mont.1969) 306 F.Supp. 348; Prevatt v. McClennan (Fla.Dist.Ct.App.1967) 201 So.2d 780; Colligan v. Cousar (1963) 38 Ill.App.2d 392, 187 N.E.2d 292; Elder v. Fisher (1966) 247 Ind. 598, 217 N.E.2d 847; Pike v. George (Ky.1968) 434 S.W. 2d 626; Adamian v. Three Sons, Inc. (1968) 353 Mass. 498, 233 N.E.2d 18; Rappaport v. Nichols (1959) 31 N.J. 188, 156 A.2d 1; Berkeley v. Park (Sup.Ct.1965) 47 Misc. 2d 381, 262 N.Y.S.2d 290; Jardine v. Upper Darby Lodge No. 1973, Inc. (1964) 413 Pa. 626, 198 A.2d 550; Mitchell v. Ketner (1965) 54 Tenn.App. 656, 393 S.W.2d 755; cf. Davis v. Shiappacossee (Fla.1963) 155 So.2d 365; Ramsey v. Anctil (1965) 106 N.H. 375, 211 A.2d 900. Contra, Carr v. Turner (Ark.1965) 385 S.W.2d 656; Hull v. Rund (1962) 150 Colo. 425, 374 P.2d 351; Cowman v. Hansen (1958) 250 Iowa 358, 92 N.W.2d 682; Meade v. Freeman (1969) 93 Idaho 389, 462 P.2d 54; Lee v. Peerless Ins. Co. (1966) 248 La. 982, 183 So.2d 328; Hall v. Budagher Bar (1966) 76 N.M. 591, 417 P.2d 71; Hamm v. Carson City Nugget, Inc. (1969) 85 Nev. 99, 450 P.2d 358; Garcia v. Hargrove (1966) 46 Wis.2d 724, 176 N.W.2d 566; Parsons v. Jow (Wyo.1971) 480 P.2d 396; cf. Nolan v. Morelli (1967) 154 Conn. 432, 226 A.2d 383.)

The two leading cases abrogating or modifying the common law rule are Waynick v. Chicago's Last Department Store supra, 269 F.2d 322, and Rappaport v. Nichols, supra, 31 N.J. 188, 156 A.2d 1. In *Waynick* the plaintiffs, residents of Michigan, brought an action for personal injuries against three Illinois tavern keepers for selling liquor to two Illinois residents who drove an automobile into Michigan and there collided with a vehicle in which the plaintiffs were riding. The sale by each defendant was alleged to have been made in violation of an Illinois criminal statute prohibiting the sale of liquor to an intoxicated person. Although both Michigan and Illinois had dram shop acts expressly providing for civil liability, the court concluded that neither applied to the case before it because the state courts had decided that the statutes did not apply extraterritorially. Nevertheless, the court held that the complaint stated a cause of action under the common law of Michigan. The court determined that the Illinois statute prohibiting the sale of liquor to an intoxicated person was enacted "for the protection of any member of the public who might be injured or damaged as a result of the drunkenness to which the particular sale of alcoholic liquor contributes" and that the statute imposed a duty upon the sellers of alcoholic beverages in favor of those who might be injured as a result of a violation of the statute. Without analyzing at length the question of proximate cause, the court held that "under the facts appearing in the complaint, the tavern keepers are liable in tort for the damages and injuries sustained by plaintiffs, as a proximate result of the unlawful acts of the former." (269 F.2d at p. 326.)

Rappaport involved a wrongful death action by a widow against the operators of four taverns for selling liquor to an intoxicated minor who negligently killed her husband in an automobile accident. Although New Jersey had repealed its dram shop act, the New Jersey Supreme Court held that the action was permissible under common law negligence principles. The court stated that "Where a tavern keeper sells alcoholic beverages to a person who is visibly intoxicated or to a person

163 he knows or should know from the circumstances to be a minor, he ought to recognize and foresee the unreasonable risk of harm to others through action of the intoxicated person or the minor." (31 N.J. at p. 201, 156 A.2d at p. 8.) The court determined that a criminal statute and administrative regulations forbidding the sale of alcoholic beverages to a minor or an intoxicated person were intended to protect members of the general public and concluded that "If the patron is a minor or is intoxicated when served, * * * and if the circumstances are such that the tavern keeper knows or should know that the patron is a minor or is intoxicated, his service to him may * * * constitute common law negligence." (*Id.* at p. 202, 156 A.2d at p. 9.) Finally, the court rejected the defendants' contention that their conduct, if negligent, was not the proximate cause of the injuries suffered. It stated: "But a tortfeasor is generally held answerable for the injuries which result in the ordinary course of events from his negligence and it is generally sufficient if his negligent conduct was a substantial factor in bringing about the injuries. [Citations.] The fact that there were also intervening causes which were foreseeable or were normal incidents of the risk created would not relieve the tortfeasor of liability. [Citations.] Ordinarily these questions of proximate and intervening cause are left to the jury for its factual determination." (*Id.* at p. 203, 156 A.2d at p. 9.) It was concluded that under the facts alleged in the complaint, a jury could reasonably find that the defendants' negligence was a substantial factor in bringing about the decedent's fatal injuries and that the minor's negligent operation of his automobile was a normal incident of the risk created by the defendants, or an event which they could reasonably have foreseen.

[3] To the extent that the common law rule of nonliability is based on concepts of proximate cause, we are persuaded by the reasoning of the cases that have abandoned that rule. The decisions in those jurisdictions which have abandoned the common law rule invoke principles of proximate cause similar to those established in this state by cases dealing with matters other than the furnishing of alcoholic beverages. (See Schwartz v. Helms Bakery Limited (1967) 67 Cal.2d 232, 60 Cal.Rptr. 510, 430 P.2d 68; Stewart v. Cox (1961) 55 Cal.2d 857, 863–864, 13 Cal.Rptr. 521, 362 P.2d 345; Richardson v. Hamm (1955) 44 Cal.2d 772, 777, 285 P.2d 269; McEvoy v American Pool Corp. (1948) 32 Cal.2d 295, 298–299, 195 P.2d 783; Mosley v. Arden Farms (1945) 26 Cal.2d 213, 218, 157 P.2d 372; Stasulat v. Pacific Gas & Elec. Co. (1937) 8 Cal.2d 631, 637, 67 P.2d 678; Prosser, Proximate Cause in California (1950) 38 Cal.L.Rev. 369.) Under these principles an actor may be liable if his negligence is a substantial factor in causing an injury, and he is not relieved of liability because of the intervening act of a third person if such act was reasonably foreseeable at the time of his negligent conduct. (Stewart v. Cox, supra, 55 Cal.2d at pp. 863–864, 13 Cal.Rptr. 521, 362 P.2d 345; Richardson v Hamm, supra, 44 Cal.2d at p. 777, 285 P.2d 269; Eads v. Marks (1952) 39 Cal.2d 807, 812, 249 P.2d 257; Benton v. Sloss (1952) 38 Cal.2d 399, 405, 240 P.2d 575; Mosley v. Arden Farms, supra, 26 Cal.2d at p. 218, 157 P.2d 372; Fuller v. Standard Stations Inc. (1967) 250 Cal.App.2d 687, 691, 58 Cal.Rptr. 792; Ewert v. Southern Cal. Gas Co. (1965) 237 Cal.App.2d 163, 169–173, 46 Cal.Rptr. 631; Rest.2d Torts, §§ 302, 302A, 431, 447.) Moreover, "If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious or criminal does not prevent the actor from being liable for harm caused thereby." (Rest.2d Torts, § 449; Schwartz v. Helms Bakery Limited, supra, 67 Cal.2d at pp. 241–242, 60 Cal.Rptr. 510, 430 P.2d 68; Richardson v. Hamm, supra, 44 Cal.2d 772, at p. 777, 285 P.2d 269; McEvoy v. American Pool Corp., supra, 32 Cal.2d 295 at p. 299, 195 P.2d 783.)

[4] Insofar as proximate cause is concerned, we find no basis for a distinction founded solely on the fact that the consumption of an alcoholic beverage is a voluntary act of the consumer and is a link in the chain of causation from the furnishing of the beverage to the injury resulting from intoxication. Under the above principles of proximate cause, it is clear that the furnishing of an alcoholic beverage to an intoxicated person may be a proximate cause of injuries inflicted by that individual upon a third person. If such furnishing is a proximate cause, it is so because the consumption, resulting intoxication, and injury-producing conduct are foreseeable intervening causes, or at least the injury-producing conduct is one of the hazards which makes such furnishing negligent.

The central question in this case, therefore, is not one of proximate cause, but rather one of duty: Did defendant Sager owe a duty of care to plaintiff or to a class of persons of which he is a member?

[5, 6] A duty of care, and the attendant standard of conduct required of a reasonable man, may of course be found in a legislative enactment which does not provide for civil liability. (See Richards v. Stanley (1954) 43 Cal.2d 60, 63, 271 P.2d 23; Routh v. Quinn (1942) 20 Cal.2d 488, 492, 172 P.2d 1; 2 Witkin, Summary of Cal. Law (1960) Torts, § 234.) In this state a presumption of negligence arises from the violation of a statute which was enacted to protect a class of persons of which the plaintiff is a member against the type of harm which the plaintiff suffered as a result of the violation of the statute. (Alarid v. Vanier (1958) 50 Cal.2d 617, 327 P.2d 897; Satterlee v. Orange Glenn School District (1947) 29 Cal.2d 581, 177 P.2d 279.) The Legislature has recently codified this presumption with the adoption of Evidence Code section 669: "The failure of a person to exercise due care is presumed if: (1) He violated a statute, ordinance, or regulation of a public entity; (2) the violation proximately caused death or injury to person or property; (3) the death or injury resulted from an occurrence of the nature which the statute, ordinance, or regulation was designed to prevent; and (4) the person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted." (Subd. (a).)

[7] In the instant case a duty of care is imposed upon defendant Sager by Business and Professions Code section 25602, which provides: "Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor." This provision was enacted as part of the Alcoholic Beverage Control Act of 1935 (Stats.1935, ch. 330, § 62, at p. 1151) and was adopted for the purpose of protecting members of the general public from injuries to person and damage to property resulting from the excessive use of intoxicating liquor.

Our conclusion concerning the legislative purpose in adopting section 25602 is compelled by Business and Professions Code section 23001, which states that one of the purposes of the Alcoholic Beverage Control Act is to protect the safety of the people of this state. Moreover, our interpretation of section 25602 finds support in the decisions of those jurisdictions in which similar statutes, and statutes prohibiting the sale of alcoholic beverages to minors, have been found to have been enacted for the purpose of protecting members of the general public against injuries resulting from intoxication. (See Waynick v. Chicago's Last Department Store, supra, 269 F.2d 322, at p. 325; Deeds v. United States, supra, 306 F.Supp. 348, at p. 359; Davis v. Shiappacossee, supra, 155 So.2d 365, at p. 367; Elder v. Fisher, supra, 247 Ind. 598, at p. 603, 217 N.E.2d 847; Rapaport v. Nichols, supra, 31 N.J. 188, at p. 202, 156 A.2d 1.)

[8-10] From the facts alleged in the complaint it appears that plaintiff is within

the class of persons for whose protection section 25602 was enacted and that the injuries he suffered resulted from an occurrence that the statute was designed to prevent. Accordingly, if these two elements are proved at trial, and if it is established that Sager violated section 25602 and that the violation proximately caused plaintiff's injuries, a presumption will arise that Sager was negligent in furnishing alcoholic beverages to O'Connell. (See Evid.Code, § 669.)

Defendant Sager maintains, however, that a change in the common law rule governing the liability of a tavern keeper
166 to an injured third person is unwarranted and that if there is to be a change in the rule, it should be made by the Legislature, not by the courts. As to the first part of his argument, defendant contends that imposition of civil liability upon tavern keepers would not alter the extent to which the consumption of intoxicants contributes to automobile accidents and that such liability would not be an adequate deterrent to the unlawful sale of alcoholic beverages. Moreover, defendant asserts that the injured third person is already assured of compensation for his injuries by Vehicle Code sections 16000-16053 and Insurance Code section 11580.2. Concerning the second part of his argument, defendant maintains the Legislature is better equipped to determine whether civil liability should be imposed for furnishing alcoholic beverages to an individual who injures himself or third persons. Defendant contends that the decision to impose liability presents various questions as to the scope of such liability, e. g., whether an intoxicated patron ought to recover for injuries sustained as a result of his intoxication and whether liability should be imposed upon a package liquor store or a noncommercial furnisher of intoxicating liquor. Because of the existence of these and other questions, defendant argues that the entire matter of civil liability for furnishing alcoholic beverages should be left to the Legislature.

[11] Defendant's argument that the question of civil liability for tavern keepers should be left to future legislative action is faulty in two respects. First, liability has been denied in cases such as the one before us solely because of the judicially created rule that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication. As demonstrated, supra, this rule is patently unsound and totally inconsistent with the principles of proximate cause established in other areas of negligence law. Other common law tort rules which were determined to be lacking in valdiity have been abrogated by this court (see Gibson v. Gibson (1971) 3 Cal.3d 914, 92 Cal.Rptr. 288, 479 P.2d 648; Muskopf v. Corning Hospital Dist. (196.) 55 Cal.2d 211, 11 Cal. Rptr. 89, 359 P.2d 457), and there is no sound reason for retaining the common law rule presented in this case. Second, the Legislature has expressed its intention in this area with the adoption of Evidence Code section 669, and Business and Professions Code section 25602. The California Law Revision Commission's recommendation relating to Evidence Code section 669 states that the presumption contained in the section "should be classified as a presumption affecting the burden of proof *in order to further the public policies expressed in the various statutes, ordinances, and regulations to which it applies.*" (Emphasis added; Cal.Law Revision Com.Rep. p. 109; see, Evid.Code, § 605.) It is clear that Business and Professions Code section 25602 is a statute to which this presumption applies and that the policy expressed in the statute is to promote the safety of the people of California (see Bus. & Prof. 167 Code, § 23001). To accept defendant's contentions and hold that plaintiff's complaint does not state a cause of action would be to thwart the legislative policies expressed in both statutes.

For the reasons discussed herein, we overrule Cole v. Rush (1955) 45 2d 345, 289 P.2d 450 and Lammers v. Pacific Electric Railway Company (1921) 186 Cal.

379, 199 P. 523 to the extent that they are inconsistent with this decision. To the same extent we disapprove of Fleckner v. Dionne (1949) 94 Cal.App.2d 246, 210 P.2d 530 and Hutson v. Dwyer (1943) 61 Cal.App.2d 803, 143 P.2d 952.

Motion to Strike

Plaintiff contends that the trial court erred in granting defendant Sager's motion to strike as sham that portion of the complaint which alleges that O'Connell was driving the automobile with the consent, permission, and knowledge of the other defendants, that each of the defendants was the agent and employee of the others, and that each defendant was acting within the scope of his agency and employment. As mentioned previously, in support of the motion to strike, defendant Sager submitted his declaration in which he stated that Earl Dirks, the owner of the car driven by O'Connell, and O'Connell were not in his employment on the date of the accident and that he had no ownership interest or any other interest in the car driven by O'Connell. Plaintiff argues that the declaration was insufficient to support the trial court's ruling because it contained only conclusions of law. In addition, he maintains that the allegations in his verified complaint are sufficient to controvert the factual allegations in Sager's declaration.

[12] From an examination of the points and authorities in support of the motion to strike, it is clear that the motion was not one for summary judgment (Code Civ.Proc., § 437c), but rather was a "speaking motion,"[4] addressed to the "inherent right of a court to strike or dismiss a complaint when it is made to appear by extraneous evidence that it is sham and based upon false allegations." (Lincoln v. Didak (1958) 162 Cal.App.2d 625, 631, 328 P.2d 498, 502.) In Pianka v. State of California (1956) 46 Cal.2d 208, 211, 293 P.2d 458, 461, we stated that such "nonstatutory speaking motions have • • • been superseded by the procedure governing motions for summary judgment contained in section 437c of the Code of Civil Procedure." Thereafter, in Lavine v. Jessup (1957) 48 Cal.2d 611, 614, footnote 2, 311 P.2d 8, we voiced our adherence to the ruling in *Pianka*.[5] 1168

Defendant relies upon Lincoln v. Didak, supra, 162 Cal.App.2d 625, 328 P.2d 498, in which the court held that the Legislature, through the adoption of Code of Civil Procedure section 435,[6] had reaffirmed the inherent right of a court to strike or dismiss a complaint through the use of nonstatutory "speaking motions." In so holding, the court placed particular emphasis upon the fact that the cause of action in *Pianka* arose prior to the enactment of section 435.

4. A speaking motion to dismiss or strike is one which is supported by facts outside the pleadings (Lerner v. Ehrlich (1963) 222 Cal.App.2d 168, 171, 35 Cal.Rptr. 108.) Such facts ordinarily are set forth in an affidavit or declaration. (See Lincoln v. Didak, supra, 162 Cal.App.2d 625 at p. 630, 328 P.2d 498; Cunha v. Anglo California Nat. Bank (1939) 34 Cal.App.2d 383, 388-389, 93 P.2d 572.)

5. Lavine v. Jessup, supra, 48 Cal.2d 611, 311 P.2d 8, did not involve a "speaking motion" to strike. In that case the trial court granted a motion to strike the plaintiff's complaint as sham because it had sustained demurrers to four identical complaints by the plaintiff.

6. Section 435 provides: "The defendant, within the time required in the summons to answer, either at the time he demurs to the complaint, or without demurring, may serve and file a notice of motion to strike the whole or any part of the complaint. The notice of motion to strike shall specify a hearing date not more than 15 days from the filing of said notice, plus any additional time that the defendant, as moving party, is otherwise required to give the plaintiff. If defendant serves and files such a notice of motion without demurring, his time to answer the complaint shall be extended and no default may be entered against him, except as provided in Sections 585 and 586, but the filing of such a notice of motion shall not extend the time within which to demur."

[13] The conclusions reached by the court in *Lincoln* lack support.[7] The court's reliance upon the fact that the cause of action in *Pianka* arose prior to the enactment of section 435 is misplaced. As mentioned previously, in *Lavine*, supra, 48 Cal. 2d 611, 311 P.2d 8, decided nearly two years after the enactment of section 435,[8] we emphasized the continuing validity of our decision in *Pianka*. More importantly, the substantive effect ascribed to section 435 by the *Lincoln* decision is inconsistent with the section's legislative history, which indicates that the section was added to the Code of Civil Procedure merely to make the motion to strike a pleading and to establish procedures governing its use.[9] We therefore disapprove of the decision in *Lincoln* and treat the motion to strike in the instant case as a motion for summary judgment.[10]

[14] Tested by the principles governing summary judgments, plaintiff's arguments prove to be without merit. We do not find Sager's statements that his codefendants were "not in his employment on the date of the accident" and that he had no "ownership interest" or "any other interest" in the vehicle involved to be mere conclusions of law. In addition, plaintiff cannot rely upon the allegations of his verified complaint to controvert the statements in defendant's declaration. (See Coyne v. Krempelo (1950) 36 Cal.2d 257, 263, 223 P.2d 244; 2 Witkin, Cal. Procedure, § 78, p. 1715.)

[15] Nevertheless, defendant's declaration is insufficient to warrant summary judgment. The standards for determining when summary judgment should be granted were reiterated by this court in Stationers Corp. v. Dun & Bradstreet, Inc.

7. The court's reasoning has been criticized as being of "doubtful validity" (2 Chadbourn, Grossman & van Alstyne, Cal. Pleading, § 1463 at p. 551; cf. 3 Witkin, Cal. Procedure (2d ed. 1971) § 856 at p. 2459 (debatable reasoning).) The overwhelming majority of the reported Court of Appeal decisions follow our decision in *Pianka* and treat a spenking motion to dismiss or strike a complaint as a motion for summary judgment. (See Hosking v. Spartan Properties Inc. (1969) 275 Cal.App.2d 152, 154–156, 79 Cal.Rptr. 893; Triodyne, Inc. v. Superior Court (1968) 240 Cal.App.2d 536, 542–543, 49 Cal.Rptr. 717; Auberry Union School District v. Rafferty (1964) 226 Cal.App.2d 599, 603, 38 Cal.Rptr. 223; Lerner v. Ehrlich, supra, 222 Cal.App.2d 171–172, 35 Cal.Rptr. 106; Vallejo v. Montebello Sewer Co. (1963) 209 Cal.App.2d 721, 729–730, 26 Cal.Rptr. 447; Callahan v. Chatsworth Park, Inc. (1962) 204 Cal.App.2d 597, 22 Cal.Rptr. 606; but see, Estate of Emery (1962) 199 Cal.App.2d 22, 18 Cal.Rptr. 86; Lincoln v. Didak, supra.) Despite our ruling in *Pianka*, our reiteration of the ruling in *Lavine*, supra, 48 Cal.2d at p. 614, fn. 2, 311 P.2d 8, and the various decisions of the Courts of Appeal following those two cases, Witkin reports that the use of nonstatutory speaking motions persists. (3 Witkin, op. cit. supra, § 856, at p. 2459.)

8. Legislation enacting section 435 was signed by the Governor on June 29, 1955, and took effect September 7, 1955. (Stats.1955, ch. 1452, at p. 2639.) *Lavine*, supra, 48 Cal.2d 611, 311 P.2d 8, was decided May 28, 1957. Although there is nothing to indicate when the cause of action arose, the order granting the motion to strike was entered in the court's minutes November 10, 1955. (48 Cal.2d 611, at p. 613, 311 P.2d 8.)

9. The Senate Interim Judiciary Committee Report dealing with section 435 states: "A second change by the measure [S.B. 815] is to make a motion to strike sufficient as a pleading and an appearance, to prevent default. Such a motion, however, must be noticed for prompt hearing. (See § 585, in particular.) Often a complaint or cross-complaint alleges scandalous or other irrelevant matter which should be eliminated before the litigant is compelled to answer. At present, it is necessary to file a demurrer with the motion to strike, even though the demurrer is not pressed. The changes, however, do not extend the time to demur. (§ 585.) Only the time to answer would be extended. Thus, a litigant could not first file a motion to strike, and then, if that be denied, file a demurrer." (34 Prog.Rep. at p. 60.)

10. Since our decision in *Pianka*, section 437c of the Code of Civil Procedure has been amended to provide for partial summary judgment where it is shown that a good cause of action does not exist as to part of a plaintiff's claim. (Stats. 1965, ch. 162, p. 1120.)

(1965) 62 Cal.2d 412, 417, 42 Cal.Rptr. 449, 452, 398 P.2d 785, 788: "Summary judgment is proper only if the affidavits in support of the moving party would be sufficient to sustain a judgment in his favor and his opponent does not by affidavit show such facts as may be deemed by the judge hearing the motion sufficient to present a triable issue." In the instant case plaintiff did not file a counteraffidavit or declaration. Nevertheless, the failure of an opposing party to file such documents does not relieve the moving party of the burden of establishing the evidentiary facts of every element necessary to entitle him to a judgment. (Brewer v. Reliable Automotive Company (1966) 240 Cal.App.2d 173, 175, 49 Cal.Rptr. 498; American Society of Composers, Authors & Publishers v. Superior Court (1962) 207 Cal.App.2d 676, 687, 24 Cal.Rptr. 772; House v. Lala (1960) 180 Cal.App.2d 412, 416, 4 Cal.Rptr. 366; see, de Echeguren v. de Echeguren (1962) 210 Cal.App.2d 141, 148-149, 26 Cal.Rptr. 562; 2 Witkin, Cal. Procedure (1967 Supp.) § 78, p. 626.) Defendant, through the filing of his declaration, has failed to discharge this burden.

[16] Plaintiff's allegations that O'Connell was Sager's agent and employee at the time of the accident and that O'Connell was driving the automobile with the consent, permission, and knowledge of Sager sought to impose liability upon Sager under the doctrine of *respondeat superior* and under the imputed negligence provisions of the Vehicle Code. (Veh.Code, § 17150 et seq.) Defendant's declaration is insufficient to warrant the granting of summary judgment as to a cause of action based on the former theory since O'Connell might have been acting within the scope of an agency relationship at the time of the accident even though he was not in Sager's employment. (Cf. Flores v. Brown (1952) 39 Cal.2d 622, 248 P.2d 922; Souza v. Corti (1943) 22 Cal.2d 54, 139 P.2d 645.) Nor is the declaration sufficient to warrant summary judgment under the imputed negligence provisions of the Vehicle Code since a person may be subject to liability under those provisions even though he has no proprietary interest in a vehicle (see Veh.Code, § 17154 (negligence of operator imputed to bailee); Friedenthal, Imputed Contributory Negligence (1964) 17 Stan.L. Rev. 55, 56.) Accordingly, defendant's declaration is insufficient to support the granting of summary judgment as to a cause of action based upon either of these theories of liability.

The judgment of dismissal is reversed.

McCOMB, PETERS, TOBRINER, MOSK, BURKE and SULLIVAN, JJ., concur.



486 P.2d 163
5 Cal.3d 229

GENERAL MOTORS CORPORATION, Plaintiff and Appellant,

v.

CITY OF LOS ANGELES, Defendant and Respondent.

L. A. 29762, 29763.

Supreme Court of California, In Bank.

June 28, 1971.

Rehearing Denied July 28, 1971.

Actions by automobile manufacturer against city for refund of business privilege license taxes paid. The Superior Court, Los Angeles County, Robert W. Kenny, J., entered summary judgments in favor of city and manufacturer appealed. The Supreme Court, Sullivan, J., held that imposition of business privilege tax with respect to gross receipts from sales of automobiles assembled within city and shipped to dealers outside city pursuant to orders placed at in-city or out-of-city zone offices did not result in taxation of significant extraterritorial values on theory that automobiles were not "wholly manufactured" within city, but the inclusion of unapportioned gross receipts from sales of automobiles assembled outside city and shipped to

(*Ferguson v. Keays* (1971) 4 Cal.3d 649, 654, 94 Cal.Rptr. 398, 484 P.2d 70), this holding in the majority opinion and in *Gilbert, supra*, should not stand.



577 P.2d 669
21 Cal.3d 144

[144] James Stewart COULTER et al., Petitioners,

v.

The SUPERIOR COURT OF SAN MATEO COUNTY, Respondent;

SCHWARTZ & REYNOLDS & CO. et al., Real Parties in Interest.

S.F. 23667.

Supreme Court of California, In Bank.

April 26, 1978.

Passenger who was injured in automobile accident brought action against owner and manager of apartment complex in which the motorist had consumed intoxicating liquors prior to the accident. The defendant's demurrers were sustained and the passenger sought mandamus. The Supreme Court, Richardson, J., held that: (1) under both the Business and Professions Code and common-law principles, a social host who furnishes alcoholic beverages to an obviously intoxicated person, under circumstances which created reasonably foreseeable risk of harm to others, may be held legally accountable to those third persons who were injured when that harm occurs, and (2) count of complaint which merely alleged that the apartment owners permitted the motorist to drink on the premises and that the apartment manager, in some unspecified manner, aided and encouraged the motorist to drink to excess did not set forth a basis for imposing liability.

Writ issued.

Mosk, J., concurred and filed an opinion in which Bird, C. J., concurred.

Newman, J., concurred in part and dissented in part.

Clark, J., dissented in part.

1. Mandamus ⇐39

Mandamus was available to review orders sustaining demurrers without leave to amend where trial would be required on remaining causes of action and granted mandamus might prevent a needless and expensive trial followed by reversal and retrial. (Per Richardson, J., with two Justices concurring, two Justices concurring specially and one Justice concurring in part.)

2. Intoxicating Liquors ⇐299

A social host who furnishes alcoholic beverages to an obviously intoxicated person under circumstances which create a reasonably foreseeable risk of harm to others may be held legally accountable to those third persons who are injured when that harm occurs. (Per Richardson, J., with two Justices concurring, two Justices concurring specially, and one Justice concurring in part.) West's Ann.Bus. & Prof.Code, § 25602.

3. Negligence ⇐59

A person is liable for the foreseeable injuries caused by his failure to exercise reasonable care. (Per Richardson, J., with two Justices concurring, two Justices concurring specially, and one Justice concurring in part.)

4. Negligence ⇐136(2)

The existence of a duty of reasonable care is primarily a question of law and is dependent upon a variety of relevant factors, of which foreseeability of the risk is a primary consideration. (Per Richardson, J., with two Justices concurring, two Justices concurring specially, and one Justice concurring in part.)

5. Intoxicating Liquors ⇐288

Service of alcoholic beverages to an obviously intoxicated person by one who

knows that the intoxicated person intends to drive a motor vehicle creates a reasonably foreseeable risk of injury to those on the highway; one who serves alcoholic beverages under such circumstances fails to exercise reasonable care. (Per Richardson, J., with two Justices concurring, two Justices concurring specially, and one Justice concurring in part.)

6. Intoxicating Liquors ⇐295

The term "obviously intoxicated" is not too broad or subjective to serve as a satisfactory measure for imposition of civil liability on one who serves intoxicating liquors to a person who is obviously intoxicated and who later injured a third party; the use of intoxicating liquors by the average person in such quantity as to produce intoxication causes many commonly known outward manifestations which are "plain" and "easily seen or discovered;" if those manifestations exist and the seller still serves a customer, he has violated the law whether because of his failure to observe what is plain and easily seen or discovered or because, having observed, he ignored that which was apparent. (Per Richardson, J., with two Justices concurring, two Justices concurring specially, and one Justice concurring in part.)

See publication Words and Phrases for other judicial constructions and definitions.

7. Intoxicating Liquors ⇐306

Complaint which alleged that owners of apartment permitted motorist to drink on their premises and that the apartment manager, in some unspecified manner, "aided, abetted, participated and encouraged" the motorist to drink to excess did not assert that the owner or manager or their agents actually furnished liquor to the motorist and thus did not provide a basis for imposition of liability on the owner or manager for injuries received by a passenger riding with the motorist following his consumption of liquor on the apartment premises. (Per Richardson, J., with two Justices concurring, two Justices concurring specially, and one Justice concurring in part.) West's Ann.Bus. & Prof.Code, § 25602.

8. Intoxicating Liquors ⇐306

Complaint which alleged only that motorist consumed large amounts of alcoholic beverages in recreation room in apartment complex and that the apartment owners permitted the motorist to drink on the premises and that the apartment manager somehow aided and encouraged the motorist to drink to excess did not provide any basis for finding that the owners or the manager had any special relationship with either the motorist or with a passenger in his automobile so that liability for injuries received by the passenger in an automobile collision after the motorist consumed the alcohol could not be imposed upon the manager or the owners on the basis of their failure to control the conduct of the motorist. (Per Richardson, J., with two Justices concurring, two Justices concurring specially, and one Justice concurring in part.)

Dahl, Hefner, Stark & Marois, C. Afton Moore, III, Sacramento, and Judy R. Campos, Davis, for petitioners.

No appearance for respondent.

Thornton, Taylor & Downs and Jerome F. Downs, San Francisco, for real parties in interest.

[1] RICHARDSON, Justice. [147]

We consider whether the noncommercial suppliers of alcoholic beverages may be liable to third persons injured by reason of the intoxication of the consumer of those beverages. We will conclude that a social host who furnishes alcoholic beverages to an obviously intoxicated person, under circumstances which create a reasonably foreseeable risk of harm to others, may be held legally accountable to those third persons who are injured when that harm occurs. We examine the pleading posture of the case, trace the evolution of civil liability imposed on those who furnish intoxicating liquors, and discuss the reasons for our adoption of the foregoing principle.

In the first cause of action of his complaint, plaintiff James Coulter alleged that

he was injured when the car in which he was riding as a passenger collided with roadway abutments in San Mateo County. James' wife, plaintiff Deborah Coulter, joined in the action with her husband, claiming, as damages, the loss of consortium with James, and the value of nursing services furnished to him. It is alleged that at the time of the accident, the car was being driven by Janice Williams, whose intoxication caused both the accident and James' injuries.

Plaintiffs further alleged that before the accident defendant Schwartz & Reynolds & Co., the owner and operator of an apartment complex in Foster City, San Mateo County, and defendant Monte Montgomery, the apartment manager, negligently and carelessly served to Williams, in a recreation room in the complex, "extremely large quantities" of alcoholic beverages; that defendants knew or should have known that Williams was becoming "excessively intoxicated"; that defendants knew or should have known that Williams "customarily drank to excess" and was "incapable of exercising the same degree of volitional control over her consumption of alcoholic beverages as the average reasonable person"; that defendants knew that Williams intended to drive a motor vehicle following her consumption of the alcoholic beverages furnished by defendants; and that defendants knew or should have known that their conduct would expose third persons such as plaintiffs to "foreseeable serious risk of harm."

The second cause of action, substantially identical to the first, omitted the allegation that the defendants actually "furnished" Williams with alcoholic beverages, but charged that defendant Schwartz & Reynolds & Co. "permitted" Williams to be served alcoholic beverages on their premises, and that defendant Montgomery had "aided, abetted, participated [in] and encouraged" Williams to drink to excess. The third and fourth causes of action are not at issue herein.

[1] Defendants' demurrers to the first and second causes of action were sustained without leave to amend. Plaintiffs seek mandate from us to compel the trial court to overrule the demurrers and proceed to trial on all causes of action. While we have generally been reluctant to extend extraordinary relief at the pleading stage (*Babb v. Superior Court* (1971), 3 Cal.3d 841, 851, 92 Cal.Rptr. 179, 479 P.2d 379; *Oceanside Union School Dist. v. Superior Court* (1962), 58 Cal.2d 180, 185, fn. 4, 23 Cal.Rptr. 375, fn. 4, 373 P.2d 439, fn. 4), we have said that mandamus will lie when it appears that the trial court has deprived a party of an opportunity to plead his cause of action or defense, and when that extraordinary relief may prevent a needless and expensive trial and reversal (*Holtz v. Superior Court* (1970) 3 Cal.3d 296, 301, fn. 4, 90 Cal.Rptr. 345, fn. 4, 475 P.2d 441, fn. 4). In the matter before us mandamus is available as a remedy and we inquire into the propriety of the trial court's ruling.

Before 1971, California case law had uniformly held that one who furnished alcoholic beverages to another person was not liable for damages resulting from the latter's intoxication. (E. g., *Cole v. Rush* (1955), 45 Cal.2d 345, 289 P.2d 450.) Our courts reasoned that "it is the voluntary consumption, not the sale or gift, of intoxicating liquor which is the proximate cause of injury from its use . . . ." (*Id.*, at p. 356, 289 P.2d at p. 457.) In *Vesely v. Sager* (1971), 5 Cal.3d 153, 95 Cal.Rptr. 623, 486 P.2d 151, however, we reconsidered our earlier position and concluded that, as to *commercial* vendors, liability would be imposed in appropriate cases for injuries occasioned to third parties by the consumer of liquor. Examining more closely the proximate cause issue, we concluded in *Vesely* that "[I]t is clear that the furnishing of an alcoholic beverage to an intoxicated person may be a proximate cause of injuries inflicted by that individual upon a third person. If such furnishing is a proximate cause, it is so because the consumption, resulting intoxication, and injury-producing conduct are foreseeable intervening causes, or at least the injury-producing conduct is one of the hazards which makes such furnishing negli-

g nt." (*Id.*, at p. 164, 95 Cal.Rptr. at p. 631, 486 P.2d at p. 159.)

Moreover, in *Vesely* we declared that the tavern-owner defendant owed a duty of reasonable care to members of the public by reason of a provision of the Business and Professions Code (all statutory references are to that code unless otherwise cited). We explained that because section 25602 was enacted to protect members of the general public from injuries to person and damage to property resulting from the excessive use of intoxicating liquor, a presumption of negligence arises whenever its provisions are violated. (5 Cal.3d at pp. 164 165, 95 Cal.Rptr. 623, 486 P.2d 151; see Evid. Code, § 669.)

In *Vesely*, we further expressly reserved the question "whether a noncommercial furnisher of alcoholic beverages may be subject to civil liability under section 25602 . . . ." (5 Cal.3d at p. 157, 95 Cal.Rptr. at p. 625, 486 P.2d at p. 153.) That question is now before us and, although defendants herein urge us to confine application of the *Vesely* rule to commercial vendors, we see no reasonable or logical basis for doing s... As will appear, section 25602 is not limited by its terms to persons who furnish liquor to others for profit. Furthermore, well established general negligence principles lead us to conclude, independently of statute, that a social host or other noncommercial provider of alcoholic beverages owes to the general public a duty to refuse to furnish such beverages to an obviously intoxicated person if, under the circumstances, such person thereby constitutes a reasonably [1150] foreseeable danger or risk of injury to third persons. We examine more closely the statutory and common law bases for our conclusion.

1. *Business and Professions Code Section 25602*

[2] Section 25602 provides, that "*Every person* who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to . . . any obviously intoxicated person is guilty of a misdemeanor." (Italics added.) Referring as it does to "every person," the section on its face appears to apply to both commercial and noncommercial suppliers of alcoholic beverages. Although it might be urged that the placement of section 25602 in the *Business* and Professions Code suggests a legislative intent to confine the section's application to the commercial sellers of liquor only, thus excluding social hosts, other sections of the same code belie any such intent. For example, unlike section 25602, the immediately preceding section, 25601, contains specified restrictions imposed upon activities of a "licensee" as opposed to any "person." Section 23008 defines "person" as including "*any individual*, firm, copartnership, [etc.] . . ." whereas section 23009 defines "licensee" as "*any person holding a license* issued by the department." (Italics added.) Since all commercial vendors of alcoholic beverages in this state must be licensed (see § 23300 et seq.), the use of the broader term "person" in section 25602 strongly suggests that the latter section must have been intended to apply whether or not the supplier of such beverages was engaged in commercial, and therefore licensed, activities.

The foregoing conclusion is further confirmed by other immediately succeeding sections of the code which, for example, make it unlawful for every or any "person" (1) to bring alcoholic beverages onto prison grounds (§ 25603), (2) to maintain unlicensed premises (§ 25604), (3) to transport alcoholic beverages subject to seizure (§ 25606), or (4) to possess, consume, sell, give away or deliver any such beverages on public school grounds (§ 25608). It seems very clear that the Legislature did not intend that application of these companion sections be restricted to commercial vendors or suppliers. We hold, accordingly, that the term "person" within the meaning of section 25602 is not limited to those who are commercial suppliers, but includes those who are social hosts as well.

Recent appellate interpretation of similar statutory language supports the foregoing conclusion. Construing section 25602, the appellate court in *Coffman v. Kennedy*

(1977), 74 Cal.App.3d 28, 36-37, 141 Cal. Rptr. 267, reached a parallel result. The *Coffman* court reviewed cases from other [151] jurisdictions and stated, in dictum, that a social host would be properly subjected to civil liability under either section 25602 or general negligence principles, on allegations that intoxicating beverages were "furnished to an obviously intoxicated person with knowledge that the intoxicated person was going to be driving a vehicle on the public highways." (P. 37, 141 Cal.Rptr. p. 272.)

Likewise, in *Brockett v. Kitchen Boyd Motor Co.* (1972), 24 Cal.App.3d 87, 93, 100 Cal.Rptr. 752, the appellate court held that the comparable language of section 25658 ("every person" who gives alcoholic beverages to a minor is guilty of a misdemeanor) applies to *all* persons whether or not they are in the business of dispensing alcoholic beverages. (See also, *Ross v. Ross* (1972), 294 Minn. 115, 200 N.W.2d 149, 151-153; *Williams v. Klemesrud* (Iowa 1972), 197 N.W.2d 614, 615-616; but see *Elgar v. Kajet* (1975), 84 Misc.2d 100, 375 N.Y.S.2d 548, 551-552, affd. 55 A.D.2d 597, 389 N.Y. S.2d 631.) Additionally, *Brockett* held that violation of section 25658 could form the basis for a cause of action by a person injured as a proximate result of the minor's intoxication.

Nonetheless, defendants insist that the Legislature, by enacting section 25602, could not have intended to impose civil liability upon social hosts, given the long line of earlier cases which had denied liability even against commercial vendors. Such an argument, however, underestimates the historic force of our *Vesely* holding. As we have explained, in 1971 the Legislature was put on notice by *Vesely* that (1) section 25602 could form the basis for imposition of civil liability upon social hosts because, identifying the object of the statute, we recognized that it was "adopted for the purpose of protecting members of the general public from injuries to person and damage to property resulting from the excessive use of intoxicating liquor" (5 Cal.3d at p. 165, 95 Cal.Rptr. at p. 631, 486 P.2d at p. 159); and (2) the noncommercial supplier's civil liability for a violation of section 25602 remained an open question (*id.*, at p. 157, 95 Cal.Rptr. 623, 486 P.2d 151). We think it of some, but not controlling, significance that, following *Vesely*, the Legislature has failed to amend section 25602 to exclude such liability.

We further note that the Legislature has clearly expressed its desire that the Alcoholic Beverage Control Act shall be liberally construed to accomplish its stated purposes of "protection of the *safety, welfare,* health, peace, and morals of the people of the State, and to promote temperance ." (§ 23001, italics added.) Further, "It is hereby declared that the subject matter of this division [which includes § 25602] involves *in the highest degree* the economic, social, and moral well-being *and the safety* of the State and of all its people." (*Ibid.*, italics added.) Our interpretation of section 25602 in authorizing imposition of civil liability is entirely consistent with these broad legislative policies, and may well further induce social hosts to take those reasonable preventive measures calculated to reduce the risk of alcohol-related accidents. (See also, *Vesely v. Sager*, supra, at p. 165, 95 Cal.Rptr. 623, 486 P.2d 151.) [152]

For all of the foregoing reasons, we conclude that section 25602 affords a sufficient statutory basis upon which civil liability may be imposed upon a noncommercial supplier who provides alcoholic beverages to an obviously intoxicated person, thereby creating a reasonably foreseeable risk of harm to third persons.

2. *Common Law Principles*

Wholly apart from the provisions of section 25602, imposition of civil liability in the present case is fully compatible with general negligence principles. It is true that in *Vesely* we based the requisite *duty* to the plaintiff upon the provisions of section 25602 alone. (5 Cal.3d at pp. 164-165, 95 Cal.Rptr. 623, 486 P.2d 151.) However, as we recently explained in *Bernhard v. Harrah's Club* (1976), 16 Cal.3d 313, 128 Cal.

Rptr. 215, 546 P.2d 719; "Although we chose to impose liability on the *Vesely* defendant on the basis of his violating the applicable statute, the clear import of our decision was that there was no bar to civil liability *under modern negligence law*." (P. 325, 128 Cal.Rptr. at p. 222, 546 P.2d at p. 726, italics added.)

[3–5] It has long been a fundamental principle of California law that a person is liable for the foreseeable injuries caused by his failure to exercise reasonable care. (*Rowland v. Christian* (1968), 69 Cal.2d 108, 112, 70 Cal.Rptr. 97, 443 P.2d 561; *Dillon v. Legg* (1968) 68 Cal.2d 728, 739, 69 Cal.Rptr. 72, 441 P.2d 912; see Civ.Code, § 1714.) Although we have, on occasion, described the foregoing rule as having civil rather than common law origins (*Rowland*, supra, 69 Cal.2d at p. 112, 70 Cal.Rptr. 97, 443 P.2d 561), the principle has most frequently been expressed in the negligence formulation that the defendant owes the plaintiff a "duty" of reasonable care. The existence of a duty is primarily a question of law, and dependent upon a variety of relevant factors, of which "foreseeability of the risk is a primary consideration . . . ." (*Weirum v. RKO General, Inc.* (1975), 15 Cal.3d 40, 46, 123 Cal.Rptr. 468, 471, 539 P.2d 36, 39.) We think it evident that the service of alcoholic beverages to an obviously intoxicated person by one who knows that such intoxicated person intends to drive a motor vehicle creates a *reasonably foreseeable* risk of injury to those on the highway. (See *Vesely*, 5 Cal.3d at p. 164, 95 Cal.Rptr. 623, 486 P.2d 151.) Simply put, one who serves alcoholic beverages under such circumstances fails to exercise reasonable care.

We have previously identified certain factors other than foreseeability in determining the ultimate existence of a "duty" to third persons. These factors include: " . . . the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." (*Rowland v. Christian*, supra, 69 Cal.2d at p. 113, 70 Cal.Rptr. at p. 100, 443 P.2d at p. 564)

Application of several of the *Rowland* elements to the circumstances herein alleged fully supports a rule establishing a duty of care and imposing civil liability. Plaintiffs' injuries are asserted to be substantial, a fact we must presume as a "certainty" for purposes of reviewing the sufficiency of the complaint under well established pleading rules. Where such circumstances exist, as are herein alleged, it is not difficult to discern a close connection between defendant's conduct and the injury suffered by plaintiffs. (E. g., *Alcorn v. Anbro Engineering, Inc.* (1970), 2 Cal.3d 493, 496, 86 Cal.Rptr. 88, 468 P.2d 216.) Unquestionably, as we amplify below, there exists a strong public policy to prevent future injuries of this nature, and we may assume that insurance coverage (doubtless increasingly costly will be made available to protect the social host from civil liability in this situation. While, traditionally, no moral blame attaches to the social host who entertains his guests by serving cocktails to them, it is not unfair to ascribe such blame to anyone who increases the obvious intoxication of a guest under conditions involving a reasonably foreseeable risk of harm to others. In this connection, we further note that it is small comfort to the widow whose husband has been killed in an accident involving an intoxicated driver to learn that the driver received his drinks from a hospitable social host rather than by purchase at a bar. The danger of ultimate harm is as equally foreseeable to the reasonably perceptive host as to the bartender. The danger and risk to the potential victim on the highway is equally as great, regardless of the source of the liquor.

Finally, we do not conclude that the burden upon the noncommercial suppliers of intoxicating beverages and the consequences to the community of imposing civil

liability are so serious as to justify a contrary holding. Doubtless, the spectre of civil liability may temper the spirit of conviviality at some social occasions, especially when reasonably observant hosts decline to serve further alcoholic beverages to those guests who are obviously intoxicated and perhaps becoming hostile. Nonetheless, in this context, we must surely balance any resulting moderation of hospitality with the serious hazard to the lives, limbs, and property of the public at large, and the great potential for human suffering which attends the presence on the highways of intoxicated drivers. In doing so we need not ignore the appalling, perhaps incalculable, cost of torn and broken lives incident to alcohol abuse, in the area of automobile accidents alone.

The dimensions of this cost and its catastrophic personal and economic impact in terms of vehicular accidents, are profoundly disturbing social phenomena of our time. In the year 1976 there were *257,846* adult misdemeanor arrests for drunk driving reported in California. (Cal.Dept. of Justice, Crim.Justice Profile—1976 (1976) p. 25.) Considering the fact that this number, large as it is, represents *arrests only*, and does not include the marginal or undetected drivers who have imbibed, the figure may well represent only the tip of a statistical iceberg. For the year 1976, alcohol was described as the *primary* collision factor in 28.3 percent of all *fatal* motor vehicle accidents, and in 11 percent of *injury* accidents. (Dept. of Cal. Highway Patrol (1976) Ann. Rep. of Fatal and Injury Motor Vehicle Traffic Accidents, p. 68.) Nationally, "alcohol has been associated with over half the deaths and major injuries suffered in automobile accidents each year." (Coleman, Abnormal Psychology and Modern Life (5th ed. 1976) p. 414.) Children are not excluded from this numerical avalanche of intoxicated drivers. "F.B.I. statistics show that more than 17,000 young people under 18, including 51 children, aged 10 or younger, were arrested for driving under the influence in 1975. The increase over 1970 is estimated at about 160 percent." ((July 11, 1977) U.S. News and World Report, at p. 33.) In the light of the foregoing statistics, it seems readily apparent that, drained of all humor, the host's well intentioned offer of "one more for the road" may frequently bear ominous and deadly overtones. We think, in short, that the policy of preventing future harm identified by us in *Rowland* is served by requiring the exercise of reasonable restraint by the social host under the circumstances herein presented.

[6] Defendants have argued that the term "obviously intoxicated" is too broad and subjective to serve as a satisfactory measure for imposition of civil liability. However, the phrase is contained in section 25602, a *criminal* statute, and the courts have experienced no discernible difficulty in applying it. (See *Samaras v. Dept. of Alcoholic Bev. Control* (1960), 180 Cal.App.2d 842, 844, 4 Cal.Rptr. 857; *People v. Smith* (1949) 94 Cal.App.2d Supp. 975, 210 P.2d 98; *People v. Johnson* (1947), 81 Cal.App.2d Supp. 973, 975 976, 185 P.2d 105.) As described in *Johnson*, "The use of intoxicating liquor by the average person in such quantity as to produce intoxication causes many commonly known *outward* manifestations which are 'plain' and 'easily seen or discovered.' If such outward manifestations exist and the seller still serve the customer so affected he has violated the law, whether this was because he failed to observe what was plain and easily seen or discovered, or because, having observed, he ignored that which was apparent." (Pp. 975-976, 185 P.2d at p. 106, italics in original.) We think the *Johnson* observations made in the context of a sale of liquor have equal application when the liquor is served by a noncommercial social host.

[7] We conclude that defendants' demurrer was improperly sustained as to plaintiffs' first cause of action. The second cause of action, however, fails to survive a demurrer for that cause alleged only that (1) defendant Schwartz & Reynolds & Co. (the apartment owners) "permitted" Williams to drink on their premises, and that (2) defendant Montgomery (the apartment manager), in some unspecified manner,

"aided, abetted, participated and encouraged" Williams to drink to excess. Since neither of these allegations asserted that defendants or their agents actually furnished liquor to Williams, no liability is imposed under the principles hereinabove set forth. (See *Bennett v. Letterly* (1977), 74 Cal.App.3d 901, 904-905, 141 Cal.Rptr. 682 ["furnish" within the meaning of § 25658, subd. (a), implies some *affirmative* action]; *Weiner v. Gamma Phi Chap. of Alpha Tau Omega Frat.* (1971), 258 Or. 632, 485 P.2d 18, 22 [no liability for merely providing a room where alcoholic beverages are served].)

[8] Moreover, we find misplaced plaintiffs' reliance upon section 315 of the Restatement of Torts to uphold the second cause of action. That section imposes upon a defendant a duty to control the conduct of another party only if the defendant bears some *special relationship* either to the party alleged to be "dangerous" or to the potential victim. (See *Nipper v. California Auto Assigned Risk Plan* (1977), 19 Cal.3d 35, 46-47, 136 Cal.Rptr. 854, 560 P.2d 743.) Plaintiffs have alleged no facts which would support a finding that defendants stood in any special relationship with either Williams or plaintiffs.

Let a peremptory writ of mandate issue directing respondent court to overrule defendants' demurrers to the first cause of action of plaintiffs' complaint.

TOBRINER and MANUEL, JJ., concur.

MOSK, Justice, concurring.

I concur.

While I agree with the underlying scheme of the majority opinion—i. e., that under some circumstances a social host, as well as a commercial supplier of alcoholic beverages, may be held legally accountable to those injured by the excessively indulged guest—I have some problems with that portion of the opinion which approves a rigid application of Business and Professions Code section 25602.

The code section provides, in relevant part, that "Every person who . . . furnishes, gives . . . any alcoholic beverage to . . . any *obviously intoxicated person* is guilty of a misdemeanor." (Italics added.) The prohibition is against providing alcoholic beverages to one who is *already intoxicated*. The law frowns upon adding a straw to a camel's back previously broken.

When the inebriate thereafter causes injury to a third person, it can be argued that the negligence which proximately caused the injury resulted from his original intoxication, not from the additional liquor served after he had already become "obviously intoxicated." Thus I suggest that in order to hold liable the social provider of liquor, it is not enough to rely upon the provisions of section 25602. The plaintiff should be compelled to prove either (1) that the social host furnished the liquor knowing that it was likely to, and that it did, produce the *original* intoxication, or (2) that the additional liquor served to one already "obviously intoxicated" *increased* or *prolonged* the existing state of intoxication and to that extent was a proximate cause of the injury.

Other than the foregoing limitation on the application of section 25602, I subscribe to the majority opinion.

BIRD, C. J., concurs.

NEWMAN, Justice, concurring and dissenting.

I concur as to the first cause of action, but dissent as to the holding that the second cause of action fails to survive a demurrer. Business and Professions Code section 25602 protects people from "Every person who . . . furnishes . . . or causes to be . . . furnished . . . any alcoholic beverage . . . to any obviously intoxicated person . . . ." I agree with the majority that the words "furnishes" and "furnished" imply an affirmative act and could include the serving of alcohol to Williams, as alleged in the first cause of action. I do not agree that the encouraging of Williams' drinking, as alleged in the second cause, should never be included or that individuals who allegedly "participated

and encouraged" an obviously intoxicated person's drinking should never be counted among those who caused the alcoholic beverage "to be . . . furnished".

Thus I believe that the second cause of action is sufficient to withstand demurrer.

CLARK, Justice, dissenting.

I am unable to join my colleagues in charging the host for the behavior of his guest. For the reasons so clearly written in *Borer v. American Airlines, Inc.* (1977), 19 Cal.3d 441, 446–447, 138 Cal.Rptr. 302, 563 P.2d 858, *Cole v. Rush* (1955), 45 Cal.2d 345, 289 P.2d 450, and *Ewing v. Cloverleaf Bowl* (1978), 20 Cal.3d 389, 408–412, 143 Cal.Rptr. 13, 572 P.2d 1155 (dis. opn.), the majority is incorrect in creating its new cause of action.[1]



577 P.2d 677
21 Cal.3d 158

[158] The PEOPLE, Plaintiff and Respondent,

v.

Henry M. FOGELSON, Defendant and Appellant.

Cr. 19823.

Supreme Court of California.

April 26, 1978.

Defendant was convicted in the Municipal Court, of Los Angeles, Sidney A. Cherniss, Jr., J., of soliciting contributions on public property without a permit, and he appealed. The Supreme Court, Bird, C. J., held that the ordinance imposed an impermissible restriction on free speech and the free exercise of religion, and was invalid on its face, where it gave administrative officials unlimited discretion to prevent or deny permission to engage in constitutionally protected forms of solicitation.

Reversed.

Mosk, J., concurred and filed opinion in which Clark, J., joined.

1. Municipal Corporations ⇐121

Defendant, convicted of violating ordinance prohibiting solicitation of contributions on city property without permit, had standing to challenge constitutionality of such ordinance despite his failure to apply for permit thereunder. U.S.C.A.Const. Amend. 1.

2. Constitutional Law ⇐47

While individual charged with violating law or regulation may attack constitutionality thereof only as it applies to facts of his or her case, court may consider measure as it applies to others when law or regulation is challenged on its face as substantially encroaching upon First Amendment protected activity. U.S.C.A.Const. Amend. 1.

3. Constitutional Law ⇐90.1(4)

Ordinance prohibiting solicitation on city property was not free from constitutional attack for facial overbreadth on ground that it did not on its face purport to regulate First Amendment activity where, in fact, ordinance attempted to regulate virtually all forms of solicitation, many of which constituted First Amendment protective activity. U.S.C.A.Const. Amend. 1.

4. Constitutional Law ⇐84, 90(3)

Test of regulation's overbreadth turns on extent to which it lends itself to improper application to protected conduct, not whether it explicitly refers to speech or religion. U.S.C.A.Const. Amend. 1.

5. Constitutional Law ⇐90.1(1)

Although commercial speech has not traditionally enjoyed constitutional protection, commercial solicitation or promotion of constitutionally-protected written works is protected as incident to First Amendment

1. Yes, Virginia, our bag may truly have no bottom. (Church, *Is There A Santa Claus?*, Editorial, The New York Sun (21 Sept. 1897).)

Alaska State Legislature

SENATOR MIKE COLLETTA

SENATE FLOOR LEADER

Senate

MEMORANDUM APRIL 12, 1979

TO: SENATOR ZIEGLER

FROM: SENATOR COLLETTA

ATTACHED PLEASE FIND CORRESPONDENCE WE HAVE RECEIVED REGARDING THE LIABILITY QUESTION RAISED IN SENATE BILL 115.

P.O. BOX 3168, ANCHORAGE 99501 • POUCH V JUNEAU 99811

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

April 11, 1979

The Honorable Bill Ray
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Dram Shop Liability Question
Our File J-66-569-79

Dear Senator Ray:

In a phone conversation earlier today, you indicated that our letter of April 2, 1979 did not completely answer your question regarding the effect of CSSB 115 (Rules) on third-person liability for injuries suffered as a result of that third person furnishing intoxicating liquor to another. You indicated that your question was whether enactment of CSSB 115 (Rules) would shield third persons from liability for injuries resulting from another's intoxication if the intoxicating liquor was furnished lawfully. For the reasons which follow, we believe it would provide such a shield.

Section 2 of CSSB 115 (Rules) would add a new section to the Alaska Statutes to read:

> Section 09.65.097. LIMITATIONS ON THE CIVIL LIABILITY OF LAWFUL BEVERAGE PROVIDERS. A person who lawfully provides an alcoholic beverage to an individual may not be held civilly liable for injuries resulting from the intoxication of that individual.

This statute would codify the rule which seems to be rather universal: A third person who lawfully furnishes liquor is not liable for injuries resulting from the consumption of that liquor. This appears to be the rule even in states like California where a third person will be liable for such injuries if he unlawfully provides liquor.

We hope this answers your question. However, it is possible that it does not. It appears that there are two

03-CSLH

possible sources for any confusion which remains: (1) Differences of opinion regarding the existing law of third-person liability in Alaska; and (2) differences of opinion regarding the effect of the language in CSSB 115 (Rules). We must point out that this is a developing area of law, and we cannot predict with absolute certainty what result our Court will reach under any given statutory enactment. However, we believe our Court would hold that the language of CSSB 115 (Rules), as it now appears, would shield third persons furnishing intoxicating liquor from liability for injuries suffered as a result of intoxication where the furnishing of that liquor was not in violation of existing law. We will work with you and/or other legislators in drafting appropriate language to accomplish whatever policy that the legislature determines is appropriate in this area if further amendment to SB 115 is desired.

In the meantime, we hope you find this of some assistance.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: G. Thomas Koester
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator Mike Colletta
Senator Patrick Rodey

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

April 2, 1979

The Honorable Bill Ray
The Honorable Mike Colletta
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Re: Dram Shop Liability Question
Our File #J-66-569-79

Dear Senators Ray and Colletta:

You requested our opinion whether removal of the word "lawfully" from CSSB 115 (Rules) would shield a tavern keeper from liability for injuries resulting from the tavern keeper serving liquor to an intoxicated adult or a minor in violation of AS 04.15.020(a). For the reasons which follow, we believe removing the word "lawfully" from that measure would have the effect of shielding a tavern keeper from civil liability for injuries resulting from the tavern keeper serving an intoxicated individual or a minor in violation of the statute.

Section 2 of CSSB 115 (Rules) would add a new section to the Alaska Statutes to read:

> Section 09.65.097. LIMITATIONS ON THE CIVIL LIABILITY OF LAWFULL BEVERAGE PROVIDERS. A person who lawfully provides an alcoholic beverage to an individual may not be held

> civilly liable for injuries resulting from the intoxication of that individual.

This Statute would codify the general common law rule:

> [I]t is not a tort to either sell or give intoxicating liquor to ordinary able-bodied men, and it has been frequently held that in the absence of statute, there can be no cause of action against one furnishing liquor in favor of those injured by the intoxication of the person so furnished. The reason usually given for this rule is that the drinking of the liquor, not the furnishing of it, is the proximate cause of the injury. The rule is based on the obvious fact that one cannot become intoxicated by reason of liquor furnished if he does not drink it.
>
> 45 Am. Jr. 2d, INTOXICATING LIQUORS, §553 at pp. 852-853 (footnotes omitted).

However, some jurisdictions do afford a cause of action against a provider of liquor for injuries resulting from intoxication. This frequently is accomplished by legislative enactments known as "dram shop acts" which place statutory liability on the person selling or furnishing the liquor which caused the intoxication. 45 Am. Jur. 2d, INTOXICATING LIQUORS, §§561 et seq. Occasionally, liability has been found in the absence of a dram shop act "where the liquor was given or sold to a person who is in such a condition as to be deprived of his will-power or responsibility for his behavior, or to a habitual drunkard, or in violation of a prohibitory statute." 45 Am. Jr. 2d, INTOXICATING LIQUORS, §554 at page 853 (footnote omitted).

In Alaska, AS 04.15.020(a) prohibits furnishing intoxicating liquor to minors and to intoxicated persons. The Alaska Supreme Court has not ruled on the precise issue whether furnishing liquor to a minor or intoxicated person in violation of AS 04.15.020(a) gives a third person injured as a result of intoxication a cause of action against the person furnishing the liquor. However, there are strong indications that the court would hold that a violation of AS 04.15.020(a) gives an injured party such a cause of action against the provider of the liquor.

The Federal District Court for Alaska has held that under Alaska law, a violation of AS 04.15.020(a) is negligence per se, giving the injured party a cause of action against the tavern keeper. Vance v. United States, 355 F. Supp. 756 (D. Alaska 1973).*/

In Barton v. Lund, 563 P. 2d 875, 877 n.6 (Alaska 1977), a three-justice Alaska Supreme Court expressly refused to reach the issue of liability resulting from a violation of AS 04.15.020(a) in holding that such a violation would not support a cause of action against a liquor licensee under AS 04.15.180 who had no control over the actual operation of the tavern. The majority noted that the

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*/ The Court in Vance did not discuss the pre-statehood case of Cherbonnier v. Rafalovich, 88 F. Supp. 900 (D. Alaska 1950), which reached an opposite result under the Territorial predecessor to AS 04.15.020(a).

Federal District Court had found such liability under Alaska law in Vance, supra, and that the California Supreme Court found such liability based on a violation of a criminal statute similar to AS 04.15.020(a), Vesely v. Sager, 46 P. 2d 151 (California 1971), and based purely on the common law without reliance on the statute. Bernhard v. Harrah's Club, 546 P. 2d 719 (California), Cert. denied, 429 U.S. 859 (1976).*/ The majority did cite Bachner v. Rich, 554 P. 2d 430 (Alaska 1976), and Farrell v. Baxter, 44 P. 2d 250 (Alaska 1971), cases not involving intoxicating liquor, in both of which the court held that a statute established a standard of care which, when violated, constituted negligence as a matter of law. Extending the holding of those cases to the intoxicating liquor situation would result in a finding of liability, the result reached by Federal District Court in Vance.

Justices Boochever and Rabinowitz, dissenting in Barton, not only appeared to approve the Federal District Court's holding in Vance but would have imposed vicarious

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*/ In response to these cases, the California legislature amended Cal. Bus. & Prof. Code §25602 and Cal. Civ. Code §1714 to abrogate the results of those decisions in favor of the traditional common law rule holding that the consumption, not the furnishing, of intoxicating liquor is the proximate cause of injuries resulting from intoxication. Ch. 929, 1978 Cal. Adv. Legis. Serv. A copy of that enactment is attached for your information.

liability for violations of AS 04.15.020(a) on licensees under AS 04.15.180 who take no active part in the conduct of the tavern's business. They appeared to assume that a violation of AS 04.15.020(a) gives rise to a cause of action against the provider of liquor, the result reached in Vance.

Enactment of CSSB 115 (Rules), as it now reads, would not appear to change the law in Alaska (as it appears in the cited cases) one way or the other. It might raise a question regarding liability where liquor was furnished in a matter which was technically unlawful--e.g., liquor sold on election day in violation of AS 04.15.020(c) but lawfully sold in all other respects--but that question currently exists in the absence of such a statute. Enactment of CSSB 115 (Rules) with the word "lawfully" removed, however, would appear to absolve any provider of an alcoholic beverage from any liability for injuries resulting from the consumer's intoxication. This would be true regardless of whether the provider of the liquor violated AS 04.15.020(a) by furnishing the liquor to a minor or an intoxicated person or violated any other statute dealing with the furnishing of liquor. In other words, it would preclude the court from finding any provider of intoxicating liquor liable for injuries suffered as a result of intoxication, even when the liquor was fur-

nished to an intoxicated person or a minor in violation of AS 04.15.020(a).

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Thomas G. Koester
Assistant Attorney General

TGK:bwb

Enclosure

An act to amend Section 25602 of the Business and Professions Code, and to amend Section 1714 of the Civil Code, relating to proximate cause.

LEGISLATIVE COUNSEL'S DIGEST

SB 1645, Ayala. Alcoholic beverage liability: proximate cause.

The California courts have recently interpreted existing law as imposing civil liability upon persons who sell, furnish, give or cause to be given alcoholic beverages to an intoxicated person when such person inflicts injury upon a third party.

This bill would specifically prohibit the imposition of civil liability in such instance.

This bill would also state a legislative declaration that prior judicial interpretation shall be reinstated so that such civil liability to a third party is incurred solely by the intoxicated person. The bill would also provide specifically that no social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages.

The people of the State of California do enact as follows:

SECTION 1. Section 25602 of the Business and Professions Code is amended to read:

25602. (a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor.

(b) No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to subdivision (a) of this section shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage.

(c) The Legislature hereby declares that this section shall be interpreted so that the holdings in cases such as Vesely v. Sager (5 Cal. 3d 153), Bernhard v. Harrah's Club (16 Cal. 3d 313) and Coulter v. Superior Court (_____ Cal. 3d _____) be abrogated in favor of prior judicial interpretation, finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person.

SEC. 2. Section 1714 of the Civil Code is amended to read:

1714. (a) Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the Title on Compensatory Relief.

(b) It is the intent of the Legislature to abrogate the holdings in cases such as Vesely v. Sager (5 Cal. 3d 153), Bernhard v. Harrah's Club (16 Cal. 3d 313), and Coulter v. Superior Court (_____ Cal. 3d _____) and reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

(c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages.

SB

122

COMMITTEE REPORT

SENATE

2/8/79

FURTHER: Finance

Date: 2/8/79

Mr. President:

The Committee on JUDICIARY has had SB 122

relating to permanent fund; amending Appellate Rule 45, Alaska Rules of Court Procedure

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

April 14, 1980

The Honorable Clem Tillion, Co-Chairman
The Honorable Joe McKinnon, Co-Chairman
Free Conference Committee on SB 122
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Gentlemen:

The Department of Revenue has reviewed the tentative agreement reached in your Committee last Saturday and has estimated the revenue effects of the amendments to the personal income tax for Fiscal Years 1980 and 1981. These are $276.1 million total, which when combined with the $128.5 million estimated for Permanent Fund Dividends, yields a grand total of $404.6 million.

The estimate of the $276.1 million for the income tax amendment is based on the following:

Tax returns were filed by March 1, 1980 for 1979 for a total of 91,966 taxpayers, of which 76,166 were residents. Of these residents, 7,389 claimed first year "Freeman credits" of $100 and 68,777 claimed second year credits; 9.70 percent of the 76,166 resident filers were filing for the first time.

Assuming that the proportion of first-time filers has not materially changed since the end of TAPS construction, this means that the 9.7 percent who are now filing for the first time would get no refund, another 9.7 percent who filed for the first time last year would get a one-third refund, another 9.7 percent would get a two-thirds refund, and the remainder would get full refunds. Thus,

9.7%	(1st-time filers)	x 0/3 refund =	0% refunded
9.7%	(2nd-time filers)	x 1/3 refund =	3.23% refunded
9.7%	(3rd-time filers)	x 2/3 refund =	6.47% refunded
70.9%	(other filers)	x 3/3 refund =	70.90% refunded
100.0%	TOTAL		80.60% refunded

04-02LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

April 14, 1980

The Honorable Clem Tillion, Co-Chairman
The Honorable Joe McKinnon, Co-Chairman
Free Conference Committee on SB 122
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Gentlemen:

The Department of Revenue has reviewed the tentative agreement reached in your Committee last Saturday and has estimated the revenue effects of the amendments to the personal income tax for Fiscal Years 1980 and 1981. These are $276.1 million total, which when combined with the $128.5 million estimated for Permanent Fund Dividends, yields a grand total of $404.6 million.

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100.0% TOTAL		80.60% refunded

04-D2LH

During 1979 we collected approximately $125 million in withholding and estimated tax payments. As people now file returns for that tax year, we expect refunds to exceed additional payments by $15 million. Our current estimate of the net tax for 1979 after these adjustments is $110.3 million. If 80.6 percent of this is refundable, the refund would be $88.9 million.

In the first quarter of calendar year 1980, withholding and estimated tax payments were $36,164,100. We estimate another $35 million for the second quarter, making a total of $71.2 million for the half year. The refundable and/or uncollected portion (80.6%) of this is $57.4 million.

For FY 81, net income tax receipts will be $161.0 million (12/79 forecast). The uncollected portion, at 80.6 percent, would be $129.8 million.

The total revenue impact in refunded or uncollected income taxes is

$88.9 million (refund of 1979)
57.4 million (refund of 1/1/80-6/30/80 receipts)
129.8 million (uncollected FY 81 tax estimate)
$276.1 million Total

These figures will be incorporated in our Fiscal Note for the tax amendment bill, once it is clear which bill (SB 122 or SB 39.) will serve as the vehicle.

Sincerely,

Thomas K. Williams
Commissioner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S - JUNEAU 99811

April 14, 1980

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100.0%	TOTAL	80.60%	refunded

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$276.1 million Total

These figures will be incorporated in our Fiscal Note for the tax amendment bill, once it is clear which bill (SB 122 or SB 394) will serve as the vehicle.

Sincerely,

Thomas K. Williams
Commissioner

SB

141

COMMITTEE REPORT

SENATE

FURTHER: None

2/13/79

Date: 3/6/79

Mr. President:

The Committee on JUDICIARY has had SB 141

relating to sentencing of criminal defendants

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ___ _____ _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

SB 141

February 21, 1979

Hon. Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: An Act Relating to Probation

Dear Bob:

I have reviewed the proposed legislation that would allow imprisonment as a condition of a suspended imposition of sentence and thus, get us out of the disaster fomented by the Boyne decision. I think that the proposed legislation covers all the bases. I particularly like the provisions for deductions for good conduct but I'm not so sure that I agree with the provisions allowing parole. If parole is to be a factor, I think the minimum term of imprisonment should be one year rather than 180 days. In my experience, when a judge suspends imposition of sentence but feels that the defendant should serve some time in prison, he usually has a definite period of time in mind and putting parole eligibility into the equation just makes it more difficult to arrive at a sentence that gets the desired results. I also feel that imprisonment as a condition of a suspended imposition of sentence should never involve more than one year's incarceration anyway. If the guy needs to go to jail longer than a year, he probably should not have gotten an SIS anyway. Of course, the same argument can be made at the six month level but frequently that young slow learner comes along that you want to give a good sharp jolt to but still leave him an opportunity to clear his record of the conviction and so I would like to see the latitude of using up to a year's imprisonment as a condition of an SIS and without having to worry about parole. The good time deduction is fine. If the guy can get along in the institution and obey all the rules and get his good time deduction, he should be able to earn it.

Under Sec. 5, the Act is take effect on January 1, 1980. The new Criminal Code goes into effect on January 1, 1980, as I understand it at this time, and we would not have the Boyne problem under the new Criminal Code because the statute specifically authorizes the judge to impose a period of imprisonment as a condition of probation. I would much prefer to see this Act rammed through

as quickly as possible to take effect immediately after its signature by the Governor and thus, cover the period of time between now and the time the new Code comes into effect.

As you know Jeff Currall has left the District Attorney's Office but I have talked to both he and Mike Thompson on this subject before and I am sure they agree with the need for the Bill. I know that Harold Brown does also but I'm not sure that anyone else would agree with my comments about parole. Since I am going to Anchorage to play Supreme Court Justice for awhile, I am going to send them a copy of this letter and ask that they get their comments to you directly as soon as possible. I would really like to see this legislation in effect just as soon as it can get passed.

Very truly yours,

Thomas E. Schulz

Thomas E. Schulz
Superior Court Judge

TES:ri

cc: Hon. Jay Rabinowitz, Chief Justice
Hon. Robert Boochever
Hon. Roger G. Connor
Hon. Edmond W. Burke
Hon. Warren Matthews

FUSION PAPER/Department of Health and Social Services

POSITION PAPER

Senate Bill 141

"An Act relating to sentencing of Criminal Defendants; and Providing for an Effective Date."

The Dept. of Health & Social Services is in support of Senate Bill 141.

This legislation would provide a means by which a defendant who has received a suspended imposition of sentence may be required to serve a portion of that suspended sentence in incarceration.

This concept allows the court to prescribe a short period of incarceration as a special condition of probation. Thus, the defendant, especially in cases of youthful and/or first offender, will experience incarceration and also receive probation supervision upon release to the community. This "jail therapy" is one attempt to deter offenders from committing additional crimes when used as a part of a probation plan.

At this time, the Department is unable to determine the fiscal impact that would result from this method of sentencing. The Department will be able to make that determination after having gained experience. It should be noted that terms of incarceration served on a continuous basis would probably not have a major impact. However, a sentence to be served on weekends, would be difficult and restrictive from a operational aspect. All correctional centers are presently operating near, at or over capacity. Normally, there is an increase in the population of these facilities over the weekend period. To include offenders sentenced to serve their period of incarceration on weekends would increase the "weekend peaking effect" and possibly cause overcrowding.

Recommended by: C. F. Campbell 3/28/79
Charles F. Campbell, Director
Division of Corrections
Date

Approved by: Catherine M. Lloyd 3/28/79
Helen D. Beirne, Commissioner
Department of Health & Social Services
Date

SB

162

COMMITTEE REPORT

SENATE

FURTHER: None

2/13/79

Date: _____

Mr. President:

The Committee on Judiciary has had SB 162

relating to peace officers

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

cc Chairman Judiciary



from the Desk of

SENATOR DON BENNETT

23 February 1979

To: Keith Specking

Request the following state employees assigned under Health & Social Services be available to testify before the Senate Judiciary Committee on Tuesday, 27 February, 1:30 p.m. in the Beltz Room, State Capitol:

Lawrence Calderone (Fairbanks)
Paul Tannenbaum (Anchorage)
Fred C. Fowler (Anchorage)
Curtis Masingill (Fairbanks)
Ron Murry (Fairbanks)

Thanks so much
Don



Controversy Rages Over Weapons For Probation-Parole Officers

AG's Office Takes Judge Van Hoomissen to Supreme Court

FROM
ALL ALASKA WEEKLY

3.5.62

In short, state probation and parole officers for the time being at least are being allowed to carry concealed weapons and will be allowed to do so until definitive court decisons are made.

The controversy which has the Department of Public Safety, the Department of Health and Social Services, and the Judiciary somewhat in knots has been sometime in the making.

In 1971 probation and parole officers were first given the special state trooper commissions to carry concealed weapons and these commissions were renewed down through the years until 1975. Then, for some reason not made clear, they were not. A number of judges and law enforcement personnel urged that the commissions be renewed contending that the probation and parole officers supervised convicted felons and oftentimes had to arrest them. For matters of safety, they urged that these officers needed to carry weapons for their own safety.

Finally, in November of last year, former Commisioner of Public Safety Richard Burton renewed the special commissions of the parole-probation officers. But the news of the renewal apparently was late in being communicated to Fairbanks.

On December 7, Judge Van Hoomissen issued the following order: "It appearing that to insure their safety and to perform their duties as officers of the Court, Probation Officers of this Court require the use of a firearm.

"Therefore, it is order, that when qualified, each regularly appointed Adult Unit Probation Officer of this Court is authorized to carry a concealed firearm on his or her person."

Judge Van Hoomissen's use of the term "qualified" no doubt referred to special weapons training which is given at a corrections arm academy at Sitka. Each of the pobation and parole officers had to pass the same qualifying test as troopers and numicipal police officers to be eligible for special commissions to to carry concealed firearms.

One of the factors which has complicated the picture is that while probation and parole officers are defined in many state statutes as "peace officers" and as such, it is argued, are allowed by law to carry concealed weapons, the probation and parole officers have been working under a Department of Health and Social Services policy that only those prsonnel with the special commissions, will, in fact, carry concealed arms.

-Continued on page 7

Judge Moody Restrains Police Commissioner; Hearing Set March 8

By Tom Snapp
Editor

A white-hot controversy is raging in Alaska over whether state probation and parole officers should be allowed to carry concealed weapons.

The new Commissioner of Public Safety William R. Nix has tried to revoke special State Trooper commissions of probation and parole officers which would allow them to carry concealed weapons but has been blocked from doing so by a court order.

And the Chief Prosecutor in the state Daniel W. Hickey, assistant attorney general, has taken Superior Court Judge Gerald Van Hoomissen to the State Supreme Court seeking to have an order nullified of Judge Van Hoomissen giving probation and parole officers working out of his court the right to carry concealed arms.

In the latter case, Chief Justice Jay Rabinowitz has refused to grant a stay of Judge Van Homissen's order until the high court has ruled on the dispute.

But in the case of 17 probation and parole officers in Fairbanks and Anchorage fighting the dropping of their special commissions by the Department of Safety, Superior Court Judge Ralph Moody has issued a temporary restraining order preventing Public Safety Commissioner Nix from suspending the commissions until a hearing on March 8.

-Continued from page 1

On January 24, Public Safety Commissioner Nix wrote a memorandum to Commissioner of Health and Social Services Helen Beirne that he was recalling all special commissions to probation and parole officers.

Wrote Nix:

"Helen, I'm evaluating all special commissions issued by this Department under AS 18.65.010.

"My objective is to limit the issuance of special commissions to only those persons who, in the broadest sense, are actually involved in assisting the State Troopers with the enforcement of all criminal laws of the State. It is my understanding that probation and parole officers already have statutory authority to make arrests, and the only reason I can see for the special commissions is to carry concealed weapons.

"I have reviewed the Attorney General's opinion J-66-005-75, and it is my conclusion that the Division of Corrections Probation and Parole Officers do not fall within the guidelines I've established for issuing special commissions. In this regard I'm recalling special commissions issued to the below listed persons effective close of business February 4, 1979. I would appreciate it if you would notify those persons affected and have them return their identification cards to me as soon as possible."

Nix listed: Donald Harvey Allen, Joe Lee Anderson, Dwane A. Burgess, Anuel Frank Byerly, Edward B. Coleman, Fred C. Fowler. Deborah L. Gefvert, Stephen D. Korenek, Artis C. Masingill, Jr., Homer L. Mayo, Peter Mirc, Ronald A. Murray, Gene H. Schafer, Mary E. Sweet, Paul W. Tannenbaum, and Stanley T. Wells.

Twelve of these officers Harvey, Lee, Burgess, Byerly, Coleman, Fowler, Korenek, Masingill, Mayo, Murray, Tannenbaum, and Wells, together with four others--Loy R. Bolt, David Cooper, Harold Fencl, and Jerry Velez--went to the Alaska Public Employees Association and through an Anchorage attorney, Wayne Anthony Ross, filed suit against the State of Alaska.

In the suit, probation and parole officers claim under statutory definition they are peace officers and are authorized to carry concealed weapons while in the performance of their duties and that the revoking of their special commissions constitute a breach of their collective bargaining agreement which the state entered into on May 2, 1977 and effective until December 31, 1979. Such revocations, they allege, would violate the state's duty under the contract to provide them with a safe place to work or safe working conditions.

They asked that Nix be enjoined from revoking the commissions until grievance procedure mandated by the contract be followed and a decision entered. Judge Ralph Moody so ordered until a hearing set for March 8.

In addition, the probation and parole officers ask for a declaratory judgement that they are "peace officers" and as such, do not need the special state trooper commissions to carry firearms.

After Judge Van Hoomissen had issued his order of December 7 authorizing adult probation officers in his district to carry firearms, he found out that Commissioner of Public Safety Burton had issued special commissions to the officers. Thus, on January 4, Judge Van Hoomissen entered a supplemental order vacating his December 7 order but with the qualification "for so long as the commissioner of Public Safety authorizes the qualified adult probation officers to carry firearms in the performance of their duties."

On February 6, Hickey acting for Attorney General Avrum M. Gross filed a motion for immediate consideration of a stay of Judge Van Hoomissen December 7 order saying it had taken effect again on February 5. On that date allegedly Nix had suspended the special commissions of the probation-parole officers.

In an affidavit filed with the court, Hickey said as a result of Judge Van Hoomissen's order several high-level meetings in the executive branch had been held and it had been determined by Commissioner of Health and Social Services Helen Beirne that probation-parole officers should not carry firearms and, in particular, that concealed firearms should not be carried.

"This decision was reached upon the advice and concurrence of the Attorney General, the Commissioner of Public Safety and the Governor," Hickey said.

Hickey said the policy was not new in that for "quite some time" the division of corrections had not allowed officers to carry firearms in the absence of special commissioner of Public Safety.

On the other hand, he said that the Department of Law had advised the division of corrections on a number of occasions that to disobey a court order was beyond the score of their duties as state employees, and that defiance could subject them to personal liability if a contempt proceeding resulted.

"From discussions with the central office of the division of corrections it appears that the probation-parole officers have construed Judge Van Hoomissen's order either as a directive to carry concealed weapons when they deem it appropriate, or al least as authority for not complying with any departmental policy or directives from the Commissioner to the contrary, Hickey wrote.

"Consequently, Judge Van Hoomissen's original order and supplemental order have created, and continue to create, considerable confusion and dissension within the executive branch vis a vis employees of the Department of Health and Social Services who want to carry concealed weapons and believe that they are entitled to and conceivably directed to as a result of Judge Van Hoomissen's orders."

In the meantime, Judge Van Hoomissen has employed Wayne Anthony Ross, the same attorney representing the probation and parole officers, to represent him before the Supreme Court. And Attorney Ross has filed a lengthy opposition to the application for stay of Judge Van Hoomissen's order filed by Hickey.

In it Ross claims Hickey has not demonstrated any standing to bring the action nor any justification for bringing it.

-Continued on Page 13

Controversy .....

–Continued from page 7

He claims Hicker merely makes a speculative conclusion unsupported by either citations of law or fact that "Judge Van Hoomissen's order could have immediate and serious consequences to the administration of justice in the State of Alaska." But he says there are no specific facts shown by affidavit or verified complaint that irreparable injury will result.

Ross also points out that since Nix has been restrained from revoking the special commissions to the parole-probation officers that Judge Van Hoomissen's December 7 order is not in effect and therefore the question is moot.

Ironically, the subject of special state trooper commissions came up in another law suit filed a few weeks ago by Al Rowe, a former state trooper and security supervisor during the construction of the pipeline, against Alyeska Pipeline Service Co. and others, including former Public Safety Commissioner Burton and present Commissioner Nix, then head of NANA Security.

In the suit, Rowe alleges that Burton conspired with Nix and others to furnish special state trooper commissions to security guards on the pipeline to assist Nana Security in establishing a non-union unit at Pump Station 5.

In an interview Wednesday, Judge Van Hoomissen confirmed that he had been approached by former Commissioner of Revenue Sterling Gallagher about his interest in the position of Commissioner of Public Safety. Van Hoomissen said he had replied in the negative.

When Commissioner Burton resigned, it was announced that their was a schism among the ranks in the state trooper organization and instead of naming the commissioner from the organization a person to fill the commissioner slot would be sought from outside the state.

Subsequently, two judges from Anchorage, Judge Van Hoomissen, and a former city police chief were contacted about interest, the acting Commissioner Nix was elevated to Commissioner.



Superior Court

State of Alaska

FOURTH JUDICIAL DISTRICT
604 BARNETTE STREET
FAIRBANKS, ALASKA
99701

CHAMBERS OF
GERALD J. VAN HOOMISSEN, JUDGE

February 26, 1979

The Honorable Robert Ziegler
State Senator
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

It has come to my attention that a bill submitted by Senator Bennett which proports to amend AS 01.10.060(6) by adding adult probation and parole officers and correctional officers to subsection 6 of the foregoing statute is coming up for public hearing before the Senate Judiciary Committee on Tuesday, February 27th, in Juneau.

I would like very much to testify before the Senate Judiciary Committee in favor of Senator Bennett's bill, however, because of trial commitments in Barrow I will be unable to appear personally before the committee. I would like you to consider this letter as an endorsement of the bill submitted by Senator Bennett.

As you are probably aware, a great deal of controversy has developed between the executive and the judicial branch of government over the question of whether or not qualified adult probation officers should be allowed to carry firearms. As past presiding judge of the Fourth Judicial District, I entered an order in November authorizing adult probation/parole officers who are qualified by the Alaska State Trooper Academy to carry firearms in the performance of their duties. I do not wish to comment at length upon that order or the subsequent events surrounding that order since there is a case pending before the Supreme Court testing its validity. I do want to say that the order was entered because I am firmly convinced that for the adult probation officers to effectively perform their duties as probation officers for their own safety, they should be allowed to

carry firearms while on duty. I think it is safe to say that I have traveled to the bush areas of this State more than any other Superior or District Court judge. The Fourth Judicial District, which includes Barrow and Bethel Service areas, encompasses an area slightly larger than the State of Texas. We have endeavored over the past five years to provide judicial services to all of the villages within the Fourth Judicial District and its service areas. Necessarily, in the performance of these duties, I am accompanied by probation/parole officers from the Fairbanks office to these remote sites. Since the probation officer is either conducting the presentence investigation or is supervising persons who have been convicted of felonies it is not hard to understand that they are not the most popular people in these remote areas. It is necessary that in the performance of their duties they are required to go into small villages and into dwellings occupied often by a number of people who are antagonistic to the officer. Many times they will find in the course of their duties it is necessary that a probationer or parolee be taken into custody on the spot. Neither Alaska State Troopers nor qualified municipal police officers are available for backup, consequently, the probation/parole officer's safety is in jeopardy when he is required to make an arrest, many times forcefully under such conditions. I have discussed this matter with Mr. Dan Hickey, Chief Prosecutor with the Attorney General's Office, and he assured me that when a probation/parole officer anticipates that he will need backup that he would assure me that the Alaska State Troopers would be present. I consider such an assurance ridiculous under the circumstances for these reasons: (1) the presence of the Alaska State Troopers in the bush areas of the Northern part of the State are many times conspicuous by their absence, and (2) the probation/parole officer just cannot anticipate unforeseen circumstances arising that would jeopardize his safety. It cannot be fairly said that everytime a probation officer goes to the bush he can expect trouble; that simply is not the case. However, trouble does arrive with enough frequency that at least the officer should be allowed to defend himself when faced with life-threatening situations, and have available to him sufficient force to effect an arrest if an arrest is necessary and required under the exigent circumstances. In the fourteen years that I have traveled throughout the bush villages in Northern and Eastern Alaska I have yet to see Mr. Hickey or any member of the Attorney General's office, other than

the ones I have required to be out there, to attend court proceedings. Mr. Hickey is simply not aware of the circumstances that actually exist in the rural areas.

So far I have addressed myself only to the rural areas. The need for a qualified adult probation/parole officer to carry firearms in the urban areas I don't think needs much exposition. Suffice it to say, the people the probation officer is dealing with are convicted felons. They have already demonstrated to the satisfaction of the court or the jury that they do not hold in highest respect the laws and regulations necessary to keep order in society. A probation officer can handle his caseload in two ways: he can sit at his desk and merely check off people who report in from time to time, or he can go out into the community where the probationer has to live, work, raise his family and face the problems that all of us face in everyday life. I am very fortunate in the Fourth Judicial District of having five outstanding probation officers who are sincerely interested in helping their probationers to establish themselves as productive members of society. This effort on the part of the probation officer necessarily requires that they be in a position to call to task probationers who demonstrate no desire to adhere to our laws or conform their conduct to society's demands. Again, the officer cannot anticipate a life-threatening situation is going to arise. I think it is fair to say that most of the people that our adult probation/parole officers deal with recognize that the officers are trying to help them and they themselves have a desire to become again the so-called solid citizen. It is nevertheless a fact that an increasing number of persons on probation do not entertain these same thoughts. In a conversation with the Attorney General, Avrum Gross, approximately two weeks ago, concerning the order I entered, he stated to me that he would take personal responsibility for any probation officer who was injured or killed in the line of duty. I have no doubt that he would feel badly if such a thing happened, however, his assurance and his assumption of responsibility would be a small consolation to a seriously injured probation officer or his widow.

I'm sorry, Senator, this letter is so long but I feel that the issue is an important one, and one that deserves the favorable consideration of the legislature. I do not feel that it is absolutely essential that adult probation/parole officers or correctional officers be specifically included under subsection 6 of

AS 01.10.060, since they already fall into the definition of "peace officer".

I'm enclosing herewith an excerpt of a letter written by Daniel Hickey, Chief Prosecutor, to Mr. James Mayer, Executive Director, Alaska Police Standards Council, dated September 18, 1977, defining a peace officer. I suggest to the committee that a probation/parole officer in the performance of his regular duties as such can perform and is required to perform all of the duties outlined by Mr. Hickey on page 3 of that letter. The passage of Senator Bennett's bill would not, in my opinion, suddenly make probation/parole officers "peace officers". It is my position that they are already peace officers and Senator Bennett's bill would clarify a situation which has given rise to a great deal of controversy and conflicting opinions and regulations within State government. The adult probation/parole officers in the Fourth Judicial District have even been threatened with criminal prosecution under AS 11.55.010 and .020 because of the disagreement as to their status. The new criminal code which becomes effective January 1, 1980, will eliminate the problems that have arisen under our present code. The passage of Senator Bennett's proposed bill will eliminate the problem between now and the effective date of the new code. I sincerely urge its passage.

Again, I am sorry that I will not be able to appear before your committee personally, however, if you have any questions with reference to my position on this bill, please do not hesitate to call on me at my office, 452-1580, or at my home 479-3[illegible]1.

Thanking you for your courtesy and consideration in this matter, I am

Very truly yours,

Gerald J. Van Hoomissen/sp

Gerald J. Van Hoomissen
(signed by secretary as directed)

GJVH/sp

Enclosure

"peace officer" as used in AS 01.10.60(6) has been given a more restricted meaning and includes public law enforcement officers having full law enforcement authority within a particular jurisdiction.

Quite clearly, a peace officer is defined in the first clause of AS 01.10.060(6) to mean public law enforcement officers having full police duties which as a general rule would include the following minimum requirements: the power to arrest and to issue citations for minor offenses; the power to detain a person taken into custody until that person can be arraigned before a judge or magistrate; the power to use all necessary and reasonable force authorized by law, including the use of deadly force in limited circumstances; the authority to conduct investigations into suspected or known violations of the criminal law; the power to search with or without a warrant, persons, dwellings and other forms of property for contraband and evidence of a crime; the authority to suppress riots and to maintain order during emergencies and natural disasters; the authority to execute process issued by a court; and, in general, the discretionary authority to take such other action as is consistent and necessary with the exercise of these enumerated powers when essential to maintain the public peace, such as the authority to carry a concealed weapon. See e.g., AS 11.55.020.

P.O.'s have all these Powers + Responsibilities

FOURTH JUDICIAL DISTRICT

IN THE MATTER OF:

The Authorization for Probation Officers to Carry Concealed Firearms.

SUPPLEMENTAL ORDER

Subsequent to the time that the Court had originally considered the question of whether Probation Officers of this court could be allowed to carry firearms without a specific permit from the Commissioner of Public Safety of the State of Alaska, but prior to the Order entered December 7, 1978, authorizing adult Probation Officers in this district to carry firearms provided they were qualified to do so, the Commissioner of Public Safety did in fact issue commissions to the qualified adult Probation Officers to carry firearms in the performance of their duties.

Consequently, the Order of December 7, 1978, is unnecessary and shall be and hereby is VACATED for so long as the Commissioner of Public Safety authorizes the qualified adult Probation Officers to carry firearms in the performance of thier duties.

DATED at Fairbanks, Alaska, this 4 day of January, 1979.

Gerald J. Van Hoomissen
Superior Court Judge

cc: District Attorney
Div. of Corrections
Supreme Court

FOURTH JUDICIAL DISTRICT

IN THE MATTER OF

AUTHORIZATION FOR PROBATION OFFICERS TO CARRY CONCEALED FIREARMS

It appearing that to insure their safety and to perform their duties as officers of the Court, Probation Officers of this Court require the use of a firearm.

THEREFORE, IT IS ORDERED, that when qualified, each regularly appointed Adult Unit Probation Officer of this Court is authorized to carry a concealed firearm on his or her person.

DATED at Fairbanks, Alaska, this 7 day of December, 1978.

Harold J. Van Hoomissen

SUPERIOR COURT JUDGE

ALASKA PEACE OFFICERS ASSOCIATION
FARTHEST NORTH CHAPTER

AFZT-PM-W

9 February 1979

Mr. Wayne Anthony Ross
Attorney at Law

Dear Sir,

Information concerning the recent objection for Removal of Commissions for Adult Parole and Probation Officers to carry concealed weapons in the performance of their duties has been brought to our attention. This alarming objection comes as a grave disappointment and extreme concern for our fellow Law Enforcement Officers. The reasoning for this action considering their role in the Criminal Justice System is baffling to say the least. These Officers confront on a daily basis known felons who without question have little or no respect for law and order and even less for representatives of Law Enforcement.

These Officers have all met the Police Standards Council and are fully qualified. Additionally a vast majority have previous Law Enforcement background which include the attendance of Police Academies and various Law Enforcement Seminars. Many Law Enforcement Officers were personally contacted and expressed their concern over this action.

The Farthest North chapter of APOA gave their vote of confidence in addressing Former Commissioner Burton's Task Force report in 1976 for commissioning these officers. Our position is unchanged and speaking for the largest chapter of APOA we fully support and indorse the Parole and Probation Officers of Fairbanks Office. They are without question true professionals and exhibit the highest standards of any parole and probation office I have worked with.

Having been associated with Law Enforcement work over the last nineteen (19) years there is little question in my mind that these Officers of the Adult Parole and Probation Office are fully qualified and warrant the commission to carry weapons, by virtue of their extreme high potential of encountering a felon who has little regard for Law Enforcement representatives. The decision of this action impacts greatly upon their mission. It is our sincere wish that in the final analysis that these Officers be permitted to retain their Commissions.

Sincerely,

JAY R. RHYMES
President

cc: Adult Parole/Probation
Executive Board APOA

ALASKA PEACE OFFICERS ASSOCIATION

State APOA Office
P.O. Box 3520 DT
Anchorage, AK 99510
Phone 337-7712

February 9, 1979

Governor Jay S. Hammond
Pouch "A"
Juneau, Alaska 99811

Dear Governor Hammond:

It has come to my attention that the Acting Commissioner of Public Safety has recently attempted to rescind the Special Commissions that had been extended to the Adult Probation/Parole Officers of the State. I observe that Commissioner Nix's opinion is inconsistent with the decision that had been previously made by Commissioner Burton. Commissioner Burton and previous representatives of the Department of Public Safety were so convinced of the Probation/Parole Officers' need to protect themselves, that to resolve the dispute between the Attorney General and the Probation/Parole Officers, Commissioner Burton, as others have done in the past, issued Special Officer status pursuant to AS 18.65.010. Probation/Parole Officers have not changed their role or function. Their job, if anything, has become tougher in recent years.

The zealous attempt of the Attorney General to strip the Adult Probation/Parole Officer of the concealed firearm is beyond comprehension. I understand the Attorney General has focused on the definition of peace officer and has argued that the legislature's failure to specifically include the Probation/Parole Officer meant that the legislature must have meant to exclude the class from the coverage of the definition. It is observed that in the Criminal Code, which recently passed the legislature and which will go into effect January 1, 1980, the legislature specifically defined a peace officer as: "a public servant vested by law with a duty to maintain order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders." This new definition of "peace officer" includes Probation/Parole Officers. I have also been apprised that the Attorney General has taken issue with a court order issued by Superior Court Judge Gerald J. VanHoomissen. The court order specifically orders that the Adult Probation/Parole Officer of the Fourth Judicial District is authorized to carry a concealed firearm.

Court action to resolve the Special Commission issue is pending in the Third Judicial District. Action to resolve the Attorney General's question concerning Superior Court Judge Gerald J. VanHoomissen's court order is pending a Supreme Court Hearing in Fairbanks. A great deal of effort is being expended by the Attorney General in opposing judicial and executive efforts in trying to disarm the State's Adult Probation/Parole Officers.

It is difficult to understand why the Attorney General has taken such a fanatic position in attempting to disarm the Adult Probation/Parole Officer of this critically needed tool. It would appear that the Attorney General's motivations for taking issue with such a trivial matter is motivated by something other than a fact of law.

It has been my personal observation that on numerous occasions, the Adult Probation/Parole Officer, while acting within his authority, has initiated and assisted in investigations and the arrests of dangerous and armed felons. I, as a supervisor of a narcotics unit over the past four years, have had occasion to work closely with the Adult Probation/Parole Officers in Fairbanks and have found their actions to be of the highest quality and professionalism. I have participated in investigations where the presence of an armed Probation/Parole Officer was of a great advantage to the safety of all concerned.

Why such tunnel-visioned focus on this issue is not yet understood.

I understand that one area frequently argued by the Attorney General is that a State Trooper or other police officer could be called upon to accompany an Adult Probation/Parole Officer when violence is expected. It would be a serious waste of manpower to require an additional police officer to assist when the Adult Probation/Parole Officer is more than capable of handling the situation at hand. It should be noted that the most dangerous situations are not always the most obvious situations.

When the State sends out an Adult Probation/Parole Officer to effect an arrest of a felon (all arrests made by the Adult Probation/Parole Officers are felonies), it will be done peaceably if possible or forcibly if necessary. It is beyond my comprehension how the Attorney General and the Acting Commissioner of Public Safety can rationalize their attempts to disarm these officers. We should be careful not to make their jobs so dangerous to perform that they might shrink from their duties and hesitate from the action which the proper protection of society demands.

I submit that the continued arming of our Adult Probation/Parole Officers is in the best interest of the citizens of this state. I am writing you in an effort to keep you informed of law enforcement's position in this important issue. I simply seek to make our position known and sincerely hope it will not create any animosities.

Your attention to this important issue would be greatly appreciated.

Sincerely,

Craig A. Forster

Craig A. Forster, President
Alaska Peace Officers Association
656 7th Avenue
Fairbanks, Alaska 99701

ALASKA PEACE OFFICERS ASSOCIATION

Capital City Chapter
P. O. Box 751
Juneau, Alaska 99802

27 February 1979

Mr. Wayne Anthony Ross
Attorney at Law

Dear Mr. Ross:

The Capital City chapter of the Alaska Peace Officers Association has recently been advised of an effort to prevent select probation officers handling adult caseloads from carrying a concealed weapon (hand gun) in the performance of their official duties.

This has been an on-again, off-again situation for a considerable number of years, to the point that many members of our association have been concerned about the extent State government is willing to go in providing avenues of legal and administrative relief for criminal offenders and, at the same time, fail to recognize the need of those Justice System personnel who are hired and sworn to uphold the law.

In our opinion, government is supposed to represent the best interests of the people and, in doing so, ensure that the probation officers in this case, who are public servants, have the necessary equipment to properly discharge their duties in the safest manner possible.

This most recent action directed against probation officers who exercise, by law, their authority to arrest with or without a warrant, the very same criminal element as police, many of which the police would not even think of apprehending, if unarmed and expected to do so, only tends to reinforce our concern about the criminal element's welfare and rights being placed above the safety and welfare of those government employees charge with enforcing the law.

No one can argue philosophy with any degree of success in the face of cold facts and reality concerning this matter. When a probation officers happens upon a probation or parole violator, there are two thing he will know for sure if he is prohibited from carrying a firearm in the performance of his duties.

A. He will know for sure that he is not armed.

B. He will have no way of knowing whether the violator is armed or not.

In view of such facts, it would appear an easy decision to make: allowing probation officers to carry firearms in the performance of their duties.

Thank you.

Very truly yours,

William H. Huston
President
Capital City Chapter
Alaska Peace Officers Association

P. O. Box 751
Juneau, Alaska 99802

PROBATION - PAROLE

JAN 04 1979

NRO - FAIRBANKS, AK

CR06 CR06

MSG. 1-6. JAN. 4, 1979

ED COLEMAN

ED, HERE IS THE LIST YOU ASKED FOR CONCERNING PAROLEES AND PROBATIONERS WITH DANGEROUS WEAPONS. THE FOLLOWING WERE SEIZED IN 1978:

OFFICER	DATE	STATUS	ITEM
ANDERSON	1-17-78	PROBATIONER	CHARTER .44 SPEC. PISTOL
KORENEK	2-78	PROBATIONER	DAGGER
MURRAY	3-24-78	PROBATIONER	.22 RIFLE
MURRAY	3-24-78	PROBATIONER	.30-30 RIFLE
MURRAY	3-24-78	PROBATIONER	.22 RIFLE
MURRAY	3-24-78	PROBATIONER	.20 GUAGE SHOTGUN
MURRAY	3-24-78	PROBATIONER	.30: 1893 RIFLE
MURRAY	3-24-78	PROBATIONER	.380 LLAMA PISTOL 8/100 RNDS. A.P.
ALLEN	7-78	PROBATIONER	S&W 29 44 MAG
ANDERSON	8-23-78	PROBATIONER	RUGER 44 MAG.
KORENEK	12-21-78	PROBATIONER	COLT 357 MAG.
KORENEK	12-21-78	PROBATIONER	CHARTER 38 SPECIAL
ALLEN	12-29-78	PROBATIONER (INTERSTATE)	ROSSI 12 GA SHOTGUN/DOUBLE BARRELL 19 1/2"

ROY MURRAY

PLEASE ACK. RECEIPT OF THIS MSG./LOIS

STATE OF ALASKA

Class Specification

PROBATION OFFICER II

4343-16

Definition:

Under general supervision, carries a caseload involving office and field work in probation and parole, pre-sentence investigation, supervision and guidance of youth and adult parolees or probationers.

Distinguishing Characteristics:

This is the fully qualified professional journeyman level class which is distinguished from Probation Officer I by the independence of action, latitude of judgment exercised, and by the assignment of any case. It is distinguished from the Probation Officer III class in that normally a Probation Officer II does not supervise other Probation Officers although he may be responsible for training of Probation Officer Trainees and Probation Officer I's.

Examples of Duties:

Counsels parolees and probationers, helps them to understand their problems, and adapts the treatment program to the individual.

Develops employment opportunities for persons eligible for or on parole or probation.

Works with and secures the cooperation of social, law enforcement, recreational, religious, educational and other agencies concerned with the rehabilitation of parolees and probationers.

Utilizes casework methods in the supervision of parolees and probationers, and makes individual diagnoses and progress reports indicating case prognosis.

Investigates cases of parole or probation violators, compiles evidence required to effect the suspension of parolee or probationer, and apprehends violators for return to custody.

Compiles case histories, dictates correspondence, and prepares reports.

Maintains personal contacts at office and periodically visits with parolees and probationers to assist them with problems of social readjustment.

Cooperates with local and state police, institutional and judicial officials in the supervision of parolees or probationers.

Performs other related duties as required.

Knowledges, Skills and Abilities:

Knowledge of: Principles and practices of counseling, guidance, and placement; cause, extent, and treatment of delinquency and criminality; procedures of parole and probation casework and court procedures; habits; attitudes and psychology of persons with delinquent tendencies; community resources and agencies which

APOA Membership

July 18, 1977

John E. Baus

1977 ANNUAL PAT TOBIN SHOOT
- SCORES -

The following are the scores fired at the 1977 Annual Pat Tobin Memorial Shoot held on July 17, 1977:

1. Ward Schute, Elelson AFB - 98.8 with 25X.
2. Don Allen, DOC - 98.8 with 20X.
3. Ken Turcotte, Elelson AFB - 98.4 with 16X.
4. Steve Devore, Elelson AFB - 98.0 with 21X.
5. Ron Murray, DOC - 97.6 with 18X.
6. Richard Wolfe, FPD - 97.6 with 15X.
7. Tom Campbell, Elelson AFB - 97.2 with 22X.
8. Louie Fleming, Elelson AFB - 96.4 with 19X.
9. John Addis, AST - 96.4 with 19X.
10. Robert Wolfe, Elelson AFB - 96.4 with 16X.
11. John Baus, FPD - 96.0 with 24X.
12. Steve Korenek, DOC - 95.6 with 18X.
13. Jim Lowe, FPD - 95.2 with 9X.
14. Doug Woolley, FPD - 94.0 with 21X.
15. George Pollitt, AST - 94.0 with 10X.
16. George Hiller, Elelson AFB - 93.6 with 16X.
17. Ken Fore, Elelson AFB - 92.8 with 18X.
18. Noel Napolllll, FPD - 92.4 with 23X.
19. Gary Vogt, FPD - 92.0 with 3X.
20. Wayne Jones, DOC - 90.8 with 19X.
21. Jim Barclay, FPD - 90.8 with 7X.
22. Terry Zee, APS - 90.4 with 15X.
23. Robert Coleman, Elelson AFB - 90.4 with 12X.
24. Herb Kallman, APS - 90.4 with 10X.
25. Victor Gunn, FPD - 89.2 with 4X.
26. Jim McCann, AST - 88.8 with 12X.
27. Don LaSage, FPD - 88.4 with 9X.
28. Gene Kallus, AST - 88.0 with 9X.
29. Joel Head, US Army - 86.4 with 12X.
30. Fred Schumacher, APS - 85.2 with 9X.
31. Pete Gunn, APS - 84.8 with 13X.
32. Rick Cummings, FPD - 84.8 with 11X.
33. Skip Harrington, APS - 82.4 with 12X.
34. Tom Barnese, US Army - 81.2 with 12X.
35. Pete Villarreal, Elelson AFB - 81.2 with 9X.
36. Ken Razza, Elelson AFB - 79.6 with 13X.
37. Ken Keber, FPD - 79.4 with 8X.
38. Ted Maynor, APS - 77.6 with 15X.
39. Jerry Prater, FPD - 76.0 with 9X.
40. Roland Bonneville, FPD - 76.0 with 8X.

DOC

DOC

AST X

DOC

APAP
DOC 2ND PLACE

1978
3rd PLACE

September 22, 1976

OC All PO's

OPEN LETTER TO ALL APOA CHAPTERS

LADIES & GENTLEMEN:

RE: Full Peace Officer Statutory Definition for Probation Officers

As a result of a continuing need to fully protect and provide for State Probation Officers who do, most definitely, go about their duties which are comprised of traditional peace officer functions, I am writing you for your support and requesting this support based on the attached material which includes a copy of written evidence of strong support from the FAR NORTH APOA CHAPTER.

It is respectfully and earnestly requested that the support from all of the APOA chapters be condensed into strongly written form clearly stating that your support encompasses not only the inclusion of State Probation Officers as peace officers in the public employee's retirement system, but also includes that State Probation Officers be clearly defined as peace officers under all Alaska Statutes which functionally and authoritatively bestow full peace officer powers.

It is further requested that this unanimous recommendation from APOA be addressed to the Governor, the Legislature, and the Commissioner of Health and Social Services, with copies to our Director and Chief of Probation Services, and this writer.

Enclosed are excerpts from a letter, dated 6-7-76, from the President of FAR NORTH APOA to Commissioner Burton endorsing what is requested of all chapters.

Also find enclosed a letter, of March 4, 1975, that I wrote to Commissioner Burton in an attempt to reinstate our Special Officer Commissions we have formerly had, which have always been poor substitutes for fully legislated peace officer status. The letter briefly summarizes some of the kinds of hazardous job functions we must perform in the field, and it also registers a profound concern for the personal safety of our professional staff that they and I still share.

Like other peace officers, probation officers deal with convicted felons and adjudicated delinquents every working day of their lives. And there is no doubt that these offenders are becoming more violent and aggressive. It is only a matter of time until we are assisting one of our staff member's survivors or visiting an injured probation officer in a local hospital.

It has occurred that probation officers have routinely entered an offender's residence alone and unarmed, and, in the past, have had to back away from making an arrest, when probable cause was in evidence, because the officer had no firearm as emergency support. Subsequently, this has left the probationer or parolee free to escape or destroy evidence which would have supported a revocation action.

Some probation officers have long met minimum police standards of police training and have possessed special officer commissions to act as peace officers. These commissions were issued by the Department of Public Safety and have to be renewed every year. Commissioner Burton of Public Safety has stated very clearly that these commissions are issued for the purpose of enlisting our personnel for emergency peace officer duty under his command and are not issued to our

staff to aid in carrying out our duties. Presently, Commissioner Burton is withholding the renewal and the initial issue of commissions pending an Attorney General's opinion regarding the commissions, defining how and for what purpose they should be issued.

A probation officer should not have to rely on another department or agency in order to do his job. It is obvious that these people should have sufficient legislative authority to accomplish any task the job demands. As present Alaska Statutes are drawn, an earlier Attorney General's opinion has clearly stated that these laws do not recognize probation officers as peace officers.

In the past five years, probation officers in the Anchorage region alone have seen a rise in the incidence of threats of bodily harm and death from probationers, parolees and anonymous callers. A minor assault has thus far occurred and offenders from Anchorage proper have recently experienced an increased incidence of seizure of deadly weapons they had in their possession. These weapons have taken the form of handguns and concealed knives. More recently a loaded, snub-barrelled .38 revolver was seized from a female offender considered to be a "fringe group" or "soft core" felon compared to many of our drug-related cases who are into hard core criminal activity in order to support their criminal proclivities, drug habits or the drug habits of others. Probation-Parole Field Services has no control over the severity of criminal cases given to its custody. These kinds of cases are reality. And many do go armed with deadly weapons concealed, or have ready access to these deadly weapons, during their release time. Of that there is no doubt as our cases of record and local police indicate clearly.

As stated in the attached material, the Anchorage superior Court Judges--in 1971--recommended that probation officers be allowed to carry concealed firearms in the course of duty. This is certainly a necessary part of full peace officer authority.

And, lest there be any doubt about the reality of where our thoughts lie, we probation officers do not agree with the idea that people must be hurt and blood must be let in order to substantiate the inherent risk that probation officers have in the course of their work.

Because of all reasons herein included in this letter and attachments, legislation making probation officers peace officers is needed to better protect the public and our employees.

NOTE: APOA, during the June, 1976 Crime Conference, indicated that if possible I should attempt to attach a dollar estimate to the total cost of bringing State Probation Officers under the peace officer retirement system. An attempt was made to obtain professional assistance from the Division of Retirement to facilitate an actuarial estimate of cost. Division of Retirement personnel informed me that they were unable at this time to provide me with such an estimate, it being a rather involved and costly process. Therefore, available resources have not permitted the obtaining of this information. However, it is important to note that that part of full peace officer status, which legislation could provide, would include approximately 65 probation officers statewide; we are not talking about literally hundreds of people in this or other job classes.

Your consideration and unified endorsement for full peace officer status by appropriate legislation is extremely appreciated. It is respectfully requested that each chapter communicate its decision on this matter to the President of APOA as soon as possible.

Very sincerely yours,

Edward B. Coleman

Edward B. Coleman
Probation Officer IV & Regional Administrator
APOA Member

EBC:bjh

2 Enclosures

cc: William Huston, Director
Walt Jones, Asst. Director & Chief
Probation-Parole Field Srvs.
All Supervisors, SCRO
John Cain, Regional Administrator, N. Reg.
President APOA

March 4, 1975

Richard L. Burton, Commissioner
Department of Public Safety
Pouch N--State Capitol
Juneau, Alaska 99301

RE: Special Officer Commissions,
A.S. 13.65.010

Dear Commissioner Burton

As you requested, applications, in addition to the ones you have already received, are enroute to you. My application will have to go via our Central Office for endorsement by our Director and then on to you. We are retaining our commission cards until you pass individual judgment on each applicant, as per your recent phone conversation with Duncan Fowler on February 27.

I would like to apprise you of the history of how we originally got into this business of Special Officer Commissions. Briefly, in 1971, the dangerous type of offender we were burdened with investigating, supervising, and arresting (often without the aid of police who were engaged in other important investigations and protective work) had increased in alarmingly significant numbers. It was clear to us, and local police, that the vicious audacity of the violence-orientated offenders we dealt with had grown accordingly. The face of crime, so to speak, had worsened so much that threats to life and highly charged situations were becoming much more routine to our staff. The police remarked to us that more common offenders, apart from these I speak of, were carrying firearms concealed as a matter of habit, at one time or another, during their time on the street.

The situation is even worse now, but then we knew, (as did our Director, Charles Adams) that it was time to arm our professional staff with at least the very minimum of personal protective equipment for field use. In November of 1971 the Judges of the Superior Court of the Third Judicial District recognized our serious plight. In writing they unanimously, (with the exception of the Family Court Judge), endorsed the carrying of concealed firearms for the personal protection of our staff.

Col. Dankworth, then Director of the Alaska State Troopers, agreed to provide annual firearms training particulary tailored to meet our needs. It was made clear, by all concerned, that the arms were to be used only in emergency self protection. They would be drawn only on an individual who is offering an imminent and unswerving, felonious threat to life and body and where no other defensive alternative is available. We were, and are, restricted from using these arms in any other way by Division policy. It is important to also tell you that Col. Dankworth, after being made aware of our profound need, suggested that our professional staff, charged with the responsibility for adult cases, apply for Special Officer Commissions.

The growth of population and crime of this area--with its commensurate number of heavy offenders that we must deal with--frankly, bears on us with the full weight of its volatile mass. Our problem with Special Officer Commissions, as it now stands, could not have materialized at a more critical time. In few words, we are extremely worried about the personal safety of our people who may shortly run the risk of being totally unarmed and therefore have that much more risk for great bodily harm and murder. I do not for a moment believe anyone wants to see one of our officers killed or maimed, (not that the designation by commission and a weapon is remotely absolute protection, nothing is) before some provisions for minimal personal protection are a reality.

Our quarterly informal meetings, over the past year, between our adult line staff and Capt. Anderson's troopers have proved mutually helpful in fostering closer cooperation and understanding between our two agencies which must work together. I hope that in this spirit, we can work out some means to insure that any of those needing training to qualify can be assisted locally to allow our limited numbers to fulfill our work requirements in the safest way possible and still come up to applicable standards.

Thank you very much for your indulgence and any assistance possible. It honestly does mean so much to our staff and their best efforts toward more safely and effectively discharging the responsibilities of their work.

Sincerely,

Frank B. Coleman

Frank B. Coleman
Regional Administrator

FBC/rk

cc: Charles Adams, Director of Probation/Parole Services
Walter B. Jones, Chief of Probation/Parole Services

In the spring of '72, after receiving approval from our higher authorities, academic firearms training was obtained from Bob Penman of the Alaska State Troopers. As I recall, the actual firing of weapons in '72 was not accomplished as a unit then. Firing for qualification along with more classroom training followed through out 1973 and 1974. We were about to schedule our annual training for 1975 and had obtained an ammunition supply just prior to receiving your notifications. This will be held in abeyance pending your final decisions.

Our routine duties encompass adult felony case supervision in the field, working in close field cooperation with Alaska State Troopers and the Anchorage Police Department members comprising the joint police Metropolitan Drug Unit, Adult Pre-sentence Investigations, Interstate Placement Investigations of felons applying for transfer, bail supervision when Court ordered on those charged with all types of violent crimes, to name some of the more prominent functions of more dangerous proportions.

It is important to note the reality of the extreme "bodily-harm and death" threats that we have seen on the definite increase over the past several years from felons and anonymous people. One more recent threat was delivered to a probation officer with the command that he change a pre-sentence recommendation on the report to the Court or face great personal violence or death. Needless to say this officer did not change his recommendation for "time to serve" on this drug dealer. The man was sentenced to prison. Another instance saw your troopers and our probation officer at Kenai intercept a felon who had avowed to visit our regional office in Anchorage and kill all officers present. As I write this letter, one of our more pernicious drug-orientated felons we have on probation, allegedly had a murder contract put out on him. Our assigned probation officer reported that the threat of murder to this person, (whom our officer was personally contacting frequently in the community), was verified by federal authorities and a local district attorney. This defendant has been removed from Anchorage for his own personal safety. Our officers, being closely indentified by the criminal element as an advocate and influence for the offender's assisting police and prosecutors, never did, and never will, have a place to hide from the "contract" man or other malignant segments of the local criminal culture. One of our "bush" officers was recently threatened with death. He is assigned to the Bethel area. I could go on, but I'm sure you get the idea. With your vast experience, you are many times more familiar with this type of cancer than most segments of the criminal justice system.

I do appreciate your reviewing and updating the procedures for the issuing of Special Officer Commissions. I think all concerned must be sure of exactly who is vested with this authority, his preparation, specific training, and character. Believe me, we also want to be sure our training is adequate.

I also realize there are possibly some of our officers who may not qualify by interpretation of statute and related administrative code. Since the work these professional staff must do will not abate, I do ask, for any of those who may be judged as not qualifying, that local training be made available in the Anchorage area. Then those who have a real need for commissions will have an opportunity to obtain them consistent with our legal work requirements which must be steadily met with our limited assigned personnel.

ALASKA PEACE OFFICERS ASSOCIATION

Dated 6/7/76

Letter to Commissioners Burton, Public Safety

PROBATION - PAROLE OFFICERS IN DOING THEIR JOB RUN INTO VERY DANGEROUS SITUATIONS AND NEED THE PROPER TOOLS TO FUNCTION IN THEIR DISIGNATED CAPACITY. LOCALLY, PROBATION PAROLE HAS BEEN OF GREAT ASSISTANCE TO US AND HAVE BEEN SUPPORTIVE IN LAW ENFORCEMENTS COMMON GOAL OF PROTECTING THE PUBLIC. TO IGNORE THEIR EXISTENCE AND POTENTIAL USEFULNESS IN PROTECTING SOCIETY WOULD BE A DISSERVICE TO LAW ENFORCEMENT AND THE COMMUNITY. WE URGE THAT THE ABOVE MENTIONED RECOMMENDATIONS BE GIVEN SERIOUS CONSIDERATION AND IMMEDIATE IMPLEMENTATION.

IN CONCLUSION WE HOPE THAT PROGRAMS INITIATED BY THE TASK FORCE WILL BE CARRIED THROUGH TO THEIR CONCLUSION AND NOT SHUFFLED TO THE BACK BURNER AFTER PUBLIC ATTENTION HAS MOVED ELSEWHERE. A PROGRESS REPORT, BY THE TASK FORCE, AFTER A REASONABLE PERIOD OF TIME TO IMPLEMENT THE VARIOUS PLANS TO INTERESTED PARTIES AROUND THE STATE MIGHT ALSO BE A GOOD IDEA.

WE THANK YOU FOR SOLICITING OUR COMMENTS AND SUGGESTIONS AND TRUST THE FORGOING WILL BE OF SOME HELP TO YOU IN A WORTHY CAUSE ALL OF US HAVE A STAKE IN.

SINCERELY,

Nancy Vogt

PRESIDENT/FAR NORTH APOA

TRAINING:

YOUR RECOMMENDED PROGRAM IS LONG OVERDUE AND SHOULD PROVIDE MANY BENEFITS TO CORRECTIONS PERSONNEL. THE TASK FORCE STUDY OF CORRECTIONS DID NOT ADDRESS ITSELF TO PROBATION - PAROLE IN IT'S STUDY AND THEREFORE HAD NO RECOMMENDATIONS TO MAKE IN THE AREA OF PROBATION - PAROLE WHICH IS A PART OF CORRECTIONS. WE FEEL THAT SINCE PROBATION - PAROLE OFFICERS GO OUT IN THE FIELD AND PART OF THEIR JOB IS TO ARREST PROBATION - PAROLE VIOLATORS, THAT THEY BE PROPERLY TRAINED IN THE AREA OF ARREST, SEARCH AND SEIZURE, WEAPONS TRAINING, AND TEMPORARILY BE COMMISSIONED SPECIAL OFFICERS PRIOR TO INTRODUCING LEGISLATION TO OFFICIALLY MAKE THEM PEACE OFFICERS.

The above is an excerpt from a letter with other material not directly related to it.

Plaintiffs have received no such guidelines, nor have they had a chance to comment thereon. Plaintiffs have not had an opportunity to review the referenced Attorney General's opinion unless such opinion is one of those attached hereto. There being no opportunity for Plaintiffs to receive or comment on the proposed decision there has been no opportunity to submit the decision to the grievance process.

As the safety of State employees is the brunt of this dispute and APEA is the representative of those employees, APEA respectfully requests that this court enjoin the named Defendant from instituting or enforcing the decision of Commissioner Nix until such time as the procedure as provided in the contract between Defendant State of Alaska and Plaintiff APEA, can be followed. Article 17 of the subject contract further sets out procedures for determining whether or not the denial of the use of weapons constitutes an unsafe working condition. It is necessary under Article 17 for th Department of Labor to make such determination. Further, the State of Alaska is contractually bound to take no disciplinary action against Plaintiffs should they refuse to work on an unsafe job.

For these reasons Defendants should be enjoined from enforcing the decision of Commissioner Nix until such time as the matter has been handled pursuant to the contract and a decision is entered.

II

THIS COURT SHOULD DECLARE THAT UNDER ALL APPLICATIONS ALASKA LAW PROBATION/PAROLE OFFICERS ARE "PEACE OFFICERS"

The Probation/Parole officers seek a declaratory judgment from this court that they are peace officers under Alaska Law.

Alaska Statute 33.05.010 puts the probation system under the authority of the Commissioner of the Department of Health and Social Services (see also A.S. 33.20.200(1)).

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The Commissioner has the duty to assign to the superior court qualified probation officers (A.S. 33.05.020(a)) and the Commissioner may assign these probation officers duties concerning the administration of the parole system (A.S. 33.05.020(b)). As shown by the Affidavit of Edward Coleman, most if not all of the probation officers have parole functions. These probation/parole officers are officers of the Superior Court and subject to the authority of the Superior Court. (A.S. 33.05.030). These officers have the power of arrest (A.S. 33.05.070 and A.S. 33.15.210).

Alaska Statute 12.25.010 sets forth who may make an arrest. It states:

> Persons authorized to arrest. An arrest may be made by a peace officer or by a private person.

It is clear therefore that probation/parole officers under Alaska Statutes who make arrests, make those arrests either as a peace officer, or as a private citizen.*

Since A.S. 33.03.030 makes these probation/parole officers, officers of the Superior Court, and not all private persons are officers of the Superior Court, probation/parole officers have more authority and responsibility than a private person.

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* A.S. 12.25.010 gives only two categories of persons who can make arrests: peace officers or private persons. In Attorney General's Opinion No. 36 issued September 18, 1977, the Attorney General's Office admits that "the term 'peace officer' is not restricted to commissioned officers employed by the Department of Public Safety." The Attorney General then goes on to state that to "be considered a peace officer in the fullest sense" a person designated "with the powers of a peace officer" must "also actively participate during substantially all of his working hours in law enforcement activities." The Attorney General thereby adds a third category, his own, to those persons allowed to arrest. This third category is apparently sandwiched in the Attorney General's scheme of things somewhere between a private person and a "peace officer in the fullest sense." Perhaps this hybrid could be called a "peace officer with less than full sense"? Or a "mini peace officer". Unfortunately for the Attorney General, this "less than full sense peace officer" exists only in the Attorney General's mind and has no basis in law. A rose by any other name is still a rose. A person, with peace officer power, by any other name is still a peace officer.

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The Attorney General has taken the position that this greater authority and responsibility held by probation/parole officers still does not make probation/parole officers peace officers. (See Attorney General's opinion No. 36, rendered September 18, 1977, supra).

Alaska Statutes however conflict with the Attorney General's opinion.

AS 01.10.060 defines "peace officer" as, among other things: Any. . .other officers whose duty it is to enforce and preserve the public peace." Since A.S. 33.05.010 requires the Commissioner of Health and Social Services, and hence his agents, to "enforce" the probation laws and such laws are aimed at maintaining public peace,* A.S. 01.10.060(6) would seem to imply, at least, that the Commissioner's probation/parole officers are peace officers under A.S. 01.10.060(6).

As the United States Supreme Court stated in U.S. ex rel Marcus v Hess, (1943) 317 U.S. 537, 557, 87 L.Ed 443, 456, 63 Sup. Ct. 379, if "(this) court is justified in reading a statute, not narrowly as through a keyhole, but in the broad light of the evils it aimed at, and the good it hoped for, it is here." As shown in Edward Coleman's affidavit, probation/parole officers deal on a day to day basis with persons known and found, by a court of competent jurisdiction,

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* On September 29, 1976, President F d signed into law the Public Safety Officers' Benefits Act of 197[illegible] (42 U.S.C. §3796 et seq.) which authorizes the Law Enforcement Assistance Administration (LEAA) to pay a benefit of $50,000.00 to specified survivors of "public safety officers" found to have died as a direct and proximate result of a personal injury sustained in the line of duty. "Public safety officer(s)" is defined as "a person serving a public agency in an official capacity. . .as a law enforcement officer or as a fireman." Among those for whom coverage is intended are persons involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws, including police, corrections, probation, parole and judicial officers. Since the United States government recognizes probation and parole officers as officers involved in public safety, it is reasonable for this court to find such officers are involved in enforcing public peace.

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to be felons, many with a propensity for violence. Thus the need for firearms for protection of the individual officers is readily apparent. Therefore this court should not narrowly construe AS 01.10.050 to eliminate probation/ parole officers from the statutes' definition of peace officers.

A.S. 01.10.050 is far from clear however and this court is certainly well justified in looking elsewhere in the statutes to ascertain the extent of the meaning of the phrase "peace officer."

The phrase "peace officer" is defined elsewhere in the Alaska Statutes.

A.S. 11 30.100 defines a "peace officer" as among other things.

> An officer or employee of an authorized representative of an officer or employee of . . .the State. . .who has authority to either (A) arrest a person by taking him into custody or (B) detain a person under a warrant, order or other legal process..

The definition of a "peace officer" contained in A.S. 11.30.100 is clearer than that in A.S. 01.10.050 and since probation/parole officers are "officers" (A.S. 33.05.030) and "employees of the State" (A.S. 33.05.020) and have authority to "arrest" (A.S. 33.05.070) or "detain under a warrant" (A.S. 33.15.210) it is clear that under the definition of "peace officer" contained in A.S. 11.30.100, State of Alaska, Department of Health and Social Service probation/parole officers are "peace officers" for purposes of that section, at least.

If probation/parole officers are "peace officers" for pursposes of A.S. 11.30.090 making it a crime to escape from a peace officer" it makes no sense to hold, as the Attorney General apparently does, that probation/parole officers are not "peace officers" for purposes of A.S. 01.10.050 and A.S. 11.55.020.

A.S. 11.55.010 makes it a crime to carry a concealed

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weapon. A.S. 11.55.020 exempts from this prohibition against carrying a concealed weapon "peace officer(s) whose duty it is to serve process or make arrest". Since probation/parole officers have among their duties, the duty to make arrests (A.S. 33.05.070 and A.S. 33.15.210) and since A.S. 01.10.050 implies and A.S. 11.30.100 clarifies probation/parole officers are, in fact, peace officers, it should be clear that the exemption against carrying concealed weapons contained in A.S. 11.55.020 applies to probation/parole officers.

Other states, too numerous to mention, have held probation/parole officers to be peace officers. See for some examples, In Re Ronny, 242 NYS2d 844 (1963); Figaro v Ward, 383 NYS2d 529 (1976); People v Clark, 69 Calif.Rptr 218 (1968); People v Cloud 81 Calif.Rptr 716, (1969).

The Alaska Legislature has attempted to clarify for the Attorney General and perhaps for others the meaning of the phrase "peace officer". In 1975 the legislature again gave us a definition of "peace officer" in A.S. 39.35.680(14), which clearly showed the legislature's intent to include officers of the Division of Corrections as "peace officers". A.S. 39.35.680(14) was amended in 1975 to include in its definition of a "peace officer", "correctional officer(s)" and "correction superintendent(s)".

Is is believed that the Legislature introduced this clarification of the term "peace officer" because of a letter written by the Attorney General's office on February 19, 1975, to Charles Adams, Jr., then Director of the Division of Corrections. That Attorney General's letter (a copy of which is attached hereto) also held that Division of Corrections employees were not "peace officers" for purposes of Title 39, Alaska Statutes. Immediately thereafter the legislature amended A.S. 39.35.680(14) to specifically include correctional officers and corrections superintendents.

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The Attorney General's opinion 36 of September 18, 1977, completely ignores this 1975 expression of legislative intent. The Attorney General in his letter of December 27, 1977, continues to deny that correction officers are "peace officers" for purposes of A.S. 11.55.020, a sort of "if kittens were born in an oven, they wud be bisquits" approach referred to by Peter Dunne Finley. (See King, Life of Fuller, 237.)

In addition to the 1975 attempt by the legislaure to define "peace officer," effective January 1, 1980, A.S. 11.81.900 defines a peace officer as:

> A public servant vested by law with a duty to maintain order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders.

That this new definition of "Peace officer" effective January 1, 1980, includes probation/parole officers, simply cannot be denied.* Probation/parole officers are "public servants" since they are "an officer or employee of the State" (A.S. 11.81.900(47)(A)) and are vested by law with a duty to make arrests (A.S. 33.05.070 and A.S. 33.15.210) even though their duty may be "limited to a specific class of offenses (probation/parole violations) or offenders" (probation/parole violators).

Despite the implied wording of A.S. 01.10.060 and the clear wording of A.S. 11.30.100, A.S. 11.81.900, and A.S. 39.35.680(14) that the term "peace officer" applies to probation/parole officers, the Attorney General and the Department of Public Safety construe the law to deny probation/parole officers the benefit of the peace officer exemption of A.S. 11.55.020, from the crime of carrying concealed weapons.**

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* Although, if the Attorney General's Office runs true to form, they probably will deny it.

** As shown by the memorandum from William Nix, Commissioner, Department of Public Safety, dated January 24, 1979, Commissioner Nix is attempting to withdraw special commissions granted to probation/parole officers because, among other things "(T)he only reason I can see for the special commission is to carry concealed weapons."

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Lord Atkin's statement in Liversidge v Anderson (1942) A.C. 206, 245 quoting Lewis Carroll, Through the Looking Glass, ch. 6 is appropriate here to describe the Attorney General's and Department of Public Safety's position.

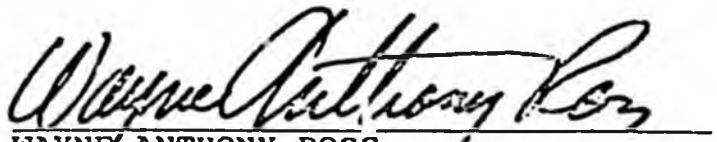
> I know of only one authority which might justify the suggested method of construction. 'When I use a word,' Humpty Dumpty said in rather a scornful tone, 'it means just what I choose it to mean, neither more nor less.' 'The question is,' said Alice, 'whether you can make words mean so many different things.' 'The question is,' said Humpty Dumpty, 'which is to be master--that's all'.

The Superior Court in Fairbanks has found that probation officers require the use of a firearm "to insure their safety and perform their duties as officers of this court" and has authorized, by court order, each regularly appointed Adult Unit Probation Officer of that Court to carry a concealed weapon firearm on his or her person, when qualified (see order of Judge Gerald Van Hoomison dated December 7, 1978, attached hereto.) Other Superior Court Districts are in agreement with Judge Van Hoomison. In addition Federal probation officers in this District have been given authority by the Federal District Court to carry weapons concealed.

We ask this court therefore to declare that under Alaska law, probation/parole officers are peace officers. We also ask this court to restrain and enjoin the State of Alaska from enforcing the provisions of A.S. 11.55.010 against its probation/parole officers until such declaratory ruling by this court is made whereupon such enforcement will be mooted.

> The purpose of the legislature in enacting the deadly weapon law was to protect the public from the menace of concealed deadly weapons, and in construing the statute it is the duty of the Court to have in mind the legislative intent and to give the statute such reasonable construction as will effectuate its purpose. Hampton v Commonwealth (1934) Ky. 626, 78 S.W.2d 748.

Respectfully submitted this 5th day of February, 1979, at Anchorage, Alaska.



WAYNE ANTHONY ROSS
Attorney for Plaintiffs

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Introduced: 2/13/79
Referred: Judiciary

IN THE SENATE

BY BENNETT AND STIMSON

SENATE BILL NO. 162

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to peace officers."

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

* Section 1. AS 01.10.060(6) is amended to read:

(6) "peace officer" means any officer of the state troopers, members of the police force of any incorporated city or borough, United States marshals and their deputies, DESIGNATED probation officers who supervise adults, parole officers, correctional officers, and other officers whose duty it is to enforce and preserve the public peace;

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 4, 1979

LETTER OF LEGISLATIVE INTENT

SB 162

The term, "peace officer," is specifically defined for purposes of the Public Employees' Retirement System in AS 39.35.680(27). It is not intended that the general definition of "peace officer" in SB 162 change or modify in any way the meaning of the term, "peace officer," in the Public Employees' Retirement System statutes.

The committee is most reluctant to be placed in a position of prejudging the Alaska Supreme Court. The problem which brought about the introduction of this bill is now on appeal to that court. The committee finds itself in an awkward situation in the middle of a dispute between judicial, probation-parole and corrections officers on the one hand and the Departments of Law and Health and Social Services on the other.

It is thought that the problem could best be resolved by removing Probation, Parole and Corrections from the Department of Health and Social Services and placing them under the auspices and supervision of the court system.

_____ _____ _____

Senator Ziegler, Chairman

_____ _____

_____

Superior Court
State of Alaska
FOURTH JUDICIAL DISTRICT
604 BARNETTE STREET
FAIRBANKS, ALASKA
99701

CHAMBERS OF
GERALD J. VAN HOOMISSEN, JUDGE

February 26, 1979

The Honorable Robert Ziegler
State Senator
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

It has come to my attention that a bill submitted by Senator Bennett which proports to amend AS 01.10.060(6) by adding adult probation and parole officers and correctional officers to subsection 6 of the foregoing statute is coming up for public hearing before the Senate Judiciary Committee on Tuesday, February 27th, in Juneau.

I would like very much to testify before the Senate Judiciary Committee in favor of Senator Bennett's bill, however, because of trial commitments in Barrow I will be unable to appear personally before the committee. I would like you to consider this letter as an endorsement of the bill submitted by Senator Bennett.

As you are probably aware, a great deal of controversy has developed between the executive and the judicial branch of government over the question of whether or not qualified adult probation officers should be allowed to carry firearms. As past presiding judge of the Fourth Judicial District, I entered an order in November authorizing adult probation/parole officers who are qualified by the Alaska State Trooper Academy to carry firearms in the performance of their duties. I do not wish to comment at length upon that order or the subsequent events surrounding that order since there is a case pending before the Supreme Court testing its validity. I do want to say that the order was entered because I am firmly convinced that for the adult probation officers to effectively perform their duties as probation officers for their own safety, they should be allowed to

carry firearms while on duty. I think it is safe to say that I have traveled to the bush areas of this State more than any other Superior or District Court judge. The Fourth Judicial District, which includes Barrow and Bethel Service areas, encompasses an area slightly larger than the State of Texas. We have endeavored over the past five years to provide judicial services to all of the villages within the Fourth Judicial District and its service areas. Necessarily, in the performance of these duties, I am accompanied by probation/parole officers from the Fairbanks office to these remote sites. Since the probation officer is either conducting the presentence investigation or is supervising persons who have been convicted of felonies it is not hard to understand that they are not the most popular people in these remote areas. It is necessary that in the performance of their duties they are required to go into small villages and into dwellings occupied often by a number of people who are antagonistic to the officer. Many times they will find in the course of their duties it is necessary that a probationer or parolee be taken into custody on the spot. Neither Alaska State Troopers nor qualified municipal police officers are available for backup, consequently, the probation/parole officer's safety is in jeopardy when he is required to make an arrest, many times forcefully under such conditions. I have discussed this matter with Mr. Dan Hickey, Chief Prosecutor with the Attorney General's Office, and he assured me that when a probation/parole officer anticipates that he will need backup that he would assure me that the Alaska State Troopers would be present. I consider such an assurance ridiculous under the circumstances for these reasons: (1) the presence of the Alaska State Troopers in the bush areas of the Northern part of the State are many times conspicuous by their absence, and (2) the probation/parole officer just cannot anticipate unforeseen circumstances arising that would jeopardize his safety. It cannot be fairly said that everytime a probation officer goes to the bush he can expect trouble; that simply is not the case. However, trouble does arrive with enough frequency that at least the officer should be allowed to defend himself when faced with life-threatening situations, and have available to him sufficient force to effect an arrest if an arrest is necessary and required under the exigent circumstances. In the fourteen years that I have traveled throughout the bush villages in Northern and Eastern Alaska I have yet to see Mr. Hickey or any member of the Attorney General's office, other than

the ones I have required to be out there, to attend court proceedings. Mr. Hickey is simply not aware of the circumstances that actually exist in the rural areas.

So far I have addressed myself only to the rural areas. The need for a qualified adult probation/parole officer to carry firearms in the urban areas I don't think needs much exposition. Suffice it to say, the people the probation officer is dealing with are convicted felons. They have already demonstrated to the satisfaction of the court or the jury that they do not hold in highest respect the laws and regulations necessary to keep order in society. A probation officer can handle his caseload in two ways: he can sit at his desk and merely check off people who report in from time to time, or he can go out into the community where the probationer has to live, work, raise his family and face the problems that all of us face in everyday life. I am very fortunate in the Fourth Judicial District of having five outstanding probation officers who are sincerely interested in helping their probationers to establish themselves as productive members of society. This effort on the part of the probation officer necessarily requires that they be in a position to call to task probationers who demonstrate no desire to adhere to our laws or conform their conduct to society's demands. Again, the officer cannot anticipate a life-threatening ituation is going to arise. I think it is fair to say that most of the people that our adult probation/parole officers deal with recognize that the officers are trying to help them and they themselves have a desire to become again the so-called solid citizen. It is nevertheless a fact that an increasing number of persons on probation do not entertain these same thoughts. In a conversation with the Attorney General, Avrum Gross, approximately two weeks ago, concerning the order I entered, he stated to me that he would take personal responsibility for any probation officer who was injured or killed in the line of duty. I have no doubt that he would feel badly if such a thing happened, however, his assurance and his assumption of responsibility would be a small consolation to a seriously injured probation officer or his widow.

I'm sorry, Senator, this letter is so long but I feel that the issue is an important one, and one that deserves the favorable consideration of the legislature. I do not feel that it is absolutely essential that adult probation/parole officers or correctional officers be specifically included under subsection 6 of

AS 01.10.060, since they already fall into the definition of "peace officer".

I'm enclosing herewith an excerpt of a letter written by Daniel Hickey, Chief Prosecutor, to Mr. James Mayer, Executive Director, Alaska Police Standards Council, dated September 16, 1977, defining a peace officer. I suggest to the committee that a probation/parole officer in the performance of his regular duties as such can perform and is required to perform all of the duties outlined by Mr. Hickey on page 3 of that letter. The passage of Senator Bennett's bill would not, in my opinion, suddenly make probation/parole officers "peace officers". It is my position that they are already peace officers and Senator Bennett's bill would clarify a situation which has given rise to a great deal of controversy and conflicting opinions and regulations within State government. The adult probation/parole officers in the Fourth Judicial District have even been threatened with criminal prosecution under AS 11.55.010 and .020 because of the disagreement as to their status. The new criminal code which becomes effective January 1, 1980, will eliminate the problems that have arisen under our present code. The passage of Senator Bennett's proposed bill will eliminate the problem between now and the effective date of the new code. I sincerely urge its passage.

Again, I am sorry that I will not be able to appear before your committee personally, however, if you have any questions with reference to my position on this bill, please do not hesitate to call on me at my office, 452-1580, or at my home 479-3591.

Thanking you for your courtesy and consideration in this matter, I am

Very truly yours,

Gerald J. Van Hoomissen
(signed by secretary as directed)

GJVH/ep

Enclosure

"peace officer" as used in AS 01.10.60(6) has been given a more restricted meaning and includes public law enforcement officers having full law enforcement authority within a particular jurisdiction.

Quite clearly, a peace officer is defined in the first clause of AS 01.10.060(6) to mean public law enforcement officers having full police duties which as a general rule would include the following minimum requirements: the power to arrest and to issue citations for minor offenses; the power to detain a person taken into custody until that person can be arraigned before a judge or magistrate; the power to use all necessary and reasonable force authorized by law, including the use of deadly force in limited circumstances; the authority to conduct investigations into suspected or known violations of the criminal law; the power to search with or without a warrant, persons, dwellings and other forms of property for contraband and evidence of a crime; the authority to suppress riots and to maintain order during emergencies and natural disasters; the authority to execute process issued by a court; and, in general, the discretionary authority to take such other action as is consistent and necessary with the exercise of these enumerated powers when essential to maintain the public peace, such as the authority to carry a concealed weapon. See e.g., AS 11.55.070.

P.O.'s have all these Powers & Responsibilities

IN THE MATTER OF:

The Authorization for Probation Officers to Carry Concealed Firearms.

SUPPLEMENTAL ORDER

Subsequent to the time that the Court had originally considered the question of whether Probation Officers of this court could be allowed to carry firearms without a specific permit from the Commissioner of Public Safety of the State of Alaska, but prior to the Order entered December 7, 1978, authorizing adult Probation Officers in this district to carry firearms provided they were qualified to do so, the Commissioner of Public Safety did in fact issue commissions to the qualified adult Probation Officers to carry firearms in the performance of their duties.

Consequently, the Order of December 7, 1978, is unnecessary and shall be and hereby is VACATED for so long as the Commissioner of Public Safety authorizes the qualified adult Probation Officers to carry firearms in the performance of thier duties.

DATED at Fairbanks, Alaska, this 4 day of January, 1979.

Gerald J. Van Hoomissen
Superior Court Judge

cc: District Attorney
Div. of Corrections
Supreme Court

FOURTH JUDICIAL DISTRICT

IN THE MATTER OF

AUTHORIZATION FOR PROBATION OFFICERS TO CARRY CONCEALED FIREARMS

It appearing that to insure their safety and to perform their duties as officers of the Court, Probation Officers of this Court require the use of a firearm.

THEREFORE, IT IS ORDERED, that when qualified, each regularly appointed Adult Unit Probation Officer of this Court is authorized to carry a concealed firearm on his or her person.

DATED at Fairbanks, Alaska, this 7 day of December, 1978.

Harold J. VanHoomissen
SUPERIOR COURT JUDGE

ALASKA PEACE OFFICERS ASSOCIATION
FARTHEST NORTH CHAPTER

AFZT-PM-W

9 February 1979

Mr. Wayne Anthony Ross
Attorney at Law

Dear Sir,

Information concerning the recent objection for Removal of Commissions for Adult Parole and Probation Officers to carry concealed weapons in the performance of their duties has been brought to our attention. This alarming objection comes as a grave disappointment and extreme concern for our fellow Law Enforcement Officers. The reasoning for this action considering their role in the Criminal Justice System is baffling to say the least. These Officers confront on a daily basis known felons who without question have little or no respect for law and order and even less for representatives of Law Enforcement.

These Officers have all met the Police Standards Council and are fully qualified. Additionally a vast majority have previous Law Enforcement background which include the attendance of Police Academies and various Law Enforcement Seminars. Many Law Enforcement Officers were personally contacted and expressed their concern over this action.

The Farthest North chapter of APOA gave their vote of confidence in addressing Former Commissioner Burton's Task Force report in 1976 for commissioning these officers. Our position is unchanged and speaking for the largest chapter of APOA we fully support and indorse the Parole and Probation Officers of Fairbanks Office. They are without question true professionals and exhibit the highest standards of any parole and probation office I have worked with.

Having been associated with Law Enforcement work over the last nineteen (19) years there is little question in my mind that these Officers of the Adult Parole and Probation Office are fully qualified and warrant the commission to carry weapons, by virtue of their extreme high potential of encountering a felon who has little regard for Law Enforcement representatives. The decision of this action impacts greatly upon their mission. It is our sincere wish that in the final analysis that these Officers be permitted to retain their Commissions.

Sincerely,

JAY R. RHYMES
President

cc: Adult Parole/Probation
Executive Board APOA

State APOA Office
P.O. Box 3520 DT
Anchorage, AK 99510
Phone 337-7712

February 9, 1979

Governor Jay S. Hammond
Pouch "A"
Juneau, Alaska 99811

Dear Governor Hammond:

It has come to my attention that the Acting Commissioner of Public Safety has recently attempted to rescind the Special Commissions that had been extended to the Adult Probation/Parole Officers of the State. I observe that Commissioner Nix's opinion is inconsistent with the decision that had been previously made by Commissioner Burton. Commissioner Burton and previous representatives of the Department of Public Safety were so convinced of the Probation/Parole Officers' need to protect themselves, that to resolve the dispute between the Attorney General and the Probation/Parole Officers, Commissioner Burton, as others have done in the past, issued Special Officer status pursuant to AS 18.65.010. Probation/Parole Officers have not changed their role or function. Their job, if anything, has become tougher in recent years.

The zealous attempt of the Attorney General to strip the Adult Probation/Parole Officer of the concealed firearm is beyond comprehension. I understand the Attorney General has focused on the definition of peace officer and has argued that the legislature's failure to specifically include the Probation/Parole Officer meant that the legislature must have meant to exclude the class from the coverage of the definition. It is observed that in the Criminal Code, which recently passed the legislature and which will go into effect January 1, 1980, the legislature specifically defined a peace officer as: "a public servant vested by law with a duty to maintain order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders." This new definition of "peace officer" includes Probation/Parole Officers.. I have also been apprised that the Attorney General has taken issue with a court order issued by Superior Court Judge Gerald J. VanHoomissen. The court order specifically orders that the Adult Probation/Parole Officer of the Fourth Judicial District is authorized to carry a concealed firearm.

Court action to resolve the Special Commission issue is pending in the Third Judicial District. Action to resolve the Attorney General's question concerning Superior Court Judge Gerald J. VanHoomissen's court order is pending a Supreme Court Hearing in Fairbanks. A great deal of effort is being expended by the Attorney General in opposing judicial and executive efforts in trying to disarm the State's Adult Probation/Parole Officers.

It is difficult to understand why the Attorney General has taken such a fanatic position in attempting to disarm the Adult Probation/Parole Officer of this critically needed tool. It would appear that the Attorney General's motivations for taking issue with such a trivial matter is motivated by something other than a fact of law.

It has been my personal observation that on numerous occasions, the Adult Probation/Parole Officer, while acting within his authority, has initiated and assisted in investigations and the arrests of dangerous and armed felons. I, as a supervisor of a narcotics unit over the past four years, have had occasion to work closely with the Adult Probation/Parole Officers in Fairbanks and have found their actions to be of the highest quality and professionalism. I have participated in investigations where the presence of an armed Probation/Parole Officer was of a great advantage to the safety of all concerned.

Why such tunnel-visioned focus on this issue is not yet understood.

I understand that one area frequently argued by the Attorney General is that a State Trooper or other police officer could be called upon to accompany an Adult Probation/Parole Officer when violence is expected. It would be a serious waste of manpower to require an additional police officer to assist when the Adult Probation/Parole Officer is more than capable of handling the situation at hand. It should be noted that the most dangerous situations are not always the most obvious situations.

When the State sends out an Adult Probation/Parole Officer to effect an arrest of a felon (all arrests made by the Adult Probation/Parole Officers are felonies), it will be done peaceably if possible or forcibly if necessary. It is beyond my comprehension how the Attorney General and the Acting Commissioner of Public Safety can rationalize their attempts to disarm these officers. We should be careful not to make their jobs so dangerous to perform that they might shrink from their duties and hesitate from the action which the proper protection of society demands.

I submit that the continued arming of our Adult Probation/Parole Officers is in the best interest of the citizens of this state. I am writing you in an effort to keep you informed of law enforcement's position in this important issue. I simply seek to make our position known and sincerely hope it will not create any animosities.

Your attention to this important issue would be greatly appreciated.

Sincerely,

Craig A. Forster

Craig A. Forster, President
Alaska Peace Officers Association
656 7th Avenue
Fairbanks, Alaska 99701

ALASKA PEACE OFFICERS ASSOCIATION

Capital City Chapter
P. O. Box 751
Juneau, Alaska 99802

27 February 1979

Mr. Wayne Anthony Ross
Attorney at Law

Dear Mr. Ross:

The Capital City chapter of the Alaska Peace Officers Association has recently been advised of an effort to prevent select probation officers handling adult caseloads from carrying a concealed weapon (hand gun) in the performance of their official duties.

This has been an on-again, off-again situation for a considerable number of years, to the point that many members of our association have been concerned about the extent State government is willing to go in providing avenues of legal and administrative relief for criminal offenders and, at the same time, fail to recognize the need of those Justice System personnel who are hired and sworn to uphold the law.

In our opinion, government is supposed to represent the best interests of the people and, in doing so, ensure that the probation officers in this case, who are public servants, have the necessary equipment to properly discharge their duties in the safest manner possible.

This most recent action directed against probation officers who exercise, by law, their authority to arrest with or without a warrant, the very same criminal element as police, many of which the police would not ever think of apprehending, if unarmed and expected to do so, only tends to reinforce our concern about the criminal element's welfare and rights being placed above the safety and welfare of those government employees charge with enforcing the law.

No one can argue philosophy with any degree of success in the face of cold facts and reality concerning this matter. When a probation officers happens upon a probation or parole violator, there are two thing he will know for sure if he is prohibited from carrying a firearm in the performance of his duties.

A. He will know for sure that he is not armed.

B. He will have no way of knowing whether the violator is armed or not.

In view of such facts, it would appear an easy decision to make: allowing probation officers to carry firearms in the performance of their duties.

Thank you.

Very truly yours,

William H. Huston
President
Capital City Chapter
Alaska Peace Officers Association

P. O. Box 751
Juneau, Alaska 99802

PROBATION - PAROLE

JAN 04 1979

NRO - FAIRBANKS, AK

SAUD CAUG

MSG. I-o. JAN. 4, 1979

TO COLEMAN

SO, HERE IS THE LIST YOU ASKED FOR CONCERNING PAROLEES AND PROBATIONERS WITH DANGEROUS WEAPONS. THE FOLLOWING WERE SEIZED IN 1978:

OFFICER	DATE	STATUS	TYPE
ANDERSON	1-17-78	PROBATIONER	CHARTER .44 SPEC. PISTOL
[illegible]	2-78	PROBATIONER	[illegible]
[illegible]	3-24-78	PROBATIONER	.22 RIFLE
[illegible]	3-24-78	PROBATIONER	.30-30 RIFLE
[illegible]	3-[illegible]-78	PROBATIONER	.22 RIFLE
[illegible]	3-24-78	PROBATIONER	.22 RIFLE
[illegible]	3-[illegible]-78	PROBATIONER	.22 RIFLE
[illegible]	3-24-78	PROBATIONER	.30-30 LEVER ACTION RIFLE
[illegible]	7-78	PROBATIONER	[illegible]
[illegible]	[illegible]-78	PROBATIONER	[illegible]
[illegible]	12-21-78	PROBATIONER	[illegible]
[illegible]	12-21-78	PROBATIONER	[illegible]
[illegible]	12-29-78	PROBATIONER	[illegible]
		(LATEST DATE)	IN 1978

[illegible]

[illegible] NEGATIVE OF THIS [illegible].

STATE OF ALASKA

Class Specification

PROBATION OFFICER II

4343-16

Definition:

Under general supervision, carries a caseload involving office and field work in probation and parole, pre-sentence investigation, supervision and guidance of youth and adult parolees or probationers.

Distinguishing Characteristics:

This is the fully qualified professional journeyman level class which is distinguished from Probation Officer I by the independence of action, latitude of judgment exercised, and by the assignment of any case. It is distinguished from the Probation Officer III class in that normally a Probation Officer II does not supervise other Probation Officers although he may be responsible for training of Probation Officer Trainees and Probation Officer I's.

Examples of Duties:

Counsels parolees and probationers, helps them to understand their problems, and adapts the treatment program to the individual.

Develops employment opportunities for persons eligible for or on parole or probation.

Works with and secures the cooperation of social, law enforcement, recreational, religious, educational and other agencies concerned with the rehabilitation of parolees and probationers.

Utilizes casework methods in the supervision of parolees and probationers, and makes individual diagnoses and progress reports indicating case prognosis.

Investigates cases of parole or probation violators, compiles evidence required to effect the suspension of parolee or probationer, and apprehends violators for return to custody.

Compiles case histories, dictates correspondence, and prepares reports.

Maintains personal contacts at office and periodically visits with parolees and probationers to assist them with problems of social readjustment.

Cooperates with local and state police, institutional and judicial officials in the supervision of parolees or probationers.

Performs other related duties as required.

Knowledges, Skills and Abilities:

Knowledge of: Principles and practices of counseling, guidance, and placement; cause, extent, and treatment of delinquency and criminality; procedures of parole and probation casework and court procedures; habits; attitudes and psychology of persons with delinquent tendencies; community resources and agencies which

APOA Membership

July 18, 1977

John E. Baus

1977 ANNUAL PAT TOBIN SHOOT
- SCORES -

The following are the scores fired at the 1977 Annual Pat Tobin Memorial Shoot held on July 17, 1977:

1. Ward Schute, Eielson AFB - 98.8 with 25X.
2. Don Allen, DOC - 98.8 with 20X.
3. Ken Turcotte, Eielson AFB - 98.4 with 16X.
4. Steve Devore, Eielson AFB - 98.0 with 21X.
5. Ron Murray, DOC - 97.6 with 18X.
6. Richard Wolfe, FPD - 97.6 with 15X.
7. Tom Campbell, Eielson AFB - 97.2 with 22X.
8. Louie Fleming, Eielson AFB - 96.4 with 19X.
9. John Addis, AST - 96.4 with 19X.
10. Robert Wolfe, Eielson AFB - 96.4 with 16X.
11. John Baus, FPD - 96.0 with 24X.
12. Steve Korenek, DOC - 95.6 with 18X.
13. Jim Lowe, FPD - 95.2 with 9X.
14. Doug Woolley, FPD - 94.0 with 21X.
15. George Pollitt, AST - 94.0 with 10X.
16. George Hiller, Eielson AFB - 93.6 with 16X.
17. Ken Fore, Eielson AFB - 92.8 with 18X.
18. Noel Napolilli, FPD - 92.4 with 23X.
19. Gary Vogt, FPD - 92.0 with 3X.
20. Wayne Jones, DOC - 90.8 with 19X.
21. Jim Barclay, FPD - 90.8 with 7X.
22. Terry Zee, APS - 90.4 with 15X.
23. Robert Coleman, Eielson AFB - 90.4 with 12X.
24. Herb Kallman, APS - 90.4 with 10X.
25. Victor Gunn, FPD - 89.2 with 4X.
26. Jim McCann, AST - 88.8 with 12X.
27. Don LaSage, FPD - 88.4 with 9X.
28. Gene Kallus, AST - 88.0 with 9X.
29. Joel Head, US Army - 86.4 with 12X.
30. Fred Schumacher, APS - 85.2 with 9X.
31. Pete Gunn, APS - 84.8 with 13X.
32. Rick Cummings, FPD - 84.8 with 11X.
33. Skip Harrington, APS - 82.4 with 12X.
34. Tom Barnese, US Army - 81.2 with 12X.
35. Pete Villarreal, Eielson AFB - 81.2 with 9X.
36. Ken Razza, Eielson AFB - 79.6 with 13X.
37. Ken Keber, FPD - 79.4 with 8X.
38. Ted Maynor, APS - 77.6 with 15X.
39. Jerry Prater, FPD - 76.0 with 9X.
40. Roland Bonneville, FPD - 76.0 with 8X.

DOC

DOC

AST X

DOC

APOA
DOC 2ND PLACE

1978
3rd PLACE

September 22, 1976 All P's

OPEN LETTER TO ALL APOA CHAPTERS

LADIES & GENTLEMEN:

RE: Full Peace Officer Statutory Definition for Probation Officers

As a result of a continuing need to fully protect and provide for State Probation Officers who do, most definately, go about their duties which are comprised of traditional peace officer functions, I am writing you for your support and requesting this support based on the attached material which includes a copy of written evidence of strong support from the FAR NORTH APOA CHAPTER.

It is respectfully and earnestly requested that the support from all of the APOA chapters be condensed into strongly written form clearly stating that your support encompasses not only the inclusion of State Probation Officers as peace officers in the public employee's retirement system, but also includes that State Probation Officers be clearly defined as peace officers under all Alaska Statutes which functionally and authoritatively bestow full peace officer powers.

It is further requested that this unanimous recommendation from APOA be addressed to the Governor, the Legislature, and the Commissioner of Health and Social Services, with copies to our Director and Chief of Probation Services, and this writer.

Enclosed are excerpts from a letter, dated 6-7-76, from the President of FAR NORTH APOA to Commissioner Burton endorsing what is requested of all chapters.

Also find enclosed a letter, of March 4, 1975, that I wrote to Commissioner Burton in an attempt to reinstate our Special Officer Commissions we have formerly had, which have always been poor substitutes for fully legislated peace officer status. The letter briefly summarizes some of the kinds of hazardous job functions we must perform in the field, and it also registers a profound concern for the personal safety of our professional staff that they and I still share.

Like other peace officers, probation officers deal with convicted felons and adjudicated delinquents every working day of their lives. And there is no doubt that these offenders are becoming more violent and aggressive. It is only a matter of time until we are assisting one of our staff member's survivors or visiting an injured probation officer in a local hospital.

It has occurred that probation officers have routinely entered an offender's residence alone and unarmed, and, in the past, have had to back away from making an arrest, when probable cause was in evidence, because the officer had no firearm as emergency support. Subsequently, this has left the probationer or parolee free to escape or destroy evidence which would have supported a revocation action.

Some probation officers have long met minimum police standards of police training and have possessed special officer commissions to act as peace officers. These commissions were issued by the Department of Public Safety and have to be renewed every year. Commissioner Burton of Public Safety has stated very clearly that these commissions are issued for the purpose of enlisting our personnel for emergency peace officer duty under his command and are not issued to our

staff to aid in carrying out our duties. Presently, Commissioner Burton is withholding the renewal and the initial issue of commissions pending an Attorney General's opinion regarding the commissions, defining how and for what purpose they should be issued.

A probation officer should not have to rely on another department or agency in order to do his job. It is obvious that these people should have sufficient legislative authority to accomplish any task the job demands. As present Alaska Statutes are drawn, an earlier Attorney General's opinion has clearly stated that these laws do not recognize probation officers as peace officers.

In the past five years, probation officers in the Anchorage region alone have seen a rise in the incidence of threats of bodily harm and death from probationers, parolees and anonymous callers. A minor assault has thus far occurred and offenders from Anchorage proper have recently experienced an increased incidence of seizure of deadly weapons they had in their possession. These weapons have taken the form of handguns and concealed knives. More recently a loaded, snub-barrelled .38 revolver was seized from a female offender considered to be a "fringe group" or "soft core" felon compared to many of our drug-related cases who are into hard core criminal activity in order to support their criminal proclivities, drug habits or the drug habits of others. Probation-Parole Field Services has no control over the severity of criminal cases given to its custody. These kinds of cases are reality. And many do go armed with deadly weapons concealed, or have ready access to these deadly weapons, during their release time. Of that there is no doubt as our cases of record and local police indicate clearly.

As stated in the attached material, the Anchorage superior Court Judges--in 1971--recommended that probation officers be allowed to carry concealed firearms in the course of duty. This is certainly a necessary part of full peace officer authority.

And, lest there be any doubt about the reality of where our thoughts lie, we probation officers do not agree with the idea that people must be hurt and blood must be let in order to substantiate the inherent risk that probation officers have in the course of their work.

Because of all reasons herein included in this letter and attachments, legislation making probation officers peace officers is needed to better protect the public and our employees.

NOTE: APOA, during the June, 1976 Crime Conference, indicated that if possible I should attempt to attach a dollar estimate to the total cost of bringing State Probation Officers under the peace officer retirement system. An attempt was made to obtain professional assistance from the Division of Retirement to facilitate an actuarial estimate of cost. Division of Retirement personnel informed me that they were unable at this time to provide me with such an estimate, it being a rather involved and costly process. Therefore, available resources have not permitted the obtaining of this infomation. However, it is important to note that that part of full peace officer status, which legislation could provide, would include approximately 65 probation officers statewide; we are not talking about literally hundreds of people in this or other job classes.

March 4, 1975

Richard L. Burton, Commissioner
Department of Public Safety
Pouch M--State Capitol
Juneau, Alaska 99801

RE: Special Officer Commissions,
A.S. 18.65.070

Dear Commissioner Burton

As you requested, applications, in addition to the ones you have already received, are enroute to you. My application will have to go via our Central Office for endorsement by our Director and then on to you. We are retaining our commissions until you pass individual judgment on each applicant, as per your recent telephone conversation with Duncan Fowler on February 27.

I would like to apprise you of the history of how we originally got involved in the business of Special Officer Commissions. Briefly, in 1971, the number of violent offender we were burdened with investigating, supervising, and arresting [illegible] without the aid of police who were engaged in other [illegible] protective work) had increased in alarmingly significant numbers. It was clear to us, and local police, that the vicious audacity of the violence-oriented offenders we dealt with had grown accordingly. The face of crime, so to speak, had worsened so much that threats to life and highly charged situations were [illegible] much more routine to our staff. The police remarked to us that more commonplace arms, apart from these I speak of, were carrying firearms concealed as a matter of habit, at one time or another, during their time on the street.

The situation is even worse now, but then we knew, (as did our Director, [illegible] James) that it was time to arm our professional staff with at least the [illegible] of personal protective equipment for field use. In November of 1971 the [illegible] of the Superior Court of the Third Judicial District recognized our serious [illegible] in writing they unanimously, (with the exception of the Family Court Judge) [illegible] the carrying of concealed firearms for the personal protection of our staff.

Col. Dankworth, then Director of the Alaska State Troopers, agreed to [illegible] personal firearms training particulary tailored to meet our needs. It was made clear, by all concerned, that the arms were to be used only in [illegible] protection. They would be drawn only on an individual who is offering an [illegible] and unswerving, felonious threat to life and body and where no other [illegible] alternative is available. We were, and are, restricted from using them in any [illegible] by Division policy. It is important to also tell you that we [illegible] for being made aware of our profound need. I suggested that our [illegible] charged with the responsibility for adult cases, apply for Special [illegible]

In the spring of '72, after receiving approval from our higher authorities, co[illegible] firearms training was obtained from Rob Penman of the Alaska State Troopers. To recall, the actual firing of weapons in '72 was not accomplished as a unit due to firing for qualification along with more classroom training fell and through the 1973 and 1974. We were about to schedule our annual training for 1975 and had obtained an ammunition supply just prior to receiving your notifications. This will be held in abeyance pending your final decisions.

Our routine duties encompass adult felony case supervision in the field, working in close field cooperation with Alaska State Troopers and the Anchorage Police Department members comprising the joint police Metropolitan Drug Unit, Adult Pre-sentence Investigations, Interstate Placement Investigations of felons applying for transfer, bail supervision when Court ordered on those charged with all types of violent crimes, to name some of the more prominent functions of more dangerous proportions.

It is important to note the reality of the extreme "bodily-harm and death" threats that we have seen on the definite increase over the past several years from felons and anonymous people. One more recent threat was delivered to a probation officer with the command that he change a pre-sentence recommendation on the report to the Court or face great personal violence or death. Needless to say this officer did not change his recommendation for "time to serve" on this drug dealer. The man was sentenced to prison. Another instance saw your [illegible] officer at Kenai intercept a felon who had avowed to visit our regional office in Anchorage and kill all officers present. As I write this letter, one of the more pernicious drug-orientated felons we have on probation, all [illegible] contract put out on him. Our assigned probation officer received [illegible] of murder to this person, (whom our officer was personally [illegible] in the community), was verified by federal authorities and [illegible] this defendant has been removed from Anchorage for his own personal [illegible] officers, being closely indentified by the criminal element as [illegible] influence for the offender's assisting police and prosecutors, [illegible] will, have a place to hide from the "contract" man or other [illegible] of the local criminal culture. One of our "bush" officers was recently [illegible] with death. He is assigned to the Bethel area. I could go on, but I [illegible] get the idea. With your vast experience, you are many times more familiar with this type of cancer than most segments of the criminal justice system.

I do appreciate your reviewing and updating the procedures for the issuing of Special Officer Commissions. I think all concerned must be sure of exactly who is vested with this authority, his preparation, specific training, and character. Believe me, we also want to be sure our training is adequate.

I also realize there are possibly some of our officers who may not qualify [illegible] interpretation of statute and related administrative code. Since the [illegible] staff must do will not abate, I do ask, for any of those who may be just [illegible] not qualifying, that local training be made available in the Anchorage area. Those who have a real need for commissions will have an opportunity to obtain [illegible] consistent with our [illegible] work requirements which must be friendly [illegible] limited assigned personnel.

The growth of population and crime of this area--with its concentration of violent offenders that we must deal with--frankly, bears on us with the full force of its volatile mass. Our problem with Special Officer Commissions, as it now stands, could not have materialized at a more critical time. In few words, we are extremely worried about the personal safety of our people who may shortly run the risk of being totally unarmed and therefore have that much more risk for great bodily harm and murder. I do not for a moment believe anyone wants to see one of our officers killed or maimed, (not that the designation by commission and a weapon is remotely absolute protection, nothing is) before some provisions for minimal personal protection are a reality.

Our quarterly informal meetings, over the past year, between our adult line staff and Capt. Anderson's troopers have proved mutually helpful in fostering closer cooperation and understanding between our two agencies which must work together. I hope that in this spirit, we can work out some means to insure that any of these needing training to qualify can be assisted locally to allow our limited numbers to fulfill our work requirements in the safest way possible and still comply with applicable standards.

Thank you very much for your indulgence and any assistance possible. It would really mean so much to our staff and their best efforts toward more safely and effectively discharging the responsibilities of their work.

Sincerely,

Paul B. Coleman

Paul B. Coleman
Regional Administrator

PBC/rk

cc: Charles Adams, Director of Probation/Parole Services
Walter B. Jones, Chief of Probation/Parole Services

Dated 6/7/76

ALASKA PEACE OFFICERS ASSOCIATION

Letter to Commissioners Burton, Public Safety

PROBATION - PAROLE OFFICERS IN DOING THEIR JOB RUN INTO VERY DANGEROUS SITUATIONS AND NEED THE PROPER TOOLS TO FUNCTION IN THEIR DESIGNATED CAPACITY. LOCALLY, PROBATION/PAROLE HAS BEEN OF GREAT ASSISTANCE TO US AND HAVE BEEN SUPPORTIVE IN LAW ENFORCEMENTS COMMON GOAL OF PROTECTING THE PUBLIC. TO IGNORE THEIR EXISTENCE AND POTENTIAL USEFULNESS IN PROTECTING SOCIETY WOULD BE A DISSERVICE TO LAW ENFORCEMENT AND THE COMMUNITY. WE URGE THAT THE ABOVE MENTIONED RECOMMENDATIONS BE GIVEN SERIOUS CONSIDERATION AND IMMEDIATE IMPLEMENTATION.

IN CONCLUSION WE HOPE THAT PROGRAMS INITIATED BY THE TASK FORCE WILL BE CARRIED THROUGH TO THEIR CONCLUSION AND NOT SHUFFLED TO THE BACK BURNER AFTER PUBLIC ATTENTION HAS MOVED ELSEWHERE. A PROGRESS REPORT, BY THE TASK FORCE, AFTER A REASONABLE PERIOD OF TIME TO IMPLEMENT THE VARIOUS PLANS TO INTERESTED PARTIES AROUND THE STATE MIGHT ALSO BE A GOOD IDEA.

WE THANK YOU FOR SOLICITING OUR COMMENTS AND SUGESTIONS AND TRUST THE FORGOING WILL BE OF SOME HELP TO YOU IN A WORTHY CAUSE ALL OF US HAVE A STAKE IN.

SINCERELY,

Nancy Dyst

PRESIDENT/FAR NORTH APOA

TRAINING:

YOUR RECOMMENDED PROGRAM IS LONG OVERDUE AND SHOULD PROVIDE MANY BENEFITS TO CORRECTIONS PERSONNEL. THE TASK FORCE STUDY OF CORRECTIONS DID NOT ADDRESS ITSELF TO PROBATION - PAROLE IN IT'S STUDY AND THEREFORE HAD NO RECOMMENDATIONS TO MAKE IN THE AREA OF PROBATION - PAROLE WHICH IS A PART OF CORRECTIONS. WE FEEL THAT SINCE PROBATION - PAROLE OFFICERS GO OUT IN THE FIELD AND PART OF THEIR JOB IS TO ARREST PROBATION - PAROLE VIOLATORS, THAT THEY BE PROPERLY TRAINED IN THE AREA OF ARREST, SEARCH AND SEIZURE, FIREARMS TRAINING, AND TEMPORARILY BE COMMISSIONED SPECIAL OFFICERS PRIOR TO IMPLEMENTING LEGISLATION TO OFFICIALLY MAKE THEM PEACE OFFICERS.

The above is an excerpt from a letter with other material not direct

SENATOR

Bill Ray

CHAIRMAN

COMMITTEE ON TRANSPORTATION

COMMITTEE ON TITLE IV CODE REVISION

BLUE RIBBON COMMISSION
ON THE STATE PERSONNEL ACT

Alaska State Legislature

Senate

March 2, 1979

POUCH V

JUNEAU, ALASKA 99811

TELEPHONE 465-4922

Keith Stell
Rt. 5, Box 5557
Juneau, Alaska 99803

Dear ~~Mr. Stell~~ Keith:

This is to acknowledge receipt of your correspondence concerning Senate Bill 162.

I have taken the liberty of forwarding a copy of your letter to Senator Ziegler, Chairman of the Judiciary Committee, for his information and consideration.

Thank you for taking the time to share your views with me. You may be assured that I will consider your thoughts when this bill is brought up on the Senate floor.

Sincerely,

Bill

Bill Ray
Senator
District C

cc: Senator Ziegler

COPY
SEN ZIEGLER
& ACKNOWLEDGE
TO SENDER

Keith Stell
Rt. 5, Box 5557
Juneau, Alaska 99803

February 27, 1979

Senator Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Ray:

SUBJECT: Senate Bill #162--Probation Officer as Peace Officer

Senator Ray, there is currently a bill being introduced by Senator Bennett from Fairbanks and Senator Stimson from Anchorage dealing with Probation Officers as Peace Officers. The bill as written limits the Peace Officer status to adult Probation Officers only. I believe it is unfair and not equitable to not include all Probation Officers, both those who deal with juveniles and adults, in this bill. Further, the bill may be somewhat discriminatory toward those Probation Officers in Southeast who deal both with juveniles and adults and who are called upon to arrest both categories of probationers. Therefore, if and when the bill comes to your attention, I would certainly appreciate it if you would argue in favor of the inclusion of all Probation/Parole Officers and not just the ones dealing with adult offenders.

Thank you for your consideration of this matter.

Sincerely,

Keith Stell
Regional Administrator
Probation/Parole
Southeast Alaska

KS/ra

P.S. Similar letters have been sent to Representatives Miller and Duncan.

Bill Would Allow Concealed Weapons For Parole-Probation Officers

By Joe La Rocca

Juneau--Five state parole, probation and corrections officers from Fairbanks and Anchorage, defied the official position of the Hammond administration here Tuesday and urged the Senate Judiciary committee to approve legislation which would enable them to carry handguns in the official performance of their duties.

The committee took no action on the bill and Chairman Robert Ziegler (D Ketchikan) scheduled another meeting for Sunday afternoon to hear the administration's opposing testimony. Ziegler said Superior Court Judge Gerald Van Hoomissen of Fairbanks would also be invited to testify.

The controversy flared up in the state's two largest cities after state Public Safety Commissioner W.R. Nix recently withdrew special commissions authorizing the state's 32 parole, probation and corrections officers to carry concealed weapons on the job.

The dispute has already been drawn into the state's superior court's at Anchorage and Fairbanks which have issued rulings effectively restoring the officers' right to bear short arms while on duty.

Tuesday's hearing focused on legislation introduced two weeks ago by State Senator Don Bennett (R-Fairbanks). The measure, Senate Bill 162, would include probation, parole and corrections officers under the legal definition of "peace officers" who are authorized by law to carry handguns.

Urging passage of the bill were Curtis Masingill, Ron Murray, and Lawrence Calderone, of Fairbanks; and Paul Tannenbaum and Fred Fowler of Anchorage.

Senator Ziegler said he would take further testimony on Sunday from several administration officials including Dr. Helen Beirne, Commissioner of the State Department of Health and Social Services, parent agency of the Division of Corrections, Dan Hickey, Chief State prosecutor, and Public Safety Commissioner Nix.

Contacted here Tuesday, Commissioner Beirne told the All-Alaska Weekly that "at this time I cannot support the bill." She said she could not support it until she has had an opportunity to study its impact upon the other state agencies it would affect beside her department including the departments of Public Safety and Law.

Said Commissioner Beirne: "It's a policy we're working on that has not been determined yet."

One probation officer, Curtis Masingill, a Fairbanks supervisor, told the Judiciary Committee that anytime his colleagues go into the field to do their job they are placing themselves in jeopardy because they deal most with convicted felons often with records of violent crime including murder.

Giving them legal status as "peace officers," except he added, "when you are doing your specific duties and there is a possibility that you would be in some kind of jeopardy."

Ray said he believes the move to secure "peace officer" status for probation and parole officers was largely motivated by their hopes of entering the peace officers retirement program which is more liberal than the retirement program for other state employees but Masingill denied Ray's assertion.

"Sure, we would like to have it," he said, "But that is not why we are asking for peace officer status."

Ray replied: "I would be inclined to soften my attitude if you would agree to leave the classified service and to into the exempt service where you could be fired if you do a bod job."

Masingill said:"Most good officers would put their badges on the table."

Another Parole Officer Fred Fowler of Anchorage told the committee that he and his colleqgues are required to take 240 hours of training at the state troopers academy in Sitka to qualify them to carry weapons.

Senator Bennett, sponsor of the bill, told the committee that matters such as retirement did not enter into his support for the bill. Said Bennett, "I'm just concerned that when parole or probation officers are ordered by the courts to go into the field to check on parolees, or arrest them, that they are armed and able to defend themselves."

Chairman Ziegler said he does not favor the measure because he knows of no need or support for it in Southeastern Alaska But Ziegler promised the

—Continued on Page 15

Weapons . . .

Continued from page 3

sponsor that it would be reported out of the committee early next week following Sunday's hearing.

Ziegler told the All-Alaska Weekly he has "reached the inescapable conclusion" that corrections, parole, and probation officers do not belong in the Department of Health and Social Services.

He said that when administration witnesses appear before the committee on Sunday the first question he will raise is whether anyone in the administration would seriously object to transferring the parole, probation and corrections officers from the Department of Health and Social Services to the jurisdiction of either the Department of Public Safety or the State Court System where he thinks they belong.

STATE of ALASKA

MEMORANDUM

TO: William H. Huston
Director

DATE: November 2, 1977

FILE NO.

Thru: Charles E. Sothan
Deputy Director

TELEPHONE NO. 465-3376

FROM: Walter B. Jones, Jr.
Assistant Director, Juvenile Services

SUBJECT: Special Commissions

Problem

Probation and Parole Officers are obligated to investigate, supervise, and, when necessary, arrest adult felons every normal working day. A larger percentage of felons referred to our service appear to be violent. This behavior change has not occurred rapidly, but has surfaced over a period of years; subsequently, it has been difficult to identify. Approximately four to five years ago, a few probation officers commenced requesting training and protection for themselves when making certain home calls and investigating interstate compact supervision requests. More recently, many field personnel desire training in self-defense and the use of firearms with the authority to carry a concealed firearm when performing hazardous duty. Our active caseload seems to have a higher percentage of violent offenders on it than it used to have a few years ago. Police are reluctant to respond to our calls for assistance when making an arrest because of their own priorities and low manpower resources.

As a result of complaints from the field regarding hazardous duty and lack of equipment and training to cope with the problem, we commenced collecting data to determine if the complaints were realistic or just the desires of a few who wanted to be something that they were not.

The following data depicts the quantity and type of incidents and acts against Probation/Parole staff during the period of January 1974 to October 1977.

Probation and Parole Regions

	South Central	South East	Northern
A. Assaults			
1. Verbal Threats - unarmed	5	16	
2. Threats with a weapon		1	1
B. Assaults and Battery			
1. Unarmed	1	3	5
2. Armed	1	2	
Totals	7	22	6

Prob..tion and Parole Regions (continued)

	South Central	South East	Northern
C. Weapons confiscated from felons under supervision			
1. Handguns	9		4
2. Long guns	3	1	
3. Knives	3	2	
4. Other	2	1	
Totals	17	4	4

In addition to the above statistics, our officers have had to retreat from certain hazardous home calls where violations were noted because the officers did not have assistance and no weapon to support their arrest. As a result, evidence was lost and subsequent revocation hearings were considerably weakened.

We are in the process of adequately training our personnel at the Academy in the use of weapons and other self-defense alternatives in expectation that sooner or later probation officers will receive permission to carry a concealed weapon, either by statute or special commission, in order to implement the full scope of their duties in a safe manner. I would not like to think that management was remiss in its performance to line staff by not exposing staff to the necessary training and support to enable staff to carry out all of their duties. I personally would not feel good if a probation officer was seriously injured or killed because he or she was not trained or equipped to enforce all the conditions of probation and parole.

Solution

I recommend that you request Commissioner Burton of Public Safety to issue Special Commissions to qualified probation/parole officers, as an interim measure, until legislation is enacted to allow our staff to carry weapons concealed.

In return for these commissions, we agree to:

1. Meet State Trooper training standards that pertain to self-defense and weapons.

2. Assist Troopers when assistance is requested with staff who hold commissions.

3. Deal with a felony offense when it presents itself and no other law enforcement personnel are in the immediate vicinity to handle it with staff who hold commissions.

4. Obtain each Presiding Superior Court Judge's written support for the commissions.

5. Arm only Probation Officers who work with adult offenders.

Please find attached to this memo our training curriculum which, I have been assured by our staff development officer, meets minimum trooper academy standards on this subject.

Many of our existing staff already meet these standard: and have previously held commissions.

WBJ:pnl

Attachments

STATE of ALASKA

MEMORANDUM

TO: William H. Huston, Director
Division of Corrections

DATE: February 23, 1977

FILE NO:

Thru: Charles E. Sothan
Deputy Director

TELEPHONE NO: 465-3376

FROM: Michael J. Gilbert
Staff Development Officer

SUBJECT: Staff Study

Early Retirement for the Division of Corrections
Central Office Operational Management Staff
and Probations/Parole Officers

A. Statement of the Problem

The State of Alaska, Division of Corrections Operational Management Staff (see Enclosure 1) and the entire Probation/Parole Career Field are not under the Early Retirement System. This situation prevents effective career development by reducing promotion potential of the Correctional Officers already covered since individuals are, in effect, penalized for accepting a promotion above the position of Correctional Superintendent. The lack of Early Retirement status blocks effective lateral movement of qualified personnel between Probation/Parole Officer career fields and the Correctional Officer career field. Additionally, the Probations and Parole Officer is exposed to many of the same hazards and stresses as uniformed police.

B. Facts Bearing on the Problem

1. Alaska Statute 39.35.680(14) defines "Peace Officer and Fireman" as an "...employee who is employed full time in the state as a peace officer, chief of police, correctional officer, correctional superintendent, fish and game biologist or technician, fireman, or fire chief;".

2. The State of Alaska, Public Employees Retirement System Information Handbook, defines "Peace Officer and Fireman" as an "...employee who is employed full time in the state as a peace officer, chief of police, correctional officer, correctional superintendent, qualified employee of the Department of Fish and Game, fireman, or fire chief;". There is no indication of the definition of a "...qualified employee of the Department of Fish and Game".

3. The definition of "Public Safety Officer" and "fireman" by the Federal Government under the Public Safety Officer's Death Benefits Act of September 29, 1976, is:

> "The Act 'Public Safety Officer' as 'a person serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a fireman'. 'Law Enforcement Officer' means 'a person involved in crime

and juvenile delinquency control or reduction, or enforcement of criminal laws. This includes but is not limited to police, corrections, probation, parole, and judicial officers.' 'Fireman' is defined by the Act to include 'a person serving as an officially recognized or designated member of a legally organized volunteer fire department'". (See Enclosure 2.)

4. The first person to collect a $50,000 death benefit under the Public Safety Officers Death Benefit Act was Paul J. Weber, age 26, of Topeka, Kansas, a Probation and Parole Officer. (See Enclosure 3.)

5. The 1976 State of Alaska, Standards and Goals for Criminal Justice prepared by the Governor's Commission on the Administration of Justice tasked the Division of Corrections to create a "series of career ladders to attract and retain qualified employees." (Reference page 29, paragraph 7.2.3.) Career ladders are ineffectual unless there are benefits associated with a promotion or lateral movement. The choice between potential advancement or the loss of benefits earned over a period of years is a negative factor that prevents acceptance of promotion or lateral movement by many correctional officers. Because of this barrier, many corrections personnel view themselves as locked into their present position without advancement opportunity.

6. The Corrections operational personnel not included in the Early Retirement System are identified by positions in Enclosure 4. Inclusion of these positions in the early retirement represents an additional 64 positions. The average age of the persons currently holding these positions is 38.5 years, with 5.3 years of state employment. It would take the average Corrections Operational Management Staff or Probation Officer 16.5 years to reach the retirement age of 55 and 14.7 years to obtain the full twenty-year retirement benefits. In effect, it will be approximately 15 years before the retirement funds deposited by these employees will be significantly effected by claims for Early Retirement Benefits.

8. The training costs to the Division of Corrections range from $4,700 to $6,500 per man for Academy style training (see Enclosures 6A and 6B). The money spent on the expansion of the Early Retirement System will be defrayed by reduced training expenditure by reducing the turnover rate (three to five less new hires per year to be trained would balance the overall costs).

9. Probation and parole personnel are authorized to make arrests, are officers of the court and, in many areas of Alaska, represent the only law enforcement agency in the region. The Probation and Parole Administrators may, at any time, be placed in the field when emergencies arise to perform duties of a similar nature, which they have done in the past, and are fully trained for.

10. The hazardous nature of probations and parole work is a very real factor that must be faced daily by the Probation/Parole Officer. The chart below depicts the quantity and type of assaults/assaults and battery committed against Probations/Parole Officers during the period of January 1974 to December 1976.

	Probation and Parole Regions		
	Southcentral	Southeast	Northern
A. Assaults			
1. Verbal Threats - unarmed	5	16	Not recorded
2. Threats with a dangerous weapon		1	1
B. Assaults and Battery			
1. Unarmed	1	3	5
2. Armed with a weapon	1	2	
Totals	7	22	6
C. Weapons Confiscated from Felon Under Supervision			
1. Handguns	3		1
2. Rifles		1	
3. Knives	3	2	
4. Other	2	1	

Enclosure 7 provides narrative examples of several assault and assault and battery situations. Note the photograph of a weapon confiscated from a felon client in the Fairbanks area.

11. The Division of Corrections Central Office has experienced significant difficulty in obtaining qualified correctional officers for available management positions because of the inequality of the two retirement systems.

12. Correction Operational Managers and the Correctional Training Officers are experienced correctional personnel who, as part of their regular duties visit all institutions to perform various services. Additionally, these same personnel are subject to reassignment to any of the correctional institutions in case of emergency or shortage of personnel.

13. The Alaska Statute 39.36.680(14) is the statute that effectively separates out the Corrections Operational Management personnel and the Probations and Parole personnel. Enclosure 8 provides alternative samples of wording for the revision of this statute.

Conclusions

That the Operational Organization of the Division of Corrections, as defined by the Organizational Chart shown in Enclosure 9 be included under the Early Retirement

System. This will enable the development of an effective career ladder system that provides upward and lateral mobility.

2. That AS 39.35.680(14) be revised and submitted to the Legislature for approval.

). Recommendations

That the rewording of AS 39.35.680(14), as shown in Enclosure 7, Alternative #1 be adopted for a legislative proposal.

JG:pnl

nclosures

Corrections Operational Management Staff

Director

Deputy Director

Assistant Director - Adult Correctional Services

Assistant Director - Probations and Parole Services

Chief of Security (and future staff)

Staff Development and Training Officer

Training Officer III

Training Officer II

Training Officer I

Interstate Compact Officer

Alternative Care Coordinator

Classification Officer

Francis S. L. Williamson
Commissioner
Dept. of Health & Social Services

September 7, 1977

William H. Huston
Director
Division of Corrections

Request for Legislation
Early Retirement Status

The Governor's Task Force on Corrections, the Governor's speech of December 12, 1975 and the Governor's Commission on the Administration of Justice have all formally recognized the significant career development problems that exist within the Division of Corrections. Under the current structure it is extremely difficult for staff members to advance above the line supervisor level. One of the unnecessary blocks preventing advancement is the inclusion of the Correctional Officer series, through Correctional Superintendent under the twenty year early retirement program while the Probation-Parole Officer career field and the Correctional Management Staff are excluded. The net effect of this practice is that an individual desiring promotion or lateral movement must decide whether or not to leave their retirement program. This has resulted in several individuals refusing promotion opportunities.

An Actuary was conducted by the Division of Retirement and Benefits to obtain the fiscal impact. The actuary report indicated that the expense would be approximately $238,000 for FY 1978 (plus inflation and benefit increases).

I have enclosed a copy of a draft staff study further documenting the need for inclusion of Probation Officers and Correctional Management Staff under the early retirement system for your reference.

For these reasons, I am submitting this request for legislation to be drafted setting forth the following:

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

AS 39.35.680 (14) is repealed and reenacted to read:

"Peace officer and Fireman" means an employee who is employed in the state as a peace officer, chief of police, probation officer, probation administrator, correctional officer, correctional superintendent, correctional managers (subject to assignment to a correctional institution during emergency situations), correctional training officers, qualified employee of the Department of Fish and Game, fireman or fire chief.

WJG/mr

Paul Arnoldt, Director
Division of Retirement & Benefits
Department of Administration

September 20, 1977

465-3376

William H. Huston, Director
Division of Corrections
Department of Health
and Social Services

REQUEST FOR A
FORMAL ACTUARY REPORT

On November 30, 1976, an actuary was requested to ascertain the financial impact of enrolling the Corrections management staff and probation/parole staff in the "early" retirement system. This request never received a formal response from the Division of Retirement and Benefits. Mr. Robert Gates, the former director, provided only an informal handwritten note indicating that the estimated costs for FY-78 was $288,000. I have enclosed a copy of the original data, actuary request, and Mr. Gates' handwritten response for your reference and use (see Enclosure 1). We have requested legislation that would include both the probation/parole staff and the correctional management staff. Since the submission of the original request, the total staff included under the proposed legislation has increased from 59 to 65 (52 probation/parole field staff and 13 correctional management staff). Enclosure 2 identifies the specific Corrections management staff members by position title and includes the number of probation field staff members by their respective region. These minor additions have not significantly affected the figures listed for average age or length of service originally computed for the first request.

The legislation we have requested will, if passed, become effective during FY-79; consequently, we will require an actuary establishing the anticipated costs for FY-79 if these additional staff members are included under the 20 year "early" retirement program.

Thank you for your assistance in this matter.

WHH:pul

Enclosures

: of ALASKA MEMORANDUM My Early Ret. File

A-1-8
A-1-16
D-4-20

TO: Paul Arnoldt
Director
Division of Retirement & Benefits
Department of Administration

DATE: September 27, 1977

FILE NO:

TELEPHONE NO. 465-3376

FROM: William H. Huston
Director
Division of Corrections
Dept. of Health & Social Services

SUBJECT: Actuary for Early Retirement Status

On September 19, 1977, in our meeting, you indicated that complete updated data would be needed to conduct a comprehensive actuary. Attached is the data requested.

In the actuary report, I would like costs to be established for the first year, and every fifth year thereafter, for the full 20 years required to fully complete the early retirement cycle. Additionally, I will need to have separate computations for the central office staff (13 positions), for the probation staff (57 positions), and for the complete list of 70 positions in order to determine our actual course of action in this matter.

Thank you for your assistance.

WHH/mjr
Attachment

NAME	SS #	D.O.B.	AGE	D.O.H.	LENGTH OF SERVICE	JOB CLASS/TITLE	(PCN)	MONTHLY SALARY	RANGE
CENTRAL OFFICE									
William H. Huston	207-22-6018	05/01/31	46.33	07/01/64	13.17	Director of Corrections	064001	3847.00	26D
Charles E. Sothan	506-36-0189	07/31/35	42.1	09/16/76 + 5 mos	1.42	Deputy Director	064063	2973.00	23B
Walter B. Jones, Jr.	516-34-9593	07/01/34	43.17	3/9/64-5/10/65 8/7/67-Present	11.33	Assistant Director	064036	3445.00	22K
Lewis Reece	553-28-0360	12/10/39	37.80	09/26/72	5.0	Alternative Care Coord.	064005	2474.00	20C
Michael Dindinger	533-46-5958	05/01/47	30.33	10/04/71	5.92	Coord., Prisoner Prog.	064435	2296.00	20A
Michael Gilbert	002-34-4007	02/27/47	30.58	11/12/76	.83	Staff Dev. & Trng. Ofcr.	064161	2474.00	21A
Thomas T. Zaruba	574-14-9375	05/14/44	33.33	04/69-Present	10.93	Chief of Security	064511	2567.00	21B
Herb Maschner	535-30-3516	09/02/34	43.00	09/05/73	4.00	Assistant Director	064510	2762.00	22B
Robert Spinde	386-28-5605	01/23/32	45.67	04/22/69	8.42	Classification Officer	064512	2567.00	21B
John Babcock	101-42-7974	02/18/50	27.58	10/10/73	3.92	Training Officer II	064553	1983.00	18A
Ron Epperson	536-44-5582	05/03/48	29.33	05/17/74	3.32	Training Officer II	064554	2058.00	18A
Harrison Robinson	429-60-8151	06/14/34	43.25	03/26/76	1.5	Training Officer I	064552	1921.00	17A
Vacant Position	-	-	-	-	-	Training Officer III	064555	2214	19A
Central Office Summary		Average Age:	37.71		Average Serv. 5.81	Total Monthly Salary:		33581.00	

NAME	SS #	D.O.B.	AGE	D.O.H.	LENGTH OF SERVICE	JOB CLASS/TITLE	(PCN)	MONTHLY SALARY	RANGE
PROBATION AND PAROLE OFFICERS - SERO									
Keith Stell	521-44-2934	02/05/37	40.58	09/01/65	12.00	Probation Officer IV	064013	2973.00	20K
Russell Webb	444-50-4616	12/03/49	27.80	03/01/77	0.50	Probation Officer II	064121	1777.00	16B
Karen Rogers	542-42-4483	03/16/41	36.50	10/01/73	3.92	Probation Officer II	064341	1912.00	16D
Marlyn Olsen	387-52-0528	04/27/49	28.42	04/28/75	2.42	Probation Officer II	064357	1842.00	16C
Robert Hubby	568-46-7277	07/04/37	40.17	10/01/73	3.92	Probation Officer III	064012	2296.00	18D
Kermit Humphries	555-68-6861	08/13/47	30.17	05/13/74	3.33	Probation Officer III	064316	1983.00	18A
Neal King	519-16-1511	07/14/25	52.17	05/30/71	6.25	Probation Officer III	064349	2567.00	18F
Barton Penny	517-40-7440	01/03/41	36.68	06/16/69	8.25	Probation Officer III	064314	2474.00	18J
Robert Collins	571-58-6875	11/15/42	34.83	03/05/74	3.50	Probation Officer II	064011	1842.00	16C
Lynda Zaugg	574-18-8902	09/23/49	28.00	02/15/74	3.58	Probation Officer II	064469	2058.00	18A
William Alway	528-16-8506	06/26/21	56.17	08/03/71	6.09	Probation Officer II	064342	2058.00	16F
Robert Wild	574-18-3353	03/13/47	30.50	11/25/69-8/71 06/72-8/72 12/74-01/06/75 09/16/77-Present	3.08	Probation Officer II	064343	1712.00	16A
SERO Summary Data	Total Positions: 12	Ave. Age: 36.83		Ave. Serv.: 4.75		Total Monthly Salary:		25191.00	

PROBATION AND PAROLE OFFICERS - SCRO

NAME	SS #	D.O.B.	AGE	D.O.H.	LENGTH OF SERVICE	JOB CLASS/TITLE	(PCN)	MONTHLY SALARY	RANGE
Carroll Smith	483-40-7284	08/05/40	37.08	10/01/74	2.90	Probation Officer II	064108	1842.00	16C
Wayne Stanley	318-36-4322	06/30/44	33.25	11/16/75	1.90	Probation Officer II	064363	1777.00	16B
Carla Strane	543-54-8258	05/25/44	33.33	07/22/68	9.17	Probation Officer II	064276	1912.00	16D
Mary Sweet	531-28-5457	11/10/29	47.83	11/53-4/54 6/2/55	22.73	Probation Officer II	064164	2214.00	16K
Paul Tannenbaum	055-30-5761	01/17/36	41.67	11/09/70	6.89	Probation Officer III	064312	2214.00	18D
Diane Webb	537-40-2428	02/09/43	34.5	04/10/69	8.42	Probation Officer II	064323	2136.00	16J
Stanley Wells	504-40-9237	04/19/40	37.42	12/18/72	4.82	Probation Officer III	064227	2296.00	18C
Steven Widmer	523-62-4648	10/10/48	28.92	07/01/75	2.17	Probation Officer II	064387	1912.00	16B
Marguerite King	542-20-4956	12/12/26	50.79	05/24/76	1.05	Probation Officer I	064162	1424.00	13B
W. Jean Slack	574-16-4798	04/15/36	41.42	03/16/73	4.5	Probation Officer II	064018	1912.00	16D
Janet Moyer	574-14-1170	10/19/41	35.92	08/06/77	.15	Probation Officer II	064163	1712.00	16A
John Vanover III	574-22-2513	11/17/48	28.83	04/16/74	3.42	Probation Officer II	064108	1712.00	16A
Deborah Gefvert	547-90-8010	06/18/51	26.25	01/24/77	.67	Probation Officer II	064330	1712.00	16A

	Total Positions:	Ave. Age:	Ave. Service:		
SCRO Summary Data	30 Full Time	37.71	6.89 years	Total Salary:	61394.00

PROBATION AND PAROLE OFFICERS - NRO

NAME	SS #	D.O.B.	AGE	D.O.H.	LENGTH OF SERVICE	JOB CLASS/TITLE (PCN)	MONTHLY SALARY	RANGE
Donald Allen	574-14-2484	03/15/43	34.08	08/08/67	10.08	Probation Officer II	2385.00	16F
Joe Anderson	463-54-0092	04/11/37	40.42	06/16/74 FCC 06/15/76 Laid Off 07/02/76 Prob.-Parole	3.2	Probation Officer II	2058.00	16B
Georgene Brennen	574-26-5520	01/09/52	25.67	09/24/73	4.0	Probation Officer II	2136.00	16C
John Cain	541-20-7977	06/20/25	52.25	12/30/69	7.77	Probation Officer IV	2973.00	20D
Ida Hadley	574-07-3869	06/20/23	54.25	11/21/72	4.83	Probation Service Aide III	1589.00	9E
Ruth Hall	567-28-5655	12/03/17	59.8	03/16/69 (Pub. Wel.) NO BREAK IN SERVICE 09/16/71 Prob.-Parole	8.5	Probation Service Aide III	1650.00	9F
Glen Johnson	553-42-1486	07/16/34	43.17	11/11/70	6.83	Probation Officer II	2385.00	16F
Thekla Johnson	571-74-1435	09/29/48	29.0	05/02/72	5.33	Probation Officer II	2296.00	16E
Stephen Korenek	454-70-3237	09/07/46	31.05	11/17/75	1.83	Probation Officer II	2058.00	16B
Curt Masingill	439-46-8485	11/06/36	40.83	04/05/71-07/21/75 10/04/76 Rehired	5.24	Probation Officer III	2973.00	18D
Ronald Murray	453-64-0624	08/27/42	35.09	11/06/72	4.83	Probation Officer II	2214.00	16D
Diane Nelson	514-28-3354	11/08/54	22.83	06/10/75	2.05	Probation Officer Trainee	1384.00	10C
Gene Shafer	531-40-2901	09/30/39	38.00	07/06/76	1.17	Probation Officer III	2661.00	18A
Hazel Straub	574-16-7925	06/29/50	27.25	10/02/72	4.92	Probation Officer II	2136.00	16C
Harriett Thomas	538-20-3180	10/28/23	53.92	09/28/73-06/15/76 09/15/77 Rehired	2.80	Probation Officer III	2296.00	18A

	Ave.Age:	Ave. Service:		
NRO Summary Data	39.17	4.89	Total Monthly Salary:	33,194

ACTUARY SUMMARY SHEET

NAME	NUMBER OF POSITIONS	AVERAGE AGE		AVERAGE LENGTH OF SERVICE		TOTAL MONTHLY SALARY	
CENTRAL OFFICE SUMMARY	13	37.71		5.81		33,581.00	
PROBATION/PAROLE OFFICERS (SERO)	12		36.83		4.75		25,494.00
PROBATION/PAROLE OFFICERS (SCRO)	30		37.71		6.89		61,394.00
PROBATION/PAROLE OFFICERS (NRO)	15		39.17		4.89		33,194.00
AVERAGE SUB TOTALS	70	37.71	37.90	5.81	5.51	33,581.00	120,082.00
TOTAL ALL JOB CLASSES		37.81		5.66		$153,663.00	

PROBATION AND PAROLE OFFICERS - SCRO

NAME	SS #	D.O.B.	AGE	D.O.H.	LENGTH OF SERVICE	JOB CLASS/TITLE	(PCN)	MONTHLY SALARY	RANGE
Dustee Bonin	574-18-6431	04/02/47	30.42	04/16/69	8.42	Probation Officer II	064338	2058.00	16F
Loy Bolt	258-68-8745	06/26/45	32.25	8/29/68-5/22/71 7/12/71-Present	8.96	Probation Officer II	064539	1842.00	16C
Willie Brown	574-18-9827	08/04/47	30.08	08/08/70	7.25	Probation Officer II	064017	1842.00	16C
Dwane Burgess	574-14-1009	07/17/41	36.17	5/67-8/71 10/73-Present	8.16	Probation Officer II	064019	2058.00	16F
Frank Byerly	573-54-3251	12/10/41	35.79	11/09/70	6.89	Probation Officer III	0641_2	2567.00	18F
Edward Coleman	516-26-9068	06/12/29	48.25	12/02/68	8.82	Probation Officer IV	064016	2867.00	20J
Victoria Deakin	531-48-9786	01/01/46	31.42	10/01/73	3.92	Probation Officer II	064318	1912.00	16D
Harold Fencl	519-30-4755	06/26/34	43.25	3/22/74-7/20/76 9/9/76-Present	3.37	Probation Officer II	064383	1777.00	16B
Fred Fowler	536-32-2256	12/10/34	42.79	02/03/69	8.58	Probation Officer III	064470	2385.00	18F
Thomas Furbush	254-62-0836	08/28/41	36.08	12/22/62-7/4/64 7/25/66-4/14/67 2/5/69-Present	10.84	Probation Officer II	064472	2058.00	16F
Susan Grisham	574-20-4483	07/16/47	30.17	09/28/71	6.0	Probation Officer II	064366	1983.00	16E
Richard Illias	532-40-1924	08/07/43	34.08	04/16/69	8.42	Probation Officer III	064344	2474.00_	18J
Homer Mayo	487-30-4059	08/09/29	48.08	7/1/63-10/1/65 5/8/66-6/30/76 8/25/76-Present	13.48	Probation Officer II	064538	2296.00	16E
Marie Oswald	393-16-9672	03/25/20	57.5	08/04/64	13.08	Probation Officer II	064109	2214.00	16K
Wayne Pinqouch	143-12-5796	01/25/24	53.67	03/22/62	15.50	Probation Officer III	064313	2661.00	18K
Elizabeth Robson	125-42-2393	07/24/49	28.17	09/20/76	1.03	Probation Officer II	064339	1712.00	16A
Macon Roberts	425-72-6905	12/01/41	35.82	9/4/70-11/30/72 10/1/74-9/29/75 12/1/75-Present	5.04	Probation Officer II	064317	1777.00	16B

of ALASKA MEMORANDUM

TO: William H. Huston
Director
Division of Corrections
Dept. of Health & Social Services

DATE: October 27, 1977

FILE NO:

TELEPHONE NO:

FROM: Paul B. Arnoldt
Director
Division of Retirement & Benefits
Dept. of Administration

SUBJECT: Actuarial Costs for Probation and Parole Officers per Your Memo Dated 9/27/77

Per your request, the following cost factors are furnished:

1. Projected FY 78 Payroll $192,000,000

2. Anticipated Annual Payroll Increase 10%

The costs to cover Probation and Parole Officers under the Peace Officer and Firemen provisions of PERS:

	Number of Employees	Annual Cost as % of State Payroll
1. Central Office	12	.0082%
2. Probation and Parole Officers - SERO	12	.0057%
3. Probation and Parole Officers - SCRO	29	.0140%
4. Probation and Parole Officers - NRO	15	.0050%
TOTALS	68	.0329%

If I can be of further assistance to you on this matter, please don't hesitate to give me a call.

PBA/EEW/hew

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 4, 1979

LETTER OF LEGISLATIVE INTENT

SB 162

The term, "peace officer," is specifically defined for purposes of the Public Employees' Retirement System in AS 39.35.680(27). It is not intended that the general definition of "peace officer" in SB 162 change or modify in any way the meaning of the term, "peace officer," in the Public Employees' Retirement System statutes.

The committee is most reluctant to be placed in a position of prejudging the Alaska Supreme Court. The problem which brought about the introduction of this bill is now on appeal to that court. The committee finds itself in an awkward situation in the middle of a dispute between judicial, probation-parole and corrections officers on the one hand and the Departments of Law and Health and Social Services on the other.

It is thought that the problem could best be resolved by removing Probation, Parole and Corrections from the Department of Health and Social Services and placing them under the auspices and supervision of the court system.

Senator Ziegler, Chairman

SB

169

COMMITTEE REPORT

SENATE

2/13/79

FURTHER: Finance

Date: 3/13/79

Mr. President:

The Committee on Judiciary has had SB 169

increasing the Number of superior court judges

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

March 14, 1979

Tony Schuerch
Box 60€
Kotzebue, Alaska 99752

Dear Mr. Schuerch:

The Judiciary Committee just passed out Senate Bill 169. It should be on the calendar in a day or two, and I have no hesitation in predicting that you'll get your new Superior Court judge for Kotzebue, although the Anchorage judgeship may be in jeopardy.

We all recognize the problem.

Regards,

Robert H. Ziegler, Sr.
Chairman
Senate Judiciary Committee

RHZ/pkz

cc - Senator Ferguson

Kobuk Valley Educational Services
P.O. Box 606
Kotzebue, Alaska 99752
Phone (907) 442-3272

March 7, 1979

Senator Robert Zeigler
Senate Judiciary Committee
Pouch V
Juneau, Alaska, 99811

Dear Senator Zeigler;

I was referred to you by Senator Frank Ferguson, who represents us in the senate. Recently I wrote to Senator Ferguson, expressing my deep concern for the need of a superior court judge here in Kotzebue. He responded by sending me a copy of SB 169, which he introduced. He suggested I write to you, since the bill is in your judiciary committee.

This bill has my full support. It calls for two additional superior court judgeships, one to be located in Kotzebue. I urge and plead that you do everything in your power to make this bill into law. We are in desperate need of a superior court judge here in Kotzebue to try felonies.

Right now the only superior court judge we have in the area is located in Nome. Yet there are more reported felonies in the Kotzebue region than in the Nome region. In order to take care of these, the entire court has to fly here from Nome to hold trial, at which time they are not available to serve the Nome area. Because they are spread so thin, both areas suffer.

In the Kotzebue area, I estimate that right now less than one-tenth of the reported felonies are prosecuted, let alone go to trial. The offenders, realizing they will not be called to account for their offenses, are repeating them. It has reached the point where many of our Native people are living each day in fear for their safety, and the safety of their families and property.

Recently, the Kotzebue chief of police showed me a stack of tapes of the testimony of rape victims. He was told by the district attorney these will not be prosecuted unless a third party witnessed the act and is willing to testify. The DA is not prosecuting but a token number of felonies, presumably because of the heavy caseload.

I don't know much about the law; my field is education. But I do know the villages and our Native people of the Nome and Kotzebue regions. I know they feel, as I do, that the system of justice has broken down, and that there is no protection for them in the law. Unlike most White people, our Native people don't usually speak out strongly for their rights. They simply endure.

For the benefit of all the people of our judicial district, I strongly urge that you support Senator Ferguson's SB 169.

cc:Senator Ed Dankworth
Senator Don Bennett
Senator Pete Meland
Bering Straights newspaper
Senator Frank Ferguson
Governor Jay Hammond
Senator Bill Ray

Sincerely,

Tony Schuerch

Tony Schuerch

CITY OF KOTZEBUE

P.O. BOX 46
KOTZEBUE, ALASKA 99752
907-442-3351

POLICE DEPARTMENT

March 9, 1979

Senator Robert Zeigler
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Zeigler:

I would like to voice my support of SB 169 which would place a superior court position in Kotzebue. It is sorely needed.

Presently we are served by Magistrate Ross Schaeffer and Assistant Magistrate Hensley. It is too bad Magistrate Schaeffer cannot be elevated to a District Judgeship. He does outstanding work in his community, is well respected by citizen and Police alike. He is a credit to his profession.

Sincerely,

Donald E. Buehler

DONALD E. BUEHLER
Chief of Police

DEB/dew

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 169

Title An Act Relating to the Number of Superior Court Judges

Requested by Senate Judiciary Date February 21, 1979

II. FISCAL DETAIL

Agency Affected Alaska Court System

Program Category Affected Administration of Justice

Budget Request Unit(s) Affected Alaska Court System

EXPENDITURES (Thousands of Dollars)

		FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES		139.7	148.1	157.0	166.4	176.4
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT		8.0				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		147.7	148.1	157.0	166.4	176.4

FUNDING (Thousands of Dollars)

GENERAL FUND		147.7	148.1	157.0	166.4	176.4
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		4	4	4	4	4
PART TIME						
TEMPORARY						

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

SB 169 creates two Superior Court judge positions - one in Kotzebue and one in Anchorage. The Kotzebue position is an upgrade and transfer of the existing district court judge position in Nome, while the Anchorage judgeship requires the establishment of a new position.

A detailed summary of the costs associated with each position is provided on the attachment budget detail.

IV. DATE February 28, 1979 PREPARED BY Richard P. Barrier

AGENCY Alaska Court System

PHONE 264-0545

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

33-001 (Rev. 10/78)

BUDGET DETAIL - SB 169

Kotzebue

Personnel:		Salary	Benefits	Total
	Superior Court Judge	$57,072	$5,567	$62,639
Less:	District Court Judge	48,252	5,214	(53,466)
	Secretary/In-Court Clk	23,208	7,392	30,600
				$39,773

Equipment:	Judge	Secretary	
Desk	463	426	
Chair	163	188	
Typewriter		820	
Bookcases	164		
Legal Reference Materials	700		
Credenza	282		
	1,772	1,434	3,206
		Kotzebue Total	$42,979

Anchorage

Personnel:	Salary	Benefits	Total
Superior Court Judge	$48,576	$5,227	53,803
Secretary	16,812	6,260	23,072
In-Court Clerk	16,812	6,260	23,072
			$99,947

Equipment:	Judge	Secretary	In-Court	
Desk	463	426	426	
Chair	163	188	188	
Typewriter		820		
Recorder			1,000	
Bookcases	168			
Legal Reference Materials	700			
Credenza	282			
	1,776	1,434	1,164	4,824
			Anchorage Total	$104,771

Total FY 80 Cost -	Kotzebue:	$ 42,979
	Anchorage:	104,771
		$147,750

SB

171

COMMITTEE REPORT

SENATE

FURTHER: None

2/13/79

Date: _____

Mr. President:

The Committee on Judiciary has had SB 171

relating to marine pilots

under consideration and ~~(a majority of the committee)~~ ~~(the committee)~~ reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 1, 1979

SUBJECT: Marine Pilots
Senate Bill 171

TO: Senator Robert Ziegler

FROM: Kenneth E. Vassar, Legislative Counsel

You have asked about potential commerce clause problems in Senate Bill 171. This bill raises the penalty for failure to employ a licensed pilot under certain circumstances. I can see no problem with the bill itself, or with penalizing masters or owners of certain vessels for failing to employ a pilot. This is not to say that constitutional questions do not exist in AS 08.62 generally, and in AS 08.62.185 specifically. The amendments presented in SB 171 would not significantly affect the constitutional questions. If there is a specific concern about SB 171, perhaps I could go into greater detail; please let me know if that is the case.

I am enclosing a copy of the memo I sent to you dated May 9, 1977, discussing the constitutional questions now in AS 08.62.185. I would note that the U.S. Supreme Court has heard the Washington case discussed in that memo and issued an opinion on March 6, 1978 (Opinion No. 76-930). The court found that Washington's law requiring a state-licensed pilot on enrolled vessels was precluded by 46 U.S.C secs. 215, 364 and to that extent the law was invalid. The court further noted that the pilotage requirement on registered vessels was not prohibited by 46 U.S.C. sec. 215 or by the Ports and Waterways Safety Act of 1972 (33 U.S.C. sec. 1221 and 46 U.S.C. sec. 391(a)); the court upheld that part of the Washington law.

KEV:nem

Enclosure

M E M O R A N D U M May 9, 1977

SUBJECT: HB 510 - Marine Pilotage

TO: Senator Robert H. Ziegler, Sr., Chairman
Senate Rules Committee

FROM: Kenneth E. Vassar
Staff Attorney

You have requested an opinion relating to the validity of HB 510 (relating to marine pilotage), particularly in light of federal legislation. The relevant federal statutes are found at 46 U.S.C. sec. 211, and 46 U.S.C. sec. 364. Section 211 allows state regulation of pilots "in the bays, inlets, rivers, harbors, and ports of the United States," and Section 364 provides for federal regulation of (and Coast Guard licensing of pilots on) all coastwise seagoing steam vessels. The bill under consideration would constitute an attempt by the state to regulate pilots of any oil tankers of 50,00 dead weight tons or greater navigating in state waters beyond Alaska pilot stations. In my opinion, HB 510 goes beyond the authority of the state as provided in 46 U.S.C. sec. 211 and intrudes into a federally preempted area under 46 U.S.C. sec. 364, and is thus unenforceable.

At least two cases to date would appear to support this conclusion. In Davis v. M/V Ester S., 509 F. 2d 1377, a barge which was transporting asphalt from Philadelphia to Jacksonville was declared to be a "steam vessel." The court stated that an expanded definition of "steam vessel" provided in 46 U.S.C. sec. 391, which includes vessels that have on board liquid cargo in bulk which is inflammable or combustible, applies to the federal pilotage regulations as well as to the federal inspection laws. Under this case an oil tanker is subject to the federal pilotage regulation of 46 U.S.C. sec. 364. Upon making the finding that the barge was subject to the federal act, the court proceeded to declare the Florida pilotage act unenforceable and specifically found that Congress, in passing the federal law, intended to exempt such vessels from state pilotage laws. Florida's law would have required the barge to take on a state-licensed pilot when entering or leaving a Florida port.

The second case, and perhaps the more important for our purposes, is a recent case tried in the federal circuit court for the western district in Washington. In Atlantic Richfield Co. v. Evans, the court was faced with the Washington Tanker Law, part of which requires a state-licensed pilot aboard oil tankers navigating in Puget Sound. In its opinion, the court states:

> ARCO and Seatrain also argue that section 2 of Washington's Tanker Law (requiring a local pilot on all tankers larger than 50,000 dwt) has been preempted. Insofar as the Tanker Law prohibits a tanker "enrolled in the coastwise trade" from navigating Puget Sound unless it has a local pilot, the statute is void; it conflicts with clear federal law on that subject. 46 U.S.C. sec. 215, 364 (1970).

This case is currently being appealed to the United State Supreme Court, and certiorari has been granted. Thus, any opinion is subject to substantial reservation until the Supreme Court's decision. The case is of particular importance because of the similarity between the Washington law and HB 510.

Based upon these cases, and the language of the federal statutes involved, I believe that HB 510 is unenforceable, at least to the extent that it attempts to regulate tankers on the coastwise trade. Enclosed are copies of the statutes and cases cited above. If you have any questions, please do not hesitate to call on me.

MEV:hjd

M E M O R A N D U M

May 9, 1977

SUBJECT: HB 510 - Marine Pilotage

TO: Senator Robert H. Ziegler, Sr., Chairman
Senate Rules Committee

FROM: Kenneth E. Vassar
Staff Attorney

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KLV:hjd

February 21, 1979

TO: BILLY BERRIER

FROM: SENATOR ZIEGLER

RE: SB 171

Is the captioned bill constitutional? The point has been raised that it might be violative of the ICC.

I don't require a lengthy opinion, nor is time especially of the essence.

Thanks.

RHZ/pbz

PILOTAGE TARIFF AND CHARGES FOR SOUTHEASTERN ALASKA

EFFECTIVE: DECEMBER 5, 1978 THROUGH JUNE 30, 1979

EXCEPT TARIFF III, E.

I. TARIFF AND CHARGES APPLICABLE TO ALL SHIPS EXCEPT PASSENGER VESSELS:

A. Basic Port Charge for Pilotage in or out of Port, each Entry or Departure Constituting a Separate Chargeable Event:

Port	Port Charge
Ketchikan	$453.00
Metlakatla	453.00
Klawock	553.00
Ward Cove	453.00
* Wrangell	494.00
* Shoemaker Bay	94.00
Petersburg	494.00
Duncan Canal	612.00
Sitka	453.00
Juneau	453.00
Juneau Oil Docks	530.00
Haines, Chilkoot	530.00
Lutak	530.00
Skagway	530.00
Skagway Ore Dock	612.00
Yakutat	553.00
Icy Bay	553.00

* On movements between these ports following an initial entry, each entry or departure except the initial entry and the final departure, will be at the rate of $453.00.

B. Charges for Restricted Passage Pilotage, Entry, Transit, and Departure From Each Listed Area Constituting a Combined Single Chargeable Event:

Area	Port Charge
Wrangell Narrows	$129.00
Sergius Narrows	65.00
Whitestone Narrows	65.00

C. Unlisted Port and Restricted Passage Charges:

These charges to be negotiated according to risk and time.

D. Overtime:

If one pilot exceed six hours continuous running time without a a six-hour rest period, overtime shall be charged at the rate of $31.00 per hour, or portion thereof. On runs anticipated to be over 8 hours duration, two pilots shall be required, and, in addition to the basic port charge, 50% of such charge shall be paid.

NOTE: PILOT BOAT CHARGES ARE NOT INCLUDED IN PILOTAGE TARIFF.

E. Anchoring Charges:

1. Anchoring or laying to for loading cargo or discharging cargo shall be considered as a regular port charge, and all fees and tariffs shall be assessed the same as if the vessel has moored.

2. Anchoring, waiting for berth, or for weather shall be at the rate of $147.00.

F. Other Charges
As applicable under the terms of Section III.

II. TARIFF AND CHARGES APPLICABLE ONLY TO PASSENGER VESSELS:

A. Basic Port Charge for Pilotage in or out of Port, Each Entry or Departure Constituting a Separate Chargeable Event:

Port	Port Charge
Ketchikan	$453.00
Wrangell	494.00
Petersburg	494.00
Sitka	453.00
Juneau	453.00
Haines, Chilkoot	530.00
Haines, Lutak	530.00
Skagway, White Pass	530.00

B. Charges for Restricted Passage and Cruise Area Pilotage, Entry Transit and Departure for Each Listed Area Constituting a Combined Single Chargeable Event:

Area	Port Charge
Cruise Areas	
Glacier Bay	$1,295.00
Tracy Arm	647.00
Endicott Arm	647.00
Restricted Passages	
Wrangell Narrows	$ 129.00
Sergius Narrows	65.00
Whitestone Narrows	65.00

C. Unlisted Port, Restricted Passage and Scenic Cruise Areas:
To be negotiated according to risk and time.

D. Passenger Cruise:
In addition to any charges otherwise applicable under Section II A and II B, passenger charges apply as follows:

NOTE: PILOT BOAT CHARGES ARE NOT INCLUDED IN PILOTAGE TARIFF.

The number of saleable passenger berths on board times the number of miles run in the inside waters Alaska (excluding miles run in scenic areas) times the mileage rate of 4.70 mills. The saleable passenger berths shall range from a minimum charge for 200 berths or a maximum charge for 1000 berths.

E. Anchoring Charges:

1. Anchoring or laying to for loading passengers or discharging passengers shall be considered as a regular port charge and all fees and tariffs shall be assessed the same as if vessel moored.

2. Anchoring, waiting for a berth or for weather shall be at the rate of $147.00.

F. Other Charges:
As applicable under the terms of Section III.

III. OTHER CHARGES APPLICABLE TO ALL VESSELS IN ADDITION TO ALL OTHER TARIFFS AND CHARGES.

A. Tonnage and Draft Charges:

1. Tonnage charges will be made on a tonnage unit system at the rate of $1.37 per unit for all units in excess of 163 units in or out of a port or cruise area. These are separate event charges and are computed separately for each entry and each departure.

2. "Tonnage Units" shall be determined as expressed by the following formula:

$$\frac{\text{Overall Length} \times \text{Extreme Breadth} \times \text{Depth}}{10{,}000} = \text{Units}$$

3. Definitions:

"Overall Length" is the distance between the forward and after extremeties of the vessel.

"Extreme Breadth" is the maximum breadth to the outside of the shell plating of the vessel.

"Depth" is the vertical distance of amidships from the top of the keel plate to the uppermost continuous deck fore and aft and which extends to the sides of the vessel. The continuity of a deck shall not be considered to be affected by the existence of tonnage opening, engine space or a step in the deck.

All measurements shall be in feet and inches (U.S.).

NOTE: PILOT BOAT CHARGES ARE NOT INCLUDED IN PILOTAGE TARIFF.

4. All draft in excess of 32 feet will be charged at the rate of $12.00 per foot or portion thereof, in or out of a port or cruise area. These are separate event charges and are computed separately for each entry and each departure.

B. Shifting Charges:

1. For a dock to dock commercial movement within an incorporated harbor, the charge will be one-half the regular port charges.

2. Shifting of ship from dock to dock, dock to anchorage, anchorage to anchorage, or anchorage to dock for bunkering or other non-commercial reasons, within an incorporated harbor, will be $177.00 per movement. A dock-to-dock shift constitutes two separate movements.

C. Dead Ships and Stern-First Dockings:
Docking and undocking dead ships and stern-first dockings will be charged at a fifty percent increase over the regular pilotage fee.

D. Emergency:
In case of a dire emergency for safety of ship, crew, or passengers, there will be no pilotage charges except for transportation and subsistence.

E. Transportation and Subsistence: (Effective May 15, 1978 - April 1, 1979)

1. Vessels, owners, agents and/or charterers shall pay pilotage fees, pilots' travel expenses such as: Plane and ferry fares, meals, lodging, cab fares, telegrams, telephone calls, and all other expenses pertaining to ship's business.

a. Meals shall be charged at the following rates:

	Juneau	Annette Ketchikan Petersburg Sitka Mt. Edgecumbe Skagway Wrangell	Other Locations
Breakfast	$ 7.00	$ 5.60	$ 6.20
Lunch	7.00	5.60	6.20
Dinner	14.00	11.20	12.40

b. Hotels shall be charged at the following rates:

Juneau	Annette Ketchikan Petersburg Sitka Mt. Edgecumbe Skagway Wrangell	Other Locations
$42.00	$33.60	$37.20

NOTE: PILOT BOAT CHARGES ARE NOT INCLUDED IN PILOTAGE TARIFF.

2. When adequate meals and rooms are not furnished to the pilot when on ship, a charge will be made in accordance with the above rates.

F. Travel Day, Detention Day, Standby Time, Cancellation Charges and Out-of-area Charge.

1. When due to weather and transportation difficulties, a pilot has to leave in advance to insure meeting a vessel upon arrival or departure, or being delayed by weather or transportation difficulties returning from an assignment, a charge of $129.00 per day will be charged for each day a pilot is in transit or on standby. This does not include an actual work day.

2. Detention time on board ship, when no other charges accrue during the day, will be at the rate of $31.00 per hour per pilot, not to exceed $129.00 per pilot in any one day. Pilots carried to sea will be the same rate for each day detained plus first class passage and subsistence back to Ketchikan.

3. Cancellation charges will be $147.00 plus transportation and subsistence.

4. Travel, standby and work days begin and end at midnight.

5. An out-of-area charge, in lieu of detention and travel time (not applicable within 100 miles of Southeast Alaska), shall equal 1½ times the detention rate.

G. Notice of Ship Arrival and Departure:

1. When vessels, owners, or agents do not correct their ETA within four hours of ETA last given, compensation in the amount of $31.00 per hour shall be charged until actual arrival of vessel at pilot station not to exceed $129.00 for any one day.

2. When sailing time is set by agent, owner or master of a vessel, any delay over one hour shall be charged at the rate of $31.00 per hour or portion thereof, not to exceed $129.00 for any one day. If the pilot is detained for one hour or less, no detention will be charged. If the pilot is detained for more than one hour, detention for the first hour will be charged.

II. Vessel at Rest Charge:

When an agent, owner or master requests a pilot to stay on board a vessel on a continuous basis while the vessel is docked or anchored at a port or anchorage, the rate will be $294.00 per day. Days begin and end at midnight.

NOTE: PILOT BOAT CHARGES ARE NOT INCLUDED IN PILOTAGE TARIFF.

STATE OF ALASKA

W. S. HAYMOND

GOVERNOR



BOARD OF MARINE PILOTS

CENTRALIZED LICENSING STATUTE, AS 08.01.

MARINE PILOT STATUTE 08.62.010

MARINE PILOT REGULATIONS 12 AAC 56.010

PILOTAGE TARIFF AND CHARGES FOR

SOUTHEASTERN AND SOUTHWESTERN ALASKA

LICENSED MARINE PILOTS

****

Printed: August 197

TITLE 8. BUSINESS AND PROFESSIONS

CHAPTER 01. CENTRALIZED LICENSING

Section
10. Applicability of chapter
20. Board organization
25. Public members
30. Quorum
40. Transportation and per diem
50. Administrative duties of department
60. Application for license
70. Administrative duties of boards
80. Department regulations
87. Powers and duties of department
90. Applicability of the Administrative Procedure Act
100. License renewal, lapse and reinstatement
105. Penalty for improper payment
110. Definitions

Sec. 08.01.010. APPLICABILITY OF CHAPTER. This chapter applies to the

(1) Board of Public Accountancy;
(2) Board of Barber Examiners;
(3) Repealed by sec. 6 ch 32 SLA 1971.
(4) Board of Chiropractic Examiners;
(5) Board of Hairdressing and Beauty Culture Examiners;
(6) Board of Dental Examiners;
(7) Board of Electrical Examiners;
(8) State Board of Registration for Architects, Engineers and Land Surveyors;
(9) State Medical Board;
(10) Board of Nursing;
(11) Board of Examiners in Optometry;
(12) Board of Pharmacy;
(13) Real Estate Commission;
(14) Board of Veterinary Examiners;
(15) Board of Psychologist and Psychological Associate Examiners;
(16) Collection Agency Board;
(17) Board of Welding Examiners;
(18) Board of Marine Pilots;
(19) Board of Dispensing Opticians;
(20) Guide Licensing and Control Board.

Sec. 08.01.020. BOARD ORGANIZATION. Unless otherwise provided, all board members are appointed by the governor and serve at his pleasure. Unless otherwise provided, the governor shall designate the chairman of the board, and all other officers shall be elected by the board members.

Sec. 08.01.025. PUBLIC MEMBERS. No public member of a board may

(1) be engaged in the occupation which the board regulates;
(2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
(3) have a direct financial interest in the occupation which the board regulates.

Sec. 08.01.030. QUORUM. A majority of the membership of a board constitutes a quorum unless otherwise provided.

Sec. 08.01.040. TRANSPORTATION AND PER DIEM. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180.

Sec. 08.01.050. ADMINISTRATIVE DUTIES OF DEPARTMENT. (a) The department shall provide the following administrative and budgetary services when appropriate

(1) collect fees and issue receipts;
(2) maintain records and files;
(3) issue and receive application forms;
(4) notify applicants of acceptance or rejection of applicants as determined by the board;
(5) designate dates examinations are to be held and notify applicants;
(6) publish notice of examination;
(7) arrange space for holding examinations;
(8) notify applicants of results of examinations;
(9) issue licenses and certificates or temporary licenses or certificates as authorized by the board;
(10) issue duplicate licenses or certificates upon proof by the licensee of loss of the original and payment by the licensee of a fee of $2;
(11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;
(12) compile and maintain current a register of licenses;
(13) answer routine inquiries;
(14) maintain files relating to individual licenses;
(15) arrange for printing and advertising;
(16) purchase supplies;
(17) employ secretarial help when needed;
(18) perform other services which may be requested by the board;
(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84 and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(b) The form and content of a license, authorized by a board listed in sec. 10 of this chapter, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned.

Sec. 08.01.060. APPLICATION FOR LICENSE. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department.

Sec. 08.01.070. ADMINISTRATIVE DUTIES OF BOARDS. Each board shall perform the following duties in addition to those provided in its respective law

(1) keep minutes and records of all proceedings;
(2) hold a minimum of one meeting each year;
(3) hold at least one examination each year;
(4) request, through the department, investigation of violations of its laws and regulations;
(5) prepare and grade examinations;
(6) pass on qualifications of applicants for examination and license;
(7) forward minutes of meetings to the department within 20 days;

(8) forward results of examinations to the department;

(9) notify the department of meeting dates at least 15 days before meeting.

Sec. 08.01.080. DEPARTMENT REGULATIONS. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

(1) how an examination is to be conducted;

(2) what is contained in application forms;

(3) how a person applies for an examination or license.

Sec. 08.01.087. POWERS AND DUTIES OF DEPARTMENT. (a) The department may, upon its own motion, conduct investigations to determine whether any person has violated a provision of this chapter or a regulation adopted under it or a provision of a chapter in this title dealing with one of the boards listed in sec. 10 of this chapter or a regulation adopted by one of those boards, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or any of the laws pertaining to or regulations adopted by the boards listed in sec. 10 of this chapter, he may, if he considers it in the public interest, and after notification to all board members by telephone or telegraph of a proposed order or action unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or his designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it, or any of the laws pertaining to or regulations adopted by the boards listed in sec. 10 of this chapter;

(3) examine or have examined the books and records of any person whose business activities require licensure by a board listed in sec. 10 of this chapter and he may require that person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents.

Sec. 08.01.090. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b).

Sec. 08.01.100. LICENSE RENEWAL, LAPSE AND REINSTATEMENT. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

Sec. 08.01.105. PENALTY FOR IMPROPER PAYMENT. An applicant shall pay a penalty of $10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor.

Sec. 08.01.110. DEFINITIONS. In this chapter

(1) "board" includes the boards and commissions listed in sec. 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development;

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in sec. 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in sec. 10 of this chapter.

CHAPTER 62. MARINE PILOTS

Article
1. Board of Marine Pilots (secs 08.62.010 - 08.62.040)
2. Licensing (secs 08.62.080 - 08.62.150)
3. General Provisions (secs 08.62.160 - 08.62.200)

Revisor's note (1970) - In ch. 106, SLA 1970, AS 08.62 was incorrectly designated AS 08.87.

ARTICLE 1. BOARD OF MARINE PILOTS

Section
10. Creation and membership of board
20. Appointment and term of office
30. Meetings
40. Powers and duties

Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Marine Pilots. It consists of two pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, two agents of managers of vessels subject to this chapter, two public members in accordance with AS 08.01.025, and the commissioner or his designee. Not more than one pilot and one agent or manager

shall be from any one judicial district. All members of the board shall be residents of the state. (sec 2 ch 106 SLA 1970; am sec 8 ch 258 SLA 1976) (Eff. of amendment. The 1976 amendment inserted "two public members in accordance with AS 08.01.025" in the second sentence.)

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the pilot and agent or manager members of the board, subject to confirmation by a majority of the members of the legislature in joint session for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. (sec 2 ch 106 SLA 1970)

Sec. 08.62.030. MEETINGS. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (sec 2 ch 106 SLA 1970)

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;

(2) consistent with the law, adopt regulatons, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licensed pilots, vessels, operators, agents and manager;

(4) regulate pilotage fees; and

(5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (sec 2 ch 106 SLA 1970)

ARTICLE 2. LICENSING

Section		Section	
80.	License requirement	120.	Duration, renewal
90.	Application	130.	Lapsed license
100.	Qualifications	140.	Fees
110.	Previous licensure	150.	Denial, revocation or suspension

Sec. 08.62.080. LICENSE REQUIREMENT. No person may pilot a vessel subject to this chapter unless he is licensed under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.090. APPLICATION. (a) A person who desires to be licensed under this chpater shall apply in writing to the department.

(b) The application shall provide the information and be made on a form prescribed by the board. (sec 2 ch 106 SLA 1970)

Sec. 08.62.100. QUALIFICATIONS. A person is entitled to a license under this chapter if he

(1) is of good moral character;
(2) is a citizen of the United States;
(3) passes the examination given by the board; and
(4) qualifies under the regulations adopted under section 40(a)(2) and (b) of this chapter. (sec 2 ch 107 SLA 1970)

Sec. 08.62.110. PREVIOUS LICENSURE. A license that was issued under AS 30.10 is considered as having been issued under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.120. DURATION, RENEWAL. A license issued under this chapter shall be renewed biennially on dates set by the department. A license issued under AS 30.10 lapses at the end of calendar year 1970. A license issued between May 7, 1970 and the end of 1970 shall be issued for a fee of $100. A license shall be renewed without examination upon the payment of the biennial license fee. (sec 2 ch 106 SLA 1970)

Sec. 08.62.130. LAPSED LICENSE. A lapsed license may be reinstated without examination if it has not remained lapsed for more than two years. However, if the license is lapsed for less than two years and the board has reason to believe that the person applying for reinstatement of his license in incapable or incompetent to carry out the duties of a licensed marine pilot, the board may require the applicant to take and pass the examination given by the board. (sec 2 ch 106 SLA 1970; am sec 1 ch 22 SLA 1973)

Sec. 08.62.140. FEES. The following fees shall be imposed under this chapter when applicable:

(1) application fee..... $ 10
(2) biennial license fee..... $200
(sec 2 ch 106 SLA 1970)

Sec. 08.62.150. DENIAL, REVOCATION OR SUSPENSION. (a) The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, revoke or suspend the license of a person who

(1) is incompetent in the performance of his pilotage duties;
(2) is habitually intoxicated;
(3) illegally uses or sells narcotic or hallucinogenic drugs;
(4) makes a false statement to obtain a license;
(5) violates a provision of this chapter or a regulation adopted under it; or
(6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

(1) the reason for the license denial, revocation or suspension has been remedied; and
(2) the period of suspension has been served and all fines imposed under this chapter have been paid. (sec 2 ch 106 SLA 1970)

ARTICLE 3. GENERAL PROVISIONS

Section
160. Mandatory employment of licensed pilots
170. Pilot's lien for compensation
180. Exemptions
190. Penalty
200. Definitions

Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel subject to this chapter navigating the inside coastal waters of Alaska as determined by regulations shall employ a pilot holding a valid license under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.170. PILOT'S LIEN FOR COMPENSATION. Each vessel, its tackle, apparel and furniture and the owner of the vessel are jointly and severally liable for the compensation of a pilot employed on the vessel and the pilot has a lien on the vessel, her tackle, apparel and furniture for his compensation. (sec 2 ch 106 SLA 1970)

Sec. 08.62.180. EXEMPTIONS. This chapter does no apply to

(1) vessels under enrollment;

(2) fishing vessels registered in the United States or in British Columbia, Canada;

(3) motorboats as defined in sec. 1 of the Federal Motorboat Act of 1940 (54 Stat. 163; 46 U.S.C., sec. 526 et seq.);

(4) vessels of United States registry of less than 300 gross tons and tow boats of United States registry and vessels owned by the State of Alaska, engaged exclusively

(A) on the rivers of Alaska; or

(B) in the coastwise trade on the west coast of the United States including Alaska, Hawaii, and British Columbia, Canada;

(5) vessels of Canada, including Canadian cruiseships, engaged in frequent trade between British Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and those of United States registry; and

(6) pleasure craft. (sec 2 ch 106 SLA 1970; am sec 1 ch 43 SLA 1972)

Effect of amendment-The 1972 amendment inserted "of United States registry of less than 300 gross tons" after "vessels in (4) and added "or" in (A).

Sec. 08.62.190. PENALTY. A master or owner of a vessel required by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $500 nor more than $1,000. A person who violates any other provision of this chapter or a regulation adopted under it is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $500 nor more than $1,000. (sec 2 ch 106 SLA 1970)

Sec. 08.62.200. DEFINITIONS. In this chapter

(1) "board" means the Board of Marine Pilots;
(2) "commissioner" means the commissioner of the Department of Commerce and Economic Development;
(3) "department" means the Department of Commerce and Economic Development;
(4) "vessel" means all vessels not exempt under 180 of this chapter. (sec 2 ch 106 SLA 1970; am sec 48 ch 218 SLA 1976)

Effect of amendment.-The 1976 amendment substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraphs (2) and (3).

PROFESSIONAL AND VOCATIONAL REGULATIONS

TITLE 12

CHAPTER 56. BOARD OF MARINE PILOTS

Article
1. Administration of board (12 AAC 56.010 - 12 AAC 56.020)
2. Licensing (12 AAC 56.030 - 12 AAC 56.080)
3. Inside Waters (12 AAC 56.090 - 12 AAC 56.120)
4. Rates (12 AAC 56.130 - 12 AAC 56.150)
5. General Provisions (12 AAC 56.160 - 12 AAC 56.190)

ARTICLE 1. ADMINISTRATION OF BOARD

Section
10. Quorum
20. Meetings

12 AAC 56.010. QUORUM. (a) For the purpose of approving applications for examination and administering the examination for a temporary license two members of the board are a quorum.

(b) For the purpose of board meetings, hearings, examinations and for conducting all other board business, three members are a quorum. (Eff 6/11/71, Register 38; am 6/1/72, Register 42)

Authority: AS 08.62.040(b)

12 AAC 56.020. MEETINGS. The annual meeting of the board shall be in December on the date, time and place designated by the chairman. Special meetings will be held at times and places designated by the chairman with approval of the governor and members of the board. (Eff. 6/11/71, Register 38)

Authority: AS 08.62.030
AS 08.62.040(b)

ARTICLE 2. LICENSING

Section
30. Qualifications for unlimited pilot's license
40. Qualifications for limited pilot's license
50. Qualifications for channel pilot's license
60. Temporary license
70. Examinations
80. Biennial license renewal

12 AAC 56.030. QUALIFICATIONS FOR UNLIMITED PILOT'S LICENSE. An applicant for an unlimited pilot's license shall apply on a form provided by the Department of Commerce and Economic Development. An applicant shall

(1) pay the required fee;

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license as a first class pilot upon the waters for which applying;

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels;

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the waters for which he is applying, which will be determined by oral and written examination before the board from topics listed in section 70 of this chapter;

(5) have met the following requirements:

(A) have a minimum of one year as a master or pilot of a vessel in the waters for which applying, and have executed under the direct supervision of a pilot holding an unlimited pilot license under AS 08.62.100 a minimum of 10 dockings and 10 undockings while holding a United States Coast Guard license as a first class pilot upon the waters of which applying and a United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels. No more than five of the required dockings or undockings may have been under the direct supervision of the same supervisory pilot; or

(B) have executed under the direct supervision of a pilot holding an unlimited pilot license under AS 08.62.100 a minimum of 20 dockings and 20 undockings while holding a United States Coast Guard license as a first class pilot upon the waters for which applying and a United States Coast Guard license for master of steam or motor vessels of 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels. No more than five of the required dockings or undockings may have been under the direct supervision of the same supervisory pilot; and

(C) all dockings and undockings must be certified as having been made within two years prior to the date of application;

(6) have satisfactorily completed a physical examination within 30 days of the date of application. The physical examination required of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(7) be at least 25 years of age. (Eff. 6/11/71, Register 38; am 6/1/72, Register 42)

Authority: AS 08.62.040(a)(2)

12 AAC 56.040. QUALIFICATIONS FOR LIMITED PILOT'S LICENSE. (a) A limited pilot's license is a license to pilot vessels of 2,000 gross tons or less.

(b) An applicant for a limited pilot's license shall apply on a form provided by the Department of Commerce and Economic Development,

(1) pay the required fee;

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license for first class pilot upon the waters for which apply;

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master;

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the waters for which he is applying, which will be determined by oral and written examination before the board from topics listed in section 70(b) and (c) of this chapter;

(5) have satisfactorily completed a physical examination within 30 days of the date of application; the physical examination is required of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight, hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(6) be at least 25 years of age.

(c) An applicant for a limited pilot's license not meeting the requirements of (b)(2) and (3) of this section may be issued a limited license, if in the opinion of te board he has submitted sufficient proof of experience and knowledge for the area in which is applying. (Eff. 6/11/71, Register 38; am 6/1/72, Register 42)

Authority: AS 08.62.040(a)(2)

12 AAC 56.050. QUALIFICATIONS FOR CHANNEL PILOT'S LICENSE. A channel pilot's license is a license to pilot in main ship channels only. A channel pilot may perform dockings and undockings only under the direct supervision of a pilot holding an unlimited pilot's license. An applicant for a channel pilot's license shall apply on forms provided by the Department of Commerce and Economic Development. An applicant shall

(1) pay the required fee;

(2) submit a full-sized, certified reproduction of a valid United States Coast Guard license for first class pilot upon the waters for which applying;

(3) submit a full-sized, certified reproduction of a valid United States Coast Guard license for master of steam or motor vessel fo 500 gross tons or better including tow boat or freighting vessels, but excluding fishing vessels;

(4) have practical knowledge of the navigation of vessels and of the conditions of navigation in the waters for which he is applying, which will be determined by oral and written examination before the board from topics listed in section 70(b) and (c) of this chapter;

(5) have completed satisfactorily a physical examination within 30 days of the date of application, the physical examination required of all pilots shall demonstrate that he is in all respects physically fit to perform his duties as a pilot and shall include an examination of his eyesight; hearing, blood pressure and anything else necessary in the opinion of the examining physician; and

(6) be at least 25 years of age. (Eff. 6/11/71, Register 38; am 6/1/72, Register 42; am 6/19/74, Register 50)

Authority: AS 08.62.040(a)(2)

12 AAC 56.060. TEMPORARY LICENSE. (a) A temporary license may be issued to a person applying for an unlimited, limited or channel pilot's license upon

(1) submission of the required application;

(2) submission of the termporary license fee of $50;

(3) submission of proof that he meets all requirements for the license for which he is applying except the examination requirement; and

(4) successful passing of a written examination consisting of 20 questions with a score of at least 75 percent; the questions will be taken from a list of 100 questions prepared previously by the board; this examination will not be considered as part of the oral and written examination given by the board under section 70 of this chapter, but will cover the same topics.

(b) A temporary license will be valid until the results of the next scheduled examination are received. If for a valid reason the applicant was unable to appear for the next scheduled examination, the board may extend the temporary license until the next scheduled examination after the one for which the applicant was unable to appear. The temporary license shall not be extended more than once nor shall a second temporary license be issued. (Eff. 6/11/71, Register 38; am 6/1/72, Register 42; am 6/19/74, Register 50)

Authority: AS 08.62.040(a)(2)

12 AAC 56.070. EXAMINATIONS. (a) The examination required by sections 30, 40 and 50 of this chapter will be given at least once a year at the time and place designated by the chairman of the board with prior approval of the other board members. All applications for examination must be submitted to the board at least 60 days before the date of examination.

(b) Applicants must pass the written portion of the examination with a score of at least 75 percent in each topic with the exception of (1) inland and pilot rules, which must be passed with a score of at least 90 percent. The written examination may consist of, but not limited to, the following topics:

(1) inland and pilot rules;

(2) aids to navigation;

(3) courses, distances, and distances passed abeam at change of course points between given points;

(4) important and essential cable areas;

(5) dredged channel widths and depths;

(6) bridge signals, widths, regulations, and closing periods;

(7) ship handling, docking problems, seamanship by actual observation, use of tow boats and anchors;

(8) Alaska Pilotage Act and rules of the board;

(9) location of anchorages;

(10) duties of pilot;

(11) relationship between master and pilot;

(12) practical operation and use of marine radar, including use of manuevering board;

(13) currents and tides;

(14) dock headings, lenghts, depths of water alongside, pier locations and berth numbers;

(15) U.S. Government Public Health Quarantine regulations;

(16) prohibited areas, restricted areas, explosive anchorages;

(17) chart knowledge, including chart symbols and abbreviations;

(18) use of navigational and bridge instruments;

(19) engine order and rudder commands for:

(A) U.S. Merchant vessels;

(B) U.S. Naval vessels;

(C) foreign flag merchant vessels; and

(2) ranges for determining error in channel ranges.

(c) An applicant for licensure as an unlimited, limited or channel pilot will be orally interviewed by the board on his safety record and elaboration of his seagoing background as listed on his application. In addition, the applicant must pass the oral examination required by sections 30, 40 and 50 of this chapter with a score of at least 75 percent in the following topics:

(1) knowledge of the local harbor conditions and local regulations in the area applied for;

(2) signals; and

(3) rules of board. (Eff. 6/11/71, Register 38; am 6/1/72, Register 42; am 6/19/74, Register 50)

Authority: AS 08.62.040(a)(2)

12 AAC 56.080. BIENNIAL LICENSE RENEWAL. (a) All licenses expire on December 31 of even-numbered years. In order to renew the biennial license all licensees must submit the renewal application with

(1) proof of having satisfactorily completed a physical examination within 30 days of the renewal date; and

(2) the biennial license fee of $200.

(b) In addition, a licensee

(1) holding an unlimited pilot's license must submit proof of having worked in a licensed deck officer capacity for two months in the area for which he was licensed during the last biennial period;

(2) holding either a limited pilot's license or a channel pilot's license must have worked in a capacity which in the opinion of the board has kept him currently knowledgeable in the area for which his license was originally issued. (Eff. 6/11/71, Register 38; am 6/19/74, Register 50)

Authority: AS 08.62.040(a)(2)
AS 08.62.040(b)

ARTICLE 3. INSIDE WATERS

Section
90. General rule for determining boundaries of inside waters of Alaska
100. Established boundaries of inside waters of Alaska
110. Exclusions for entering inside waters of Alaska
120. Pilot stations or pickup points

12 AAC 56.090. GENERAL RULE FOR DETERMINING BOUNDARIES OF INSIDE WATERS OF ALASKA. At all buoyed entrances from seaward to bays, sounds, rivers, or other estuaries for which specific lines are not described in this chapter, the waters inshore of the shore, drawn through the outermost buoy or other aid to navigation of any system of aids, are inside waters. (Eff. 6/11/71, Register 38)

Authority: AS 08.62.040(a)(1)&(b)

12 AAC 56.100. ESTABLISHED BOUNDARIES OF INSIDE WATERS OF ALASKA. (a) The boundaries for Southeastern inside waters are as follows: A line drawn from Cape Spencer Light due south to a point of intersection which is due west of the southernmost extremity of Cape Cross; thence to Cape Edgecumbe Light; thence through Cape Bartolome Light and extended to a point of intersection which is due west of Cape Muzon Light; thence due east to Cape Muzon light; thence to a point which is 1 mile, 180° true, from Cape Chacon Light; thence to Barren Island Light; thence to Lord Rock Light; thence to the southernmost extremity

of Garnet Point, Kanagunut Island; thence to the southeasternmost extremity of Island Point, Sitklan Island. A line drawn from the northeasternmost extremity of Point Mansfield, Sitklan Island, 040° true, to where it intersects the mainland.

(b) The boundaries for Southwestern inside waters are as follows:

(1) Prince William Sound. All waters of Prince William Sound inside a line drawn from Cape Puget to Point Elrington; thence to Cape Clear; thence Zaikof Point to Cape Hinchinbrook Light; thence Point Bentinch Light to Point Whitshed;

(2) Resurrection Bay. The waters of Resurrection Bay north of latitude 59°, 59.0 minutes north;

(3) Cook Inlet. All waters of Cook Inlet inside a line drawn from Cape Douglas (latitude 58°, 51.2 minutes north, longitude 153°, 14.9 minutes west) through Cape Elizabeth Light at latitude 59°, 08.9 minutes north, longitude 151°, 52.5 minutes west to the Kenai Peninsula shoreline. (Eff. 6/11/71, Register 38)

Authority: AS 08.62.040(a)(1)&(b)

12 AAC 56.110. EXCLUSIONS FOR ENTERING INSIDE WATERS OF ALASKA. Vessels are excluded from the use of a licensed marine pilot for inside waters only when proceeding directly from points outside Alaska inside waters to an established pilot station or pickup point. These exclusions are as follows:

(a) Southeastern Alaska:

(1) travel via Clarence Strait to Guard Island at a point located at latitude 55°, 26.7 minutes north, longitude 131°, 52.8 minutes west;

(2) travel via Clarence Strait to a point located approximately 1 mile east of Point McCartey Light at latitude 55°, 06.8 minutes north, longitude 131°, 42.3 minutes west;

(3) travel via Cape Bartolome in Bucareli Bay to Cabras Island located at latitude 55°, 20.3 minutes north, longitude 133°, 23.4 minutes west;

(4) travel via Cape Ommaney in Chatham Strait to a point in the vicinity of Point Retreat located at latitude 58°, 25.0 minutes north, longitude 134°, 59.0 minutes west;

(5) travel via Sitka Sound to a vicinity close aboard Eckholms Light at latitude 57°, 00.6 minutes north, longitude 135°, 21.4 minutes west. This exclusion applies only to those vessels going to the port of Sitka; and

(b) Southwestern Alaska:

(1) travel via Prince William Sound to the Cordova Pilot Station located approximately two miles south of Sheops

Point at latitude 60°, 37.0 minutes north, longitude 146°, 00.0 minutes west;

(2) travel via Prince William Sound to the Valdez Pilot Station located approximately 2.3 miles north of Busby Island Light (60°, 53.8 minutes north, 146°, 48.9 minutes west);

(3) travel via Prince William Sound to the Whittier Pilot Station located approximately one mile south of Pigot Point Light (60°, 48.1 minutes north, 148° 21.3 minutes west);

(4) travel via Cook Inlet to the Homer Pilot Station located approximately one mile south of Homer Spit Light on Coal Point (59°, 36.2 minutes north, 151°, 24.5 minutes west); and

(5) travel to the Kodiak City or Womens Bay Pilot Station located approximately one mile eastward of St. Paul Harbor lighted bouy #14 (57°, 44.5 minutes north, 152°, 24.3 minutes west). (Eff. 6/11/71, Register 38; am 6/1/72, Register 42)

Authority: AS 08.62.040(a)(1)&(b)

12 AAC 56.120. PILOT STATIONS OR PICKUP POINTS. (a) The established pilot stations for Southeastern Alaska are as follows:

(1) Guard Island (55°, 26.7 minutes north, 131°, 52.8 minutes west;

(2) Point McCartey - located approximately one mile east of Point McCartey (55°, 06.8 minutes north, 131°, 42.3 minutes west);

(3) Cabras Island, Bucareli Bay (55°, 20.3 minutes north, 133°, 23.4 minutes west);

(4) Sitka Sound - to a point close aboard Eckholms Light (57°, 00.6 minutes north, 135°, 21.4 minutes west);

(5) Point Retreat - to a point in the vicinity of Point Retreat (58°, 25.0 minutes north, 134°, 59.0 minutes west); and

(6) Lucy Island (British Columbia) - Lucy Point Light Station (54°, 17.5 minutes north, 130°, 34.5 minutes west).

(b) The established pilot stations for Southwestern Alaska are as follows:

(1) Cordova - located approximately two miles south of Sheeps Point (60°, 37.0 minutes north, 146°, 00.0 minutes west);

(2) Valdez - located approximately 2.3 miles north of Busby Island Light (60°, 53.8 minutes north, 146°, 48.9 minutes west);

(3) Whittier - located approximately one mile south of Pigot Point Light (60°, 48.1 minutes north, 148°, 21.3 minutes west);

(4) Seward - located one mile southeasterly from Caines Head Light (59°, 59.0 minutes north, 149° 23.1 minutes west);

(5) Cook Inlet - located near Homer approximately one mile south of Homer Spit Light on Coal Point (59°, 36.2 minutes north, 151°, 24.5 minutes west);

(6) Kodiak (city) or Womens Bay - located approximately one mile eastward of St. Paul Harbor lighted buoy #14 (57°, 44.5 minutes north, 152°, 24.3 minutes west);

(7) Cold Bay - located approximately three miles southward of Cold Bay entrance buoy #1 (55°, 05.6 minutes north, 162°, 31.8 minutes west);

(8) Dutch Harbor - located one mile east of Ulakta Head Light (53°, 55.5 minutes north, 166°, 30.4 minutes west); and

(9) Adak - located two miles east of Gannet Rocks Light (51°, 52.1 minutes north, 176°, 36.4 minutes west).

(c) For those areas not having an established pilot station or pickup point, pickups will be made only by specific arrangement with the ship's agent and pilots. (Eff. 6/11/71, Register 38; am 6/1/72, Register 42)

Authority: AS 08.62.040(a)(1)&(b)

ARTICLE 4. RATES

Section
130. General rule for determining rates
140. Consent to rate deviation
150. Rate adjustment

12 AAC 56.130. GENERAL RULE FOR DETERMINING RATES. If no rate for an area has been established the rate mutually agreed on by the parties will be used until a rate is established by the board. (Eff. 6/11/71, Register 38)

Authority: AS 08.62.040(a)(4)&(b)

12 AAC 56.140. CONSENT TO RATE DEVIATION. If parties to a piloting contract are dissatisfied with the rates established for an area, the parties may agree to a higher rate. This rate mutually agreed upon must be submitted to the board for approval. No deviations from the published rate may be used until approved by the board. (Eff. 6/11/71, Register 38)

Authority: AS 08.62.040(a)(4)&(b)

12 AAC 56.150. RATE ADJUSTMENT. Any party having a material interest in the rate structure desiring a rate change for an area must file a request for a rate adjustment at least 60

days before the next meeting of the board. (Eff. 6/11/71, Register 38)

Authority: AS 08.62.040(a)(4)&(b)

ARTICLE 5. GENERAL PROVISIONS

Section
160. Duties of pilots
170. Physical incapacitation
180. Registration of operators
190. Definitions

12 AAC 56.160. DUTIES OF PILOTS. (a) A pilot shall be on duty piloting the vessel at all times when the vessel is in transit in pilotage waters.

(b) Passenger vessels in transit of the inside waters of Southeast Alaska except as set forth in sec. 110 of this chapter are required to carry two pilots on board for continuous alternating duty.

(c) In any case where a vessel being piloted by a state licensed pilot goes aground, collides with another vessel or dock, or meets with any casualty, or is injured or damaged in any way, the pilot shall, within ten days thereafter, make written report thereof to the board, and the board may thereupon, either with or without complaint being made against the pilot, investigate the matter reported upon. In any case of apparent damage being sustained or caused by a vessel under his charge, the pilot shall file his report as soon as possible after returning to shore.

(d) Pilots will report to the Aids to Navigation officer of the United States Coast Guard, all changes in lights, range lights, buoys, and any dangers to navigation that may come to their knowledge.

(e) Any pilot who fails, neglects or refuses to make a report to the board as required by the pilotage laws of the state, or by this chapter, for a period of ten days after the date when the report is required to be made, is subject to having his license suspended at the discretion of the board.

(f) Pilots when so notified in writing shall report in person to the board at any meeting specified in the notice.

(g) Any pilot summoned to testify before the board shall appear in accordance with the summons and shall answer, under oath, any questions put to him which deal with any matter connected with the pilot service, or of the pilotage waters over which he is licensed to act. He is entitled to have his attorney or advisor present during any such appearance and testimony.

(h) A pilot on boarding a ship, if required by the master, shall exhibit his state license or photostatic copy of it.

(i) Pilots on board passenger vessels shall be provided access to an operable radio on the bridge at all times to use on frequency 2182 KHZ for security purposes.

(j) When a pilot licensed under AS 08.62 is employed on an enrolled ship, the same regulations apply.

(k) All pilots shall report on a quarterly basis the names of all vessels served that were subject to the services of a licensed pilot. (Eff. 6/11/71, Register 38; am 5/19/74, Register 50)

Authority: AS 08.62.040(a)(1)&(b)

12 AAC 56.170. PHYSICAL INCAPACITATION. Any pilot who is physically incapacitated as a pilot for a period of ninety (90) days or more shall not return to service as an active pilot until he has passed a physical examination by a physician approved by the board. (Eff. 6/11/71, Register 38; am Eff. 10/73, Register 48)

Authority: AS 08.62.040(a)(1)&(2)
AS 08.62.040(b)

12 AAC 56.180. REGISTRATION OF OPERATORS. All shipowners, operators and agents of owners and operators whose vessels are subject to AS 08.62 must register with the board and keep the board advised of any changes of names and addresses. (Eff. 6/11/71, Register 38)

Authority: AS 08.62.040(a)(3)

12 AAC 56.190. DEFINITIONS. For the purposes of this chapter "pilotage waters" means all inside waters of Alaska except those described in section 110 of this chapter. (Eff. 6/11/71, Register 38)

Authority: AS 08.62.040(b)

PILOTAGE TARIFF AND CHARGES FOR SOUTHEASTERN ALASKA

EFFECTIVE: July 15, 1977

I. TARIFF AND CHARGES APPLICABLE TO ALL SHIPS EXCEPT PASSENGER VESSELS:

A. Basic Port Charge for Pilotage in or out of Port, each Entry or Departure Constituting a Separate Chargeable Event:

Port	Ships 3,000 Gross Tons and Over	Ships Under 3,000 Gross Tons
Ketchikan	$423.50	$264.00
Metlakatla	423.50	264.00
Klawock	517.00	264.00
Ward Cove	423.50	264.00
*Wrangell	462.00	264.00
*Shoemaker Bay	462.00	264.00
Petersburg	462.00	264.00
Duncan Canal	572.00	264.00
Sitka	423.50	264.00
Juneau	423.50	264.00
Juneau Oil Docks	495.00	264.00
Haines, Chilkoot	495.00	264.00
Lutak	495.00	264.00
Skagway	495.00	264.00
Skagway Ore Dock	572.00	264.00

*On movements between these ports, following an initial entry each entry or departure except the initial entry and the final departure will be at the rate of 423.50.

B. Charges for Restricted Passage Pilotage, Entry, Transit, and Departure from each Listed Area Constituting a Combined Single Chargeable Event:

Area	Ships 3,000 Gross Tons and Over	Ships Under 3,000 Gross Tons
Wrangell Narrows	$121.00	$121.00
Sergius Narrows	60.50	60.50
Whitestone Narrows	60.50	60.50

C. Unlisted Port and Restricted Passage Charges:
These charges to be negotiated according to risk and time.

D. Overtime:
If one pilot exceeds six hours continuous running time without a six-hour rest period, overtime shall be charged at the rate of $28.60 per hour, or portion thereof. On runs anticipated to be over 8 hours duration, two pilots shall be required, and in addition to the basic port charge, 50% of such charge shall be paid.

E. Anchoring Charges:
1. Anchoring or laying to for loading cargo or discharging cargo shall be considered as a regular port charge, and all fees and tariffs shall be assessed the same as if the vessel has moored.

NOTE: PILOT BOAT CHARGES ARE NOT INCLUDED IN PILOTAGE TARIFF.

2. Anchoring, waiting for berth, or for weather shall be at the rate of $137.50.

F. Other Charges:
As apply under the terms of Section III.

II. TARIFF AND CHARGES APPLICABLE ONLY TO PASSENGER VESSELS:

A. Basic Port Charge for Pilotage in or out of Port, Each Entry or Departure Constituting a Separate Chargeable Event:

Port	Ships 3,000 Gross Tons and Over	Ships Under 3,000 Gross Tons
Ketchikan	$423.50	$264.00
Wrangell	462.00	264.00
Petersburg	462.00	264.00
Sitka	423.50	264.00
Juneau	423.50	264.00
Haines, Chilkoot	495.00	264.00
Haines, Lutak	495.00	264.00
Skagway, White Pass	495.00	264.00

B. Charges for Restricted Passage and Cruise Area Pilotage, Entry, Transit, and Departure for Each Listed Area Constituting a Combined Single Chargeable Event:

Area	Ships 3,000 Gross Tons and Over	Ships Under 3,000 Gross Tons
Cruise Areas		
Glacier Bay	$1,210.00	$445.50
Tracy Arm	605.00	418.00
Endicott Arm	605.00	418.00
Restricted Passages		
Wrangell Narrows	121.00	121.00
Sergius Narrows	60.50	60.50
Whitestone Narrows	60.50	60.50

C. Unlisted Port, Restricted Passage and Scenic Cruise Areas:
To be negotiated according to risk and time.

D. Passenger Charges:
In addition to any charges otherwise applicable under Section II A and II B, passenger charges apply as follows:

The number of saleable passenger berths on board times the number of miles run in the inside waters Alaska (excluding miles run in scenic areas) times the mileage rate of 4.40 mills. The saleable passenger berths shall range from a minimum charge for 200 berths or a maximum charge for 1000 berths.

NOTE: PILOT BOAT CHARGES ARE NOT INCLUDED IN PILOTAGE TARIFF.

E. Anchoring Charges:

1. Anchoring or laying to for loading passengers or discharging passengers shall be considered as a regular port charge and all fees and tariffs shall be assessed the same as if vessel moored.

2. Anchoring, waiting for a berth or for weather shall be at the rate of $137.50.

F. Other Charges:
As apply under the terms of Section III.

VII. OTHER CHARGES APPLICABLE TO ALL VESSELS IN ADDITION TO ALL OTHER TARIFFS AND CHARGES:

A. Tonnage and Draft Charges:

1. Tonnage charges will be made on a tonnage unit system at the rate of $1.28 per unit for all units in excess of 163 units in or out of a port or cruise area. These are separate event charges and are computed separately for each entry and each departure.

2. "Tonnage Units" shall be determined as expressed by the following formula:

$$\frac{\text{Overall Length} \times \text{Extreme Breadth} \times \text{Depth}}{10{,}000} = \text{Units}$$

3. Definitions:
"Overall Length" is the distance between the forward and after extremities of the vessel.

"Extreme Breadth" is the maximum breadth to the outside of the shell plating of the vessel.

"Depth" is the vertical distance of amidships from the top of the keel plate to the uppermost continuous deck fore and aft, and which extends to the sides of the vessel. The continuity of a deck shall not be considered to be affected by the existence of tonnage opening, engine space or a step in the deck.

All measurements shall be in feet and inches (U.S.).

4. All draft in excess of 32 feet will be charged at the rate of $11.00 per foot or portion thereof, in or out of a port or cruise area. These are separate event charges and are computed separately for each entry and each departure.

B. Shifting Charges:
1. For a dock to dock commercial movement within an incorporated harbor, the charge will be one-half the regular port charges.

NOTE: PILOT BOAT CHARGES ARE NOT INCLUDED IN PILOTAGE TARIFF.

2. Shifting of ship from dock to dock, dock to anchorage, anchorage to anchorage, or anchorage to dock for bunkering or other non-commercial reasons, within an incorporated harbor, will be $165.00 per movement. A dock-to-dock shift constitutes two separate movements.

C. Dead Ships and Stern First Dockings:
Docking and undocking dead ships and stern-first dockings will be charged at a fifty percent increase over the regular pilotage fee.

D. Emergency:
In case of a dire emergency for safety of ship, crew, or passengers, there will be no pilotage charges except for transportation and subsistence.

E. Transportation and Subsistence:
1. Vessels, owners, agents and/or charterers shall pay pilotage fees, pilots' travel expenses such as: plane and ferry fares, meals, lodging, cab fares, telegrams, telephone calls, and all other expenses pertaining to ship's business.

   a. Meals shall be charged at the following rates:

Breakfast	$ 5.00
Lunch	5.00
Dinner	10.00

   b. Hotel rooms shall be charged at the rate of $30.00 per day.

2. When adequate meals and rooms are not furnished to the pilot when on ship, a charge will be made in accordance with the above rates.

F. Travel Day, Detention Day, Standby Time and Cancellation Charges:
1. When due to weather and transportation difficulties, a pilot has to leave in advance to insure meeting a vessel upon arrival or departure, or being delayed by weather or transportation difficulties returning from an assignment, a charge of $121.00 per day will be charged for each day a pilot is in transit or on standby. This does not include an actual work day.

2. Detention time on board ship, when no other charges accrue during the day, will be at the rate of $28.60 per hour per pilot, not to exceed $121.00 per pilot in any one day. Pilots carried to sea will be the same rate for each day detained plus first class passage and subsistence back to Ketchikan.

3. Cancellation charges will be $137.50 plus transportation and subsistence.

4. Travel, standby, and work days begin and end in midnight.

NOTE: PILOT BOAT CHARGES ARE NOT INCLUDED IN PILOTAGE TARIFF.

G. Notice of Ship Arrival and Departure:

1. When vessels, owners, or agents do not correct their ETA within four hours of ETA last given, compensation in the amount of $28.60 per hour shall be charged until actual arrival of vessel at pilot station not to exceed $121.00 for any one day.

2. When sailing time is set by agent, owner or master of a vessel, any delay over one hour shall be charged at the rate of $28.60 per hour or portion thereof, not to exceed $121.00 for any one day. If the pilot is detained for one hour or less, no detention will be charged. If the pilot is detained for more than one hour, detention for the first hour will be charged.

II. Vessel at Rest Charge:

When an agent, owner or master requests a pilot to stay on board a vessel on a continuous basis while the vessel is docked or anchored at a port or anchorage, the rate will be $275.00 per day. Days begin and end at midnight.

NOTE: PILOT BOAT CHARGES ARE NOT INCLUDED IN PILOTAGE TARIFF.

PILOTAGE TARIFF AND CHARGES FOR SOUTHWESTERN ALASKA

EFFECTIVE: January 1, 1975

Cook Inlet Pilotage Rates:

Following rates are one way only:

Homer to Port of Anchorage	$ 680.00
Homer to Nikiski	510.00
Homer to Drift River	510.00
Homer to North Foreland/Point Possession	600.00
Anchorage to Drift River (North of Kalgin Island)	510.00
Anchorage to Drift River (South of Kalgin Island)	680.00
Anchorage to Nikiski	425.00
Nikiski to Drift River (North of Kalgin Island)	385.00
Nikiski to Drift River (South of Kalgin Island)	510.00
Homer to Kasitsna Bay	400.00
Homer Pilot Station to Homer	400.00

Other Alaska Ports:

Following rates are one way only:

Valdez	500.00
Cordova	500.00
Whittier	500.00
Seward	500.00
Kodiak - (City Harbor)	500.00
(Womens Bay)	500.00
Cold Bay	650.00
Dutch Harbor	600.00
Adak	650.00

Charges for unlisted ports negotiated according to time and risk. Minimum charge will be $400.00

CHARGES ADDITIONAL TO PORT TARIFF

1. A tonnage surcharge of $.02 (2 cents) per gross ton is made for all tonnage in excess of 14,000 gross tons. In all the preceeding cases any gross tonnage in excess of 50,000 gross tons will be charged for at $.01 (1 cent) per gross ton.

2. All rates remain the same whether piloting is to or from sea, or, to or from a pilot boarding or debarking point.

3. Standby/travel fee: When standing by to pilot, or traveling to or from distant pilot ports and not actually piloting, such time shall be charged for at a rate of $150.00 per day or portion thereof.

4. Transportation and subsistence expenses incurred enroute to/from/or while in standby status ashore or afloat shall be charged for as incurred.

5. Travel, standby, and work days begin and end at midnight. Each category occurring at any point within a midnight to midnight time period will be charged for according to the category involved.

NOTE: PILOT CHARGES ARE NOT INCLUDED IN PILOTAGE TARIFF.

6. If one pilot exceeds eight hours continuous running time without a six hour rest period or presence of a relief pilot (i.e., a second pilot) while transisting compulsory pilotage waters, overtime shall be charged for at the rate of $40.00 per hour or portion thereof.

7. Shifting of ship from dock to harbor or harbor anchorage; from harbor or harbor anchorge to dock; from anchorage within a harbor to another anchorage within the same harbor will be charged for at $200.00 per each movement. A dock to dock shift comprises two movements and will be charged for accordingly.

8. On each occasion of hauling ship alongside a dock or mooring to position tanks, holds, manifolds, loading arms, towers, or hoses comprises a single movement and will be charged for accordingly at $100.00 per movement.

9. Movement of a ship in the absence of availability of the ship's own propulsion system even though assisted by tugboats will be charged for at twice the prevailing rate for each evolution engaged.

10. Docking/Undocking vessels over 2,000 gross tons without the use of a tugboat, if a tugboat is available, at Anchorage, Seward, Whittier, Valdez, Cordova, Kodiak, will be charged for at the rate of $250.00 per movement. It will remain pilot's option whether or not to proceed without use of a tug.

11. Carried to sea detention on board will be charged for at $150.00 per day. If disembarked at a position other than the base station from which dispatched, first class return passage will be charged.

12. Off duty detention on board, intentional or otherwise, or off duty standby on board at the request of the Master will be charged for at the rate of $250.00 per day.

13. Bridge watch time rendered while ship is anchored or moored will be charged for at the rate of $40.00 per hour or portion thereof.

14. Bridge watch time rendered underway at the Master's request not otherwise provided for under the tariff will be charged for at $40.00 per hour or portion thereof.

15. Pilots will furnish VHF transceivers for vessels not so equipped and in working order such that compliance will be made with the provisions of the Vessel Bridge-to-Bridge Radiotelephone Act when it becomes law. The charge for the use of this equipment will be charged for at the rate of $10.00 per day or portion thereof.

16. The rate for a Second Pilot, when used, will be charged for at the rate of 50% of the rate for the first pilot (all applicable charges to apply).

17. Mooringmaster - Services and rates are negotiable on application.

NOTE: PILOT BOAT CHARGES ARE NOT INCLUDED IN PILOTAGE TARIFF.

February 1, 1977

LICENSED ALASKA MARINE PILOTS

BRASTAD, Earling P.
10505 15th N.W.
Seattle, Washington 98177
License #0036 - Unlimited
Southeastern Alaska
Prince William Sound
excluding West Coast

BUCKLER, Franklin W.
P.O. Box 1395
Tacoma, Washington 98401
License #0013 - Unlimited
Southeastern Alaska
Southwestern Alaska
Western Alaska

BULLARD, William L.
P.O. Box 472
Orleans, Massachusetts 02753
License #0057 - Unlimited
Southeastern Alaska
excluding West Coast

CLARK, John E.
P.O. Box 6100
Ketchikan, Alaska 99901
License #0031 - Unlimited
Southeastern Alaska
Southwestern Alaska

CLOUGH, Harley A.
Box 1171
Juneau, Alaska 99802
License #0035 - Unlimited
Southeastern Alaska

COLLAR, Oliver K.
2013 Churchill Drive
Anchorage, Alaska 99503
License #0010 - Unlimited
Southwestern Alaska

CREASEY, E.W.
P.O. Box 6583
Ketchikan, Alaska 99901
License #0042 - Unlimited
Southeastern Alaska

CUNNINGHAM, John T.
P.O. Box 468
Homer, Alaska 99603
License #0041 - Unlimited
Southwestern Alaska

ELSENSOHN, Harold K.
Box 1539
Ketchikan, Alaska 99901
License #0050 - Unlimited
Southeastern Alaska
West Coast Alaska

FALCONER, Charles P.
4650 Blank Road
Sebastopol, California 95472
License #0007 - Unlimited
Southeastern Alaska
Southwestern Alaska

HODGMAN, James A.
Box 6100
Ketchikan, Alaska 99901
License #0049 - Unlimited
Southeastern Alaska
West Coast of Alaska

HOFSTAD, Richard T.
3.6 Mile Mitkof Highway
Petersburg, Alaska 99833
License #0043 - Unlimited
Southeastern Alaska
Southwestern Alaska

HOPKINS, Jack W.
Box 163
Seldovia, Alaska 99663
License #0053 - Unlimited
Prince William Sound
Resurrection Bay
Cook Inlet
Kachemak Bay
Kodiak Island

HURD, James M.
P.O. Box 678
Homer, Alaska 99603
License #0047 - Unlimited
Cook Inlet
Resurrection Bay
Kodiak Harbor
excluding Womens Bay

JACKINSKY, Walter W.
P.O. Box 617
Juneau, Alaska 99801
License #0029 - Unlimited
Southeastern Alaska

JOHNSON, Robert C.
4111 S.W. Frontenac
Seattle, Washington 98136
License #0037 - Unlimited
Southeastern Alaska
Cape Hinchbrooke to
Whittier

JOHNSON, Robert M.
605 Tower Road
Ketchikan, Alaska 99901
License #0027 - Unlimited
Southeastern Alaska

JOHNSON, William L.
P.O. Box 273
Homer, Alaska 99603
License #0002 - Unlimited
Southeastern Alaska
Southwestern Alaska

JORGENSEN, Anker F.
50 Porto Bello Drive
San Rafael, California 94901
License #0032 - Unlimited
Southeastern Alaska
Southwestern Alaska

KING, Stanley B.
3242 S.W. 325 Street
Federal Way, Washington 98003
License #0016 - Unlimited
Southwestern Alaska
Southeastern Alaska

MARONI, Jack E.
P.O. Box 75
Haines, Alaska 99827
License #0006 - Unlimited
Southeastern Alaska
Yakutat Bay

MITCHELL, William W.
1304 Millar Street
Ketchikan, Alaska 99901
License #0055 - Unlimited
Southeastern Alaska
excluding West Coast

MURPHY, William E.
P.O. Box 597
Homer, Alaska 99603
License #0051 - Unlimited
Cook Inlet
Prince William Sound
Resurrection Bay
Kodiak Harbor

McREYNOLDS, George E.
Box 6100
Ketchikan, Alaska 99901
License #0033 - Unlimited
Southeastern Alaska

OLDOW, Donald J.
Box 977
Homer, Alaska 99603
License #0012 - Unlimited
Southeast Alaska
Southwest Alaska
Western Alaska

PEDERSON, Theodore
Bear Cove Box 113
Homer, Alaska 99603
License #0040 -
2,000 Gross Tons
Southwestern Alaska

PAYNE, Harold
P.O. Box 70
Freeland, Washington 98249
License #0014 - Unlimited
Southeastern Alaska

REESER, Maynard L.
Box 492
Petersburg, Alaska 99833
License #0017 - Unlimited
Southeastern Alaska

RICHARDS, Eugene W.
P.O. Box 8324
Ketchikan, Alaska 99901
License #0039 - Unlimited
Southeastern Alaska

ROBINSON, Gerard B.
P.O. Box 1273
Homer, Alaska 99603
License #0052 - Unlimited
Cook Inlet

ROSENQUEST, Bill R.
19353 2nd Avenue N.W.
Seattle, Washington 98117
License #0019 - Unlimited
Southwestern Alaska

SHELTON, William M.
175 Lucan Park Drive
San Rafael, California 94903
License #0030 - Unlimited
Southeastern Alaska
Southwestern Alaska

SMITH, Robert W.
P.O. Box 542
Juneau, Alaska 99801
License #0025 - Unlimited
Southeastern Alaska

STARKWEATHER, Dan D.
2712 Second Avenue
Ketchikan, Alaska 99901
License #0005 - Unlimited
Southeastern Alaska

SUBCLEFF, Andrew C.
18924 88th West
Edmonds, Washington 98020
License #0044 - Unlimited
Southwestern Alaska
Southeastern Alaska
excluding West Coast

SWETT, Roger W.
453 Klickitat Drive
Lake Conner, Washington 98257
License #0004 - Unlimited
Southeastern Alaska
Southwestern Alaska

[illegible]
[illegible] Jackson Street
Ketchikan, Alaska 99901
License #1022 - Unlimited
Southeastern Alaska
Southwestern Alaska

THORNTON, Donald A.
8014 4th Ave. S.W. Apt. #28
Seattle, Washington 98136
License #[illegible] - Unlimited
Southeastern Alaska
Southwestern Alaska

TINGLEY, William A.
P.O. Box 1237
Homer, Alaska 99603
License #3003 - Unlimited
Southeastern Alaska
Southwestern Alaska

WEBB, John Martin
1617 15th Place S.W.
Edmonds, Washington 98020
License #0056 - Unlimited
Southeastern Alaska

WALKER, William E.
P.O. Box 6130
Ketchikan, Alaska 99901
License #3048 - Unlimited
Southeastern Alaska
West Coast Alaska

WYATT, Vernon H.
Star Route Box 168
Mesa, Washington 99343
License #0039 - Unlimited
Southeastern Alaska

[illegible] Vernon
[illegible]
Douglas, Alaska 9[illegible]
License #00[illegible] - Unlimited
[illegible]outheastern Alaska

SB

181

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

2/13/79

Date: 2/13/79

Mr. President:

The Committee on JUDICIARY has had SB 181

exempting spouses of members of the armed forces from the requirement of obtaining a driver's license

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

TO: GUY VAN DOREN DATE: FEBRUARY 26, 1979

FROM DIANE SIMONSON

RE: SB 181

Spouses of Military Personnel have voiced dissatisfaction over the law that requires them to obtain an Alaska Driver's License within 30 days of arrival in Alaska whild holding a valid Driver's License from another state.

This bill proposes to change the situation so that SPOUSES (not all dependents), may retain their Driver's License from another state while their husband or wife is stationed in Alsaka.

Military spouses maintain that certain state honor the validity of their license from a different state.

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER _____

DEPARTMENT _____

ATTENTION Lou Ziegler

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

FROM:
MAIL STATION NUMBER 1200

DEPARTMENT Public Safety

BY Tom Trig DATE 2-20-79

02-002 (REV. 10/73)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 181

Title An act exempting spouses of members of the armed forces ...

Requested by Judiciary Committee Date 2/14/79

II. FISCAL DETAIL

Agency Affected Department of Public Safety

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected Driver/Vehicle Services

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

The bill discriminates against spouses of others who are transferred from other states. It also raises the question of dependents who accompany the military member, i.e. 16 year-old son/daughter who have out-of-state drivers license.

Fiscal impact is minimal; probably Driver License Revenue would decrease by $5,000 or less

IV. DATE 2/16/79 PREPARED BY Jos Mapranath, Budget Analyst

AGENCY Public Safety

PHONE 465-4368

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

33-001 (Rev. 12/78)

SB
239

COMMITTEE REPORT

SENATE

FURTHER: Finance

1/14/80

Date: 4/1/80

Mr. President:

The Committee on JUDICIARY has had SSSB 239
relating to alcoholic beverages

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SSSB 239 [X] same title [ ] new title

and recommends CSSSB 239

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

POUCH V
JUNEAU, ALASKA 99811
TELEPHONE 465-4922

Alaska State Legislature

Senate

February 12, 1980

SENATOR
Bill Ray
CHAIRMAN
COMMITTEE ON TRANSPORTATION
COMMITTEE ON TITLE IV CODE REVISION
BLUE RIBBON COMMISSION
ON THE STATE PERSONNEL ACT

TO: Senator Robert Ziegler
Chairman, Judiciary Committee

FROM: Senator Bill Ray BR

I have gone over each of the recommendations in regard to the letter of February 4th from CHAR and offer the following explanations:

Page 1: 04.06.020 - If the word "persons" was deleted and the words "a licensee" substituted, it would not give employees working in the alcoholic beverage industry an opportunity to serve on the board. By having the word "persons," it includes both licensees and employees.

Page 2: 04.06.060 - Deletion of this section and keeping the old language changes balance. Three members (two from Liquor) could make decisions. New way avoids that.

Page 3: 04.06.090 - In order for regulations to have the full force and effect of law they must be legally adopted by the Board. Most Boards have the authority to adopt regulations instead of waiting for legislative action. They must go through Administrative Procedures hearings.

04.06.090(c) - Does not restrict free enterprise; having control over the size of a licensed area is necessary for proper protection of both licensee and general public.

04.06.090(d) - This section gives the board a wider scope in selecting qualified enforcement agents.

Page 5: 04.06.100(14) - To add the word "filing" before fees makes no sense. This section is for the establishment and collection of fees to be paid for a license or permit, not the establishment and collection of a filing fee, which is a registration fee for the processing of an application.

Page 9: 04.11.090(b) - The beverage dispensary license fee has not been raised in over 20 years.

04.11.090(c) - The requirement of a bond works very well as a deterrent and keeps out unbondable applicants.

Page 11: 04.11.110(c) - Making the annual fee for a club license at $600 does have some merit.

Page 12: 04.11.150(b) - Retail license fees have not been raised in over 20 years.

04.11.150(e) & (f) - The basic tenet of the entire control law is that the sale must be from the "premises" only.

Page 13: 04.11.150(g) - This subsection defines premises for subsection (e).

Page 16: 04.11.190(a) - Subsection (b) takes care of the problem in regard to first class or home rule cities.

Page 20: 04.11.260 - Why shouldn't all of the authorized officers sign the application?

Page 21: 04.11.270(2) - The addition of the words "which has occurred within the past year" is agreeable with me.

Page 22: 04.11.300 - Substituting the word "may" for "shall" is not satisfactory especially in outlying areas. The State Police has access to information on applicants that is necessary to enable the board to make their decisions.

04.11.310 (line 17) - I think the board should make the determination where notices should be posted for public inspection.

04.11.310 (line 22) - The bush legislators are adamant about the provision being in the law. Many people in the bush areas do not speak or write English.

04.11.320(a) (line 28) - These are mandatory provisions which are scattered throughout the act and as such not only NECESSARY, but informative to a possible applicant. It tells him what the board <u>cannot</u> do!

Page 23: 04.11.320(a)(5) & (10) - Local Option.

Page 24: 04.11.320(b)(4) - Local Option is a cornerstone in any democratic society and should be recognized as the "people's right" to have some regulation within their respective areas.

04.11.330 (line 14) - Here again these provisions are statutory requirement.

04.11.330(a)(5) - This subsection is local option petition.

Page 25: 04.11.330(a)(9) - Local Option.

Page 26: 04.11.340 - This again is local option elections.

04.11.360 (line 21) - Again these are mandatory requirements presently appearing in the statutes.

Page 27: 04.11.360(7) - Local Option.

Page 28: 04.11.370(4) & (5) - Municipalities have the right of adopting ordinances as long as such ordinances are consistent with the act; i.e., opening and closing hours.

04.11.370(9) - OK to delete this subsection as this is language which appears in the regulations which have the full force and effect of law.

04.11.370(10) - This is language that currently appears in the regulations which have full force and effect of law.

Page 29: 04.11.400(2) - How does this need clarification? It is clear to me as written.

Page 30: 04.11.400(g)(1)(B) - Why would you want this portion of the sentence deleted? These licenses are nontransferable as to other persons, not locations. A licensed premises may want to (or be forced to) move within a one-mile radius of his premises. CHAR's change would deny this.

Page 33: 04.11.460(a) (lines 17 & 18) - I can see no problem in deleting the words "unless specifically required by the board."

04.11.460(b) - This language clearly defines license procedure for premises to be located more than 50 miles from an incorporated area.

04.11.460(b)(2) - This language clearly defines licenses outside municipalities within 50 miles of an organized area.

Page 34: 04.11.470 - I can see no reason to make this change. This section provides for public input which is often beneficial regardless of residency status.

04.11.480(b) - Local Option.

Page 35: 04.11.490 - Local Option.

Page 38: 04.11.500 - Local Option.

Page 39: 04.11.510(b)(2) - Why should "on its own initiative" be deleted? A hearing may be beneficial for all concerned.

04.11.510(3) - Local Option.

Page 40: 04.11.520 (line 28) - The addition of the words "within 10 days" is fine with me.

Page 44: 04.11.660(a) - In regard to a license being a property right, I am unaware of the court test referred to.

04.11.670 (lines 18 & 19) - Supreme Court cases state that the board has the authority to determine who has the license.

04.11.690 - It would be nonsense to delete this section. It certainly would not be in the public's interest to have monopolies take over in the industry.

Page 45: 04.16.010(d) - Local Option.

Page 46: 04.16.030 - Deletion of the words "or with criminal negligence" takes the authority out of the section.

04.16.030(3) - Deletion of this subsection takes the authority out of the entire title.

Page 47: 04.16.049(2) - Fine with me to delete the words "and dancing" but the general public may disagree.

Page 48: 04.16.052 (line 16) - The addition of the word "knowingly" changes the section so that the language has the assumption then the licensee and employees would have to "know" to "allow" disposition of alcoholic beverages to persons under the age of 19.

Page 49: 04.16.060(d) (line 13) - The law is Title IV.

Page 50: 04 16.080 - The "pub" at the University of Alaska is not in the gymnnasium, so there is no conflict.

Page 51: 04.16.140 - This cite is for storage places other than the licensed premises.

Page 52: 04.16.180(b)(1) & (2) - Doesn't make sense; first and second conviction could receive the same number of days for a closure. The second conviction should be stronger than the first.

04.16.180(3) - Why should a licensee be issued an operating certificate once his license has been revoked?

04.16.180(d) - Local Option. Undermines power of board and local option.

Page 53: 04.16.200(2) - Why should an unlicensed person not be fined or punished for selling or trafficking in alcoholic beverages without a license?

Page 57: 04.21.020 - This section clarifies "legally" as meaning only drunks and minors.

Section 1

Sec. 04.06.010. ESTABLISHMENT OF BOARD. This section establishes the Alcoholic Beverage Control Board, as a regulatory and quasi-judicial agency which is among the agencies that under the terms at Article III, sec. 22 of the Alaska Constitution need not be allocated within a principal department.

Sec. 04.06.020. APPOINTMENT AND QUALIFICATIONS. This section establishes the number and qualifications of members of the board. The section also provides that the members of the board shall be appointed by the governor and confirmed by the legislature, in accordance with Article III, sec. 26 of the Alaska Constitution.

Sec. 04.06.030. TERMS OF OFFICE. This section prescribes the terms of office of the board members, and provides for the filling of vacancies.

Sec. 04.06.040. PER DIEM AND EXPENSES. This section provides payment of travel expenses and per diem of board members as authorized by law for other boards and commissions. This authorization for the payment of travel and per diem appears at AS 39.20.180.

Sec. 04.06.050. MEETINGS. The intent of this section is that the board meet at least four times a year, one time each in the four judicial districts in the state.

Sec. 04.06.060. QUORUM AND MAJORITY. It is the intent of this section that three members of the board are necessary to establish a quorum for routine business. It is further the intent that a majority of the whole membership of the board, or three members all voting the same way, are necessary to approve or deny an application for a new license, or a renewal, transfer, suspension or revocation of an existing license. This section does not preclude less than a majority of the board from holding hearings; or appeals from action taken by the board or director; upon the direction of the majority.

Sec. 04.06.070. APPOINTMENT AND REMOVAL OF DIRECTOR. It is the purpose of this section to provide a continuity in the directorship of this agency freeing the position from possible

political patronage during a change of administration. It is also the purpose of this section to provide a check and balance between the governor and the board in the same manner. The intent of this section is to allow the governor to remove the director only for misconduct, misfeasance or malfeasance requiring notice of the charges and hearing on those charges while allowing summary removal by the board for any reasons the board considers appropriate.

Sec. 04.06.075. AUTHORITY OF DIRECTOR. This section gives the director power to enforce this title and regulations adopted by the board.

Sec. 04.06.080. DELEGATION OF AUTHORITY. It is the intent of this section that the board is solely responsible for its actions and for the policies vested within its powers and duties necessary for the control of alcoholic beverages. The board may delegate all of its responsibilities to the director except its power to adopt regulations. The delegation of authority to the director is discretionary to the board and in no manner does it free them from the responsibility of errors in judgment or law committed in their name by the director.

Sec. 04.06.090. POWERS AND DUTIES. This section enumerates the powers and responsibilities of the board. The board is granted power to employ enforcement agents directly or through contracts with other departments and agencies of the state. This section states that the salaries of personnel of the board in the exempt service shall be set by the Department of Administration. Finally, the board is charged with notifying licensees and municipalities of major changes to this title.

Sec. 04.06.100. REGULATIONS. This section authorizes the board to adopt regulations to carry out the purposes of Title 4. This section enumerates a number of the subjects which may be addressed but this list is specifically stated not to be all inclusive. Among those subjects particularly authorized are the creation of classifications of licenses and permits not provided for in this title and the establishment and collection of fees to be paid on application for a license or permit.

Sec. 04.06.110. PEACE OFFICER POWERS. It is the intent of this section that the board may delegate limited peace officer powers to the director or any of its employees. The limitation on these limited peace officer powers is that they may apply only when necessary for the enforcement of the criminally punishable provisions of this title, regulations of the board, other criminally punishable laws and regulations governing the manufacture, barter, sale, consumption, and possession of alcoholic beverages in the state. Because of the strict limitation of peace officer powers provided in this section, the director or board employees are not included within the definition of peace officer or fireman contained in AS 39.-35.680(27) and may not qualify for peace officer or fireman benefits under AS 39.35. State troopers and certified peace officers under contractual agreements to the board are not affected by this section.

Section 2

Sec. 04.11.010. LICENSE OR PERMIT REQUIRED. Under this section, all manufacturing, selling, offering for sale, possessing for sale, trafficking in, bartering or exchanging for goods and services of alcoholic beverages is prohibited unless authorized under a license or permit issued under this title. It also limits orders for delivery of alcoholic beverages in areas where, by local option, alcoholic beverages may not be sold.

Sec. 04.11.020. EXCEPTIONS: LICENSE OR PERMIT NOT REQUIRED. Subsection (a) of this section makes an exception to the general requirement that a license or permit be obtained in those circumstances when sales are made by order of a court, whether as a result of foreclosure, bankruptcy, or forfeiture. Subsection (b) excepts from the requirement of obtaining a license or permit persons who solicit equal contributions from persons attending a private gathering of co-workers or of a professional, social, or fraternal organization, but only if the amount required to purchase the alcoholic beverages is collected and used for the purchase of the same.

Sec. 04.11.030. DEATH OF A LICENSEE. This section excepts from the general requirement that a license or permit need be obtained by an executor or administrator of the estate of a person holding a license as a sole licensee until the administrator has a reasonable opportunity to obtain board

approval for the transfer of the license to himself or somebody else. Subsections (c) and (d) prohibit transfer of the license into the name of the deceased's estate.

Sec. 04.11.040. BOARD APPROVAL OF TRANSFERS. The intent of this section is to require a licenseholder to obtain the consent of the board before transferring his license between persons or locations.

Sec. 04.10.050. REPORTS REQUIRED OF CORPORATIONS. This section requires a corporation holding a license to report to the board any change in its corporate officers or directors, and report to the board when 10 percent or more of its corporate stock is transferred regardless of whether the transfer of stock is required to have board approval under the preceding section. Only corporations encompassed by subsection (c) are excepted from this reporting requirement.

Sec. 04.11.060. NONRESIDENT DISTILLER, BREWER, WINERY OR WHOLESALER. This section sets out the requirements which must be fulfilled before a distiller, brewer, winery or wholesaler whose plant or principal place of business is outside the state may sell products inside the state.

Sec. 04.11.070. POWER LIMITED TO THE BOARD. This section codifies the principle recognized by the superior court in CY Inc. v. Linda Brown, Alcoholic Beverage Control Board, No. 1569 and the Supreme Court in Queen of the North, Inc. v. Henry C. Legue, No. 1670, that court ordered transfers of licenses are subject to the approval of the Alcoholic Beverage Control Board.

Sec. 04.11.080. TYPES OF LICENSES AND PERMITS. This section lists the licenses and permits authorized under this title.

Sec. 04.11.090. BEVERAGE DISPENSARY LICENSE. This section enumerates those fees and bonding requirements particularly relating to the beverage dispensary license, and describes the extent of the authority granted by the license, specifically in relation to hotels, motels, resorts or similar businesses, bowling alleys, and duplicate licenses issuance when more than one service bar is maintained. It is the intent of that portion of this section dealing with duplicate licenses that issuance of duplicates is entirely discretionary by the board and is limited to beverage dispensary licenses.

Sec. 04.11.100. RESTAURANT OR EATING PLACE LICENSE. This section addresses the requirements particularly relating to the restaurant license, including the requirements relating to the service of food and requires control by licensee of both the liquor and food ends of the business.

Sec. 04.11.110. CLUB LICENSE. This section enumerates the extent of authority granted under a club license, specifies the kinds of organizations which may be issued a club license, who may purchase liquor from a premises licensed under a club license, and the uses to which liquor purchased by an organization licensed under this license may be put.

Sec. 04.11.120. BOTTLING WORKS LICENSE. This section outlines the authority granted under a bottling works license.

Sec. 04.11.130. BREWERY LICENSE. This section outlines the authority granted under a brewery license. Subsection (c) allows the brewery to permit a person to sample the brew free of charge; otherwise it states the same restrictions on sales as the bottling works license.

Sec. 04.11.140. WINERY LICENSE. This section outlines the authority granted under a winery license. Subsection (c) allows the winery to permit a person to sample the wine free of charge, otherwise it states the same restrictions on sales as the bottling works license.

Sec. 04.11.150. PACKAGE STORE LICENSE. This section describes the extent of authority granted under a package store license; among the limitations contained in this section is a prohibition on the consumption of alcoholic beverages on the premises and a prohibition on access from the licensed premises to a retail business not licensed under this title. It includes language granting authority to the board to require licenseholder to install additional entrances to a package store. The legislature has determined there is no enforceable provision limiting individual sales in any one day short of ration cards or some other cumbersome procedure. However, this determination should not deter enforcement agents from investigating excessively large or particularly unusual purchases to determine their ultimate use. Example: "particularly unusual" would be the purchase of case lots of half pints or pints by individuals.

This section does not allow "over the bar" sales in a beverage dispensary which is adjacent or connected to a package store even though both licenses are issued to the same person or corporation.

This section also limits sales to persons present at the premises or by written order where the purchaser is personally known to the licensee and the beverage purchased must be delivered to the purchaser.

Sec. 04.11.160. WHOLESALE LICENSES. This section sets forth the limits of the authority granted under the general wholesale license and the wholesale malt beverage and wine license. Among other things, this section requires that wholesalers obtain either a general wholesale license or a wholesale malt beverage and wine license for each location where alcohol is distributed from a warehouse. The reference to AS 04.24.-040 exempts sales to federal instrumentalities from the requirements that wholesalers licensed under this section sell only to persons licensed under this title.

Sec. 04.11.180. COMMON CARRIER DISPENSARY LICENSE. This section outlines the authority granted under a common carrier dispensary license. It is the intent of this section that the board need not conform to or distinguish its decision from any action it has taken in the past on applications presenting similar facts, but may, instead, base its decision on the particular facts before it. (See comment on sec. 04.11.437)

Sec. 04.11.190. COMMUNITY LIQUOR LICENSE. The intent of this section is to authorize the licensure of a city to operate a beverage dispensary or package store, so long as the city has had no privately owned beverage dispensaries or package stores which are in operation and have been in continuous operation prior to June 1, 1970; however, if a beverage dispensary or package store has had a privately owned beverage dispensary or package store in continuous operation beginning after June 1, 1970, the city may be issued a community liquor license only if no other license of the same type is in effect within the city. Subsection (d) requires a city council to apply for a community liquor license if approved by a majority of the people at a local option election. Also the city council may apply on its own initiative for a license.

Sec. 04.11.200. RETAIL STOCK SALE LICENSE. The intent of this section is to provide a means for the owner of a package store business who has lost his package store license through expiration or forfeiture to liquidate his remaining stock. As subsection (d) indicates, this type of license may not be issued to a person whose package store license was suspended or revoked. It is the intent of this section that only the owner of the package store business may receive such a license and that liquidators, insurance companies, banks, etc., do not qualify unless they were the licensee.

Sec. 04.11.210. RECREATIONAL SITE LICENSE. The intent of this section is to authorize the licensure of persons to sell beer and wine at the site of recreational events. This license may not be used at a school event but may use school grounds or fields or other property when approved by the board.

Sec. 04.11.220. PUB LICENSE. The intent of this section is to authorize licensure of premises on the campus of a college or university to sell beer and wine. It is intended that beer and wine be sold at only one location on campus under this license.

Sec. 04.11.230. CATERER'S PERMIT. This section prescribes the conditions whereby a caterer's permit may be obtained and used. The intent of this section is to provide a means whereby the holder of a beverage dispensary license can secure legal authority to sell alcoholic beverages off his licensed premises for specific occasions. Subsection (b) requires the written approval of the law enforcement agency having jurisdiction over the site of the occasion for which the permit is sought which must be obtained and accompany the application.

Sec. 04.11.240. SPECIAL EVENTS PERMIT. The intent of this section is to provide a means whereby nonprofit fraternal, civic, or patriotic organizations may secure legal authority to sell alcoholic beverages without a license. This section prescribes how a special events permit may be obtained and used. Like the caterer's permit, the written approval of the law enforcement agency having jurisdiction over the designated premises of the occasion for which the special events permit is sought must accompany the application.

Sec. 04.11.250. CONDITIONAL CONTRACTORS PERMIT. The intent of this section is to provide a means whereby alcoholic beverages can be sold without a license at a construction site located within the boundaries of a military or naval reservation. This section prescribes how a conditional contractor permit may be obtained and used. It provides for the revocation or suspension of this permit at the discretion of the commanding officer or the prime contractor.

Sec. 04.11.260. APPLICATION FOR A NEW LICENSE OR PERMIT. This section prescribes what information must be supplied in an application for a license or permit. Subsection (c) specifies what additional documentation must be filed with the application in order to substantiate that requirements imposed by other sections have been met. Subsection (b) requires that the names and addresses of stockholders who own 10 percent or more of the stock in a corporation holding a license be listed. Subsection (b) relates to the reporting requirements of sec. 04.11.050 and the required board approval of transfers of stock required under sec. 04.11.040.

Sec. 04.11.270. APPLICATION FOR RENEWAL OF LICENSE OR PERMIT. This section prescribes what information must be supplied in an application for renewal of a license or permit, as well as the procedure by which licenses and permits are renewed. If the procedure prescribed in paragraph (b)(2) is not adhered to, a license expires in accordance with sec. 04.11.540.

Sec. 04.11.280. APPLICATION FOR TRANSFER OF A LICENSE TO ANOTHER PERSON. This section prescribes what information must be supplied in an application for transfer of a license to another person. The applicant is required to execute a statement listing all debts and taxes owed by the business so that the board can determine whether the application must be denied under sec. 04.11.360(4). It allows the board to require other information be furnished.

Sec. 04.11.290. APPLICATION FOR TRANSFER OF LICENSE LOCATION. This section addresses what information must be supplied in an application for transfer of the location of licensed premises. While generally delegating to the board specification of information required, specific mention is made of documentation which must be filed with the application in order to substantiate that the requirements imposed by other sections have been met.

Sec. 04.11.300. STATE TROOPER INVESTIGATION. This section is a directive to the state troopers to assist the director in his investigation of applicants.

Sec. 04.11.310. NOTICE OF APPLICATION. It is the intent of this section that all applicants for original issuance of licenses, as well as a transfer of license between persons or location, be required to post a copy of the application at the proposed licensed premises. The making of the additional notice provided in paragraphs (1) and (2) is required of applicants at the board's discretion.

Sec. 04.11.320. DENIAL OF NEW LICENSES AND PERMITS. This section lists grounds upon which an application for a license or permit shall be denied, if not in their entirety, then by reference to another place in the statutes where the prohibition is spelled out. It is not intended that these grounds be the exclusive grounds upon which an application for a license or permit be denied. Paragraph (a)(1) and (b)(1), by providing for denial if issuance is not in the best interests of the public, would authorize broad discretion in denial for any reason found incompatible with the public interest. The purpose of this listing is to indicate those grounds which compel denial of an application. Incorporated cities which did not have licensed premises before June 19, 1970 must have approval by local option election before a license may be issued.

Sec. 04.11.330. DENIAL OF LICENSE OR PERMIT RENEWAL. Subsections (a) and (c) of this section list grounds upon which an application for renewal of a license or permit shall be denied, if not in their entirety, then by reference to another place in the statutes where the prohibition is spelled out. It is not intended that these grounds be the exclusive grounds upon which an application for a license or conditional contractor's permit be denied. Paragraphs (a) and (c)(1), by providing for denial if renewal is not in the best interest of the public, would authorize broad discretion in denial for any reason found incompatible with the public interest. Instead, the purpose of this listing is to indicate those grounds which compel denial of an application. Subsection (b) of this section leaves the decision to deny renewal of a license because of nonpayment of taxes to the discretion of the board.

Sec. 04.11.340. DENIAL OF TRANSFER OF LOCATION. This section lists grounds upon which an application for transfer of location of a license or permit shall be denied, if not in their entirety, then by reference to another place in the statutes where the prohibition is spelled out. It is not intended that these grounds be the exclusive grounds upon which an application for a license or conditional contractor's permit be denied. Paragraph (1), by providing for denial if transfer is not in the best interests of the public, would authorize broad discretion in denial for any reason found incompatible with the public interest. Instead, the purpose of this listing is to indicate those grounds which compel denial of an application.

Sec. 04.11.360. DENIAL OF TRANSFER OF A LICENSE TO ANOTHER PERSON. This section lists grounds upon which an application for transfer of a license to another person shall be denied, if not in their entirety, then by reference to another place in the statutes where the prohibition is spelled out. It is not intended that these grounds be the exclusive grounds upon which a license or conditional contractor's permit be denied. Paragraph (1), by providing for denial if a transfer is not in the best interests of the public would authorize broad discretion in denial for any reason found incompatible with the public interest. Instead, the purpose of this listing is to indicate those grounds which compel denial of an application. Noteworthy, perhaps, is the difference between paragraph (4) and sec. 04.11.330(b), the former requiring denial of a transfer between persons if debts and taxes are not paid while the latter providing that denial on this ground is at the board's discretion.

Sec. 04.11.370. SUSPENSION AND REVOCATION OF LICENSES AND PERMITS. Like the foregoing four sections, this listing of grounds is not exhaustive; like them, paragraph (2) authorizes suspension or revocation of a license if continuation of activities would not be in the best interests of the public. The intent behind listing the grounds for suspension of a license or permit is to foreclose any argument that suspension or revocation on any of the grounds listed is in excess of the jurisdiction of the board.

Sec. 04.11.390. RESIDENCE. It is the intent of this section that all applicants for licenses be resident at least one year in the state. In the matter of corporations, a certificate of authority allowing transaction of business by a

foreign corporation under AS 10.05.598 - 10.05.696 at least a year previous to applying for a license or permit is acceptable.

Sec. 04.11.400. POPULATION LIMITATIONS. This section expresses the legislature's intention with regard to the ratio of licenses to population. The basic formula is set forth in subsection (a); subsection (b) grants the board specific authority to deny an application for a license just outside of a town where the population inside and within the immediate vicinity of the town is not equal to the required minimum. Subsections (e) and (f) define the term "population" by reference to a specific date, thereby eliminating any uncertainty in this regard. Finally, the legislature intends subsections (g), (h) and (i) to delineate exceptions to the general rule enunciated in (a) of this section.

Sec. 04.11.410. RESTRICTION OF LOCATION NEAR CHURCHES AND SCHOOLS. This section places restrictions on the board with regard to the issuance, renewal, and transfer of location of premises of a license when the premises are located within 200 feet of a school ground or church building.

Sec. 04.11.420. ZONING LIMITATIONS. The intent of this section is to require the board to determine whether issuance of a license would violate a zoning ordinance and moreover to compel denial of issuance if a zoning ordinance is found to be contrary to the issuance. It is the intent of this section that a municipality notify the board if the issuance of a license would be in violation of said municipality's zoning ordinances in existence prior to the application for license.

This section deals with applications for new licenses and transfer of location only. It does not allow a municipality to zone an existing license out of its present location except in accordance with usual zoning principles applying to any uses including provisions for continuation as non-conforming uses. (See Sec. 8 of this Act)

Sec. 04.11.430. PERSON AND LOCATION. The intent of this section is to keep the name and address of a licensee accurate and current by requiring the name and address of the licensee. The term "individual" is used in this section to contrast with corporation instead of the term "person" since by general

definition and as the term is otherwise used in this Act the term "person" also includes corporations.

Sec. 04.11.450. PROHIBITED FINANCIAL INTEREST. By prohibiting persons other than the licensee from holding direct or indirect financial interests in licensed premises, this section is aimed at prohibiting hidden financial interests in licensed premises. The intent of this section is also to prohibit wholesalers, brewers, vintners, bottlers and distillers from having any ownership interest in beverage dispensaries or package stores licenses or premises.

Credit sales of stock are not prohibited but do not give the creditor any right, title, or interest in or to the license. (See sec. 04.11.070)

Credit sales of stock are given at the creditor's risk and are of no particular interest to the board except under the provisions of sec. 04.11.360(4).

Sec. 04.11.460. PRIOR PUBLIC APPROVAL. This section requires applicants for issuance of new licenses to be located outside municipalities as well as applicants for transfers of location of existing licenses to be located within 50 miles of municipalities to secure the signature of the local residents. Note that that proportion of permanent residents whose signature is required to be secured, as well as the geographical limits within which signatures must be secured differs depending on whether the premises are to be within or without 50 miles of the municipality.

Sec. 04.11.470. OBJECTION. The intent of this section is to establish a process whereby objections to applications by individual members of the public are received and reviewed in a regularized fashion.

Sec. 04.11.480. PROTEST. This section provides for special handling of objections made by local governing bodies, or permanent residents residing outside of but within two miles of an incorporated city or established village. Sec. 04.-11.520 of this revision requires the board to notify the local governing body of the receipt of an application for a premises within the boundaries of the area of the governing body's jurisdiction while sec. 04.11.510 of this revision requires the board to withhold action on an application for

30 days to give a local governing body time to protest; subsection (a) requires a local governing body which wishes to protest an application to submit to the board a protest within 30 days of receipt from the board of notice of filing the application. It is the intent of this section in conjunction with sec. 04.11.520 to provide a municipality sufficient time and process to formally protest an application coming from within their boundaries. Subsection (b), together with AS 04.11.510(b)(3) provides that if the permanent residents residing outside of but within two miles of an incorporated city or an established village submit the signatures of 35 percent of their number on a petition, then the board is required to hold a public hearing on the protest. Public hearings may be held at the board's discretion in response to objections and protests made by individuals and local governing bodies, whereas a hearing is required to be held if a petition filed with the board presents a question of law or contains the signatures of 35 percent of the adult residents having a permanent place of abode outside of but within two miles of an incorporated city or an established village.

Sec. 04.11.490. LOCAL OPTION ELECTION. This section authorizes municipalities to conduct local option elections on the following questions:

(1) whether alcohol should be prohibited entirely in a community;

(2) whether alcohol should be prohibited entirely except if sold through either a package store or beverage dispensary operated under a community liquor license;

(3) whether a municipality which has previously banned the sale of alcohol through a local option election should apply for a community liquor license enabling it to sell through a package store or beverage dispensary;

(4) whether beverage dispensary or package store licenses in effect in the community should be banned, and a community liquor license sought in order to enable the city to sell liquor through a beverage dispensary or package store; and

(5) whether the sale of alcoholic beverages should be banned in a community unless sold under a restaurant or eating place license.

While subsection (a) allows the local governing body to place one or more of these questions on a separate ballot at the next municipal election, subsection (b) requires the lieutenant governor to conduct the election, canvass the ballots, and publish the results.

The intent of subsections (d), (e), (f), (g) and (h) of this section is to specify the results should the voters vote favorably on one or more of the questions appearing on the separate ballot.

The intent of subsection (i) is to provide that licenses and permits which are not renewed as a result of a local option election expire at midnight on December 31, and do not continue in effect through February 28, as sec. 04.11.540 would otherwise authorize.

Subsection (k) continues in effect the substance of provisions in current law providing for issuance of licenses if a majority of the voters at a subsequent election reverse the results of an earlier election on the same question. It also provides that if more licenses than would be allowed under the population limits of AS 04.11.040 would be authorized but the council requests that the population limit apply no more licenses than are allowable under the population limit may be issued.

Sec. 04.11.500. LOCAL OPTION ELECTION IN UNINCORPORATED AREAS. The intent of this section is to authorize local option type elections for unincorporated areas. It provides for an election in unincorporated areas on whether a license should be issued, renewed, or transferred into an established village, if 35 percent of the residents of the village and those residing within a two-mile radius so petition.

Sec. 04.11.510. PROCEDURE FOR ACTION ON LICENSE APPLICATIONS, SUSPENSIONS, AND REVOCATIONS. This section specifies procedures to be followed by the board when reviewing applications for issuance, renewal, transfer of location, and transfer of ownership of licenses, as well as when suspending and revoking licenses. It is the intent of this section that when an application is denied, the applicant may request

an informal hearing with either the director or board where he will be informed of the reason for denial. If he is not satisfied, he is then entitled to a hearing under the Administrative Procedures Act.

It is further the intent of this section that when the board believes a violation has occurred, they will inform the licensee by accusation of their proposed action against the licensee. The licensee is then afforded an informal hearing with either the board or the director. If he is not satisfied he may file a notice of defense and be provided a formal hearing under the Administrative Procedures Act.

Further, it is the intent of this section upon the conviction of a licensee, his agent or employee (AS 04.11.370(4)(5)), the board shall afford the licensee notice and hearing which meet minimal due process requirements. Paragraphs (b)(1) and (b)(2) are addressed to the conduct of hearings to receive public comment on an application. As mentioned earlier public hearings may be held at the board's discretion in response to objections and protests made by individuals and local governing bodies, whereas a hearing is required to be held if a petition filed with the board presents a question of law or contains the signatures of 35 percent of the adult residents having a permanent place of abode outside of but within two miles of an incorporated city or an established village.

Sec. 04.11.520. NOTICE. By requiring the board to notify local governing bodies of its receipt of application for issuance, renewal, transfer of location or transfer of ownership for licenses in or into the area of its geographical location, this section, together with 04.11.480(a) and 04.-11.510(a), allows local governing bodies 30 days to protest before any action is taken on an application. It requires the board to give notice to the local governing body within 10 days of the receipt of the application.

Sec. 04.11.530. CONSIDERATION OF SENTENCING REPORT. The intent of this section is to require the board, before revoking or suspending a license on grounds that the licensee, or his agent or employee was convicted of violating any provision of law, regulation, or ordinance, to take into consideration the sentencing report prepared by the court under AS 12.55.025 which sec. 7 of this bill requires to be sent to the board. Under AS 12.55.025, this sentencing report includes

(1) a verbatim record of the sentencing hearing and any other [illegible] court procedures;

(2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;

(3) a clear statement of the terms of the sentence imposed; and

(4) recommendations as to the place of confinement or the manner of treatment.

Sec. 04.11.535. IMPUTED LIABILITY. It is the intent of this section to provide a licensee a minimal protection from illegal acts committed by his agents or employees deriving from the agent's or employee's negligence, conspiracy with others, or direct disobedience of the licensee's instructions, etc.

It is further the intent of this section that the burden of proof shall be upon the licensee that the violations occurred without his consent, or knowledge, or in a manner in which he had no direct control.

Sec. 04.11.537. APPLICATION OF PRECEDENT. The intent of this section is that the board need not follow its own precedent in carrying out its administrative adjudication functions, i.e. ruling on applications for issuance, renewal, transfer, or suspension or revocation of a license or permit.

Sec. 04.11.540. LICENSE RENEWAL AND EXPIRATION. This section provides for the expiration of licenses only after a two-month grace period, during which the license may be renewed, has elapsed. It is the intent of this section that the license may not be excercised during the grace period unless and until it is renewed.

Sec. 04.11.550. NOTICE OF EXPIRATION. The intent of this section is that the board assist licensees by warning them of the impending expiration of their licenses; however, the responsibility for renewal is a responsibility of the licensee and failure on the part of the board to mail a warning does not constitute a defense to expiration of the license on grounds of failure to file for renewal within the prescribed time.

Sec. 04.11.560. APPEALS. The intent of subsection (a) of this section is to oblige the board to hear appeals taken from the action of its officers, employees, or agents. The intent of subsection (b) of this section is to provide authorization, required under the terms of AS 22.10.020, for appeals to the superior court from the action of the board.

Sec. 04.11.570. REFUND AND FORFEITURE OF FEES. The intent of this section is to specify those conditions under which the license fee paid at the time of filing the application is returnable. Notice that mention is made of "application fees." Such fees are to be established by the board by regulation adopted under sec. 04.06.100(b)(14).

Sec. 04.11.580. SURRENDER OR DESTRUCTION OF LICENSE. The intent of this section is to specify those conditions under which the license must be surrendered to the board. Moreover, subsection (c) instructs the licensee what to do if the license is destroyed.

Sec. 04.11.590. DISPOSITION OF FUNDS. This section requires all program receipts collected by the board, whether under the provisions of this title or regulations adopted under the provisions of this title, to be deposited in the general fund.

Sec. 04.11.610. REFUND TO MUNICIPALITIES. The purpose of this section is to provide an incentive to municipalities to actively enforce liquor laws, and the authority to grant, deny and recover refunds of license fees is intended to further that purpose.

Sec. 04.11.630. ACCESSIBILITY OF LICENSED PREMISES TO INSPECTION. This section would allow officers charged with enforcement of this title to inspect licensed premises without a search warrant. The intent of subsection (b) is that the license be posted on the premises in such a place and manner that it may be easily taken down and presented for a close personal inspection.

Sec. 04.11.660. LICENSE A PRIVILEGE. The purpose of this section is to limit the rights incident to holding a license for dealing in alcoholic beverages to those powers specified by statute and those rights arising from the U.S. and Alaska Constitutions concomitant to holding such statutorily granted

powers. Therefore, the normal incidents of ownership only apply to the extent specified by statute and insofar as rights are accorded to persons in the position of such licensees by the U.S. and Alaska Constitutions.

Sec. 04.11.670. FORECLOSURE. The intent of this section is to prohibit use of the license as collateral for debts, except that if a licensed premises is sold on a contract, the transferor may secure payment for real and personal property conveyed to the transferee upon the promise of the transferee to transfer the license back to the transferor upon default in payment. (Under Queen of the North, Inc. v. Henry C. Legue, No. 1670, what is collateralized is not the license itself, only a right to petition the Alcoholic Beverage Control Board for transfer of the license and there is no intent to change that holding.)

Sec. 04.11.680. DURATION OF LICENSES AND PERMITS. This section indicates that a license is issued for a term ending the immediately subsequent December 31, unless the board prescribes a term ending earlier for that particular license. Note that this section is addressed to the question of the term of the license, whereas sec. 04.11.540 is addressed to the expiration of the license -- two separate questions. Also note that permits are valid for that duration specifically prescribed by the board.

Sec. 04.11.690. DISCOURAGEMENT OF MONOPOLIES. It is the intent of this section that the board discourage the creation of monopolies and submit their proposals on the matter, if any, to the governor and the legislature for their consideration.

Section 3

Sec. 04.16.010. HOURS OF SALE AND PRESENCE ON LICENSED PREMISES. This section specifies the times between which persons may not sell, offer for sale, give, furnish or consume an alcoholic beverage on licensed premises, or enter licensed premises, as well as the times between which a licensee, his agent, or employee may not permit a person to consume liquor or enter licensed premises, delineating exceptions to these requirements.

Sec. 04.16.020. SOLICITATION OF ALCOHOLIC BEVERAGES. The intent of this section is prohibition of B-Girl type of activity as well as the prohibition of the employment or sufferance

of the presence of such persons on the premises by licensees, their agents, or empl yees.

Sec. 04.16.030. SALE OR DISPOSITION OF ALCOHOLIC BEVERAGES TO DRUNKEN PERSONS. This section enumerates the prohibitions on licensees, their agents, or employees with regard to selling, giving, bartering of alcohol to drunken persons, permitting other persons to sell, give, or barter alcohol to drunken persons on licensed premises or permitting drunken persons to enter licensed premises or sell alcohol. It is the intent of this section that a licensee, his agent, or employee be subjected to more than an ordinary degree of responsibility in making sales, serving or giving of intoxicating beverages to take care that he or she does not sell, serve, or give intoxicating beverages to a drunken person.

This section places a duty upon the seller, server, or giver of intoxicating beverages before he or she sells, serves or gives intoxicating beverages to a person to use their powers of observation to see that which can easily be seen, and hear that which can easily be heard, under the existing conditions and circumstances and to determine whether the person is so far under the influence of intoxicating beverages that his conduct and demeanor are drunken and such drunken conduct or demeanor should be reasonably discernible to a person of ordinary experience in dispensing alcoholic beverages who has a duty to observe persons to whom alcoholic beverages are dispensed.

The use of intoxicating liquor by the average person in such quantity to produce drunkeness causes many commonly known outward manifestations which are "plain" and "easily seen or discovered" and when such manifestations exist and a licensee, his agent, or employee still sells, serves, or gives to a person so affected, he has violated this section whether this was because he failed to observe what was plain or easily seen or discovered, or because, having observed, he ignored that which was apparent.

On the charge of selling, serving or giving intoxicating liquor to a drunken person, the facts constituting the alleged outward manifestations should be presented, and it is ordinarily the province of a jury to determine whether or not they were such as to be observable and recognizable as the usual indications of a drunken or overly intoxicated person.

Sec. 04.16.040. ACCESS OF DRUNKEN PERSONS TO LICENSED PREMISES. The intent of this section is to make it unlawful for a drunken person to enter a licensed premises, or for a person to remain on the premises after becoming drunken.

Sec. 04.16.041. OBLIGATION TO ENFORCE RESTRICTIONS IN LICENSED PREMISES. The intent of this section is to prohibit on-the-premises consumption of alcoholic beverages except when it is specifically permitted by the terms of the license.

Sec. 04.16.049. ACCESS OF PERSONS UNDER THE AGE OF 19 TO LICENSED PREMISES. This section enumerates the conditions upon which minors may enter and remain on licensed premises. The intent of subsection (b) is to authorize licensees, their agents, or employees to refuse entry, refuse service, or eject minors who otherwise meet the requirement specified in subsection (a). In subsection (c), board designation of a hotel, restaurant or eating place as suitable for the employment of minors is intended to be separate and apart from licensure of those premises.

Sec. 04.16.050. POSSESSION OR CONSUMPTION BY PERSONS UNDER THE AGE OF 19. This section is the prohibition on "minors consuming."

Sec. 04.16.051. FURNISHING OF ALCOHOLIC BEVERAGES TO PERSONS UNDER THE AGE OF 19. This section is the prohibition on furnishing liquor to minors. Subsection (c) carves out exceptions to the prohibition in (a) whereby liquor can be furnished by persons who stand in relation to the minor in one of a number of defined relationships. Subsection (c) provides, however, that subsection (b) does not make acts constituting contributing to the delinquency of a minor under AS 11.51.130 lawful.

Sec. 04.16.052. FURNISHING OF ALCOHOLIC BEVERAGES TO PERSONS UNDER THE AGE OF 19 BY LICENSEES. This section enumerates the prohibition on licensees, their agents, and employees with regard to allowing other persons to sell, barter, or give alcohol to a minor within licensed premises, allowing minors to enter licensed premises unlawfully, allowing a minor to consume alcohol within a licensed premises, or allowing a person under the age of 19 to sell or serve alcohol.

Sec. 04.16.060. PURCHASE BY PERSONS UNDER THE AGE OF 19. This section prohibits actions leading to the acquisition of alcohol by minors, to wit: direct purchase, solicitation of purchase by others for the minor's benefit; misrepresentation by others of the age of a minor seeking the acquisition of alcohol; misrepresentation of his age by a minor seeking to acquire alcohol, whether or not a false ID is used; or misrepresenting having obtained the consent required under 04.16.049 of a parent or guardian to the presence of a minor on licensed premises. It is the intent of this section that persons under 19 who unlawfully procure or attempt to procure alcoholic beverages be legally responsible for their actions.

Sec. 04.16.070. SALES ON ELECTION DAY. It is the intent of this section that the sale, barter, gift, consumption, or disposal of alcoholic beverages be prohibited on the days elections for candidates to office are held at the statewide or local level. Under this section elections solely concerned with ballot propositions would not activate this prohibition unless on "local option" propositions. Notice that under subsection (c) municipalities may exempt themselves from the application of this section.

Sec. 04.16.080. SALES AT SCHOOL EVENTS. Prohibits the sale or consumption of alcohol at school events.

Sec. 04.16.090. PROHIBITION OF BOTTLE CLUBS. The intent of this section is the prohibition of the operation of unlicensed premises where, for consideration (1) alcoholic beverages are kept for the consumption of the public at large, or (2) where alcoholic beverages may be brought and consumed. Note that subsection (c) defines consideration broadly, including not only cover charges but also sale of food, ice, mixers, and the furnishing of glassware. It is the intent that indirect consideration, as well as direct consideration, for providing alcoholic beverages be prohibited to restrict evasion of the policy of this title.

Sec. 04.16.100. RESTRICTION ON SIZE OF CONTAINERS. This section prohibits sales of alcohol in sizes of containers deceptively similar in appearance to containers of a different volume. The intent is to protect the public from deceptive trade practices.

Sec. 04.16.110. SALE OF POWDERED ALCOHOL PROHIBITED. No substance having alcoholic content and intended for human consumption may be sold in the state unless in liquid form.

Sec. 04.16.120. REMOVAL OR INTRODUCTION OF ALCOHOLIC BEVERAGES. This section prohibits persons from carrying alcohol on or off premises on which alcohol purchased on the premises only may be consumed, except for licensees, agents, or employees as provided in subsection (b).

Sec. 04.16.130. STOCK CONFINED TO LICENSED PREMISES. This section prohibits storing alcoholic beverages off the licensed premises in any premises other than premises authorized for storage under sec. 04.21.060. The latter section requires that (1) the premises to be used for storage are inspected and approved by the board before their use (2) the use of the premises is authorized by local zoning ordinances (3) the premises are accessible for inspection as provided in AS 04.11.630. Subsection (b) exempts delivery trucks from the coverage of (a).

Sec. 04.16.140. SALE OR CONSUMPTION OF ALCOHOLIC BEVERAGES IN A WAREHOUSE. Prohibits sale or consumption of alcoholic beverages on premises approved for storage under 04.21.060 (described in the preceding section).

Sec. 04.16.150. LICENSEE RESPONSIBLE FOR VIOLATIONS. It is the intent of this section that the licensee is responsible for violations of this title, and its regulations, by his agent or employees if he failed to observe what was plain and easily seen or discovered, or because, having observed, he ignored that which was apparent. This sanction is in addition to the administrative sanctions which may be imposed under sec. 04.11.370(5) against a licensee who allows his agents or employees to violate this title. Also note that under sec. 04.11.535(b) if the board finds that a licensee knowingly, recklessly, or with criminal negligence "allowed" the unlawful action of an agent or employee, the board is obliged to file a criminal complaint charging the licensee with violation of this section.

Sec. 04.16.170. SOURCE OF ALCOHOLIC BEVERAGES. This section prohibits licensees engaged in sales to consumers from buying from unlicensed persons, and persons transporting alcohol into the state from selling to unlicensed persons, except where used for specified purposes.

Sec. 04.16.175. FURNISHING ALCOHOLIC BEVERAGES IN AID OF GAMBLING ENTERPRISE. This section prohibits an agent or employee of a gambling enterprise from furnishing alcoholic beverages to a player. The definitions are identical to those in the criminal code section AS 11.66.280.

Sec. 04.16.180. PENALTIES FOR VIOLATION. This section prescribes both the criminal and administrative sanctions (suspensions and revocations) for violation of this title, except as regards those sections of this title specifically referenced. Subsection (b) limits the period of time a license may be suspended for violations by a licensee, his agents or employees for violations of laws, regulations, or ordinances and permits revocation only upon a third conviction. Under (c) of this section a licensee can have three convictions charged against him solely on the basis of convictions of his agents or employees of laws, regulations, or ordinances if the licensee is found to have allowed or to have acted recklessly or with criminal negligence that he is responsible for the violation. Subsection (d) of this section expresses the legislature's intent that the limitations in subsection (c) on suspension and revocation do not apply if the board determines that continuance of a license is in the best interest of the public.

Sec. 04.16.200. UNLICENSED PERSONS. This section prescribes a separate penalty, different from the general penalty prescribed in sec. 04.16.180, for sale by unlicensed persons. Under this section, bootlegging is a Class A misdemeanor unless the illegal sales are made to a minor or the violation is a second offense, in which case the violation is a felony. A mandatory jail sentence is required if the offense is committed in an area where, by local option, sale is forbidden.

Sec. 04.16.210. PENALTY FOR MAKING FALSE STATEMENT. This section prescribes a separate penalty, different from the general penalty prescribed in sec. 04.16.180, for making a false statement on an application.

Sec. 04.16.220. FORFEITURES. This section provides for the forfeiture of alcoholic beverages, as well as materials, equipment, and conveyances involved in violations of liquor laws. Procedures for the seizure of the property are specified, and notice to the owner of the impending forfeiture provided. This section authorizes forfeitures of property either as part of a criminal action leading to forfeiture, or in an

independent civil action. Relief from forfeiture is provided owners of property forfeited or holders of interest in property forfeited who can show they were neither involved in the violation subjecting the property to forfeiture nor knew of the violation. Subsection (g) provides that property can be forfeited in an in rem proceeding regardless of whether criminal proceeding has resulted in a conviction or acquittal. Finally, destruction or sale of forfeited property is provided for.

Section 4

Sec. 04.21.010. MUNICIPAL REGULATION. The purpose of this section is to describe with particularity the regulatory and taxing powers granted municipalities in regard to alcoholic beverages by Title 29 (see AS 29.48.010(7) and AS 29.48.035). Authorization is provided for municipalities to adopt ordinances "necessary to the orderly conduct of the business of selling alcoholic beverages" but the ordinances must be consistent with this title and regulations. Moreover, subsection (b) limits the circumstances in which taxes may be levied on alcoholic beverages inventories and sales.

Sec. 04.21.020. LIMITATION ON CIVIL LIABILITY. It is the intent of this section that a licensee, his agent, or employee who lawfully furnishes an alcoholic beverage to a person who is 19 years of age or older, or a person who is not drunken, may not be held civilly liable for injuries resulting from the consumption of said alcoholic beverage by the above described persons or a third party.

"Lawfully" in this section concerns itself only with the age and physical condition of the person furnished the alcoholic beverage.

Sec. 04.21.030. RESPONSIBILITY OF LICENSEES, AGENTS AND EMPLOYEES. This section requires that a licensee shall make every effort a prudent person would in the operation and management of his licensed business.

It is the intent of this section that it present a standard whereby it may be determined whether a licensee who has no actual knowledge of the violation of a liquor law by an agent or employee has nonetheless acted without the reasonable care that the manager of a business should exercise may be

held to be responsible for the violation. The standards in this section are applied by the board in making the finding required under sec. 04.11.535 before a license may be revoked or suspended on grounds of violation of a liquor law by an agent or employee. It is further the intent of this section that the burden is on the licensee to take reasonable preventive measures to insure violations do not occur on the licensed premises.

It shall be the duty of the board to determine whether the licensee knowingly or negligently allowed violations by his agent or employee.

Sec. 04.21.040. SALES ON FEDERAL RESERVATIONS. This section establishes, and delineates the parameters of, an exception to the requirement appearing in sec. 04.11.160 that holders of general wholesale and wholesale malt beverage and wine licenses sell only to other licensees. It does so by permitting wholesalers of alcoholic beverages to sell to non-licensees when the non-licensee has a "fixed place of business or residence on territory within the state which is maintained by the U.S. government as a military or naval reservation, a national park, or other federal reservation, but only if the purchaser is a ship's service store, officer's club, officer's mess, post exchange, or similar organization."

Sec. 04.21.050. PROOF OF AGE. This section requires licensees, their agents, or employees to secure proof of the age of customers or alternatively, to furnish a signed statement of age. Subsection (b) specifies what is acceptable proof of age. The language in subsection (c) expresses the legislature's intent that the omission prohibited in (a) is the failure to secure proof of age, if and when a valid driver's license or identification card is not forthcoming by a good faith effort to secure a signed statement.

Sec. 04.21.060. WAREHOUSING OF ALCOHOLIC BEVERAGES. This section specifies those conditions under which licensees may warehouse alcoholic beverages off licensed premises.

Sec. 04.21.070. ENFORCEMENT. Requires peace officers to investigate and report to the board violations of this title.

Sec. 04.21.080. DEFINITIONS. This section defines the terms "alcoholic beverage," "board," "criminal negligence," "designated premises," "director," "drunken person," "establishe

village," "knowingly," "licensed premises," "local governing body," "municipality," "recklessly," and "distributing point."

Section 5

This section amends AS 09.35.087 to exempt liquor licenses not only from execution but also attachment and garnishment.

Section 6

This section amends AS 12.55.025(a) to require the court to prepare a sentencing report whenever the court is imposing sentence upon conviction of a liquor law, thereby adding to the current requirement that the court prepare such a report whenever imposing sentence of over 180 days.

Section 7

This section requires the sentencing report prepared under the amendments in the foregoing section to be sent to the Alcoholic Beverage Control Board, inter alia.

Section 8

This prohibits a local governing body from adopting zoning ordinances which would make illegal the conduct of activities authorized under a license issued before the adoption of the ordinance. (See comment to sec. 04.11.420)

Section 9

This section adds the officers, agents, and employees of the Alcoholic Beverage Control Board to the ranks of the exempt service.

Section 10

This section repeals the law this revision replaces.

Section 11

This section continues in office the present members of the Alcoholic Beverage Control Board until the expiration of their terms.

Sections 12 and 13

These sections establish the effective dates of these amendments.

April 16, 1980

Mr. James Elkins
Fo'c'sle Bar and Liquor Store
312 Front Street
Ketchikan, Alaska 99901

Dear Jim:

The enclosue is the revision of Title 4 in the version in which it passed the Senate the other day. We are also enclosing a copy of the only amendment which was adopted.

After you've read it, you might see that it's circulated among the other dealers in town.

Also, if any changes, amendments, or what-have-you, are in order, your comments and suggestions should be sent to Representative Charles H. Parr, who chairs the House Judiciary Committee.

Best regards,

Robert H. Ziegler, Sr.

RHZ:lk

Enclosure

February 15, 1980

Cabaret, Hotel and Restaurant
Owners Association of Alaska
Mile 22.5 Old Seward Highway
Anchorage, Alaska

Attention: Executive Director

Dear Sir:

Senator Ray, who serves with me on the Senate Judiciary Committee, has worked laboriously on the recodification of Title 4. You are, of course, familiar with that legislation.

At my request, he researched the comments and proposed changes that you set forth in your recent communication.

His reply thereto is enclosed.

We'll be having a public meeting on the 21st. Thereafter a committee substitute will be prepared and disseminated throughout the state for additional public criticism and comment, if any. I anticipate bringing the bill before the Senate for a floor vote no later than March 15.

Very truly yours,

Robert H. Ziegler, Sr.

Enclosure

RHZ:lk

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

February 21, 1980

The Honorable Bill Ray
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SSSB 239 (revision of alcoholic beverage control laws -- AS 04)

Dear Senator Ray:

Yesterday your staff assistant notified this office that this bill will be coming up for discussion in the Senate Judiciary Committee today. We are interested in the bill and would like to offer some comments on it. However, it is a lengthy bill and we will not be able to complete our analysis of it by this afternoon's meeting and would appreciate being given another opportunity to testify. Our analysis would include a comparison of this bill with the governor's alcohol legislation and the comprehensive revision of AS 04 prepared last year by the Alaska Code Revision Commission (under AS 24.20.075).

Thank you.

Yours truly,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Art Peterson
Arthur H. Peterson
Assistant Attorney General

AHP:md

cc: The Honorable Robert Ziegler, Chairman
Senate Judiciary Committee

03-C8LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

420 "L" STREET, SUITE 100
ANCHORAGE, ALASKA 99501

March 4, 1980

The Honorable Robert Ziegler
Chairman, Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SSSB 239 (Revision of Alcoholic Beverage Control Laws - AS 04)

Dear Senator Ziegler:

This letter is a follow-up to our letter of February 26, 1980, commenting on SSSB 239. The purpose of this letter is to withdraw the former letter. We are making this request because the views expressed in the February 26 letter, particularly in its appendix, refer to a version of SSSB 239 dated October 8, 1979, when in fact a revised version of SSSB 239 was introduced on January 14, 1980.

The views expressed in the February 26 letter were formulated in a memorandum to my file on December 27, 1979, which was distributed within the Department of Law and Department of Revenue at that time. When instructed to comment on behalf of the Department of Law on February 26, it was my understanding that the views which I was called upon to express at this time were those which I had previously formulated. I was not aware that a revised version of SSSB 239 had been introduced. The Executive Director of the Alcoholic Beverage Control Board brought the oversight to my attention on the 29th of February. I accept the responsibility for this error. Therefore, please disregard the letter of February 26, 1980.

A brief word about the tenor of the remarks in the appendix to the February 26 letter may be in order. In the brief time available, a complete section-by-section

analysis of SSSB 239 was impossible. The appendix to the February 26 letter was therefore reproduced from the December 27 internal memorandum. Maybe mistakenly, I thought that even a very informal, impressionistic working paper, which was intended to highlight areas of concern for further thinking, was better than no specifics whatsoever. Had time allowed a more formal critique, I would have been more constructive, and doubtless upon reflection and discussion, my views in some areas could be expected to change. Unfortunately, the instruction that I quickly, on short notice, respond to the Judiciary Committee's request for comments prevented this.

I am reviewing the revised SSSB 239, and will reflect upon the areas of my initial concern. I would like to be helpful and would be happy to assist in any way that I can. My intention is to be responsive to your needs, not to be merely critical.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: David T. LeBlond
David T. LeBlond
Assistant Attorney General

DTL:dr

cc: The Honorable Bill Ray
Senator, Alaska State Legislature

Wilson L. Condon
Deputy Attorney General

Arthur Peterson
Assistant Attorney General
Juneau - AGO

SB

277

COMMITTEE REPORT

SENATE

FURTHER: None

4/24/78

Date: 5/8/80

Mr. President:

The Committee on JUDICIARY has had SB 277
making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SB 277 [ ] same title [ ] new title

and recommends CS SB 277

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 28, 1980

SUBJECT: The Revisors Bill
(HCS for CSSB 277)

TO: Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee

FROM: David T. Walker
Co-Revisor of Statutes

The purpose of this memo is to explain the changes which the House made to the Revisors bill.

A version of SB 438 (relating to energy) is awaiting action by the Governor. It picks up the substance of the amendment proposed by section 48 of the Revisors bill and it also repeals the sections amended by sections 51 and 52 of the Revisors bill. Accordingly, this office requested the House Judiciary Committee to remove those sections (48, 51 and 52) from the Revisors bill.

Section 22 of the Revisors bill repealed a statute related to certain nonconforming highway advertising signs. Some confusion exists about certain of those signs and so the House Judiciary Committee removed section 22 from the bill upon the joint request of this office and their committee counsel.

The House Judiciary Committee added the last section to the bill. It amends the statutes so that all references to workmen's compensation will be changed to worker's compensation.

This office supports the House Judiciary Committee version of the Revisors bill.

Thank you for your assistance.

DTW:ljb

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

April 22, 1980

SUBJECT: CSSB 277 - "An Act making corrective amendments in the Alaska statutes as recommended by the revisor of statutes."

TO: Alaska Legislative Council

FROM: Donna Sragg Pegues
David T. Walker
Co-Revisors of Statutes

This committee substitute was prepared by the revisor of statutes under AS 01.05.036 which provides in part that the revisor of statutes shall

> "prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state."

It is suggested that this explanatory memorandum accompany the bill through its legislative course.

SECTIONAL ANALYSIS

Section 1 repeals an obsolete section of AS 02.15.180. The underlying federal law (Veterans' Readjustment Assistance Act of 1952) on which this section relies was repealed in 1958.

Section 2 amends AS 05.15.030(a) to delete obsolete language. The "15-day period" referred to in AS 05.-15.030(a) was a suspense period previously set out in AS 05.15.020 which was deleted by sec. 1, Chapter 182, SLA 1976.

Section 3 amends AS 06.30.445(b) to correct a reference in that statute. A 1978 amendment to the section included a reference to "Federal Savings and Loan Insurance Corporation regulations." In fact, the applicable regulations are the responsibility of the Federal Home Loan Bank Board. See also the corrective regulation at 3 AAC 05.150 (adopted April 4, 1979).

Section 4 corrects an incorrect statute reference in AS 06.30.665. The statute now refers to AS 06.01.660 which was repealed in 1978.

Section 5 repeals a provision of the Alaska Integrated Bar Act relating to disciplinary proceeding and review which was inadvertently left out of the repealer contained in Chapter 181, SLA 1976, involving amendments to the state bar act.

Sections 6 and 7 correct an error in the repeals made by Chapter 177, SLA 1978, which is an act relating to malpractice insurance. That act repealed AS 08.80.115 which had nothing to do with malpractice insurance but rather involved the registration of pregraduate and postgraduate intern pharmacists. However, AS 08.80.117 does relate to malpractice insurance and was not repealed in Chapter 177, SLA 1978. It is apparent that a repeal of 08.80.117 was intended and that the repeal of 08.80.115 was inadvertent.

Section 8 corrects an internal citation in AS 08.80.295(a).

Section 9 corrects a mistake in AS 09.55.238(b). The word "visitation" is substituted for "violation" to make the section consistent with the other sections relating to an action for failure to permit visitation with a minor child. See AS 11.51.125(b).

Section 10 removes an archaic provision from the applicability section of the chapter regulating non-profit corporations. (AS 10.20). The class of corporations referred to by the provision being repealed is now regulated under AS 10.40 (religious corporations).

Section 11 inserts a statutory reference in the definition contained in AS 14.12.170 to clarify the coverage of the definition of school districts.

Section 12 eliminates a reference in AS 14.17.140(b) to a section of AS 28.10 which was repealed in 1978. The correct suceeding code section has been substituted.

Section 13 removes an obsolete reference to the state pay plan in the statute relating to the Postsecondary Education Commission.

Section 14 deletes an obsolete reference to "State Operated Schools" in AS 14.36 relating to community schools. A reference to "regional educational attendance areas" is substituted.

Section 15 repeals the tuition grant program which was held unconstitutional in Sheldon Jackson College v. State, 599 P.2d 127 (1979).

Sections 16 and 17 amends the section relating to sport fishing and hunting so as to properly relocate an existing provision relating to big game tags.

Section 18 repeals an obsolete section in Title 17. AS 17.-05.040 would punish violations of AS 17.05.030 which was repealed in 1968.

Section 19 updates the language of AS 18.50.280 (relating to court reporting requirements under the Vital Statistics Act) to include the reports of dissolution of a marriage.

Section 20 corrects an incorrect internal citation. Facility procurement policy development procedures are found at AS 35.10.160 -- not AS 35.10.060.

Section 21 repeals an obsolete section which refers only to a repealed section which was in former AS 07.

Section 22 repeals a section relating to nonconforming highway advertising which expired by its own terms on July 1, 1971.

Section 23 repeals a section relating to the removal of nonconforming junk yards. This effect of this section expired September 14, 1979.

Section 24 corrects two statute references in AS 21.-27.420(2).

Section 25 repeals an obsolete reference to the jurisdiction of the district court over proceedings under the defunct Village Incorporation Act.

Section 26 repeals certain sections of the Alaska World War II Veterans' Act (AS 26.15) which have expired. Most of these sections relate to payment of bonuses which have terminated. One of these sections provides for repayment of a loan to the veterans' revolving fund from the general fund. This loan was long ago paid. The title of the Act is also repealed since AS 26.15 now relates to veterans other than veterans of World War II.

Sections 27 and 28 amend the description of an eligible veteran in AS 26.15 to adopt the termination date (plus six months) of the "Viet Nam era" established by Presidential Proclamation No. 4373 (40 Fed. Reg. 20257).

Section 29 corrects obsolete and repealed statute citations in AS 28.35.030(a).

Section 30 corrects obsolete and repealed internal statute citations in AS 28.35.155(a).

Sections 31 and 32 remove obsolete references to "weighted voting" from the Municipal Code. Weighted voting by a borough assembly is no longer allowed under Alaska statutes.

Sections 33 and 34 correct mistaken internal citations in AS 31.05.027 and AS 31.05.110(p).

Section 35 repeals AS 38.05.066 (preference to uplands land for persons for fishery purposes), as the application period for a preference right under that section expired in July 1973.

Section 36 amends the definition of "veteran" in AS 38.-05.067 (veterans' preference in state land transactions) to adopt the termination date (plus 6-months) of the "Viet Nam era" established by Presidential Proclamation No. 4373 (40 Fed. Reg. 20257).

Section 37 repeals the laws requiring local hire under state leases. These statutes were held unconstitutional by the United States Supreme Court in Hicklin v. Orbeck, 437 U.S. 518 (1978).

Section 38 amends AS 39.05.020 relating to the confirmation of gubernatorial appointments. The amendment conforms this statute to the holding of the Alaska Supreme Court in Bradner v. Hammond, 553 P.2d 1 (19[illegible]).

Section 39 amends the section which allows for veterans' preference in state employment to adopt the termination date of (plus 6 months) of the "Viet Nam era" established in Presidential Proclamation 4373 (40 Fed. Reg. 20257).

Sections 40 through 44 correct the list of boards and commissions which are included under the conflict of interest provisions of state law. The defunct Board of Fish and Game is eliminated and the Board of Fisheries and Board of Game are added. The following repealed or obsolete boards are eliminated from the list:

(1) State Section of Joint Federal-State Land Use Planning Commission (no longer in existence);

(2) Board of Directors, State-Operated Schools (repealed in 1975);

(3) Alaska Salary Commission (repealed 1980).

Section 45 repeals the statutes which establish the Joint Federal-State Land Use Planning Commission for Alaska. The Commission expired on June 30, 1979.

Section 46 amends the law relating to the Public Utilities Commission to conform AS 42.05.171 to the quorum requirement in 42.05.071. In Chapter 213, SLA 1973, the commission was increased from three to five members and the requirement for a quorum was increased to three members. However, the section establishing the number of commissioners which may conduct a formal hearing was apparently overlooked. The amendment also conforms to present commission practice.

Section 47 corrects an incorrect definition in the amendment made to the fisheries taxes in 1979. For purposes of the

taxing statutes, (43.75) year was defined as "fiscal year". This definition was related to an earlier version of the fisheries tax bill and when the bill was rewritten all other references to "fiscal year" were deleted. Retaining the definition was a drafting oversight.

Section 48 clarifies the application of limitations in AS 44.47.140. As that section now reads, the limitations could be read as applying to all programs of the Department of Community and Regional Affairs. However, a close reading of the statutes and investigation of the legislative history makes it clear that the limitations were only intended to apply to programs of the department in rural areas.

Section 49 corrects the terminology describing the coverage of the definition of "municipality" contained in AS 44.74.-150(g).

Section 50 deletes the reference to the requirement of United States Citizenship as a qualification of appointment as a notary public. This requirement was deleted from AS 44.-50.020 in the 1976 amendment of that section (section 1, Chapter 160, SLA 1976).

Sections 51 and 52 delete references to nonexistent Alaska permanent fund "guarantees" from the Alaska Power Authority statutes. The sections of AS 37.13 referred to in AS 44.46 were not enacted.

Section 53 removes the Department of Natural Resources functions relating to oil and gas conservation from the list of officers and boards which must comply with hearing procedures of the Administrative Procedures Act. Chapter 158, SLA 1978 transferred these functions to the Oil and Gas Conservation Commission. Chapter 160, SLA 1978, established specific provisions for hearings, etc. by the Oil and Gas Conservation Commission. (See AS 31.05.060(b) added by Ch. 160, SLA 1978.)

Section 54 amends AS 45.55.140(b)(viii) to correct an internal inconsistency which apparently resulted from a technical oversight in 1977 legislation. (See also AS 45.-55.140(b)(A)(v))

Sections 55, 56, 57, and 58 amend the Uniform Gifts to Minors Act to define a minor under that Act as a person under 18 years of age. This conforms with AS 25.20.010 which sets the age of majority in this state as 18 years of age. (See Chapter 63, SLA 1977)

Section 59 corrects a reference to the wrong rules of court.

Sections 60 and 61 clarify the age of the child who comes under the child protection laws. One reference is to a "child under 18" and the other is to a "person under 16". The revisor's bill would change the second reference to a "person under 18."

Section 62 changes references to "inmate of the Alaska Pioneers' Home" to "resident of Alaska Pioneers' Home" to conform with policy embodied in Chapter 11, SLA 1979.

Section 63 relates to the advisory board on alcoholism and repeals obsolete and incorrect provisions relating to the terms of board members.

DSP:DTW:ljb

Enclosure

August 29, 1979

COPY

Mr. Robert C. Albietz
Cook Inlet Region, Inc.
Drawer 4-N
Anchorage, Alaska 99509

Dear Mr. Albietz:

I'll be taking your August 20th letter to Juneau with me with reference to Senate Bill 277.

Your comments are noted.

Regards,

Robert H. Ziegler, Sr.

RHZ/pkz

COOK INLET REGION, INC.
P.O. DRAWER 4-N • ANCHORAGE • ALASKA 99509
(907) 274-8638 • 2525 C STREET
TELECOPIER (907) 279-8836

August 20, 1979

Honorable Robert H. Ziegler Sr.
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

The Cook Inlet Region, Inc. would like to advise you that we are in favor of the proposed amendments to A.S. 45.60 included in Senate Bill No. 277 Eleventh Legislature Sections 25, 26, 27 and 28.

We understand that these technical amendments have been introduced in the Senate, and are now pending before your committee. The amendments included in these sections eliminates the inconsistency in the Alaska Statutes pertaining to the age of majority that has caused great confusion to our 18 year old shareholders. Passage of these sections will certainly aid us in meeting the needs of these shareholders on a more timely basis and eliminate the unneccesary uncertainty regarding their legal rights. If we can be of assistance to you in your efforts in this regard, please feel free to call on us.

Sincerely,

COOK INLET REGION, Inc.

Robert C. Albietz

Robert C. Albietz
Manager, Financial & Shareholder Services

RCA/pra

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM April 22, 1980

SUBJECT: CSSB 277 - "An Act making corrective amendments in the Alaska statutes as recommended by the revisor of statutes."

TO: Alaska Legislative Council

FROM: Donna Spragg Pegues
David T. Walker
Co-Revisors of Statutes

This committee substitute was prepared by the revisor of statutes under AS 01.05.036 which provides in part that the revisor of statutes shall

> "prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state."

It is suggested that this explanatory memorandum accompany the bill through its legislative course.

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Section 59 corrects a reference to the wrong rules of court.

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Section 63 relates to the advisory board on alcoholism and repeals obsolete and incorrect provisions relating to the terms of board members.

DSP:DTW:ljb

Enclosure

SB
287

COMMITTEE REPORT

SENATE

FURTHER: None

3/11/80 Date: 3/20/80

Mr. President:

The Committee on JUDICIARY has had SB 287
civil liability for shoplifting;

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

Fred Meyer Shopping Centers

NORTHERN REGION OFFICE
7101 Empire Way So., Seattle, Washington 98118

725-7200

In the Northwest it's "MY-TE-FINE"

February 18th, 1980

Terry Stimson
Alaska State Senator
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 287 (Civil Penalties for Shoplifting)

Senator Stimson,

I am writing to you in response to Senate Bill No. 287, regarding proposed civil penalties recoverable by a merchant from those who shoplift on their premises.

Because shoplifting is an ever increasing cost factor that is ultimately born by the vast majority of our honest customers the concept of civil penalties, I believe, is a valid one for the following reasons:

1. That small percentage of persons who shoplift help to bear the cost of their activity.

2. The civil penalties can be a catalyst for a positive shoplifting prevention campaign.

3. We believe those persons who have paid the civil penalties have a much lower recidivism rate than those who have not.

Having reviewed the proposed legislation, it is similiar to that enacted into law in Washington State. Our experience in Washington State has been as follows:

1. Civil Penalties have accounted for about 12% of the total cost of our store detectives expenses.

2. We believe that even in those instances where a person is "suit proof" there is a deterent effect to their returning to our store to shoplift.

3. Those persons who have paid the civil penalties after being apprehended seems to be positive "I'll never do it again - IT'S TOO EXPENSIVE".

It is integral to an understanding of the shoplifting problem that the great majority of shoplifters are not "hardened criminals" but rather persons whose lives and values are pretty much average. It must also be understood that the greatest number and dollar amount of loss is sustained as a result of these "amateurs".

I might mention also that we have not dramatically reduced the number of shoplifting cases involving the criminal justice system, especially where large dollar amounts and/or perceived history of shoplifting is obvious. We believe the civil and criminal remedies are both appropriate.

We heartily endorse your efforts on this legislation, Senator, feeling that it is in the best interest of the total community.

Sincerely,

Ron Huebner

Ronald G. Huebner
Security Manager
Northern Region
Fred Meyer

RGH:df

American Society
for Industrial Security

25th year

Please Reply to Alaska Chapter
P. O. Box 2339
Anchorage, Alaska 99510

February 14, 1980

The Honorable Terry Stimson
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Subject: Senate Bill No. 287, Civil Liability for Shoplifting

Dear Senator Stimson:

In October, 1979, Dic Gribbon, Loss Prevention Manager, Pay'n Save Corporation, informed the membership of the Alaska Chapter, American Society for Industrial Security, of the contents and purpose of this bill. The membership voted to support the legislation.

The American Society for Industrial Security is the nation's foremost organization for security professionals. The Alaska Chapter, although relatively new, includes among its membership a significant number of the security professionals in Alaska.

We are pleased to go on record in support of legislation which would help to reduce the tremendous losses due to shoplifting which are suffered by retail stores in Alaska.

Very truly yours,

J. P. Goldsmith
Chapter Chairman
Alaska Chapter

JPG:bjc
cc: Dic Gribbon

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 287
Title "An Act Relating to Civil Liability for Shoplifting; and Providing for an Effective Date"
Requested by Senator Stimpson Date 2/12/80

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Legal Services
(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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

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)

This bil. provides for civil action on the part of owners of merchandise to collect damages and penalties from shoplifters. Since the Department of Law is not involved in this process, there will not be a fiscal impact for legal services.

IV. DATE February 13, 1980 PREPARED BY Richard I. Pegues Admin. Officer
AGENCY Department of Law
PHONE 465-3695

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

33-001 (Rev. 12/79)

Getting the Goods

Shoplifting, Once Only Holiday Problem, Shows Gains Year-Round as More of Elderly Join Trend

By Bill Abrams
Staff Reporter of The Wall Street Journal

'Tis the season to be jolly – and to make special use of the "five-finger discount."

This involves whisking merchandise directly from store shelf into purse or pocket. It simplifies shopping by eliminating the bothersome stage of paying for the stuff.

Shoplifting: As ruddy Santas circulate and carols fill the air, America's most common crime reaches its yearly peak. Between Thanksgiving and Christmas, says New York security consultant Saul Astor, more than a fifth of the nation's yearly shoplifting takes place. He says the holiday heist totals at least $1.6 billion.

The yuletide bulge chiefly reflects the greater number of people in the stores at that time. However, the crime is rising year-round. "Shoplifting used to be a serious problem only at Christmas," says the security chief at a West Palm Beach, Fla., shopping mall. "Lately it's been Christmas all the time."

Continuing inflation, combined with an economic downturn, has more than a little to do with it. "Times are going to be tight," says Lewis Shealy, security director for Woodward & Lothrop, a Washington, D.C., department store that reports a 25% increase in shoplifting arrests this year. "People are going to be looking for ways to make ends meet."

Who Steals What?

Security officers have a hard time determining just who steals. They only know about the ones they catch. It also is hard to ascertain just how much merchandise is shoplifted; employe theft, the other chief reason for "shrinkage," may account for even greater losses than those from shoplifting.

But it is clear that authorities are finding new faces along with the sticky fingers. "You catch people who never dreamed of stealing three years ago," says Stuart Tomeske, security director for the Foodorama chain in New York and New Jersey. A notable new group consists of older people. Foodorama says about 23% of the shoplifters it catches are senior citizens.

"The first group a bad economy hits is the elderly," says one supermarket security chief. There is some sympathy for pensioners trying to get by on fixed incomes. "These old folks are respectable, law-abiding people who never had crossed the street against a red light," says a security man. "Now they're forced to steal."

Mattie Schultz, a 91-year-old widow in San Antonio, Texas, made headlines last summer when she was collared stealing $15 of ham, sausage and butter. Her explanation: "I was hungry. I was desperate." The charges were dropped, and, following the publicity, people around the country sent her letters of sympathy and gifts of food and money.

Prosecuting senior citizens is a ticklish business. "You'd be laughed out of court," says Mr. Tomeske of Foodorama.

Security officials are severely vexed about the increase in pilferage among other adults. Teen-agers usually have been the most common – and the most commonly caught – shoplifters. Commercial Security Systems Inc., a Los Angeles security concern, found in a 1978 survey of 900 California stores that pilferers under 18 years of age accounted for about 37% of the arrests in supermarkets, 48% in drugstores and 43% in discount stores.

With a Shopping Bag

But many security people believe the number of adult pilferers is underestimated. "A middle-aged woman with a shopping bag steals more frequently than teen-agers," says Mr. Astor, the security consultant. "More teen-agers are apprehended because store detectives zero in on them. A middle-aged woman with a shopping bag doesn't look like a shoplifter."

In California, officials even apprehended a nun taking panty hose from a supermarket. Another consideration with adults: They tend to steal merchandise of greater value. Commercial Security Systems, in its survey, found that the average value of merchandise recovered from adults in supermarkets was $7.82; the figure for juveniles was $3.66.

Security officials say most shoplifters caught usually have enough cash with them to pay for the items they have stolen. Or they have credit cards in good standing. A prominent Cincinnati attorney, for instance, was nabbed taking $14 of food from a supermarket. He had $700 in his pocket and just had left the city's most affluent country club.

Why do such people steal? Lawrence Conner, president of Shoplifters Anonymous International, a Pennsylvania program for rehabilitating pilferers, says many people shoplift because they are under personal stress. About 25% of the offenders at Shoplifters Anonymous "were in an unusual personal situation at the time they took something," Mr. Conner asserts.

Some shoplifters recently have suffered a marital breach or a death in the family. A Philadelphia-area woman caught taking a $15 bottle of perfume from a department store said her 22-year marriage to an alcoholic was breaking up at the time of her arrest.

Many factors are involved. Stan Shrotel, director of risk management for Kroger Co., speculates that some shoplifting may be "a form of retaliation for people laboring under the impression that retailers of our size are exploiting them." Self-service shelves and enticing displays may arouse larcenous impulses in some shoppers.

Then there are the professionals, who steal and resell the booty at bargain prices. One New York professional acknowledged that she and her partner had been stealing about $3,500 of merchandise weekly – choosing the stores with the best cuts of meat.

In Los Angeles, one thief stationed himself at a bar across the street from a supermarket and shoplifted to order. "I'm amazed at the individuals of supposed integrity who buy this stuff," says Mr. Shrotel.

The professionals tend to get violent when security forces descend on them. One Kroger female detective has been hospitalized four times this year with occupational injuries. In one Kroger store, a shoplifter broke a bottle and jabbed it into the face of a 17-year-old clerk who confronted him.

Discouraging Pursuit

At an Ontario, Calif., supermarket, a shopper filled his cart with $153 of meat, cigarets and liquor. He brazenly wheeled past the cashier and out of the store. Followed by the store manager, he turned and fired two shots from a pistol – and made his escape.

Mr. Astor, the consultant, once had his agents follow 1,647 shoppers selected at random in New York, Boston and Philadelphia. They found that one out of 15 took something. But stores catch only a tiny fraction of that number in the act of stealing. Commercial Security System's California survey shows the average supermarket nabbing less than one shoplifter every two weeks. Mr. Conner says graduates of his Shoplifters Anonymous admitted to an average of 66 thefts each before they got caught.

Retailers, and particularly supermarkets working on net profit margins that typically are less than 1%, say that theft is a serious drain on earnings. "Customer pilferage amounts to 15% to 25% of a (food) store's after-tax profit," says Edgar B. Walzer, publisher of Progressive Grocer magazine.

A Serious Threat

"Retailers who don't recognize this threat are going to be put out of business," Mr. Conner contends.

Giant Foods Inc. says it caught 7,059 shoplifters in its Washington, D.C.-area supermarkets in the first 10 months of this year, up 49% from the year before. Kroger says apprehensions are up 15%, and another supermarket chain reports a 30% jump.

But the legal penalties usually are minor because shoplifting generally is treated as a misdemeanor. And enforcement is lax. Commercial Security Systems says that only 33% of the shoplifters noted in its survey were prosecuted, compared with 43% a few years earlier. Most often, pilferers are photographed, fingerprinted and banned from the stores where they have been caught.

"That's like saying, 'Go steal elsewhere,' " says Mr. Walzer.

"We've got to stop calling this kind of dishonesty 'shoplifting,' " says Kroger's Mr. Shrotel. "It's theft. We've got to call it what it is."

American Society
for Industrial Security

25th year

Please Reply to: Alaska Chapter
P. O. Box 2339
Anchorage, Alaska 99510

February 14, 1980

The Honorable Terry Stimson
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Subject: Senate Bill No. 287, Civil Liability for Shoplifting

Dear Senator Stimson:

In October, 1979, Dic Gribbon, Loss Prevention Manager, Pay'n Save Corporation, informed the membership of the Alaska Chapter, American Society for Industrial Security, of the contents and purpose of this bill. The membership voted to support the legislation.

The American Society for Industrial Security is the nation's foremost organization for security professionals. The Alaska Chapter, although relatively new, includes among its membership a significant number of the security professionals in Alaska.

We are pleased to go on record in support of legislation which would help to reduce the tremendous losses due to shoplifting which are suffered by retail stores in Alaska.

Very truly yours,

J. P. Goldsmith
Chapter Chairman
Alaska Chapter

JPG:bjc
cc: Dic Gribbon

Fred Meyer Shopping Centers

NORTHERN REGION OFFICE
7101 Empire Way So., Seattle, Washington 98118
725-7200

In the Northwest it's "MY-TE-FINE"

February 18th, 1980

Terry Stimson
Alaska State Senator
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 287 (Civil Penalties for Shoplifting)

Senator Stimson,

I am writing to you in response to Senate Bill No. 287, regarding proposed civil penalties recoverable by a merchant from those who shoplift on their premises.

Because shoplifting is an ever increasing cost factor that is ultimately born by the vast majority of our honest customers the concept of civil penalties, I believe, is a valid one for the following reasons:

1. That small percentage of persons who shoplift help to bear the cost of their activity.

2. The civil penalties can be a catalyst for a positive shoplifting prevention campaign.

3. We believe those persons who have paid the civil penalties have a much lower recidivism rate than those who have not.

Having reviewed the proposed legislation, it is similiar to that enacted into law in Washington State. Our experience in Washington State has been as follows:

1. Civil Penalties have accounted for about 12% of the total cost of our store detectives expenses.

2. We believe that even in those instances where a person is "suit proof" there is a deterent effect to their returning to our store to shoplift.

3. Those persons who have paid the civil penalties after being apprehended seems to be positive "I'll never do it again - IT'S TOO EXPENSIVE".

It is integral to an understanding of the shoplifting problem that the great majority of shoplifters are not "hardened criminals" but rather persons whose lives and values are pretty much average. It must also be understood that the greatest number and dollar amount of loss is sustained as a result of these "amateurs".

I might mention also that we have not dramatically reduced the number of shoplifting cases involving the criminal justice system, especially where large dollar amounts and/or perceived history of shoplifting is obvious. We believe the civil and criminal remedies are both appropriate.

We heartily endorse your efforts on this legislation, Senator, feeling that it is in the best interest of the total community.

Sincerely,

Ron Huebner

Ronald G. Huebner
Security Manager
Northern Region
Fred Meyer

RGH:df

80/5

Anchorage
CHAMBER of COMMERCE

Crossroads of | *the Air World*

RESOLUTION

BE IT RESOLVED BY THE ANCHORAGE CHAMBER

WHEREAS The crime of shoplifting continues to grow each year

WHEREAS In order to maintain adequate shoplifting prevention measures, the costs of these measures must be passed on to the Consumer.

NOW THEREFORE BE IT RESOLVED:
That the Anchorage Chamber of Commerce does wholeheartedly support the concepts presently envisioned in Senate Bill No. 287 }

Approved thi. 15th day of February, 1980. Submitted by the Retail Division.

George L. Easley, President

277-2401

ANCHORAGE
CHAMBER OF COMMERCE

Anchorage
CHAMBER OF COMMERCE

February 19, 1980

Crossroads of the Air World

ANCHORAGE CHAMBER OF COMMERCE ENDORSES SHOPLIFTING LEGISLATION

On Friday, February 15, the Anchorage Chamber of Commerce endorsed the concepts presently envisioned in Senate Bill No. 287. The Bill, introduced in the State Senate by Senator Terry Stimson endeavours to place more of a civil liability on shoplifters.

In taking this action the Anchorage Chamber of Commerce endorsed the following concepts as taken from the current draft of Senate Bill No. 287:

An adult or emancipated minor who shoplifts or changes the price ticket on any merchandise, in addition to a criminal penalty shall be held liable in a civil action to the seller or owner of the merchandise. The shoplifter shall be held liable for actual damages and a penalty equal to the retail value of the merchandise or $1000.00 whichever is less. In addition, another penalty shall be assessed not to be less than 100.00 or more than $200.00.

The Bill also provides the same penalties to a lesser amount to be incurred by those persons having legal custody over an unemancipated minor.

The purpose of the Bill is an attempt to recover those expenses suffered by a merchant for the loss or damage of the merchandise and the cost of maintaining a security department or retaining security personnel.

Should this Bill become law, retail merchants in the Anchorage area feel that the costs normally passed on to the consumer as a result of shoplifting will be reduced.

-more-

In discussing this issue before the Chamber Board of Directors, Warren G. Lamb, head of security at Fred Meyer's offered the following information, "It is estimated that 2,500 shoplifting arrests were made in the Anchorage Bowl last year. Furthermore, the national average shows that for every arrest we make ten shoplifters will get away. Therefore, it is estimated that twelve percent of the annual mark-up on most retail goods is compensation for shrinkage due to theft. Last year the national retail industry suffered total losses of 9.3 billion dollars due to theft. Almost the same concepts contained in this bill were passed into law in the State of Washington. Our company in Washington estimates that because of this, they saved over $20,000 last year."

-end-

PAY'n SAVE

CORPORATION

2002 WEST BENSON BLVD.
ANCHORAGE, ALASKA 99503

February 14, 1980

Senater Terry Stimson
Pouch "V"
Juneau, Alaska 99811

Re: SB 287 Civil Shoplift Restitution

Dear Terry;

I'm not sure if you remember or not, but when our group was discussing the New Civil Shoplift Restitution Law that was recently enacted in Oregon, we noticed Oregon had provided for situations involving ticket changing or price switching, in addition to shoplifting. We expressed interest at that time to include the ticket switch clause in the proposed bill now before the Alaska State Senate.

The phrase "... or alters the price indicia,..." would be placed in Section 1(a) following the words "... shoplifts merchandise,... "
This section would then read "An adult or emancipated minor who shoplifts merchandise, or alters the price indicia, is, in addition to any criminal penalty provided by law, liable in a civil action to the owner or seller of the merchandise for all of the following:...".

I look forward to seeing you, Tuesday, February 26.

Sincerely,

Dic Gribbon
Loss Prevention Manager
Pay'N Save Corporation

Enclosure:

ORC

OREGON RETAIL COUNCIL

1149 COURT ST. N.E. / P.O. BOX 12519 / SALEM, OREGON 97309 / 503 588-0050
PORTLAND AREA 503 227-5634

A Division of Associated Oregon Industries

Director
Otto J. Wilson

August 15, 1979

ORC BULLETIN 79-48

TO: All ORC Primaries, Board of Governors, Security Committee, Corporate Counsels, Corporate Security Mgrs, Shopping Center Managers, Oregon Chambers of Commerce

FROM: Otto J. Wilson, ORC Director

SUBJECT: New Shoplifting Civil Statute

You will find enclosed a copy of the "Enrolled Senate Bill 893". This is the language that will appear in the statute. A statutory reference has not yet been designated.

The law becomes effective October 3, 1979. It does not seem that it should be necessary to say that the provisions of the law cannot be used until that date, but we have had sufficient inquiry to this effect to bring this word of caution.

ORC is preparing an "Information Sheet" which will be sent to you in the near future. It will be a brief "How to Use the Law" guide intended to fill the immediate need for some type of reference. It will be followed later by a more complete "Shoplifting Procedure Guide".

Also it is our intention to conduct a series of meetings statewide, bringing merchants and law enforcement agencies together for a thorough presentation. This will require a long range schedule and necessarily will extend well into 1980. ORC will be happy to receive your questions and endeavor to provide sufficient information to facilitate your use of the new law.

We recommend that you do not attempt to use the new procedure unless you are sure you understand it completely.

We will be grateful for any assistance you may be able to provide in extending knowledge of this new civil statute to others who should be familiar with it.

ORC is focusing its dedicated attention to achieving these goals:

1. Thorough understanding of the law and its use by the entire Oregon retail community.
2. Thorough understanding by Oregon law enforcement agencies.
3. Public awareness of the provisions of the law and realization that it will be implemented.
4. Widespread routine use of the law by Oregon retailers to assure its effectiveness.
5. Universal observance of the procedures and standards necessary to make certain its use by each retailer is legal, safe, effective, and in the interest of all concerned. This is a matter not to be taken lightly. Improper use of the law could destroy all the gains we have made and create serious complications and problems.

Enrolled

Senate Bill 893

Sponsored by COMMITTEE ON STATE AND FEDERAL AFFAIRS/RULES (at the request of Oregon Retail Council)

CHAPTER 592

AN ACT

Relating to shoplifting.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in this Act:

(1) "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale.

(2) "Merchandise" means all things movable and capable of manual delivery.

(3) "Owner" means any person who owns or operates a mercantile establishment or the agents or employes of that person.

SECTION 2. (1) An adult or an emancipated minor who takes possession of any merchandise displayed or offered for sale by any mercantile establishment without the consent of the owner and with the intention of converting such merchandise to the individual's own use without having paid the purchase price thereof, or who alters the price indicia of such merchandise, shall be civilly liable to the owner for actual damages, for a penalty to the owner in the amount of the retail value of the merchandise not to exceed $500, plus an additional penalty to the owner of not less than $100 nor more than $250.

(2) The parents having custody of an unemancipated minor who takes possession of any merchandise displayed or offered for sale by any mercantile establishment without the consent of the owner, and with the intention of converting such merchandise to the minor's own use without having paid the purchase price thereof, or who alters the price indicia of such merchandise shall be civilly liable to the owner for actual damages, for a penalty to the owner in the amount of the retail value of the merchandise not to exceed $250, plus an additional penalty to the owner of not less than $100 nor more than $250. Persons operating a foster home certified under ORS 418.625 to 418.645 are not liable under this subsection for the acts of children not related to them by blood or marriage and under their care.

(3) A conviction for theft under ORS 164.045 or 164.055 is not a condition precedent to the maintenance of a civil action under this section.

(4) A civil liability under this section is not limited by any other law that limits liability of parents of minor children.

(5) An action for recovery of damages under this section may be brought in any court of competent jurisdiction, including the small claims department of a district court if the total damages do not exceed the jurisdictional limit of the small claims department.

(6) The fact that an owner or seller of merchandise may bring an action against an individual for damages as provided in this section shall not limit the right of the owner or seller to demand, in writing, that a person who is liable for damages under this section remit said damages prior to the commencement of any legal action.

(7) Judgments, but not claims, arising under this section may be assigned.

Shoplifting Meeting of September 13, 1979
Dic Gribben - Chairman

Question: As to whether courts will slack off. Bill Hughes will check - Wards
Question: How Fred Brown in Fairbanks will respond to this bill and also whether or not to approach Senator Bradly for his support and whether or not you might want him as a co-signer on the bill.
Question: Would it be feasible to start publicly advertising the bill 4 months before or 2 months before session.
Answer: At your last meeting it was emphasized that it should be within the next 3 weeks if possible.
Question: As to who STEM is and how to contact - Bill Hughes will check on th
Question: Some concern as to how our court and judicial systems would react

PLAN OF ACTION:

1) Articles in newspaper within the next weeks
   a. 2 articles on problems
   b. Different methods retailers use
   c. Then bring in what bill is and will do
2) Hot Line - with Chamberlin
3) Chamber meeting
   a. hearings
   b. Outline and program for chamber/with tie in from newspaper

Conversation with Dic Gribben, Pennys and Sears may help with newspaper articles?

Mike Wainwright from Norhtern Commercial will check on when we can be on the next chamber luncheon. Concern if Terry cannot make it then Dic would give presentation of the Bill for you.

Emphasis, on the fact that parents would have to pay for the merchandise!

Check on a past offender to come into the High Schools and speak to the students. Check through the Halfway House.

Next meeting October 2, 1979 at 3:00 p.m.

IDEA: Bring in the samller bussinesses such at the ones in the Malls at Dimond Center, Sears Center, and Boniface Center and around town for support and expression of their concerns.

Newspaper reporter will attend next meeting in order to present problems and explanation of bill and what is needed to publisize it.

IDEA: It would probably be best to start advertising the bill and problems before Thanksgiving.



TODAY

WEAVERS
Fairbanks Weavers Guild will meet at 1:30 at the home of Pat Costello. Rya is the topic. Call 452-7033 or 452-4124 for information.

PRECEPTOR ALPHA
Alpha Chapter of Beta Sigma Phi will meet tonight at 8 in the home of Lee Ann Third. Call 456-7872 for more information.

MASONS
Golden Heart Lodge No. 182, F & AM, will confer on a degree tonight at 7.

SCHOOL BOUNDARIES
Ballaine Junior-Senior High parents will meet at 7:30 in the school cafeteria to discuss boundary changes.

T.M. LECTURE
A free lecture on Transcendental Meditation will be tonight at 7:30 at the USO.

MEDICAL SERVICES
The Interior Region Emergency Medical Services Council will meet tonight at 7 at the Fairbanks Chamber of Commerce. Call 456-3978 for more information.

TOASTMASTERS
The Golden Heart Toastmasters Club will meet at 6:30 at Jeffrey's. Guests are welcome.

THURSDAY

Pay 'n Save raises ante in war with shoplifters

By DAN JOLING
Staff Writer

It's getting more expensive to be caught shoplifting at Pay 'n Save.

A spokesman for the corporation confirmed Tuesday that Pay 'n Save is now seeking civil compensation from persons caught stealing in its stores, in addition to collecting any restitution ordered by the District Court judge as part of a sentence.

Under Alaskan law, a store can seek a minimum of $100 and a maximum of $250 from persons arrested for stealing items worth less than $250, on top of any criminal penalty ordered by a judge.

For thefts greater than $250, the store can sue for the full amount.

Depending on which District Court judge the person appears before, that will mean paying an additional $100-$250, plus court costs and attorneys fees, paid to the store besides paying for the stolen items, assuming the store wins in civil court.

Typically, shoplifters have also been fined to as much as $500 and sentenced to as many as five days in jail.

Letters to persons convicted of shoplifting in Pay 'n' Save informing them they face civil action unless they pay a specified sum were sent last month.

"If you fail to submit your payment to the address given below within ten (10) days of the date of this letter, we will refer this matter to legal counsel," the form letter says.

Accompanying the letters are copies of the statute under which the store can sue.

Though the letters and threatened legal action are new to Alaska, they are not new to Pay 'n Save, according to Dic Gribbon, loss prevention manager for the store in Anchorage.

"It's very common in other states," Gribbon said.

The reasons for the seeking civil penalties are two-fold, Gribbon said. "It's a definite deterrent. That's the bottom line of it."

He believes that if persons realized they will be ordered to pay a sum in addition to receiving jail time and a fine, they will be more reluctant to steal in his company's stores.

"It's going to make some people think twice before they shoplift five or 50 dollars worth of items," Gribbon said.

The civil penalties also help pay his check and others in the company's theft security program, and they help to offset losses from items stolen by persons who don't get caught.

"Shoplifting adds 15 to 20 per cent to the cost of an item sometimes," Gribbon said.

In Washington, Gribbon said, for every $1 stolen, $30 of items must be sold to make up for it.

And it probably costs at least $100 per shoplifter to prosecute, especially if a clerk or employee has to go to court on company time, Gribbon said.

If a shoplifter doesn't contribute, the full cost is passed on to the consumers.

Gribbon said that even with the civil penalties, the cost of the theft security program is not fully recovered.

But in the two years since Pay 'n Save has sought civil penalties in Washington, it has been "an excellent deterrent," according to Jim Konschuh, public relations spokesman in Seattle.

Gribbon said the law in Alaska is mainly aimed at small merchants who may be tempted not to prosecute if it's going to cost them a great deal to pay an employee to testify and pay for a replacement worker.

He said several other large retailers in the state plan to seek civil compensation, too. "I know of some who are going to," Gribbon said.

He said it's too early to tell if it will be a deterrent here or if more money can be recovered.

"We have not had the program in effect long enough," Gribbon said.



KEEPING TABS—Fo
winner of Borough

Election Ro

Flak flies over school boundaries

By SUSAN FISHER
Staff Writer

Preliminary proposed school boundary changes are already under

students, among other issues.

The task force is composed of parent representatives from each school, but parents in the audience Tuesday—who

mended for in-town junior high schools, which are currently under capacity enrollments.

The subcommittee on North Pole

School

Marguerite Stetson
second term on the
board Tuesday with
vote, but the 1,700
John Waterman, pulled
a surprise

How shoplifting is draining the economy

Bank robbers have been grabbing headlines since the days of Jesse James. Last year they made off with nearly $25 million in cash and negotiable securities. But that is all small potatoes compared with a less glamorous but far more costly crime that is draining upwards of $8 billion a year from U. S. merchants—and which no one has been able to do much about so far.

The crime is shoplifting, and, according to experts, it contributes to productivity losses, saps the vitality of many retail businesses, and redistributes a significant amount of wealth from stores to thieves and fences—which adds up to higher costs for most consumer goods. Merchandise losses and extra security costs, in fact, add an average of 2% to 3% to everything sold by major department stores and grocery and drug chains, speeding up an already overheated inflationary spiral.

In fact, shoplifting appears to be growing faster than most segments of the economy, including the inflation rate. For as prices rise, many consumers are taking out their frustration and anger on the person along the business chain who is closest at hand: the retail merchant. And as such pilferage gains increasing acceptance among many Americans, it is accelerating the growth of a subterranean economy in the U. S., which some economists claim reached a mind-numbing $195 billion in 1977—or about 10% of the recorded gross national product (BW—Mar. 13, 1978).

Even the Internal Revenue Service has belatedly acknowledged the existence of an underground economy where some $100 billion worth of income from legal sources goes unreported—as well as $35 billion from drug peddling, illegal gambling, and prostitution on which no income tax is paid. So far, the IRS has been unable to estimate the tax loss from such white-collar crimes as shoplifting.

Bankruptcies. For the bigger retailers, all this has become an unpleasant fact of doing business. But for smaller merchants, who can afford neither the losses nor the security to keep them in line, shoplifting can mean financial ruin. According to some estimates, one out of three small-business bankruptcies are the direct result of thefts by employees and customers.

Unlike many other social scientists, economists view such crimes as shoplifting as rational acts in which the thief carefully weighs the personal costs and benefits involved. And according to economist William E. Cobb of the West Virginia College of Graduate Studies, who spent a year talking to fences and surveying shoppers in metropolitan Washington, all the benefits are on the side of the shoplifter. Cobb found that the average veteran shoplifter in 1971 was walking off with more than $30,000 worth of merchandise annually. At 1979 prices, a skilled shoplifter could thus be clearing $53,000 a year. "I'd say that's a pretty good occupation," says Cobb, who also found that only 1 out of 1,250 shoplifters ever sees the inside of a jail cell. And for those who do, almost none ends up behind bars for the act of shoplifting alone. Instead, they are sentenced for such crimes as illegally possessing drugs or weapons when caught by the store detective.

Losses add at least 2% to the prices of most goods. Productivity feels the pinch

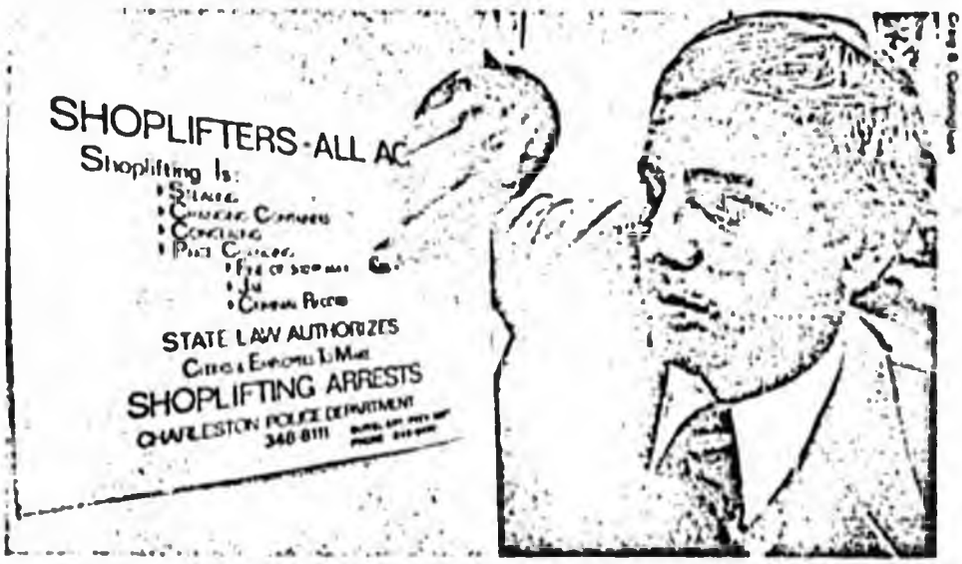
In fact, a good part of the reason why the benefits are all on the side of the shoplifter is that judges are reluctant to imprison them. Many companies in turn, are reluctant to spend time and money prosecuting shoplifters when the courts put them right back on the street. But Cobb and most security experts stress that stores must become tough on thieves. Evidence shows that amateurs, once caught, are discouraged from shoplifting again, and that even repeat shoplifters are deterred by being fingerprinted and formally arrested.

But shoplifters prey not just on stores but on the economy as a whole. Edward F. Denison, one of the nation's foremost experts on economic growth and an associate director of the Commerce Dept.'s Bureau of Economic Analysis, says that retail crime takes a significant slice out of U. S. productivity. Extra security means that stores are using money to pay guards and buy electronic equipment that could be spent on adding more consumer goods to the economy. "You are basically adding lots of people and no output," he maintains. And theft means that goods purchased as inventory have disappeared from the store's books and thus, in a sense, from the nation's measurable output.

Compounded losses. Moreover, fences traditionally purchase stolen merchandise for about 25% of its actual value and resell it illegally to stores that are willing to ask few questions in order to buy something at discount. Thus a very real part of the value of the nation's output has been destroyed.

Professional shoplifters often compound the loss still further by returning their stolen goods for a 100% refund to the very stores from which they were taken. And the toll can be even higher—many thousands of times the actual value of the merchandise—because many professional thieves shoplift not to walk off with the store's wares but with an eye to a civil lawsuit for false arrest. Says James J. Kerin, former security director at Macy's New York and now president of security consultant Kerin, Duffy & Hellerer Inc.: "There's no question that a professional shoplifter can kill you [financially]."

As shoplifting has increased, so has the number of professionals living off it. In 1977 police in New York and other



Economist Cobb: Stores have to get tough on shoplifters by prosecuting all thefts.

major U. S. cities reported that members of organized gangs were each netting as much as $1,000 a day stealing better men's and women's clothes. According to Glen R. Dornfeld, who recently retired as security director at Minneapolis-based Dayton's department stores, the professionals today are far more brazen and more violent than any he has ever seen.

Made to order. At Southern California's Von's Grocery Co., C. R. Gresswell, the chain's loss prevention manager, says that he is seeing both more professional shoplifters and more of them carrying weapons. In fact, grocery stores are finding themselves even bigger prey to organized rings, where such easily resold items as meat, cigarettes, and liquor are often shoplifted to order for fences or well-to-do clients.

Economists stress that the only real solution is to change the actual—as well as the perceived—costs of such thefts. West Virginia's Cobb says that stores should redirect the amount they are currently spending on fancy electronic equipment and put their dollars to work in the following areas:

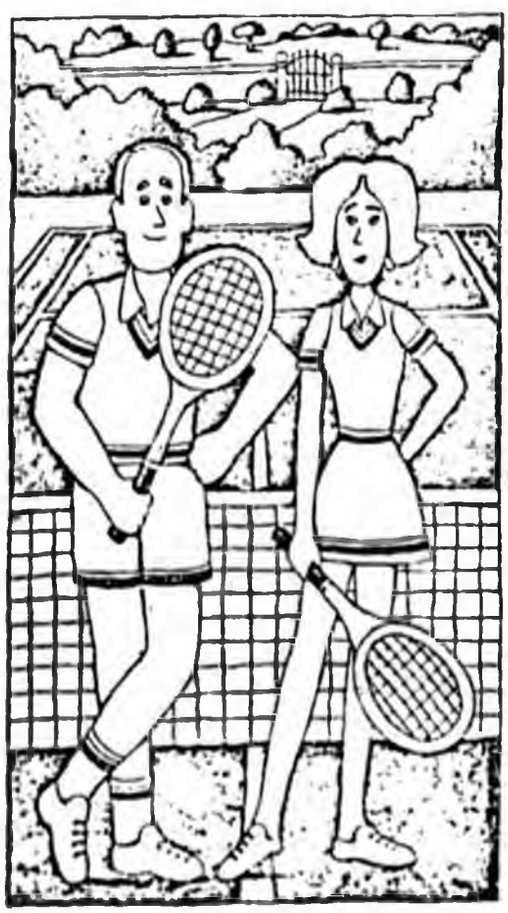
- Prosecuting all shoplifters they catch. Instead, most stores ask apprehended thieves to return the stolen goods and sign a statement admitting the crime and agreeing not to set foot in the store again.
- Advertising the fact that both uniformed and plainclothes detectives are on the watch for potential shoplifters. The idea, Cobb says, is to give thieves the feeling that they can never be sure when they are being observed.
- Mounting dummy cameras and large signs promising dire consequences to shoplifters who are caught—even though such threats may not be valid.
- Hiring actors to pose as shoplifters and periodically staging fake, calm arrests, so that potential thieves get the idea that their misdeeds will be detected. Cobb points out that such ploys have been effective in reducing thefts by employees at major retail chains.

Skilled shoplifters can clear $50,000 a year. Few ever see a jail cell

Dallas-based Zale Corp. claims quite a bit of success using some of these methods, plus some more traditional ones. The company has started a special program to train employees in spotting common shoplifting tricks, has installed a network of closed-circuit cameras, and is busy redesigning its 1,723 stores to eliminate any blind spots where thieves could go to hide merchandise under their clothes or in dummy gift boxes. But most important, says Harry D. Johnson, vice-president for loss prevention, Zale now has a company-wide policy of prosecuting all shoplifters. "Everything has to be done," he says, "to make it difficult for the shoplifter to operate in private."

The big dilemma with all programs aimed at discouraging shoplifters, of course, is that they tend to discourage legitimate shoppers as well. With uniformed guards, ominous-sounding posters, and all kinds of electronic spy equipment around, "people begin to think they are in an armed camp," warns Leonard F. Smith, executive director of the American Management Assn.'s Crimes Against Business Project. Thus, retail stores—particularly those with a wealthier clientele—are constantly faced with the trade-off of more surveillance and less theft or less surveillance and more sales.

But far more significant than this trade-off is the one affecting the cost-benefit ratio for shoplifting itself. Unless repeat shoplifters are treated more like house burglars or bank robbers, and unless the courts and society stop dismissing shoplifting as penny-ante stuff, the toll on inflation and U. S. productivity will just keep mounting. ■



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Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4900

GEORGE M. SULLIVAN, MAYOR

VOLUNTEER SERVICES
825 "L" Street, 3rd Floor

February 26, 1980

Senator Arliss Sturgulewski
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Arliss:

As a follow-up to my testimony on SB 287 today, I wanted to let you know my basic concern about this bill. Our Pre-Trial office works with approximately 450 clients each year. We accept only those without a prior offense of any kind not just those without a prior shoplifting offense. We screen out all individuals who are unsuited to community service work as a result of emotional or alcohol - or drug - related problems.

Many of our clients feel they are innocent and have been unjustly harrassed by over-zealous store detectives. We have no way of knowing how true their statements are, but many are very credible. Their lawyers advise them to accept the community service work rather than enter into costly litigation which it is unlikely they will win; it is usually their word against a store detective's. My problem with SB 287 is that it does not distinguish between the person who has entered our program through careful screening procedures as an alternative to sentencing and the individual who habitually shoplifts or who shoplifts merchandise of substantial value.

I imagine the only answer, once this bill passes, for the individuals who have benefitted from the pre-trial program will be to fight the charges; however for most people this is simply too expensive and too embarrassing. If this bill passes, I predict that the majority of our clients, who really do include our neighbors -- doctors, teachers, clergymen -- will view the civil penalty as blackmail and simply pay it quietly. This is what is now happening, but on a much smaller scale than we will see in the future if the bill passes.

I am definitely in favor of merchants realizing restitution. I would have preferred to see the exemption from this bill of clients accepted for pre-trial diversion.

Sincerely,

Connie

Connie Jones
Volunteer Coordinator

CJ/bas

March 10, 1980

Connie Jones
Volunteer Coordinator
Municipality of Anchorage
Pouch 6-650
Anchorage, Alaska 99502

Dear Connie:

Thank you for the follow-up testimony on SB 287, An Act relating to civil liability for shop lifting. As you know, this bill was passed out of the Commerce Committee and is now in Senate Judiciary which is chaired by Senator Bob Ziegler.

I have made a copy of your letter available to Senator Ziegler for his consideration when Judiciary considers SB 287. Certainly you should provide his committee with any additional statistics that you might have as a result of the program you are conducting.

The shoplifting statistics are absolutely appalling. It does seem appropriate to give additional tools to the retail outlets, but I agree with you that we should encourage use of rehabilitative programs. Such use does not, however, make up for the financial loss suffered by the retail outlet.

Thank you for sharing this information with me.

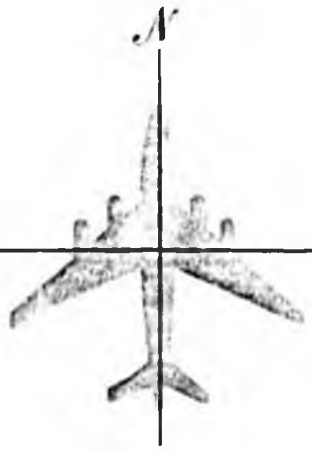
Sincerely,

Arliss Sturgulewski
Senator, District 10-H

cc: Senator Ziegler

Anchorage

CHAMBER of COMMERCE



Crossroads of the Air World

ANCHORAGE CHAMBER OF COMMERCE — 612 F STREET, ANCHORAGE, ALASKA 99501 — (907) 272-2401

80/5

Anchorage
CHAMBER of COMMERCE

Crossroads of the Air World

RESOLUTION

BE IT RESOLVED BY THE ANCHORAGE CHAMBER

WHEREAS The crime of shoplifting continues to grow each year

WHEREAS In order to maintain adequate shoplifting prevention measures, the costs of these measures must be passed on to the Consumer.

NOW THEREFORE BE IT RESOLVED:
That the Anchorage Chamber of Commerce does wholeheartedly support the concepts presently envisioned in Senate Bill No. 287

Approved this 15th day of February, 1980. Submitted by the Retail Division.

George W. Easley, President

February 19, 1980

Crossroads of the Air World

ANCHORAGE CHAMBER OF COMMERCE ENDORSES SHOPLIFTING LEGISLATION

On Friday, February 15, the Anchorage Chamber of Commerce endorsed the concepts presently envisioned in Senate Bill No. 287. The Bill, introduced in the State Senate by Senator Terry Trivette, endeavours to place more of a civil liability on shoplifters.

In taking this action, the Anchorage Chamber of Commerce endorsed the following concepts as taken from the current draft of Senate Bill No. 287:

An adult or emancipated minor who shoplifts or changes the price ticket on any merchandise, in addition to any criminal penalty shall be held liable in a civil action to the seller or owner of the merchandise. The shoplifter shall be held liable for actual damages equal to the retail value of the merchandise or $200.00 whichever is less. In addition, another penalty shall be imposed not to be less than $50.00 nor more than $200.00.

The Bill also provides for parental liability to a limited extent to be exercised by those persons having legal custody over an unemancipated minor.

The purpose of the Bill is, in part, to recover those expenses suffered by merchants due to the loss of merchandise from shoplifting and the cost of maintaining a security department or security personnel.

Some of this Bill's provisions, such as the right to sue, also fall within the scope of shoplifting

In discussing this issue before the Chamber Board of Directors, Warren G. Lamb, head of security at Fred Meyer's offered the following information, "It is estimated that 2,500 shoplifting arrests were made in the Anchorage bowl last year. Furthermore, the national average shows that for every arrest we make ten shoplifters will get away. Therefore, it is estimated that twelve percent of the annual mark-up on most retail goods is compensation for shrinkage due to theft. Last year the national retail industry suffered total losses of 9.3 billion dollars due to theft. Almost the same concepts contained in this bill were passed into law in the State of Washington. Our company in Washington estimates that because of this, they saved over $20,000 last year."

-end-

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 287
Title "An Act Relating to Civil Liability for Shoplifting; and Providing for an Effective Date"
Requested by Senator Stimpson Date 2/12/80

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Legal Services
(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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

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)

This bill provides for civil action on the part of owners of merchandise to collect damages and penalties from shoplifters. Since the Department of Law is not involved in this process, there will not be a fiscal impact for legal services.

IV. DATE February 13, 1980 PREPARED BY Richard I. Pegues Admin. Officer
AGENCY Department of Law
PHONE 465-3695

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

33-001 (Rev. 12/79)

Getting the Goods

Shoplifting, Once Only Holiday Problem, Shows Gains Year-Round as More of Elderly Join Trend

By Bill Abrams
Staff Reporter of The Wall Street Journal

'Tis the season to be jolly and to make special use of the "five-finger discount."

This involves whisking merchandise directly from store shelf into purse or pocket. It simplifies shopping by eliminating the bothersome stage of paying for the stuff.

Shoplifting: As ruddy Santas circulate and carols fill the air, America's most common crime reaches its yearly peak. Between Thanksgiving and Christmas, says New York security consultant Saul Astor, more than a fifth of the nation's yearly shoplifting takes place. He says the holiday heist totals at least $1.6 billion.

The yuletide bulge chiefly reflects the greater number of people in the stores at that time. However, the crime is rising year-round. "Shoplifting used to be a serious problem only at Christmas," says the security chief at a West Palm Beach, Fla., shopping mall. "Lately it's been Christmas all the time."

Continuing inflation, combined with an economic downturn, has more than a little to do with it. "Times are going to be tight," says Lewis Shealy, security director for Woodward & Lothrop, a Washington, D.C., department store that reports a 25% increase in shoplifting arrests this year. "People are going to be looking for ways to make ends meet."

Who Steals What?

Security officers have a hard time determining just who steals. They only know about the ones they catch. It also is hard to ascertain just how much merchandise is shoplifted; employe theft, the other chief reason for "shrinkage," may account for even greater losses than those from shoplifting.

But it is clear that authorities are finding new faces along with the sticky fingers. "You catch people who never dreamed of stealing three years ago," says Stuart Tomeske, security director for the Foodorama chain in New York and New Jersey. A notable new group consists of older people. Foodorama says about 25% of the shoplifters it catches are senior citizens.

"The first group a bad economy hits is the elderly," says one supermarket security chief. There is some sympathy for pensioners trying to get by on fixed incomes. "These old folks are respectable, law-abiding people who never had crossed the street against a red light," says a security man. "Now they're forced to steal."

Mattie Schultz, a 91-year-old widow in San Antonio, Texas, made headlines last summer when she was collared stealing $15 of ham, sausage and butter. Her explanation: "I was hungry. I was desperate." The charges were dropped, and, following the publicity, people around the country sent her letters of sympathy and gifts of food and money.

Prosecuting senior citizens is a ticklish business. "You'd be laughed out of court," says Mr. Tomeske of Foodorama.

Security officials are severely vexed about the increase in pilferage among other adults. Teen-agers usually have been the most common–and the most commonly caught – shoplifters. Commercial Security Systems Inc., a Los Angeles security concern, found in a 1978 survey of 900 California stores that pilferers under 18 years of age accounted for about 37% of the arrests in supermarkets, 48% in drugstores and 43% in discount stores.

With a Shopping Bag

But many security people believe the number of adult pilferers is underestimated. "A middle-aged woman with a shopping bag steals more frequently than teen-agers," says Mr. Astor, the security consultant. "More teen-agers are apprehended because store detectives zero in on them. A middle-aged woman with a shopping bag doesn't look like a shoplifter."

In California, officials even apprehended a nun taking panty hose from a supermarket. Another consideration with adults: They tend to steal merchandise of greater value. Commercial Security Systems, in its survey, found that the average value of merchandise recovered from adults in supermarkets was $7.82; the figure for juveniles was $3.86.

Security officials say most shoplifters caught usually have enough cash with them to pay for the items they have stolen. Or they have credit cards in good standing. A prominent Cincinnati attorney, for instance, was nabbed taking $14 of food from a supermarket. He had $700 in his pocket and just had left the city's most affluent country club.

Why do such people steal? Lawrence Conner, president of Shoplifters Anonymous International, a Pennsylvania program for rehabilitating pilferers, says many people shoplift because they are under personal stress. About 25% of the offenders at Shoplifters Anonymous "were in an unusual personal situation at the time they took something," Mr. Conner asserts.

Some shoplifters recently have suffered a marital breach or a death in the family. A Philadelphia-area woman caught taking a $15 bottle of perfume from a department store said her 22-year marriage to an alcoholic was breaking up at the time of her arrest.

Many factors are involved. Stan Shrotel, director of risk management for Kroger Co., speculates that some shoplifting may be "a form of retaliation for people laboring under the impression that retailers of our size are exploiting them." Self-service shelves and enticing displays may arouse larcenous impulses in some shoppers.

Then there are the professionals, who steal and resell the booty at bargain prices. One New York professional acknowledged that she and her partner had been stealing about $3,500 of merchandise weekly–choosing the stores with the best cuts of meat.

In Los Angeles, one thief stationed himself at a bar across the street from a supermarket and shoplifted to order. "I'm amazed at the individuals of supposed integrity who buy this stuff," says Mr. Shrotel.

The professionals tend to get violent when security forces descend on them. One Kroger female detective has been hospitalized four times this year with occupational injuries. In one Kroger store, a shoplifter broke a bottle and jabbed it into the face of a 17-year-old clerk who confronted him.

Discouraging Pursuit

At an Ontario, Calif., supermarket, a shopper filled his cart with $150 of meat, cigarets and liquor. He brazenly wheeled past the cashier and out of the store. Followed by the store manager, he turned and fired two shots from a pistol–and made his escape.

Mr. Astor, the consultant, once had his agents follow 1,647 shoppers selected at random through department stores in New York, Boston and Philadelphia. They found that one out of 15 took something. But stores catch only a tiny fraction of that number in the act of stealing. Commercial Security System's California survey shows the average supermarket nabbing less than one shoplifter every two weeks. Mr. Conner says graduates of his Shoplifters Anonymous admitted to an average of 66 thefts each before they got caught.

Retailers, and particularly supermarkets working on net profit margins that typically are less than 1%, say that theft is a serious drain on earnings. "Customer pilferage amounts to 15% to 25% of a (food) store's after-tax profit," says Edgar B. Walzer, publisher of Progressive Grocer magazine.

A Serious Threat

"Retailers who don't recognize this threat are going to be put out of business," Mr. Conner contends.

Giant Foods Inc. says it caught 7,089 shoplifters in its Washington, D.C.-area supermarkets in the first 10 months of this year, up 49% from the year before. Kroger says apprehensions are up 15%, and another supermarket chain reports a 30% jump.

But the legal penalties usually are minor because shoplifting generally is treated as a misdemeanor. And enforcement is lax. Commercial Security Systems says that only 33% of the shoplifters noted in its survey were prosecuted, compared with 43% a few years earlier. Most often, pilferers are photographed, fingerprinted and banned from the stores where they have been caught.

"That's like saying, 'Go steal elsewhere,' " says Mr. Walzer.

"We've got to stop calling this kind of dishonesty 'shoplifting,' " says Kroger's Mr. Shrotel. "It's theft. We've got to call it what it is."

American Society
for Industriai Security

25th year

Please Reply to: Alaska Chapter
P. O. Box 2339
Anchorage, Alaska 99510

February 14, 1980

The Honorable Terry Stimson
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Subject: Senate Bill No. 287, Civil Liability for Shoplifting

Dear Senator Stimson:

In October, 1979, Dic Gribbon, Loss Prevention Manager, Pay'n Save Corporation, informed the membership of the Alaska Chapter, American Society for Industrial Security, of the contents and purpose of this bill. The membership voted to support the legislation.

The American Society for Industrial Security is the nation's foremost organization for security professionals. The Alaska Chapter, although relatively new, includes among its membership a significant number of the security professionals in Alaska.

We are pleased to go on record in support of legislation which would help to reduce the tremendous losses due to shoplifting which are suffered by retail stores in Alaska.

Very truly yours,

J. P. Goldsmith
Chapter Chairman
Alaska Chapter

JPG:bjc
cc: Dic Gribbon

80/5

Anchorage
CHAMBER OF COMMERCE

Crossroads of | *the Air World*

RESOLUTION

BE IT RESOLVED BY THE ANCHORAGE CHAMBER

WHEREAS The crime of shoplifting continues to grow each year

WHEREAS In order to maintain adequate shoplifting prevention measures, the costs of these measures must be passed on to the Consumer.

NOW THEREFORE BE IT RESOLVED:
That the Anchorage Chamber of Commerce does wholeheartedly support the concepts presently envisioned in Senate Bill No. 287

Approved this 15th day of February, 1980. Submitted by the Retail Division.

George K. Easley, President

272-2401

Anchorage
CHAMBER of COMMERCE

February 19, 1980

Crossroads of the Air World

ANCHORAGE CHAMBER OF COMMERCE ENDORSES SHOPLIFTING LEGISLATION

On Friday, February 15, the Anchorage Chamber of Commerce endorsed the concepts presently envisioned in Senate Bill No. 287. The Bill, introduced in the State Senate by Senator Terry Stinson endeavours to place more of a civil liability on shoplifters.

In taking this action the Anchorage Chamber of Commerce endorsed the following concepts as taken from the current draft of Senate Bill No. 287:

An adult or emancipated minor who shoplifts or changes the price ticket on any merchandise, in addition to a criminal penalty shall be held liable in a civil action to the seller or owner of the merchandise. The shoplifter shall be held liable for actual damages and a penalty equal to the retail value of the merchandise or $1000.00 whichever is less. In addition, another penalty shall be assessed not to be less than $100.00 or more than $200.00.

The Bill also provides the same penalties to a lesser amount to be incurred by those persons having legal custody over an unemancipated minor.

The purpose of the Bill is an attempt to recover those expenses suffered by a merchant for the loss or damage of the merchandise and the cost of maintaining a security department or retaining security personnel.

Should this Bill become law, retail merchants in the Anchorage area feel that the costs normally passed on to the consumer as a result of shoplifting will be reduced.

-more-

In discussing this issue before the Chamber Board of Directors, Warren G. Lamb, head of security at Fred Meyer's offered the following information, "It is estimated that 2,500 shoplifting arrests were made in the Anchorage bowl last year. Furthermore, the national average shows that for every arrest we make ten shoplifters will get away. Therefore, it is estimated that twelve percent of the annual mark-up on most retail goods is compensation for shrinkage due to theft. Last year the national retail industry suffered total losses of 9.3 billion dollars due to theft. Almost the same concepts contained in this bill were passed into law in the State of Washington. Our company in Washington estimates that because of this, they saved over $20,000 last year."

-end-

PAY'n SAVE

CORPORATION

2002 WEST BENSON BLVD.
ANCHORAGE, ALASKA 99503

February 14, 1980

Senater Terry Stimson
Pouch "V"
Juneau, Alaska 99811

Re: SB 287 Civil Shoplift Restitution

Dear Terry;

I'm not sure if you remember or not, but when our group was discussing the New Civil Shoplift Restitution Law that was recently enacted in Oregon, we noticed Oregon had provided for situations involving ticket changing or price switching, in addition to shoplifting. We expressed interest at that time to include the ticket switch clause in the proposed bill now before the Alaska State Senate.

The phrase "... or alters the price indicia,..." would be placed in Section 1(a) following the words "... shoplifts merchandise,... "
This section would then read "An adult or emancipated minor who shoplifts merchandise, or alters the price indicia, is, in addition to any criminal penalty provided by law, liable in a civil action to the owner or seller of the merchandise for all of the following:...".

I look forward to seeing you, Tuesday, February 26.

Sincerely,

Dic Gribbon
Loss Prevention Manager
Pay'N Save Corporation

Enclosure:

ORC

OREGON RETAIL COUNCIL

1149 COURT ST. N.E. / P.O. BOX 12519 / SALEM, OREGON 97309 / 503 588-0050
PORTLAND AREA 503 227-5636

A Division of Associated Oregon Industries

Director
Otto J. Wilson

August 15, 1979

ORC BULLETIN 79-48

TO: All ORC Primaries, Board of Governors, Security Committee, Corporate Counsels, Corporate Security Mgrs, Shopping Center Managers, Oregon Chambers of Commerce

FROM: Otto J. Wilson, ORC Director

SUBJECT: New Shoplifting Civil Statute

You will find enclosed a copy of the "Enrolled Senate Bill 893". This is the language that will appear in the statute. A statutory reference has not yet been designated.

The law becomes effective October 3, 1979. It does not seem that it should be necessary to say that the provisions of the law cannot be used until that date, but we have had sufficient inquiry to this effect to bring this word of caution.

ORC is preparing an "Information Sheet" which will be sent to you in the near future. It will be a brief "How to Use the Law" guide intended to fill the immediate need for some type of reference. It will be followed later by a more complete "Shoplifting Procedure Guide".

Also it is our intention to conduct a series of meetings statewide, bringing merchants and law enforcement agencies together for a thorough presentation. This will require a long range schedule and necessarily will extend well into 1980. ORC will be happy to receive your questions and endeavor to provide sufficient information to facilitate your use of the new law.

We recommend that you do not attempt to use the new procedure unless you are sure you understand it completely.

We will be grateful for any assistance you may be able to provide in extending knowledge of this new civil statute to others who should be familiar with it.

ORC is focusing its dedicated attention to achieving these goals:

1. Thorough understanding of the law and its use by the entire Oregon retail community.
2. Thorough understanding by Oregon law enforcement agencies.
3. Public awareness of the provisions of the law and realization that it will be implemented.
4. Widespread routine use of the law by Oregon retailers to assure its effectiveness.
5. Universal observance of the procedures and standards necessary to make certain its use by each retailer is legal, safe, effective, and in the interest of all concerned. This is a matter not to be taken lightly. Improper use of the law could destroy all the gains we have made and create serious complications and problems.

Enrolled

Senate Bill 893

Sponsored by COMMITTEE ON STATE AND FEDERAL AFFAIRS/RULES (at the request of Oregon Retail Council)

CHAPTER 592

AN ACT

Relating to shoplifting.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in this Act:

(1) "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale.

(2) "Merchandise" means all things movable and capable of manual delivery.

(3) "Owner" means any person who owns or operates a mercantile establishment or the agents or employes of that person.

SECTION 2. (1) An adult or an emancipated minor who takes possession of any merchandise displayed or offered for sale by any mercantile establishment without the consent of the owner and with the intention of converting such merchandise to the individual's own use without having paid the purchase price thereof, or who alters the price indicia of such merchandise, shall be civilly liable to the owner for actual damages, for a penalty to the owner in the amount of the retail value of the merchandise not to exceed $500, plus an additional penalty to the owner of not less than $100 nor more than $250.

(2) The parents having custody of an unemancipated minor who takes possession of any merchandise displayed or offered for sale by any mercantile establishment without the consent of the owner, and with the intention of converting such merchandise to the minor's own use without having paid the purchase price thereof, or who alters the price indicia of such merchandise shall be civilly liable to the owner for actual damages, for a penalty to the owner in the amount of the retail value of the merchandise not to exceed $250, plus an additional penalty to the owner of not less than $100 nor more than $250. Persons operating a foster home certified under ORS 418.625 to 418.645 are not liable under this subsection for the acts of children not related to them by blood or marriage and under their care.

(3) A conviction for theft under ORS 164.045 or 164.055 is not a condition precedent to the maintenance of a civil action under this section.

(4) A civil liability under this section is not limited by any other law that limits liability of parents of minor children.

(5) An action for recovery of damages under this section may be brought in any court of competent jurisdiction, including the small claims department of a district court if the total damages do not exceed the jurisdictional limit of the small claims department.

(6) The fact that an owner or seller of merchandise may bring an action against an individual for damages as provided in this section shall not limit the right of the owner or seller to demand, in writing, that a person who is liable for damages under this section remit said damages prior to the commencement of any legal action.

(7) Judgments, but not claims, arising under this section may be assigned.

Shoplifting Meeting of September 13, 1979
Dic Gribben - Chairman

Question: As to whether courts will slack off. Bill Hughes will check - Wards
Question: How Fred Brown in Fairbanks will respond to this bill and also whether or not to approach Senator Bradly for his support and whether or not you might want him as a co-signer on the bill.
Question: Would it be feasible to start publicly advertising the bill 4 months before or 2 months before session.
Answer: At your last meeting it was emphasized that it should be within the next 3 weeks if possible.
Question: As to who STEM is and how to contact - Bill Hughes will check on thi
Question: Some concern as to how our court and judicial systems would react

PLAN OF ACTION:

1) Articles in newspaper within the next weeks
   a. 2 articles on problems
   b. Different methods retailers use
   c. Then bring in what bill is and will do
2) Hot Line - with Chamberlin
3) Chamber meeting
   a. hearings
   b. Outline and program for chamber/with tie in from newspaper

Conversation with Dic Gribben, Pennys and Sears may help with newspaper articles?

Mike Wainwright from Norhtern Commercial will check on when we can be on the next chamber luncheon. Concern if Terry cannot make it then Dic would give presentation of the Bill for you.

Emphasis, on the fact that parents would have to pay for the merchandise

Check on a past offender to come into the High Schools and speak to the students. Check through the Halfway House.

Next meeting October 2, 1979 at 3:00 p.m.

IDEA: Bring in the samller bussinesses such at the ones in the Malls at Dimond Center, Sears Center, and Boniface Center and around town for support and expression of their concerns.

Newspaper reporter will attend next meeting in order to present problems and explanation of bill and what is needed to publisize it.

IDEA: It would probably be best to start advertising the bill and problems before Thanksgiving.



TODAY

WEAVERS

Fairbanks Weavers Guild will meet. 7:30 at the home of Pat Costello. is the topic. Call 452-7033 or 452-4124 information.

PRECEPTOR ALPHA

Alpha Chapter of Beta Sigma ...ld tonight at 8 in the home of Lee ...n Third. Call 456-7872 for more in-...

MASONS

...Lodge No. 162, F & AM, will confer ...gree tonight at 7.

SCHOOL BOUNDARIES

...Junior-Senior High parents will ...et at 7:30 in the school cafeteria to ...ndary changes.

T.M. LECTURE

...lecture on Transcendental ...will be tonight at 7:30 at the USO.

MEDICAL SERVICES

...terior Region Emergency Medical ...Council will meet tonight at 7 at the ...ch Commerce. Call 456-3978 for ...ation.

TOASTMASTERS

...Heart Toastmasters Club will ...et at 6:30 at Jeffrey's. Guests are ...

THURSDAY

Pay 'n Save raises ante in war with shoplifters

By DAN JOLING
Staff Writer

It's getting more expensive to be caught shoplifting at Pay 'n Save.

A spokesman for the corporation confirmed Tuesday that Pay 'n Save is now seeking civil compensation from persons caught stealing in its stores, in addition to collecting any restitution ordered by the District Court judge as part of a sentence.

Under Alaskan law, a store can seek a minimum of $100 and a maximum of $250 from persons arrested for stealing items worth less than $250, on top of any criminal penalty ordered by a judge.

For thefts greater than $250, the store can sue for the full amount.

Depending on which District Court judge the person appears before, that will mean paying an additional $100-$250, plus court costs and attorneys fees, paid to the store besides paying for the stolen items, assuming the store wins in civil court.

Typically, shoplifters have also been fined to as much as $500 and sentenced to as many as five days in jail.

Letters to persons convicted of shoplifting in Pay 'n' Save informing them they face civil action unless they pay a specified sum were sent last month.

"If you fail to submit your payment to the address given below within ten (10) days of the date of this letter, we will refer this matter to legal counsel," the form letter says.

Accompanying the letters are copies of the statute under which the store can sue.

Though the letters and threatened legal action are new to Alaska, they are not new to Pay 'n Save, according to Dic Gribbon, loss prevention manager for the store in Anchorage.

"It's very common in other states," Gribbon said.

The reasons for the seeking civil penalties are two-fold, Gribbon said. "It's a definite deterrent. That's the bottom line of it."

He believes that if persons realized they will be ordered to pay a sum in addition to receiving jail time and a fine, they will be more reluctant to steal in his company's stores.

"It's going to make some people think twice before they shoplift five or 50 dollars worth of items," Gribbon said.

The civil penalites also help pay his check and others in the company's theft security program, and they help to offset losses from items stolen by persons who don't get caught.

"Shoplifting adds 15 to 20 per cent to the cost of an item sometimes," Gribbon said.

In Washington, Gribbon said, for every $1 stolen, $30 of items must be sold to make up for it.

And it probably costs at least $100 per shoplifter to prosecute, especially if a clerk or employee has to go to court on company time, Gribbon said.

If a shoplifter doesn't contribute, the full cost is passed on to the consumers.

Gribbon said that even with the civil penalties, the cost of the theft security program is not fully recovered.

But in the two years since Pay 'n Save has sought civil penalties in Washington, it has been "an excellent deterrent," according to Jim Konschuh, public relations spokesman in Seattle.

Gribbon said the law in Alaska is mainly aimed at small merchants who may be tempted not to prosecute if it's going to cost them a great deal to pay an employee to testify and pay for a replacement worker.

He said several other large retailers in the state plan to seek civil compensation, too. "I know of some who are going to," Gribbon said.

He said it's too early to tell if it will be a deterrent here or if more money can be recovered.

"We have not had the program in effect long enough," Gribbon said.



KEEPING TABS—Br... winner of Borough A...

Flak flies over school boundaries

By SUSAN FISHER
Staff Writer

Preliminary proposed school boundary changes are already under

students, among other issues.

The task force is composed of parent representatives from each school, but parents in the audience Tuesday—who ...

mended for in-town junior high schools, which are currently under capacity enrollments.

The subcommittee on North Pole

Election Ro...

School

Marguerite Stetson, ... second term on the ... board Tuesday with 70 ... vote, but the 1,400 votes ... John Waterman, ... a surprise.

How shoplifting is draining the economy

Bank robbers have been grabbing headlines since the days of Jesse James. Last year they made off with nearly $25 million in cash and negotiable securities. But that is all small potatoes compared with a less glamorous but far more costly crime that is draining upwards of $8 billion a year from U.S. merchants—and which no one has been able to do much about so far.

The crime is shoplifting, and, according to experts, it contributes to productivity losses, saps the vitality of many retail businesses, and redistributes a significant amount of wealth from stores to thieves and fences—which adds up to higher costs for most consumer goods. **Merchandise losses and extra security costs, in fact, add an average of 2% to 3% to everything sold by major department stores and grocery and drug chains, speeding up an already overheated inflationary spiral.**

In fact, shoplifting appears to be growing faster than most segments of the economy, including the inflation rate. For as prices rise, many consumers are taking out their frustration and anger on the person along the business chain who is closest at hand: the retail merchant. And as such pilferage gains increasing acceptance among many Americans, it is accelerating the growth of a subterranean economy in the U.S., which some economists claim reached a mind-numbing $195 billion in 1977—or about 10% of the recorded gross national product (BW—Mar. 13, 1978).

Even the Internal Revenue Service has belatedly acknowledged the existence of an underground economy where some $100 billion worth of income from legal sources goes unreported—as well as $35 billion from drug peddling, illegal gambling, and prostitution on which no income tax is paid. So far, the IRS has been unable to estimate the tax loss from such white-collar crimes as shoplifting.

Bankruptcies. For the bigger retailers, all this has become an unpleasant fact of doing business. But for smaller merchants, who can afford neither the losses nor the security to keep them in line, shoplifting can mean financial ruin. **According to some estimates, one out of three small-business bankruptcies are the direct result of thefts by employees and customers.**

Unlike many other social scientists, economists view such crimes as shoplifting as rational acts in which the thief carefully weighs the personal costs and benefits involved. And according to economist William E. Cobb of the West Virginia College of Graduate Studies, who spent a year talking to fences and surveying shoppers in metropolitan Washington, all the benefits are on the side of the shoplifter. Cobb found that the average veteran shoplifter in 1971 was walking off with more than $30,000 worth of merchandise annually. At 1979 prices, a skilled shoplifter could thus be clearing $53,000 a year. "I'd say that's a pretty good occupation," says Cobb, who also found that only 1 out of 1,250 shoplifters ever sees the inside of a jail cell. And for those who do, almost none ends up behind bars for the act of shoplifting alone. Instead, they are sentenced for such crimes as illegally possessing drugs or weapons when caught by the store detective.

Losses add at least 2% to the prices of most goods. Productivity feels the pinch

In fact, a good part of the reason why the benefits are all on the side of the shoplifter is that judges are reluctant to imprison them. Many companies in turn, are reluctant to spend time and money prosecuting shoplifters when the courts put them right back on the street. But Cobb and most security experts stress that stores must become tough on thieves. Evidence shows that amateurs, once nabbed, are discouraged from shoplifting again, and that even repeat shoplifters are deterred by being fingerprinted and formally arrested.

But shoplifters prey not just on stores but on the economy as a whole. Edward F. Denison, one of the nation's foremost experts on economic growth and an associate director of the Commerce Dept.'s Bureau of Economic Analysis, says that retail crime takes a significant slice out of U.S. productivity. Extra security means that stores are using money to pay guards and buy electronic equipment that could be spent on adding more consumer goods to the economy. "You are basically adding lots of people and no output," he maintains. And theft means that goods purchased as inventory have disappeared from the store's books and thus, in a sense, from the nation's measurable output.

Compounded losses. Moreover, fences traditionally purchase stolen merchandise for about 25% of its actual value and resell it illegally to stores that are willing to ask few questions in order to buy something at discount. Thus a very real part of the value of the nation's output has been destroyed.

Professional shoplifters often compound the loss still further by returning their stolen goods for a 100% refund to the very stores from which they were taken. And the toll can be even higher—many thousands of times the actual value of the merchandise—because many professional thieves shoplift not to walk off with the store's wares but with an eye to a civil lawsuit for false arrest. Says James J. Kerin, former security director at Macy's New York and now president of security consultant Kerin, Duffy & Hellerer Inc.: "There's no question that a professional shoplifter can kill you [financially]."

As shoplifting has increased, so has the number of professionals living off it. In 1977 police in New York and other



Economist Cobb: Stores have to get tough on shoplifters by prosecuting all thefts

major U. S. cities reported that members of organized gangs were each netting as much as $1,000 a day stealing better men's and women's clothes. According to Glen R. Dornfeld, who recently retired as security director at Minneapolis-based Dayton's department stores, the professionals today are far more brazen and more violent than any he has ever seen.

Made to order. At Southern California's Von's Grocery Co., C. R. Gresswell, the chain's loss prevention manager, says that he is seeing both more professional shoplifters and more of them carrying weapons. In fact, grocery stores are finding themselves even bigger prey to organized rings, where such easily resold items as meat, cigarettes, and liquor are often shoplifted to order for fences or well-to-do clients.

Economists stress that the only real solution is to change the actual—as well as the perceived—costs of such thefts. West Virginia's Cobb says that stores should redirect the amount they are currently spending on fancy electronic equipment and put their dollars to work in the following areas:

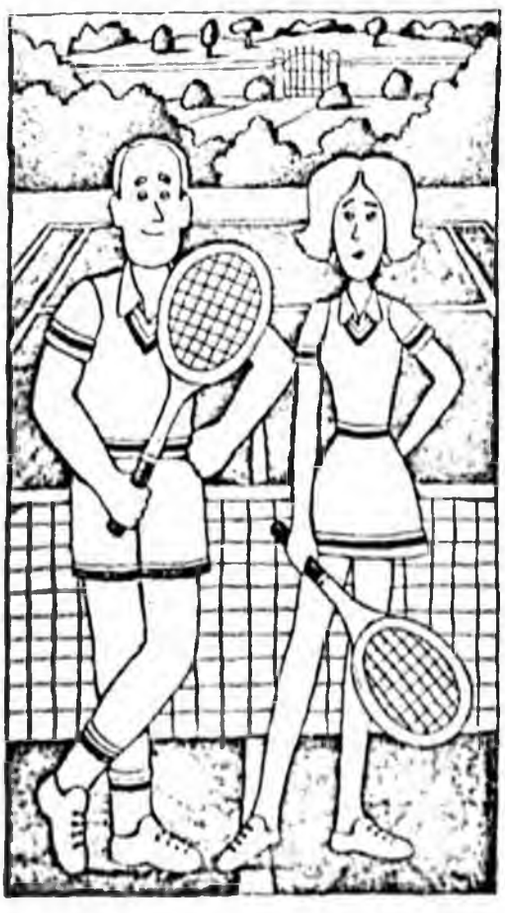
- Prosecuting all shoplifters they catch. Instead, most stores ask apprehended thieves to return the stolen goods and sign a statement admitting the crime and agreeing not to set foot in the store again.
- Advertising the fact that both uniformed and plainclothes detectives are on the watch for potential shoplifters. The idea, Cobb says, is to give thieves the feeling that they can never be sure when they are being observed.
- Mounting dummy cameras and large signs promising dire consequences to shoplifters who are caught—even though such threats may not be valid.
- Hiring actors to pose as shoplifters and periodically staging fake, calm arrests, so that potential thieves get the idea that their misdeeds will be detected. Cobb points out that such ploys have been effective in reducing thefts by employees at major retail chains.

Skilled shoplifters can clear $50,000 a year. Few ever see a jail cell

Dallas-based Zale Corp. claims quite a bit of success using some of these methods, plus some more traditional ones. The company has started a special program to train employees in spotting common shoplifting tricks, has installed a network of closed-circuit cameras, and is busy redesigning its 1,723 stores to eliminate any blind spots where thieves could go to hide merchandise under their clothes or in dummy gift boxes. But most important, says Harry D. Johnson, vice-president for loss prevention, Zale now has a company-wide policy of prosecuting all shoplifters. "Everything has to be done," he says, "to make it difficult for the shoplifter to operate in private."

The big dilemma with all programs aimed at discouraging shoplifters, of course, is that they tend to discourage legitimate shoppers as well. With uniformed guards, ominous-sounding posters, and all kinds of electronic spy equipment around, "people begin to think they are in an armed camp," warns Leonard F. Smith, executive director of the American Management Assn.'s Crimes Against Business Project. Thus, retail stores—particularly those with a wealthier clientele—are constantly faced with the trade-off of more surveillance and less theft or less surveillance and more sales.

But far more significant than this trade-off is the one affecting the cost-benefit ratio for shoplifting itself. Unless repeat shoplifters are treated more like house burglars or bank robbers, and unless the courts and society stop dismissing shoplifting as penny-ante stuff, the toll on inflation and U. S. productivity will just keep mounting. ■



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Address _____

City _____ State _____ Zip _____

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 287

Title "An Act Relating to Civil Liability for Shoplifting; and Providing for an Effective Date"

Requested by Senator Stimpson Date 2/12/80

II. FISCAL DETAIL

Agency Affected Department of Law

Program Category Affected General Government

BRU, Program, or Subprogram(s) Affected Legal Services

(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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

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)

This bill provides for civil action on the part of owners of merchandise to collect damages and penalties from shoplifters. Since the Department of Law is not involved in this process, there will not be a fiscal impact for legal services.

IV. DATE February 13, 1980 PREPARED BY Richard I. Pegues Admin. Officer

AGENCY Department of Law

PHONE 465-3695

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

33-001 (Rev. 12/79)

SB

293

COMMITTEE REPORT

SENATE

FURTHER: None

1/14/80

Date: 1/21/80

Mr. President:

The Committee on JUDICIARY has had SB 293
relating to presumptive death

under consideration and (a majority of the committee) (the committee)
reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

* special note: letter of intent to follow the bill.

CHAIRMAN

S 60 (Rev. 12/78)

SENATE AMENDMENT

BY The Judiciary Committee

To: Harrod SENATE BILL No. 293

To: _____ HOUSE BILL No. _____

PAGE: 1 LINE: 13

INSERT "SECTION" between Board and Hereof"

S 70

District Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 400
KETCHIKAN, ALASKA
99901

CHAMBERS OF
H. C. KEENE, Jr., JUDGE

June 29, 1979

Hon. Robert H. Ziegler, Sr.
Alaska State Senate
Ziegler, Cloudy, Smith, King & Brown
307 Bawden Street
Ketchikan, Alaska 99901

Re: Repeal of Alaska Enoch Arden Law or Presumption of Death After Six Continuous Years of Disappearance

Dear Senator Ziegler:

Pursuant to our conversation of 28 June, 1979 relative to the holding of Presumptive Death Hearing, I have gathered the material concerning repeal of A.S. 20.05.130 which provided that a person missing for six continuous years was presumed to be dead and his estate was to be administered in accordance with the law applicable to the administration of the estate of deceased persons. (Exh. A)

It is noted that this provision was located under Title 20, Infants and Incompetents, and specifically with those sections dealing with Guardianship. Title 20 was deleted out of existence or otherwise amended by the Uniform Probate Code enactment in 1972. This particular section was disposed of by the very last sentence on the last page, 121, of the 1972 Session Laws, Chapter 78, in a most summary manner. (Exh. B)

The above action was noted in the Alsska Statutes Supplement to Title 20 solely with respect to the appointment of a guardian for a missing person. (Exh. C)

Declaration of Death for persons who are missing and presumed to have died without the location of their body is covered under the Code of Civil Procedure, Title 9. Specifically, Sections 09.55.020 - 09.55.060 cover the subject. (Exh. D)

It is my assumption from studying the various statutes and legislative action that the provision for the declaration of death for a person who had been continuously missing for more than six years was inadvertently swept away with the introduction of the Uniform Probate Code. It is felt that this provision should be effective as I indicated when you recently posed questions relative to a Presumptive Death Hearing for a person who had been last seen in 1928 when he went into the woods hunting.

My particular interest in the matter has not been too great since having been relieved of the duties of Coroner some years past Coroners who have mentioned this to me apparently have not gone further with the subject.

It is my recommendation that a statutory provision be enacted into the Code of Civil Procedure providing that a person missing for a considerable period of time such as six years be presumed dead and a Declaration of Presumptive Death be entered. This would fill the void created by the deletion of this provision from the Guardianship Section, where it really did not belong, and would enable the survivors to administer the estate of the missing person.

Very truly yours,

Henry C. Keene, Jr.
District Court Judge

HCK:ri

Enclosures

February 4, 1980

The Honorable Henry C. Keene, Jr.,
District Court Judge
State of Alaska
First Judicial District
415 Main Street, Room 400
Ketchikan, Alaska 99901

Dear Henry:

Senate Bill 293 (presumptive death) passed the Senate with no dissenting votes on February 1.

I suspect it would be in order for you to write a letter to Charles Parr, Chairman of House Judiciary Committee, much akin to that letter you wrote me when you first called the problem to my attention.

It might be a good idea to send blind copies of your letter to Oral and Terry, both of whom are in a position to expedite House action.

Regards,

Robert H. Ziegler, Sr.

RHZ:lk

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 MELAND, MEMBER

SENATOR BENNETT, MEMBER

SENATOR DANKWORTH, MEMBER

SENATOR RAY, MEMBER



District Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 400
KETCHIKAN, ALASKA
99901

CHAMBERS OF
H. C. KEENE, Jr., JUDGE

January 21, 1980

Hon. Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Presumptive Death

Dear ~~Senator Ziegler~~ Bob:

This is in reply to your letter of January 16, 1980.

First and foremost, I must admit that the section pointed out by Mr. Vassar probably escaped my notice although I have considered it in the past.

However, I do not think it will fit the bill. Sec. 13.06.035 is a rule of evidence only. My evaluation is that this is not sufficient for the average magistrate or judge handling presumptive death certificates to act upon. A provision which is more in the nature of a directive or authority for specific action is needed.

I, therefore, feel that Senate Bill No. 293 is still necessary. This evaluation is based on discussions with other judicial officers and my own experience.

Very truly yours,

Henry C. Keene, Jr.
District Court Judge

HCK:ri

Enclosures

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 15, 1980

SUBJECT: Presumptive Death
(Work Order Number 7316)

TO. Senator Robert H. Ziegler, Sr.

FROM: Kenneth E. Vassar
Legislative Counsel

Enclosed is the letter from Judge Keene with back-up "exhibits". I have found in the Uniform Probate Code (AS 13.06 - 13.36) a section which is substantially similar to the repealed section referred to in Judge Keene's letter and to the provisions of SB 293. That section is AS 13.06.035(3), which provides:

> Sec. 13.06.035. EVIDENCE AS TO DEATH OR STATUS. In proceedings under this code, the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the code. In addition, the following rules relating to determination of death and status are applicable:
>
> * * *
>
> (3) a person 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 occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

I regret not having seen this section previously. It appears to accomplish Judge Keene's goal.

KEV:ljb

Enclosures

MEMORANDUM State of Alaska

TO: Honorable Robert Ziegler, Chairman
Senate Judiciary Committee

DATE: January 31, 1980

FILE NO:

THRU: Kenneth C. Moore
Director

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

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.

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

SB

303

COMMITTEE REPORT

SENATE

FURTHER: NONE

1/14/80

Date: 1/14/80

Mr. President:

The Committee on JUDICIARY has had SB 303
relating to arson information

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for SB 303 [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

1411 2974 17.51 02/04/80 J001 0007 08.07 02/05/80

TO SEN. ZIEGLER

FROM JAN BARBER, LEGISLATIVE CHAIRMAN FOR INSURANCE WOMEN OF ANCHORAGE
P.O. BOX 4-1294, ANCHORAGE, AK 99509 274-5617

"THE INSURANCE WOMEN OF ANCHORAGE HEREBY REQUEST YOUR SUPPORT IN BEHALF OF SB303 RELATING TO ARSON INFORMATION. WE FEEL THIS LEGISLATION WOULD BE BENEFICIAL IN THE STRUGGLE TO CURB ARSON."

02031 ANCHORAGE ALASKA 17 02-04 1019A AST

PMS SEN ROBERT H ZIEGLER

JUNEAU AK 1608

THIS OFFICE SUPPORTS AND URGES THE PASSAGE OF SENATE BILL 303

AN ACT RELATING TO ARSON INFORMATION

GARY CROUSE, DEPUTY DIRECTOR

DIVISION OF FIRE PREVENTION, DEPT OF PUBLIC SAFETY

PO BOX 6188 ANNEX

ANCHORAGE AK 99502

2/4/80
5:15 p.m.

SEN. ROBERT ZIEGLER

FROM: WILLIAM GASLER
ALASKA ARSON GUARD FUND COORDINATOR
900 K STREET, SUITE 1100
ANCHORAGE, AK 99501 279-2422, X 214

PLEASE YOU SUPPORT FOR SB 303 - AN ACT RELATING TO ARSON INFORMATION AS INTRODUCED BY SEN. BRADLEY. THANK YOU.

SB 303
Testimony by the Division of Insurance
Before the Senate Judiciary Committee
February 5, 1980

The Division of Insurance is very much in favor of this bill. In view of the reports of high levels of arson in this State, this proposal is timely. Insurers often come upon information during their claims investigation suggesting that a fire on an insured property is suspect but are reluctant to share or pass on such information for fear that such action may result in a charge of libel. The bill, in effect, requires an exchange of information between insurers and "authorized agencies" in cases of suspect nonaccidental fire loss and provides insurers with the necessary protection for good faith provision of such data. This would be most useful in reducing arson cases in Alaska.

The one area where we would suggest an amendment is in Section 21.89.050(a), which would require that the fire marshal receive the required report in all cases, in addition to those provided to any other agency. Currently, the proposal offers an option which could tend to diffuse the potential effectiveness of the report by scattering it to various locations. The amendment we propose is to add language on line 12 between the word "agency" and the "." which will read "and the director of the Division of Fire Prevention, Department of Public Safety."

Recently, a computerized national interchange on arson information was created by a number of insurance companies, but information from that interchange is available only to subscribers and is limited to their use only, unless the law otherwise provides that that information be provided to law enforcement agencies in the particular jurisdiction. This bill would, therefore, enable access to that interchange by law enforcement agencies in Alaska through requests to insurance companies.

DPK/s120N

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811

March 3, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 303
Our File No.

Dear Senator Ziegler:

You recently requested that the Department of Law draft a proposed committee substitute for SB 303, "An Act relating to arson information". Both SB 303 and the enclosed proposed committee substitute are based on the Model Arson Reporting Immunity Act which has been enacted in thirty six states.

The proposed committee substitute retains the central feature of the Model Act and SB 303: civil and criminal immunity is provided for insurers who provide information to law enforcement agencies regarding cases of suspected arson. However, the proposed committee substitute differs from SB 303 in two important ways:

1. While SB 303 requires that law enforcement agencies share information regarding suspected arson with an insurer, regardless of when that information is requested, the proposed committee substitute limits that duty to situations where release of the information would not compromise the success of an ongoing investigation or when the case has been closed by decision of the agency or through final criminal adjudication;

2. Whereas SB 303 provides criminal penalties for the failure to provide information required by the bill, the Department of Law has concluded that such sanctions are unnecessary to insure compliance and are inconsistent with the spirit of voluntary cooperation that the bill attempts to encourage.

To better help the Committee understand how the proposed committee substitute compares to SB 303, the Model Act and other state versions of the Model Act, we have included the enclosed chart comparing the various approaches to the seven central features of the Model Act.

If we can be of further assistance with regard to this bill, please contact us at your convenience.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: _____
Barry J. Stern
Assistant Attorney General

BJS:gm

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

Ladies and Gentlemen:

Please excuse the use of a form letter, but the Senate Judiciary Committee has received so many letters and telegrams relating to SB 303, Arson Information, that it is impossible to answer each message individually.

The Senate Judiciary Committee appreciates your comments relating to the bill. The committee feels that the concept of the bill is excellent; however, much technical work on the bill must be done. It is anticipated that the committee will have a committee substitute completed in the next three weeks or so.

Please be assured that an anti-arson bill will be reported out of this committee in time for early consideration.

Sincerely,

Guy A. Van Doren

Guy A. Van Doren,
Administrative Assistant to
Senator Robert H. Ziegler, Sr.

GAVD:lk

611 2974 17.51 02/04/80 JA01 0007 08.07 02/05/80

TO SEN. ZIEGLER

FROM JAN BARBER, LEGISLATIVE CHAIRMAN FOR INSURANCE WOMEN OF ANCHORAGE
P.O. BOX 4-1294, ANCHORAGE, AK 99509 276-5617

"THE INSURANCE WOMEN OF ANCHORAGE HEREBY REQUEST YOUR SUPPORT IN BEHALF OF SB303 RELATING TO ARSON INFORMATION. WE FEEL THIS LEGISLATION WOULD BE BENEFICIAL IN THE STRUGGLE TO CURB ARSON."

02031 ANCHORAGE ALASKA 17 02-04 1019A AST

PMS SEN ROBERT H ZIEGLER

JUNEAU AK 1608

THIS OFFICE SUPPORTS AND URGES THE PASSAGE OF SENATE BILL 303

AN ACT RELATING TO ARSON INFORMATION

GARY CROUSE, DEPUTY DIRECTOR

DIVISION OF FIRE PREVENTION, DEPT OF PUBLIC SAFETY

PO BOX 6188 ANNEX

ANCHORAGE AK 99502

2/4/80
5:15 p.m.

SEN. ROBERT ZIEGLER

FROM: WILLIAM GASLER
ALASKA ARSON AWARD FUND COORDINATOR
880 H STREET, SUITE 1100
ANCHORAGE, AK 99501 279-2422, X 214

REQUEST YOU SUPPORT FOR SB 303 - AN ACT RELATING TO ARSON INFORMATION INTRODUCED BY SEN. BRADLEY. THANK YOU.

.611 2374 17.51 02/04/00 JA01 0007 08.07 02/05/00

TO SEN. ZIEGLER

FROM JAN BARBER, LEGISLATIVE CHAIRMAN FOR INSURANCE WOMEN OF ANCHORAGE
P.O. BOX 4-1294, ANCHORAGE, AK 99509 276-5617

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GARY CROUSE, DEPUTY DIRECTOR

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PO BOX 6188 ANNEX

ANCHORAGE AK 99502

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SEN. ROBERT ZIEGLER

FROM: WILLIAM GASLER
ALASKA ARSON AWARD FUND COORDINATOR
900 K STREET, SUITE 1100
ANCHORAGE, AK 99501 279-2422, X 214

REQUEST YOU SUPPORT FOR SB 303 - AN ACT RELATING TO ARSON INFORMATION AS INTRODUCED BY SEN. BRADLEY. THANK YOU.

ARSON BILL 303

SENATOR BRADLEY HAS ASKED ME TO TESTIFY ON HIS BEHALF REGARDING SENATE BILL 303, THE ARSON INFORMATION ACT. IT HAD COME TO OUR ATTENTION LATE THIS FALL THAT ARSON IS THE FASTEST GROWING CRIME IN ALASKA. AND ONE OF THE MAJOR PROBLEMS THAT HAS FACED ARSON INVESTIGATORS AND CRIMINAL PROSECEUTORS IS THAT OF RECEIVING INFORMATION FROM THE FILES OF INSURANCE COMPANIES. THESE FILES USUALLY CONTAIN THE DATES AND AMOUNTS OF POLICY HOLDERS INSURANCE TRANSACTIONS AS WELL AS THE PREMIUM PAYMENT RECORDS OF THE INSURED. THE FILES MAY ALSO CONTAIN APPLICATIONS OR DECLARATIONS SIGNED BY THE INSURED AS WELL AS COPIES OF REPORTS MADE BY THE COMPANY INSPECTORS. THE FILE MAY ALSO CONTAIN THE HISTORY OF PRIOR CLAIMS MADE BY THE INSURED. THE FILE WILL CONTAIN THE CLAIM ADJUSTER REPORT, STATEMENTS OF THE INSURED AND POSSIBLY OF THE WITNESSES. IT MAY CONTAIN PICTURES AND ANALYTICAL REPORTS PREPARED BY THE CONSULTANTS. BEFORE THE CLAIM IS PAID THE FILE WILL CONTAIN A PROOF OF LOSS, A LEGAL DOCUMENT PREPARED BY THE INSURED. ADDITIONAL INFORMATION DEVELOPED BY THE COMPANY USING THESE CONTRACTURAL RIGHTS COULD BE AVAILABLE TO LAW ENFORCEMENT AUTHORITIES IF STATE LAW WOULD PERMIT. SOME OF THIS INFORMATION MAY BE UNSUBSTANTAITED OR UNPROVEN, AND EVEN THE MOST COOPERATIVE COMPANY WOULD BE RELUCTANT TO PROVIDE THIS INFORMATION TO LAW ENFORCEMENT AUTHORITIES. IMPRUDENT DISCLOSURE OF THIS INFORMATION IN AN UNSECCESSFUL CRIMINAL PROCEDURE COULD RESULT IN A CIVIL ACTION BEING FILED AGAINST THE INSURER FOR PUNITIVE DAMAGES. FEAR OF LEGAL REPRISIALS AND UNFOUNDED CHARGES OF PUNITIVE ACTION PRESENTLY CAUSE INSURERS TO RESIST THE FREE EXCHANGE OF INFORMATION WITH LAW ENFORCEMENT AUTHORITIES.

THIS BILL AS WELL AS THOSE ENACTED IN 37 STATES HAVE BEEN STUDIED

AND REVIEWED BY THE ALLIANCE OF AMERICAN INSURERS. THE MODEL BILL INCLUDES PROVISIONS FOUND TO BE NECESSARY IF THIS LAW IS TO BE EFFECTIVE. INSURERS MUST BE OBLIGATED TO REPORT SUSPICIOUS FIRES ONLY TO PROPER LAW ENFORCEMENT AUTHORITIES. ARSON MAY NOT BE EVIDENT AT THE TIME OF A FIRE AND MAY ESCAPE IDENTIFICATION BY FIRE FIGHTERS. THE POSSIBILITY OF ARSON MAY BECOME APPARANT WHEN THE CLAIMS ADJUSTER VIEWS THE DAMAGE, QUESTIONS THE INSURED, OR BEGINS AN INVENTORY OF THE PROPERTY. THIS BILL REQUIRES THAT INVESTIGATIVE AUTHORITIES BE INFORMED OF FIRES SUSPECTED OF RESULTING FROM OTHER THAN ACCIDENTAL CAUSES. TO ENCOURAGE THE FREE FLOW OF ALL INFORMATION THAT MAY BE RELEVANT TO THE INVESTIGATION, THE INSURER MUST BE PROTECTED FROM LEGAL ACTION OR HARASSMENT AND JUDGEMENTS FOR PUNITIVE DAMAGES. THE INSURER MUST BE PROVIDED IMMUNITY FROM CIVIL ACTION OR CRIMINAL PROSECUTION FRO ANY INFORMATION IT PROVIDES IN GOOD FAITH TO INVESTIGATIVE AUTHORITIES IF THE MUTUAL AID AND ASSISTANCE PROGRAM IS TO BE SUCESSFUL AND OPERATE IN THE CO-OPERATIVE SPIRIT INTENDED. WITHOUT IMMUNITY, HOWEVER, INSURERS WILL BE OBLIGATED TO WITHHOLD ALL BUT PROVEN FACTS AND DATA. BECAUSE OF THE SENSITIVE NATURE OF THE INFORMATION DEVELOPED DURING AN ARSON INVESTIGATION, IT IS NECESSARY THAT THE MATERIAL AND INFORMATION BE HELD CONFIDENTIAL UNTIL IT IS REQUIRED PURSUANT TO A CRIMINAL OR CIVIL PROCEEDING. BOTH THE INVESTIGATIVE OR PROSECUTING AUTHORITIES AND INSURANCE COMPANY PERSONNEL MUST BE HELD ACCOUNTABLE FOR THE PREMATURE OR IMPROPER RELEASE OF THE CONFIDENTIAL INFORMATION. IF FRAUD ARSON AND ARSON-FOR-PROFIT SCHEMES ARE TO BE CURTAILED OR CONTROLLED, INSURERS AND LAW ENFORCEMENT OFFICIALS MUST BE LEGALLY

AUTHORIZED AND EMPOWERED TO MUTUALLY AID AND ASSIST ONE ANOTHER. ONLY WHEN THE FULL RESOURCES OF THE INVESTIGATIONS OF BOTH THE PRIVATE INSURANCE INDUSTRY AND THE LAW ENFORCEMENT AGENCIES ARE COMBINED IN A LEGALLY CONCERTED PROGRAM OF DETECTION AND PROSECUTION CAN WE HOPE TO REDURE THE CRIME OF ARSON, AMERICA'S MILIGNANT CRIME.

IN OUR STUDIES WE WERE ABLE TO DISCERN THAT THERE WERE 28 ARSON ARRESTS IN ANCHORAGE FOR 1979. JOHN FULLENWIRE FROM THE ANCHORAGE FIRE INVESTIGATION UNIT stated THAT 3 OUT OF THE 5 FIRE RELATED DEATHS CAN BE TRACED TO ARSON. ADDITIONALLY, ARSON HAS COST CLOSE TO 2 MILLION DOLLARS IN 1979. THE RECENT FIRES IN ANCHORAGE AT BOBBY MCGEES WAS A GOOD EXAMPLE OF THE AFFECT OF THIS TYPE OF LEGISLATION. FIRE INVESTIGATORS ARE HAVING A DIFFICULT TIME GETTING INFORMATION FROM THE INSURANCE COMPANIES CONCERNED.

BILL ANALYSIS

ASSIGNMENT DATE 1-15-80

UNASSIGNED

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Bradley By Request	SB 303

DEPARTMENT POSITION

Support

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Ronald A. Hendrie /by: Gary Crouse	1-22-80	By William R. Nix	1/25/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING) (1) Unknown
(2) OTHER AGENCIES AFFECTED BY BILL (2) Department of Law

(2) a. ORGANIZATIONAL SUPPORT FOR BILL
It is our understanding the Insurance industry supports this bill.

(2) b. ORGANIZATIONAL OPPOSITION TO BILL

Unknown

(3) PROGRAM EFFECTS OF BILL

Will enhance the investigative process by improving the mechanism for the exchange of necessary and vital information.

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

None

(6) COMMENTS:

Often while conducting an arson investigation the motive or reason behind the incident is not readily known and it becomes necessary to delve into areas of the insureds financial background, insurance history including provisions of any insurance policies in effect, particularly of the proof of loss documents.

It is usually necessary, when working with an insurance and/or adjusting firm, to secure subpoenas or search warrants, prior to an exchange of information. Reasons by the insurance industry for not making the information requested readily available is the "Right To Privacy" and similar acts.

It is our understanding similar arson information acts have been enacted in 27 of the 50 states.

(Comments continued on back)

COMMENTS cont'd:

It is also our understanding this bill will be supported by the Department of Commerce and Economic Development and that they may propose an amendment which would require the property insurer to notify the State Fire Marshal in all cases when the fire may not have been of an accidental origin (sec. 21.89.050-a).

Our contact with the Department of Law indicates they see no problem with the proposed legislation.

Alliance of American Insurers
20 North Wacker Drive
Chicago, Illinois 60606
312:346:5190

MODEL ARSON REPORTING - IMMUNITY LAW

-- The Need and Purpose

With increasing frequency arson investigators and criminal prosecutors are recognizing the value of information contained in policy writing and claim files of insurers of property which appear to have been "torched." Failing to realize that there are legal and contractual constraints against companies freely releasing this information, investigators and prosecutors are complaining that insurers are being uncooperative or are refusing to share the information with authorities. Most insurers are eager to assist authorities but, for their protection and the protection of their innocent insureds, will release the needed information only under subpoena.

The insurance industry acknowledges the value of this information to law enforcement authorities. The files contain all the data needed to prepare the insurance policy, the dates and amounts of policyholder's insurance transactions as well as the premium payment record of the insured. The files may also contain applications or declarations signed by the insured, appraisals of the property as well as copies of reports made by the company inspectors. The file may also contain the history of prior claims made by the insured. The claim file will contain the claim adjuster's reports, statements of the insured and possibly statements of witnesses. It may contain pictures and analytical reports prepared by consultants. Before the claim is paid, the file will contain a Proof of Loss, a legal document signed by the insured, witnessed or notorized and which contains detailed data concerning the cause of loss, the value of the property destroyed and the amount of reimbursement claimed by the insured.

The New York Standard Fire Insurance Policy in use in most states affords insurers the right to examine the books and accounts of the insured and to examine the damaged property as often as may be reasonably required. The policy, also, requires the insured, as often as may be reasonably required to submit to examinations under oath by any person designated by the company. Additional information developed by the company using these contractual rights could be available to law enforcement authorities if state laws would permit.

Because some of the information in the company files may be unsubstantiated or unproven, even the most cooperative company will be reluctant to provide -- much less voluntarily pass -- this information to law enforcement authorities. Imprudent disclosure of the information or use of the information in an unsuccessful criminal proceeding could result in criminal charges being made against the insurer or, as is more often the case, a civil action being filed which seeks and can result in judgments against the insurer for punitive damages. Punitive damages awards are in addition to policy limits or claim payments and, though rare, have resulted in judgments against insurers. Fear of legal harassment and unfounded charges of punitive action cause insurers presently to resist the free exchange of information with law enforcement authorities

The National Fire Prevention and Control Administration held leadership seminars for developing a coordinated attack on arson during January and February, 1976. The seminars were attended by thirty-six concerned citizens and experts in the field of arson and representing the many disciplines whose work and expertise bear on the total arson problem. The report of the seminar, "Arson: America's Malignant Crime," recommended a legal committee be formed and that "the first order of business -- developing recommended legislation for submission to states which would provide appropriate immunity to insurance companies which share arson-related information with public authorities."

The Ohio legislature enacted such legislation in 1976. During 1977, reporting immunity legislation was enacted in the states of Connecticut, Georgia, Illinois, New York, North Carolina and Texas. Similar legislation was considered but failed to be enacted in nine other states during the past two legislative years. Many of the bills failed because they were poorly conceived or drafted; others created jurisdictional problems among responsible agencies; while some would have increased the legal problems of the cooperating insurance companies.

These bills, as well as those already enacted, have been studied and reviewed by the Alliance and its affiliate the Property Loss Research Bureau. Procedures developed for implementing the laws that have been enacted and some of the unforeseen problems have also been scrutinized. The Alliance -PLRB model law includes the provisions found to be necessary ingredients in these laws if they are to be effective and avoid the problems which are now resulting from the first attempt at legislation in this area.

Insurers must be obliged to report suspicious fires only to the proper law enforcement authorities. Arson may not be evident at the time of the fire and escape identification by the fire fighters. The possibility of an incendiary fire may become evident only when the insurance claim adjuster views the damage, questions the insured or begins preparing the inventory of damaged property. The model law would require that the investigative authorities be informed of fires suspected of resulting from other than accidental causes.

If insurers are to resist fraud arson and to take the "profit out of arson" the insurer and arson investigating offical must freely and without legal encumbrance exchange information developed during their separate investigations. Information developed by the law enforcement agencies should be available upon request to an insurance company investigating suspected arson. The model law would authorize access to and use of the information developed by the law enforcement agency and serve to increase the flow of vital investigative information between the insurer and a law enforcement agency, as well as between appropriate law enforcement agencies, themselves.

The testimony of the law enforcement or investigative officer is frequently necessary if an insurer is to successfully resist or deny fraudulent fire claims. The model law allows the insurer to call upon such officials for testimony.

In any criminal investigation it is vital that the investigators have access to any information that may be relevant to the case under investigation. Much of the information developed by insurance investigators and which is lodged in company claim files may be unproven and unsubstantiated, at least early in the investigation. It may, also, be exactly the information needed by authorities to develop leads and other incriminating evidence. This information may never reach the proper authorities because of legal problems if the insurers must first verify or substantiate the facts before providing the information to authorities.

To encourage the free flow of all information that may be relevant to the investigation, the insurer must be protected from legal action or harassment and judgments for punitive damages. The insurer must be provided immunity from civil action or criminal prosectuion for any information it provides in good faith to investigative authorities if the mutual aid and assistance program is to be successful and operate in the cooperative spirit intended. Without immunity, however, insurers will be obligated to withhold all but proven facts and data.

Because of the sensitive nature of the information developed during an arson investigation, it is necessary that the material and information be held confidential until it is required pursuant to a criminal or civil proceeding. Both the investigative or prosecuting authorities and insurance company personnel must be held accountable for the premature or improper release of the confidential information.

If fraud arson and arson-for-profit schemes are to be curtailed or controlled, insurers and law enforcement officials must be legally authorized and empowered to mutually aid and assist one another. Only when the full resources of the investigations of both the private insurance industry and the law enforcement agencies are combined in a legally concerted program of detection and prosecution can we hope to reduce the crime of arson, America's Malignant Crime.

FWC: 1/9/78

APPREHENSIONS AND DISPOSITIONS

1979

DATE	RUN NO.	TYPE	ARRESTED	DISPOSITION
1-22-79	79-0207	Apartment	1 F Adult	Deferred Prosecution
2-01-79	79-0434	School	1 M Juvenile	Referred to J. Warner
2-26-79	79-0660	Residence	1 M Juvenile	Referred to J. Warner
11-05-79	78-3775	Vehicle Garage	5 M Juveniles	Referred to J. Warner
Also closed by above arrests:				
11-26-78	PD78-61239	Street		
11-26-78	PD78-61378	Motor Home		
1-14-79	PD79-02599	Vehicle		
1-22-79	PD79-04207	Business-Vandalism		
1-24-79	PD79-04590	Residence-Property Damage		
1-28-79	PD79-05280	Business-Vandalism		
3-14-79	79-0821	School	1 M Juvenile	Referred to J. Warner
3-15-79	79-0834	False Alarm	1 M Adult	Referred to D.A.
3-30-79	79-0991	School	1 M Juvenile	Referred to J. Warner
4-19-79	79-1146	School	3 M Juveniles	Referred to J. Warner
4-25-79	79-1228	School	2 M Juveniles	Referred to J. Warner
4-28-79	79-1194	The Lodge	1 M Adult	Deferred Prosecution
4-30-79	79-1300	Boarding House	1 M Adult	Sentenced to 41 years
Also closed by above arrest:				
5-5-79	79-1368	Boarding House		
5-7-79	79-1401	Boarding House		
5-03-79	79-1345	False Alarm	1 F Juvenile	Referred to J. Warner (No action taken-Letter sent to mother)
5-30-79	79-1711	Warehouse	2 M Juveniles	Referred to J. Warner
6-20-79	79-2043	Residence	1 M Adult	Released to custody of A.P.I.
			1 M Juvenile	Referred to J. Warner
7-19-79	79-2366	Chalet	1 M Juvenile	Referred to J. Warner
8-26-79	79-2826	Massage Parlor	1 M Adult	Referred to D.A.-Pled Guilty
9-03-79	79-2922	Kit Kat	1 M Adult	Referred to D.A.-Pled No Contest
9-18-79	79-3078	Shed	1 M Juvenile	Referred to J. Warner
10-14-79	79-3332	Mobilehome	1 M Juvenile	Referred to J. Warner
10-24-79	79-3429	Residence	1 M Adult	Referred to D.A.

Total Apprehensions:

7 Male Adults, 1 Female Adult	8
20 M Juveniles, 1 F Juvenile	21
	29

Total Cases Closed by Apprehension: 28

Death by fire is probably man's greatest primeval fear, points out Alvin Rakoff, director of Avco Embassy's new disaster flick, **City on Fire.** This fact has not been lost on Hollywood, where major conflagrations have been staged almost since the medium began. Selznick put Atlanta to the torch in **Gone With the Wind,** Twentieth Century-Fox reduced the Windy City to ashes in **In Old Chicago,** MGM fiddled with Nero's Rome in **Quo Vadis;** and who can forget poor Bambi trying to escape from that terrifying forest fire?

In terms of special effects at least, **City on Fire** has outdone its predecessors by making its fire the star of the film and spending more money than anyone else. Budgeted at $5.6 million, with $1.5 going for the fire alone, the film was shot in Canada, where production costs are cheaper. The action takes place in a fictional Midwestern city, however, which is turned into an inferno by an arsonist, an accident and avaricious politicians.

To accomplish this extraordinary feat special effects director Cliff Wenger built a 500-foot-long street with nine buildings more than 60 feet high–the largest set ever built in Canada–on the site of Canada Cement Lafarge Ltd. Dubbed "Prince Street," the set required some 40,000 square feet of plywood, 400 gallons of paint, 10,000 feet of electrical wiring, 16,000 feet of lumber and 500 units of scaffolding.

"The secret of a good film fire is total control," says Wenger, whose credits include **The Island of Dr. Moreau, The Day the Earth Moved** and **Hooper.** "The set was coated three times with fireproofing silicate soda. The flames were created with burning jets of propane piped throughout the set and controlled from a central point."

Three giant propane tanks were set up about 500 yards from the set which, of course, was not really burning. Lead pipes carried the gas to the wooden frames, and perforated copper tubings supplied the flames behind the false building fronts. Protected by the silicate and 10,000 square feet of asbestos, the city block was too expensive not to be saved for future use. At present the jets are shut off, waiting for the street's next cinematic conflagration.

Location of the set at the cement plant was particularly convenient for other special effects. Not only was it close by a refinery--blown up by an arsonist in the film–it was also near a huge gravel pit, which serves a rescue camp for the cast. The plant's self-filling water shelf further reduced costs by providing the required 200,000 gallons of water needed for the climatic water tunnel sequence, instead of having it brought in by a tanker.

Wenger's stuntmen rehearsed for hours, choreographing movements through the flames and falls from glazing windows. "All the money in the world doesn't pay for a life," he says. "If anyone is in danger, do it over. Film is cheap. There's a shot of an old monument we left in the film, which says 'Safety Through Wisdom.' That was our motto."

Arson is ostensibly the theme of **City on Fire,** which places it squarely in today's headlines. The fastest growing crime in America, arson was responsible for more than $2 billion in property destroyed, over 1,000 deaths and at least 10,000 injuries. The cheapest and easiest crime to commit, it is also one of the most difficult to detect. Usually it is committed for profit, anger, or even thrills. The going rate for a professional "torch" or pyromaniac is, according to one convicted arsonist, "10 per cent of the insurance money, half in advance, half the day after the fire."

The latest fire-fighting equipment is shown in the film, including a hydrocarbon reader–a new device that absorbs vapors at the scene of a fire and tells the operator what kind of liquids were used to set it. Dedication of the film is "to fire fighters throughout the world." ★





Firemen work in vain, trying to put out special effects fire of propane gas–turned off at end of day's shooting. Shelley Winters, fresh from recent disaster in **Beyond the Poseidon Adventure** appears as hard-working, overweight hospital nurse.

photos © Avco Embassy

#11

ARSON UPDATE

ILLINOIS ADVISORY COMMITTEE
ON ARSON PREVENTION

OCTOBER, 1979

RECEIVED
DIRECTOR'S OFFICE
DIVISION OF FIRE PREVENTION

"Selective Enforcement" - The Feds Move On the Arsonist

The federal government's role in the crackdown on arson is beginning to crystallize. Since the passage last year of the bill that elevated arson to Part One status in the FBI's Uniform Crime Report series, "selective enforcement" and "support services" are the buzz words coming out of Washington.

In testimony before the Senate recently, the Deputy Director of the Bureau of Alcohol, Tobacco and Firearms said that although arson is primarily a problem for state and local jurisdictions, there is a definite need for a blending of federal, state and local responsibilities.

John Krogman outlined the specific approach ATF is taking, saying, "The federal govenment is interested when there is organized criminal involvement, white collar crime, or arson-for-hire rings which cross state lines to carry out their illegal activities."

Krogman said that because "this crime has become of such magnitude, some selective federal assistance to the states may be necessary." He added that although ATF does not have the resources to investigate more than a small percentage of the arson incidents each year, organized and direct federal involvement is needed to relieve the burden at state and local levels.

Selective enforcement would have ATF concentrating its investigative resources on large volume, white collar arson-for-profit schemes and on cases involving organized criminal activity.

In the support area, ATF is rapidly expanding its force of trained arson investigators and plans to extend its capabilities to train state and local officers.

ATF's forensic laboratories are being used to examine evidence not only in ATF cases, but in cases submitted by state and local agencies as well.

Arson Task Forces, set up by ATF, are now operating in 26 cities and new ones will eventually be established in every city with an ATF District Office. When it is feasible, the agency welcomes task force members assigned from local fire and police services.

Krogman expanded on the training aspects, indicating that a nationwide series of arson training schools for state and local officials will begin soon. "Within the next twelve months, these week-long courses will be held in 18 major cities," Krogman said. "Proposed funding from the Law Enforcement Assistance Administration will make possible these badly needed courses." AFT expects to train 20 to 40 individuals at each session and the instructors will concentrate on post-arson investigation.

In his concluding remarks to the Senate, Krogman said, "We believe this approach - arson task forces, intensive training, use of the latest available technology, specially trained response teams and backup laboratory suppo t of the highest caliber - will provide the American public with additional federal assistance to help combat these destructive crimes."

	+ 8	+ 11	+ 15
	+ 10	+ 15	+ 15
	+ 1	+ 8	+ 11
	+ 16	+ 13	+ 24
	+ 2	+ 11	+ 11

ed	Burglary	Larceny-theft	Motor vehicle theft	Arson*
	- 8	+ 13	- 3	
	- 7	- 11	- 4	
	- 2	- 7	- 2	
	+ 8	+ 11	+ 15	

has begun, but data on this offense

Arson Finally Makes It In UCR Series

It isn't much, but it's a beginning. For the first time in history, arson has made the FBI's Uniform Crime Report series.

Congressional action last year mandated that the FBI reclassify arson as a Part I index crime in the National Uniform Crime Reporting Program. After several months of consultation with law enforcement and fire and insurance officials, the FBI notified its UCR units that arson Part I statistics were to be collected effective January 1, 1979.

The FBI noted "that a number of law enforcement agencies do not have investigative or arrest jurisdiction in arson-related matters. Those agencies may wish to initiate appropriate liaison with local fire service representatives currently responsible for determining the cause of fires."

Arson is on the books, hopefully for keeps. And once again the key element, as the FBI stresses, is cooperation.

UPDATE

Arson Reporting Immunity on the Books in 36 States

In an earlier issue of Update, we reported on the progress of arson reporting-immunity legislation in each of the states, noting the difficulties insurers face when no protection is afforded.

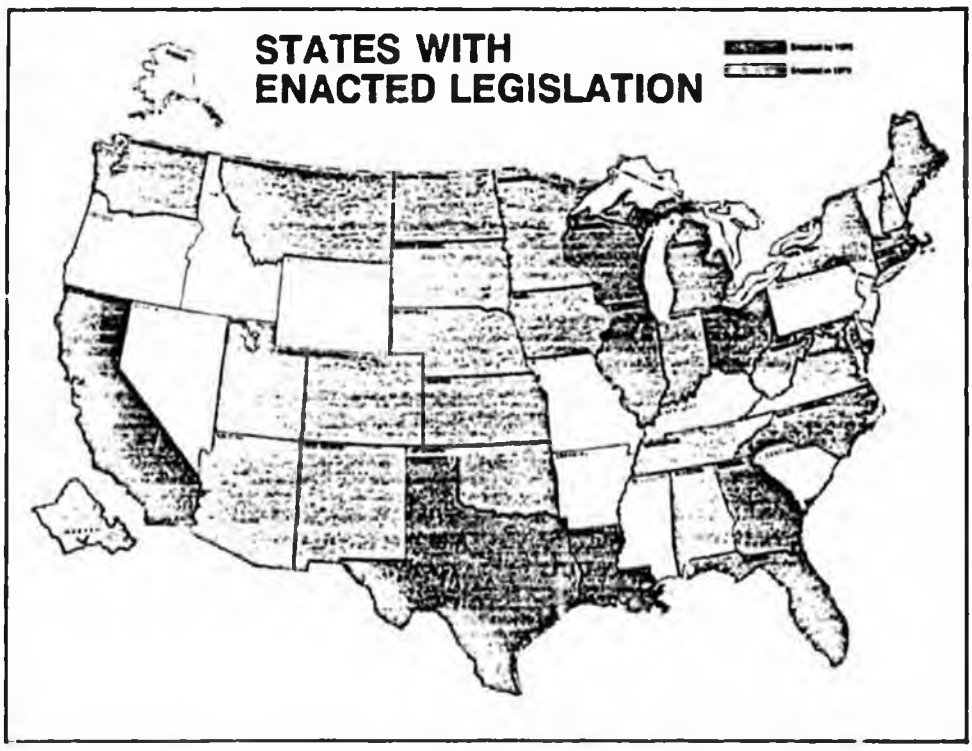
Although 36 states have enacted some form of immunity legislation offering protection to insurance companies which cooperate with authorities in suspected arson cases, the degree of that protection varies widely.

The need for such legislation in every state is clear and compelling. In the 14 states that don't have an immunity bill or similar provisions, insurers must first substantiate the facts in a case before giving key information to the proper authorities.

Much of the information developed by insurers in suspected arson cases is unsubstantiated, at least in the early stages, but it may provide exactly the lead that investigating authorities need to develop more substantive evidence. If insurers must first substantiate the facts to avoid being sued for libel, key information may never reach the proper authorities. At the very least, it would be delayed.

Most bills need strengthening

In the 36 states that have acted, most need additional legislation to add important provisions of the model immunity bill. Only four states have laws on the books that incorporate all major provisions of the model bill — Nebraska, Rhode Island, South Dakota and Washington. The other 32 states have enacted legislation that includes at least two and as many as seven of the model bill's provisions.



Civil immunity is granted in every state with an arson reporting immunity bill, but that is the only provision common to all 36. Every state except Maine allows authorized agencies to acquire relevant insurance company information without resorting to a subpoena.

Criminal immunity for the insurance companies is granted in 34 states, but it is not extended in Kansas and Montana. And every state except Maine and Texas have legislation requiring insurance companies to notify an authorized agency of any "other than accidental" fire.

The eight crucial elements

In 1977 the Alliance of American Insurers and its affiliate, the Property Loss Research Bureau, drafted model immunity legislation that included eight elements of vital importance to insurers and investigators. They did so in the belief that such laws are needed if insurance executives are to report suspected arson cases to law enforcement authorities without fear of being sued for libel or slander by their clients. What follows is a rundown of the current legislation and the degree to which the model bill's recommendations are reflected.

in all 36 states	1) Civil immunity for insurance companies which cooperate with authorities in suspected arson or insurance fraud cases
not in Maine	2) Authorized agencies can get relevant information without subpoena
not in Kansas, Montana	3) Criminal immunity for insurance companies which cooperate with authorities in suspected arson or insurance fraud cases
not in Maine, Texas	4) Insurance companies required to notify authorities of any "other than accidental" fire
not Connecticut, Maine, Illinois, Wisconsin	5) Notification of one agency by an insurance company is sufficient
not in 12 states	6) Authorities must testify on behalf of insurance companies
not in 20 states	7) Authorized agencies may share information with other officials
not in 22 states	8) Insurance companies may receive information from authorized agencies

Each element of the model bill that is passed effectively removes another barrier to the communications process and increases the likelihood that an individual arsonist will be caught.

Immunity concerns some — but it's not absolute

Although some concern has been expressed, and properly so, that existing privacy legislation and the traditional protection afforded by subpoenas would be short - circuited by such bills,

ARSON UPDATE

OCTOBER, 1979

Editor: R.J. Jackson

Contributing Editor: E.J. Harvey

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IACAP membership includes fire fighters, fire investigators, law enforcement officers, insurance professionals and educators. Their goal is to reduce the incidence of arson and to increase the likelihood of arrest and conviction when arson is committed.

the possible risks inherent in the two-way exchange provisions are outweighed by the benefits.

Beyond that, the immunity granted by these bills is not absolute. The model law grants only limited immunity to insurers, which is to say that an insurance company could be held liable if the claimant can prove that the company acted with malice. In short, the model law encourages insurers to treat information on private individuals judiciously.

A detailed monograph on the various aspects of immunity legislation is available for distribution by writing Illinois Advisory Committee on Arson Prevention, Allstate Plaza F-3, Northbrook, IL 60062

Legislative work needed now

It must be said that this legislation is only one part of the package needed if a unified front is to be presented to the arsonist.

The fact that 36 states now have this legislation is encouraging. The fact that only minimal protection is offered by some of the bills is not.

Each state, including Illinois, should move in the next legislative session to ensure that its immunity bill complies with the model legislation. Further, each state should also review the model arson penal code to determine needed improvements in the state codes.

Legislation should be drafted now and sponsors sought. If this is done before the end of the year, the proposed legislation can be considered early in the next session.



UPDATE

Arsonists Drawing IRS Attention

Louis J. Schroeder
Internal Revenue Service

Law enforcement agencies of the federal government are showing an increased interest in arson and arson-related crimes.

Encouraged by the development of information that certain violations of Internal Revenue Service laws evolve from arson-for-profit schemes, the Criminal Investigation Division (CID) of the IRS is looking at the possibility of their involvement.

CID would not investigate arson as such, but they would investigate the financial crimes associated with arson as they affect income tax. The Criminal Investigation Division is interested in income tax related information unearthed by other criminal investigators or insurance company personnel during their investigation of arson or other fraudulent claims.

Certain types of information, sometimes called "badges of fraud," should alert investigators of the possibility of an income tax law violation. These include, but are not limited to, the following:

1) Maintaining two sets of books or no books;

2) Hidden or undisclosed bank accounts held in other banks, other cities or in other names;

3) Failure to file a tax return although substantial amounts of taxable income were received;

4) Destruction or concealment of records or refusal to make certain records available;

5) False returns admitted, but attributed to another motive, constitutes excellent evidence of income tax fraud;

6) Business loss claims not commensurate with claimant's tax return income;

7) Any other pattern of conduct likely to mislead or to conceal pertinent tax related information.

The existence of any one or a combination of the "badges of fraud" or the knowledge of other circumstances which would result in an understatement of income or cause false information to be recorded on any income tax return would be of interest to the IRS.

In addition to the criminal statutes, the Internal Revenue Code has statutory provisions for civil violations of income tax laws. Civil provisions are the responsibility of the Examination Division of the IRS.

The technical aspect of income tax information submitted by taxpayers is audited by revenue agents of the Examination Division to test compliance with the civil provisions. Civil provisions can be enforced independently or in conjunction with criminal aspects.

For additional information, contact Special Agent Louis J. Schroeder (CID:21), Internal Revenue Service, Criminal Investigation Division, P.O. Box 1101, Chicago, IL 60690. The telephone number is 312/886-4526.

Aetna Announces Anti-Arson Battle Plan

Aetna Life and Casualty has kicked off a major anti-arson campaign and hired a nationally known arson expert to guide their efforts.

John Barracato, the recently retired deputy fire marshal of New York City, is directly involved in planning and executing Aetna's anti-arson strategies. And although the partnership between Aetna and Barracato may be unusual at this stage of the insurance industry's battle against the arsonist, it appears to be a logical step.

Two of the prinicipal elements of Aetna's campaign are under way.

Last April, Aetna announced that a grant for $97,500 had been awarded to the New Haven, CT Arson Task Force for the development of their Arson Warning and Prevention Strategy (AWPS) program.

AWPS originated two years ago and was based on the premise that intentional fire setting can be anticipated and predicted through the combined presence of certain key variables. The goal is to establish a practical arson predictability system which can identify specific buildings at risk to arson.

The company is also offering the city of New Haven the expertise of their technical arson control consultants in support of AWPS.

Across the continent, the California District Attorneys Association has received a $140,000 grant from Aetna to finish preparation and publication of arson investigation and trial practice manuals. The manuals will be distributed to all 50 states, and Jim Rushford of the Califronia District Attorneys Association indicates they may be ready as early as mid-December.

UPDATE

LEAA Awards First Grants in Arson Fight

The Law Enforcement Assistance Administration is making available more than four million dollars for arson control projects at the state and local levels through its recently announced Arson Control Assistance Program.

Up to four grants will be awarded to support efforts at the state level, six will go to jurisdictions with populations of 100,000 or more and five will be made to jurisdictions with populations of 100,000 or less.

According to LEAA, "It has been determined that a coordinated effort among police, fire and prosecutorial agencies . . . . is required to successfully combat the crime. Funds will be available to support programs constituting such an integrated approach."

Cooperation and coordination are central to the program. LEAA is asking for letters of commitment and memoranda of agreement indicating involvement and participation on the part of all agencies connected with the overall arson control effort within a specific jurisdiction

Each of the grants will be awarded for a period of 18 months with consideration for a second cycle based upon the results of an LEAA review and the availability of funds.

The cash match requirements for these grants will be ten percent. If second cycle funding is awarded, a 20 percent cash match is required.

USFA Receives $500,000 Grant

In a related development, LEAA also announced that a grant of $500,000 has been awarded to the U.S. Fire Administration to expand and develop a national attack on arson. Transfer of funds occurred on June 1 and the grant marks the first time the USFA has received this type of assistance.

The funding will allow for the training of 700 additional arson investigators, the exposure of approximately 3,000 municipal fire and police officials to the new arson task force concept, and the availability of 3,000 student arson workbooks for state training officials to use to instruct the fire fighters.

"Quite obviously this will be a major national undertaking," said USFA Administrator Gordon Vickery. "The end product of this agreement will be more effective aid to state and local governments in their fight to control and reduce arson incidents."

Citing growing evidence that arson is not only an urban problem, but rural and suburban as well, Vickery said, "Small communities served by volunteer fire agencies have requested aid in determining the best arson prevention and control strategies . . . . and we're happy to be able to respond to this request." USFA plans to use a portion of the funds to develop and implement an arson program guide for volunteer fire fighters.

The development of national arson task force seminars, presented to appropriate agencies and to municipal policy makers upon request, is another area of USFA interest.

"This is an excellent example of law enforcement and fire agencies working together at a federal level," Vickery concluded. "Arson is a major crime problem in the nation and if we are to be successful in showing a substantial reduction, there must be complete cooperation."

The action by LEAA in funding programs of this type is encouraging, but it is only a beginning. The success of renewed efforts against the arsonist will depend to a great degree on the quality and quantity of support at many levels, and LEAA's role is important.

IACAP Announces Publication Distribution Policy

Past issues of Update have described a number of films and pamphlets on the subjects of arson and arson investigation.

Because of their limited supply, it will not be possible for the IACAP to accommodate film requests for use outside Illinois.

Small quantities of the written material may be obtained free from IACAP. Information on how to acquire quantities is available by writing the committee at

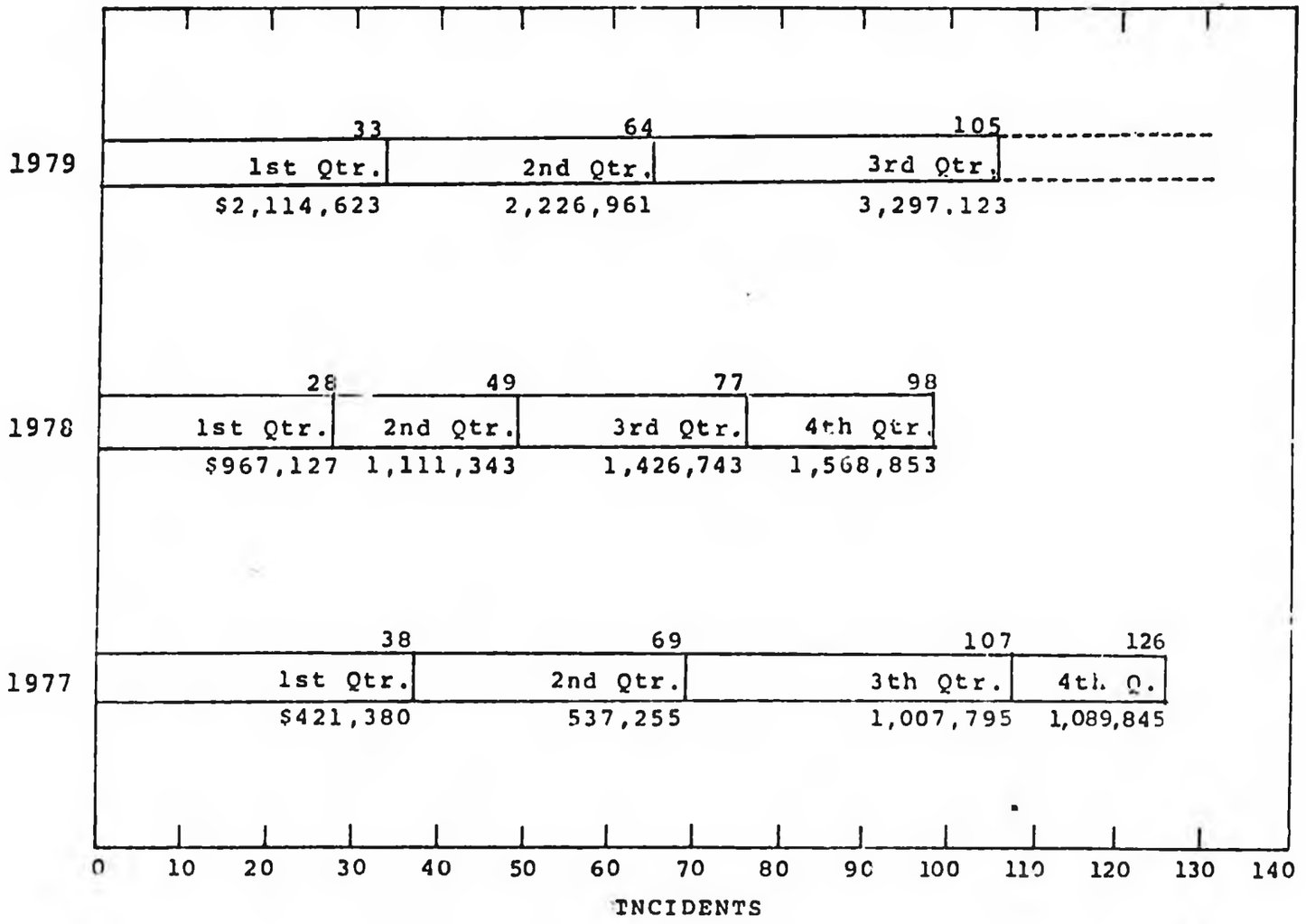
P.O. Box 614
Bloomington, Illinois 61701

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ILLINOIS ADVISORY COMMITTEE ON ARSON PREVENTION
ATTN: R.J. JACKSON F-3
ALLSTATE PLAZA
NORTHBROOK, IL 60062

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ILLINOIS



INVESTIGATED INCENDIARY FIRES

Incidents and Estimated Loss

RECENT LEGISLATION OF INTEREST (continued)

COLORADO

Concerning the Exchange of Arson-Related Information Between Insurance Companies and Authorized Agencies

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 4 of title 10, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 10

ARSON INFORMATION REPORTING ACT

10-4-1001. Short title. This part 10 shall be known and may be cited as the "Arson Information Reporting Act".

10-4-1002. Definitions. As used in this part 10, unless the context otherwise requires:

(1) "Authorized agencies" means:

(a) Fire departments and local law enforcement agencies authorized or charged with the investigation of fires within the jurisdiction where the fire occurred;

(b) The Colorado Bureau of Investigation;

(c) The district attorney or county attorney and their representatives who are responsible for prosecution in the county or city and county where the fire occurred.

(2) "Notice" or "notify" means the notification in writing to an authorized agency by an insurance company of a fire loss.

(3) "Person" means every natural person, firm, partnership, association, or corporation.

(4) "Relevant" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.

10-4-1003. Disclosure of information. (1) When an insurance company has reason to believe that a fire loss in which it has an interest may have been caused by other than accidental means, then the company shall notify an authorized agency for the purpose of having such fire loss investigated.

(2) Any authorized agency may, in writing, require the insurance company having an interest in a fire loss to release to the authorized agency specific, relevant information or evidence deemed important by the authorized agency which the insurance companies have in the possession and which relates to the fire loss in question. Relevant information may include, but shall not be limited to:

RECENT LEGISLATION OF INTEREST (continued)

COLORADO

(a) Insurance policy information pertaining to a fire loss under investigation and any application for such a policy;

(b) Policy premium payment records;

(c) History of previous claims made by the insured; and

(d) Any other material relating to the investigation of the loss, including statements of any person who may have information about the loss and any proof of such loss.

(3) Nothing in subsection (1) of this section shall abrogate or impair the rights or powers created under subsection (2) of this section.

(4) Any authorized agency provided with relevant information or evidence pursuant to subsection (1) or (2) of this section may release such information to any other authorized agency.

10-4-1004. Evidence - confidential nature thereof. (1) Any authorized agency or insurance company which receives any information furnished pursuant to this part 10 shall hold the information in confidence except as provided in section 10-4-1003 (4) or until such time as its release is required pursuant to a civil or criminal proceeding.

(2) Any authorized agency or its agents or employees may be required to testify in any civil or criminal proceeding in which the insurance company at interest is named as a party.

10-4-1005. Immunity. In the absence of actual malice, there shall be no liability on the part of, and no cause of action shall rise against, any authorized agency or insurance company or their authorized representatives, agents, or employees for furnishing information or taking other action pursuant to the provisions of this part 10.

10-4-1006. Enforcement. (1) No person, authorized agency, or insurance company shall:

(a) Intentionally or knowingly refuse to release any information requested pursuant to section 10-4-1003 (2);

(b) Intentionally or knowingly fail to provide authorized agencies with relevant information pursuant to section 10-4-1003 (1); or

(c) Fail to hold in confidence information required to be held in confidence pursuant to section 10-4-1004 (1).

10-4-1007. Penalty. Any person who violates any of the provisions of this part 10 is guilty of a class 2 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. 1973.

10-4-1008. Municipal ordinances - concurrent jurisdiction - common law. (1) The provisions of this part 10 shall not be construed to affect, supersede, or repeal any ordinance of any municipality relating to fire prevention or control of arson.

RECENT LEGISLATION OF INTEREST (continued)

COLORADO

(2) The Colorado Bureau of Investigation shall have investigative authority concurrent with that of county or municipal authorities when the county or municipality in which investigation of a fire loss is taking place requests the assistance of said bureau.

(3) With the exception of section 10-4-1005, the provisions of this part 10 shall not be construed to impair any existing statutory or common law rights or powers.

WEST VIRGINIA

Volunteer Fire Department Monies

Governor John D. Rockefeller of West Virginia proposed a grant program for volunteer fire departments this year. Accordingly, the West Virginia Legislature appropriated 1 million dollars for the grant program. The program will be administered through the Office of Economic and Community Development via the Community Partnership Grant Program. The funds will be available for purchase of firefighting equipment. The volunteer fire department must provide 50-50 matching monies for purchase of fire apparatus and 90 (state) - 10 (local) matching monies for other types of firefighting equipment. A review board consisting of five volunteer fire chiefs and the State Fire Marshal will review the applications for determination of eligibility for approval of grant monies.

Any interested individuals desiring to obtain information regarding this program may contact: Walter Smittle, State Fire Marshal, 2000 Quarrier Street, State Capitol, Charleston, West Virginia 25305.

SOUTH CAROLINA

South Carolina State Fire Commission

Be it enacted by the General Assembly of the State of South Carolina:

Section 1. There is hereby created the South Carolina State Fire Commission to be composed of nineteen residents of the State, eighteen of whom shall be appointed by the Governor upon the advice and consent of the Senate as follows: two members shall be appointed from each congressional district with one from each district being a volunteer fireman and one from each district being a full-time professional fireman but in no event shall the two from each district be appointed from the same county; one shall be a registered architect; one shall be a local government building official; one shall be an electrical inspector; one shall be a licensed contractor; one shall be a fire protection engineer and one shall be a consumer. The other member shall be a fire chief elected from the State at large by the General Assembly and shall serve as chairman.

The terms of the members shall be four years and until their successors are appointed and qualify, except that of those first appointed the consumer, the electrical inspector and the architect shall serve for one year; the building official, the contractor and the fire protection engineer shall serve for two years and the fire service members from congressional districts one, two and three shall serve for three years. Vacancies shall be filled in the manner of the original appointments or election for the unexpired portion of the term only

Arson Resource BULLETIN

FEDERAL EMERGENCY MANAGEMENT AGENCY
U.S. Fire Administration
Office of Planning and Education
Washington, D.C 20472

RECEIVED
OCT 2 : 1979

DIRECTOR'S OFFICE
DIVISION OF FIRE PREVENTION
ANCHORAGE, ALASKA

USFA ARSON NEWS — Arson Control a Top Priority, Vickery Says

MANAGEMENT — Arson Task Force Assistance Forthcoming

INVESTIGATION/PROSECUTION — Ten Additional Arson Training Courses Planned

ECONOMICS — National Association of Insurance Commissioners Establishes an Arson Task Force

BEHAVIOR — L.A. County Firesetters' Counseling Program on Prime Time T.V.

FEATURE ARTICLE — How to Fight Arson with Public Education

ARSON CONTROL

A TOP PRIORITY,

VICKERY SAYS

Arson remains the fastest growing crime in America. The national direct loss due to arson is estimated at $1.3 billion per year, a figure that is comparable to losses due to other major crimes such as larceny-theft ($1.1 billion) or burglary ($1.4 billion). In the United States more people die in arson fires annually than in all natural disasters combined.

In a recent interview, Gordon Vickery, Administrator, United States Fire Administration, stressed the need for a positive, effective national effort to counteract these staggering statistics.

"When I assumed the leadership of the Fire Administration, I put the responsibility of coordinating efforts to prevent and control arson as one of my top priorities," Vickery emphasized.

"While the problem is fairly well identified, I do not believe the situation has peaked--either in the magnitude of the number of lives lost or the total property damage.

"We're still fairly new in this field, but I believe we are beginning to develop some fairly sophisticated techniques--a predictive system--which will assist local authorities in preventing arson fires before they happen," he said.

"Our report to Congress on a Federal strategy to combat arson is in the final review process and should be distributed in the near future. We've also entered into an agreement with the Law Enforcement Assistance Administration (LEAA) to accept $500,000 to expand our training programs in detection, investigation, and the development of task forces.

"I contend the arson problem can be controlled," Vickery concluded. "It will take a coordinated effort of all those concerned at each level of government. We <u>are</u> concerned and pledge to work expeditiously and cooperatively with others in achieving the desired end."

USFA AND LEAA COOPERATION

VIEWED AS BENEFICIAL

Two high-level officials of the Law Enforcement Assistance Administration and the United States Fire Administration agree that the joining of hands by the two agencies to fight arson can only have positive effects.

"Arson is both a fire and a crime," said Robert Grimes, head of the Office of Criminal Justice Programs at LEAA, "and because of this unique characteristic there has been some confusion in the field as to how it should be handled."

"In our minds, it is not a matter of turf, but rather an understanding that to fight arson effectively, the fire service and police must work together," added Richard Strother, Associate Administrator of USFA, who is responsible for the coordination of USFA arson initia-

tives. "This is why we drew up an agreement in March between our two agencies, delineating areas of responsibility and cooperation at the Federal Level."

"One major benefit of our agencies working together is that we can encourage cooperation at the state and local level," added Grimes. "In early June, LEAA transferred to USFA a half million dollars, part of which is to be used in the next year to motivate and train people in the task force concept."

"A number of objectives will be completed with the transfer of funds," stated Strother. "One task, in fact, has already been accomplished--the pilot testing of the National Fire Academy and National College of District Attorneys seminar on arson for prosecutors. The monies will also be used to teach 10 additional Academy detection and arson investigation courses and to hand off number of student detection handbooks to state training directors for use by volunteer departments. Approximately half of the funds, however, will be devoted over the next 12 months to help states coordinate their resources and develop strategies to meet the arson threat, and to provide motivational workshops and technical assistance to municipalities that wish to start arson task forces."

"We expect to be working together on this issue for quite some time," concluded Grimes. "Cooperation is the only sensible way to deal with the arson problem."

USFA ARSON REPORT TO CONGRESS CONTAINS 70 RECOMMENDATIONS

In an effort to address the Nation's arson problem, the 95th Congress in October, 1978 called upon the United States Fire Administration to study and report on what the Federal role should be in assisting state and local governments in arson prevention and control.

The USFA report entitled Arson: The Federal Role is based on an intensive national survey, examination, and analysis of existing arson research, studies, and programs. The report is organized into five chapters on: Federal Programs for Reducing Arson; State and Federal Arson Laws; Recommendations for Combatting the Nation's Arson Problem; and an Arson Cost-Benefit Model.

By far the largest section is Chapter IV, containing 70 recommendations for Federal support of state and local arson prevention and control efforts. These recommendations are organized into four sections: Management; Investigation/Prosecution; Economic Incentives; and the Psychology and Behavior of Firesetters.

Input for the report was solicited from every state, and extensive reviews of the recommendations were made by state and local officials, the Joint Council of Fire Service Organizations, various Federal agencies, and a number of public information groups.

It is expected that copies of the

Executive Summary of the Report will be available in November from:

Office of Planning and Education
Room 610
United States Fire Administration
Federal Emergency Management Agency
Washington, D.C. 20472

The full report will be available later in the year from the Government Printing Office.

BULLETIN NEEDS YOUR HELP

This is the first issue of the Arson Resource Bulletin. For it to grow and prosper it needs your help. For it to truly be useful to the field--and the field includes arson investigators, public fire education specialists, prosecutors, police, insurance representatives, arson task forces and advisory committees to name a few--we need to hear what you are doing. If you have programs, ideas, resources, successes, failures, announcements you want to share, please let us know. We want this bulletin to serve as an exchange of information between all parties concerned with arson prevention and control.

A word concerning our format: it basically emulates the structure of the USFA report to Congress on arson. We see that arson must be attacked on four fronts: management, investigation and prosecution, economic, and behaviorial. News related to task forces, data collection and analysis, arson awareness programs, early warning systems and community arson initiatives we view as management issues. Investigation and Prosecution is self-explanatory and includes training and technological news. The Economics section deals with insurance, housing and banking efforts to reduce arson, particularly arson for profit. The Behavior section looks at the psychological motives, especially efforts to combat juvenile fire-setting.

The structure is not hard and fast and overlap will occur, but it does provide an organizational approach in looking at the arson issue. We are open to suggestions for new columns, special features, and new ideas.

This bulletin will be published seven times a year. The next issue will be mailed in November.

All comments and suggestions regarding the Bulletin should be directed to:

Dr. Herman Weisman
Arson Resource Center
United States Fire Administration
Federal Emergency Management Agency
Washington, D.C. 20472

ARSON IS THEME OF USFA FIFTH ANNUAL CONFERENCE

Arson will be the focus of the Fifth Annual Conference of the United States Fire Administration scheduled for January 21-23, 1980, in New Orleans, Louisiana.

"It is time to halt the growth of this crime," said Gordon Vickery, USFA Administrator, "which is why USFA is increasing its efforts to work with Federal, state and local organizations as well as

the private sector in attacking the problem. It is also why we have decided to bring our conference resources to bear on the problem by bringing arson experts from different disciplines together at our annual conference to discuss not only the arson situation in the United States, but to identify and help implement solutions to this menace."

When he was Fire Chief of the Seattle Fire Department, Mr. Vickery initiated that Department's Arson Unit which resulted in the Seattle Arson Task Force that is today a good example of what can be done to combat arson and turn its growth around. The Seattle Task Force will be discussed at the annual conference, along with other successful arson-fighting programs, including those in San Francisco, Dallas, Los Angeles County, and New Haven.

Implementation packets for these programs will be available so that conference attendees can take the applicable information home for use in designing and operating an arson program tailored to the requirements of the community.

Other features of the 1980 Conference will include:

- innovative presentations involving role-playing, debates, mock court trials, round-table discussions;
- extensive attendee participation through group question/comment periods and one-on-one discussions with speakers;
- "hands-on" demonstrations of effective arson programs and a live vehicle arson fire;
- displays of incendiary devices, forensic laboratory and detection instruments, and an arson mobile van;
- review of current USFA and other Federal arson initiatives.

Since arson control is an aspect of fire protection which involves a significant number of disciplines, the program for the 1980 Conference has been designed to include participation by representatives of criminal justice, government administration, banking, and the insurance industry as well as members of the fire service.

The Conference will be hosted by the New Orleans Fire Department under the direction of Chief William McCrossen at the New Orleans Hilton Hotel.

Agenda details and registration information may be obtained by calling Mary Underwood at 202/634-7654 or by writing to:

National Fire Conference
United States Fire Administration
Federal Emergency Management Agency
Washington, D.C. 20472

USFA ARSON RESOURCE CENTER ESTABLISHED

Under the direction of Dr. Herman Weisman of the Office of Planning and Education, an Arson Resource Center has been established at the United States Fire Administration.

The major purpose of the Center is to act as a clearinghouse for arson information. Dr. Weisman will solicit material from the field and in turn, disseminate it through this bulletin, and through prepared papers, brochures, and letters in re-

sponse to requests for information.

Recently, the Center has been updating and expanding the USFA collection of 800 documents, films, slide sets, case histories, and other items related to arson first compiled in 1977.

If you have a question or need certain information about arson, the Center will try to help you. Please write:

Dr. Herman Weisman
Arson Resource Center
United States Fire Administration
Federal Emergency Management Agency
Washington, D.C. 20472

MANAGEMENT

ARSON TASK FORCE ASSISTANCE FORTHCOMING

As part of an interagency agreement, monies have been transferred to USFA from LEAA to provide technical assistance to states and municipalities on how to implement arson task forces.

Arson task forces are based on the concept that coordinating and pooling the talents and resources of agencies concerned with arson prevention and control is one of the most effective ways to deal with the crime.

Directed by John Lynch of the Office of Planning and Education, the technical assistance program will have two phases. In the first phase, beginning in September, Lynch will provide technical advice to state officials wishing to employ the task force concept in developing a statewide arson strategy.

"Starting in February, we will provide workshops for interested cities on how to set up arson task forces and discuss the advantages and problems experienced by other cities in implementing the concept," said Lynch in a recent interview.

"If a city decides to start a task force and runs into difficulty on how to proceed with a specific issue (e.g., training, data collection, arson public education campaigns), we will send to that city personnel with experience in dealing with these program areas in their own communities.

"I should make it clear that we will be offering technical assistance,

upon request, not financial assistance. We will do our very best to help people establish task forces within their jurisdictions," concluded Lynch.

For information or assistance in starting a task force, please write:

John Lynch
Office of Planning and Education
United States Fire Administration
Federal Emergency Management Agency
Washington, D.C. 20472

NEW JERSEY DEVELOPS ARSON STRATEGY

In the early months of 1979, New Jersey suffered a high number of fatalities which were reportedly due to arson and suspicious fires. In response to these tragedies, Governor Brendan T. Bryne organized an arson task force and charged the group with the responsibility to study the nature and magnitude of the arson problem in New Jersey, to identify causal factors associated with the problem, to assess the State's response to the crime of arson and finally to explore avenues for the development of an effective and comprehensive statewide strategy for arson prevention and control.

The 16 member task force, organized under the Department of Law and Public Safety, is comprised of fire and police personnel, prosecutors, insurance, and housing authorities. John Lynch from the United States Fire Administration provided technical assistance to the task force.

The task force made recommendations in the areas of data and information, training, investigation and enforcement, housing, insurance, public awareness, and agency coordination. The task force's report is now complete and single copies can be obtained free from:

Lawrence Welle
Deputy Attorney General
New Jersey Division of Criminal Justice
13 Roszell Road
Princeton, New Jersey 08540

AIMS CONFERENCE HELD

USFA sponsored an invitational Arson Information Management Systems (AIMS) Conference May 3-5, 1979, in Airlie, Virginia.

The purpose of the conference was to exchange information about systems designed to collect, analyze, and manage data that can assist in predicting and investigating arson. Speakers informed the audience, comprised of fire chiefs, investigators, prosecutors, and representatives from the insurance industry and various Federal agencies, about the efforts of Boston, New Haven, Ohio State Fire Marshal's Office, Law Enforcement Assistance Administration, American Insurance Association and Battelle-Seattle Research Center in developing and/or utilizing information management systems. At the conclusion of the conference, participants were asked to make recommendations regarding future directions for AIMS.

Proceedings of the conference are now available. While the supply lasts, single free copies can be

obtained by writing:

Nancy Stone
Office of Planning and Education
United States Fire Administration
Federal Emergency Management Agency
Washington, D.C. 20472

"WINNING THE WAR ON ARSON"

A NEW FILM

This 15:30 minute color film, produced by Aetna Life and Casualty, explores the dimensions of the country's fastest growing crime, and focuses on how two communities, Seattle and New Haven, are managing their resources to deal with arson. Geared for general audiences, the film includes interviews with arson investigators, prosecutors, fire and city officials, and insurance representatives.

Appropriate for arson public education campaigns, the film is available for free loan either in 16 mm film or 3/4" video tape cassette. Brochures on the Seattle and New Haven programs are included.

Please write:

Film Librarian
Aetna Life and Casualty
151 Farmington Avenue
Hartford, Connecticut 06156

ICMA BOOK COULD BE USEFUL

The International City Management Association has recently published Managing Fire Services (1979) as one book in their Municipal Management Series.

For fire chiefs going to their city managers to argue for a coordinated effort among city agencies to combat arson, the ICMA book could prove useful. One chapter written by Bob Carter of the National Fire Protection Association, called "Managing Fire and Arson Investigation," speaks to the issue of coordination and successfully makes the case for the formation of arson task forces. Showing a city manager that his/her own association thinks task forces are an example of good management, could be convincing.

Check your library for the book, or purchase it for $27.50 from:

Order Department
International City Management Association
1140 Connecticut Avenue, N.W.
Washington, D.C. 20036

INVESTIGATION/PROSECUTION

TEN ADDITIONAL ARSON TRAINING COURSES PLANNED

The National Fire Academy will be offering ten additional detection and investigation courses in the field during the next 12 months due to a transfer of funds from LEAA to USFA.

The Academy's arson offerings have been highly acclaimed by over 1,000 students who have taken the courses. The 3-day detection course trains fire personnel in identifying fire causes and detection of arson, securing the fire scene, identifying and preserving evidence, and reporting of incidents. The 10-day investigation course for fire and law enforcement personnel includes the same topics as the detection course, but also covers the most current and effective techniques of fire/arson investigation, motivation of the firesetter, witness interrogation, case preparation, and presentation.

"We will be offering the courses in each of the ten Federal regions, but in states in those regions where we have not taught the courses before," states Victor Palumbo, manager of the Academy's arson programs. "We conducted our first LEAA sponsored course in Region 9 in July. Our next offerings will be in Region 5 (Ohio) September 17-28, Region 4 (North Carolina) October 15-26, and Region 3 (Maryland) in November. Other regions will be covered starting February of next year.

"A 30 percent stipend is provided to participants of the LEAA sponsored courses," continued Palumbo. "The Academy arson courses are always oversubscribed, therefore we must be very restrictive as to who fills the 35 slots available for each offering. Generally, only cities with over 200,000 population receive invitations since they often have the most severe arson problems."

The arson courses will also be taught at the National Fire Academy site in Emmitsburg, Maryland beginning in January. If you would like further information about the courses, please contact:

Victor Palumbo, Arson Manager
National Fire Academy
United States Fire Administration
Route 1, Box 10A
Emmitsburg, Maryland 21727

ARSON AID FOR VOLUNTEERS

Within the next six months, volunteer fire departments can expect help in their efforts to fight arson from the United States Fire Administration.

Supported by monies from LEAA, aid to volunteers will come by three avenues. One, volunteers will be encouraged to attend the 3-day detection course soon to be taught in each of the ten Federal regions (see previous article). Two, approximately 4,000 copies of the student handbook for the detection course will be distributed free to state training directors for use by volunteer departments. Three, a handbook will be prepared on how volunteers can best meet the arson

problem within their communities. Model volunteer programs will be described in the booklet.

For further information about the detection course, please contact Victor Palumbo as noted above. For information about either of the handbooks, please contact your state training director in March, 1980. If you feel your volunteer department has an effective program to reduce arson, please describe your efforts in a letter and send it to:

Nancy Stone
Office of Planning and Education
United States Fire Administration
Federal Emergency Management Agency
Washington, D.C. 20472

PROSECUTORS' SEMINAR PILOT TESTED

A seminar for prosecutors on arson investigation and prosecution, planned and presented by the USFA National Fire Academy and the National College of District Attorneys, was held in Alexandria, Virginia, on June 3-6, 1979.

Supported by monies from LEAA and the insurance industry, the seminar received a high rating from the 65 prosecutors in attendance. Seminar topics covered by noted experts were: general nature and behavior of fire, incendiary fire detection, evidence preservation and laboratory analysis, inter-agency investigatory cooperation, insurance industry assistance, preparation of case, presentation of the state's case, and how to meet common arson defenses. In addition, workshops were held on the technical aspects of arson and the prosecutorial aspects of the arson case.

Within the next five months, the seminar is scheduled to be taught again in the following locations: Chicago (September 16-19), Denver (November 28-December 1), and Atlanta (January 20-23). For more details, please write:

Kathryn Gentilezza
National College of District Attorneys
College of Law
University of Houston
Houston, Texas 77004

One inch video tapes of the seminar are available on free loan to selected organizations and agencies. For further information, please contact:

Tom Gavey
Audio-Visual Communications Division
Law Enforcement Assistance Administration
633 Indiana Avenue, N.W.
Washington, D.C. 20531

ARSON HAS DOUBLED, ARRESTS/CONVICTIONS UP

According to a just released study by the National Institute of Law Enforcement and Criminal Justice, arson fires per capita almost doubled between 1971 and 1977, from 55 per 100,000 to 98 per 100,000. On a more encouraging note, arrests increased slightly over a 1976 survey, from 9 percent to 11 percent. Nearly half of those arrested (5.4 percent) were convicted.

Other highlights of the study

entitled A Survey of Arson and Arson Response Capabilities in Selected Jurisdictions, include:

- Fire departments that investigate a high percentage of all fires uncover relatively more arson fires and make relatively more arrests than those departments investigating a lower percentage of fires. This is particularly true of those fire departments that investigate more fires than the firefighters at the scene suspect to be arson.

- On the average, fire departments assign only one staff member to their arson unit for every $2.5 million in the department's budget.

- Many cities, particularly those with a high incidence of arson, have implemented task forces to coordinate city resources against arson.

Free single copies of the study, based on a survey of 174 fire departments in cities with a population of 50,000 or more, can be obtained by writing:

National Criminal Justice
Reference Service
P.O. Box 6000
Rockville, Maryland 20850

NFPA TRAINING UNIT AVAILABLE

The National Fire Protection Association has produced the first unit of a series of twelve slide/tape training packages on arson investigation. The twelve part series will instruct firefighters, fire investigators, police, and insurance investigators in recognizing signs of arson. The first unit, entitled "Fire Fighter Responsibility in Arson Detection," is geared specifically to the firefighter.

The training package, order No. SL-37, Unit 1, is comprised of approximately 30 color slides (35 mm), cassette tape, and instructor's manual. Cost is $40.00 per set and may be ordered from:

Publication Sales Department
National Fire Protection
Association
470 Atlantic Avenue
Boston, Massachusetts 02210

The second and third units of the series, entitled "Determining Origin and Cause" are expected to be available sometime in September.

NATB AUTO ARSON BOOK REISSUED

Manual For the Investigation of Automobile Fires, published by the National Automobile Theft Bureau, has been re-released, and copies are available for fire investigators and others concerned with auto arson. Given the energy crunch and the resulting increase in theft and torching of gas guzzling cars, the reissuing of this manual is opportune.

The 50-page book details the investigative contribution that can be made by insurance adjusters, police, fire personnel, and mechanics.

To obtain free copies of the book, please write:

Richard Wedekind
National Automobile Theft Bureau
9730 South Western Avenue
Chicago, Illinois 60642

"ANATOMY OF AN ARSON"

A TRAINING FILM

The Insurance Crime Prevention Institute has recently produced a film, "Anatomy of an Arson," designed for insurance adjusters and appraisers, and those at the introductory level of arson investigation. The 32-minute film provides instruction on basic skills for approaching a fire scene, including the determination of point of origin, cause, common incendiary devices, and common techniques for fire acceleration.

The 16 mm color film may be borrowed (for approximately 2 weeks) or purchased for $125 from:

James Ahern, Director
Insurance Crime Prevention Institute
15 Franklin Street
Westport, Connecticut 06880

The ICPI is a national non-profit trade organization funded by the insurance industry to investigate fraudulent casualty and property insurance claims.

ECONOMICS

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS ESTABLISHES AN ARSON TASK FORCE

The growing national arson problem has been of concern to the National Association of Insurance Commissioners. Deciding that state insurance commissioners can play an influential role in helping to curb arson, the NAIC established in June, 1979 an arson task force to study the problem and offer recommendations for possible action by individual state commissioners. Scope of action will not be limited to concerns with new legislation, but could include new approaches to statewide arson measures.

Members of the NAIC Arson Task Force are:

Harvey Bartle, III, Commissioner of Insurance, State of Pennsylvania, Chairman;
Albert B. Lewis, Superintendent of Insurance, State of New York;
David Elliot, Insurance Commissioner, State of Delaware;
Richard L. Mathias, Director of Insurance, State of Illinois.

A first meeting of the NAIC Arson Task Force was scheduled for September 7, 1979, in Philadelphia.

ARSON CONTROL DIRECTORY PUBLISHED

The Public Relations Committee of the Insurance All-Industry Committee for Arson Control released copies of its Arson Control Directory in August. The directory, a key resource, will be helpful to public and private organizations concerned with arson prevention and control.

The main focus of the directory is a state by state listing of key persons, groups, and organizations involved in combatting arson. Regional offices of Federal agencies, such as the FBI, ATF, Forest Service, and IRS, are listed. The state fire marshal, attorney general, insurance commissioner, and state chairman of the International Association of Arson Investigators are also noted. If a state has an arson advisory committee, hotline or tipster program, contacts are listed.

The directory also includes a copy of Target: Arson, the official guiding document of the All-Industry Committee, a sample speech text on arson which can serve as the basis for articles on arson, and a listing of national organizations which are concerned with the crime.

Copies are available for $15 each from:

Lawrence C. Christopher, Chairman
Public Relations Subcommittee
IAICAC
20 North Wacker Drive, Suite 2132
Chicago, Illinois 60606

THIRTY-FIVE STATES ADOPT IMMUNITY LAW

As of July, 1979, 35 states have enacted immunity laws protecting insurance companies from suits when they share arson-related information with law enforcement officials. The first such law was enacted in Ohio in 1976.

In 1977, the Alliance of American Insurers and its affiliate, the Property Loss Research Bureau, drafted model legislation entitled, "Arson Reporting-Immunity Bill." The Alliance and other insurance associations believe that immunity laws are needed if insurance executives are to report suspected arson cases to law enforcement authorities without fear of libel or slander suits by clients. They feel that a two-way flow of information between insurers and law enforcement agencies is necessary to effectively combat arson. Although the model bill provides for a two-way exchange of information, most state immunity laws only require a one-way exchange, from insurance companies to law enforcement authorities.

States which have not enacted an immunity law to date are: Alabama, Alaska, Arkansas, Delaware, Idaho, Kentucky, Mississippi, Missouri, Nevada, New Jersey, Oregon, Pennsylvania, South Carolina, Vermont, and Wyoming. In these States, the results of investigations conducted by insurance companies are usually shared with police and fire investigators only after a subpoena is issued. For copies of the model bill, please write:

Kenneth H. Nail
Chairman, Subcommittee on Legislature
Insurance All-Industry Committee for Arson Control
20 North Wacker Street
Chicago, Illinois 60606

BEHAVIOR

L.A. COUNTY FIRESETTERS' COUNSELING PROGRAM ON PRIME TIME T.V.

Juvenile firesetting and the Los Angeles County Fire Department's program for counseling firesetters were featured on NBC's "Prime Time" August 5, 1979. The documentary pointed out that firesetting by juveniles is a growing and serious problem in the United States. Captain Joe Day and other southern California fire personnel began working closely with mental health professionals three years ago to develop techniques for identifying and helping these youthful firesetters. The program they developed seems to work. It is credited for being a major factor in reducing the incidence of juvenile firesetting in Los Angeles County from 169 to 20, within a one year period. A manual entitled "Interviewing and Counseling Juvenile Firesetters" resulted from their work and will soon be available through the United States Fire Administration to fire departments nationwide.

Fire department personnel are often the first community resource people to come in contact with the juvenile firesetter. In investigating intentionally set fires, department personnel often interview suspected juvenile firesetters and/or provide advice to distraught parents of young firesetters. In the past, fire personnel had to rely on their own experience and intuition to handle these situations. The new manual provides information and a format to help the fire community

deal more effectively with the juvenile firesetter.

The first volume of the manual, scheduled for publication this fall, focuses on the child under seven. A supplement for older juveniles is being prepared and will be available in the summer of 1980.

The first volume of the manual includes:

- Basic information on causes of firesetting behavior in children.
- Strategies and techniques for interviewing children and parents to determine cause of firesetting behavior.
- A guide for using interview information to determine if the child will respond to an educational program or needs professional help.
- Resources for helping the child and family including: educational programs for the curiosity firesetter and mental health resources for the disturbed child or family.

A workshop to provide fire personnel with training in using approaches discussed in the manual has been developed and is presently being field tested. A video tape entitled "Interviewing Juvenile Firesetters" was produced for the workshop by the Fire Services and Arson Prevention Committee of the California State Psychological Association under a grant from USFA. The Committee is made up of both psychologists and fire service personnel.

Early response to the workshop from the field has been positive. "The workshop was so well received here," stated John Anderson, Supervisor, Washington State Fire Service Training, Olympia, Washington, "that we plan to include the topic in our Arson Investigation and Detection series." Workshops are scheduled in the near future in Georgia, Montana, California, and Connecticut. For more information about the manual and/or workshop, please contact:

Jim Smalley
Office of Planning and Education
United States Fire Administration
Federal Emergency Management Agency
Washington, D.C. 20472

FIRESETTING REVIEW COMPLETED

The Center for Fire Research, National Bureau of Standards, recently released The Psychology of Firesetting: A Review and Appraisal, a study conducted by the Department of Psychology at the University of North Carolina.

The paper is a review of the literature of firesetting and describes a preliminary conceptualization of how firesetters should be classified. Among other topics, the paper covers firesetting behavior, consequences of firesetting (i.e. those factors which reinforce the act of firesetting) and intervention strategies.

This study shoud prove useful to researchers and those involved in the prevention and treatment of firesetting.

Copies of the paper may be purchased for $5.25 from:

National Technical Information Service (NTIS)
5285 Port Royal Road
Springfield, Virginia 22151
Order No.: PB290821

FEATURE ARTICLE

HOW TO FIGHT ARSON WITH PUBLIC EDUCATION

Local public arson education campaigns have proven to be effective tools in the fight against arson. After eight months of "Burn the Arsonist for Cold Cash" campaign in Dallas, there was a 26 percent decrease in arson fires compared to the same eight month period the year before. In Seattle, the monthly dollar loss dropped from $410,000 to $192,000 after an intensive public education campaign.

Campaigns do two things: (1) they inform the public about the seriousness of arson in their community and (2) they solicit the help of the public to combat the crime. Although these two elements are not mutually exclusive and are often accomplished at the same time, they will be covered separately here.

Informing the Public about the Seriousness of the Arson Problem

The campaign centers around the media. The media must be fed the information. Fire is news and arson is better news. Often the media will support efforts to educate the public.

The strategy that Chief Andy Casper uses in San Francisco is to call a news conference each time there is a major arson fire. He makes a point to explain to the newspaper, radio, and T.V. reporters the property loss and human suffering which resulted from an arson fire. Be it the fire chief, the head of an arson task force, or the mayor, having a recognized community leader point out the harm that arson causes is important.

To support a chief's news conference, fire department press releases can center on the number of arson incidents to date, the dollar loss, the injury and death rate, the loss of taxes, jobs, and how these factors affect the public as a whole. In Seattle, the offices of Fire Chief Frank Hanson and Mayor Al Uhlman issued a joint release proclaiming "Arson Awareness Week" further drawing attention to the problem.

Once stimulated, the news media will generally pursue the issue on its own. Local television stations in Los Angeles, Dallas, and Seattle have all produced week long in-depth

series on arson in their respective cities. In one such series, the television reporter and camera crew accompanied the arson investigator investigating a fire. The series was called "Arson for Hire" and concluded with an interview, arranged by investigators, with an arsonist. Another series concentrated on the fear people feel when arson is a common occurence in their neighborhood.

Newspapers will also run special series on the crime. Articles that concentrate on how arson infringes on the public's pocketbook, like increased insurance rates, are particularly effective.

Lectures to civic groups, school assemblies, and community organizations are another avenue for getting the message out. The Seattle Fire Department managed to secure the services of professional athletes to speak to students during and after school about arson, which proved to have an impact on the rate of juvenile initiated fires.

Soliciting the Help of the Public

Help can take many forms. One form is encouraging the public to lobby for more staff, better training, or improved laws. Another form is asking various civic groups to contribute to the purchase of required equipment, like an accelerant detector.

More commonly, however, the public is asked to provide investigative leads to solve a particular arson case. This is achieved primarily through a tipster/hotline program. This program consists of a telephone number, most often 24 hour lines, which citizens can call with information pertaining to arson-related fires. In connection with the majority of tipster/hotline programs is a reward fund, usually financed by the insurance industry. Rewards range from small amounts for useful tips to larger sums for information which leads directly to the arrest of a firesetter. In Michigan where they have had an operational hotline since 1975, 51 people have been arrested and 33 rewards totalling $12,400 have been distributed. Most of the tipster/hotline programs are statewide, but local organizations have begun to initiate their own programs. Before starting a local program, it would be beneficial for a municipal officer to check with the state fire marshal's office in case a toll-free number exists within the state.

Once a tipster/hotline program has been established, the development of a catchy slogan helps push the public arson education campaign forward. Slogans such as "Arrest Arson," "Put the Heat on Arson," "Stomp Out the Arson Bug," and "Burn an Arsonist for Cold Cash" provide a central theme for the public to rally around.

A symbol, to accompany the slogan, further identifies the campaign in the eyes of the public. In Seattle, a rat symbolizes the arsonist in their "Arson Alarm" campaign. An interesting sidenote is that a contest was held to name the "arson rat" and the name chosen was "Sinder Sid." After the contest was completed, "Stop Sinder Sid" t-shirts were printed and sold. This contest not only resulted in an identifiable symbol and slogan, but also served as a mechanism to reach a large portion of the juvenile population that was not aware of the arson problem.

FEATURE ARTICLE

There are several methods by which to advertise tipster/hotline programs.

Seattle developed four television spot announcements. One announcement begins with a hand igniting a match, then slowly moving toward a pile of combustibles. As the match reaches the pile of combustibles, the wrist is handcuffed. The accompanying message is "Arrest Arson. If you have information about a fire, be a hero and call this number."

Other methods of advertisement are equally as effective. These include: billboards placed throughout the city, signs mounted on the inside and rear of public buses, bumper stickers, and newspaper and magazine ads. These ads usually contain the campaign slogan, symbol, reward amount, and tipster/hotline telephone number. The investigators in one city hand out calling cards to spectators at a fire scene where arson is suspected, post a sign on the burned building announcing a reward for information and distribute a flyer to residents within a six block radius of the fire which describes how to contact the fire department if they have leads which will help solve the crime.

Summary

A public arson education campaign involves informing the public of the seriousness of the crime and soliciting their involvement.

Methods of educating the public which have proven to be successful include:

- News conferences held by a recognized city leader
- The issuing of press releases
- Newspaper articles and continued coverage
- Arson specials on T.V.
- Lectures to civic, school, and community groups

To involve the public, a tipster/hotline program with a reward fund is most commonly used. The program and identifiable slogan and symbol are advertised through:

- T.V. and radio public service announcements
- Billboards
- Public transportation signs
- Bumper stickers
- Newspaper and magazine ads
- Reward signs at suspected arson sites
- Flyers

If you would like a list where public arson education campaigns are being conducted, with contact names and addresses, please write:

Dr. Herman Weisman
Arson Resource Center
United States Fire Administration
Federal Emergency Management Agency
Washington, D.C. 20472

KNOWN INCENDIARY STRUCTURE FIRES

August 1 - November 13, 1979

ADDRESS	DATE	STRUCTURE TYPE	DAMAGE ESTIMATE	MOTIVE	RESPONSIBLE PERSON(S)
1213 E. 8th	8/11/79	S&S Apt.	800	UNK	UNK
1250 E. 8th	8/14/79	S&S Apt.	26,000	UNK	UNK
7001 Jewel Lake Rd.	8/15/79	Ulmer Rexall	550,000	UNK	UNK
206 B McCarey	8/5/79	Condominium	300	UNK	UNK
237 Friendly Place	8/22/79	Dwelling	200	UNK	UNK
3800 Lois Dr.	8/26/79	Aloha Massage	50	Dissatisfied Customer or Competition	Adult
Carrs Shopping Center, E.R.	8/11/79	Restaurant	300	UNK	UNK
3500 Mt.View Dr., Sp. 18	8/24/79	Mobilehome	4,000	UNK	UNK
160 N. Klevin, Sp. 18	9/8/79	Mobilehome	10,000	UNK	UNK
Kit Kat Club	9/2/79	Bar	-0-	Alcohol Related	Adult
2833 E. 72nd Ave.	9/17/79	Storage Shed	3,000	UNK	UNK
7508 Arctic Blvd.	9/26/79	Dwelling	30,000	UNK	UNK
13031 Bates Circle	9/19/79	Dwelling	100	UNK	UNK
741 E. Tudor	10/1/79	Restaurant/ Disco	5,000	UNK	UNK
4330 Northwood	10/3/79	Dwelling (6-Plex)	200	Cover for Child Stealing	Adult
5001 Eagle	10/6/79	Offices	50,000	UNK	UNK
741 E. Tudor	10/15/79	Restaurant/ Disco	3,500,000	UNK	UNK
6941 Weimer, Apt. 4	10/12/79	Dwelling(6-Plex)	30,000	UNK	UNK
125 N. Bliss	10/24/79	Dwelling	5,000	Mental/Alcohol	Adult
4231 Laural St.	10/27/79	Apartment	50	UNK	UNK
140 E. 4th	11/4/79	Bar (Moby Dick)	225,000	UNK	UNK
945 Juneau	11/4/79	Duplex	1,000	UNK	UNK
945 E. 11th	11/4/79	Apartment	500	UNK	UNK
945 E. 11th	11/4/79	Apartment	1,000	UNK	UNK
		TOTAL	4,442,500		
*Kit Kat Club	9/3/79	Bar	125,000	UNK	UNK

*Cause of this fire is Undetermined.

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER _____

DEPARTMENT Judiciary

ATTENTION B Zeigler

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

Room 107 - Capitol

FROM:
MAIL STATION NUMBER 1200

DEPARTMENT Public Safety

BY _____ DATE 5-21-80

02-002 (REV.10/73)

BILL ANALYSIS

ASSIGNMENT DATE 5-16-80

UNASSIGNED _____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Original Sponsor: Bradley by Request Judiciary Committee	HCS for CS SB 303

DEPARTMENT POSITION

Support

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Ronald A. Hendrie	5-20-80	William R. Nix	5/20/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING) (1) None - To our knowledge
(2) OTHER AGENCIES AFFECTED BY BILL (2) Department of Law

(2) a. ORGANIZATIONAL SUPPORT FOR BILL

Alaska State Firefighters Association
Alaska Fire Chiefs Association
Insurance Industry

(2) b. ORGANIZATIONAL OPPOSITION TO BILL

None - To our knowledge

(3) PROGRAM EFFECTS OF BILL

Will enhance the investigative process by improving the mechanism for the exchange of necessary and vital information.

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

None

(6) COMMENTS:

Same general comments as stated for the original bill. Refer to our analysis of SB 303 dated 1-22-80.

The language in CS for SB 303, which was drafted by Barry Stern, Department of Law, is considered far superior to that of the original bill.

HCS for CS SB 303 changes line 3 on p.2 (CS SB 303) deleting the word "agency" and inserting "Department of Law". We have no objection to this change and so testified during the House Judiciary Committee hearing on CS SB 303, 5-12-80.

SB
308

COMMITTEE REPORT

SENATE

1/14/80

FURTHER: NONE

Date: 1/14/80

Mr. President:

The Committee on JUDICIARY has had SB 308
shifting to the state the burden of proving that a challenged regulation is valid

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

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 MELAND, MEMBER

SENATOR BENNETT, MEMBER

SENATOR DANKWORTH, MEMBER

SENATOR RAY, MEMBER

BARRY DONNELLAN
Attorney at Law

P.O. Box 73795 • Fairbanks • Alaska • 99707 • (907) 456-2309

February 8, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Senate Bills 340 and 355

Dear Senator Ziegler:

This office represents many mining claim holders throughout most of Alaska. This affords me an excellent opportunity to guage the mood of a large segment of our population.

I can assure you, Senator Ziegler, that the question of regulations is foremost in the minds of my clients. A major flaw in our system of government is the fact that the regulations are promulgated by bureaucrats insensitive to and immune from the will of the electorate.

It is my impression that if the power to promulgate regulations is not rescinded and vested in those responsive to the will of the electorate, it is only a matter of time until the people of Alaska will take the law into their own hands. With a view to averting such a catastrophy, it is hereby suggested that you utilize the full power of your office to expedite passage of Senate Bills 340 and 355.

Many thanks for your attention to this very important matter.

Sincerely yours,

Barry Donnellan

Barry Donnellan

Copy: Senators Fahrenkamp and Sumner

(b) Only this section and § 180 of this chapter apply to

(1) a regulation which prescribes the organization or procedure of an agency, or

(2) Repealed by § 4 ch 45 SLA 1969. (§ 2(1) art IV (ch 1) ch 143 SLA 1959; am § 17 ch 143 SLA 1968; am § 8 ch 40 SLA 1969; am § 4 ch 45 SLA 1969)

Legislative committee report. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414.

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, §§ 26, 27.

Article 5. Judicial Review.

Section

300. Court review

Sec. 44.62.300. Court review. An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid (1) for a substantial failure to compy with §§ 10 — 320 of this chapter, or (2) in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency under § 250 of this chapter. (§ 1 art V (ch 1) ch 143 SLA 1959)

Judicial review from nonadjudicatory legislative action is provided in the Administrative Procedure Act under this section, which section specifically provides for declaratory relief, but not for a statute of limitations on actions. Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

In the past the supreme court has departed from a restrictive interpretation of the standing requirement. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Standing may be allowed one without direct interest in outcome. — The need for review in certain cases may make it desirable to allow standing to one whose primary interest is not in the direct outcome of the administrative action, but in its competitive effect on his economic interest. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Registered voters held "interested persons" to challenge election regulations. — Residents and registered voters held to possess standing as "interested persons" under the Administrative Procedure Act (AS 44.62) to challenge the regulations promulgated by the lieutenant governor under AS 15.15.330, dealing with early counting of election votes. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Denial of standing to registered voters would have the effect of unduly limiting the possibility of a popular check upon executive control of the election process. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The distinction between legislative and interpretative rule making is a helpful one when reviewing regulations adopted by state administrative agencies. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

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Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, §§ 186 to 250.

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Section

310. Agency meetings pub
312. State policy regarding

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(c) The following e session:

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Article 5. Judicial Review.

Sec. 44.62.300. Court review.

Two distinct types of administrative decisions, etc.

The supreme court has distinguished between two types of questions which may confront a court in judicial review of administrative action. Where the agency decision involves the formulation of fundamental policy or the particularized expertise and experience of administrative personnel, the court will defer to the administrative decision, inquiring only whether it has a reasonable basis. On the other hand, where the issues to be resolved turn on statutory interpretation, the knowledge and expertise of the agency is not conclusive of the intent of the legislature in passing a statute. Statutory interpretation is within the scope of the court's special competency, and it is the court's duty to consider the statute independently. Hood v. State, Sup. Ct. Op. No. 1559 (File No. 3289), 574 P.2d 811 (1978).

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Where there is primarily a question of a statutory interpretation and legislative intent, it is a question of whether "the administrative agency has acted within the scope of its authority" and concerns "statutory interpretations requiring the special competency of the courts." Therefore, the reasonable basis test is not the appropriate standard of review. Stevenson v. Burgess, Sup. Ct. Op. No. 1514 (File No. 2791), 570 P.2d 728 (1977).

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Article 7. Legislative Review of Rules.

Section

320. Legislative annulment of regulations and review

Sec. 44.62.320. Legislative annulment of regulations and review.

(a) The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460. (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975; am § 5 ch 64 SLA 1978)

(b) Only this section and § 180 of this chapter apply to

(1) a regulation which prescribes the organization or procedure of an agency, or

(2) Repealed by § 4 ch 45 SLA 1969. (§ 2(1) art IV (ch 1) ch 143 SLA 1959; am § 17 ch 143 SLA 1968; am § 8 ch 40 SLA 1969; am § 4 ch 45 SLA 1969)

Legislative committee report. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414.

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, §§ 26, 27.

Article 5. Judicial Review.

Section
300. Court review

Sec. 44.62.300. Court review. An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid (1) for a substantial failure to compy with §§ 10 — 320 of this chapter, or (2) in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency under § 250 of this chapter. (§ 1 art V (ch 1) ch 143 SLA 1959)

Judicial review from nonadjudicatory legislative action is provided in the Administrative Procedure Act under this section, which section specifically provides for declaratory relief, but not for a statute of limitations on actions. Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

In the past the supreme court has departed from a restrictive interpretation of the standing requirement. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Standing may be allowed one without direct interest in outcome. — The need for review in certain cases may make it desirable to allow standing to one whose primary interest is not in the direct outcome of the administrative action, but in its competitive effect on his economic interest. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Registered voters held "interested persons" to challenge election regulations. — Residents and registered voters held to possess standing as "interested persons" under the Administrative Procedure Act (AS 44.62) to challenge the regulations promulgated by the lieutenant governor under AS 15.15.330, dealing with early counting of election votes. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

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February 14, 1980

LETTER OF INTENT

SENATE JUDICIARY COMMITTEE

The Senate Judiciary Committee, in reporting out SB 308, "Relating to the Validity of Regulations", feels that various state agencies and departments from time to time promulgate regulations which are totally out of line and beyond the pale of reason.

The bureaucrats of the state are running roughshod over the people and do not seem to understand the ever-increasing public resentment for which the regulations are directly responsible. The public is sick unto death of the amount of unprovoked good that is being done for them.

It is the unanimous opinion of the committee that by compelling the state to uphold the validity of regulations when they are challenged that, although it may be true that the agencies and departments involved may become swamped with litigation and challenges, much better the onus on their backs to justify the validity of regulations than on the backs of the 400,000 some-odd citizens of the state to have the regulations adjudicated invalid.

Strong letter follows!

Respectfully submitted,

Senator Ziegler, Chairman

Senator Meland, Member

Senator Ray, Member

Senator Dankworth, Member

Senator Bennett, Member

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

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SB 308

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

February 26, 1980

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature

The Honorable Samuel Cotten
Chairman
Rules Committee
House of Representatives

The Honorable Charles Parr
Chairman
Judiciary Committee
House of Representatives

The Honorable Mike Miller
Chairman
State Affairs Committee
House of Representatives

Re: SB 308 (burden of proving validity of regulations)

Gentlemen:

This bill passed the Senate by a substantial vote. (1980 S.J., p. 359) If enacted into law, it will create extremely serious problems. A floor amendment which would have alleviated some of those problems was offered yesterday and then withdrawn. I am writing in the hope that you will consider these problems before any definitive House action on the subject. I understand that the Senate recognizes that there are serious problems in this bill and anticipates substantial amendment in the House.

This bill would require that, when an adminstrative regulation is challenged under AS 44.62.300, the state bear the burden of "proving" it valid. There are two areas of difficulty: (1) the basic policy the bill reflects, and (2) more-or-less technical, legal difficulties. I am convinced that this bill would be inimical to the interests of the State of Alaska, not just of the executive branch.

03-C8LH

In reversing the presumption of validity of administrative regulations, the bill destroys the presumption heretofore applicable to statutes, regulations, and other governmental actions. Singling out regulations for a presumption of invalidity attacks an essential means of assuring governmental fairness in dealing with all people. Administrative regulations serve two fundamental governmental functions: (1) since statutes must speak in more-or-less general terms, regulations provide the details necessary to deal with the complexities of a highly technical, highly populous twentieth century society; and (2) they establish a standard for people in dealing with their government and with each other, to avoid their being subjected to possible arbitrary, ad hoc decision making by that government.

Numerous statutes expressly require the adoption of administrative regulations, and numerous statutes expressly authorize the adoption of others. In addition, several supreme court decisions have indicated that agency action taken in the absence of administrative regulations is invalid. Even the ombudsman has filed complaints about the absence of regulations. Administrative agencies thus required to adopt regulations would be unable to execute the statutes for which they are responsible if the regulations necessary to implement those statutory functions do not have the benefit of the presumption of validity.

A bill such as this, essentially stating that administrative regulations are presumed invalid, invites challenges. A complaint need not even be well founded in order to force the state through the hoops of "proving" validity. The attendant expense of such a proposal is difficult to predict precisely, but it is evident that it would be substantial. With the great number of challenges certain to be inspired by this bill if it passes, the witness fees, attorney fees, and related litigation costs would require greatly expanded agency budgets. In addition, the already crowded court dockets would become even more unmanageable. Thus the bill would increase the court overload, increase the cost to the state, and provide a windfall to lawyers.

While there is certainly a popular sentiment against government regulation, it appears most logical to deal with regulations in a way that allows one to distinguish between good ones and bad ones. This bill, in a wholesale fashion, would establish a presumption applicable to all regulations -- from fish and game season opening dates to oil and gas lease provisions to rules of the road to public assistance application procedures, etc.

Many people have in mind a favorite example of a regulation that appears unnecessary or unwise, but the literally thousands of regulations which are essential to the functioning of statutorily created programs, and which raise little if any controversy, would be as affected by this bill as the controversial or questionable ones.

It has been said in support of the bill that one of its purposes is to avoid having people "presumed guilty" under some regulation and to enable them to enjoy the traditional presumption of innocence until proven guilty. But most regulations do not deal with a question of guilt or innocence. They establish procedures, set standards, set prerequisites for application for some state benefit, regulate relationships among people, and do many things unrelated to a presumption of guilt or innocence.

Moreover, the bill creates internal conflicts within the Administrative Procedure Act. The presumption of invalidity is established by this bill in AS 44.62.300. But the bill does not amend AS 44.62.100 which embodies a presumption of validity. There is thus a conflict between the bill and the existing statute in that a presumption of validity is not operable if, in fact, the agency has the burden of proving that the plaintiff's alleged facts are untrue or that if true are not sufficient grounds for invalidating the regulation.

In addition, it is not really clear what the bill means by the "burden of proving." The general concept of "burden of proof" has two essential parts: the burden of "going forward" and the burden of "persuasion." In traditional legal concepts, a presumption, such as the presumption of invalidity established by this bill, would operate only on the burden of going forward. But it is not clear whether that is what the bill means.

Another point left unclear by the bill is the standard for "proving" the regulation's validity. In reviewing various kinds of administrative actions, the courts have developed four standards. The one applicable to administrative regulations is known as the "reasonable and not arbitrary" test. But that goes to the substance of a regulation rather than to the procedure followed in adopting it. The bill leaves the point untouched.

It has also been asserted in support of this bill that it will make agencies more concerned about citizens' rights. It has been my experience through many years of dealing with state agencies that a concern for citizens and their rights is directly related to the quality of people working for the agency, and would have no relation whatsoever to statutes establishing burden of proof tests in future lawsuits. Of course, the mere fact that an agency reaches a policy decision different from the one some individual citizen or some legislator might make does not mean that the agency is not concerned about citizens' rights or that it is disregarding opinions that were expressed during the regulations-adoption process. Obviously, both houses of the legislature often have quite different opinions of what their respective constituencies require but that does not mean that either house is disregarding the needs of the people.

It has been suggested that this bill would provide a means that would be more expeditious and less expensive for individuals to relieve themselves of the requirements of regulations they do not like (whether or not thousands of other people, as well as the agency involved and perhaps a majority of the legislators, think that the regulation is wise and generally beneficial). The other avenues of protest open to an individual are AS 44.62.210's opportunity to comment; AS 44.62.230's procedure for petitioning for the adoption, amendment or repeal of a regulation; AS 44.62.060's legal review by the Department of Law; AS 44.62.300's opportunity for declaratory relief; and, of course, working with the legislature for enactment of a statute that would supersede the regulation. None of these methods is necessarily time-consuming or expensive to the individual, and they have the advantage of not interfering with the regular performance of functions by various administrative agencies. This bill, on the other hand, would be a serious disruption to the very programs mandated by the legislature and would be very expensive to the taxpayers of the state.

There is certainly a good deal of sentiment today against the multitude of regulations that affect our lives. However, before taking drastic action to respond to that sentiment, it is well to reflect on the fact that most, if not all, of these regulations, have been adopted because the legislature directed the agencies to do so. There are other ways to deal with the problem, and I would be happy to discuss them with you, but this approach would create many more serious problems that it would solve.

Yours very truly,

Arthur H. Peterson

for Avrum M. Gross
Attorney General

AMG:md

cc: The Honorable Clem V. Tillion
President
Alaska State Senate

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate

The Honorable Glenn Hackney
Alaska State Senate

Keith Specking
Legislative Assistant
Office of the Governor

Don Koch
Division of Insurance
Department of Commerce & Economic Development

Karen Bernstein
Department of Fish & Game

SB
309

COMMITTEE REPORT

SENATE

3/27/80

FURTHER: None

Date: 5/1/80

Mr. President:

The Committee on JUDICIARY has had SB 309

requiring the preparation of a local government impact statement

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST
JUNEAU, ALASKA 99801

May 1, 1980

To: Senator Ziegler, Chairman, Senate Judiciary Committee
and all members of the Committee

From: Ginny Chitwood, Executive Director
Alaska Municipal League

Re: SB 309 and CSSB 309

State mandates tend to impose state priorities on local governments. Many mandates require local governments to make organizational changes, provide more services, tell them how to relate to other local governments, or to their own personnel. While they sometimes create a benefit for the local government, more often mandates impose additional costs, especially when they are not accompanied by adequate state financial assistance.

Therefore, the Alaska Municipal League supports SB 309 and CS for SB 309, local government fiscal impact statements. Such statements would estimate the effect on the expenditures or revenues of a local government of implementing or complying with a proposed state regulation. They can provide information for both legislators and local representatives on the effect of state regulation on localities.

The Advisory Commission on Intergovernmental Relations, recognizing some of the difficulties inherent in state mandating of local expenditures, has recommended that states define and catalog state-initiated mandates, and that they provide reimbursement for mandates which require local governments to provide additional services, exempt property from the tax base, or impose unnecessarily costly personnel requirements. In addition, the Commission has recommended that state legislation and proposed administrative regulations contain an explicit "fiscal note" setting out any financial cost impact on local governments.

We urge the Committee to look favorably on this piece of legislation and thank you for your courteous consideration.

We also wish to call to your attention SB 292 am which has passed both houses and is now Chapter 16, SLA 1980. This law calls for fiscal notes on the impact of proposed regulations on the state. You may wish to amend SB 309 or CSSB 309 in order that the provisions of SB 292 am will not be abrogated.

ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSB 309

Title An Act requiring the preparation of a local government impact statement.

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Community & Regional Affairs

Program Category Affected Development

BRU, Program, or Subprogram(s) Affected Local Government Assistance

(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		95.5	103.2	111.4	120.3	129.9
200	TRAVEL		2.0	2.2	2.3	2.5	2.7
300	CONTRACTUAL		4.9	5.3	5.7	6.2	6.7
400	COMMODITIES						
500	EQUIPMENT		1.5	0	0	0	0
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		103.9	110.7	119.4	129.0	139.3

FUNDING (Thousands of Dollars)

GENERAL FUND	103.9	110.7	119.4	129.0	139.3
FEDERAL FUNDS					
OTHER (Specify Fund Source)					

POSITIONS

FULL TIME	3	3	3	3	3
PART TIME					
TEMPORARY					

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

1. The personal servides cost is based on the addition of three staff members (a Local Government Specialist IV - Range 19, a Local Government Specialist III - Range 17 and a Clerk Typist III - Range 8) to handle the additional work.

2. Benefits are included in the personal services cost. These are figured at 28% of salary per year.

3. Travel costs are figured at $2,000 a year. Preparation of the required fiscal notes would require dealing with agencies throughout the state and phone calls would not always be adequate to resolve the issues.

4. Contractual costs are to cover long distance telephone tolls and telephone base rate for 3 persons (1.5), typewriter rental (2.7), and rent for an additional 450 sq. ft. of floor space (.7).

- Continued -

IV. DATE 3-25-80 PREPARED BY McKie Campbell

AGENCY Community & Regional Affairs

PHONE 465-4735

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

6/12

5. All the above costs are increased at 8% a year for inflation.

6. The one time equipment cost is for desks, office equipment, etc. for three persons.

SB

310

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

1/14/80

Date: _____

Mr. President:

The Committee on JUDICIARY has had SB 310

exempting interest earned from certain financial institutions from the Alaska net income tax

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

S 60 (Rev. 12/78)

alaska national
bank of the north

COLLEGE OFFICE AND ADMINISTRATIVE CENTER P.O. BOX 60730 FAIRBANKS, ALASKA 99701 (907) 479-2281

December 3, 1979

The Honorable Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, AK 99504

Dear Tim:

I read with interest your letter indicating your intention to introduce legislation relieving banks from taxation on interest. I have asked Bill Green, our Sr. Vice President who also serves on the Governing Council of the American Bankers Association, to develop material to submit to you for your perusal.

Heartiest best wishes for a Happy Holiday Season.

Sincerely,

Frank H. Murkowski
President

FHM:js

cc: Bill Green

THE B.M. BEHRENDS BANK
P. O. BOX 1367 JUNEAU, ALASKA 99802
(907) 586-6800

REMINGTON LOW
PRESIDENT & CHAIRMAN OF THE BOARD

December 6, 1979

Honorable Tim Kelly
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly:

Thank you for your letter of November 21, 1979 regarding income tax exemption for interest earned in Alaska financial institutions.

I personally believe your proposed bill will be beneficial to the people of Alaska as well as to Alaskan financial institutions.

It gives a needed tax break to all investors, but it especially helps small savers who are not able to buy $10,000 money market certificates or $100,000 certificates of deposit. The Congress of the United States has been talking about helping the small savers for a long time, but has never been able to get around to it.

It will also, as you state, encourage capital formation within Alaska which is beneficial to business as well as to the economy of the state in general.

Banks need increased deposits so they will have money to lend to Alaskans. All to often under our present way of handling state money the state's resources go outside the state to the big banks in the lower fourty-eight who are able to outbid the much smaller Alaskan banks.

Another thing your bill would accomplish is to make Alaskan financial institutions more competitive with the large insurance companies and brokerage firms who are aggressively selling money market funds, which money then immediately leaves the state.

I discussed your letter with the other directors of the Alaskan Bankers Association at a meeting in Anchorage yesterday, and they were heartily in favor of it.

I would suggest you talk your bill over with Wes Coyner whom I am sure you know to see if he can be of any assistance to you. He represents the A. B. A. in the legislature, and is very knowledgeable about banking matters.

If I can be of any assistance please let me know. I would be happy to meet with you at your convenience.

Sincerely,

Remington Low
President & Chairman
of the Board

RL/jr

NORTHERN SCHOOLS FEDERAL CREDIT UNION

Constitution Hall • University of Alaska Fairbanks, Alaska 99701 • Phone 907/479-4209

TO Senator Tim Kelly
Pouch V
Juneau, Alaska 99811

DATE November 28, 1979

SUBJECT Exempt Interest

Dear Tim,

Read your letter and the draft of the proposed bill. I heartily agree with the idea. Lets keep Alaska's money in Alaska and with the people. It might also prove an incentive for people to start saving more. A lot of complaints that are heard referes to the fact "why earn interest, the government will just take it away".

Keep up the good work and keep us informed.

Thank you.

NORTHERN SCHOOLS FEDERAL CREDIT UNION

Barbara B. Brallier, General Manager



AlaskaPacificBank

December 4, 1979

The Honorable Tim Kelly
Alaska State Senate
283 Muldoon Road
Station Box 76
Anchorage, Alaska 99504

Dear Tim:

Your proposed legislation exempting interest earned in Alaska financial institutions from taxation is great!

In addition to encouraging greater savings on the part of Alaskans by generating a higher return for them, this will also have the effect of stemming the outflow of money. Rates on certificates of deposit of over $100,000 are negotiable. Because of the rather unusual money market conditions, Alaska banks have presently been unable to compete with banks in the "lower 48" which are paying extremely high rates. As a result there has been somewhat of an outflow of funds from Alaska. If interest on Alaska CD's were exempt from state taxation, the effective yield on Alaska CD's would be considerably higher and the outward flow of funds would cease.

If there is any way in which I can assist you further on this matter, I would be most pleased to do so.

Cordially,

Robert R. Richards
President

RRR/ph

FEDALASKA
FEDERAL
CREDIT
UNION

ANCHORAGE
Pouch 7-505
Anchorage, Alaska 99510
W.E. SAMPLES
General Manager
R.N. RICHARDSON
Manager
MARSHALL ELLISON
Assistant Manager
(907) 276-1011

FAIRBANKS
Box 670
Fairbanks, Alaska 99707
P.J. SCHULER Manager
(907) 456-2362

KODIAK
P.O. Box 109
Kodiak, Alaska 99615
J.T. JOHNSON Manager
(907) 487-5340

JUNEAU
Box 1307
Juneau, Alaska 99802
R.W. COOPER Manager
(907) 789-2128

December 6, 1979

The Honorable Tim Kelly
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly:

Thank you for your correspondence of November 23 with the outline of your proposed legislation exempting interest earned in Alaska financial institutions.

We in FedAlaska would be interested in and give very heavy support of legislation as you have outlined.

Savings in financial institutions is the primary source of capital for mortgage loans and consumer lending and we feel this would be one of the best things that could be done for future development in the State of Alaska.

Sincerely,

W. E. Samples
General Manager

WES/sps

alaska national
bank
of the north

ALASKA NATIONAL BANK BUILDING FAIRBANKS, ALASKA 99701 (907) 456 [illegible]

December 12, 1979

The Honorable Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, Ak 99504

Dear Tim:

This will respond to your inquiry to Frank, and his letter of December 3rd relative to legislation proposed for introduction by you into the Eleventh Legislature's second session.

As I read the intent of your bill, it would be to exempt bona fide Alaskan residents, partnerships, and corporations, from payment of state income tax on interest paid to them on savings or time deposits in Alaskan domiciled financial institutions.

Tim, as you are no doubt aware, there is a plethora of banking legislation roaming through various committees in the Congress, ranging from those dealing with the Fed reserve issue (HR7, S85, S85 as amended, and S353) to Regulation Q, NOW accounts, share drafts, automatic transfer services, and remote service units (HR4986).

The Ulman legislation (HR3712), did have an amendment proposed to it which would have exempted from Federal taxation the first $100 of interest earned. However, the legislation as originally proposed was defeated in the House Ways and Means Committee and there is no way of telling at this time whether the legislation will ever clear the Congress to become law. To the best of my knowledge, there is no other legislation proposed nationally which deals with exempting from taxation interest earned on savings and time deposits.

The Congress is, however, very conscious of the "plight of the small saver," and quite sensitive to groups such as the Gray Panthers. One of the avenues of relief endorsed by the American Bankers Association is a change in Reg Q to allow a ratcheting upward so that a maximum of 10% interest can be paid on passbook savings, and a reduction in the minimum denominations for money market type CD's (the 182 day rates) from $10,000 to under $1,000.

Assuming that we continue to have a state income tax, as I read your proposal, the interest paid to full-time Alaska residents by Alaskan financial institutions would be exempted from state income tax, whereas interest paid to full-time Alaska residents by financial institutions domiciled outside of Alaska would be subject to state income tax. One of the decisions to be made is whether all interest is to be exempted, or to a maximum dollar amount of interest paid per recipient. Certainly any tax forgiveness allowed on interest earned from deposits made in Alaskan financial institutions as compared with interest earned from deposits made in "outside" institutions will have a beneficial effect on keeping Alaskan money at home. Where there would be some benefit to even the small saver, the great incentive for keeping investable money in Alaska would come from those who have $10,000 or more to invest to enable them to take advantage of the very attractive rates now being quoted. This state tax exemption, if applied to all savings and time interest, would also give Alaskan financial institutions help in the struggle to prevent disintermediation of funds from financial institutions to such areas as the mutual money market funds offered by brokers.

The Alaska Bankers Association should be interested in helping develop this concept, and I suggest you contact Mr. H. A. "Buzz" Hoffman of First National Bank of Anchorage, the Association President. I will also be pleased, as a Board member and individually, to work with you.

Yours very truly,

William J. Green
Senior Vice President
Main Office

WJG:rh

cc: Frank Murkowski

THE FIRST NATIONAL BANK OF ANCHORAGE

December 4, 1979

Senator Tim Kelly
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly:

I do appreciating being advised of your proposed amendment affecting interest paid on savings accounts, and will follow its progress in the Legislature.

Sincerely,

D. H. CUDDY
President

DHC:mh

ALASKA USA FEDERAL CREDIT UNION

777 JUNEAU STREET
ANCHORAGE, ALASKA 99501
(907) 276-5100

December 13, 1979

Senator Tim Kelly
P.O. Box 1004
Eagle River, AK 99577

Dear Senator Kelly:

This letter is in reference to your letter of November 23 regarding your consideration of introducing legislation exempting interest earned from Alaska financial institutions from state taxation.

Needless to say, legislation in this regard would be very timely as the current rate of inflation and tax laws regarding personal interest income do not promote individual savings. Individual savings is one of the cornerstones of a stable economy and provides funds for the financing of consumer durables and business investment. Your proposed legislation would be a step in changing individual ideas regarding savings, and would thereby promote thrift and be of value to the State's economy from the consumer's to the large corporation's standpoint.

The one question that I have regarding your proposal is why limit the tax savings to full-year residents? I feel the advantage to the State's economy of attracting additional funds from part-time residents, with the funds then available for making loans by Alaska financial institutions, far outweighs any benefit the State would obtain in collecting taxes on the interest earned.

In any case, we look forward to your proposed legislation's passage and will certainly promote this tax savings advantage to our 75,000 Alaska members. We appreciate your efforts on behalf of the State's economy, and the benefit that our members and the credit union will realize through passage of your bill.

Sincerely,

W. B. Eckhardt
General Manager

WBE:lb

ALASKA RAILROAD
FEDERAL CREDIT UNION
320 West First Avenue Anchorage, Alaska 99501
(907) 276-6543

December 19, 1979

Senator Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, Alaska 99504

Dear Senator Kelly:

Thank you for your letter regarding your intent to introduce legislation exempting interest earned in Alaska financial institutions from state taxation. I wholeheartedly support such legislation, and am certain that it would increase substantially the capital available within the State.

I do, however, have some observations to make. First, I have no objections to non-residents, or part-time residents investing their funds in Alaska financial institutions to take advantage of the proposed tax exemption. Although the tax benefit might go to a non-resident in a case like this, the benefit of the capital infusion would definitely belong to the State residents.

Next, I would anticipate some opposition to the bill from those who might consider it just a tax loophole for large investors and corporate entities, with no advantage to the lower income sector of the economy. The advantages are, of course, availability of funds for capital investments, with the corresponding multiplier effect, and the creation of resulting jobs.

There is one potentially dangerous flaw in the bill. Most, if not all financial institutions in the State offer substantially reduced interest rates on loans secured by funds on deposit. If the proposed bill passes, it would enable someone to deposit funds, immediately borrow against those funds, thus taking advantage of a tax exemption on the income earned, and a tax deduction on the interest expense. This creates larger deposits and loans for the financial institutions, a definite tax advantage for the borrower/depositer, but zero new capital. This situation is not advantageous to many depositors unless Congress passes similar legislation, which is currently under consideration.

I have no solution as to how to close this potential loophole. Perhaps a limitation on the amount of interest that is exempt, but that would dilute the intended effect of the bill. Also, Congress may not take

similar action, in which case there is no problem.

I hope I have been of some assistance in evaluating the proposed bill. If I can be of further help, feel free to call on me.

Sincerely,

Tim Rogers
Manager

LAR/ds

ALASKA
BANK OF COMMERCE

MAIN OFFICE: POUCH 7012, ANCHORAGE, ALASKA 99510

December 20, 1979

Senator Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, Alaska 99504

Dear Senator Kelly:

I have reviewed the draft of the legislation you plan to introduce exempting interest earned in Alaska financial institutions from State taxation. I agree with your concept, however, I would suggest that you define financial institutions.

Sincerely yours,

R. W. Miller, Jr.
President

rwc

PEOPLES BANK & TRUST

POUCH 7007 • 8TH AVENUE AND G STREET • ANCHORAGE, ALASKA 99510
TELEPHONE (907) 279-7511

R. A. KENNARD
PRESIDENT

December 14, 1979

Senator Tim Kelly
283 Muldoon Rd.
Station Box 76
Anchorage, Alaska 99504

Dear Senator Kelly:

Thank you for your letter of November 21 regarding a bill you were going to introduce which would delete interest on savings accounts for residents of Alaska.

This is of interest and would be helpful to a lot of people, but it could be abused by people. I would suggest that you check with a tax expert, wherein he could show that a person borrowing on a time certificate of deposit would have quite an advantage if there were no tax liability for interest earned on savings in State banking and lending institutions.

Thanks for giving us an opportunity to look at this. I am curious as to what you find out in discussing this with a tax expert.

Very truly yours,

Dick

R.A. Kennard
President

RAK:bwa
2425

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for Senate Bill No. 310

Title An Act exempting interest from certain financial institutions from the

Requested by Judiciary Committee (AK net income tax. Date 2/7/80

II. FISCAL DETAIL

Agency Affected Revenue

Program Category Affected Fiscal Services

BRU, Program, or Subprogram(s) Affected Audit Division

(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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

See attached memorandum to R. D. Stevenson dated 2/7/80.

IV. DATE February 7, 1980 PREPARED BY [signature]

AGENCY Department of Revenue, Audit Division

PHONE 465-2320

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

33-001 (Rev. 12/79)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS For SB 310
Title Act exempting from the net income tax interest earned from Alaska financial/ institutions
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected _____
Program Category Affected _____
Budget Request Unit(s) Affected _____

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND			Unknown			
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

The bill proposes to exempt from income taxation interest earned from a financial institution which is chartered under the laws of the State or has its principal or home office within the State.

Due to lack of data we are unable to determine the exact revenue impact of this proposal. It is likely to reduce general fund revenue by about $5.0 million annually.

IV. DATE 2/7/80 PREPARED BY [illegible] Freeman
AGENCY Revenue
PHONE 52174

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

33-001 (Rev. 10/78)

STATE of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: February 7, 1980

FILE NO.

TELEPHONE NO.

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: CS for Senate Bill No. 310

This bill would exempt any interest paid by a financial institution in the State of Alaska from taxation under the Alaska Income Tax Act. This income would be exempt to individuals trusts, estates, partnerships, and corporations.

It is assumed that the objective behind this bill would be to encourage individuals to place more money in interest-bearing accounts in financial institutions in the State. While this is a very ideal aim, there is serious question about whether a bill such as this would cause the desired result. It is my impression that people place money in savings accounts, depending on the economic climate in the society, rather than because any interest which might be earned is tax free.

The major benefactors of this bill would be the wealthy individuals and large corporations who already have substantial interest-bearing accounts in Alaska banks. If the intent is truly to encourage savings by the average citizen, consideration should be given to providing the tax exempt status to deposits made after the effective date of the bill and on a maximum amount, such as $5,000.

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: February 7, 1980

FILE NO.

TELEPHONE NO.

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: CS for Senate Bill No. 310

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The major benefactors of this bill would be the wealthy individuals and large corporations who already have substantial interest-bearing accounts in Alaska banks. If the intent is truly to encourage savings by the average citizen, consideration should be given to providing the tax exempt status to deposits made after the effective date of the bill and on a maximum amount, such as $5,000.

Statement for Record
of Robert R. Richards
President, Alaska Pacific Bank

SENATE BILL 310

THIS BILL ADDRESSES ONE OF THE MOST PERVASIVE PROBLEMS IN ALASKA AND THROUGHOUT THE UNITED STATES; CAPITOL FORMATION. ALASKA HAS CONTINUALLY BEEN A CAPITOL SHORT AREA. ALASKAN FINANCIAL INSTITUTIONS WITH COMPARATIVELY LITTLE CAPITOL HAVE BEEN UNABLE TO FINANCE THE EXPANSION OF ALASKA'S BUSINESS, INDUSTRY OR CONSUMER ACQUISITION OF GOODS.

ONE INSTANT EXAMPLE OF THE CAPITOL SHORTAGE IN ALASKA IS THE INABILITY OF OUR FINANCIAL INSTITUTIONS TO FINANCE THE SINGLE-FAMILY AND MULTI-FAMILY HOUSING MARKET WITHIN OUR STATE.

PRESENTLY, OVER 1/2 OF THE MORTAGE MARKET IS BEING FINANCED THROUGH THE USE OF TAX EMPT BONDING. NOTING THE POTENTIAL FOR PASSAGE OF THE ULLMAN BILL IN THE U.S. CONGRESS WHICH SEVERLY RESTRICTS THE ABILITY OF ALASKA HOUSING FINANCE CORPORATION TO SERVICE THE MORTAGE MARKET IN NOTING ITS INCUMBENT RESTRICTIONS ON BOTH HOUSING AND THE CONSTRUCTION INDUSTRY, I FEEL IT IS IMPERATIVE FOR THIS BODY TO ACT NOT ONLY WITH THE SHORT-TERM CAPITOL INJECTION WHICH THE ADMINISTRATION HAS SUGGESTED BUT MORE IMPORTANTLY TO FINALLY ADDRESS THE LONG-TERM SOLUTION FOR CAPITOL FORMATION IN ALASKA;UTILIZATION OF THE EFFICENCY OF THE PRIVATE MARKET SYSTEM UNRESTRAINED BY GOVERNMENT.

THE RESULT OF THE PENDING LEGISLATION IS QUITE SIMPLE; INCREASE CAPITOL FOR ALASKANS WHEN ALASKANS ARE NOT TAXED ON INTEREST EARNINGS, AN ADDITIONAL INCENTIVE IS AVAILABLE TO REVERSE THE DECLINING SAVINGS RATE WITHIN OUR STATE. WHEN DOMESTIC PARTNERSHIPS AND CORPORATIONS ARE NOT TAXED ON INTEREST EARRINGS, AN ADDITIONAL INCENTIVE IS AVAILABLE TO MAINTAIN DEPOSITS IN ALASKAN FINANCIAL INSTITUTIONS THEREBY INHANCING THE FUNDS AVAILABLE FOR LENDING.

THE STABILITY OF FUNDS IS THE MOST CRITICAL JUDGEMENTAL FACTOR IN DECIDING WHETHER OR NOT THAT FINANCIAL INSTITUTE CAN LEND THOSE FUNDS. WHEN ALASKA COMES SHORT-TERM DEPOSIT INTO ALASKAN INSTITUTIONS, HOW CAN THE STATE REASONABLY EXPECT THOSE FUNDS TO BE USED TO FUND LONG-TERM LOANS? THERE IS REALLY NOTHING THAT CAN BE DONE WITH SHORT-TERM (UNDER 1 YEAR MATURITY) DEPOSTIS OTHER THAN INVEST THEM IN VERY SHORT-TERM LOANS OR RE-INVEST THEM WITH OTHER INSTITUTIONS OUTSIDE THE STATE. THESE SHORT TERM FUNDS DO LITTLE IF ANYTHING FOR THE ECONOMY AS A WHOLE. THE FORMULA OF LENDING LONG ON SHORT-TERM DEPOSITS HAS ONE SURE EVENTUAL CONSEQUENCE; BANKRUPTCY. THE STABILITY THEREFORE OF PUBLIC FUNDS FOR DEPOSITS IS QUESTIONABLE AT BEST - EVEN WITH THE ASTRONOMICAL PROJECTED SURPLUSES IT IS UNLIKELY THAT THE STATE WILL BE IN A POSITION TO PLACE 10 20 YEAR OR LONGER MATURITY DEPOSITS IN LOCAL FINANCIAL INSTITUTES. THE SOLUTION AGAIN IS TO FREE THE CAPITOL POTENTIAL OF THE PRIVATE MARKET SYSTEM BY EXEMPTING FROM TAXATION THOSE CITIZENS OF OUR STATE BE THEY INDIVIDUALS, PARTNERSHIPS, OR CORPORATIONS TO BUILD

LOCAL CAPITOL. BY DOING SO WE ARE RECOGNIZING THAT ALTHOUGH TODAY OUR GOVERNMENT MIGHT BE ABLE TO PROVIDE A SHORT-TERM SOLUTION THE REAL ANSWER TO CAPITOL FORMATION LIES WHEN THE GOVERNMENT REMOVES THE RESTRICTIONS UPON THE PRIVATE MARKET SYSTEM AND ALLOWS THE FREE ENTERPRISE SYSTEM TO WORK.

I URGE YOUR SERIOUS CONSIDERATION AND ADOPTION OF THIS MEASURE SINCE IT IS IN THE BEST INTEREST OF ALL ALASKANS.

TO: MEMBERS OF THE JUDICIARY COMMITTEE

FROM: GUY VAN DOREN, ADMINISTRATIVE ASST.
SENATE JUDICIARY COMMITTEE

SUBJECT: SB 310....EXEMPTING INTEREST EARNED FROM CERTAIN FINANCIAL INSTITUTIONS FROM THE ALASKA INCOME TAX...

THE BILL WAS INTRODUCED TO ENCOURAGE, BY INTEREST TAX EXEMPTION, PERSONS TO INVEST IN FINANCIAL INSTITUTIONS CHARTERED UNDER AS 06, OR INSTITUTIONS WHICH HAVE THEIR HOME OFFICE OR PRINCIPAL OFFICE IN THE STATE OF ALASKA.

AS. 43.020.031.(b)..PROVIDES FOR ALLOWABLE EXEMPTION IN COMPUTING TAXABLE INCOME. THIS BILL WOULD ADD TO THOSE EXEMPTIONS IN EXISTENCE, " INTEREST EARNED BY A PERSON FROM A FINANCIAL INSTITUTION CHARTERED UNDER AS 06 OR WHICH HAS ITS PRINCIPAL OFFICE OR HOME OFFICE IN THE STATE."

THE BILL ALSO DEFINES "FINANCIAL INSTITUTIONS".

PEOPLES BANK & TRUST

POUCH 7007 • 8TH AVENUE AND G STREET • ANCHORAGE, ALASKA 99510
TELEPHONE (907) 279-7511

R. A. KENNARD
PRESIDENT

December 14, 1979

Senator Tim Kelly
283 Muldoon Rd.
Station Box 76
Anchorage, Alaska 99504

Dear Senator Kelly:

Thank you for your letter of November 21 regarding a bill you were going to introduce which would delete interest on savings accounts for residents of Alaska.

This is of interest and would be helpful to a lot of people, but it could be abused by people. I would suggest that you check with a tax expert, wherein he could show that a person borrowing on a time certificate of deposit would have quite an advantage if there were no tax liability for interest earned on savings in State banking and lending institutions.

Thanks for giving us an opportunity to look at this. I am curious as to what you find out in discussing this with a tax expert.

Very truly yours,

Dick

R.A. Kennard
President

RAK:bwa
2425

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

A FULL SERVICE BANK

ALASKA RAILROAD
FEDERAL CREDIT UNION
320 West First Avenue Anchorage, Alaska 99501
(907) 276-6543

December 19, 1979

Senator Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, Alaska 99504

Dear Senator Kelly:

Thank you for your letter regarding your intent to introduce legislation exempting interest earned in Alaska financial institutions from state taxation. I wholeheartedly support such legislation, and am certain that it would increase substantially the capital available within the State.

I do, however, have some observations to make. First, I have no objections to non-residents, or part-time residents investing their funds in Alaska financial institutions to take advantage of the proposed tax exemption. Although the tax benefit might go to a non-resident in a case like this, the benefit of the capital infusion would definitely belong to the State residents.

No longer in the bill

Next, I would anticipate some opposition to the bill from those who might consider it just a tax loophole for large investors and corporate entities, with no advantage to the lower income sector of the economy. The advantages are, of course, availability of funds for capital investments, with the corresponding multiplier effect, and the creation of resulting jobs.

There is one potentially dangerous flaw in the bill. Most, if not all financial institutions in the State offer substantially reduced interest rates on loans secured by funds on deposit. If the proposed bill passes, it would enable someone to deposit funds, immediately borrow against those funds, thus taking advantage of a tax exemption on the income earned, and a tax deduction on the interest expense. This creates larger deposits and loans for the financial institutions, a definite tax advantage for the borrower/depositer, but zero new capital. This situation is not advantageous to many depositors unless Congress passes similar legislation, which is currently under consideration.

I have no solution as to how to close this potential loophole. Perhaps a limitation on the amount of interest that is exempt, but that would dilute the intended effect of the bill. Also, Congress may not take

similar action, in which case there is no problem.

I hope I have been of some assistance in evaluating the proposed bill. If I can be of further help, feel free to call on me.

Sincerely,

Tim Rogers
Manager

LAR/ds

FEDALASKA
FEDERAL
CREDIT
UNION

ANCHORAGE
Pouch 7-505
Anchorage, Alaska 99510
W.E. SAMPLES
General Manager
R.N. RICHARDSON
Manager
MARSHALL ELLISON
Assistant Manager
(907) 276-1011

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J T. JOHNSON Manager
(907) 487-5340

JUNEAU
Box 1307
Juneau, Alaska 99802
R.W. COOPER Manager
(907) 789-2128

December 6, 1979

The Honorable Tim Kelly
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly:

Thank you for your correspondence of November 23 with the outline of your proposed legislation exempting interest earned in Alaska financial institutions.

We in FedAlaska would be interested in and give very heavy support of legislation as you have outlined.

Savings in financial institutions is the primary source of capital for mortgage loans and consumer lending and we feel this would be one of the best things that could be done for future development in the State of Alaska.

Sincerely,

W. E. Samples
General Manager

WES/sps

ALASKA USA FEDERAL CREDIT UNION

777 JUNEAU STREET
ANCHORAGE, ALASKA 99501
(907) 276-5100

December 13, 1979

Senator Tim Kelly
P.O. Box 1004
Eagle River, AK 99577

Dear Senator Kelly:

This letter is in reference to your letter of November 23 regarding your consideration of introducing legislation exempting interest earned from Alaska financial institutions from state taxation.

Needless to say, legislation in this regard would be very timely as the current rate of inflation and tax laws regarding personal interest income do not promote individual savings. Individual savings is one of the cornerstones of a stable economy and provides funds for the financing of consumer durables and business investment. Your proposed legislation would be a step in changing individual ideas regarding savings, and would thereby promote thrift and be of value to the State's economy from the consumer's to the large corporation's standpoint.

The one question that I have regarding your proposal is why limit the tax savings to full-year residents? I feel the advantage to the State's economy of attracting additional funds from part-time residents, with the funds then available for making loans by Alaska financial institutions, far outweighs any benefit the State would obtain in collecting taxes on the interest earned.

No longer in the bill

In any case, we look forward to your proposed legislation's passage and will certainly promote this tax savings advantage to our 75,000 Alaska members. We appreciate your efforts on behalf of the State's economy, and the benefit that our members and the credit union will realize through passage of your bill.

Sincerely,

W. B. Eckhardt
General Manager

WBE:lb

THE FIRST NATIONAL BANK OF ANCHORAGE

December 4, 1979

Senator Tim Kelly
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly:

I do appreciating being advised of your proposed amendment affecting interest paid on savings accounts, and will follow its progress in the Legislature.

Sincerely,

D. H. CUDDY
President

DHC:mh

alaska national
bank of the north

COLLEGE OFFICE AND ADMINISTRATIVE CENTER P.O. BOX 60730 FAIRBANKS ALASKA 99701 (907) 479-2281

December 3, 1979

The Honorable Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, AK 99504

Dear Tim:

I read with interest your letter indicating your intention to introduce legislation relieving banks from taxation on interest. I have asked Bill Green, our Sr. Vice President who also serves on the Governing Council of the American Bankers Association, to develop material to submit to you for your perusal.

Heartiest best wishes for a Happy Holiday Season.

Sincerely,

Frank H. Murkowski
President

FHM:js

cc: Bill Green

AlaskaPacificBank

December 4, 1979

The Honorable Tim Kelly
Alaska State Senate
283 Muldoon Road
Station Box 76
Anchorage, Alaska 99504

Dear Tim:

Your proposed legislation exempting interest earned in Alaska financial institutions from taxation is great!

In addition to encouraging greater savings on the part of Alaskans by generating a higher return for them, this will also have the effect of stemming the outflow of money. Rates on certificates of deposit of over $100,000 are negotiable. Because of the rather unusual money market conditions, Alaska banks have presently been unable to compete with banks in the "lower 48" which are paying extremely high rates. As a result there has been somewhat of an outflow of funds from Alaska. If interest on Alaska CD's were exempt from state taxation, the effective yield on Alaska CD's would be considerably higher and the outward flow of funds would cease.

If there is any way in which I can assist you further on this matter, I would be most pleased to do so.

Cordially,

Robert R. Richards
President

RRR/ph

NORTHERN SCHOOLS FEDERAL CREDIT UNION
Constitution Hall • University of Alaska • Fairbanks, Alaska 99701 • Phone 907/479-4209

TO Senator Tim Kelly
Pouch V
Juneau, Alaska 99811

DATE November 28, 1979

SUBJECT Exempt Interest

Dear Tim,

Read your letter and the draft of the proposed bill. I heartily agree with the idea. Lets keep Alaska's money in Alaska and with the people. It might also prove an incentive for people to start saving more. A lot of complaints that are heard referes to the fact "why earn interest, the government will just take it away".

Keep up the good work and keep us informed.

Thank you.

NORTHERN SCHOOLS FEDERAL CREDIT UNION

Barbara B. Brallier, General Manager

alaska national
bank
of the north

ALASKA NATIONAL BANK BUILDING FAIRBANKS ALASKA 99701 (907) 456-6691

December 12, 1979

The Honorable Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, Ak 99504

Dear Tim:

This will respond to your inquiry to Frank, and his letter of December 3rd relative to legislation proposed for introduction by you into the Eleventh Legislature's second session.

As I read the intent of your bill, it would be to exempt bona fide Alaskan residents, partnerships, and corporations, from payment of state income tax on interest paid to them on savings or time deposits in Alaskan domiciled financial institutions.

Tim, as you are no doubt aware, there is a plethora of banking legislation roaming through various committees in the Congress, ranging from those dealing with the Fed reserve issue (HR7, S85, S85 as amended, and S353) to Regulation Q, NOW accounts, share drafts, automatic transfer services, and remote service units (HR4986).

The Ulman legislation (HR3712), did have an amendment proposed to it which would have exempted from Federal taxation the first $100 of interest earned. However, the legislation as originally proposed was defeated in the House Ways and Means Committee and there is no way of telling at this time whether the legislation will ever clear the Congress to become law. To the best of my knowledge, there is no other legislation proposed nationally which deals with exempting from taxation interest earned on savings and time deposits.

The Congress is, however, very conscious of the "plight of the small saver," and quite sensitive to groups such as the Gray Panthers. One of the avenues of relief endorsed by the American Bankers Association is a change in Reg Q to allow a ratcheting upward so that a maximum of 10% interest can be paid on passbook savings, and a reduction in the minimum denominations for money market type CD's (the 182 day rates) from $10,000 to under $1,000.

Assuming that we continue to have a state income tax, as I read your proposal, the interest paid to full-time Alaska residents by Alaskan financial institutions would be exempted from state income tax, whereas interest paid to full-time Alaska residents by financial institutions domiciled outside of Alaska would be subject to state income tax. One of the decisions to be made is whether all interest is to be exempted, or to a maximum dollar amount of interest paid per recipient. Certainly any tax forgiveness allowed on interest earned from deposits made in Alaskan financial institutions as compared with interest earned from deposits made in "outside" institutions will have a beneficial effect on keeping Alaskan money at home. Where there would be some benefit to even the small saver, the great incentive for keeping investable money in Alaska would come from those who have $10,000 or more to invest to enable them to take advantage of the very attractive rates now being quoted. This state tax exemption, if applied to all savings and time interest, would also give Alaskan financial institutions help in the struggle to prevent disintermediation of funds from financial institutions to such areas as the mutual money market funds offered by brokers.

The Alaska Bankers Association should be interested in helping develop this concept, and I suggest you contact Mr. H. A. "Buzz" Hoffman of First National Bank of Anchorage, the Association President. I will also be pleased, as a Board member and individually, to work with you.

Yours very truly,

William J. Green
Senior Vice President
Main Office

WJG:rh

cc: Frank Murkowski

THE B.M. BEHRENDS BANK
P. O. BOX 1367 JUNEAU, ALASKA 99802
(907) 586-6600

REMINGTON LOW
PRESIDENT & CHAIRMAN OF THE BOARD

December 6, 1979

Honorable Tim Kelly
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly:

Thank you for your letter of November 21, 1979 regarding income tax exemption for interest earned in Alaska financial institutions.

I personally believe your proposed bill will be beneficial to the people of Alaska as well as to Alaskan financial institutions.

It gives a needed tax break to all investors, but it especially helps small savers who are not able to buy $10,000 money market certificates or $100,000 certificates of deposit. The Congress of the United States has been talking about helping the small savers for a long time, but has never been able to get around to it.

It will also, as you state, encourage capital formation within Alaska which is beneficial to business as well as to the economy of the state in general.

Banks need increased deposits so they will have money to lend to Alaskans. All to often under our present way of handling state money the state's resources go outside the state to the big banks in the lower fourty-eight who are able to outbid the much smaller Alaskan banks.

Another thing your bill would accomplish is to make Alaskan financial institutions more competitive with the large insurance companies and brokerage firms who are aggressively selling money market funds, which money then immediately leaves the state.

I discussed your letter with the other directors of the Alaskan Bankers Association at a meeting in Anchorage yesterday, and they were heartily in favor of it.

I would suggest you talk your bill over with Wes Coyner whom I am sure you know to see if he can be of any assistance to you. He represents the A. B. A. in the legislature, and is very knowledgeable about banking matters.

If I can be of any assistance please let me know. I would be happy to meet with you at your convenience.

Sincerely,

Remington Low
President & Chairman
of the Board

RL/jr

ALASKA
BANK OF COMMERCE

MAIN OFFICE: POUCH 7012, ANCHORAGE, ALASKA 99510

December 20, 1979

Senator Tim Kelly
283 Muldoon Road
Station Box 76
Anchorage, Alaska 99504

Dear Senator Kelly:

I have reviewed the draft of the legislation you plan to introduce exempting interest earned in Alaska financial institutions from State taxation. I agree with your concept, however, I would suggest that you define financial institutions.

Done !

Sincerely yours,

R. W. Miller, Jr.
President

rwc

Banks Pushing Passage Of Tax Break for Savers

SB 310 11/5/80

By Ward Sinclair
Washington Post Staff Writer

In the name of "the little saver," the country's biggest banking groups are besieging Congress to approve a new tax exemption—this one on interest from savings accounts.

Trade associations for banks and savings and loan institutions have activated their nationwide networks to push for passage.

As a result, before 26 senators and House members sit down this week to confer on an oil-profits tax, they'll find their mailboxes and phone lines jammed with messages from the bankers back home.

The message has nothing to do with oil profits. Rather, it hails a Senate-passed amendment to the oil tax bill that would exclude some savings account interest from federal income taxes.

The source of lenders' enthusiasm, clothed in the apparel of helping folks with small savings, is no secret. They see the tax break as a way of enticing money from other sources into savings. Savers might benefit but so would bankers, with more money to lend and profit on.

Another point is equally clear. As an amendment to an oil tax measure the president and others dearly want, the proposal's political chances are enhanced.

Savings account interest became an issue for this conference after the Senate last month added language by Sen. Lloyd Bentsen (D-Tex.) to exclude from income tax the first $201 a saver earns in interest.

For banks and savings and loan associations, it's almost a dream come true. For years they have been pushing for the exclusion in hope of attracting more money to savings accounts.

Since the House oil-tax bill has no such provision, the banking groups are aiming their lobbying guns at House conferees who will have to accept or reject the Bentsen proposal.

A pending House bill dealing with mortgage bonds carries an amendment by Rep. W. Henson Moore (R-La.) that would exclude just the first $100 in savings interest from income taxes.

But for now, the big fight will be in the oil tax conference, and Moore said last week that he is campaigning to get fellow House conferees aboard the Bentsen bandwagon.

"The exclusion is very necessary to help reverse the trend of declining amounts of money going into savings accounts and to help stimulate capital formation," Moore said.

"This is a political opportunity to form capital and fight inflation and get people saving more money again . . . The exclusion ought to be higher, but this is a foot in the door. If this passes, we can then work on something more meaningful for the future."

That is precisely what the Carter administration, many House tax-writers and tax-reform groups fear—that once the exclusion is adopted, it will lead to even greater write-offs that would reduce federal tax revenues.

Bentsen's amendment also allows exclusion of $400 of interest when joint tax returns are filed. His exclusion applies to savings interest as well as stock dividends—one, the other or a combination. Current law allows individual exclusion of $100 and joint exclusion of $200 on investment dividends.

Opponents have argued that if savings incentives and capital formation are the issue, as Bentsen and Moore contend, they ought to be dealt with separately and not as appendages to other bills.

Moreover, there is concern about the cost of the Bentsen language. It is estimated that the tax loss to the Treasury would be about $26.9 billion between 1981 and 1990.

"It is true they see this as a foot in the door," said Robert McIntyre of the Tax Reform Research Group. "They'll come back for more next time. We hope the House conferees will stand firm, because this is just a lousy way to legislate."

The banking groups are hoping just as fervently that the House conferees cave in.

And for this fight, they are going all out. The American Bankers Association, in a special alert letter to members, urges aiming a blizzard of mail at the conferees.

"Sen. Bentsen suggests . . . that you consider requesting the employes of your bank on their own letterhead to write their senators and representatives in support of the Bentsen amendment," wrote ABA's Gerald M. Lowrie.

Other lenders have followed suit. The National Savings and Loan League, also quoting Bentsen, called for letters from S&L executives, employes and customers. Similar appeals have gone to members of the Independent Bankers Association of America, the U.S. League of Savings Associations and the National Association of Mutual Savings Banks.

"There is unanimity on this and we have pulled the stops," said the Independent Bankers' Ken Gunther. "We all agree something has to be done to help small savers."

Statement for Record
of Robert R. Richards
President, Alaska Pacific Bank

SENATE BILL 310

THIS BILL ADDRESSES ONE OF THE MOST PERVASIVE PROBLEMS IN ALASKA AND THROUGHOUT THE UNITED STATES; CAPITOL FORMATION. ALASKA HAS CONTINUALLY BEEN A CAPITOL SHORT AREA. ALASKAN FINANCIAL INSTITUTIONS WITH COMPARATIVELY LITTLE CAPITOL HAVE BEEN UNABLE TO FINANCE THE EXPANSION OF ALASKA'S BUSINESS, INDUSTRY OR CONSUMER ACQUISITION OF GOODS.

ONE INSTANT EXAMPLE OF THE CAPITOL SHORTAGE IN ALASKA IS THE INABILITY OF OUR FINANCIAL INSTITUTIONS TO FINANCE THE SINGLE-FAMILY AND MULTI-FAMILY HOUSING MARKET WITHIN OUR STATE.

PRESENTLY, OVER 1/2 OF THE MORTAGE MARKET IS BEING FINANCED THROUGH THE USE OF TAX EXEMPT BONDING. NOTING THE POTENTIAL FOR PASSAGE OF THE ULMAN BILL IN THE U.S. CONGRESS WHICH SEVERLY RESTRICTS THE ABILITY OF ALASKA HOUSING FINANCE CORPORATION TO SERVICE THE MORTAGE MARKET IN NOTING ITS INCUMBENT RESTRICTIONS ON BOTH HOUSING AND THE CONSTRUCTION INDUSTRY, I FEEL IT IS IMPERATIVE FOR THIS BODY TO ACT NOT ONLY WITH THE SHORT-TERM CAPITOL INJECTION WHICH THE ADMINISTRATION HAS SUGGESTED BUT MORE IMPORTANTLY TO FINALLY ADDRESS THE LONG-TERM SOLUTION FOR CAPITOL FORMATION IN ALASKA;UTILIZATION OF THE EFFICENCY OF THE PRIVATE MARKET SYSTEM UNRESTRAINED BY GOVERNMENT.

THE RESULT OF THE PENDING LEGISLATION IS QUITE SIMPLE; INCREASE CAPITOL FOR ALASKANS WHEN ALASKANS ARE NOT TAXED ON INTEREST EARNINGS, AN ADDITIONAL INCENTIVE IS AVAILABLE TO REVERSE THE DECLINING SAVINGS RATE WITHIN OUR STATE. WHEN DOMESTIC PARTNERSHIPS AND CORPORATIONS ARE NOT TAXED ON INTEREST EARRINGS, AN ADDITIONAL INCENTIVE IS AVAILABLE TO MAINTAIN DEPOSITS IN ALASKAN FINANCIAL INSTITUTIONS THEREBY INHANCING THE FUNDS AVAILABLE FOR LENDING.

THE STABILITY OF FUNDS IS THE MOST CRITICAL JUDGEMENTAL FACTOR IN DECIDING WHETHER OR NOT THAT FINANCIAL INSTITUTE CAN LEND THOSE FUNDS. WHEN ALASKA COMES SHORT-TERM DEPOSIT INTO ALASKAN INSTITUTIONS, HOW CAN THE STATE REASONABLY EXPECT THOSE FUNDS TO BE USED TO FUND LONG-TERM LOANS? THERE IS REALLY NOTHING THAT CAN BE DONE WITH SHORT-TERM (UNDER 1 YEAR MATURITY) DEPOSTIS OTHER THAN INVEST THEM IN VERY SHORT-TERM LOANS OR RE-INVEST THEM WOTH OTHER INSTITUTIONS OUTSIDE THE STATE. THESE SHORT TERM FUNDS DO LITTLE IF ANYTHING FOR THE ECONOMY AS A WHOLE. THE FORMULA OF LENDING LONG ON SHORT-TERM DEPOSITS HAS ONE SURE EVENTUAL CONSEQUENCE; BANKRUPTCY. THE STABILITY THEREFORE OF PUBLIC FUNDS FOR DEPOSITS IS QUESTIONABLE AT BEST - EVEN WITH THE ASTRONOMICAL PROJECTED SURPLUSES IT IS UNLIKELY THAT THE STATE WILL BE IN A POSITION TO PLACE 10 20 YEAR OR LONGER MATURITY DEPOSITS IN LOCAL FINANCIAL INSTITUTES. THE SOLUTION AGAIN IS TO FREE THE CAPITOL POTENTIAL OF THE PRIVATE MARKET SYSTEM BY EXEMPTING FROM TAXATION THOSE CITIZENS OF OUR STATE BE THEY INDIVIDUALS, PARTNERSHIPS, OR CORPORATIONS TO BUILD

LOCAL CAPITOL. BY DOING SO WE ARE RECOGNIZING THAT ALTHOUGH TODAY OUR GOVERNMENT MIGHT BE ABLE TO PROVIDE A SHORT-TERM SOLUTION THE REAL ANSWER TO CAPITOL FORMATION LIES WHEN THE GOVERNMENT REMOVES THE RESTRICTIONS UPON THE PRIVATE MARKET SYSTEM AND ALLOWS THE FREE ENTERPRISE SYSTEM TO WORK.

I URGE YOUR SERIOUS CONSIDERATION AND ADOPTION OF THIS MEASURE SINCE IT IS IN THE BEST INTEREST OF ALL ALASKANS.

.40 The taxpayer could not deduct interest paid on the purchase price of 30-year deferred annuity savings bonds and on borrowings on the bonds, where his annual borrowings kept the cash value of the bonds, on which the annuity or life insurance payments depended, at nominal amount. There was nothing of substance to be realized by the taxpayer beyond a tax deduction. Congress, by disallowing in 1954 Code Sec. 264(a)(2) deductions for interest on single-premium annuity contracts, did not show an intent to allow deduction of interest on pre-1954 transactions without regard to whether the transactions created a true obligation to pay interest. Three dissents.

K. F. Knetsch, (Sup. Ct.) 60-2 USTC ¶ 9785, 364 U. S. 361.

Followed.

T. C. Bulleigh, (Ct. Cls.) 64-1 USTC ¶ 9496, 331 F. 2d 874. Cert. den., 379 U. S. 887.

H. C. Minchin, (CA-2) 64-2 USTC ¶ 9649, 335 F. 2d 30.

The legislative history of the statutory prohibition against deduction of interest on loans to purchase multiple premium annuities (Code Sec. 264(a)(3)) did not allow a deduction arising from transactions occurring before the effective date of such legislation where the transaction lacked economic substance.

W. L. McLane, Jr., (CA-9) 67-2 USTC ¶ 9491, 377 F. 2d 557.

A. F. Pierce, 28 TCM 1, Dec. 29,399(M), TC Memo. 1969-1.

The taxpayer was not entitled to deduct some $148,000 in out-of-pocket cost incurred in annuity transactions in which an "interest" deduction was denied. The taxpayer did not in any manner incur expenses for the production of income or for the management, conservation or maintenance of property held for the production of income. He entered into the annuity transactions to obtain a tax advantage. Such expenses were not losses since the transactions were not entered into for profit.

E. S. Gerstell, (CA-3) 63-2 USTC ¶ 9565, 319 F. 2d 131.

K. F. Knetsch, (Ct. Cls.) 65-2 USTC ¶ 9560, 348 F. 2d 932. Cert. denied, 382 U. S. 957.

The court disallowed the claimed deduction where the receipt and prepayment agreement and the loan agreement and assignment had no relationship to the insurance benefits and were merely a means whereby the true cost could be reported as "interest."

J. E. Golsen, (CA-10) 71-2 USTC ¶ 9497, 445 F. 2d 985. Cert. den., 404 U. S. 940.

With respect to certain tax years only, taxpayers could deduct the interest on certain life insurance company loans. They needed the loans in order to pay their premiums, and it did not make any difference that they borrowed against their policies, instead of, for example, from a bank.

M. S. Lee, CtCls. 78-1 USTC ¶ 9252, 571 F.2d 1180.

.50 "Lease life insurance."—No portion of the payment by the owner-lessee of a life insurance policy to a leasing company under a "lease life insurance" arrangement is deductible as interest under Code Sec. 163.

Rev. Rul. 66-204, 1966-2 CB 48

.55 Single payment certificate.—A single payment certificate purchased by a corporation was a face amount certificate. However, it was not an endowment contract.

Rev. Rul. 74-349, 1974-2 CB 91.

.80 Tax-saving plans.—See ¶ 1416.2755.

[¶ 2226] EXPENSES AND INTEREST RELATING TO TAX-EXEMPT INCOME

'54 Code

Sec. 265 [1954 Code]. No deduction shall be allowed for—

(1) EXPENSES.—Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this subtitle, or any amount otherwise allowable under section 212 (relating to expenses for production of income) which is allocable to interest (whether or not any amount of such interest is received or accrued) wholly exempt from the taxes imposed by this subtitle.

(2) INTEREST.—Interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle. In applying the preceding sentence to a financial institution (other than a bank) which is a face-amount certificate company registered under the Investment Company Act of 1940 (15 U. S. C. 80a-1 and following) and which is subject to the banking laws of the State in which such institution is incorporated, interest on face-amount certificates (as defined in section 2(a)(15) of such Act) issued by such institution, and interest on amounts

THIS IS THE LAW

Alaska Statute 43.20.021 Adopts Internal Revenue Code by reference

'54 Code

[¶ 2226]—Continued

received for the purchase of such certificates to be issued by such institution, shall not be considered as interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle, to the extent that the average amount of such obligations held by such institution during the taxable year (as determined under regulations prescribed by the Secretary) does not exceed 15 percent of the average of the total assets held by such institution during the taxable year (as so determined).

(3) CERTAIN REGULATED INVESTMENT COMPANIES.—In the case of a regulated investment company which distributes during the taxable year an exempt-interest dividend (including exempt-interest dividends paid after the close of the taxable year as described in section 855), that portion of any amount otherwise allowable as a deduction which the amount of the income of such company wholly exempt from taxes under this subtitle bears to the total of such exempt income and its gross income (excluding from gross income, for this purpose, capital gain net income, as defined in section 1222(9)).

(4) INTEREST RELATED TO EXEMPT-INTEREST DIVIDENDS.—Interest on indebtedness incurred or continued to purchase or carry shares of stock of a regulated investment company which during the taxable year of the holder thereof distributes exempt-interest dividends.

.01 Amended by P. L. 94-455 (Deadwood) and P. L. 88-272. For details, see the Code Volume.

.05 Committee Reports on P. L. 88-272 are at 1964-1 CB 729.

.20 Committee Reports on 1954 Code Sec. 265 as originally enacted were reproduced at 582 CCH 2226.10.

• *Regulations*

[¶ 2230] § 1.265-1. Expenses relating to tax-exempt income—(a) *Nondeductibility of expenses allocable to exempt income.* (1) No amount shall be allowed as a deduction under any provision of the Internal Revenue Code of 1954 for any expense or amount which is otherwise allowable as a deduction and which is allocable to a class or classes of exempt income other than a class or classes of exempt interest income.

(2) No amount shall be allowed as a deduction under section 212 (relating to expenses for production of income) for any expense or amount which is otherwise allowable as a deduction and which is allocable to a class or classes of exempt interest income.

(b) *Exempt income and nonexempt income.* (1) As used in this section, the term "class of exempt income" means any class of income (whether or not any amount of income of such class is received or accrued) wholly exempt from the taxes imposed by subtitle A of the Code. For purposes of this section, a class of income which is considered as wholly exempt from the taxes imposed by subtitle A includes any class of income which is—

(i) Wholly excluded from gross income under any provision of subtitle A, or

(ii) Wholly exempt from the taxes imposed by subtitle A under the provisions of any other law.

(2) As used in this section the term "nonexempt income" means any income which is required to be included in gross income.

(c) *Allocation of expenses to a class or classes of exempt income.* Expenses and amounts otherwise allowable which are directly allocable to any class or classes of exempt income shall be allocated thereto; and expenses and amounts

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THIS IS COMMISSIONER'S REGULATIONS

directly allocable to any class or classes of nonexempt income shall be allocated thereto. If an expense or amount otherwise allowable is indirectly allocable to both a class of nonexempt income and a class of exempt income, a reasonable proportion thereof determined in the light of all the facts and circumstances in each case shall be allocated to each.

(d) *Statement of classes of exempt income; records.* (1) A taxpayer receiving any class of exempt income or holding any property or engaging in any activity the income from which is exempt shall submit with his return as a part thereof an itemized statement, in detail, showing (i) the amount of each class of exempt income, and (ii) the amount of expenses and amounts otherwise allowable allocated to each such class (the amount allocated by apportionment being shown separately) as required by paragraph (c) of this section. If an item is apportioned between a class of exempt income and a class of nonexempt income, the statement shall show the basis of the apportionment. Such statement shall also recite that each deduction claimed in the return is not in any way attributable to a class of exempt income.

(2) The taxpayer shall keep such records as will enable him to make the allocations required by this section. See section 6001 and the regulations thereunder. [Reg. § 1.265-1.]

.01 **Historical Comment:** Proposed 3/19/58. Adopted 9/16/58 by T. D. 6313.

⟹ *Caution: Reg. § 1.265-2, below, does not reflect the amendment of Code Sec. 265(2) or the addition of Code Sec. 265(3) and (4) by P. L. 94-455. See ¶ 2232.024.* ⟸

• *Regulations*

[¶ 2231] § 1.265-2. Interest relating to tax-exempt income.—(a) *In general.* No amount shall be allowed as a deduction for interest on any indebtedness incurred or continued to purchase or carry obligations, the interest on which is wholly exempt from tax under subtitle A of the Code, such as municipal bonds, Panama Canal loan 3-percent bonds, or obligations of the United States, the interest on which is wholly exempt from tax under subtitle A, and which were issued after September 24, 1917, and not originally subscribed for by the taxpayer. Interest paid or accrued within the taxable year on indebtedness incurred or continued to purchase or carry (1) obligations of the United States issued after September 24, 1917, the interest on which is not wholly exempt from the taxes imposed under subtitle A of the Code, or (2) obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer, the interest on which is wholly exempt from the taxes imposed by subtitle A of the Code, is deductible. For rules as to the inclusion in gross income of interest on certain governmental obligations, see section 103 and the regulations thereunder.

(b) *Special rule for certain financial institutions.* (1) No deduction shall be disallowed, for taxable years ending after February 26, 1964, under section 265(2) for interest paid or accrued by a financial institution which is a face-amount certificate company registered under the Investment Company Act of 1940 (15 U. S. C. 80a-1 and following) and which is subject to the banking laws of the State in which it is incorporated, on face-amount certificates (as defined in section 2(a)(15) of the Investment Company Act of 1940) issued by such institution and on amounts received for the purchase of such certificates to be issued by the institution, if the average amount of obligations, the interest on which is wholly exempt from the taxes imposed by subtitle A of the Code, held by such institution during the taxable year, does not exceed 15 percent of the average amount of the total assets of such institution during

Caution: Reg. § 1.265-2, below, does not reflect the amendment of Code Sec. 265(2) or the addition of Code Sec. 265(3) and (4) by P. L. 94-455. See ¶ 2232.024.

[¶ 2231]—Continued

such year. See subparagraph (3) of this paragraph for treatment of interest paid or accrued on face-amount certificates where the figure is in excess of 15 percent. Interest expense other than that paid or accrued on face-amount certificates or on amounts received for the purchase of such certificates does not come within the rules of this paragraph.

(2) This subparagraph is prescribed under the authority granted the Secretary or his delegate under section 265(2) to prescribe regulations governing the determination of the average amount of tax-exempt obligations and of the total assets held during an institution's taxable year. The average amount of tax-exempt obligations held during an institution's taxable year shall be the average of the amounts of tax-exempt obligations held at the end of each month ending within such taxable year. The average amount of total assets for a taxable year shall be the average of the total assets determined at the beginning and end of the institution's taxable year. If the Commissioner, however, determines that any such amount is not fairly representative of the average amount of tax-exempt obligations or total assets, as the case may be, held by such institution during such taxable year, then the Commissioner shall determine the amount which is fairly representative of the average amount of tax-exempt obligations or total assets, as the case may be. The percentage which the average amount of tax-exempt obligations is of the average amount of total assets is determined by dividing the average amount of tax-exempt obligations by the average amount of total assets, and multiplying by 100. The amount of tax-exempt obligations means that portion of the total assets of the institution which consists of obligations the interest on which is wholly exempt from tax under subtitle A of the Code, and valued at their adjusted basis, appropriately adjusted for amortization of premium or discount. Total assets means the sum of the money, plus the aggregate of the adjusted basis of the property other than money held by the taxpayer in good faith for the purpose of the business. Such adjusted basis for any asset is its adjusted basis for determining gain upon sale or exchange for Federal income tax purposes.

(3) If the percentage computation required by subparagraph (2) of this paragraph results in a figure in excess of 15 percent for the taxable year, there is interest that does not come within the special rule for certain financial institutions contained in section 265(2). The amount of such interest is obtained by multiplying the total interest paid or accrued for the taxable year on face-amount certificates and on amounts received for the purchase of such certificates by the percentage figure equal to the excess of the percentage figure computed under subparagraph (2) of this paragraph over 15 percent. See paragraph (a) for the disallowance of interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from tax under subtitle A of the Code.

(4) Every financial institution claiming the benefits of the special rule for certain financial institutions contained in section 265(2) shall file with its return for the taxable year:

(i) A statement showing that it is a face-amount certificate company registered under the Investment Company Act of 1940 (15 U. S. C. 80a-1 and following) and that it is subject to the banking laws of the State in which it is incorporated.

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Caution: Reg. § 1.265-2, below, does not reflect the amendment of Code Sec. 265(2) or the addition of Code Sec. 265(3) and (4) by P. L. 94-455. See ¶ 2232.024.

(ii) A detailed schedule showing the computation of the average amount of tax-exempt obligations, the average amount of total assets of such institution, and the total amount of interest paid or accrued on face-amount certificates and on amounts received for the purchase of such certificates for the taxable year. [Reg. § 1.265-2.]

.01 **Historical Comment:** Proposed 3/19/58. Adopted 9/16/58 by T. D. 6313. Amended 9/18/67 by T. D. 6927 to reflect P. L. 88-272.

• *Regulations*

[¶ 2231A] § 1.265-3. **Nondeductibility of interest relating to exempt-interest dividends.**—(a) *In general.* No deduction is allowed to a shareholder of a regulated investment company for interest on indebtedness that relates to exempt-interest dividends distributed by the company to the shareholder during the shareholder's taxable year.

(b) *Interest relating to exempt-interest dividends.* (1) All or a portion of the interest on an indebtedness relates to exempt-interest dividends if the indebtedness is either incurred or continued to purchase or carry shares of stock of a regulated investment company that distributes exempt-interest dividends (as defined in section 852(b)(5) of the Code) to the holder of the shares during the shareholder's taxable year.

(2) To determine the amount of interest that relates to the exempt-interest dividends the total amount of interest paid or accrued on the indebtedness is multiplied by a fraction. The numerator of the fraction is the amount of exempt-interest dividends received by the shareholder. The denominator of the fraction is the sum of the exempt-interest dividends and taxable dividends received by the shareholder (excluding capital gain dividends received by the shareholder and capital gains required to be included in the shareholder's computation of long-term capital gains under section 852(b)(3)(D)). [Reg. § 1.265-3.]

.10 **Historical Comment:** Proposed 7/28/78. Adopted 3/15/79 by T. D. 7601. The Preamble to T. D. 7601 is at 79(10) CCH ¶ 6500A.

[¶ 2232] Expenses and Interest Relating to Tax-Exempt Income

• • *CCH Explanation*

.02 **Prevention of double deduction.**—If all expenses connected with earning exempt income were deductible, there would, in effect, be a double deduction. The exempt income would not be taxable in the first place. The expenses would be deductible in the second, although they would not be attributable to income on which tax is owing.

To prevent this, the expenses of earning income, which by federal income tax standards are wholly exempt from tax, are not deductible.

The courts have found, and the Commissioner has agreed, that there is a valid distinction between "wholly exempt" income and income on which "no gain or loss is recognized" (see .043 and .20, below). These decisions hold that gain realized by a corporation upon a complete plan of liquidation which is not recognized under Code

CCH COMMENTARY

Expenses and Interest Relating to Tax-Exempt Income

[¶ 2232.02]—Continued

• • *CCH Explanation*

Sec. 332 and 337 is not "wholly exempt" income within the meaning of Code Sec. 265 and, therefore, state income tax paid on such gain is a deductible expense.

.021 **Expenses of earning tax-exempt income.**—No deduction is allowed for any expense allocable to the earning of tax-exempt income. However, a *business* expense (excluding interest on indebtedness incurred to carry tax-exempts—see .022 below) attributable to the earning of tax-exempt *interest* may be deducted. Code Sec. 265(1) provides that *nonbusiness* expenses (within the meaning of Code Sec. 212) incurred in earning tax-exempt income are not deductible.

Thus, while an investor may not deduct the expense of earning wholly tax-exempt interest, because the expense is not incurred in a trade or business, a bank may deduct such an expense because it is a business expense. The position of banks and other financial institutions with regard to expenses incurred in earning tax-exempt interest has been clarified at .025 below.

State income taxes paid by an estate or trust which receives taxable income, tax-exempt interest income, and other exempt income may be deducted in part, as explained by the IRS in Rev. Rul. 61-86, at .20, below. The deduction is limited to that portion of the taxes allocable to taxable income and to exempt interest income.

.022 **Interest on indebtedness incurred to carry tax-exempts.**—Code Sec. 265(2) prohibits a deduction for interest on an indebtedness incurred or continued to purchase or carry tax-exempt securities. However, whether the indebtedness is incurred or continued to avoid liquidating tax-exempts is a question which must be decided on the individual circumstances. The courts have generally held that if a satisfactory business purpose can be shown for borrowing the funds, an interest deduction will be allowed even though the borrower continues to hold tax-exempt securities (see .042). Recently, however, in *Illinois Terminal Railroad Co.* (.041), the Court of Claims held that, while a good business purpose existed for continuing an indebtedness, the taxpayer's dominant purpose was to continue to hold tax-exempt securities. The Court of Appeals for the 7th Circuit recently denied an interest deduction where it felt that the borrower should have foreseen, at the time it purchased the tax-exempts, that a loan would be required to meet future economic needs. However, the same taxpayer was not required to liquidate municipal bonds in order to finance the construction of a new plant, since this was a major non-recurrent expenditure (*Wisconsin Cheeseman, Inc.* at .041).

.023 **Deductions of certain financial institutions.**—Nonbanking financial institutions which are face-amount certificate companies registered under the Investment Company Act of 1940 and which are subject to state banking laws can deduct the interest on face-amount certificates issued to investors, even though the payments received from these investors are partially reinvested by these financial institu-

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MINUTES
SENATE FINANCE COMMITTEE
February 28, 1980
9:03 a.m.

PRESENT

Chairman Sackett convened the meeting at approximately 9:03 a.m. All committee members were present. Also in attendance were Senators Stimson, Kelly, and Ziegler; Julius J. Brecht, Director, Division of Banking, Securities, and Corporations; Janet Bradley, Assistant Director, Human Rights Commission; Charles Campbell, Director, Division of Corrections; Roger Lange, Administrative Officer, Division of Corrections; Fiscal Analyst Bob Schroeder; and Administrative Assistant to Senate Finance Garrey Peska.

SB 310

Senator Kerttula moved that SB 310 (Act exempting interest earned from certain financial institutions from the Alaska net income tax) be brought up for committee discussion, advising that both Senator Ziegler and the bill's sponsor, Senator Kelly, were present to testify concerning the legislation.

SENATOR KELLY

Senator Kelly advised that the purpose of the bill is to increase capital amounts available within financial institutions in the State of Alaska thereby increasing the amount of money available for loan. A similar idea is currently being looked at very seriously in Congress. Senator Kelly stated again that the legislation would increase capital available for loan within the state and encourage savings.

Mr. Brecht, Director of Banking appeared before committee at this time and distributed to members a copy of an article from the Washington Post outlining the processes involved in effecting this type of savings.

Senator Kelly advised he has not "heard" of any opposition to the bill. Senator Ray stated that while he feels no opposition to the concept, the bill "seems" to discriminate against those who don't have savings accounts--those who have invested their money in other areas. He stated his belief that the bill is too narrow.

Senator Kelly responded that encouraging savings is only the minor thrust of the legislation. The "major idea" is to build up capital savings in Alaska banks.

Chairman Sackett referred to the fiscal note attached to the bill and a memorandum from Gary Jenkins (copies appended to these minutes), advising of the lack of exact data for the bill.

Senator Kelly responded that he had written Mr. Jenkins advising him that he, Jenkins, had missed "the thrust" of the bill which is to increase capital in Alaska financial institutions in order that it can be used to benefit Alaskans.

Senator Kerttula suggested the committee hear from Mr. Brecht concerning Division of Banking's position on the legislation. Mr. Brecht advised that he is in favor of the bill in that it will encourage savers, large and small, to put their money in Alaska financial institutions.

Senator Kerttula asked if the $5 million loss in general fund revenue would be offset by economic activity in the banks. Mr. Brecht replied that a multiplying effect would derive from the bill. By not taxing earned interest, it is available for reinvestment in mortgages which are in turn sold, creating more capital and multiplying the effect many times over He advised that the effect is difficult to estimate since one would have to know approximately how much capital would be generated and how much economic activity would subsequently follow. Mr. Brecht "guessed" that the capital derived from such non-taxed interest would "at least be increased by a factor of two." It depends upon how quickly an institution can roll its money.

Senator Ray advised of his belief that the legislation represents "a very clever disguise for 'big-brother' action, telling people what to do with their money." Senator Ziegler voiced disagreement with Senator Ray's statement, advising that the bill allows all individuals who save a tax break and would be a "great thing for all savers in the State of Alaska, small and large."

SB 310 HELD IN COMMITTEE

Senator Hohman requested additional time to evaluate the Washington Post article as well as additional backup material relating to the bill and suggested that the bill be returned to committee files at this time. No objection to the Senator's suggestion having been voiced, SB 310 was retained in committee.

SJR 16

Senator Hackney moved that SJR 16 (Relating to an amendment to the Constitution of the United States which would require that total federal appropriations not exceed total estimated federal revenues in a fiscal year in the absence of a national emergency) be brought up for discussion, advising that Senator Ziegler was present to testify.

Senator Ziegler stated that 30 states have passed resolutions similar to SJR 16. The Resolution represents a philosophical attempt to curb governmental expenditures. In recommending passage, Senator Zielger attested to the need to "slow down federal spending before we go completely bankrupt." Secondly,

SENATOR ZIEGLER

considering what the state has been subjected to by the present administration in Washington, the Resolution represents a means of "fighting back," a method of saying "we don't like the way we have been treated on the national level." Senator Ziegler briefly referred to needed minor amendments (Page 2, Line 1, change "five" to "four," and Page 2, Line 6, after "alternatively" insert "this body makes application and requests that") and then requested committee passage of the Resolution.

AMENDMENT SJR 16

Senator Ray expressed his opinion that passage of the Resolution might be analogous to "sticking your hand in a piranha's mouth, specifically at appropriation time." Senator Ziegler replied that no other states passing similar legislation have been penalized to any extent. The Senator concluded his remarks asking "What more can they do to us?"

Senator Sumner moved for passage of SJR 16 as amended with individual recommendations. No objection having been voiced, SJR 16 as amended passed from committee--Senators Sackett, Holman, Bennett, Hackney, and Sumner signing do pass, Senators Ray and Kerttula signing no recommendation.

MOTION

SJR 16 (AMENDED) DO PASS

The Chairman moved to bring SB 382 (Act making a supplemental appropriation to the Department of Health and Social Services, Division of Corrections, for FY 79 bills) and SB 396 (Act making supplemental appropriations to the Department of Health and Social Services, Division of Corrections) up for discussion, advising that the two bills have been combined within Committee Substitute for SB 396.

SB 382

SB 396

CS for SB 396

Mr. Charles Campbell, Director of the Division of Corrections, and Roger Lange, the Division's Finance Officer, appeared before committee to testify on the legislation. Mr. Campbell stated that, essentially, the bill addresses supplemental needs in order to continue operation of the Division of Corrections on a maintenance level. Mr. Campbell attested to the Division's inability to deal with the 6% vacancy factor because of the need for 24 hour guard coverage. In addition, the Division needs major medical funding and funding for out-of-state placement of prisoners.

CAMPBELL & LANGE

Mr. Lange advised that the Committee Substitute also includes salary costs and $575 thousand for in-state juvenile care in private institutions. The Division has restored the vacancy assessment and the probation officer position. Mr. Lang stated that restriction

of the probation position would be unfair to those about to be released from institutions. Funding is also requested within the legislation to cover the cost of unbudgeted lease costs.

Senator Ray advised that the Committee Substitute also includes $22 thousand for a refrigerator/freezer unit at the Fairbanks Correctional Center, $16 thousand for psychological counseling and a teaching position at Ridgeview Manor, and $400 thousand needed by the Division to pay accumulated unpaid bills. Mr. Lange stated that the unpaid bills consist of charges made by the Federal Bureau of Prisons for out-of-state care, payment for juvenile care in private institutions, and miscellaneous small bills.

Mr. Campbell advised that the number of individuals housed out-of-state has escalated rather dramatically. The Division was previously put on notice to reduce the number of prisoners so housed since the Palmer and Eagle River facilities were not being utilized to full capacity. The division agreed to such a reduction, advising that it is opposed to sending prisoners out-of-state. Seventeen prisoners were brought back to the state and the Division noted increased tension within its facilities as a result of their return. Seventeen represents the greatest number of prisoners the system could bring back. The state continues to "have people out-of-state in excess of what it can pay for."

Responding to a question from Senator Hackney concerning juvenile care, Mr. Campbell advised that McLaughlin had been underfunded by a substantial amount. The Division is in favor of reducing this kind of incarceration for juveniles, but it does not have enough funding to place all juveniles in private care. The Division moved money from private care into foster homes and made an attempt to identify more foster homes. Out-of-state care was reduced by 82% while foster care was increased 52%. Mr. Campbell advised that the department's problem is that it must continue to use McLaughlin until it can implement other programs. To date 28 children have participated in adventure-based programs. The department has also reorganized and set up a specific unit for handling youth, but the Division is "seriously lacking in funding for placing children in private institutions."

Senator Hohman asked how last year's figures for McLaughlin compare with this year's, and Mr. Lange stated he would furnish a comparison

Responding to questions from Senator Hohman concerning adventure-based education, Mr. Campbell advised that the Division has utilized such a program, adding that the programs have been "dramatically successful," although the Division's tracking system has not been the best. The Division strongly supports the adventure-based concept although it has encountered problems developing in-state resources for the programs.

Responding to a question from Chairman Sackett, Mr. Lange advised that the exact amount needed for McLaughlin is $365,000, such funding to be in addition to that already in the budget.

Senator Ray attested to the need for legislative understanding that "it takes 'x' amount of dollars" to operate such a facility as McLaughlin whether it houses 5 or 50 individuals. Such an amount represents "the basic cost of running an institution." Cutting down on the number of people housed therein does not necessarily cut costs proportionately.

Senator Hohman referred to an analysis by Fiscal Analyst Bob Schroeder suggesting that Sec. 10 ($400,000 to division of corrections for outstanding 1979 bills) is inflated by 6%.

Mr. Lange responded that the $400,000 request was prepared last October. At that time the Division had $368,000 in unpaid bills. The Division, in correspondence to Budget & Management, stated that the amount requested could be reduced to the actual dollar amount of its outstanding bills at the time the supplemental was formalized.

Senator Ray moved that the bill be held in committee until the division could provide more information on its unpaid bills. Senator Hohman asked if the $400,000 request was inflated by 6%, and Mr. Lange replied, "yes." Senator Hohman stated his belief that the Division should have advised the committee of this fact on its own.

The Chairman advised the bill would be held in committee.

CS for SB 39
HELD IN
COMMITTEE

In his closing remarks Mr. Campbell stated that the Division "couldn't be more pleased at the opportunity to exchange complete information." The Division wants to develop alternative plans for young people, but until such plans are concrete, the Division must continue to use McLaughlin.

2/28/80

Senator Hohman attested to the fact that it is difficult to have confidence in the Division based on its past reputation. He further advised of his belief the Division is guilty of withholding information because of the 6% inflation factor uncovered by Legislative Finance on funds requested under Sec. 10 of the above-discussed legislation.

The meeting adjourned at approximately 10:00 a.m. ADJOURN

SFC-80 #20, Side 1 (000-end)
Side 2 (000-208) 2/28/80

02-0018 (Rev. 10/79)

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: February 7, 1980

FILE NO:

TELEPHONE NO.

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: CS for Senate Bill No. 310

This bill would exempt any interest paid by a financial institution in the State of Alaska from taxation under the Alaska Income Tax Act. This income would be exempt to individuals trusts, estates, partnerships, and corporations.

It is assumed that the objective behind this bill would be to encourage individuals to place more money in interest-bearing accounts in financial institutions in the State. While this is a very ideal aim, there is serious question about whether a bill such as this would cause the desired result. It is my impression that people place money in savings accounts, depending on the economic climate in the society, rather than because any interest which might be earned is tax free.

The major benefactors of this bill would be the wealthy individuals and large corporations who already have substantial interest-bearing accounts in Alaska banks. If the intent is truly to encourage savings by the average citizen, consideration should be given to providing the tax exempt status to deposits made after the effective date of the bill and on a maximum amount, such as $5,000.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS For SB 310 institutions
Title Act exempting from the net income tax interest earned from Alaska financial/
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected _____
Program Category Affected _____
Budget Request Unit(s) Affected _____

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND			Unknown			
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

The bill proposes to exempt from income taxation interest earned from a financial institution which is chartered under the laws of the State or has its principal or home office within the State.

Due to lack of data we are unable to determine the exact revenue impact of this proposal. It is likely to reduce general fund revenue by about $5.0 million annually.

IV. DATE 2/7/80 PREPARED BY [illegible]
AGENCY Revenue
PHONE 5-2174

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

33-001 (Rev. 10/78)

SB

311

COMMITTEE REPORT

SENATE

1/14/80

FURTHER: NONE

Date: _____

Mr. President:

The Committee on JUDICIARY has had SB 311
relating to ride sharing

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

S 60 (Rev. 12/78)

NO YOUTHFUL OPERATOR

Age and Sex		Pleasure Use	DRIVE TO OR FROM WORK		Business Use	Farm Use
			Less than 15 Miles	15 or More Miles		
Only Operator in Household is a Female Age 30-64	Factor Code	.90 8131— —	1.15 8132— —	1.35 8133— —	1.35 8138— —	.80 8139— —
Principal Operator is Age 65 or Over	Factor Code	.90 8021— —	1.15 8022— —	1.35 8023— —	1.35 8028— —	.80 8029— —
All Other	Factor Code	1.00 8111— —	1.25 8112— —	1.45 8113— —	1.45 8118— —	.90 8119— —

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Having determined that no youthful operator is involved and that the primary factor is to be taken from the table above, the remaining considerations are *age and sex of the principal driver* and *use of the car*. As regards age and sex, most non-youthful drivers fall into the "all other" class, of course. In 1970 a lower factor was introduced for principal operators of age 65 or older. With the introduction of the 161 class plan, the factors for this age group now equal the discount factors for a woman age 30 to 64 who is the only operator in her household.

There are four "use" categories *for the non-youthful driver classes* — but the effect is of five since the "drive to work" category is further subdivided on the basis of mileage. The categories are:

Pleasure Use: The automobile is not used in business *or customarily* driven to or from work — *unless the one way road mileage to the job is under three miles.*

There are, however, two exceptions to this rule, the first relating to an automobile owned by a member of the clergy. It is rated as "pleasure use" — or for "farm use" if that is its place of principal garaging — in spite of the fact that the clergyman may use it in "business" or in driving to or from "work." The other exception is for an insured who has reduced his driving or participates in a *car pool* and drives *less than 15 miles to work*. If the vehicle is not used more than two days a week *or* not more than two weeks in each five week period, the insured is eligible for a "pleasure use" classification.

Drive to Work: The car is not used in business, but it is customarily used to drive to or from work and the one way road mileage is *three miles or more*. If less than three miles, the *pleasure* use category, above, applies. Note that *separate factors* apply to cars driven a one way distance of less than 15 miles and those driven 15 miles or more. Drive to work includes *drive to school* and also driving *part way*, as to a bus depot or train station.

A car pool participant or anyone who drives *15 miles or more to work*, but does not drive more than two days a week *or* not more than two weeks in each five week period, is eligible for classification in the "work less than 15 miles" category.

(Continued on next page.)

public for hire. He limited its use to the transportation of workers who were the clients of his agency. Such limited, special use, therefore, did not make his vehicle a "public or livery conveyance."

In a 1972 case decided by the Virginia supreme court, the insurer involved had denied coverage for liability arising out of the use of an insured's car in carrying car pool members to and from their common place of employment. Each car pool member would pay the insured one dollar a day toward operating expenses. The court ruled that the policy exclusion of any vehicle while used as a public or livery conveyance did not apply to this car pooling arrangement because the car was not held out *indiscriminately to the general public* for the carrying of passengers for hire. This case is *Smith vs. Stonewall Casualty Co., 188 S.E. (2nd.) 82.*

In Personal Auto Policy

The Public or Livery exclusion, as traditionally worded, is not included in the latest private passenger Automobile contract, the Personal Auto policy. Instead of excluding coverage for "any automobile while used as a public or livery conveyance," the Personal Auto policy excludes coverage for claims "arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee. This exclusion does not apply to a share-the-expense car pool."*

This exclusion, presumably, has the same purpose as the Public or Livery exclusion — to eliminate coverage for the public automobile hazard, which is not anticipated in the formulation of private passenger rates. However, the distinction made in the Personal Auto policy hinges only on whether or not "a fee" has been charged. Whether or not the auto has been used as a public or livery conveyance — i.e., held indiscriminately for hire to the general public — is no longer at issue.

In the case of *car pools*, the new exclusion will in most instances have the same effect as the old. *Share-the-expense* car pools are specifically exempted from the exclusion, and by their very nature most car pools fit this description.

In situations not involving car pools, however, the new exclusion may have a more stringent effect than the Public or Livery exclusion. It is possible to imagine, for example, a Bodily Injury Liability claim arising out of an insured's use of his pickup to move an acquaintance's furniture. If the insured charges a fee, the exclusion in his Personal Auto policy states that there is no coverage, despite the fact that the insured has not held the pickup for hire to the general public. This result, though supported by a literal reading of the exclusion, is contrary to the historical intent and legal effect of the traditional Public or Livery exclusion.

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"PUBLIC OR LIVERY CONVEYANCE"

Exclusion in Private Passenger Auto Policies

Rates for private passenger Automobile insurance do not anticipate the hazards inherent in operating an automobile for hire to the general public, such as a taxicab or a van. For this reason, private passenger Automobile policies have customarily excluded coverage for any automobile "while used as a public or livery conveyance." The exclusion, as expressed in its traditional wording, survives in the Family Automobile policy, the Special Package Automobile policy, and many independently filed Automobile policies.

Despite the relatively simple intent of the exclusion, the legal term "public or livery conveyance" has made interpretation difficult for policyholders and insurance people alike. The question often arises as to whether a car pool, especially one in which participants pay the driver a share of expenses, constitutes use of the insured automobile as a public or livery conveyance. The relevant case law on the subject indicates that as long as a driver does not hold an insured auto for hire to the *general public*, the driver may collect a reasonable amount of money from passengers to pay for the expenses of operating the car pool.

A prominent case in this matter is *Allstate Insurance Co. vs. Roberson, 217 Fed. (2nd.) 10 (1954)*. Roberson, the insured, owned a truck which he equipped with extra seats and used for the purpose of regularly transporting about seven of his fellow employes to and from work with him. Although the insured normally collected a small amount of money from each passenger to cover expenses, the Federal court of appeals (8th Circuit, applying Arkansas law) held that because the insured *did not solicit riders and did not hold the truck out to the public for hire*, the truck had not been used as a "public or livery conveyance."

Another case whose outcome depended on the same test of "public or livery conveyance" as employed in the Roberson case is *American Fidelity Insurance Co. vs. Pardo, 299 N.Y.S. (2nd.) 521 (1969)*. Involved here was an insured who owned an employment agency for domestic workers. Each day, he would transport the workers to and from residences where they worked; for this purpose, the insured used a truck which had been altered to carry 12 passengers. The insured charged a fixed rate for all domestics whether or not they used his transportation services.

While the insured was transporting 12 workers to their places of work, he was involved in an accident with another motorist. When the claim was submitted to his insurer, it was denied because of the exclusion in question. The supreme court of New York, in reversing a lower court's decision in favor of the insurer, held that the words "public or livery conveyance" as used in the policy refer to "a vehicle used indiscriminately in conveying the general public, without limitation to certain persons or particular occasions or without being governed by special terms." Here, the insured did not use his vehicle indiscriminately in carrying the general

(Continued on next page)

Alaska State Legislature

HOME ADDRESS
1136 SUNSET DRIVE
FAIRBANKS, ALASKA 99701
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WHILE IN JUNEAU
POUCH V
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SENATOR
GLENN HACKNEY
REPRESENTING
SENATE DISTRICT O
"ALASKA'S GOLDEN HEART"

COMMITTEES:
FINANCE

HEALTH, EDUCATION & SOCIAL SERVICES
CHAIRMAN

State Senate

TO: Senator Robert Ziegler

FROM: Senator Glenn Hackney GH/ss

SUBJECT: SB 311 - Ridesharing

DATE: January 23, 1980

The thrust of the 1979 annual meeting of the Western Conference, Council of State Governments, was energy. One of the facets of that energy package was energy conservation. One of the points in that facet was ridesharing.

It appeared that ridesharing might be feasible in the state of Alaska if it were possible to remove the mickey mouse aspects of indulging in that practice.

With the above in mind, I asked Legislative Affairs to come up with a bill that would render it less likely that people would avoid getting into ridesharing by addressing the points in our own state law that might discourage the practice. Attached to this memo is a copy excerpted from the report of the WCSG Annual Report.

Attachment

"PUBLIC OR LIVERY CONVEYANCE"

Exclusion in Private Passenger Auto Policies

Rates for private passenger Automobile insurance do not anticipate the hazards inherent in operating an automobile for hire to the general public, such as a taxicab or a van. For this reason, private passenger Automobile policies have customarily excluded coverage for any automobile "while used as a public or livery conveyance." The exclusion, as expressed in its traditional wording, survives in the Family Automobile policy, the Special Package Automobile policy, and many independently filed Automobile policies.

Despite the relatively simple intent of the exclusion, the legal term "public or livery conveyance" has made interpretation difficult for policyholders and insurance people alike. The question often arises as to whether a car pool, especially one in which participants pay the driver a share of expenses, constitutes use of the insured automobile as a public or livery conveyance. The relevant case law on the subject indicates that as long as a driver does not hold an insured auto for hire to the *general public*, the driver may collect a reasonable amount of money from passengers to pay for the expenses of operating the car pool.

A prominent case in this matter is *Allstate Insurance Co. vs. Roberson, 217 Fed. (2nd.) 10 (1954)*. Roberson, the insured, owned a truck which he equipped with extra seats and used for the purpose of regularly transporting about seven of his fellow employes to and from work with him. Although the insured normally collected a small amount of money from each passenger to cover expenses, the Federal court of appeals (8th Circuit, applying Arkansas law) held that because the insured *did not solicit riders and did not hold the truck out to the public for hire*, the truck had not been used as a "public or livery conveyance."

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While the insured was transporting 12 workers to their places of work, he was involved in an accident with another motorist. When the claim was submitted to his insurer, it was denied because of the exclusion in question. The supreme court of New York, in reversing a lower court's decision in favor of the insurer, held that the words "public or livery conveyance" as used in the policy refer to "a vehicle used indiscriminately in conveying the general public, without limitation to certain persons or particular occasions or without being governed by special terms." Here, the insured did not use his vehicle indiscriminately in carrying the general

(Continued on next page.)

public for hire. He limited its use to the transportation of workers who were the clients of his agency. Such limited, special use, therefore, did not make his vehicle a "public or livery conveyance."

In a 1972 case decided by the Virginia supreme court, the insurer involved had denied coverage for liability arising out of the use of an insured's car in carrying car pool members to and from their common place of employment. Each car pool member would pay the insured one dollar a day toward operating expenses. The court ruled that the policy exclusion of any vehicle while used as a public or livery conveyance did not apply to this car pooling arrangement because the car was not held out *indiscriminately to the general public* for the carrying of passengers for hire. This case is *Smith vs. Stonewall Casualty Co., 188 S.E. (2nd.) 82.*

In Personal Auto Policy

The Public or Livery exclusion, as traditionally worded, is not included in the latest private passenger Automobile contract, the Personal Auto policy. Instead of excluding coverage for "any automobile while used as a public or livery conveyance," the Personal Auto policy excludes coverage for claims "arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee. This exclusion does not apply to a share-the-expense car pool."*

This exclusion, presumably, has the same purpose as the Public or Livery exclusion — to eliminate coverage for the public automobile hazard, which is not anticipated in the formulation of private passenger rates. However, the distinction made in the Personal Auto policy hinges only on whether or not "a fee" has been charged. Whether or not the auto has been used as a public or livery conveyance — i.e., held indiscriminately for hire to the general public — is no longer at issue.

In the case of *car pools*, the new exclusion will in most instances have the same effect as the old. *Share-the-expense* car pools are specifically exempted from the exclusion, and by their very nature most car pools fit this description.

In situations not involving car pools, however, the new exclusion may have a more stringent effect than the Public or Livery exclusion. It is possible to imagine, for example, a Bodily Injury Liability claim arising out of an insured's use of his pickup to move an acquaintance's furniture. If the insured charges a fee, the exclusion in his Personal Auto policy states that there is no coverage, despite the fact that the insured has not held the pickup for hire to the general public. This result, though supported by a literal reading of the exclusion, is contrary to the historical intent and legal effect of the traditional Public or Livery exclusion.

*Includes copyrighted material of Insurance Services Office, with its permission. Copyright, Insurance Services Office, 1975, 1976, 1978.

To SEN. ZIEGLER WITH MEMO

MODEL STATE LAW TO REMOVE LEGAL IMPEDIMENTS TO RIDESHARING ARRANGEMENTS

INTRODUCTION

Eighty percent of travel to work is by motor vehicle and most drivers commute by themselves. If drivers participated in ridesharing arrangements, it has been estimated that over 10 million gallons of gas would be saved each day and that rush hour traffic could be reduced by 30%. For these and other reasons, people should be encouraged to share rides to work and any law that unnecessarily impedes or discourages such sharing should be changed.

The National Committee on Uniform Traffic Laws and Ordinances is an independent, non-profit, voluntary association, which exists to maintain the Uniform Vehicle Code and Model Traffic Ordinance. The Uniform Vehicle Code is a specimen set of motor vehicle and traffic laws used as a guide by state legislatures, and the Model Traffic Ordinance is a companion document used by local legislative bodies. The National Committee is a carefully selected group of over 140 individuals representing federal, state and local government, private industry, and other groups interested in achieving sound, uniform motor vehicle and traffic laws. Since 1972, the National Committee has drafted texts of model laws in areas of emerging interest that are not covered by the Uniform Vehicle Code. The purpose of this activity is to have the best possible laws to test new ideas or to conduct programs necessary to solve new problems.

Under the title "Model Ridesharing Law" (dated March 26, 1979), the first draft of this document was distributed to more than 1,000 agencies and organizations for their review. Over 65 letters commenting on the first draft were received. These comments were summarized and a second draft dated June 15, 1979 was prepared and distributed to all persons who had commented on the first draft. The second draft, and letters commenting on it, were submitted to a Special Panel, which at a meeting on August 20-21, 1979, decided the contents of this document. The members of the Special Panel were: Senator Nat Washington (Chairman), Jack Derby (California Office of Ridesharing), Ken Dirkzwager (Minnesota Division of Driver and Vehicle Services), Bill Fortune (National Association of Vanpool Operators), Charles Gray (National Association of Regulatory Utility Commissioners), Tim Letzkus (Highway Users Federation for Safety and Mobility), Herb Scheuer (American Public Transit Association), and Mavis Walters (Insurance Services Office).

The preparation of this document was preceded by a review by the NCUTLO Staff of state laws which could impede forming carpools and vanpools. This review will be published under the title "Legal Impediments to Forming Carpools, Vanpools and Other Types of Ridesharing Arrangements." Using that review will enable each state to determine which of sections of this Model Law should be considered for enactment and will facilitate determining how the sections of this Model Law compare with laws in all jurisdictions.

§ 1. DEFINITION OF RIDESHARING

Section 1. Ridesharing arrangement defined.

Ridesharing arrangement means the transportation of persons in a motor vehicle where such transportation is incidental to another purpose of the driver. The term shall include ridesharing arrangements known as carpools, vanpools and buspools.

§ 2. MOTOR CARRIER LAWS

Section 2. Motor carrier laws do not apply to ridesharing.

The following laws and regulations of this state shall not apply to any ridesharing arrangement using a motor vehicle with a seating capacity for not more than 15 persons, including the driver:

(a) Chapter ..... pertaining to the regulation of motor carriers of any kind or description by the (Public Utilities Commission).

(b) Laws and regulations containing insurance requirements that are specifically applicable to motor carriers or commercial vehicles.

(c) Laws imposing a greater standard of care on motor carriers or commercial vehicles than that imposed on other drivers or owners of motor vehicles.

(d) Laws and regulations with equipment requirements and special accident reporting requirements that are specifically applicable to motor carriers or commercial vehicles.

(e) Laws imposing a tax on fuel purchased in another state by a motor carrier or road user taxes on commercial buses.

§ 3. WORKMEN'S COMPENSATION LAWS

Section 3. Workmen's compensation law does not apply to ridesharing.

Chapter ..... providing compensation for workers injured during the course of their employment shall not apply to a person injured while participating in a ridesharing arrangement between his or her place of residence and place of employment or termini near such places, provided that if the employer owns, leases or contracts for the motor vehicle used in such arrangement, Chapter ..... shall apply.

§ 4. LIABILITY OF EMPLOYER

Section 4. Liability of employer.

(a) An employer shall not be liable for injuries to passengers and other persons resulting from the operation or use of a motor vehicle, not owned, leased or contracted for by the employer, in a ridesharing arrangement.

(b) An employer shall not be liable for injuries to passengers and other persons because he provides information, incentives or otherwise encourages his employees to participate in ridesharing arrangements.

§ 5. INCOME TAXES

Section 5. Ridesharing payments are not income.

Money and other benefits, other than salary, received by a driver in a ridesharing arrangement using a motor vehicle with a seating capacity for not more than 15 persons, including the driver, shall not constitute income for the purpose of Chapter ..... imposing taxes on income.

Comment: Excepting income received by a driver in smaller ridesharing arrangements from taxes will avoid keeping records. Such a record-keeping requirement is perceived as an impediment to forming carpools and vanpools.

§ 6. MUNICIPAL LICENSES AND TAXES

Section 6. Municipal licenses and taxes.

No county, city, town or other municipal corporation may impose a tax on, or require a license for, a ridesharing arrangement using a motor vehicle with a seating capacity for not more than 15 persons, including the driver.

§ 7. OVERTIME AND MINIMUM WAGE LAWS

Section 7. Overtime compensation and minimum wage laws.

The mere fact that an employee participates in any kind of ridesharing arrangement shall not result in the application of Chapter ..... (laws requiring payment of a minimum wage, overtime pay or otherwise regulating the hours a person may work).

§ 8. BUSES AND STATE VEHICLE CODES

Section 8. Certain ridesharing vehicles are not commercial vehicles or buses.

(a) A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than 15 persons, including the driver, shall not be a "bus" or "commercial vehicle" under the portion of Chapter ..... (state vehicle code) relating to equipment requirements or rules of the road.

(b) A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than 15 persons, including the driver, shall not be a "bus" or "commercial vehicle" under the portions of Chapter ..... (state vehicle code) relating to registration.

(c) The driver of a passenger car (motor vehicle that has a seating capacity for not more than 10 persons, including the driver) used in a ridesharing arrangement is not a "chauffeur" nor is he transporting persons for compensation under the driver licensing portions of Chapter ..... (state vehicle code).

Comment: As to "passenger car" in subsection (c), Uniform Vehicle Code § 1-142 defines this term as a motor vehicle designed to carry 10 passengers or less that is used to transport persons.

§ 9. USE OF PUBLIC VEHICLES

Section 9. Use of public motor vehicles for ridesharing.

Motor vehicles owned or operated by any state or local agency may be used in ridesharing arrangements (for public employees). Participants in any such ridesharing arrangement shall pay the actual total costs of using the vehicle in that arrangement.

Comment: States should enact the phrase in parentheses if they decide to allow only public employees to ride to work in vehicles owned or leased by government agencies.

MISCELLANEOUS TOPICS

Incentives

Several people commenting on the "Model Ridesharing Law" recommended the enactment of incentives that would increase sharing rides. While this subject is definitely worthy of consideration, it was deemed beyond the scope of this document.

Cost and availability of insurance

A problem for forming ridesharing arrangements in the past has been the cost and availability of insurance, particularly for vanpools.

Mandating coverage. The Special Panel considered a section which would have prohibited insurers from increasing premiums, cancelling any policy or denying coverage because a motor vehicle is used in a ridesharing arrangement. Members of the Panel unanimously agreed that this approach could be counter-productive and could even result in higher premiums for vehicles used in pooling arrangements. The Panel also thought that enactment of the sections in this document coupled with recent developments in the insurance industry should solve this problem.

No fault benefits. In states where economic losses caused by injuries in crashes are compensated on a no-fault basis, consideration of the source of such compensation in accidents involving ridesharing vehicles should be considered. There may be some reduction in insurance premiums for ridesharing vehicles if the occupants are compensated by their own insurers rather than the insurer of the owner of the vehicle.

Deduction of expenses by employer

The Special Panel considered a section which would allow employers to deduct the costs of "promoting, organizing, administering and operating" ridesharing programs as ordinary business expenses. The Panel's view was that providing for such deductions in state income tax laws was unnecessary because employers already could deduct such costs as ordinary business expenses. And inclusion of the cost of operating vanpools might allow employers to write off the cost of acquiring vans on an accelerated basis.

Parking facilities

Several people commenting on the first draft recommended that this Model Law contain sections that would facilitate establishing lots where people could park their cars and continue their journey to work or sporting events in ridesharing arrangements or by using public transit. The Panel did not regard problems in this area to be impediments to most ridesharing arrangements but it did agree that it would be helpful to alert states to possible existence of problems in establishing such lots.

Use of public funds for parking lots located on private property. If the owners of a parking lot in a shopping center agree to allow commuters to park cars in their lot, there probably should be authority to expend public funds to indicate the existence of the facility and to pay the cost of any extra maintenance that may be necessary.

Liability issue. Owners of private property who allow commuters to park probably should be liable for injury or damages to such users only when the owners are grossly negligent. Another approach would be to authorize purchasing insurance to cover any such liability.

Tax-exempt status. If a church allows commuters to park in its lot, it may be necessary to provide that such use of its property does not affect its tax-exempt status.

SB
332

COMMITTEE REPORT

SENATE

1/15/80

FURTHER: None

Date: _____

Mr. President:

The Committee on JUDICIARY has had SB 332
relating to hunting in the trans-Alaska pipeline corridor

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

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_____

CHAIRMAN

S 60 (Rev. 12/78)

SENATE AMENDMENT

By Senate Judiciary Committee

To: AMEND SENATE BILL No. SB 332

To: _____ HOUSE BILL No. _____

PAGE: 1 LINE: 11 + 12

Line 11 delete [five] insert TWO

Line 12 delete [Alignment]

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

January 23, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 332
Our file J-66-416-80

Dear Senator Ziegler:

Guy VanDoren of your office requested that we review Senate Bill 332. This bill would make it a class-A misdemeanor to hunt "in the area within five miles on either side of the trans-Alaska pipeline alignment." Except as noted below, we do not believe the bill presents any major problems.

One question we have concerns the word "alignment." We assume this refers to the pipeline itself. If that is the case, it would appear that the word "alignment" in the bill is unnecessary. If it means something else, that should be described more explicitly.

A second question is whether the bill (if enacted) would provide the amount of procedural protection afforded by the due process clause of the federal and state constitutions. In Wacek v. State, 530 P.2d 751 (Alaska 1975), a conviction for discharging a firearm in a public park in violation of AS 11.55.050(a) and 11 AAC 12 190 was reversed. The court stated:

> The burden placed upon the defendant in this case to locate the boundaries of a park which has no signs marking its boundaries, which is shown on no published map, and the existence of which is mentioned in no Fish and Game regulation issued to hunters is unreasonable given the relative ease with which some corrective measure might be taken. 2/
>
> 2/ We do not hold, as suggested by the state in its brief, that it will now be necessary "to post signs at every 10 feet along the boundaries

> of its state parks." We only hold that the application of AS 11.55.050 to appellant, given all the facts stipulated, placed an unreasonable burden upon him to locate the boundaries of the park.

530 P.2d at 753 (emphasis supplied by Alaska Supreme Court; citations omitted). While similar arguments might be made in a case arising under this bill if no additional steps are taken, it would seem that additional steps could be taken (e.g., indicating the area in which hunting is prohibited on published maps, mentioning the prohibition in regulations issued by the Department of Fish & Game to hunters, posting signs at various locations providing access to the area, etc.) and there would be no constitutional defect.

Beyond these two points, we do not believe the bill presents any legal difficulties. Some may question the reasonableness of imposing such a prohibition within five miles on either side of the pipeline. However, this appears to be a policy decision appropriate for the legislature. Since section 2 of the bill states that the purpose of the proposed act "is to prevent damage to the trans-Alaska oil pipeline," it does not seem unreasonable for the legislature to determine that prohibiting hunting within five miles of the pipeline would reduce to a negligible level the possibility of inadvertent damage to the pipeline from such activity.

Under the mens rea provisions of the new Criminal Code, AS 11.81.600 et seq., it would appear that an offense under the bill would have to be committed "recklessly" with respect to the circumstance of being within 5 miles of the pipeline. AS 11.81.610(b)(2). The legislature may wish to consider designating such an offense one of strict liability under AS 11.81.600(b)(1)(B), or (through a letter of intent or committee report) indicating an intent to dispense with the culpable mental state requirement. See AS 11.81.600(b)(2).

We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: G. Thomas Koester
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator John C. Sackett

S.B.332

of Indian Creek and Falls Creek are closed to the taking of Dall sheep. The department shall retain the authority to set limited seasons, by permit only, and in consultation with the Division of Parks, to adjust severe imbalances in game animal populations;

(14) the Westchester Lagoon waterfowl nesting and observation area: all lands and waters on Chester Creek between Arctic Boulevard and Turnagain Arm are closed to hunting and trapping and to the use of motorized vehicles off designated roadways and travel routes;

(15) Otter Island (one of the Pribilof Islands–Unit 10) administered by the U.S. Department of Commerce National Marine Fisheries Service, is closed to all hunting;

(16) the Moose River closed area (Sterling–Unit 15A): on and within ¼ mile of the Moose River between the Kenai National Moose Range boundary and the Sterling Highway is closed to the taking of waterfowl.

5 AAC 81.260. INTERIOR-ARCTIC ALASKA (UNITS 17-26). The following areas are closed areas:

(1) the Birch Lake closed area (near Fairbanks–Unit 20): on and within ½ mile of Birch Lake (closed to the taking of big game only);

(2) the Harding Lake closed area (near Fairbanks–Unit 20); on and within ½ mile of Harding Lake (closed to the taking of big game only);

(3) the Lost Lake closed area (near Fairbanks–Unit 20); on and within ½ mile of Lost Lake (closed to the taking of big game only);

(4) Repealed.

(5) the Healy-Lignite closed area (near Healy–Unit 20C): beginning at the confluence of Lignite Creek and the Nenana River, thence upstream along Lignite Creek to its confluence with Sanderson Creek, thence in a straight line southerly to the confluence of Healy Creek and Coal Creek, thence in a straight line southerly to Dora Peak (63°49'N and 148°42'W), thence in a straight line westerly to the confluence of Healy Creek and Moody Creek, thence downstream along Healy Creek to the Nenana River, thence downstream along the Nenana River to the point of beginning, is closed to all hunting;

(6) the Prudhoe Bay closed area (near Prudhoe Bay–Unit 26): beginning at a point 70°22'N latitude and 148°00'W longitude, thence south approximately 14 miles to a point at 70°10'N and 148°00'W, thence west approximately 15 miles to a point at 70°10'N and 148°40'W, thence north approximately two miles to a point at 70°12'N and 148°40'W, thence west approximately eight miles to a point at 70°12'N and 148°56'W, thence north approximately two miles to a point at 70°15'N and 148°56'W, thence west approximately 12 miles to a point at 70°15'N and 149°28'W, thence north approximately 12 miles to a point at 70°26'N and 149°28'W, thence east approximately 14 miles to a point at 70°26'N and 148°52'W, thence south for approximately two miles to a point at 70°24'N and 148°52'W, thence east for approximately 16 miles to a point at 70°24'N and 148°11'W, thence south for approximately two miles to a point at 70°22'N and 148°11'W, thence east approximately six miles to the point of beginning at 70°22'N and 148°00'W, is closed to the taking of big game only;

(7) Sledge Island (Unit 22) and the waters within one mile of it are closed to walrus hunting;

(8) the trans-Alaska pipeline corridor closed area (north of the Yukon River-Units 24, 25 and 26): the area within a strip five miles on both sides of the trans-Alaska pipeline alignment from the Yukon River to Prudhoe Bay is closed to the taking of big game only.

Existing Regulation

5 AAC 81.270. APPLICATIO
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5 AAC 81.280. SOUTHEA
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5 AAC 81.290. SOUTHCEN
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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

January 23, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 332
Our file J-66-416-80

Dear Senator Ziegler:

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One question we have concerns the word "alignment." We assume this refers to the pipeline itself. If that is the case, it would appear that the word "alignment" in the bill is unnecessary. If it means something else, that should be described more explicitly.

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of its state parks." We only hold that the application of AS 11.55.050 to appellant, given all the facts stipulated, placed an unreasonable burden upon him to locate the boundaries of the park.

The courts like policy letters of intent

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We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: G. Thomas Koester
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator John C. Sackett

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____ _____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Sackett	SB 332

DEPARTMENT POSITION

Neutral

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Col. Fred Woldstad	1/22/80	William R. Nix	1/22/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)

(2) OTHER AGENCIES AFFECTED BY BILL: Dept. of Fish & Game, Board of Game

(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Unk.		Unk.

(3) PROGRAM EFFECTS OF BILL

No adverse effect on the division's programs.

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

The div .on enforced a similar law during the pipeline construction era and does not foresee any problem with this bill.

S.B.332

of Indian Creek and Falls Creek are closed to the taking of Dall sheep. The department shall retain the authority to set limited seasons, by permit only, and in consultation with the Division of Parks, to adjust severe imbalances in game animal populations;

(14) the Westchester Lagoon waterfowl nesting and observation area: all lands and waters on Chester Creek between Arctic Boulevard and Turnagain Arm are closed to hunting and trapping and to the use of motorized vehicles off designated roadways and travel routes;

(15) Otter Island (one of the Pribilof Islands–Unit 10) administered by the U.S. Department of Commerce National Marine Fisheries Service, is closed to all hunting;

(16) the Moose River closed area (Sterling–Unit 15A): on and within ¼ mile of the Moose River between the Kenai National Moose Range boundary and the Sterling Highway is closed to the taking of waterfowl.

5 AAC 81.260. INTERIOR-ARCTIC ALASKA (UNITS 17-26). The following areas are closed areas:

(1) the Birch Lake closed area (near Fairbanks–Unit 20): on and within ½ mile of Birch Lake (closed to the taking of big game only);

(2) the Harding Lake closed area (near Fairbanks–Unit 20); on and within ½ mile of Harding Lake (closed to the taking of big game only);

(3) the Lost Lake closed area (near Fairbanks–Unit 20); on and within ½ mile of Lost Lake (closed to the taking of big game only);

(4) Repealed.

(5) the Healy-Lignite closed area (near Healy–Unit 20C): beginning at the confluence of Lignite Creek and the Nenana River, thence upstream along Lignite Creek to its confluence with Sanderson Creek, thence in a straight line southerly to the confluence of Healy Creek and Coal Creek, thence in a straight line southerly to Dora Peak (63°49'N and 148°42'W), thence in a straight line westerly to the confluence of Healy Creek and Moody Creek, thence downstream along Healy Creek to the Nenana River, thence downstream along the Nenana River to the point of beginning, is closed to all hunting.

(6) the Prudhoe Bay closed area (near Prudhoe Bay–Unit 26): beginning at a point 70°22'N latitude and 148°00'W longitude, thence south approximately 14 miles to a point at 70°10'N and 148°00'W, thence west approximately 15 miles to a point at 70°10'N and 148°40'W, thence north approximately two miles to a point at 70°12'N and 148°40'W, thence west approximately eight miles to a point at 70°12'N and 148°56'W, thence north approximately two miles to a point at 70°15'N and 148°56'W, thence west approximately 12 miles to a point at 70°15'N and 149°28'W, thence north approximately 12 miles to a point at 70°26'N and 149°28'W, thence east approximately 14 miles to a point at 70°26'N and 148°52'W, thence south for approximately two miles to a point at 70°24'N and 148°52'W, thence east for approximately 16 miles to a point at 70°24'N and 148°11'W, thence south for approximately two miles to a point at 70°22'N and 148°11'W, thence east approximately six miles to the point of beginning at 70°22'N and 148°00'W, is closed to the taking of big game only.

(7) Sledge Island (Unit 22) and the waters within one mile of it are closed to walrus hunting;

(8) the trans-Alaska pipeline corridor closed area (north of the Yukon River-Units 24, 25 and 26): the area within a strip five miles on both sides of the trans-Alaska pipeline alignment from the Yukon River to Prudhoe Bay is closed to the taking of big game only.

Existing Regulation

5 AAC 81.270. APPLICATIO
otherwise provided in secs. 280-30
this chapter are continuously close

5 AAC 81.280. SOUTHE
Forrester Island State Game Re
Forrester Island and adjacent rock
taken for commercial purposes un
the discretion of the commissione

(b) The Hazy Island State G
Islands in Southeastern Alaska a
taken for commercial purposes un
the discretion of the commissione

(c) The St. Lazaria Islands
Lazaria Islands at the entrance of S

(d) The Mendenhall Wetlan
area described as the Mendenhal
closed to trapping and hunting,
during established seasons. The u
other motorized vehicles (excep
Wetlands State Game Refuge is pr

5 AAC 81.290. SOUTHCEN
State Game Refuge (Kodiak Islan
ing to the Kodiak National Wildlif

(b) The Semidi Islands Stat
8): The Semidi Island group is clo

(c) The McNeil River Stat
McNeil River, Mikfik Creek and a
from Akjemguiga Cove on the n
head of Kamishak Bay, in lowe
Access to McNeil River is by perm

(d) The Tuxedni Island Sta
Egg and other small islands in Tux

(e) The Aleutian Islands S
Islands are closed to hunting with

(1) Umnak, Atka, Uni
Islands are open to hunting.

(2) Shemya, Attu, an
ptarmigan hunting;

(3) Adak Island is oper

(4) all of the Aleutian

(f) The Bogoslof Islands S
10): The Bogoslof Islands are clos

(g) The Kenai State Gam
corresponding to the Kenai Natio
hunting;

(h) The Potter Point Stat
14C): all lands and waters south
which extends from Campbell
hunting and trapping and to th
exceptions:

(1) that portion of th

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

January 23, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 332
Our file J-66-416-80

Dear Senator Ziegler:

Guy VanDoren of your office requested that we review Senate Bill 332. This bill would make it a class-A misdemeanor to hunt "in the area within five miles on either side of the trans-Alaska pipeline alignment." Except as noted below, we do not believe the bill presents any major problems.

One question we have concerns the word "alignment." We assume this refers to the pipeline itself. If that is the case, it would appear that the word "alignment" in the bill is unnecessary. If it means something else, that should be described more explicitly.

A second question is whether the bill (if enacted) would provide the amount of procedural protection afforded by the due process clause of the federal and state constitutions. In Wacek v. State, 530 P.2d 751 (Alaska 1975), a conviction for discharging a firearm in a public park in violation of AS 11.55.050(a) and 11 AAC 12.190 was reversed. The court stated:

> The burden placed upon the defendant in this case to locate the boundaries of a park which has no signs marking its boundaries, which is shown on no published map, and the existence of which is mentioned in no Fish and Game regulation issued to hunters is unreasonable given the relative ease with which some corrective measure might be taken. 2/
>
> 2/ We do not hold, as suggested by the state in its brief, that it will now be necessary "to post signs at every 10 feet along the boundaries

of its state parks." We only hold that the application of AS 11.55.050 to appellant, given all the facts stipulated, placed an unreasonable burden upon him to locate the boundaries of the park.

530 P.2d at 753 (emphasis supplied by Alaska Supreme Court; citations omitted). While similar arguments might be made in a case arising under this bill if no additional steps are taken, it would seem that additional steps could be taken (e.g., indicating the area in which hunting is prohibited on published maps, mentioning the prohibition in regulations issued by the Department of Fish & Game to hunters, posting signs at various locations providing access to the area, etc.) and there would be no constitutional defect.

Beyond these two points, we do not believe the bill presents any legal difficulties. Some may question the reasonableness of imposing such a prohibition within five miles on either side of the pipeline. However, this appears to be a policy decision appropriate for the legislature. Since section 2 of the bill states that the purpose of the proposed act "is to prevent damage to the trans-Alaska oil pipeline," it does not seem unreasonable for the legislature to determine that prohibiting hunting within five miles of the pipeline would reduce to a negligible level the possibility of inadvertent damage to the pipeline from such activity.

Under the mens rea provisions of the new Criminal Code, AS 11.81.600 et seq., it would appear that an offense under the bill would have to be committed "recklessly" with respect to the circumstance of being within 5 miles of the pipeline. AS 11.81.610(b)(2). The legislature may wish to consider designating such an offense one of strict liability under AS 11.81.600(b)(1)(B), or (through a letter of intent or committee report) indicating an intent to dispense with the culpable mental state requirement. See AS 11.81.600(b)(2).

We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: G. Thomas Koester
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator John C. Sackett

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Sackett	SB 332

DEPARTMENT POSITION

Neutral

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Col. Fred Woldstad	1/22/80	William R. Nix	1/22/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)

(2) OTHER AGENCIES AFFECTED BY BILL

Dept. of Fish & Game, Board of Game

(2) a. ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Unk.	Unk.

(3) PROGRAM EFFECTS OF BILL

No adverse effect on the division's programs.

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS

The division enforced a similar law during the pipeline construction era and does not foresee any problem with this bill.

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER _____

DEPARTMENT _____

ATTENTION _____

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

(Jud.)
Sen. Ziegler
107 Cap

FROM:
MAIL STATION NUMBER 1200

DEPARTMENT Pub. Safety

BY _____ DATE 3-11-80

02-002 (REV.10/73)

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Sackett	CSSB 332

DEPARTMENT POSITION

Support

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Col. Fred Woldstad	3/10/80	William R. Nix by HCL	3/10/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL

(3) PROGRAM EFFECTS OF BILL

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

The committee substitute limits the hunting closure to the corridor north of the Yukon River, which is desirable from an enforcement view.

It is recommended that Sec. 16.05.785(b) be amended to remove the hyphenated word "class-A" from the sentence, as there are no class-A misdemeanors in the Fish and Game statutes. Such wording could cause grounds for argument that there is no proper penalty.

Reviewing Title 16, the addition of 785 to Chapter 5 will require an amendment in a penalty section to provide a penalty for violation of 785.

SB

340

COMMITTEE REPORT

SENATE

1/17/80

FURTHER: None

Date: 1/17

Mr. President:

The Committee on JUDICIARY has had SB 340

requiring legislative approval of regulations

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

BETTYE FAHRENKAMP
ALASKA STATE SENATOR
FAIRBANKS, ALASKA 99701
4016 EVERGREEN
907-479-3550

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE 907-465-3763
HOME 907-789-9182

Senate

Memorandum

To: Senator Ziegler

From: Senator Fahrenkamp

Re: SB 340

We are all aware of the difficulties which arise through an agency's interpretation and administration of legislation which may impose greater or lesser control on the public than the legislation intended. A further problem exists when the promulgators of a regulation, perhaps having an education or experience level acceptable for designing the regulations, may not have the practical or field experience that shows the relationship of the regulation to the regulated activity. In addition, agencies and even departments within agencies may have regulations which counteract each other. Agencies are not usually aware of other agency regulations.

In attempting to change regulations after they have been drafted, the interested citizen has many barriers to hurdle. First, he is viewing a set of regulations which, while not set in cement, have undergone several drafts within the agency (likely without public or outside participation) and which are less likely to be changed due to the time already spent on drafting. The citizen's views may be noticed, but are not required to be specifically addressed in the review process. (Nor should they be; however, a citizen should be able to prepare or give testimony on a particular set of regulations with the knowledge that his concerns will be considered). Second, his time is likely spent in the private sector trying to earn a living. He may not have the time or money available to prepare testimony or appear at a hearing as an interested party. (Hearings are not known for being convenient). Third, there is a difficulty for the citizen in even learning about a hearing or receiving notice. Much of the information (and misinformation) regarding government is passed by word of mouth. If the person misses the hearing he has no other opportunity to address the issue.

Finally, the preponderance of effort and the number of regulations involved may simply wear down an individual's ability to participate.

At times, an agency gets frustrated with current legislative procedure. In a recent hearing regarding proposed regulations the director of the agency stated that his agency had tried several times to get bills passed by the legislature, but had been unsuccessful. Since the bills never got anywhere, he had promulgated the proposed regulations so that the changes could be made without going through the legislative process. This appears to be a prime example of the need for legislative involvement in the rule-making process.

Separate from all this are the agencies' declarations that drafting regulations is the least enjoyed aspect of their responsibilities.

On February 19, 1980, the Supreme Court held as unconstitutional a statute which permitted the legislature to annul by concurrent resolution regulations issued by the executive department and agencies. In effect, this decision removes the authority for the Regulation Review Committee to do anything but ask that an agency change its regulations. Due to this decision it becomes evident that action is necessary.

The court struck down the statute because it allowed the legislature to legislate without following the safeguards included in Article II of the Constitution. Some of the safeguards include the limitation of one subject per bill, the requirement of three readings per bill and the right of the governor to veto the legislation. Concurrent resolutions are not subject to these provisions.

In the dissenting opinion, Justice Boochever held that the provisions in Article II do not apply to regulations. Noting that a regulation does not have to comply with these provisions to be validly issued, compliance is also not necessary for a regulation's valid annulment. He observed that rule-making is an essentially legislative function which the legislature has delegated to the executive branch of government, that the power of the executive is not infringed by the legislature's retention of the authority to review and annul regulations.

Alaska policy, as stated in AS 44.62.312:, " It is the policy of the state that (1) the governmental units mentioned in 310(a) of this Chapter exist to and in the conduct of

the people's business;" (2) It is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly; (3) The people of this state do not yield their sovereignty to the agencies which serve them; (4) The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know; (5) The people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

Something needs to be done and SB 340 may provide the answer. When SB 340 was introduced there were questions as to whether or not a concurrent resolution would be strong enough to approve regulations of the executive branch, since challenges to the same procedures in other states had been upheld by the court systems. Since the decision came out, we have communicated with legal affairs. (Their memorandum is attached.) Their recommendations for corrections to the bill are contained in the attached sponsor substitute. (The other change in the legislation is the sixty day requirement for the approval of regulations, including those emergency regulations which are being permanently adopted.) I hope you will consider the changes in the sponsor substitute for SB 340 and pass this bill from your committee with a Do Pass recommendation.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

February 27, 1980

The Honorable Bettye Fahrenkamp
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Sponsor substitute for
SB 340 (legislative approval
of regulations)

Dear Senator Fahrenkamp:

I have reviewed the Sponsor Substitute for SB 340 which you brought to the meeting of the Senate Judiciary Committee yesterday. It is a great improvement over the original SB 340 -- removing some of that version's constitutional and other problems -- but the Department of Law still cannot support it.

As we discussed at yesterday's meeting of the Senate Judiciary Committee, I will be in Anchorage and will not be able to attend the committee's Thursday, February 28, meeting at which this bill will be considered. Therefore, I am sending a copy of this letter to Senator Ziegler, and will include some comments on the original SB 340 since your sponsor substitute has not yet been formally introduced.

It is our opinion that the bill still suffers two serious defects: (1) it violates the separation-of-powers doctrine, and (2) the 60-day to almost a year's delay in a regulation's effective date is not workable. The delay and the constitutional issue are inextricably related in that the delay so interferes with the execution of the laws, for which the executive branch is responsible, that the executive branch is prevented from performing its constitutionally required functions.

As a practical matter, it is simply not feasible for the Board of Fisheries, for example, to delay the effective date of a June 1 fisheries opening until the following year when the legislature will have had 60 days to consider what to do about

MG-C6LH

that date. If the regulation is filed, for example, by the lieutenant governor on May 1 and the legislature adjourns May 10, this bill would require that the regulation lie before the legislature for another 50 days during the next regular session -- to convene the following January. In addition, any regulation filed after adjournment of the regular legislative session would have to wait until the full 60 days of the next regular session before taking effect. Again, for many regulations, such a deferred effective date would not be in the best interests of the state. Events and circumstances requiring adoption or amendment or repeal of administrative regulations do not necessarily coincide with legislative sessions, and thus this bill would seriously interfere with the executive branch's performance of its constitutionally required functions. AS 44.62.270 says that it is "state policy that emergencies are held to a minimum and are rarely found to exist," and the emergency regulation approach should be used sparingly.

Concerns similar to those being expressed now in the legislature were expressed in 1975 when the legislature enacted the bill which became ch. 27 SLA 1975, creating the Administrative Regulation Review Committee. At that time, it was recognized that the legislature should not interfere with the regulations-adoption process as a means of executing statutorily required functions. The legislature felt that what was needed was a systematic means of review. See the second sentence of AS 24.20.400 (the last portion of which, as you know, was held invalid on February 19, 1980, by the Alaska Supreme Court in State v. A.L.A.V.E. Voluntary). Section 2, ch. 27 SLA 1975 enacted AS 44.62.320(b), requiring the lieutenant governor to submit a regulation to the new committee within 45 days after the regulation is filed. Believing that an earlier transmission to the committee would be even more helpful, in 1978 the legislature amended AS 44.62.320(b) (see sec. 5, ch. 64 SLA 1978) to require the lieutenant goverror to submit the regulation to the committee "at the same time" that the regulation is filed by the lieutenant governor.

The current system involving prompt review of regulations by the Administrative Regulations Review Committee appears to adequately address the concern expressed in Sponsor Substitute for SB 340, and does so without raising the serious constitutional and practical issues that this bill raises.

However, in the A.L.I.V.E. Voluntary case, the Alaska Supreme Court stated (at page 24 of the advance copy), "While the power to void agency regulations could be exercised by either the legislature, or by an agency, when the legislature exercises such power it must do so while acting as a legislature. It may not grant itself the power to act as an agency." Citing cases from other jurisdictions, our court indicated that a statute expressing some administrative agency's role in performing an oversight function would be valid. Perhaps some such arrangement based upon referrals from the Administrative Regulation Review Committee could be developed.

I would like to comment on three statements contained in your undated, but presumably February 26, 1980, memo to Senator Ziegler covering your proposed sponsor substitute. Near the middle of your second paragraph on page 1 you state that "a citizen should be able to prepare or give testimony on a particular set of regulations with the knowledge that its concerns will be considered." The last sentence of AS 44.62.-210(a) already requires this, stating "The state agency shall consider all relevant matter presented to it before adopting, amending or repealing a regulation." An earlier legislature anticipated your concern and enacted a statute covering it.

The last sentence on your first page says "If the person misses the hearing he has no other opportunity to address the issue." That is not quite correct. If an oral hearing is scheduled, and someone is not able to appear in person, he or she may present written comments or arguments. AS 44.62.210(a). If the person misses the opportunity for submitting written comments, AS 44.62.220 gives him or her the right to petition for a change in the regulations. AS 44.62.230 sets out the procedure for such a petition. In addition, AS 44.62.060 prohibits the lieutenant governor from filing a regulation unless it has been approved for legal matters by the Department of Law. If a person has a legal concern regarding a proposed or newly adopted regulation, he or she can submit that concern to the Department of Law with the assurance that it will be considered. If the person believes that a regulation is invalid and the Department of Law has not agreed with that point of view, the person can submit the matter to court for a declaratory judgment under AS 44.62.300. And, of course, if all of these procedures fail to

produce the result sought by the individual, he or she is free to work with the legislature in enacting legislation to supersede the offending regulation.

In the second sentence of the fourth paragraph on page 2 of your memo, you state that the A.L.I.V.E. Voluntary decision "removes the authority for the regulation review committee to do anything but ask that an agency change its regulations." That too is not quite correct. The committee is always free to work for legislative amendment of the statutes under which the regulations were adopted. As a committee of the legislature, it is, of course, in a good position to do so.

With regard to the original bill, I generally agree with Legislative Counsel Joe Guthrie's February 25 comments on the A.L.I.V.E. Voluntary case and the bill's unconstitutionality. As to more technical problems with the original bill, the "or" between paragraphs (3) and (4) of sec. 260 is confusing. It appears to make each paragraph stand independently. For example, an emergency regulation may not remain in effect unless, under paragraph (2), the agency certifies compliance with secs. 60 and 150 -- 210 of the APA, indicating that legislative approval is not required if the agency complies with those sections; but I wonder if that is what you intended. Also, under paragraph (3), an emergency regulation may not remain in effect unless the legislature has approved it under sec. 275; but sec. 275 does not provide for notice, hearing, or the attorney general's legal approval; thus, if the legislature approves the regulation it will remain in effect even though there has been no notice, hearing, or legal approval. And, under paragraph (4), the emergency regulation will not remain in effect unless the time period under sec. 275(c) has not expired; sec. 275(c) sets a one-year period for legislative approval; so, it appears that an emergency regulation could remain in effect a year, but then that is inconsistent with the lead-in line for sec. 260(a) which says 120 days. If the word "and" was intended to be used in place of the word "or," and all four requirements must be met, what happens when the legislature is not in session and it is necessary to adopt an emergency regulation? In addition, line 29 on page 2 of the original bill refers to filing "with" the lieutenant governor; however, under the rest of the APA,

regulations are "submitted to" him and "filed by" him; this distinction is significant because it is the filing by him that starts the time period running under current law.

In summary then, the Department of Law, upon consideration of both the constitutional and practical problems inherent in both the original SB 340 and the proposed Sponsor Substitute for SB 340, cannot support either version. The current law, providing for prompt review of regulations by the Administrative Regulations Review Committee, appears to be adequate, but we are open to suggestions for improving the system within the bounds of the constitution.

Thank you for this opportunity to offer our comments. We would be pleased to discuss this with you and other legislators if you and they wish.

Yours truly,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Arthur H. Peterson
Arthur H. Peterson
Assistant Attorney General

AHP:md

cc: Keith Specking
Legislative Assistant
Governor's Office

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 28, 1980

SUBJECT: State of Alaska v. A.L.I.V.E. Voluntary

TO: Representative Nels A. Anderson, Jr.
House Majority Leader

FROM: Billy G. Berrier
Director
Division of Legal Services

You have asked my comments on the decision of the Supreme Court in the case of State of Alaska v. A.L.I.V.E. Voluntary, (File No. 3670). A copy of the decision is attached.

The case concerns a regulation relating to games of skill and chance annulled by the legislature. The authority for annulment was AS 44.62.320(a) which provides:

> The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

The Administrative Procedure Act was adopted by the First State Legislature in 1959. This Act provided, among other things, for the procedure by which regulations of agencies or departments are promulgated and the section was enacted as part of that procedure.

The Court held, with a majority opinion of three justices and a strong dissent by two justices, that regulations could not constitutionally be annulled by concurrent resolution since a resolution is not enacted in accordance with the requirements in Article II of the Constitution for adoption of law. The result, of course, is a non sequitor since the majority opinion avoided addressing the difference between regulation and law and finding that despite the difference, the enactment procedures applied. They, therefore, assumed the middle term of the syllogism and rambled widely to provide a substitute for the missing logic. Various cases were cited, only one of which was relevant and that one is no longer good law in its own jurisdiction.

For this reason, it is very difficult to determine the effect of the decision.

The holding is explicit that regulations may not be annulled by concurrent resolution. Although it is not explicitly stated, there is a clear implication that annulment by bill is constitutional.

Beyond that, the Court made several statements which do not appear necessary to the holding in this case. Much of this dicta is in sweeping terms. It casts doubt over substantial areas and, since the reasoning is essentially stream of consciousness rather than coherent, gives only minimal clues concerning the legal status of these areas.

Essentially the areas affected fall into two classes

(1) regulations and legislative oversight of regulations; and

(2) other areas of law where concurrent resolutions are used to provide legislative oversight.

On regulations the majority opinion states broadly:

> "The express provision in the Alaska Constitution of two specific legislative veto mechanisms supports our view that no implied general power to veto agency regulations by informal legislative action exists.
>
> * * *
>
> "In our view, the specificity with which the constitution deals with the legislative veto powers it does grant leads logically to the conclusion that no other veto power is implied."

The case law on regulations which the majority opinion cited is not helpful. One of the cases is on point but is no longer good law in its own jurisdiction, the second is a trial court decision and the last is a federal case where the question of a one-house veto was present but not reached. The discussion of this last case illustrates the difficulty in following the reasoning in the majority opinion. The Court referring to the United States Circuit Court decision in Atkins v. United States, 556 F2d 1028 (1977) said:

> The court implied that for one House to have the authority to make such a change would be unconstitutional: "Nor could one House do anything more than preserve existing law. . ." Id. at 1064. In contrast, the annullment provisions of AS 44.62.320(a) permit the legislature to void administrative regulations which are in effect. Such regulations are laws in every meaningful sense, and annulling any one of them effects a change in the law.

The connection and logic totally escape me.

In its discussion of delegation of power to annul regulations, an issue injected into the opinion since no delegation is involved in the case before the Court, the opinion is even less helpful. The majority opinion observes:

> "While the power to void agency regulations could be exercised by either the legislature, or by an agency, when the legislature exercises such power it must do so while acting as a legislature. It may not grant itself the power to act as an agency.
>
> "It might be supposed that if the legislature could condition the validity of a regulation upon the subsequent disapproval by both of its houses by concurrent resolution, it could condition the same upon disapproval by a committee, or a single legislator. Using the theory, propounded by the Amici, that a veto is merely a condition there is no principled distinction between these cases. It is therefore worth observing that most authorities have rejected the validity of laws conferring either affirmative or negatory legislative powers on individual legislators or legislative committees."

Perhaps the second point made by the majority opinion in discussing the desirability of legislative oversight of administrative regulations gives the best clue. The opinion stated:

> Second, at least according to a recent case study, the legislative veto has been unimpressive in practice. See Bruff & Gellhorn, Congressional Control of Administrative Regulation: A Study of Legislative Vetoes, 90 Harv. L. Rev., 1369 (1977). That study concludes, essentially, that the legislative veto encourages secretive, poorly

> informed, and politically unaccountable legislative action. Id. at 1409-20. It is consequences such as these that the enactment provisions of our constitution are designed to guard against.

It should be pointed out that the facts concerning the annulment which was the subject matter of the case do not support a conclusion that the annulment resulted from "secretive, poorly informed and politically unaccountable legislative action" but that, of course, is not material.

It is my conclusion that any annulment of regulation other than by law would be unconstitutional under this case. Although the question is not discussed since it is not relevant to the case, it is very clear that regulations which have the effect of law require statutory authorization and the legislature can withdraw the authorization or establish standards in whatever degree of specificity the legislature desired. Since in case of conflict between statute and regulation the statute controls, it is also clearly permissible to make the substantive statutes detailed thereby leaving less or no areas which must be dealt with by regulations. This latter course, however, involves a loss of flexibility and administrative expertise.

It appears that any form of legislative oversight of administrative regulations would be regarded with suspicion by the court. However, devices such as providing that no regulation can become effective until it has been before the legislature in session for a set time or even a provision that no regulation may become effective unless approved by law are not clearly precluded.

In Plumley v. Hale, 594 P.2d 497 (Alaska 1979), our Court discussed the question of non-retroactive treatment in civil cases. The Court in that case stated:

> In accord with United States Supreme Court precedent, we have previously identified four conditions indicating the propriety of non-retoractive treatment in civil cases: 1) the holding is one of first impression, or overrules prior law, and was not foreshadowed in earlier decisions; 2) there has been justifiable reliance on an alternative interpretation of the law; 3) undue hardship would result from retroactive application; and 4) the

purpose and intended effect of the holding is best accomplished by prospective application.

The case concerned approval of free conference committee reports without a recorded roll call vote. The Court held the criteria to be satisfied and the decision to be prospective only. In my opinion the facts here, while not as compelling as the facts in Plumley, would lead to a conclusion that annulment of regulations which occurred prior to this case are not affected by the case.

The second major problem area is legislative oversight exercised by concurrent resolution in other areas than regulation oversight. The majority opinion made a very broad statement saying:

> The question presented by this case is whether the legislature can exercise its legislative power without following these enactment provisions. In our view the answer must be in the negative, for otherwise they would serve no purpose.

(The dissenting opinion quite correctly pointed out this is not the question at all. Justice Boochever said

> In my opinion, the majority misstates the question presented as being whether the legislature can exercise its legislative power without the usual constitutional safeguards. The real question is whether, having exercised its legislative power, subject to all those safeguards, it may condition the delegation of regulatory power to an executive agency upon a provision for legislative oversight. I agree with our statement in Boehl that the legislature has that power.

This view will be significant in subsequent cases which concern the use of concurrent resolutions in context other than annulment of regulations placing as it does the issue before the Court in focus.)

The majority opinion went on the say:

> Of course, when the legislature wishes to act in an advisory capacity it may act by resolution. However, when it means to take action having a binding effect on

those outside the legislature it may do so only by following the enactment procedures.

While the dissent noted that numerous other statutes provide some specific legislative review function by concurrent resolution, the majority opinion does not specifically address this. The sweeping generality of the majority opinion clouds, and on its face forbids, these other functions.

These include:

1. AS 18.45.025 -- Approval of facilities siting permit for nuclear facilities.

2. AS 18.65.060 -- Disapproval of regulations relating to compilation of criminal justice information and release of this information.

3. AS 28.05.021 -- Approval of compacts with other states relating to motor vehicle registration and driving licenses.

4. AS 28.15.141 -- Approval of regulations relating to classification of drivers licenses.

5. AS 28.15.081 -- Approval of regulations relating to drivers license examination.

6 AS 35.10.080 -- Approval of physical facility procurement and planning policy.

7. AS 37.05.280 -- Approval of leases by the state with a rental in excess of $12,000. (While this has general application, it was adopted as part of and specifically relates to construction of public buildings by ASHA for lease to the state and is necessary for the validity of the revenue bonds issued by ASHA.)

8. AS 37.12.080 -- Approval of investments in a single project or to a single applicant by Alaska Renewable Resources Corporation if the investment exceeds $1,500,000 or five percent of the resources of the corporation.

9. AS 38.05.037 -- Disapproval of zoning by the division of lands in the unorganized borough.

10. AS 38.05.182 -- Disapproval of a determination by the Commissioner of the Department of Natural Resources that the taking of royalty on natural resources in money rather than in kind is in the best interests of the state.

11. AS 38.05.065 -- Approval of disposition of oil and gas and contracts for sale of state owned royalty gas or oil.

12. AS 39.23.080 -- Approval of salary commission recommendations. (This is now repealed but until the pay bill this year went into effect, it was the basis on which higher government officials, including the governor, legislators and judges, were paid.)

13. AS 44.55.110 -- Approval of Alaska Power Authority plans. This approval is a specific condition on bonding.

14. AS 44.57.210 -- Approval of projects of the Alaska Toll Bridge Authority. This approval is required before bonds may be issued.

15. AS 46.03.758 -- Disapproval of regulations establishing civil penalties for discharge of oil.

16. AS 46.40.080 -- Approval of Alaska coastal management programs.

While all of these are clouded by the language in the majority opinion, that language is clearly dicta except on the point of annulment of regulations. In my opinion, an attempt to determine whether in later cases the court would follow the broad sweep in the instant case, narrow that sweep depending on the issue before it, or even confine the case to its facts would be pure speculation. Courts have frequently done all three. The majority opinion with its conclusionary approach unsupported by a coherent rationale is of little assistance in determing the scope of the opinion.

Earlier in the opinion, I discussed retro-activity as it applied to regulations annuled by concurrent resolution before the opinion. There is an even stronger case for holding that retroactive application cannot be given to a decision in the areas where annulment of regulations is not in question.

I am, however, very distrubed by the possibility that a future decision in this area could be retroactive to the date of this decision based on a finding by the Court that this decision "clearly foreshadowed" a subsequent decision that resolutions could not be used as prescribed in these statutes. I do not think this would be the decision since certainly at the time of enactment of the laws referred to there was no foreshadowing and bringing all legislative action to a halt in areas of major concern to the state while the legislature re-wrote the law in these areas is certainly not reasonable.

Since the alternative would be to halt, among other things, power development, coastal zone management, and oil and gas sales based on a possibility that the Court will look on legislative oversight in these areas as unfavorably as it does on legislative oversight of regulations, I recommend continuing to operate within the statutory framework now established until the Court, by a subsequent decision, clarifies its position.

I would also recommend that the legislature consider the question of what options are open to it to meet the serious problems created by the case.

BGB:jdn

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 25, 1980

SUBJECT: Constitutionality of SB 340 in light of State v. A.L.I.V.E. Voluntary.

TO: Senator Bettye Fahrenkamp

FROM: Joseph A. Guthrie
Legislative Counsel

As you may know, on February 19, 1980 the Alaska Supreme Court held in State v. A.L.I.V.E. Voluntary, No. 2022, that the use of a concurrent resolution to annul regulations, as authorized by AS 44.62.320, is unconstitutional. The Court equated annulment of regulations with repeal of statutes in finding that the use of a concurrent resolution to annul regulations violates the procedures specified for lawmaking in Article II of the Alaska Constitution. These procedures, which the Court described as safeguards against ill considered action, include the requirement that each bill be confined to one subject, have a descriptive title, contain an enactment clause of prescribed wording, be read three times on three separate days, and be passed by the recorded votes of a majority of each house.

None of these safeguards, of course, apply to concurrent resolutions.

SB 340 would require that all regulations be approved by concurrent resolution adopted by the legislature before becoming effective. While A.L.I.V.E. Voluntary, supra, is concerned with the annulment of regulations, not their prior approval, the decision turns on the use of the concurrent resolution to effectuate what the Court considered to be lawmaking. That the Court would consider a requirement of prior approval of regulations to be lawmaking seems clear, since the Court cited with approval Reith v. South Carolina State Housing Authority, Ct. C. P., 11th Jud. Dist. (August 28, 1975), rev'd on other grounds, 225 S.E.2d 847, 848, (S. C. 1976). In that case, the South Carolina Court of Common Pleas held invalid a statute stating that regu-

lations adopted would be invalid unless approved by a concurrent resolution of the South Carolina General Assembly on the grounds that the General Assembly could not perform a legislative function by means of a concurrent resolution. Therefore, it seems clear that the legislation you requested is now unconstitutional.

After consulting with your staff assistant, I drafted a sponsor substitute for SB 340 which would require that newly adopted regulations, before becoming effective, be placed before the legislature while it is in session for 60 days. This would afford the legislature an opportunity, before the regulation becomes effective, to review the regulation, consult with the executive regarding any modifications thought necessary, and if need be, enact a bill disapproving the regulation.

JAG:ljb

Enclosure

Sharp copy

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 27, 1980

SUBJECT: Rationale for the addition of section 2 to the Judiciary Committee Substitute for SB 340

TO: Senator Bettye Fahrenkamp

FROM: Joseph A. Guthrie
Legislative Counsel

You will note that we have added a section 2 to the Senate Judiciary Substitute for SB 340 repealing AS 24.20.445. That section authorizes the Administrative Regulation Review Committee to suspend the effectiveness of regulations adopted since the end of the last session of the legislature until 30 days into the next session. Since your bill would provide that no regulation becomes effective until it is before the legislature for 60 days, regulations adopted since the end of the last session of the legislature would not be effective in any case, and therefore the power of suspension is rendered nugatory.

JAG:ljb

Enclosure

March 5 1980

Senator Robert H. Ziegler Sr.
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

Last night, for the first time ever, I had the opportunity (just took the time) to watch "Capitol 80" on television. Regarding the business of regulations, I applaud your comments and I sincerely hope you can find some way to maintain control over the regulatory powers of agencies and commissioners. I loved your comment about them only wishing to be the legislature themselves! How true, how true!

I have stated repeatedly that commissioners are given far too much power - we've had regulations imposed by the Department of Public Safety on the school bus industry - we've got the Department of Natural Resources proposing some absolutely asinine fire control regulations - and it goes on and on. Commissioners are not elected representatives and should be answerable to those who are! There have been many times that regulations have been gross misinterpretations of legislative intent. The legislature must keep some control over this situation. DON'T GIVE UP!

Public hearings on regulations: what a joke! This last batch of fire control regs being pushed by Resources never had a hearing in the Delta area and we'll be greatly affected. When we objected, they said that a hearing was held in Fairbanks. Perhaps, but it was not announced within the Delta area. No one here knew about it. And the agency rep could not "remember" <u>when</u> it was advertised in the Fairbanks paper! The public needs your attitude on regulations - hang in there and keep legislative control.

E. C. PHILLIPS & SON, INC.
Box 8235
KETCHIKAN, ALASKA 99901

March 2, 1980

The Honorable Bettye Fahrenkamp
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

We support Senate Bill No. 340 which you introduced, requiring that all regulations be approved by the legislature before becoming effective 30 days after approval.

Sincerely,

Paul M. Ohashi

cc: Senator Robert H. Ziegler, Sr., Alaska State Senate
Richard B. Lauber, Pacific Seafood Processors Ass'n.

3/6/80

One way or another, we're going to take care of the regulation situation. Give my regards to your mother, Paul, when you see her.

Regards,

BL3

Phone: (907) 225-2080

THE ALASKA CHAPTER

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

SKILL
RESPONSIBILITY
INTEGRITY

BOX 4-2500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 276-5354

3201 SPENARD ROAD
ANCHORAGE
H. GLENZER, JR.
MANAGER

February 28, 1980

The Honorable Robert H. Ziegler
Chairman, Senate Judiciary Committee
Alaska State Senate
Juneau, Alaska 99811

Dear Senator Ziegler:

At its duly constituted February Board of Directors meeting held in Juneau, Alaska on February 27 and 28, 1980, the members of the Board of Directors of the Alaska Chapter Associated General Contractors of America passed the following resolution in support of Committee Substitute for Senate Bill 340.

BE IT RESOLVED that the Board of Directors of the Alaska Chapter of the Associated General Contractors of America wish their testimony to become a matter of record in support of Committee Substitute for Senate Bill 340.

FURTHER BE IT RESOLVED that no member of the Board of Directors of the Alaska Chapter A.G.C. can recall that any present elected member of the State of Alaska Legislature can be identified as having sought election to office who espoused the increased regulation of the lives or businesses of the citizens of the State of Alaska, and that quite the contrary, to the best of our knowledge all the present elected Senators and Representatives of the State of Alaska had as one of their campaign promises the stopping of quasi-legislative law being promulgated by the regulation writers who form such a substantive portion of the employees of various State agencies and departments.

FURTHER BE IT RESOLVED that the Board of Directors of the Alaska Chapter A.G.C. of America is desirous of seeing the responsibility of the laws enacted by the State of Alaska legislature returned totally to their rightful location, which is the legislature itself, and removed from the various regulation writers within the State agencies and commissions.

FURTHER BE IT RESOLVED that it is the opinion of the Board of Directors of the Alaska Chapter A.G.C. of America, acting as spokesman for the over 500 general, associate and sub-contractor members from throughout the entire State of Alaska, that the legislature should concern itself to a much greater degree with the elimination of existing regulations that stifle the freedom of the individual, and which are used as a tool of the radical element of the environmental community to delay, impede or stop the economic development of the State of Alaska.

FURTHER BE IT RESOLVED and noted that it is the opinion of the Board of Directors of the Alaska Chapter A.G.C. of America that the problem addressed by Committee Substitute for Senate Bill 340 is not localized to the State of Alaska but is of national concern and is a root cause of the extremely high inflationary burden being placed upon the citizens of the entire United States by bureaucrats dedicated to the proposition that they alone know what is best for the citizenry in America.

We therefore unanimously have passed this resolution with the hope and intent that the laws of the State of Alaska and the regulations related thereto be returned to the people's elected representatives and removed from the bureaucratic bastions within the various agencies and commissions.

Sincerely,

Con Frank, President
Alaska Chapter Associated General Contractors of America

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

February 27, 1980

The Honorable Bettye Fahrenkamp
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Sponsor substitute for SB 340 (legislative approval of regulations)

Dear Senator Fahrenkamp:

I have reviewed the Sponsor Substitute for SB 340 which you brought to the meeting of the Senate Judiciary Committee yesterday. It is a great improvement over the original SB 340 -- removing some of that version's constitutional and other problems -- but the Department of Law still cannot support it.

As we discussed at yesterday's meeting of the Senate Judiciary Committee, I will be in Anchorage and will not be able to attend the committee's Thursday, February 28, meeting at which this bill will be considered. Therefore, I am sending a copy of this letter to Senator Ziegler, and will include some comments on the original SB 340 since your sponsor substitute has not yet been formally introduced.

It is our opinion that the bill still suffers two serious defects: (1) it violates the separation-of-powers doctrine, and (2) the 60-day to almost a year's delay in a regulation's effective date is not workable. The delay and the constitutional issue are inextricably related in that the delay so interferes with the execution of the laws, for which the executive branch is responsible, that the executive branch is prevented from performing its constitutionally required functions.

As a practical matter, it is simply not feasible for the Board of Fisheries, for example, to delay the effective date of a June 1 fisheries opening until the following year when the legislature will have had 60 days to consider what to do about

cc-CBLM

that date. If the regulation is filed, for example, by the lieutenant governor on May 1 and the legislature adjourns May 10, this bill would require that the regulation lie before the legislature for another 50 days during the next regular session -- to convene the following January. In addition, any regulation filed after adjournment of the regular legislative session would have to wait until the full 60 days of the next regular session before taking effect. Again, for many regulations, such a deferred effective date would not be in the best interests of the state. Events and circumstances requiring adoption or amendment or repeal of administrative regulations do not necessarily coincide with legislative sessions, and thus this bill would seriously interfere with the executive branch's performance of its constitutionally required functions. AS 44.62.270 says that it is "state policy that emergencies are held to a minimum and are rarely found to exist," and the emergency regulation approach should be used sparingly.

Concerns similar to those being expressed now in the legislature were expressed in 1975 when the legislature enacted the bill which became ch. 27 SLA 1975, creating the Administrative Regulation Review Committee. At that time, it was recognized that the legislature should not interfere with the regulations-adoption process as a means of executing statutorily required functions. The legislature felt that what was needed was a systematic means of review. See the second sentence of AS 24.20.400 (the last portion of which, as you know, was held invalid on February 19, 1980, by the Alaska Supreme Court in State v. A.L.I.V.E. Voluntary). Section 2, ch. 27 SLA 1975 enacted AS 44.62.320(b), requiring the lieutenant governor to submit a regulation to the new committee within 45 days after the regulation is filed. Believing that an earlier transmission to the committee would be even more helpful, in 1978 the legislature amended AS 44.62.320(b) (see sec. 5, ch. 64 SLA 1978) to require the lieutenant governor to submit the regulation to the committee "at the same time" that the regulation is filed by the lieutenant governor.

The current system involving prompt review of regulations by the Administrative Regulations Review Committee appears to adequately address the concern expressed in Sponsor Substitute for SB 340, and does so without raising the serious constitutional and practical issues that this bill raises.

However, in the A.L.I.V.E. Voluntary case, the Alaska Supreme Court stated (at page 24 of the advance copy), "While the power to void agency regulations could be exercised by either the legislature, or by an agency, when the legislature exercises such power it must do so while acting as a legislature. It may not grant itself the power to act as an agency." Citing cases from other jurisdictions, our court indicated that a statute expressing some administrative agency's role in performing an oversight function would be valid. Perhaps some such arrangement based upon referrals from the Administrative Regulation Review Committee could be developed.

I would like to comment on three statements contained in your undated, but presumably February 26, 1980, memo to Senator Ziegler covering your proposed sponsor substitute. Near the middle of your second paragraph on page 1 you state that "a citizen should be able to prepare or give testimony on a particular set of regulations with the knowledge that its concerns will be considered." The last sentence of AS 44.62.-210(a) already requires this, stating "The state agency shall consider all relevant matter presented to it before adopting, amending or repealing a regulation." An earlier legislature anticipated your concern and enacted a statute covering it.

The last sentence on your first page says "If the person misses the hearing he has no other opportunity to address the issue." That is not quite correct. If an oral hearing is scheduled, and someone is not able to appear in person, he or she may present written comments or arguments. AS 44.62.210(a). If the person misses the opportunity for submitting written comments, AS 44.62.220 gives him or her the right to petition for a change in the regulations. AS 44.62.230 sets out the procedure for such a petition. In addition, AS 44.62.060 prohibits the lieutenant governor from filing a regulation unless it has been approved for legal matters by the Department of Law. If a person has a legal concern regarding a proposed or newly adopted regulation, he or she can submit that concern to the Department of Law with the assurance that it will be considered. If the person believes that a regulation is invalid and the Department of Law has not agreed with that point of view, the person can submit the matter to court for a declaratory judgment under AS 44.62.300. And, of course, if all of these procedures fail to

produce the result sought by the individual, he or she is free to work with the legislature in enacting legislation to supersede the offending regulation.

In the second sentence of the fourth paragraph on page 2 of your memo, you state that the A.L.I.V.E. Voluntary decision "removes the authority for the regulation review committee to do anything but ask that an agency change its regulations." That too is not quite correct. The committee is always free to work for legislative amendment of the statutes under which the regulations were adopted. As a committee of the legislature, it is, of course, in a good position to do so.

With regard to the original bill, I generally agree with Legislative Counsel Joe Guthrie's February 25 comments on the A.L.I.V.E. Voluntary case and the bill's unconstitutionality. As to more technical problems with the original bill, the "or" between paragraphs (3) and (4) of sec. 260 is confusing. It appears to make each paragraph stand independently. For example, an emergency regulation may not remain in effect unless, under paragraph (2), the agency certifies compliance with secs. 60 and 150 -- 210 of the APA, indicating that legislative approval is not required if the agency complies with those sections; but I wonder if that is what you intended. Also, under paragraph (3), an emergency regulation may not remain in effect unless the legislature has approved it under sec. 275; but sec. 275 does not provide for notice, hearing, or the attorney general's legal approval; thus, if the legislature approves the regulation it will remain in effect even though there has been no notice, hearing, or legal approval. And, under paragraph (4), the emergency regulation will not remain in effect unless the time period under sec. 275(c) has not expired; sec. 275(c) sets a one-year period for legislative approval; so, it appears that an emergency regulation could remain in effect a year, but then that is inconsistent with the lead-in line for sec. 260(a) which says 120 days. If the word "and" was intended to be used in place of the word "or," and all four requirements must be met, what happens when the legislature is not in session and it is necessary to adopt an emergency regulation? In addition, line 29 on page 2 of the original bill refers to filing "with" the lieutenant governor; however, under the rest of the APA,

regulations are "submitted to" him and "filed by" him; this distinction is significant because it is the filing by him that starts the time period running under current law.

In summary then, the Department of Law, upon consideration of both the constitutional and practical problems inherent in both the original SB 340 and the proposed Sponsor Substitute for SB 340, cannot support either version. The current law, providing for prompt review of regulations by the Administrative Regulations Review Committee, appears to be adequate, but we are open to suggestions for improving the system within the bounds of the constitution.

Thank you for this opportunity to offer our comments. We would be pleased to discuss this with you and other legislators if you and they wish.

Yours truly,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Arthur H. Peterson
Arthur H. Peterson
Assistant Attorney General

AHP:md

cc: Keith Specking
Legislative Assistant
Governor's Office

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 25, 1980

SUBJECT: Constitutionality of SB 340 in light of State v. A.L.I.V.E. Voluntary.

TO: Senator Bettye Fahrenkamp

FROM: Joseph A. Guthrie
Legislative Counsel

As you may know, on February 19, 1980 the Alaska Supreme Court held in State v. A.L.I.V.E. Voluntary, No. 2022, that the use of a concurrent resolution to annul regulations, as authorized by AS 44.62.320, is unconstitutional. The Court equated annulment of regulations with repeal of statutes in finding that the use of a concurrent resolution to annul regulations violates the procedures specified for lawmaking in Article II of the Alaska Constitution. These procedures, which the Court described as safeguards against ill considered action, include the requirement that each bill be confined to one subject, have a descriptive title, contain an enactment clause of prescribed wording, be read three times on three separate days, and be passed by the recorded votes of a majority of each house.

None of these safeguards, of course, apply to concurrent resolutions.

SB 340 would require that all regulations be approved by concurrent resolution adopted by the legislature before becoming effective. While A.L.I.V.E. Voluntary, supra, is concerned with the annulment of regulations, not their prior approval, the decision turns on the use of the concurrent resolution to effectuate what the Court considered to be lawmaking. That the Court would consider a requirement of prior approval of regulations to be lawmaking seems clear, since the Court cited with approval Reith v. South Carolina State Housing Authority, Ct. C. P., 11th Jud. Dist. (August 28, 1975), rev'd on other grounds, 225 S.E.2d 847, 848, (S. C. 1976). In that case, the South Carolina Court of Common Pleas held invalid a statute stating that regu-

lations adopted would be invalid unless approved by a concurrent resolution of the South Carolina General Assembly on the grounds that the General Assembly could not perform a legislative function by means of a concurrent resolution. Therefore, it seems clear that the legislation you requested is now unconstitutional.

After consulting with your staff assistant, I drafted a sponsor substitute for SB 340 which would require that newly adopted regulations, before becoming effective, be placed before the legislature while it is in session for 60 days. This would afford the legislature an opportunity, before the regulation becomes effective, to review the regulation, consult with the executive regarding any modifications thought necessary, and if need be, enact a bill disapproving the regulation.

JAG:ljb

Enclosure

SB
365

COMMITTEE REPORT

SENATE

FURTHER: None

1/25/80

Date: 1/25/80

Mr. President:

The Committee on JUDICIARY has had SB 365
imposing penalties on persons who deal in intoxicating liquors without a license

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

SENATE AMENDMENT

By SENATE JUDICIARY COMMITTEE

To: AMEND SENATE BILL No. SB 365

To: HOUSE BILL No.

PAGE: 1. LINE: 16

delete [six] insert five

In context, the sentence will read "a felony and punishable by imprisonment for not more than [six] five years, or by a fine of not more than $30,000, or by both.....

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER _____

DEPARTMENT _____

ATTENTION _____

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

preliminary
draft 10/1

FROM:
MAIL STATION NUMBER 500

DEPARTMENT Technical Services

BY _____ DATE 5-12-92

02-002 (REV.10/73)

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety		SB 365

DEPARTMENT POSITION

Support

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Col. Anderson	3/18/80	William Nix	3/18/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL

(3) PROGRAM EFFECTS OF BILL

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:



District Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 400
KETCHIKAN, ALASKA
99901

CHAMBERS OF
H. C. KEENE, Jr., JUDGE

June 29, 1979

Hon. Robert H. Ziegler, Sr.
Alaska State Senate
Ziegler, Cloudy, Smith, King & Brown
307 Bawden Street
Ketchikan, Alaska 99901

Re: Repeal of Alaska Enoch Arden Law or Presumption of Death After Six Continuous Years of Disappearance

Dear Senator Ziegler:

Pursuant to our conversation of 28 June, 1979 relative to the holding of Presumptive Death Hearing, I have gathered the material concerning repeal of A.S. 20.05.130 which provided that a person missing for six continuous years was presumed to be dead and his estate was to be administered in accordance with the law applicable to the administration of the estate of deceased persons. (Exh. A)

It is noted that this provision was located under Title 20, Infants and Incompetents, and specifically with those sections dealing with Guardianship. Title 20 was deleted out of existence or otherwise amended by the Uniform Probate Code enactment in 1972. This particular section was disposed of by the very last sentence on the last page, 121, of the 1972 Session Laws, Chapter 78, in a most summary manner. (Exh. B)

The above action was noted in the Alsska Statutes Supplement to Title 20 solely with respect to the appointment of a guardian for a missing person. (Exh. C)

Declaration of Death for persons who are missing and presumed to have died without the location of their body is covered under the Code of Civil Procedure, Title 9. Specifically, Sections 09.55.020 - 09.55.060 cover the subject. (Exh. D)

It is my assumption from studying the various statutes and legislative action that the provision for the declaration of death for a person who had been continuously missing for more than six years was inadvertently swept away with the introduction of the Uniform Probate Code. It is felt that this provision should be effective as I indicated when you recently posed questions relative to a Presumptive Death Hearing for a person who had been last seen in 1928 when he went into the woods hunting.

My particular interest in the matter has not been too great since having been relieved of the duties of Coroner some years past. Coroners who have mentioned this to me apparently have not gone further with the subject.

It is my recommendation that a statutory provision be enacted into the Code of Civil Procedure providing that a person missing for a considerable period of time such as six years be presumed dead and a Declaration of Presumptive Death be entered. This would fill the void created by the deletion of this provision from the Guardianship Section, where it really did not belong, and would enable the survivors to administer the estate of the missing person.

Very truly yours,

Henry C. Keene, Jr.
District Court Judge

HCK:ri

Enclosures

TO: SENATOR ZIEGLER

FROM: GUY VAN DOREN

SUBJECT: SENTENCING AND FINES FOR FELONIES AND MISDEMEANORS

Murder in the second degree...	Class A felony
Manslaughter ...	Class A felony
Negligent homicide.....	Class C felony
Assult in the First Degree...	Class A felony
" " " Second "	Class B "
" " " Third "	Class A Misdemeanor
Reckless endangerment.....	Class A Misdemeanor
Sexual Assult in the first degree...	Class A felony
" " " " Second "	Class B felony

FINES

Murder in the first or second degree, or kidnapping	$75,000.00
Class A, B, or C felony.....	50,000.00
Class A Misdemeanor.....	5,000.00
Class B Misdemeanor....	1,000.00
Violations..not to exceed.....	300.00

IMPRISONMENT

Murder in the second degree.....	5 to 99 years
Class A Felony..... If the offenseis a first felony conviction, other than for manslaughter and the defendent possessed or used a fire-arm or caused serious physical injury during commission of the crime....	six (6) years....
Class B felony.....	Not more than 10 years 2nd. conviction 4 years
Class C felony.....	Not more than 5 years
Class A Misdemeanor...	Not more than 1 year
Class B Misdemeanor	Not more than 90 days

District Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 400
KETCHIKAN, ALASKA
99901

CHAMBERS OF
H. C. KEENE, Jr., JUDGE

January 21, 1980

Hon. Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Presumptive Death

Dear Bob ~~Senator Ziegler~~:

This is in reply to your letter of January 16, 1980.

First and foremost, I must admit that the section pointed out by Mr. Vassar probably escaped my notice although I have considered it in the past.

However, I do not think it will fit the bill. Sec. 13.06.035 is a rule of evidence only. My evaluation is that this is not sufficient for the average magistrate or judge handling presumptive death certificates to act upon. A provision which is more in the nature of a directive or authority for specific action is needed.

I, therefore, feel that Senate Bill No. 293 is still necessary. This evaluation is based on discussions with other judicial officers and my own experience.

Very truly yours,

Henry C. Keene, Jr.
District Court Judge

HCK:ri

Enclosures

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 January 15, 1980

SUBJECT: Presumptive Death
(Work Order Number 7316)

TO. Senator Robert H. Ziegler, Sr.

FROM: Kenneth E. Vassar
Legislative Counsel

Enclosed is the letter from Judge Keene with back-up "exhibits". I have found in the Uniform Probate Code (AS 13.06 - 13.36) a section which is substantially similar to the repealed section referred to in Judge Keene's letter and to the provisions of SB 293. That section is AS 13.06.035(3), which provides:

> Sec. 13.06.035. EVIDENCE AS TO DEATH OR STATUS. In proceedings under this code, the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the code. In addition, the following rules relating to determination of death and status are applicable:
>
> * * *
>
> (3) a person 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 occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

I regret not having seen this section previously. It appears to accomplish Judge Keene's goal.

KEV:ljb

Enclosures

SB
366

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

1/29/80

Date: 2/5/80

Mr. President:

The Committee on JUDICIARY has had SB 366

increasing the number of superior court judges

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

SUPPORT MATERIAL FOR TWO ADDITIONAL ANCHORAGE JUDGES

The backlog and delay in Superior Court civil cases in Anchorage has reached an unacceptable level. Court delay has reached the point that it takes approximately 18 months from the date that a "Memo to Set" is filed until a trial can be scheduled. Even when this trial date is reached, trials are often postponed for an additional several months due to the congestion of the trial calendar and the inability of the court to provide a judge on the scheduled date. Because of this delay, cases are requiring from 18 months to more than two years from the date of filing to the date of completion at the trial court level.

The median time to trial for civil cases has increased from 417 days in 1976 to 598 days in 1979. Backlog in civil cases has grown from 2,799 at the end of 1975 to 4,499 at the end of 1978, or an increase of 61 per cent in those three years.

What has caused this rapid deterioration of the civil calendar in Anchorage? In the first instance, the civil filings in the Superior Court have increased approximately 30 per cent since 1974, with no additional Superior Court judges added during that time. Second, the number of felony trials has increased by over 80 per cent since 1975, which in turn reduces the available judge time for processing of civil cases. Also, the length of felony trials

has increased 37 per cent in the past three years. There likewise appears to be an increase in the length of trials in the civil area.

The problem of backlog in the Anchorage calendar has been addressed by a committee comprised of the Chief Justice and representatives of the Supreme Court and trial courts of Anchorage. This committee has studied the calendaring process in Anchorage extensively, and has made recommendations to the Anchorage trial court for implementation of procedures that will increase the productivity of the trial court in the future. As a result of this committee's work, the following steps have been taken in an effort to reduce the delay in processing cases and hopefully to bring the system back into a position to process civil cases within approximately a one-year time frame:

1. Beginning January 15, 1980, and continuing for four months, the Anchorage Superior Court is being augmented by an infusion of judges from other jurisdictions within the state and retired judges in an effort to work down the existing backlog. Already these judges have disposed of many pending cases.

2. The committee recommended the implementation of a revised case assignment system which will provide for an assignment of each case to an individual judge for all

future proceedings, including the trial. This earlier individual assignment system will permit the judges to obtain greater familiarity with their cases and increase the elements of judicial accountability and responsibility for efficient disposition of pending cases. These factors should contribute to a more rapid processing of civil cases.

3. A committee comprised of judges and lawyers in Anchorage has been established to work out agreement on standard requirements for pre-trial case preparation. Such requirements should eventually result in shorter, more efficient trials and hearings due to more thorough preparation by the parties

4. A request for two additional Superior Court judges has been introduced. While the steps discussed above will aid in reducing the current short-term problem in Anchorage and will increase the long-term efficiency of the court, additional judicial resources are still necessary if the court is to avoid future backlogs and prevent deterioration of service as has happened in the past three to four years.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. S.B. 366
Title An Act Relating to the Number of Superior Court Judges
Requested by Senate Judiciary Committee Date Feb. 4, 1980

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected Administration of Justice
BRU, Program, or Subprogram(s) Affected Alaska Court System
(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		297.4	319.7	343.7	369.5	397.2
200	TRAVEL		2.0	2.2	2.4	2.6	2.9
300	CONTRACTUAL						
400	COMMODITIES		1.0	1.1	1.2	1.3	1.4
500	EQUIPMENT		14.6				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		315.0	323.0	347.3	373.4	401.5

FUNDING (Thousands of Dollars)

GENERAL FUND		315.0	323.0	347.3	373.4	401.5
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		8	8	8	8	8
PART TIME						
TEMPORARY						

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

See attached Budget Summary.

IV. DATE February 4, 1980 PREPARED BY Richard P. Barrier
AGENCY Alaska Court System
PHONE 264-0545

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

33-001 (Rev. 12/79)

BUDGET SUMMARY - S.B. 366

Personnel:		
2 judges at $63,120	$126,240	
Benefits	7,719	
Total judges	133,959	$133,959
2 secretaries at $20,136 (Range 12)	40,272	
2 in-court clerks at $20,136 (Range 12)	40,272	
2 law clerks at $23,808 (Range 15)	47,616	
Benefits	35,262	
Total support	163,424	163,424
Total Personnel	$297,383	
Travel:		2,000
Commodities:		1,000
Equipment:		14,600
Grand Total		$314,983

SB
367

COMMITTEE REPORT

SENATE

FURTHER: None

3/11/80

Date: 4/2/80

Mr. President:

The Committee on JUDICIARY has had SB 367

savings associations

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[X] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

AMENDMENT

OFFERED IN THE SENATE: BY: SENATE JUDICIARY COMMITTEE

TO: AMEND SENATE BILL No. CSSB 367

HOUSE BILL No. _____

PAGE: 1 LINE: 15 through line 19

Beginning with the word "For" on line 15, delete all material through line 19.

Original sponsor: Hackney

Offered: 3/11/80
Referred: Judiciary

IN THE SENATE BY THE COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 367

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to savings associations."

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

* Section 1. AS 06.30.025 is repealed and re-enacted to read:

Sec. 06.30.025. DECLARATION OF POLI Y; RULE-MAKING AUTHORITY. (a) In giving authority for the establishment of associations, it is the intent of the legislature to make available to the people of the state the benefits of savings and loan associations, thereby promoting a sound and competitive association system, the practice of thrift, savings, investment, home financing, and the security of persons saving through associations. [For the accomplishment of these purposes, the legislature intends by this chapter to vest in the department, in addition to other regulatory authority, the authority to allow by regulation those powers possessed by state-chartered associations in other states which the department determines have demonstrated accomplishment of these purposes.]

(b) The commissioner may by regulation define the powers of associations and adopt regulations to carry out the purposes of associations consistent with this chapter and AS 06.01.020.

* Sec. 2. AS 06.30.030 is amended to read:

Sec. 06.30.030. STANDARDS FOR REGULATIONS. The commissioner in the exercise of the power to issue regulations under [NECESSARY TO CARRY OUT] this chapter shall act in the interests of a sound and competitive savings and loan system and in the interest of promoting and encouraging thrift, savings, investment, home financing, and the security of persons saving through savings associations.

* Sec. 3. AS 06.30.280 is amended by adding a new paragraph to read:

(19) under regulations adopted by the department provide negotiable or nonnegotiable orders of withdrawal accounts for its depositors.

* Sec. 4. AS 06.30.295 is amended to read:

Sec. 06.30.295. FIXED RATE, FIXED TERM ACCOUNTS. No association may issue, sell, negotiate, or advertise for sale either to members or the public any type of investment security other than savings accounts unless otherwise provided in this chapter or in regulations adopted under AS 06.01.020. An association may accept accounts bearing a definite rate of return for fixed periods of time when its board of directors has adopted a resolution providing for the issuance of fixed rate, fixed term accounts and those accounts are insured by the Federal Savings and Loan Insurance Corporation.

* Sec. 5. AS 06.30.375 is amended to read:

Sec. 06.30.375. SAVINGS ACCOUNTS IN GENERAL. (a) Savings accounts shall be opened for cash or its equivalent. Except as limited by the board of directors, a member may make additions to his savings accounts in amounts and at times he chooses.

(b) Earnings on accounts shall be fixed or otherwise declared in accordance with the provisions of this chapter, the implementing regulations adopted under this chapter, or regulations adopted under AS 06.01.020.

(c) Under regulations adopted by the department, each association may classify and differentiate among accounts but [EXCEPT AS PROVIDED IN AS 06.30.450 - 06.30.455,] an association may not prefer one of its savings accounts within an account class over another savings account in the same class as to the right to participate in earnings [RECEIVE DIVIDENDS].

(d) No preference between savings account members may be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding up the business of the association.

* Sec. 6. AS 06.30.450 is amended to read:

Sec. 06.30.450. DECLARATION OF DIVIDENDS. As of one of the last three business days before the closing of any period as fixed by the board of directors, the board may declare a dividend on various account classifications [SAVINGS ACCOUNTS] of record on that date. The dividend shall be payable as of that date or a later date not more than 30 days following the close of the period as determined by the board. No dividends shall be declared except dividends payable as provided in this section.

* Sec. 7. AS 06.30.455 is amended to read:

Sec. 06.30.455. COMPUTATION AND PAYMENT OF DIVIDENDS ON SAVINGS PLANS. Dividends shall be credited to savings accounts on the books of the association on the dividend-payment date unless a savings account holder requests and the association agrees to pay dividends on all or part of a savings account in cash. Dividends payable in cash shall be paid on the dividend-payment date and may be paid by check or bank draft. All [SAVINGS] account holders shall participate equally in earnings [DIVIDENDS] pro rata to the withdrawal value of their respective accounts unless an association has classified or differentiated among its accounts. If an association has classified and differentiated among its accounts, all account holders in the same class participate equally in earnings pro rata to the withdrawal value of their respective accounts. [, EXCEPT THE] The association may pay dividends according to the rate limitations prescribed for different classes of accounts and administered by the Federal Home Loan Bank Board. Dividends shall be declared on the withdrawal value of each savings account at the begin-

ning of the dividend period, plus additions to it made during the dividend period, less amounts withdrawn and noticed for withdrawal, which for dividend purposes shall be deducted from the latest previous addition, computed at the declared rate for the time invested. The date of investment is the date of actual receipt by the association of an account or an addition to an account. If the board of directors so determines, accounts or additions received by the association on or before a date not later than the 10th day of the month, unless the day determined is not a business day, in which case it may be the next succeeding business day, shall receive dividends as if invested on the first day of the month in which the payments were received. If the board makes this determination, it also shall determine that payments received after the determination date shall either (1) receive dividends as if invested on the first day of the next succeeding month, or (2) receive dividends from the date of actual receipt by the association.

* Sec. 8. AS 06.30.460 is repealed and re-enacted to read:

Sec. 06.30.460. APPLICATION FOR WITHDRAWAL OR TRANSFER. An account holder or an authorized representative may at any time apply for withdrawal or transfer of all or a part of an account. The application may consist of a negotiable or nonnegotiable order of withdrawal or an authorization for transfer from one account to another. Each application shall request immediate withdrawal or transfer of a specified amount in accordance with AS 06.30.470. A member may cancel his application at any time in whole or in part by written notice.

* Sec. 9. AS 06.30 is amended by adding a new section to article 15 to read:

Sec. 06.30.897. ADDITIONAL POWERS. The enumeration of the general powers of association in AS 06.30.280 does not exclude the exercise of other powers that are appropriate for the achievement of the objectives

and purposes of an association under this chapter. With the approval of the department, an association may provide for the exercise of other powers in its bylaws or regulations.

* Sec. 10. AS 06.30.910 is amended by adding a new paragraph to read:

(27) "order of withdrawal" means an order directing withdrawal from a savings or similar interest-bearing account.



SECTION ANALYSIS OF CS FOR SB 367 BY TOM BISS REPRESENTING PENN. SAVINGS.

SECTION ONE: VESTS THE DEPT OF COMMERCE WITH REGULATORY POWERS TO PROMULGATE REGULATIONS EXISTING IN OTHER STATES FOR STATE CHARTERED SAVINGS AND LOAN ASSOCIATIONS.

SECTION TWO: EMPOWERS THE COMMISIONER OF COMMERCE TO ISSUE REGULATIONS UNDER THIS ACT.

SECTION THREE: PROVIDES REGULATORY POWER TO THE DEPT. OF COMMERCE TO ALLOW NEGOTIABLE AND NONNEGOTIABLE ORDERS OF WITHDRAWAL (NOW) ACCOUNTS.

SECTION FOUR: AMENDS SEC. 06.30.295 TO ALLOW FOR NOW ACCOUNTS.

SECTION FIVE: ALLOWS DEPT. OF COMMERCE TO ESTABLISH NOW ACCOUNTS BY REGULATION ALLOWS WITHDRAWLS FROM INTEREST BERING ACCOUNTS AND GIVES THE DEPOSITOR THE RIGHT TO EARNINGS.

SECTION SIX: EXPANDS AUTHORITY FOR PAYMENT OF DIVIDENDS FROM JUST SAVINGS ACCOUNTS TO VARIOUS ACCOUNT CLASSIFICATIONS. ALLOWS DIVIDENDS TO BE PAID ON NOW ACCOUNTS.

SECTION SEVEN: ESTABLISHES AUTHORITY OF DEPT. OF DEPT. OF COMMERCE TO ESTABLISH INTEREST RATES TO BE PAID TO NOW ACCOUNT HOLDERS. RE-CLASSIFIES DIVIDENDS AS EARNINGS AND EXPANDS PAYMENTS ON EARNINGS FOR SAVINGS ACCOUNTS TO COVER ALL CLASSIFICATIONS OF ACCOUNTS.

SECTION EIGHT:REWRITES AS 06.30.460 TO ALLOW FOR NOW ACCOUNTS.

SECTION NINE: PROVIDES SAVINGS AND LOANS ASSOCIATIONS THE AUTHORITY TO AMEND THEIR BY-LAWS TO ALLOW FOR NOW ACCOUNTS.

SECTION TEN: REDEFINES ORDER OF WITHDRAWL TO ACCOMODATE NOW ACCOUNTS.

THE FIRST NATIONAL BANK OF ANCHORAGE

February 25, 1980

Brad Bradley, State Senator
Chairman, Senate Commerce Committee
Pouch V State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

I just am not conversant with the activities, structure, and laws relating to savings and loan associations to comment on Senate Bill #367.

Rather than to make an uninformed comment, I thought better to make none. I do thank you for considering me and my advise.

Sincerely,

D. H. CUDDY,
President

DHC:hla
cc

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT
DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D
JUNEAU, ALASKA 99811

February 27, 1980

Senator Brad Bradley
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

Re: NOW Account Legislation
(SB 367)

At the hearing held by the Senate Commerce Committee several weeks ago on SB 367, I indicated that the department had just received an opinion from the Department of Law stating that as a practical matter the Alaska Savings Association Act (AS 06.30) precluded state-chartered savings associations from offering NOW accounts.

Since that time I had the opportunity to review the provisions of AS 06.30 in the context of the Attorney General's opinion. I have found that to make clear that these accounts are not prohibited by AS 06.30, one must make adjustments to five other sections of that chapter. I am therefore resubmitting the full set of amendments that I believe are necessary to provide clear authority and procedures for state-chartered savings associations to offer NOW accounts.

I have reviewed this new set of amendments with Mr. Turner, President of Peninsula Savings and Loan Association. It is my understanding that he is in agreement with them.

I stand ready to discuss these proposed amendments with you or members of your staff at your convenience.

Sincerely,

Julius J. Brecht
Director

JJB:aw
Enclosure

cc: Senator Glen Hackney
Eddie Turner

08-M14LH

February 27, 1980

PROPOSED AMENDMENTS TO SB 367

1. I suggest the following to replace Section 1 of the bill so that there is a clear expression of legislative intent:

"Sec. 06.30.025 DECLARATION OF POLICY; RULE-MAKING AUTHORITY. (a) In providing authority for the establishment of associations, it is the intent of the legislature to make available the benefits of savings and loan association business, thereby promoting a sound and competitive association system, the practice of thrift, savings, investment, home financing, and the security of persons saving through associations. For the accomplishment of these purposes, the legislature intends by this chapter to vest in the department, in addition to other regulatory authority, the authority to allow by regulation those powers possessed by state-chartered associations in other states which the department determines have demonstrated accomplishment of this declaration of policy.

(b) The commissioner may by regulation define the powers of associations and adopt regulations to carry out the purposes for their creation consistent with the provisions of this chapter and AS 06.01.020."

2. I suggest that the word "savings" be deleted in lines 28 and 29 on page 1 of the bill in that the term "association" is defined as a savings and loan association in AS 06.30.910(1).

3. Line 19 of the bi I be changed to read:

"exercise of the power to issue regulations <u>under</u> [NECESSARY TO CARRY OUT] this"

In this way the provisions of AS 06.30.030 will be more compatible with the proposed changes to AS 06.30.025 and the new Sec. 06.30.897.

4. The word "objects" on line 28 of page 1 of the bill should be replaced with the word "objectives."

5. In addition, I suggest that the following amendments be made to make clear that state-chartered savings associations may offer NOW accounts. (These recommendations are made as a result of the February 1, 1980 opinion of the Department of Law on NOW accounts under AS 06.30):

(a) AS 06.30.295 is amended to read:

"AS 06.30.295. FIXED RATE; FIXED TERM ACCOUNTS. No association may issue, sell, negotiate or advertise for sale either to members or the public any type of investment security other than savings accounts unless otherwise provided under this chapter or AS 06.01.020. An association may accept accounts bearing a definite rate of return for fixed periods of time when its board of directors has adopted a resolution providing for the issuance of fixed rate, fixed term accounts and those accounts are insured by the Federal Savings and Loan Insurance Corporation."

(b) AS 06.30.375 is amended to read:

"Sec 06.30.375. SAVINGS ACCOUNTS IN GENERAL. (a) Savings accounts shall be opened for cash or its equivalent. Except as limited by the board of directors, a member may make additions to his savings accounts in amounts and at times he chooses.

(b) Earnings on accounts shall be fixed or otherwise declared in accordance with the provisions of this chapter, the implementing regulations, or AS 06.01.020.

(c) Under regulations adopted by the department, each association may classify and differentiate among deposits but no association shall prefer one of its savings accounts within an account classification over any other savings account in the same classification as to the right to participate in earnings. [EXCEPT AS PROVIDED IN §§ 450-455 OF THIS CHAPTER, AN ASSOCIATION MAY NOT PREFER ONE OF ITS SAVINGS ACCOUNTS OVER ANOTHER AS TO THE RIGHT TO RECEIVE DIVIDENDS.]

(d) No preference between savings account members may be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding up the business of the association."

(c) AS 06.30.450 is amended to read:

"Sec. 06.30.450. DECLARATION OF DIVIDENDS. As of one of the last three business days before the closing of any period as fixed by the board of directors, the board may declare dividends on various account classifications of record on that date. The board is not required to declare any dividends or the same dividends for the various account classifications [A DIVIDEND ON SAVINGS ACCOUNTS OF RECORD ON THAT DATE]. The dividends shall be payable as of that date or a later date not more than 30 days following the close of that period as determined by the board. No dividends shall be declared except dividends as provided in this section."

(d) AS 06.30.455 is amended to read:

"Sec. 06.30.455. COMPUTATION AND PAYMENT OF DIVIDENDS ON SAVINGS PLANS. Dividends shall be credited to savings accounts on the books of the association on the dividend-payment date unless a savings account holder requests and the association agrees to pay dividends on all or part of a savings account in cash. Dividends payable in cash shall be paid on the dividend-payment date and may be paid by check or bank draft.

All account holders shall participate equally in earnings pro rata to the withdrawal value of their respective accounts unless an association has classified or differentiated among its accounts. If an association has classified and differentiated among its accounts, all account holders within the same classification shall participate equally in earnings pro rata to the withdrawal value of their respective accounts.

[ALL SAVINGS ACCOUNT HOLDERS SHALL PARTICIPA E EQUALLY IN DIVIDENDS PRO RATA TO THE WITHDRAWAL VALUE OF THEIR RESPECTIVE ACCOUNTS, EXCEPT THE] The association may pay dividends according to the rate limitations prescribed for different classes of accounts and administered by the Federal Home Loan Bank Board. Dividends shall be declared on the withdrawal value of each savings account at the beginning of the dividend period, plus additions to it made during the dividend period, less amounts withdrawn and noticed for withdrawal, which for dividend purposes shall be deducted from the latest previous addition, computed at the declared rate for the time invested. The date of investment is the date of actual receipt by the association of an account or an addition to an account. If the board of directors so determines, accounts or additions received by the association on or before a date not later than the 10th day of the month, unless the day determined is not a business day, in which case it may be the next succeeding business day, shall receive dividends as if invested on the first day of the month in which the payments were received. If the board makes this determination, it also shall determine that payments received after the determination date shall either (1) receive dividends as if invested on the first day of the next succeeding month or (2) receive dividends from the date of actual receipt by the association."

(e) AS 06.30.460 is repealed and reenacted to read:

"Sec. 06.30.460. APPLICATION FOR WITHDRAWAL OR TRANSFER. Any account holder or an authorized representative may at anytime apply for withdrawal or transfer of all or any part of an account. Application may consist of negotiable or nonnegotiable orders or transfer authorizations from one account to another. Every application shall request immediate withdrawal of a specified amount in accordance with secs. 460-470 of this chapter. A member may cancel his application at any time in whole or in part by a writing."

(f) AS 06.30.910 is amended by adding a new paragraph to read:

"(19) provide the service of negotiable or nonnegotiable orders of withdrawal accounts to its depositors under regulations adopted by the department."

Brad

Chris has the

Model Act (273 page

booklet) referred to

in this letter

D

PENINSULA SAVINGS AND LOAN ASSOCIATION

Eddie J. Turner
President
and Managing Officer

February 19, 1980

The Honorable W. E. "Brad" Bradley
Chairman, Senate Commerce Committee
State Capital
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 367

Dear Senator Bradley:

In reviewing this necessary legislation together with an opinion of the Assistant Attorney General regarding N.O.W. accounts as they relate to savings and loan associations, AS 06.30.455 should be amended to include suitable language similiar to the U.S. League's "Model Savings and Loan Act".

I have enclosed proposed changes and a copy of the model act for your perusal.

Jan and I are planning to be in Juneau on Thursday, February 28th, and would therefore request a hearing be scheduled to consider SB 367 on that date if at all possible.

Your prompt consideration of this matter is greatly appreciated.

Sincerely,

Eddie J. Turner

EJT/jt

Enclosures

cc: Julius J. Brecht, Director
File

Pouch 1000
Soldotna, Alaska 99669
907/262-9166
Blazy Mall — Sterling Highway

Sec. 06.30.455. COMPUTATION AND PAYMENT OF DIVIDENDS ON SAVINGS PLANS.

Dividends shall be credited to savings accounts on the books of the association on the dividend-payment date unless a savings account holder requests and the association agrees to pay dividends on all or part of a savings account in cash. Dividends payable in cash shall be paid on the dividend-payment date and may be paid by check or bank draft. All savings account holders shall participate equally in dividends pro rata to the withdrawal value of their respective accounts, [except the association may pay dividends according to the rate limitations prescribed for different classes of accounts and administered by the Federal Home Loan Bank Board.] except that an association may classify its savings accounts according to the character, amount, or duration thereof, or regularity of additions thereto, and may agree in advance to pay an additional or different rate of dividends on all savings accounts in the same account classification, and shall regulate such dividends in such manner that each savings account in the same classification shall receive the same ratable portion of such additional dividends. Except for accounts which shall be classified according to a specified contractual time or notice period, dividends shall be declared on the withdrawal value of each savings account at the beginning of the dividend period, plus additions to it made during the dividend period, less amounts withdrawn and noticed for withdrawal, which for dividend purposes shall be deducted from the latest previous addition, computed at the declared rate for the time invested. The date of investment is the date of actual receipt by the association of an account or an addition to an account. If the board of directors so determines, accounts or additions received by the association on or before a date not later than the 10th day of the month, unless the day determined is not a business day, in which case it may be the next succeeding business day, shall receive dividends as if invested on the first day of the month in which the payments were received. If the board makes this determination, it also shall determine that payments received after the determination date shall either (1) receive dividends as if invested on the first day of the next succeeding month, or (2) receive dividends from the date of actual receipt by the association. Notwithstanding the provisions of the third sentence of this section, the board of directors, by resolution, may determine that dividends shall not be paid on designated savings accounts (1) from which withdrawals may be made by negotiable and transferable order or authorization, or (2) which are established for the purpose of accumulating funds to pay taxes or insurance premiums, or both, in connection with a loan, or (3) which have a withdrawal value of a specified amount less than $50, or (4) which are intended to be closed within a specified period less than twenty-four (24) months from the date on which such savings account is opened. The directors shall determine by resolution the method of calculating the amount of any dividends on any savings account classification as herein provided, and the time or times when dividends are to be declared, paid or credited.

Julius Brecht Amendment February 4, 1980

AMENDMENTS:

1. I suggest the following to replace Section 1 of the bill so that there is a clear expression of legislative intent:

Sec. 06.30.025 DECLARATION OF POLICY; RULE-MAKING AUTHORITY [GENERAL RULE-MAKING AUTHORITY OF COMMISSIONER]. (a) In providing authority for the establishment of associations, it is the intent of the legislature to make available the benefits of savings and loan association business, thereby promoting a sound and competitive association system, the practice of thrift, savings, investment, home financing, and the security of persons saving through associations. For the accomplishment of these purposes, the legislature intends by this chapter to vest in associations those powers generally possessed by state-chartered associations in other states, as promised by the dept by regulation.

(b) [Insert the present language of AS 06.30.025.]

2. Furthermore, I suggest that the word "savings" be deleted in lines 28 and 29 on page 1 of the bill in that the term "association" is defined as a savings and loan association in AS 06.30.910(1).

3. Line 19 of page 1 of the bill should be changed to read:

"exercise of the power to issue regulations under [NECESSARY TO CARRY OUT] this"

In this way the provisions of AS 06.30.030 will be more compatible with the proposed changes to AS 06.30.025 and the new Sec. 06.30.897.

4. Finally, the word "objects" on line 28 of page 1 of the bill should be replaced with the word "objectives."

The Hackney Amendment

* Sec. 4. AS 06.30.280 is amended by adding a new subsection to read:

(19) provide the service of negotiable order of withdrawal accounts to its depositors under regulations adopted by the department.

FRONTIER INCORPORATORS

P. O. BOX 74320 • FAIRBANKS, ALASKA 99707

February 7, 1980

Honorable Brad Bradley
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Senate Bill # 367 (CSSB 367)

Dear Sir:

I am told that Senate Bill 367 will become CSSB 367 in your committee. I am familiar with the substitute language and Senator Hackney's amendment. I believe that the new language and amendment are superior to the original version of the bill in that the substitute as amended more clearly sets forth the legislative declaration of policy and the mechanism of remedy.

I therefore ask that the bill be reported out as is. Its language will suffice to end the disparity between mutual savings banks and savings and loan associations in their competition for savings dollars, ensuring that both compete on on equal footing.

I am sending a copy of this letter to all members of the Fairbanks delegation along with my request that each of them do whatever he or she can on either the House or Senate side to see that this (substitute) bill moves to the Governor's desk this session. I am also sending a copy hereof to Mr. Julius J. Brecht, Director of Banking, Securities and Corporations for his information and advice.

Very truly yours,

Gerald E. Stinson

Gerald E. Stinson, Chairman
FRONTIER SAVINGS AND LOAN ASSOCIATION

GES/kr

PENINSULA SAVINGS AND LOAN ASSOCIATION

Eddie J. Turner
President
and Managing Officer

February 12, 1980

Honorable W. E. "Brad" Bradley
Senate Commerce Committee Chairman
Pouch V
Juneau, Alaska 99811

RE: Senate Bill No. 367 - "An act relating to savings associations"

Dear Senator Bradley:

It was indeed a pleasure discussing with you today the worthwhile efforts of the commerce committee.

The referenced senate bill, as approved by the committee, appears to be very satisfactory and indicates the concentrated efforts for proper legislation which is beneficial to the residents of our state.

I have discussed this bill with Mr. Julius Brecht, Director of Banking and it is my understanding that he supports the commerce committees' recommendations. In addition, this bill has also been a subject for conversation with a colleague from the Alaska League of Insured Savings and Loan Associations, Mr. Lee Coffman, who indicated an amicable attitude toward this legislative effort.

The careful consideration of legislative needs for our new state industry, as exhibited by you and your committee members is greatly appreciated. If I can be of further service please let me know.

Sincerely,

Eddie J. Turner

EJT/jt

cc: Julius J. Brecht, Director
L. C. Coffman
File

Pouch 1000
Soldotna, Alaska 99669
907/262-9166
Blazy Mall — Sterling Highway

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 4, 1980

Mr. R. T. Hall
Senior Vice President
National Bank of Alaska
Corporate Headquarters
Box 600
Anchorage, AK 99510

Dear Mr. Hall:

We appreciate your comments on Senate Bill 367. After going over this section with our various experts we do agree with you that "those powers generally possessed" are too vague and we have amended that to say "those powers possessed by state chartered associations in other states which the department determines have demonstrated accomplishment of this declaration of policy."

We will be having a Senate Commerce Committee hearing on this bill on March 11 at 8:30 a.m. in the Assembly Building, Room 106. We have numerous other amendments to this bill and we feel that this will satisfy most segments of this industry.

Sincerely,

Frank P. Lee
Administrative Assistant
Senate Commerce Committee

bm

PEOPLES BANK & TRUST

POUCH 7007 • 8TH AVENUE AND G STREET • ANCHORAGE, ALASKA 99510
TELEPHONE (907) 279-7511

February 19, 1980

Honorable Brad Bradley, State Senator
Chairman, Senate Commerce Committee
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Mr. Bradley:

Thank you for your letter of February 13, 1980 together with proposed Senate Bill No. 367. I appreciate your bringing this to my attention as we are interested in all legislation that effects the banking industry.

I have reviewed the proposed bill and the code sections which it effects.

With respect to savings and thrift institutions, we as a commercial bank are primarily interested in the legislative trends which seem to be developing a double standard in the banking industry favoring the savings and thrift institutions with preferential rates so as to give them an advantage in the competitive market but at the same time expanding their powers so that the savings and thrift institutions are given all of the powers of the commercial banks. Like other commercial banks, we feel that if the savings and thrift institutions are going to have all the powers of commercial banks, then they should be placed on the same competitive level as commercial banks and not given the preferential interest rates and tax advantages that they now enjoy.

We do appreciate your advising us of this proposed bill and we do not have any comments with respect to it.

Very truly yours,

PEOPLES BANK & TRUST COMPANY

Robert C. Lowe

Robert C. Lowe
Chairman

RCL:bwa
0328

P. O. BOX 74320 • FAIRBANKS, ALASKA 99707

Hackney

December 27, 1979

Honorable Glenn Hackney
1136 Sunset Drive
Fairbanks, Alaska 99701

Re: (1) Budget For Div sion Of Banking, Securities and Corporations, (2) Changes In Chapter 30 (Savings Association Code), and (3) Recodification Of Banking And Savings Association Acts

Dear Sir:

I am Gerald E. Stinson, Chairman of the Board of Directors of Frontier Savings and Loan Association (in organization), a state-chartered stock savings and loan association. I will treat the captioned topics in sequential order after giving a brief background sketch of Frontier Savings and Loan which will establish our interest in seeking the relief (largely remedial) here sought.

Frontier was begun by twenty incorporators, all from Fairbanks. Its stock subscribed to date is subscribed to by approximately 80% Fairbanksans who, counting joint tenants, number over 200 individuals, and that number is growing. It is the first and (to-date) the only state-chartered stock association in Interior Alaska.

(1) You are probably no more eagle-eyed than I when it comes to increasing budget and personnel slots for a division or department of state government, but however biased against paying out more money we may be, I trust that we will guard against knee-jerk negative reaction in a given instance and instead study the supposed need with an open mind and have the courage and responsibility to spend more money if fairly warranted. For the past several months there have been severe shortages of both staff and budget in the Division of Banking brought about by increases in regulatory duties associated with the increasing number of newly filed applications for banking and savings association charters. The division has had to train some of its staff for new and expanded auditing responsibilities. The division has neither sufficient staff nor budget with which to do the job it was statutorily enjoined to do. I suggest that you review the situation with Mr. Brecht, Director of the Division of Banking, Securities and Corporations, when you go to Juneau in the next few weeks. He can detail the situation to you with more precision than I. From the point of view of Frontier and its shareholders, there is no more important division or department of state government than this division, and we are vitally interested in its funding and efficient operation. I therefore trust that you will find time to check this situation out with Mr. Brecht either before or early in the next session.

(2) As you know, Title 06, Chapter 30 (the savings association act) was amended session before last to permit the formation of state-chartered stock savings and loan associations. Hitherto all had been mutuals. The amendment was good, but as are many amendments engrafted on old statutes, the old and the new parts don't always mesh well, but whether they do or not, frequently

an unintended incidental injustice will occur. Thus the savings association act (Chapter 30) does not contain language which would permit state-chartered stocks to involve themselves in NOW (negotiable orders of withdrawal) accounts. Such language does exist in the mutual banking code (Title 06,Chapter 15), however, and thus state-chartered associations such as Frontier are (though I'm sure it was unintended) at a severe competitive disadvantage in attracting savings when a mutual savings bank (in our case - Mt. McKinley Mutual) is doing business in the same Alaskan community. I am told that this could be corrected by using the counterpart language of the mutual bank code found at AS 06.15.360 to amend the savings association act, or perhaps by other language of amendment designed to serve as a base for a more liberal regulation which would allow savings associations to be competitive with mutual savings banks in attracting savings dollars. I recommend that this matter of concern to us be likewise addressed to Mr. Brecht when you go to Juneau next month.

(3) The last item above captioned would involve a substantial expenditure of legislative time and effort, particularly in committee(s), but needs to be done. Band-aid amendments such as I propose above, though absolutely necessary to prevent injustice, have their limitations. With some exceptions, the provisions of the acts are financial horse and buggy vehicles in a jet age, of poor design and integration, and in need of major overhaul or replacement. Perhaps some model act could serve as a starting point from which committee hearings would tailor it to Alaska s specific situation. Recodification is necessary as the current statutory language, unlike wine, will not improve with age, and since it must be done sometime, I suggest we initiate the process next session. As with the other two items, I believe Mr. Brecht can be very helpful to you in selection of a model code (and appropriate amendments thereto for introduction) and accordingly suggest that you discuss this matter with him prior to or early in the next session.

The suggestions set forth to you in this letter are essentially housekeeping matters not susceptible to partisan points of view. I trust that each of you can and will support and implement such suggestions into concrete legislative action.

If you have any questions pertaining to this letter, please feel free to write or call me (456-6617) at any time.

Very truly yours,

Gerald E. Stinson

Gerald E. Stinson, Chairman
FRONTIER SAVINGS AND LOAN ASSOCIATION

cc: Julius J. Brecht, Director
Division of Banking and Securities
Charles Parr, Respresentative
L. W. Stinson, Director
Robert Bettisworth, Respresentative
William Gordon, Director

GES/kr

Re Savings Association Division & Mutual Banking Code

06.15.010

Title 06.15.360

AMENDMENT

OFFERED IN THE SENATE: BY: SENATE JUDICIARY COMMITTEE

To: AMEND SENATE BILL No. CSSB 367

HOUSE BILL No. _____

PAGE: 1 LINE: 15 through line 19

Beginning with the word "For" on line 15, delete all material through line 19.

PENINSULA SAVINGS AND LOAN ASSOCIATION

Eddie J. Turner
President
and Managing Officer

February 12, 1980

Honorable W. E. "Brad" Bradley
Senate Commerce Committee Chairman
Pouch V
Juneau, Alaska 99811

RE: Senate Bill No. 367 - "An act relating to savings associations"

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The referenced senate bill, as approved by the committee, appears to be very satisfactory and indicates the concentrated efforts for proper legislation which is beneficial to the residents of our state.

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Sincerely,

Eddie J. Turner

EJT/jt

cc: Julius J. Brecht, Director
L. C. Coffman
File

Pouch 1000
Soldotna, Alaska 99669
907/262-9166
Blazy Mall — Sterling Highway

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 4, 1980

Mr. R. T. Hall
Senior Vice President
National Bank of Alaska
Corporate Headquarters
Box 600
Anchorage, AK 99510

Dear Mr. Hall:

We appreciate your comments on Senate Bill 367. After going over this section with our various experts we do agree with you that "those powers generally possessed" are too vague and we have amended that to say "those powers possessed by state chartered associations in other states which the department determines have demonstrated accomplishment of this declaration of policy."

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Frank P. Lee
Administrative Assistant
Senate Commerce Committee

bm

PEOPLES BANK & TRUST

POUCH 7007 • 8TH AVENUE AND G STREET • ANCHORAGE, ALASKA 99510
TELEPHONE (907) 279-7511

February 19, 1980

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Chairman, Senate Commerce Committee
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Mr. Bradley:

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PEOPLES BANK & TRUST COMPANY

Robert C. Lowe
Chairman

RCL:bwa
0328

P. O. BOX 74320 • FAIRBANKS, ALASKA 99707

Hackney

December 27, 1979

Honorable Glenn Hackney
1136 Sunset Dri e
Fairbanks, Alaska 99701

Re: (1) Budget For Division Of Banking, Securities and Corporations, (2) Changes In Chapter 30 (Savings Association Code), and (3) Recodification Of Banking And Savings Association Acts

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Gerald E. Stinson

Gerald E. Stinson, Chairman
FRONTIER SAVINGS AND LOAN ASSOCIATION

cc: Julius J. Brecht, Director
Division of Banking and Securities
Charles Parr, Respresentative
L. W. Stinson, Director
Robert Bettisworth, Respresentative
William Gordon, Director

GES/kr

Re Savings & Loan Division to Mutual Banking Code

06.15.010

Jan 20 15 20

SB
377

COMMITTEE REPORT

SENATE

FURTHER: Finance

2/1/80

Date: 2/21/80

Mr. President:

The Committee on JUDICIARY has had SB 377

highway safety

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SB 377 [ ] same title [X] new title

and recommends H.1 SSSB 377 D Pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO	ASS	MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 377

"An Act relating to highway safety."

Senate Bill 377 provides for the creation of a Highway Safety Commission in the Office of the Governor to encourage coordination and joint planning among state agencies assigned responsibilities with regard to highway safety. The Commission would provide planning assistance, including research of needs and potential sources of funding for highway safety programs.

The Department of Health and Social Services recognizes the need for increased coordination of highway safety efforts, since many state agencies (Courts; Department of Public Safety; Department of Law; Department of Transportation and Public Facilities; and Department of Health and Social Services) are presently involved in the administration of such programs.

We were pleased to be included as a member of the Commission, in that the Department has many programs which have a special interest in highway safety and the prevention of traffic accidents. These programs include alcoholism and drug abuse, emergency medical services, public health education, and corrections.

Some areas of potential discussion are:

1. The Bill places the Highway Safety Commission in the Office of the Governor. The Governor has recently, by executive order, transferred many special offices and commissions directly from under his office to various departments of state government. That transfer was implemented as a result of the Governor's Management and Efficiency Study. Therefore, it may be appropriate to explore placement in another agency, such as the Department of Public Safety, rather than in the Office of the Governor.

2. There is no provision for coverage of a slot on the Commission if a member (such as a Commissioner) is traveling or otherwise unable to attend a meeting. It may be worthwhile to consider allowing members to designate persons to represent them in their absence.

Department Position

The Department of Health and Social Services recognizes the need for increased coordination of state programs and planning processes for highway safety. We therefore recommend passage of SB 377.

Approved by: Helen D. Beirne

Helen D. Beirne
Commissioner

Date: 2-25-80

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SENATE BILL NO. 377
Title "An Act relating to highway safety."
Requested by Commissioner's Office Date 2/25/80

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected Health/Division of Public Health
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	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

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

Prepared by: M. Deaver Date: 2/25/80
Division/Office: P.H. Admin. PH: 3090
Department of Health & Social Services

Approval DHSS Mgt. & Bdgt: Date: 2/25/80

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

Page ____ of ____

Introduced: 2/1/80
Referred: Judiciary and Finance

IN THE SENATE BY RAY, COLLETTA AND KERTTULA

SENATE BILL NO. 377

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to highway safety."

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

* Section 1. AS 44.19.025 is amended to read:

Sec. 44.19.025. ADMINISTRATION OF HIGHWAY SAFETY PROGRAM. The governor may contract and do all other things necessary on behalf of this state under the Federal Highway Safety Act of 1966, and may cooperate with interested persons and agencies [FEDERAL AND STATE AGENCIES, PRIVATE AND CORPORATE AGENCIES, INTERESTED CORPORATIONS, AND INDIVIDUALS,] to effect [EFFECTUATE] the purposes of that Act. The governor may designate a person to serve as his highway safety representative; however, the governor is the official in this state having the ultimate responsibility for dealing with the federal government with respect to programs and activities under the Federal Highway Safety Act of 1966. He shall coordinate the activities relating to highway safety of state departments, agencies and subdivisions and of the Highway Safety Commission established in AS 44.19.801.

* Sec. 2. AS 44.19 is amended by adding new sections to read:

ARTICLE 10A. HIGHWAY SAFETY COMMISSION.

Sec. 44.19.801. HIGHWAY SAFETY COMMISSION. (a) There is established in the Office of the Governor the Highway Safety Commission.

(b) The Highway Safety Commission is composed of 15 members, who shall include:

(1) the attorney general and the commissioners of public safety, transportation and public facilities, and health and social

services;

(2) one superior court or district court judge who is experienced in the adjudication of traffic cases selected by the chief justice of the supreme court;

(3) three members of the house of representatives selected by the speaker of the house;

(4) three members of the senate selected by the president of the senate;

(5) four residents of the state selected by the governor based on geographic representation and population distribution.

(c) Members of the Highway Safety Commission serve at the pleasure of the governor. Members of the commission receive no salary for their service on the commission, but are entitled to receive the same per diem and travel expenses authorized by law for boards and commissions.

Sec. 44.19.811. POWERS AND DUTIES. (a) The Highway Safety Commission acts as the state planning agency and assists the governor in the exercise of his powers and duties under AS 44.19.025. The commission may apply for, receive, and utilize grants, gifts and other forms of assistance from the federal government and from other public and private sources for the execution of its programs.

(b) The Highway Safety Commission may investigate state and local highway safety needs and seek funding for the development of more effective programs and techniques to

(1) alleviate and prevent traffic accidents;

(2) aid the court system in the adjudication of traffic cases;

(3) aid peace officers in the enforcement of traffic laws; and

(4) rehabilitate traffic offenders and prevent recidivism.

(c) The Highway Safety Commission shall provide planning and coordination assistance to state agencies with responsibilities related to highway safety to encourage the most efficient allocation, utilization, and coordination of highway safety and related personnel at the state and local level and to determine reasonable qualifications for the employment of the personnel.

(d) The court system and the state departments and agencies with responsibilities related to highway safety shall assist the Highway Safety Commission in the performance of its duties.

(e) In order to facilitate communication and cooperation the Highway Safety Commission shall conduct conferences to discuss and plan highway safety, traffic enforcement and adjudication, and offender rehabilitation programs and personnel for the court system and the state departments and agencies.

Sec. 44.19.821. STAFF. (a) The governor, or the person designated under AS 44.19.025, with the approval of the governor, may select a director to administer the governor's programs under AS 44.19.025 and the programs of the Highway Safety Commission under AS 44.19.801 - 44.19.811.

(b) The director may employ personnel as necessary to carry out the functions assigned under this chapter. Personnel employed under this subsection are in the classified service under AS 39.25.100.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER POUCH N – JUNEAU 99811

February 26, 1980

Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Ray:

Senate Bill 377 is intended to create a highway safety commission that will provide a central coordinating group for all highway safety related programs.

In the past various agencies have been conducting individual highway safety programs with little or no communication between agencies. This has caused repetition in some areas as well as being highly inefficient in statewide efforts towards the reduction of highway deaths.

This commission will provide coordination and communications with all agencies involved with highway safety and will allow the crossover of departmental lines in its efforts towards the improvement of highway safety programs. The commission should have the authority to establish policy in all areas of highway safety.

Senate Bill 377 establishes the responsibilities of the commission as providing planning and coordination assistance to concerned agencies and that these agencies will act in kind. It is intended to improve the highway safety programs by coordinating the efforts of all agencies involved.

Sincerely yours,

Charles A. Smith, Director
Highway Safety Planning Agency

T. Michael Lewis

T. Michael Lewis
Field Training Officer

12-L2LH

02 0018 (Rev. 10/76)

STATE of ALASKA

MEMORANDUM

TO: Ron Lehr, Director
Division of Budget & Management
Office of the Governor

DATE: February 20, 1980

FILE NO:

TELEPHONE NO:

FROM: Robert J. Stickles, Director
Division of Administrative Services
Department of Public Safety

SUBJECT: Highway Safety Planning Agency
Budget Amendment

The Department of Public Safety, Highway Safety Planning Agency, requests that the Division's budget, affecting both Federal and General Funds, be amended as follows. In either case, no additional funds are involved. The request is only to realign the funds by transfer from 700 object group to other line items as explained in the attached budget forms. Earlier, the FY 81 budget was revised to include one (1) Federally funded position under the special classification of Program Assessment and Systems Officer.

a. Establish two (2) new PFT positions and one (1) new Project Employee using Federal funds.

1. Highway Safety Project Administrator - PFT
2. Highway Safety Field Monitor - PFT
3. System Analyst II - Project Employee

b. Establish four (4) new positions (3 PFT and 1 PPT) using General Funds. These positions are presently established and operating under the Court System under PCN's 41-6601, 41-6602, 41-6603 and 41-6604 via a General Fund grant issued by the Agency but, effective 7-1-80, the program will come under the direct administration of the Agency.

1. Administrative Officer - PCN 41-6603 - PFT
2. Screener - PCN 41-6602 - PFT
3. Secretary - PCN 41-6601 - PFT
4. Assistant Clerk - PCN 41-6604 - PPT

The critical need of this budget amendment will be evident by a review of the following attachments.

1. Memorandum from U.S. DOT Regional Administrator to the Division Director.
2. Memorandum from Commissioner Nix to Commissioner Hudson regarding the Division reorganization.

Necessary budget forms are attached detailing the new positions and line-item transfer.

As a part of the reorganization, certain reclassifications of existing positions are being proposed which will be submitted for your action in the form of a revised program shortly.

Attachments

cc: Charles Smith, Director, HSPA
Jay Hanaranath, Finance Officer

REPRESENTS STATE, GOVERNOR AND GOVERNOR'S REPRESENTATIVE ON NATIONAL HIGHWAY SAFETY MATTERS.
LEGISLATION - DRAFTS, COORDINATES AND TESTIFIES ON HIGHWAY SAFETY RELATED LEGISLATION.
STATE AGENCY HEADS - COORDINATES HIGHWAY SAFETY POLICIES WITH COMMISSIONERS AND DIRECTORS.

DIRECTOR
12-6000

ALASKA SAFETY COUNCIL

SECRETARY
12-6001

TRAFFIC COURT TASK FORCE

DEPUTY DIRECTOR
12-6005

TECHNICAL ADVISORY COMMITTEE

LOCAL GOVERNMENT

PROGRAM EVALUATION

SPECIAL PROJECTS DIRECT SERVICE

TECHNICAL SERVICES

FISCAL SUPPORT SERVICES

GRANT & CONTRACT ADMINISTRATION

PROGRAMS ASSESSMENT OFFICER

SEE PAGE 2

SYSTEMS ANALYST II

ADMINISTRATIVE ASSISTANT II
12-6002

HIGHWAY SAFETY PROJECT COORDINATOR
12-6004

RESEARCH ANALYST II
12-6003

STATE AGENCY PROGRAM DIRECTORS

HIGHWAY SAFETY PROJECT ADMINISTRATOR

STRIS COMMITTEE *

POLITICAL SUB-DIVISION DIRECTORS

FIELD MONITOR

STATE AGENCIES

FEDERAL AGENCIES

MUNICIPALITIES OF ANCHORAGE & FAIRBANKS

PAGE 2

ALCOHOL SAFETY ACTION PROGRAM

DEPUTY DIRECTOR

SPECIAL PROJECTS DIRECT SERVICE

PROGRAM EVALUATION

PROGRAM ASSESSMENT OFFICER

KENAI PROPOSED

KETCHIKAN PROPOSED

FAIRBANKS ACTIVE**

ANCHORAGE AASAP ACTIVE***

JUNEAU PROPOSED

KODIAK PROPOSED

OTHER COMMUNITIES ACTIVE**

CO-ORDINATOR

ADMINISTRATIVE OFFICER 41-6602

SECRETARY

SCREENER 41-6602

NORTON SOUND COORDINATOR

TOK COUNSELOR

SECRETARY 41-6601

KOTZEBUE COUNSELOR

BETHEL COORDINATOR

ASSISTANT CLERK TYPS 41-6604

DILLINGHAM ALCOHOLISM EVALUATOR

COMMISSIONER OF PUBLIC SAFETY

COMMISSIONER OF ADMINISTRATION

GOVERNOR OF ALAS

* The STRIS Committee will be set up to control the design and implementation of the State Traffic Records Information System. The Systems Analyst II will take the initial steps to form this committee and will provide the leadership necessary to the completion of the project.

** These active Alcohol Safety Action Programs are currently being conducted by various local associations in conjunction with the Alaska Highway Safety Planning Agency (AHSPA). The AHSPA provides funding to this association for this program and also provides program management and general supervision of the task.

*** This active program resides in the Court System but is provided with program management and line supervision by AHSPA. It is the intent of this reorganization to transfer this function into the AHSPA to provide direct supervision and program management thus eliminating current contractual services.

SB

406

COMMITTEE REPORT

SENATE

FURTHER: None

3/31/80

Date: 4/1/80

Mr. President:

The Committee on JUDICIARY has had SB 406
relating to age limits under Title 4, Alcoholic Beverages

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [X] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER_____

DEPARTMENT_____

ATTENTION Senator Leighton

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

FROM:
MAIL STATION NUMBER_____

DEPARTMENT Brad Bradley

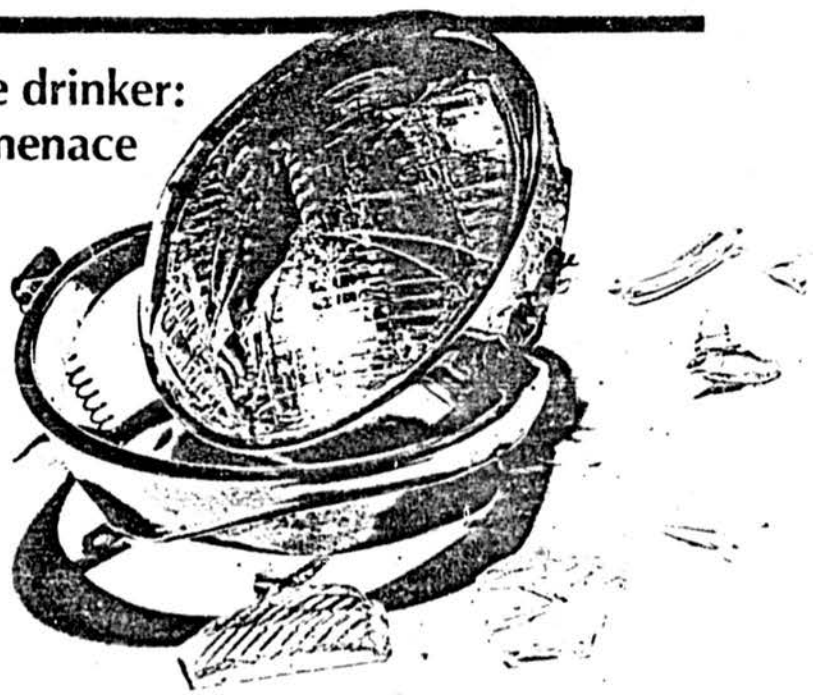
BY_____ DATE_____

02-002 (REV.10/73)

Senator Zwiegle - SB406 COPIES TO: LAUREN, KELSO, EMILY + MZ 9-004

Kemper Insurance & Financial Companies

The teen-age drinker: A highway menace



The teen-age drinker-driver is the nation's number one highway menace.

The combination of driver inexperience and alcohol has made the under-20 motorist the leading highway killer.

Even without the presence of alcohol, the under-20 driver poses a significant threat on our highways and streets. This age group has the smallest percentage of the driving population, yet has more accidents than any other age group.

In 1976, for example, the under-20 driver was only 8.9 percent of the driving population, yet was involved in 18.1 percent of all traffic accidents and 18.3 percent of all traffic accidents involving a fatality, according to a study by National Highway Traffic Safety Administration (NHTSA).

The same study ranks automobile accidents as sixth in the list of causes of deaths among Americans as a whole, but the leading cause of death in the 15 to 19-year-old age group. (See chart, page 3). Nearly 40 percent of all deaths in this age category are caused by motor vehicle accidents.

In the 18 and 19-year-old age groups, 42 per every 100,000 population have been involved in an auto accident where alcohol was a factor. For the driving population as a whole, the ratio was 28 per 100,000 population, according to the U.S. Department of Transportation (DOT).

Nationally, since 1970, there has been a 28 percent increase in the number of alcohol-related traffic accidents involving the under-20 driver, the DOT reports.

The DOT — along with the National Safety Council and the NHTSA — unanimously attribute the steadily worsening under-20 driving record to the national trend towards lower legal drinking ages. Since 1970, 26 states have reduced the drinking age limit. Currently, only 11 states require a person to be 21 years of age before allowing the legal purchase and consumption of alcohol. (See state by state chart).

PUBLIC AFFAIRS NEWSLETTER

. . . a digest of current events, topical legislation and media reports about insurance

Long Grove, Illinois 60049
Volume 7 No. 1
September 1978

While a state-by-state comparison is virtually impossible, due to differences in reporting and record keeping procedures, enough statistics are available from states which have lowered the drinking age recently to show a definite upward trend in the number of auto accidents involving teen-age drivers and alcohol.

For example, *Arizona*, which reduced the legal drinking age to 19 in 1971, reported that the number of drinking teen-agers involved in highway accident fatalities jumped from 8.3 percent in 1971 to 13.2 percent in 1975.

In *Illinois*, which lowered the legal drinking age to 19 in 1973, the number of traffic accidents involving teen-agers and alcohol rose 33 percent in three years.

Connecticut, which lowered the legal drinking age to 18 in 1972, reported the percentage of drinking teen-agers involved in all of the state's traffic accidents jumped from 13 percent in 1972, to 24.2 percent in 1975. During the same time frame, the number of teen-agers arrested for driving while intoxicated increased 50 percent.

In *Iowa* — which lowered the legal drinking age to 18 in 1973 — there was a significant increase in the number of teen-agers killed in accidents involving alcohol. For the four years 1970-1973, 124 teen-agers died in accidents in which alcohol was a contributing factor. For the four years 1974-1977, the number rose to 194. This statistic played a major role in the state's returning the legal drinking age to 19 in June of this year.

Michigan, which lowered its drinking age in 1971, reported that alcohol related accidents involving 18 and 19-year-old drivers increased by 119 percent in the three years following the law change.

In *New Jersey*, the percentage of 18 to 20-year-old drivers involved in fatal accidents while drinking rose from 8.9 percent in 1972 (the year before the age limit was lowered) to 16.3 percent in 1973 and up to 29.2 percent in 1975.

Such statistical experience over the last few years has led to interest in many states for returning the legal drinking age to the pre-1970 levels.

Only Iowa, however, has actually taken action. Several other states are awaiting more complete statistical data before attempting to push legislation through their respective state governments. The NHTSA reports it has been contacted by a number of state legislators seeking information on the teen drinking-driving problem. But, the NHTSA also reports that many of these same legislators said that efforts to raise the legal drinking age "would come slowly" because the 18-year-old voter today constitutes a major voting block; one that state legislators are reluctant to alienate.

Joseph E. Luecke, Senior Executive Vice President of the Kemper Insurance Companies, testifying before a state legislative committee said: "The driving age must be raised to 18, and the drinking age for beer and wine must be brought back to 21. We think it's time to bite the bullet. If we're serious about this; if we really believe we want to stop injuries and wanton deaths, some of these unpleasant things have to occur."

Teen-agers and alcohol: How involved are they?

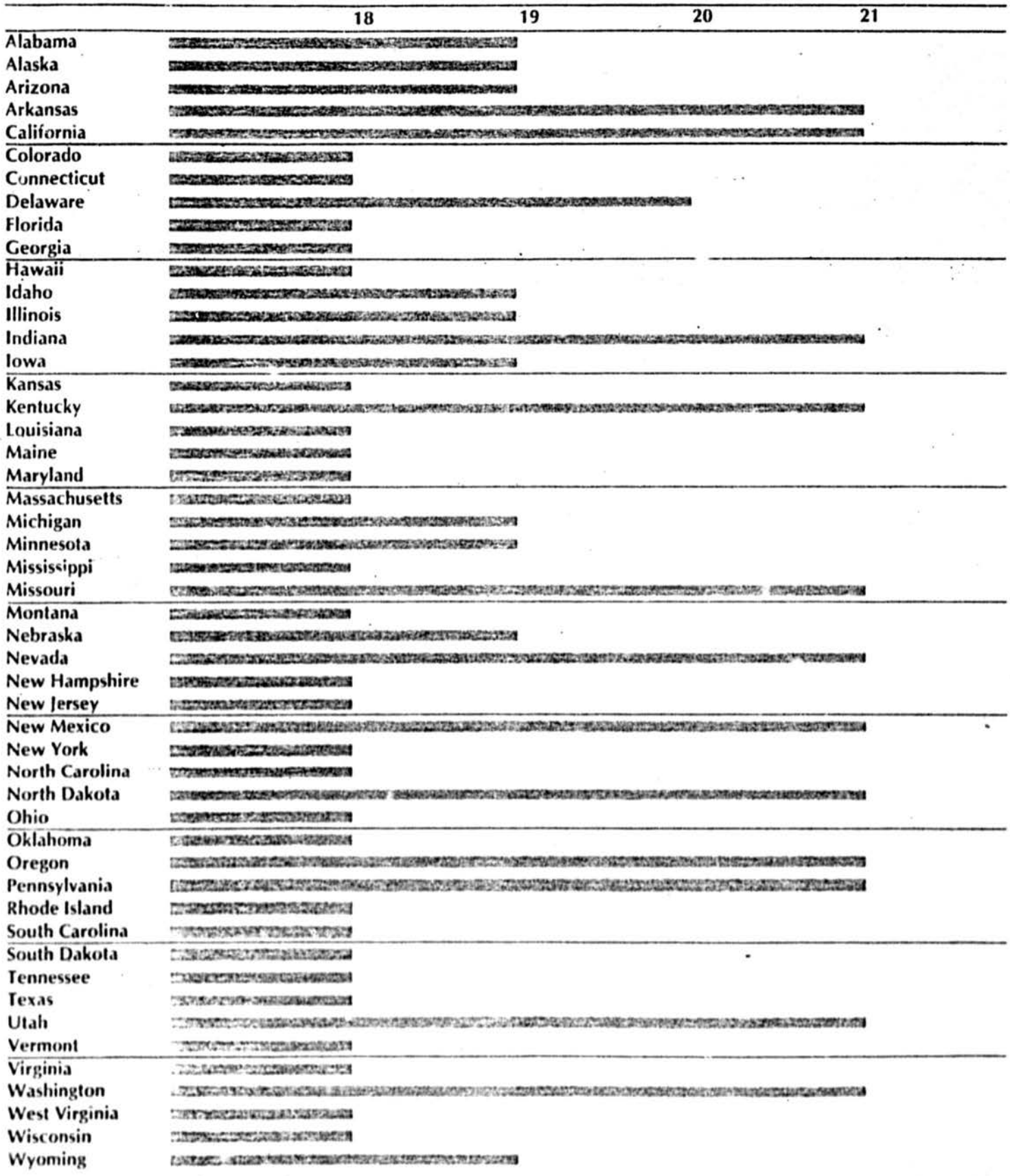
To understand why the under-20 driver who drinks is such a menace, one needs to understand just how involved that age group has become with alcohol.

According to a survey of high school students conducted by the National Highway Traffic Safety Administration in 1975:

- 93 percent of the males and 87 percent of the females have experimented with alcohol by their senior year of high school.
- in grades 9-12, 95 percent of the high school students are in an unsupervised situation where alcohol is served at least once a month.
- half of all those in high school drink at least once a week.
- 40 percent of this group report they had at least four drinks in any one day during a given week.
- 61 percent claim to have been drunk at least once a month.
- 32 percent said they have been in a car in the last month where the driver was drinking heavily.
- half of the licensed drivers in the study group said they have driven while drunk at least once.
- 67 percent of the group said they felt a young person could drink five beers in a two-hour period and still remain within the legal limit.
- 28 percent believe they drive as well or better while under the influence of alcohol.

Editor's note:
Additional copies of the Public Affairs Newsletter may be obtained by writing Public Relations D-1, Kemper Insurance and Financial Companies, Long Grove, Illinois 60049.

Legal age of purchase of alcohol state-by-state



Commissioner, Department of
Public Safety
Pouch H
Juneau, Alaska 99801

P-2

First Class
U.S. Postage
Paid
Long Grove, IL
Permit 38

Long Grove, IL 60049

KEMPER INSURANCE & FINANCIAL COMPANIES

Anatomy of a teen-ager's accident

More than 8,000 teen-agers died in alcohol related automobile accidents last year.

According to a grim scenario pieced together bs the U.S. Department of Transportation after a three-year study, in most cases the accident:

- happened on a Friday or Saturday night between the hours of 10 p.m. and 1 a.m.
- involved a vehicle carrying an average of three or more persons.
- happened while the young people were not enroute to a particular destination, but rather were just "cruising around".
- involved a combination of speed and alcohol.
- happened within an hour after the participants had been drinking heavily or moderately.
- happened within 10 miles of the driver's home.

Leading causes of death 15-19 Age group

Rank	Cause of death	Number killed	Percent of total
1	Motor vehicle accidents	8,401	38.2%
2	Other accidents	4,083	18.6
3	Homicide	2,024	9.2
4	Suicide	1,489	6.8
5	Cancer	1,285	5.8

Source: Department of Transportation 1977 report.

ALASKA'S LARGEST NEWSPAPER

The Anchora ES

Cloudy Saturday; weather, page A-2

56 pages

FRIDAY EVENING

25

THE
Anchorage Times
COMPLIMENTARY COPY
from the
ANCHORAGE TIMES
for
MEMBERS OF THE LEGISLATURE
flown to Juneau courtesy of
ALASKA AIRLINES

Inside today...A-2

'The human angle' comes to The Times

Senators ask boost in drinking age



by Dave Carpenter
Times Juneau Bureau

Juneau — Legislation to raise Alaska's minimum drinking age from 19 to 21 received the unanimous support of a Senate committee Thursday despite an Anchorage member's concern that it wouldn't make much difference.

"It would be naive for us to expect this bill to handle much of the problem," said Sen. Arliss Sturgulewski, R-Anchorage. "This might help, but . . . liquor is readily available in our society and that's a great deal of the problem."

The Senate Commerce Committee passed the bill on to the Judiciary Committee, one step from a floor vote. And an administration official who testified Thursday said Gov. Jay Hammond would sign the bill if it is approved by the Legislature.

Several states have raised the legal drinking age recently, reversing the trend of the 1960s and early 1970s.

Clay Shelton of Anchorage, a representative of the Rev. Jerry Provo, told the committee by teleconference that more states now have a minimum age of 20 or 21 than 18 or 19.

And Commerce Committee Chairman Brad Bradley, R-Anchorage, said that in the three states which have recently raised the age, there has been a drastic drop in the number of insurance claims filed, suggesting a similar decrease in the number of drinking-related accidents.

"Most of our automobile accidents are caused by motorists between the ages of 16 and 21," said Bradley, who has pushed for the age change. "I used to think they were old drunks, but they're just kids — young drunks."

Sturgulewski suggested that another solution might be more programs encouraging youths not to drink and giving them alternatives.

And the state's director of alcohol and drug abuse, Bob Cole, echoed her comments that raising the drinking age is only one approach to the alcohol abuse problem.

"The proposed bill in and of itself would not be a panacea for the alcohol abuse problem but it would be a step in the right direction of limiting availability," he said.

Anchorage Democrat Sen. Terry Stimson, a high school counselor, said teen-agers he has talked with don't care what the drinking age is because liquor is readily available to them at any age.

"I find the question of whether young people are not as responsible at 19 as they are at 21 almost moot on this issue," said Stimson. "What's important is the problem of the availability of alcohol to young children."

Lois Holm of Anchorage also testified by teleconference in support of the bill. Mrs. Holm, a mother of eight children, said 19-and 20-year-olds would find better use of their time if they were not allowed to drink in bars.

"We're putting undue pressure on our young people by giving them the option of entering these establishments," she said.

Besides Bradley, Stimson and Sturgulewski, members of the Commerce Committee are Frank Ferguson, D-Kotzebue, and Tim Kelly, R-Anchorage.



STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811

March 14, 1980

The Honorable W. E. Bradley
Chairman
Senate Commerce Committee
Room 303 - Assembly Building
Juneau, AK 99811

Dear Senator Bradley:

SENATE BILL NO. 406

Senate Bill No. 406, an Act relating to age limits under Title 4, Alcoholic Beverages, was introduced in the Senate on February 7, 1980 and was referred to the Senate Commerce Committee. On February 8, 1980 the bill was given an additional referral to the Senate Judiciary Committee.

For the consideration of the Senate Commerce Committee, I am enclosing a copy of a Fiscal Note prepared by Patrick Sharrock, Director, Alcoholic Beverage Control Board, Department of Revenue, Anchorage concerning the proposed legislation.

Sincerely,

R. D. Stevenson
Special Assistant
(907) 465-2397

cc: The Honorable Robert H. Ziegler, Sr.
Chairman
Senate Commerce Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Patrick Sharrock, Director
Alcoholic Beverage Control Board
Department of Revenue

04-D2LH

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB406
Title Age limits under AS Title 4, Alcoholic Beverages
Requested by Senate Commerce Committee by request Date 2/7/80

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Public Protection
BRU, Program, or Subprogram(s) Affected Alcoholic Beverage Control Board
(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						
200	TRAVEL	-0-	10.0	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	2.0	-0-	-0-	-0-	-0-
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	12.0	-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)
NOTE: AS 04.15.020(H) should also be amended to accommodate the age change consistent with other amendments proposed in the bill. Suggest that the effective date be after July 1, 1980 to allow for adequate notice to the public of the change in the law.

It is assumed that with passage of this legislation, over the long term, incidents of violation of liquor laws involving younger "minors" will tend to decrease even though the number of minors increases as a result of this bill. Initially additional enforcement personnel would be desirable until public awareness of the change in law was assured.

Costs noted for FY81 are estimated for media information announcements to the public to be coordinated with state and local law enforcement agencies and notices to liquor licensees and school districts.

IV. DATE March 12, 1980 PREPARED BY Patrick L. Sharrock, Director
AGENCY Alcoholic Beverage Control Board
PHONE 277-8638

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

33-001 (Rev. 12/79)

SB

438

COMMITTEE REPORT

SENATE

FURTHER: None

2/14/80

Date: 3/4/80

Mr. President:

The Committee on JUDICIARY has had SB 438

exempting certain sales of energy from regulation by the Alaska Public Utilities Commission

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for SB 438 [ ] same title [X] new title

and recommends CSSB 438

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

801 W. FIREWEED LANE • SUITE 101 • ANCHORAGE, ALASKA 99503 • (907) 276-3235

February 28, 1980

Honorable Robert H. Ziegler, Chairman
Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

I regret very much that I must be out of state on March 4th, the date that has been set for consideration of Senate Bill 438. Please accept this letter as testimony which I wish to submit on behalf of our association.

We very strongly support SB 438 as a measure which will reduce the amount of energy being wasted and make that reclaimed energy available to consumers at a lower cost than they would otherwise have to pay for energy from conventional sources. The opportunity for this result comes from the fact that waste energy is now available from industrial operations, and utilities serving nearby areas would like to buy this waste energy.

There are two very good examples of this within our association. Golden Valley Electric Association of Fairbanks has been negotiating with Alyeska Pipeline Company for some time to buy the waste heat from four pumpstations. The Alaska Power Authority has agreed to finance the necessary waste heat recapture facilities, and legislation is now pending (SJR 46, HJR 68 and HJR 72) which would authorize the APA to issue $110 million of revenue bonds for that purpose. Copper Valley Electric Association of Glennallen is also quite interested in installing a pressure reducing turbine on the pipeline between Thompson Pass and Valdez to recapture this energy which is not now being used.

The sale of waste energy is invariably a very small item in comparison with the industrial operation which produces it. It is so small, in fact, that the potential sellers of this waste energy find that it makes economic sense for them to let this energy go unused rather than going to the expense and aggravation of subjecting themselves to regulation on those sales by the Alaska Public Utilities Commission.

Senate Bill 438 exempts from regulation sales to a certificated utility of waste heat, electricity, or other energy which is available as a by-product of an industrial operation. The sponsor's substitute is carefully drafted so that nothing new is exempted except these specific sales. It also takes care that the utility is maintained as the entity solely responsible for providing the utility service to the public.

We think this legislation is clearly in the public interest, and we respectfully request your support for SB 438.

Sincerely,

David Hutchins

David Hutchins
Executive Director

cc: Senator Fahrenkamp

BACK UP SB 438

NEED:

Presently there are numerous oppportunities for energy which is now being wasted to be recovered and used economically. This waste energy is a byproduct of industrial or pipeline operations. It may come from burning wood chips, the heat from pump stations or the flow of oil between Thompson Pass and Valdez. In each instance, the sale of this waste energy would be a very small item to the prospective seller. Because this small sale could subject them to additional state regulation, and because they would have to deal with a whole new set of state regulations, these companies find it makes economic sense for them to let the energy go to waste rather than sell it.

EFFECT:

This bill exempts sales of economy energy to an electric utility from regulation by the APUC. However, the bill is drafted so as to limit this exemption only to those sales which do not create a utility obligation on the part of the seller. If the seller were to contract to provide firm energy rather than economy energy to a buyer, he would be subject to APUC jurisdiction.

THE ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.

SKILL
RESPONSIBILITY
INTEGRITY

BOX 4-2500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 276-5354

3201 SPENARD ROAD
ANCHORAGE
H. GLENZER, JR.
MANAGER

February 28, 1980

The Honorable Robert H. Ziegler
Chairman, Senate Judiciary Committee
Alaska State Senate
Juneau, Alaska 99811

Dear Senator Ziegler:

At its duly constituted February Board of Directors meeting held in Juneau, Alaska on February 27 and 28, 1980, the members of the Board of Directors of the Alaska Chapter Associated General Contractors of America passed the following resolution in support of Committee Substitute for Senate Bill 340.

BE IT RESOLVED that the Board of Directors of the Alaska Chapter of the Associated General Contractors of America wish their testimony to become a matter of record in support of Committee Substitute for Senate Bill 340.

FURTHER BE IT RESOLVED that no member of the Board of Directors of the Alaska Chapter A.G.C. can recall that any present elected member of the State of Alaska Legislature can be identified as having sought election to office who espoused the increased regulation of the lives or businesses of the citizens of the State of Alaska, and that quite the contrary, to the best of our knowledge all the present elected Senators and Representatives of the State of Alaska had as one of their campaign promises the stopping of quasi-legislative law being promulgated by the regulation writers who form such a substantive portion of the employees of various State agencies and departments.

FURTHER BE IT RESOLVED that the Board of Directors of the Alaska Chapter A.G.C. of America is desirous of seeing the responsibility of the laws enacted by the State of Alaska legislature returned totally to their rightful location, which is the legislature itself, and removed from the various regulation writers within the State agencies and commissions.

FURTHER BE IT RESOLVED that it is the opinion of the Board of Directors of the Alaska Chapter A.G.C. of America, acting as spokesman for the over 500 general, associate and sub-contractor members from throughout the entire State of Alaska, that the legislature should concern itself to a much greater degree with the elimination of existing regulations that stifle the freedom of the individual, and which are used as a tool of the radical element of the environmental community to delay, impede or stop the economic development of the State of Alaska.

FURTHER BE IT RESOLVED and noted that it is the opinion of the Board of Directors of the Alaska Chapter A.G.C. of America that the problem addressed by Committee Substitute for Senate Bill 340 is not localized to the State of Alaska but is of national concern and is a root cause of the extremely high inflationary burden being placed upon the citizens of the entire United States by bureaucrats dedicated to the proposition that they alone know what is best for the citizenry in America.

We therefore unanimously have passed this resolution with the hope and intent that the laws of the State of Alaska and the regulations related thereto be returned to the people's elected representatives and removed from the bureaucratic bastions within the various agencies and commissions.

Sincerely,

Conrad J. B. Frank

Con Frank, President
Alaska Chapter Associated General Contractors of America

BACK UP SB 438

NEED:

Presently there are numerous oppportunities for energy which is now being wasted to be recovered and used economically. This waste energy is a byproduct of industrial or pipeline operations. It may come from burning wood chips, the heat from pump stations or the flow of oil between Thompson Pass and Valdez. In each instance, the sale of this waste energy would be a very small item to the prospective seller. Because this small sale could subject them to additional state regulation, and because they would have to deal with a whole new set of state regulations, these companies find it makes economic sense for them to let the energy go to waste rather than sell it.

EFFECT:

This bill exempts sales of economy energy to an electric utility from regulation by the APUC. However, the bill is drafted so as to limit this exemption only to those sales which do not create a utility obligation on the part of the seller. If the seller were to contract to provide firm energy rather than economy energy to a buyer, he would be subject to APUC jurisdiction.

SB

468

COMMITTEE REPORT

SENATE

FURTHER: None

4/2/80

Date: 4/10/80

Mr. President:

The Committee on JUDICIARY has had SB 468

relating to foreign trade zones

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 468

Title An Act relating to foreign trade zones; eff. date.

Requested by _____ Date February 25, 1980

II. FISCAL DETAIL

Agency Affected Commerce and Economic Development

Program Category Affected Development

BRU, Program, or Subprogram(s) Affected Division of Economic Enterprise

(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	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

There is no fiscal impact associated with passage of this bill.

IV. DATE 2-25-80 PREPARED BY Fred Muller, Deputy Director

AGENCY Division of Economic Enterprise

PHONE 465-2018

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

Fred Muller

33-001 (Rev. 12/79)

FOREIGN TRADE ZONES

One of the bright possibilities for enhancing Alaska's role as a processing and transshipping center is the establishment of a series of foreign trade zones. First, a set of definite users must be identified. We are holding active discussions with ocean and air carriers presently and plan to initiate talks with foreign fish processors.

"Each port of entry in the U.S. is entitled to at least one Foreign Trade Zone." "Before a grant is made an economic survey must demonstrate to the satisfaction of the (FTZ)Board that the anticipated commerce, benefits and returns, both direct and indirect, will justify its construction to expediate and encourage foreign commerce." "The ability of the applicant adequately to finance and conduct the undertaking must be demonstrated..." The board will also review the availability of all the necessary infrastructure. Additionally, "where harbor facilities of any port of entry in the State are owned and controlled by the State, and where harbor facilities of any port of entry in the State are owned and controlled by the municipality, grants to public corporations will not be approved by the board unless such applications have been authorized by an act of the State Legislature..."

"Grants to private corporations will not be approved by the board unless such corporations have been authorized by an act of the State Legislature..."

The application must include: "Evidence satisfactory to the board that permits for construction have been obtained from federal, State of municipal authorities."

The above information is taken from a paper by Mr. Ron walt of the Division of Economic Enterprise.

The Anchorage Economic Development Commission has requested enabling legislation.

The Anchorage Assembly has authorized the filing of an application with the U.S. Department of Commerce for establishing a FTZ.

The Anchorage Chamber of Commerce has formed a Free Trade Zone Committee in an effort to gain public and private support for the project.

The Anchorage Marketing and Development Study is currently making a feasability study on the establishment of a FTZ in Anchorage.

The Economic Enterprise Division, of the State Department of Commerce and Economic Development, has been looking for possible users for the FTZ.

****

Foreign Trade Zone: Foreign or "Free" Trade Zones are secured areas legally outside a nation's cutoms territory. Their purpose is to attract and promote international trade and commerce.

user: Company or companies that can guarantee consistant use of the FTZ.

grant: The "grant" is a grant of authority.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND
GOVERNOR

POUCH D — JUNEAU 99811

February 27, 1980

Honorable M.E. "Ed" Dankworth
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 468

Dear Senator Dankworth:

Marie of your staff recently . sted the comments of this department on the above referenced bill.

Foreign trade zones are one of the bright possibilities for enhancing Alaska's role as a processing and transshipping center and, as such, we support the bill. Generally, such zones are not profit making enterprises but must be regarded as an added incentive to doing business in the State. Benefits are derived from secondary activities generated around and related to the zone.

Each zone requires enabling legislation, state and local, a sponsor, an operator, a user, identified benefits and operating capital. Unless a public or private agency is willing to provide the start-up capital, the capital usually comes from the potential user. In either case, a user or a group of users must be identified. In Alaska, this has proven to be a difficult task.

All indications are that Alaska is ready for the establishment of a foreign trade zone. This piece of enabling legislation helps bring the Alaska statutes into compliance with the minimum requirements of the federal statutes and we support this approach.

If you find you are in need of further information with respect to this bill, please feel free to call upon us again.

Sincerely,

Bertram L. Wagnon
Deputy Commissioner

SB
487

COMMITTEE REPORT

SENATE

2/18/80

FURTHER: Finance

Date: 4/24/80

Mr. President:

The Committee on Judiciary has had SB 487

relating to jurisdiction of the district court

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[X] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

AMENDMENT

OFFERED IN THE SENATE: BY: Senate Judiciary Committee

To: Sec. 1 SENATE BILL No. SB 467

HOUSE BILL No. _____

PAGE: 1 LINE: 27

Delete "(1) (A) (i)"

Insert "As used in section 15, (a) (1) is repealed"

Technical correction should be bracketed around subsection 7 on line 27

Introduced: 2/18/80
Referred: Judiciary and Finance

IN THE SENATE BY HOHMAN

SENATE BILL NO. 487

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the jurisdiction of the district court; and providing for an effective date."

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

* Section 1. AS 22.15.030(a) is amended to read:

(a) The district court has jurisdiction of civil cases and proceedings as follows:

(1) for the recovery of money or damages when the amount claimed exclusive of costs, interest and attorney fees does not exceed $20,000 [$10,000, EXCEPT AS PROVIDED IN (10) OF THIS SUBSECTION];

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed $20,000 [$10,000];

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $20,000 [$10,000];

(4) to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute;

(5) for establishing the fact of death of any person in the manner prescribed in AS 09.55.020 - 09.55.060;

(6) (repealed); JAN 1, 1968

(7) [repealed]; for proceedings under the Village Incorporation Act of 1957 AS 29.25

(8) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160 when the value of the

property or of the arrears and damage to the property does not exceed $20,000 [$10,000];

(9) for the foreclosure of a lien when the amount in controversy does not exceed $20,000 [$10,000];

(10) for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest and attorney fees does not exceed $20,000 [$15,000].

* Sec. 2. This Act takes effect July 1, 1980.

Alaska State Legislature

Senate

Pouch V
JUNEAU, ALASKA
99811
PHONE: (907) 465-3880

Senator George H. Hohman, Jr.

MEMORANDUM

TO: Senator Bob Ziegler DATE: April 16, 1980

FROM: Senator George Hohman

SB 487 is presently in your committee. This bill will increase district court jurisdiction from $10,000 to $20,000 for personal injury damage claims.

I believe this bill is important and should be scheduled for hearing as soon as possible. The following is a summary of my reasons for encouraging the passage of this bill:

1. The current jurisdictional limit of $10,000 needs to be increased to reflect inflation and the increase in damages being sought by Plaintiffs.

2. The bill will help reduce the existing back log of cases in Superior Court.

3. If the Supreme Court adopts mandatory arbitration rules for district court cases as requested in SCR 47, (which was passed out of Senate Judiciary several weeks ago), there will be a reduction of trials in district court.

   The increased jurisdictional limit will help balance this reduction of district court trials. It is hoped that with mandatory arbitration and increased jurisdiction the fiscal impact on the district court will be minimal.

4. The Alaska Court Administration supports the bill.

Thank you.

SB
498

COMMITTEE REPORT

SENATE

FURTHER: None

2/22/80

Date: 5/1/80

Mr. President:

The Committee on JUDICIARY has had SB 498
amending the motor vehicle code

under consideration and (a majority of the committee) (the committee)
reports it back with the following recommendations: Unanimous Recommendation

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for SB 498 [✓] same title [ ] new title

and recommends CSSB 498 Be reported out as follows.

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Jo Ray McKee

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Edmund Kemp

Ken Anderson

CHAIRMAN

S 60 (Rev. 12/78)

SENATE BILL 498

AMENDING THE MOTOR VEHICLE CODE AND

CSSB 498

The origional bill contained only sections 1 and 4 of the Committee Substitute. The Committee Subistitute added two sections and changed Section one slightly.

Section 1. Under the section setting out the grounds for refusing registration, the bill changes the language so that if an applicant fails to comply with any regulations adopted under the chapter, rather than just the section, he can be refused registration.

Section 2. This section adds a new paragraph which will allow the Department to refuse registration to a person who ownes a vehicle which violates a stature or regulation relating to color of the vehicle, emblems, or lights which a vehicle may display. Both this section and section 1, are written to eliminate persons or companies from driving school busses with the "chorme yellow" coloring. People become used to seeing yellow busses and do not stop for them. If only busses which transport children are yellow, motorists will recognize them for what they are and use caution.

Section 3. As presently written, there is not time limitations for accumulating points (good ones), thus driving records must be maintained indefinitely. This proposition is costly, plus records are available for dissemination long past their usefulness by the Division of Motor Vehicles, criminal justice agencies, or insurance companies.

As presently written, the intent of the point system could be nullified in some instances, again, mainly due to no time limitations. A person could easily accumulate 40 credit points or more by the age of 75, become an extremely bad driver, and the point accumulation would not identify him as a problem driver.

Section 4. This section would exempt school busses from the dates vehicles are required to remove studded tires or chaines on state roads. In most cases we are talking about approximately two (2) weeks on either side of the school year when school busses will have studded tires and the public will not use them. It saves the buss companies from having to purchase a totally new set of tires. Also, although low areas may be snow free, some hilly areas of the state have snow earlier and the snow stays later.

SB

511

COMMITTEE REPORT

SENATE

FURTHER:

3/6/80

Date: 4/17/80

Mr. President:

The Committee on JUDICIARY has had SB 511

relating to criminal laws of the state

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for SB 511 [X] same title [ ] new title

and recommends CSSB 511 Do Pass with the Judiciary Committee Amendments

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

60 (Rev. 12/78)

SENATE AMENDMENT

BY The Senate Judiciary Committee

To: Amend SENATE BILL No. CSSB511

To: _____ HOUSE BILL No. _____

PAGE: 10 LINE: 4

after the word "material" add "or the use of drugs."

[illegible] the [illegible] after the word "material"

SENATE AMENDMENT

BY The Senate Judiciary Committee

To: Amend SENATE BILL No. CSSB 511

To: _____ HOUSE BILL No. _____

PAGE: 1 LINE: 4

Delete the period [.] after the word "alcohol"

After the word "alcohol" add " or the use of drugs"

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

March 11, 1980

The Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 511

Dear Senator Ziegler:

Attached is a copy of the letter which we have sent to judges, bar associations and other interested individuals along with copies of the referenced bill requesting that comments be forwarded to your committee by April 1. I've also attached a copy of the distribution list for the letter. If you notice anyone we may have inadvertently omitted, please let us know.

Also attached are ten copies of a draft commentary for the bill which explains it section by section in much the same way as the original commentary to the code. I've asked Barry to assume responsibility for committee presentations on the bill. I will, of course, be available myself on relatively short notice should you think it advisable. Many thanks for your assistance.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Dan Hickey
Daniel W. Hickey
Chief Prosecutor

DWH:gm

Enclosures

03-C7LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

March 7, 1980

SB 511, "An Act relating to the criminal laws of the state" was introduced in the Senate on March 5, 1980, by the Senate Judiciary Committee. The Act makes 39 amendments to the revised criminal code which became effective January 1, 1980. The overwhelming majority of the amendments clear up drafting errors and unintended gaps in coverage in the code which were identified through the training sessions we recently conducted. The number of substantive changes have been kept to a minimum. The bill also reflects suggestions for amendments requested by a number of individual judges and the Advisory Committee on Minority Judicial Sentencing Practices.

Though the bill currently indicates referrals to the Senate State Affairs and Judiciary committees, it is our understanding that the State Affairs referral will be waived and the bill will only be considered in Senate Judiciary. Senator Robert H. Ziegler, Sr. the chairman of the Senate Judiciary Committee, has informed us that he plans to hold hearings on the bill in early April. He has asked us to request that you review the bill and foward any comments you might have about any of its provisions to him at Pouch V, State Capitol, Juneau, Alaska 99811 by April 1.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Daniel W. Hickey
Daniel W. Hickey
Chief Prosecutor

DWH:sl:BJS

03-C7LH

DISTRIBUTION LIST OF SB 511

Alaska Supreme Court Justices
Alaska Superior Court Judges
Alaska District Court Judges
Public Defender Agency
District Attorneys
Alaska Judicial Council
Alaska Bar Association
Anchorage Bar Association
Fairbanks Bar Association
Juneau Bar Association
Kenai Bar Association
Ketchikan Bar Association
Kodiak Bar Association
Nome Bar Association
Sitka Bar Association

DRAFT

COMMENTARY AND SECTIONAL ANALYSIS FOR THE PROPOSED 1980 AMENDMENTS TO ALASKA'S REVISED CRIMINAL CODE

Senate Bill 511

INTRODUCTION

In 1978 the Alaska Legislature enacted a comprehensive revision of the state's criminal law. (Ch. 166 SLA 1978). The bill adopting the revised criminal code provided for an eighteen month delayed effective date and became law on January 1, 1980.

During this eighteen month period the code was reviewed in conjunction with a comprehensive training program to identify possible problem areas so that any necessary corrective amendments could be made during the 1980 legislative session. SB 511 contains a total of 39 amendments. Three categories of amendments are included.

The overwhelming majority of the amendments proposed in the bill clarify particular provisions to more adequately reflect legislative intent. Included in this category are sections that correct drafting errors and oversights.

The second category includes two amendments, one to the homicide statutes and one to the assault statutes, which are designed to conform code provisions with decisions of the Supreme Court of Alaska announced simultaneously with or since adoption of the code.

The third category includes amendments which make substantive changes in the law. These amendments have been kept to a minimum and have been proposed through this bill only when particularly compelling reasons exist for the amendment.

The following material is a section by section analysis of the bill including a discussion of the effect of each amendment and why it is felt to be necessary. The analysis is organized in accordance with each chapter and article set out in the revised criminal code. Where no amendment has been proposed with respect to a particular chapter or article, a notation to that effect is included.

CHAPTER 16. PARTIES TO CRIME

No amendment proposed.

CHAPTER 31. ATTEMPT AND SOLICITATION

Section 1. AS 11.31.100. Attempt.

Section 2. AS 11.31.110. Solicitation.

Section 1 and section 2 of the bill contain identical amendments which provide that the Code's general attempt and solicitation statutes are to apply to unclassified crimes defined outside Title 11. Through an oversight, the Code's present attempt and solicitation statutes now only apply to crimes defined in Title 11 and classified crimes defined outside Title 11.

The amendments provide that the maximum penalty for an attempt or solicitation to commit a crime outside Title 11 will ordinarily be one-half the maximum punishment for the crime that is attempted or solicited. This penalty structure is identical to the punishment provided for attempts under the repealed attempt statute, AS 11.05.020.

CHAPTER 41. OFFENSES AGAINST THE PERSON

ARTICLE 1. HOMICIDE

Section 3. AS 11.41.115. Defenses to Murder.

This section constitutes a conforming amendment to subsection (e) of AS 11.41.115 and is discussed in conjunction with Section 39 of the bill which repeals AS 11.41.115(d).

ARTICLE 2. ASSAULT AND RECKLESS ENDANGERMENT.

Section 4. AS 11.41.210. Assault in the Second Degree.

This amendment makes two changes to the Assault in the Second Degree statute in order to conform those sections pertaining to assaults with a dangerous instrument to conduct included under the former law. Amended paragraph (1) covers the situation when a person intentionally causes physical injury by means of a dangerous instrument. Under the old law this conduct was the felony crime of Assault with a Dangerous Weapon, a felony. Under the new code, however, this conduct would only be included under Assault in the Third Degree, a misdemeanor, absent the presence of an intent to cause serious physical injury. The proposed amendment closes this obvious gap in coverage.

The amendment also provides that Assault in the Second Degree under new paragraph (3) can be committed "recklessly", "knowingly" and "intentionally" (See AS 11.81.610(c)) instead of only "intentionally". The effect of this amendment is to restore what is commonly referred to as "ADW" (Assault with a Dangerous Weapon) to a general intent crime from a specific intent crime.

Providing specifically that an assault with a dangerous instrument is a general intent crime is consistent with Menard v. State, 578 P.2d 996 (Alaska 1978), a decision published by the Supreme Court during the final days of the legislature's consideration of the Code. In Menard, the court held that a "jury did not have to find any specific intent to do any particular kind or degree of harm to the victim in order to find [the defendant] guilty of assault with a dangerous weapon." Id. at 970. With the additio. of the word "recklessly" the Code provision would be consistent with the court's prior interpretation of the repealed "ADW" statute in Menard and would restore "ADW" to a general intent crime.

Section 5. AS 11.41.230(a)(1). Assault in the Third Degree.

Because of the general rule regarding proof of higher forms of culpable mental states in AS 11.81.610(c) (proof of a higher form of culpability establishes a lower form) this amendment deleting the unnecessary words "intentionally or" has been made.

ARTICLE 3. KIDNAPPING AND RELATED OFFENSES.

Section 6. AS 11.41.300(a)(1). Kidnapping

This amend clarifies that "restraint" (defined in AS 11.41.370(3)) of a victim with intent to commit a

sexual assault is kidnapping. While such conduct is already generally covered under AS 11.41.300(a)(1)(E), it is preferable to specifically prohibit this particularly serious form of conduct in the kidnapping statute.

It should be noted that this amendment would not turn a restraint that was merely incidental to a sexual assault into kidnapping. For example, a defendant who forces a victim who is jogging along a bike path into woods a few feet from the bike path in order to commit a sexual assault has not committed kidnapping. The "restraint" of the victim was too closely related to the sexual assault, both in time and the degree of movement, to qualify as a separate crime. However, if the victim was forced into the defendant's car and then driven a block to a nearby deserted house and sexually assaulted, or sexually assaulted while his accomplice was driving the car, kidnapping has occurred. In this situation the restraint was specifically done to facilitate the commission of the felony and there was significant confinement or movement of the victim beyond that necessary to commit the sexual assault. (See generally Levshakoff v. State, 565 P.2d 504 (Alaska 1977)).

Section 7. AS 11.41.410. Sexual Assault in the First Degree.
Section 8. AS 11.41.440. Sexual Abuse of a Minor.

Section 7 amends the Sexual Assault in the First Degree statute to provide that causing or inducing a child

under 13 to engage in sexual penetration with another person (regardless of age) is prohibited in the same manner as actually engaging in sexual penetration with the child.

Similarly, section 8 amends the statute on Sexual Abuse of a Minor to cover causing or inducing children under 16 and 13 to engage in acts of sexual penetration and contact, respectively. Also prohibited is causing or inducing a child to engage in conduct described in paragraphs (2)-(6) of the Unlawful Exploitation of a Minor statute (AS 11.41.455(a)), even though no commercial purpose can be established. Paragraph (1) of AS 11.41.455(a), covering sexual penetration, is not included since this conduct has already been covered either in section 7 if the child is under 13, or under paragraphs (1) and (2) of section 8.

ARTICLE 5. ROBBERY

No amendment proposed.

CHAPTER 46. OFFENSES AGAINST PROPERTY

ARTICLE 1. THEFT AND RELATED OFFENSES

Section 9. AS 11.46.210. Theft By Failure to Make Required Disposition of Funds Received or Held.

This amendment makes no substantive change in this statute but conforms language in subsection (b) to the

Code's consolidated theft statute. The amendment clarifies that a person who engages in conduct described in AS 11.46.210 is prosecuted for "Theft" under AS 11.46.120-150 and not for "Theft by Failure to Make Required Disposition of Funds Received or Held" (See AS 11.46.110).

Section 10. AS 11.46.220. Concealment of Merchandise.

This amendment makes two changes to the Concealment of Merchandise statute. The first is a technical one and clarifies the intent element in language that more closely parallels the general theft provisions. See AS 11.46.100(1). While the definition of "intent to deprive" (AS 11.46.990(2)) is broad enough to include conduct included within the definition of "intent to appropriate" (AS 11.46.990(1)), it is preferable to closely parallel the general language of the theft statutes in the Concealment of Merchandise statute.

The second change is to provide that the concealment of any firearm, regardless of value, is a class C felony. This amendment is intended to conform the Concealment of Merchandise statute with the general theft statutes which provide that the theft of any firearm is a class C felony. See, AS 11.46.130(a)(2).

ARTICLE 2. BURGLARY AND CRIMINAL TRESPASS

Section 11. AS 11.46.320. Criminal Trespass in the First Degree.

This amendment clarifies that a trespass on land with intent to commit a crime is covered specifically as a class A misdemeanor. While this section of the trespass statute was intended by the legislature to only apply to trespasses on land, the term "real property" has traditionally included both land and buildings. (However, note the definition of "premises" in AS 11.81.900(b)(42) which treats "building" and "real property" as distinct categories). To avoid potential overlapping coverage with the Burglary in the Second Degree statute, which specifically covers an unlawful entry into a building with intent to commit a crime, this technical amendment is required.

ARTICLE 3. ARSON, CRIMINAL MISCHIEF, AND RELATED OFFENSES

Section 12. AS 11.46.482. Criminal Mischief in the Second Degree.

The legislature adopted an approach to "joyriding" that aggravates the misdemeanor crime to a felony when the vehicle taken was damaged or the owner incurred expenses in an amount of $500 or more. As drafted, the statute seems to require that either $500 in damage or $500 in expenses result. The situation, for example, where the vehicle is damaged in an amount of $300 and the owner incurs $300 in rental expense would not appear to be a felony since even though the total loss was in excess of $500, neither the damages or the expenses exceeded $500. Although this particu ar

question was not specifically considered by the legislature in 1978, it would seem consistent with the overall statutory scheme to impose felony penalties under these circumstances. Additionally, this amendment clarifies that strict liability is imposed on the defendant as to the element of causing damage to the car or expenses for the owner.

ARTICLE 4. FORGERY AND RELATED OFFENSES

No amendment proposed.

ARTICLE 5. BUSINESS AND COMMERCIAL OFFENSES

Section 13. AS 11.46.600. Scheme to Defraud.

Because of a drafting error, a scheme to obtain $10,000 from one or more persons was made a class B felony regardless of whether criminal intent was present. This amendment corrects this problem by specifying the applicable intent requirement.

Section 14. AS 11.46.620. Misapplication of Property.

This amendment allows for the possibility of felony prosecution when the value of the property misapplied is $500 or more. Currently, all cases involving the misapplication of property (usually by a fiduciary) are classified as class A misdemeanors regardless of whether the value of the property misapplied was $25 or $25,000. Because of the

possibility of significant pecuniary losses caused by misapplication of property, higher penalties should be authorized. In providing for felony penalties when the property involved is $500 or more, the statutory scheme is consistent with the penalty structure applicable to theft offenses.

CHAPTER 51. OFFENSES AGAINST THE FAMILY

Section 15. AS 11.51.130. Contributing to the Delinquency of a Minor.

The Alaska Bar Association Criminal Law Committee has noted that the code's contributing statute is overbroad because of the inclusion of the word "permits". This amendment strikes the word "permits" from paragraphs (1)-(4) of the statute and uses the uniform language "aids, induces, causes or encourages" in describing the acts sufficient to constitute the crime. Additionally, a new paragraph (5) has been added which covers aiding, inducing, causing or encouraging a child under 16 to absent himself from the lawful custody of his parents or from school. This conduct was included under the former contributing statute. See, AS 11.40.130 and AS 11.40.130(4). It should be noted, however, that the offense does not occur when the child has "just cause" to be absent from custody.

CHAPTER 56. OFFENSES AGAINST PUBLIC ADMINISTRATION

ARTICLE 1. BRIBERY AND RELATED OFFENSES

No amendment proposed.

ARTICLE 2. PERJURY AND RELATED OFFENSES

No amendment proposed.

ARTICLE 3. ESCAPE AND RELATED OFFENSES

Section 16. AS 11.56.310. Escape in the Second Degree.

Section 17. AS 11.56.320. Escape in the Third Degree.

Section 18. AS 11.56.330. Escape in the Fourth Degree.

Section 19. AS 11.56.370. Permitting an Escape.

Sections 17 and 18 provide that if a person commits an Unlawful Evasion (failure to return to a correctional facility following temporary leave) and leaves or attempts to leave the state the crime is Escape in the Third Degree, a class C felony and not Escape in the Fourth Degree, a class A misdemeanor. The penalties for escape under the new code were intended to closely parallel the penalties for escape provided in former AS 11.30.095, the escape statute enacted in 1976. Because of an oversight in drafting, the penalty for the conduct described in AS 11.56.320(a)(2) was

reduced from a felony to a misdemeanor. This change is inconsistent with the remainder of the statutory scheme on escape which provides that an unlawful evasion without leaving the state is itself a class A misdemeanor.

Additionally, sections 16-19 replace the words on "a charge of" with the word "for". This amendment is required to make clear that escape and permitting an escape can occur when a person has been arrested for a crime, though not necessarily formally charged with a crime by way of complaint, indictment or information.

ARTICLE 4. OFFENSES RELATING TO JUDICIAL AND OTHER PROCEEDINGS

No amendment proposed.

ARTICLE 5. OBSTRUCTION OF PUBLIC ADMINISTRATION

No amendment proposed.

CHAPTER 61. OFFENSES AGAINST PUBLIC ORDER

ARTICLE 1. RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES

No amendment proposed.

ARTICLE 2. WEAPONS AND EXPLOSIVES

Section 20. AS 11.61.210. Misconduct Involving Weapons in the Second Degree.

This amendment provides that the standard for determining whether a person's possession of a firearm while intoxicated is unlawful is whether the defendant was "under the influence" and not whether he was "substantially impaired". The "substantially impaired" language was included in the Commission's draft of the code because the statute applied to all deadly weapons (such as knifes and explosives) and not only to firearms. Because of the expanded range of instruments covered by the statute, it was felt that the test for determining impairment should be made more restrictive. In the legislature the statute was amended to apply only to firearms. However, the standard for determining impairment was not specifically addressed.

The "under the influence" standard is identical to the test under the former statute, AS 11.55.070, and has the benefit of previously accepted jury instructions which define when a person is "under the influence". Additionally, the "substantially impaired" standard is not defined by the code.

Section 21. AS 11.61.220(b)(1). Misconduct Involving Weapons in the Third Degree.

This amendment clarifies that a defendant has an affirmative defense to the carrying a concealed weapon prohibition of the weapons statute if he is in his dwelling or on land owned or leased by him which is appurtenant to his dwelling. As drafted, the defense applied when the defendant was in his dwelling or on "property" appurtenant to his dwelling. The proposed amendment clarifies the provision consistent with the legislative intent expressed at the time the Code was enacted.

The proposed amendment makes it clear that the defense should only apply to situations where the person is in his back yard or on any other land owned or leased by him directly attached to his dwelling. Additionally, it avoids the possibility that a bar owner or other merchant will claim that possession of a concealed weapon while on business premises attached to his dwelling was authorized by this provision.

CHAPTER 66. OFFENSES AGAINST PUBLIC HEALTH AND DECENCY

No amendment proposed.

CHAPTER 76. MISCELLANEOUS OFFENSES

No amendments proposed.

CHAPTER 81. GENERAL PROVISIONS

ARTICLE 1. GENERAL PURPOSES

No amendments proposed.

ARTICLE 2. APPLICABILITY OF CRIMINAL STATUTES

No amendments proposed.

ARTICLE 3. CLASSIFICATION OF OFFENSES

No amendments proposed.

ARTICLE 4. GENERAL PRINCIPLES OF JUSTIFICATION

Section 22. AS 11.81.300. Justification: Defense.

Because of the specification of AS 11.81.400(a)(2) as an affirmative defense (discussed in conjunction with sec. 23, infra) this conforming amendment is required.

Section 23. AS 11.81.400. Justification: Use of Force in Resisting Arrest.

This amendment makes two changes to the statute describing when a person may resist an unlawful arrest. Subsection (c) makes the defense an affirmative one which the defendant must prove by a preponderance of the evidence. The defense provided for is one that should be appropriately made an affirmative defense consistent with other provisions of the code because it exists only as a matter of legislative policy and involves a matter that is subjectively in the possession of the defendant. Additionally, because this defense expands the current rule of law with respect to the circumstances when resistance is allowed, shifting the burden of proof on the issue is clearly permissible.

Subsection (d) provides that the issue of whether there was probable cause to arrest is a question of law that is to be determined by the court. While the current provision would undoubtedly be interpreted to include this provision consistent with other similar provisions in the criminal law, it is preferable to specifically set out this procedure.

ARTICLE 5. GENERAL PRINCIPLES OF CRIMINAL LIABILITY

Section 24. AS 11.81.600. General Requirements of Culpability.

This amendment makes two changes regarding the

code's general rules on culpability. The first is to clarify the general rule concerning culpability and to make clear that, with certain specified exceptions, a culpable mental state must be proven for every crime. For example, to commit Burglary in the Second Degree the state must establish that the defendant entered or remained unlawfully in a building with intent to commit a crime. The culpable mental state in this case is the intent to commit a crime. If the state establishes a voluntary act by the defendant in entering or remaining in a building, and in addition shows he acted with the intent to commit a crime, the crime of Burglary in the Second Degree has been established.

The second change provides that culpability need not be established if a legislative intent to dispense with the culpability requirement appears. While the decision to eliminate the culpable mental state requirement must comport with constitutional due process guarantees, the courts should be specifically authorized to consider the legislature's intent (and most importantly, the commentary accompanying passage of the code) in determining whether the legislature intended to dispense with the culpability requirement.

Section 25. AS 11.81.620. Effect of Ignorance or Mistake Upon Liability.

This amendment emphasizes that in order for a

defendant's mistake of fact to constitute a defense to a crime the mistake must be a reasonable one. While the reasonableness requirement is probably already included in this statute, this amendment is desirable to avoid potential litigation in the area.

ARTICLE 6. DEFINITIONS

Section 26. AS 11.81.900(b)(11). Definition of "dangerous instrument".

This amendment is required in order to make it specifically clear that all "deadly weapons" (including unloaded firearms) are "dangerous instruments" consistent with the legislative intent expressed with enactment of the code.

Section 27. AS 11.81.900(b)(12), Definition of "deadly force".

During the legislature's consideration of the justifiable use of force, the issue whether deadly force could be threatened in situations when its actual use would be improper was frequently discussed. Because of the possibility that such threats could tragically escalate a conflict, the legislature concluded that only peace officers making an arrest should have the authority to threaten deadly force in situations where the actual use of deadly force was not justified. See AS 11.81.370.

While making this specific change in AS 11.81.370 no corresponding change was made in the definition of "deadly force". While it can be argued that because of the express inclusion in AS 11.81.370 of the phrase "a peace officer may use nondeadly force and may threaten to use deadly force" nondeadly force does not include a threat of deadly force, the definition of deadly force appears to provide otherwise. This amendment provides that pointing a firearm in the direction of another person as well as intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument constitutes deadly force.

Section 28. AS 11.81.900(b)(21). Definition of "Firearm".

This amendment is included to correct a potential drafting oversight and clarifies that an inoperable firearm is included within the definition of firearm. While it would seem to be the case that inoperable firearms are already included within paragraph (B) of the current definition of firearm ("any weapon, whether loaded or unloaded, designed for discharging a shot capable of causing death or serious physical injury"), it is preferable to specifically state that inoperable firearms are included in order to avoid unnecessary issues being raised during trials.

Section 29. AS 11.81.900(b)(49). Definition of "Serious Physical Injury".

This amendment provides that serious injury to a body member as well as a body organ will specifically qualify as serious physical injury. This amendment is identical to the definition of "great bodily injury" appearing in the former aggravated assault statute, AS 11.15.225, which was enacted in 1976 and which the legislature intended to parallel in the definition of "serious physical injury". However, because of a drafting oversight, the word body member did not appear in the definition of "serious physical injury".

Section 30. AS 12.25.180. When Peace Officer has Option to Take Person Before Judge or Magistrate.

Though the criminal code provided for noncriminal offenses called violations (e.g., littering) it did not provide a specific enforcement mechanism for dealing with a suspect who has committed a violation. This amendment authorizes the use of citations and provides that a peace officer will ordinarily issue a suspect a citation for a violation consistent with the provisions in existing AS 12.25.190 -- AS 12.25.220. However, if the suspect refuses to identify himself or refuses to accept the citation, authority is given to the officer to bring the suspect directly before a judge or magistrate.

Section 31. AS 12.30.040. Release After Conviction.

This amendment makes conforming amendments in the statute prohibiting bail upon conviction for four specified crimes. The names of the four crimes have been changed to reflect the corresponding new names for the crimes under the Code.

Section 32. AS 12.55.015. Authorized Sentences.

AS 12.55.015(b) lists three circumstances when a judge is required to impose imprisonment in situations where a nonincarcerative alternative is not otherwise precluded. Because the presumptive sentencing scheme will usually require the imposition of some period of imprisonment for repeat felons, absent mitigating factors or extraordinary circumstances, this section is of particular importance in the sentencing of misdemeanants and first time felons.

The amendment changes paragraph (3) to more narrowly define the circumstances when imprisonment is required. The amendment addresses the specific concerns expressed by the Advisory Committee on Minority Judicial Sentencing Practices and eliminates the possibility that imprisonment will be required whenever a court on a single occasion in the past has imposed a sentence of lesser severity on the defendant. The amendment additionally conforms this provision to the underlying legislative intent that accompanied enactment of

presumptive sentencing.

Section 33. AS 12.55.045. Restitution.

As presently drafted, the code requires that before a court may order restitution the victim of the crime must be notified. Several judges have criticized this provision as unduly burdensome since in many cases the location of the victim will not be known by the court. This amendment eliminates the necessity of notifying the victim every time restitution is ordered. While notification will occur as a matter of course in most cases, the failure to provide notification should not prevent the court from imposing a sentence of restitution.

Section 34. AS 12.55.155(c)(8). Modification of Aggravating Factor.

In response to a further suggestion by the Advisory Committee on Minority Judicial Sentencing Practices, this amendment more narrowly describes the aggravating factor that the defendant has a prior criminal history of assaultive behavior, including misdemeanor convictions.

Section 35. AS 12.55.155(c). Aggravating Factors Added.

This amendment adds three aggravating factors that a judge may consider in imposing a presumptive sentence.

The first treats the presence of three or more prior felony convictions as an aggravating factor. This amendment is required since the Code recognizes that two or more prior felony convictions will place the defendant in the most serious category for purposes of presumptive sentencing. However, no provision specifically allows the judge to consider the fact that the defendant may have, for example, six prior felonies as opposed to only two. This amendment allows the judge to consider prior felonies beyond those necessary to place the defendant in the most serious category of presumptive sentencing as an aggravating factor.

The second and third proposed additional factors are intended to be applicable in the sentencing of "white-collar" criminals. These include the fact that the defendant intended to obtain substantial gain under circumstances where the risk of prosecution and subsequent punishment were minimal and the fact that a defendant's crime was part of a continuing series of offenses in futherance of an illegal business from which the defendant derives substantial income.

Section 36. AS 12.55.155(d). Mitigating Factor Added.

This section adds an additional factor that can be used to reduce a presumptive sentence. This mitigating factor allows the judge to consider that the aggregate harm caused by the defendant's criminal conduct, including his

prior offenses, was consistently minor and inconsistent with a substantial period or imprisonment. One situation where this factor might be applicable is when the defendant has committed a number of felony property offenses, such as check forgeries, but they all involve relatively small amounts of money. This amendment is also proposed in response to the suggestions and recommendations of the Advisory Committee on Minority Judicial Sentencing Practices.

Section 37. AS 12.80.040. Violations and Infractions.

This amendment should be considered in conjunction with section 30 of the bill discussed supra. It allows peace officers to arrest a person for a violation or an infraction if the person refuses to identify himself or to accept a citation.

Section 38. AS 28.35.135(a). Conforming Amendment to Motor Vehicle Law.

AS 28 35.135(a) deals with false statements on forms required under Title 28. The penalty for this conduct has been classified as unsworn falsification, rather than perjury, since the statements referred to under AS 28.35.135(a) will include statements not made under oath.

Section 39. Repeal of AS 11.41.115(d), and 11.81.610(a).

This amendment repeals two provisions in the criminal code. The first is AS 11.41.115(d) which provides that an unreasonable but honest belief as to the circumstances giving rise to a defense of justification (e.g., self-defense) will mitigate what would otherwise be murder to manslaughter. This section was not recommended by the Criminal Code Revision Commission but was added by the legislature subsequent to a discussion during committee consideration that it correctly stated the applicable law in Alaska.

In a recent decision, Houston v. State, _____ P.2d _____, Op. No. 1970 (Nov. 16, 1979) the Alaska Supreme Court noted that the law in effect in Alaska at the time did not recognize the defense of unreasonable belief as to justification. The effect of the repeal of AS 11.41.115(d) is to make the Code consistent with the law that existed prior to January 1, 1980 and to provide that only reasonable beliefs as to the right of justification will excuse what would otherwise be a murder. Note also that a conforming amendment has also been made in sec. 3 of the bill reflecting the elimination of AS 11.41.115(d).

The second amendment repeals AS 11.81.610 (a) which provides that the use of one culpable mental state in a statute rebutably presumes that the mental state applies

to all elements of the crime. This rule is inappropriately broad and ignores the fact that, by definition, particular mental states only apply to particular elements of a crime. For example, "intentionally" only applies to elements of crimes that can be classified as "results" as opposed to "circumstances" or "conduct" to which the culpable mental "knowingly" applies. Because of the requirement set forth in Section 24 that ordinarily only one culpable mental state is required to be established for each crime, this section is superfluous and misleading.

April 17, 1980

To: All Members of the Senate

From: Senate Judiciary Committee

Re: CSSB 511.

Attached are the explanatory comments relating to CSSB 511 which will probably be scheduled for floor action next week.

As you recall, the new criminal code passed the legislature in 1978, and became effective January 1, 1980.

The committee substitute for SB 511 reflects three categories of changes to the criminal code:

1. Clarifying provisions to reflect more adequately legislative intent and correcting drafting errors and oversights;

2. Conforming the code to decisions of the Supreme Court of Alaska announced simultaneously with or since adoption of the code; and

3. Substantively changing the law. These amendments have been kept to a minimum.

The bill has been approved by various organizations of the criminal justice system and I suggest, if you have any questions prior to floor action, you contact Dan Hickey, Chief Prosecutor, Department of Law, Barry Stern, Assistant Attorney General, Criminal Division, Senator Bill Ray or myself, and we will try to answer them.

Robert H. Ziegler, Sr.,
Chairman

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

April 16, 1980

The Honorable Thomas E. Schulz
Superior Court Judge
First Judicial District
415 Main Street
Ketchikan, Alaska 99901

Re: SB 511 (Criminal Code Amendments)

Dear Judge Schulz:

Senator Ziegler recently provided me with a copy of the letter you sent to him commenting on SB 511. Because the Department of Law has worked closely with Senator Ziegler on this bill, I wanted to take the liberty of briefly responding to the four points raised in your letter.

Your first comment concerned the statute on Misapplication of Property. As you pointed out, the proposed amendment raises the penalty for the crime from a class A misdemeanor to a class C felony when more than $500 is involved. This amendment has been recommended for two reasons. First, some of the conduct covered by the offense was previously treated as embezzlement and was classified as a felony when the amount involved was in excess of $100. Second, the conduct covered by the statute will most frequently involve the misapplication of significant sums of money by fiduciaries such as accountants and lawyers who are required to exercise a high degree of care in their handling of property entrusted to them by others. In reviewing this provision since initial adoption of the code, I have come to believe that it was misclassified. Given the fact that the statute involves fiduciary relationships and potential defendants in whom society places considerable trust, it seems appropriate for it to correspond with the overall approach to theft taken in the code.

Your second comment concerned potential overlapping coverage between the "Contributing" statute and the statute pertaining to Sexual Abuse of a Minor. While the misdemeanor contributing statute prohibits sexual contact by a defendant

19 or older with children between the ages of 13 and 16, the sexual abuse of a minor provision prohibits sexual penetration with children between the ages of 13 and 16 and sexual contact with children under 13. Thus, the statutes are not inconsistent since contributing covers only sexual contact with children between the ages of 13 and 16 while the sexual abuse statute applies to penetration with children within that age group. The overall statutory scheme, however, does tend to be confusing since the sexual abuse statute also applies to acts of sexual contact -- but only with respect to children under 13.

With respect to the proposed deletion of the requirement in the Title 12 provision pertaining to restitution that the court notify a victim before restitution could be ordered, I share your view that ordinarily restitution should not be settled absent consultation with the victim. However, as presently drafted, the code requires that before a court may order restitution the victim must be notified. The amendment was included in the bill at the specific request of a number of Anchorage judges who were afraid that the failure to notify a victim could expose a sentence of restitution to attack on appeal. For example, assume that when a defendant charged with criminal mischief is sentenced the owner of the property is out of the state, cannot be reached and there is no indication in the record that he was consulted concerning whether he wished restitution be ordered. While notification will occur as a matter of course in most cases, a failure or inability to contact the victim should not prevent the court from imposing a sentence involving restitution.

Your final concern involved the proposed addition as an aggravating factor the fact that a defendant has "three or more" prior felony convictions since three felony convictions were required to trigger a presumptive sentence. Actually, the most serious form of presumptive sentence applies when a defendant has two or more prior felony convictions and so this change is appropriate.

As you pointed out in your letter, most of the changes in the bill involved minor housekeeping matters. Many of these are technical points that we identified in putting together the law enforcement training program on the code. I appreciate your taking the time to review the bill and

forward your comments to the Senate Judiciary Committee. If you have any additional questions about the bill, please let me know.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: _____
Daniel W. Hickey
Chief Prosecutor

DWH:gm

cc: The Honorable Robert H. Ziegler, Sr.
Chairman,
Senate Judiciary Committee

Alaska State Legislature
House

JUNEAU, ALASKA

MESSAGE TO THE SENATE DATE May 28, 1980

MR. PRESIDENT:

The House has passed CSSB 511am (criminal laws of the state: eff date) with the following amendment:

HCS CSSB 511 (same title)

and it is transmitted herewith for consideration.

Chief Clerk of the House

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety		SB 511

DEPARTMENT POSITION

Support

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Col. Anderson	3/18/80	bfc for William R. Nix	3/18/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL

(3) PROGRAM EFFECTS OF BILL

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

STATE OF ALASKA / JAY S. HAMMOND, GOVERNOR

PUBLIC DEFENDER AGENCY

716 W. 4th Avenue, Suite 500
Anchorage, Alaska 99501
Phone: (907) 279-7541

April 14, 1980

Senator Robert H. Ziegler, Sr.
Pouch V
State Capitol
Juneau, AK 99811

Re: SB 511

Dear Senator Ziegler:

I received a copy of SB 511 with a cover letter from Daniel Hickey, Chief Prosecutor, during the month of March. I have looked over the modifications to the new Criminal Code and have some comments to make about them. I hope you will not think that I have examined these provisions exhaustively, but I have circulated them to the various public defender offices around the state and asked for comments. When I receive them, I will certainly pass any relevant criticism or suggestions on to you.

For my own part, I would direct your attention to Section 11.46.220, which makes it a felony to shoplift a firearm. It seems to me that this statute will not do much to protect the public, and it threatens to make felons out of a class who do not need this kind of stigma. Presumably, the intent of the statutory modification is to provide protection for the public by making the penalties for theft of dangerous weapons so stringent that the class of people who might ordinarily shoplift them would be deterred. However, it is my experience that most shoplifters are young and are not the type of people who will pursue a life of crime. They are also frequently fascinated with firearms, not because they want to shoot someone, but because they, like many other Alaskans, are hunting or target practice enthusiasts. Thus, if the statute is modified to make a felony of what has traditionally been a misdemeanor, the class of people the legislature will be penalizing is not one we traditionally think of punishing as felons.

I have some other problems with the concealment of merchandise statute as it would be modified by Section 11.46.220. Addition of the vague phrase, "or with intent to appropriate the merchandise" merely dilutes traditional larceny requirement.

With regard to AS 11.41.440(a), I would ask that the legislature consider carefully the reasons why it would want to add the broad, "aids, induces, causes, or encourages" language to a statute which deals with the problem of sexual abuse of minors in a concise way. I am particuarly bothered by the words "aids" and "encourages", which encompass a whole lot of behavior the legislature may not really want to punish by a term of imprisonment of up to five (5) years.

I would also urge deletion of the modifications to AS 11.51.130(b)(3) and (5). I think the reasons are obvious -- these statutory modifications are overbroad and really reach beyond the limits of reasonable criminal statutes.

The same type of criticism as has been made above in regard to other statutes may be applied to the proposed modifications in AS 11.81.620(b). The definition of factual mistake, I submit, does not need the language of reasonableness attached to it. Of course, this modification would give prosecutors more room to argue, but that does not necessarily make desireable.

My final comment is directed at the proposed change to AS 11.81.900(b)(12). It does seem to be overkill to define the term "deadly force" as encompassing the pointing of a firearm and intentionally placing another person in fear of imminent serious physical injury. I would urge that the definition not be expanded.

I hope you will not take these comments as an exhaustive analysis of the proposed modifications to the criminal code. However, I hope you and the Judiciary Committee will take them into consideration when you decide whether or not SB 511 should pass in its current form.

Very truly yours,

Brian Shortell

Brian Shortell
Public Defender

BS:mb

HOUSE UNIT TAKES UP CRIMINAL CODE BILL

Heavy Lobbying Is Anticipated As 14-year Effort to Rewrite Law Enters Yet Another Phase

By ROBERT PEAR
Special to The New York Times

WASHINGTON, April 20 — A 14-year effort to rewrite Federal criminal laws will enter a new phase this week as the House Judiciary Committee begins to debate and amend the legislation.

When the panel meets Wednesday, members will have before them a 461-page bill known as the Criminal Code Revision Act of 1980, which was approved last month by the subcommittee on criminal justice. Business and labor groups, prosecutors, defense attorneys and civil libertarians will all be lobbying for or against particular features of the bill, which attempts to rearrange the present hodgepodge of criminal laws into a coherent format.

Parallel legislation, sponsored by Senator Edward M. Kennedy, was approved in December by the Senate Judiciary Committee, of which Mr. Kennedy is chairman.

The Justice Department, having closely followed the evolution of the Senate bill, strongly prefers it over the House version. The American Civil Liberties Union, on the other hand, opposes the Senate bill and prefers the proposal developed by the House subcommittee, whose chairman is Representative Robert F. Drinan, like Mr. Kennedy a Massachusetts Democrat.

Commission Created in 1966

Congress created a commission to propose changes in the criminal laws in 1966, and legislators say that the code appears to have a better chance of passage this year than at any time since then. Other recent efforts to revise the code have failed, in part because of concern about the effect on civil liberties.

The Senate, having approved one version of the criminal code by a vote of 72 to 15 in January 1978, would probably endorse a similar bill this year, according to Senate aides.

Mr. Kennedy has an agreement with Senator Strom Thurmond, the ranking Republican on the Judiciary Committee, to keep the bill free of controversial amendments when it comes up for debate by the full Senate. So lobbyists intend to focus their efforts on the House bill, which differs from the Senate version in several important respects.

The House bill, in a departure from longstanding Federal practice, would permit lawyers to accompany witnesses appearing before a Federal grand jury. The American Bar Association and the Civil Liberties Union favor such a change; the Justice Department vehemently opposes it, saying that lawyers could transform the grand jury sessions into adversary proceedings.

The Senate bill would continue current practice. At present, witnesses appearing before a grand jury may consult their attorneys, but counsel must remain outside the grand jury room.

The House bill would permit a defendant to appeal a sentence on the ground that it is too severe or "clearly unreasonable." The Justice Department wants to have a similar right of appeal when it considers a sentence too lenient. The Senate bill would give both the Government and defendants the right of appeal. Under present law, neither side can appeal except in rare cases.

The Senate bill would abolishe parole. The House bill would retain parole for study and evaluation for five years, after which Congress would decide on changes in the sentencing system. The Justice Department favors the Senate approach, believing that parole adds to inequities and disparities in sentencing.

Supporters of the Senate bill maintain that it would be tougher on white-collar crime than the House version. The Senate measure would create a new crime known as "endangerment" and increase the penalties for violations of health, safety and environmental laws committed in a particularly egregious way — when someone knowingly places another person in "imminent danger of death or serious bodily injury." The Justice Department would like to see this feature of the Senate bill accepted in the House.

Business Objects

Business representatives view this section as the most objectionable in the code. James P. Carty, vice president of the National Association of Manufacturers, said the "endangerment" section "goes way beyond anything we think is necessary." He said that the language was so broad and ambiguous that a corporate officer often would not known whether he was violating it.

A major unresolved question facing the House Judiciary Committee is the extent to which the Federal extortion law should apply to conduct arising from a labor dispute. Unions strongly favor the current situation: As interpreted by the Supreme Court, the law does not apply to the conduct of persons engaged in bona fide strikes that lead to property damage or personal injury.

The Senate bill would allow unions, employees and employers to be prosecuted for extortion in limited circumstances, when, for example, there is "clear proof" that certain acts were intended to cause death or "severe bodily injury."

Massachusetts Townspeople Use A Human Chain to Move Library

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AMENDMENTS MADE BY SENATE JUDICIARY COMMITTEE TO SB 511

(All page references are to CSSB 511)

Criminal Mischief in the Second Degree

Page 4, line 10: Words "or any other property of another" added. Damage to any property of another (not only the vehicle) in an amount of $500 or more as a result of the taking of the vehicle raises the offense to a class C felony.

Contributing to the Delinquency of a Minor

Page 5, lines 10-11: Paragraph (2) deleted since conduct described is already included in paragraph (1).

Page 5, line 18: Words "a parent" replaces "his parents" to make the statute sex-neutral.

Misconduct Involving Weapons in the Second Degree

Page 6, lines 19-24: Definition of "under the influence" added to statute prohibiting possession of firearm while under the influence of intoxicating liquor or drug.

Definition of "Dangerous Instrument"

Page 8, line 5: Word "or" substituted for word "and" in definition of dangerous instrument to correct drafting error.

Release Before Trial in Cases Involving Domestic Violence

Page 9, line 23 - page 10, line 8: New section added to provide court guidance in imposing conditions for release on bail in cases involving domestic violence.

Aggravating Factors

Page 11, lines 10-13: Fact that offense was a crime involving domestic violence added to list of aggravating factors.

S. Judiciary
SB 511

SENATE
JOURNAL SUPPLEMENT

5/29/80 Thursday No. 44

HCS
CS B
511

COMMENTARY AND SECTIONAL ANALYSIS
FOR THE 1980 AMENDMENTS TO
ALASKA'S REVISED CRIMINAL CODE

House Committee Substitute for
Committee Substitute for Senate Bill 511

SENATE JUDICIARY COMMITTEE

Senator Robert H. Ziegler, Sr., Chairman
Senator M. E. Dankworth, Vice Chairman
Senator Don Bennett
Senator H. D. Meland
Senator Bill Ray

HCS
CSSB
511

CHAPTER 16. PARTIES TO CRIME

No amendment proposed.

CHAPTER 31. ATTEMPT AND SOLICITATION

Section 1. AS 11.31.100. Attempt.

Section 2. AS 11.31.110. Solicitation.

Section 1 and section 2 of the bill contain identical amendments which provide that the Code's general attempt and solicitation statutes are to apply to unclassified crimes defined outside Title 11. Through an oversight, the Code's present attempt and solicitation statutes now only apply to crimes defined in Title 11 and classified crimes defined outside Title 11.

The amendments provide that the maximum penalty for an attempt or solicitation to commit a crime outside Title 11 will ordinarily be one-half the maximum punishment for the crime that is attempted or solicited. This penalty structure is identical to the punishment provided for attempts under the repealed attempt statute, AS 11.05.020.

CHAPTER 41. OFFENSES GAINST THE PERSON

ARTICLE 1. HOMICIDE

Section 3. AS 11.41.115. Defenses to Murder.

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511

This section constitutes a conforming amendment to subsection (e) of AS 11.41.115 and is discussed in conjunction with Section 44 of the bill which repeals AS 11.41.115(d).

ARTICLE 2. ASSAULT AND RECKLESS ENDANGERMENT.

Section 4. AS 11.41.210. Assault i the Second Degree.

This amendment makes two changes to the Assault in the Second Degree statute to conform the sections pertaining to assaults with a dangerous instrument to conduct included under the former law.

Amended paragraph (1) covers the situation when a person intentionally causes physical injury by means of a dangerous instrument. Under the old law this conduct was the felony crime of Assault with a Dangerous Weapon, a felony. Under the new code, however, this conduct would only be included under Assault in the Fourth Degree, a misdemeanor, absent the presence of an intent to cause serious physical injury. The amendment closes this obvious gap in coverage by requiring that the defendant only intend to cause physical injury.

The second change made by the amendment is to eliminate former paragraph (2) which covered intentionally placing another person in fear of imminent serious physical

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511

injury by means of a dangerous instrument. This conduct is now included within the new crime of Assault in the Third Degree, discussed below.

Section 5. AS 11.41.220. Assault in the Third Degree.

This amendment adds a new degree of assault to the criminal code. The conduct is classified as a C felony, and covers recklessly placing another person in fear of imminent serious physical injury by means of a dangerous instrument. By using the culpable mental state of "recklessly" the statute allows proof of the crime if the state can establish that the conduct was committed either "recklessly", "knowingly" or "intentionally". (See AS 11.81.610(c) proof of a higher form of culpability then required in the statute establishes the crime). The effect of this amendment is to restore what is commonly referred to as "ADW" (Assault with a Dangerous Weapon) to a general intent crime from a specific intent crime.

Providing specifically that an assault with a dangerous instrument is a general intent crime is consistent with Menard v. State, 578 P.2d 996 (Alaska 1978), a decision published by the Supreme Court during the final days of the legislature's consideration of the Code. In Menard, the court held that a "jury did not have to find any specific intent to do any particular kind or degree of harm to the victim in order to find [the defendant] guilty of assault

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with a dangerous weapon." Id. at 970. With the addition of the word "recklessly" the Code provision is consistent with the court's prior interpretation of the repealed "ADW" statute in Menard and would restore "ADW" to a general intent crime.

Section 6. AS 11.41.230. Assault in the Fourth Degree.

Because of the general rule regarding proof of higher forms of culpable mental states in AS 11.81.610(c) (proof of a higher form of culpability establishes a lower form) this amendment deleting the unnecessary words "intentionally or" from paragraph (1) has been made. The name of the crime has been changed to Assault in the Fourth Degree to reflect the addition of the new crime of Assault in the Third Degree discussed in section 5.

ARTICLE 3. KIDNAPPING AND RELATED OFFENSES.

Section 7. AS 11.41.300(a)(1). Kidnapping

This amendment clarifies that "restraint" (defined in AS 11.41.370(3)) of a victim with intent to commit a sexual assault is kidnapping. While such conduct is already generally covered under AS 11.41.300(a)(1)(E), it is preferable to specifically prohibit this particularly serious form of conduct in the kidnapping statute.

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It should be noted that this amendment would not turn a restraint that was merely incidental to a sexual assault into kidnapping. For example, a defendant who forces a victim who is jogging along a bike path into woods a few feet from the bike path in order to commit a sexual assault has not committed kidnapping. The "restraint" of the victim was too closely related to the sexual assault, both in time and the degree of movement, to qualify as a separate crime. However, if the victim was forced into the defendant's car and then driven a block to a nearby deserted house and sexually assaulted, or sexually assaulted while his accomplice was driving the car, kidnapping has occurred. In this situation the restraint was specifically done to facilitate the commission of the felony and there was significant confinement or movement of the victim beyond that necessary to commit the sexual assault. (See generally Levshakoff v. State, 565 P.2d 504 (Alaska 1977)).

Section 8. AS 11.41.410. Sexual Assault in the First Degree.
Section 9. AS 11.41.440. Sexual Abuse of a Minor.

Section 8 amends the Sexual Assault in the First Degree statute to provide that causing, aiding, inducing or encouraging a child under 13 to engage in sexual penetration with another person (regardless of age) is prohibited in the same manner as actually engaging in sexual penetration with the child.

Similarly, section 9 amends the statute on Sexual Abuse of a Minor to cover causing, encouraging or inducing children under 16 and 13 to engage in acts of sexual penetration and contact, respectively. Also prohibited is aiding, causing, encouraging or inducing a child to engage in conduct described in paragraphs (2)-(6) of the Unlawful Exploitation of a Minor statute (AS 11.41.455(a)), even though no commercial purpose can be established. Paragraph (1) of AS 11.41.455(a), covering sexual penetration, is not included since this conduct has already been covered either in section 8 if the child is under 13, or under paragraphs (1) and (2) of section 9.

In describing the acts sufficient to sustain a conviction under these sections (aids, induces, causes, or encourages) the section parallels identical language used in the contributing statute. Though broadly described, the prohibited conduct is not intended to cover speech or conduct protected by the First Amendment.

ARTICLE 5. ROBBERY

No amendment proposed.

CHAPTER 46. OFFENSES AGAINST PROPERTY

ARTICLE 1. THEFT AND RELATED OFFENSES

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Section 10. AS 11.46.210. Theft By Failure to Make Required Disposition of Funds Received or Held.

This amendment makes no substantive change in this statute but conforms language in subsection (b) to the Code's consolidated theft statute. The amendment clarifies that a person who engages in conduct described in AS 11.46.210 is prosecuted for "Theft" under AS 11.46.120-150 and not for "Theft by Failure to Make Required Disposition of Funds Received or Held" (See AS 11.46.110).

Section 11. AS 11.46.220. Concealment of Merchandise.

This amendment makes two changes to the Concealment of Merchandise statute. The first is a technical one and clarifies the intent element in language that more closely parallels the general theft provisions. See AS 11.46.100(1). While the definition of "intent to deprive" (AS 11.46.990(2)) is broad enough to include conduct included within the definition of "intent to appropriate" (AS 11.46.990(1)), it is preferable to closely parallel the general language of the theft statutes in the Concealment of Merchandise statute.

The second change is to provide that the concealment of any firearm, regardless of value, is a class C felony. This amendment is intended to conform the Concealment of Merchandise statute with the general theft statutes which provide that the theft of any firearm is a class C felony. See, AS 11.46.110(a)(2).

ARTICLE 2. BURGLARY AND CRIMINAL TRESPASS

Section 12. AS 11.46.320. Criminal Trespass in the First Degree.

This amendment clarifies that a trespass on land with intent to commit a crime is covered specifically as a class A misdemeanor. While this section of the trespass statute was intended by the legislature to only apply to trespasses on land, the term "real property" has traditionally included both land and buildings. (However, note the definition of "premises" in AS 11.81.900(b)(42) which treats "building" and "real property" as distinct categories). To avoid potential overlapping coverage with the Burglary in the Second Degree statute, which specifically covers an unlawful entry into a building with intent to commit a crime, this technical amendment is required.

ARTICLE 3. ARSON, CRIMINAL MISCHIEF, AND RELATED OFFENSES

Section 13. AS 11.46.482. Criminal Mischief in the Second Degree.

The legislature adopted an approach to "joyriding" that aggravates the misdemeanor crime to a felony when the vehicle taken was damaged or the owner incurred expenses in an amount of $500 or more. As drafted, the statute seems to require that either $500 in damage or $500 in expenses

result. The situation, for example, where the vehicle is damaged in an amount of $300 and the owner incurs $300 in rental expense would not appear to be a felony since even though the total loss was in excess of $500, neither the damages or the expenses exceeded $500. Although this particular question was not specifically considered by the legislature in 1978, it would seem consistent with the overall statutory scheme to impose felony penalties under these circumstances. Additionally, this amendment clarifies that strict liability is imposed on the defendant as to the element of causing damage to the car or expenses for the owner and allows the element of damage to be satisfied by any damage to property of another and not only damage to the propelled vehicle. Thus, the defendant who takes a propelled vehicle of another and damages property of another in an amount exceeding $500 with the vehicle commits a class C felony.

ARTICLE 4. FORGERY AND RELATED OFFENSES

No amendment proposed.

ARTICLE 5. BUSINESS AND COMMERCIAL OFFENSES

Section 14. AS 11.46.600. Scheme to Defraud.

Because of a drafting error, a scheme to obtain $10,000 from one or more persons was made a class B felony regardless of whether criminal intent was present. This

amendment corrects this problem by specifying the applicable intent requirement.

Section 15. AS 11.46.620. Misapplication of Property.

This amendment allows for the possibility of felony prosecution when the value of the property misapplied is $500 or more. Currently, all cases involving the misapplication of property (usually by a fiduciary) are classified as class A misdemeanors regardless of whether the value of the property misapplied was $25 or $25,000. Because of the possibility of significant pecuniary losses caused by misapplication of property, higher penalties should be authorized. In providing for felony penalties when the property involved is $500 or more, the statutory scheme is consistent with the penalty structure applicable to theft offenses.

CHAPTER 51. OFFENSES AGAINST THE FAMILY

Section 16. AS 11.51.130. Contributing to the Delinquency of a Minor.

The Alaska Bar Association Criminal Law Committee has noted that the code's contributing statute is overbroad because of the inclusion of the word "permits". This amendment strikes the word "permits" from paragraphs (1)-(4) of the statute and uses the uniform language "aids, induces, causes or encourages" in describing the acts sufficient to constitute

the crime. Former paragraph (2) has been deleted since the conduct described is already covered under paragraph (1). Paragraph (3) has been amended to require that the minor be in the same room in a building where a drug sale occurs. This amendment eliminates the possibility that a person could be charged under the statute when he has no knowledge that the sale is occurring. Additionally, a new paragraph (4) has been added which covers aiding, inducing, causing or encouraging a child under 16 to absent himself from the lawful custody of a parent or to be persistently absent from school. This conduct was included under the former contributing statute. See, AS 11.40.130 and AS 11.40.150(4). It should be noted, however, that the offense does not occur when the child has "just cause" to be absent from custody. In requiring that the child be "repeatedly absent" from school the statute eliminates the possibility that a person could be charged when he encourages a minor to be absent from school on a single occasion, or on several occasions over an extended period of time.

CHAPTER 56. OFFENSES AGAINST PUBLIC ADMINISTRATION

ARTICLE 1. BRIBERY AND RELATED OFFENSES

No amendment proposed.

ARTICLE 2. PERJURY AND RELATED OFFENSES

No amendment proposed.

ARTICLE 3. ESCAPE AND RELATED OFFENSES

Section 17. AS 11.56.310. Escape in the Second Degree.

Section 18. AS 11.56.320. Escape in the Third Degree.

Section 19. AS 11.56.330. Escape in the Fourth Degree.

Section 20. AS 11.56.370. Permitting an Escape.

Sections 18 and 19 provide that if a person commits an Unlawful Evasion (failure to return to a correctional facility following temporary leave) and leaves or attempts to leave the state the crime is Escape in the Third Degree, a class C felony and not Escape in the Fourth Degree, a class A misdemeanor. The penalties for escape under the new code were intended to closely parallel the penalties for escape provided in former AS 11.30.095, the escape statute enacted in 1976. Because of an oversight in drafting, the penalty for the conduct described in AS 11.56.320(a)(2) was reduced from a felony to a misdemeanor. This change is inconsistent with the remainder of the statutory scheme on escape which provides that an unlawful evasion without leaving the state is itself a class A misdemeanor.

Additionally, sections 17-20 replace the words on "a charge of" with the word "for". This amendment is required to make clear that escape and permitting an escape can occur when a person has been arrested for a crime, though not necessarily formally charged with a crime by way of complaint, indictment or information.

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ARTICLE 4. OFFENSES RELATING
TO JUDICIAL AND OTHER PROCEEDINGS

No amendment proposed.

ARTICLE 5. OBSTRUCTION OF PUBLIC ADMINISTRATION

No amendment proposed.

CHAPTER 61. OFFENSES AGAINST PUBLIC ORDER

ARTICLE 1. RIOT, DISORDERLY
CONDUCT, AND RELATED OFFENSES

No amendment proposed.

ARTICLE 2. WEAPONS AND EXPLOSIVES

Sections 21 and 22. AS 11.61.210. Misconduct Involving Weapons in the Second Degree.

Section 21 amendment provides that the standard for determining whether a person's possession of a firearm while intoxicated is unlawful is whether the defendant was "under the influence" and not whether he was "substantially impaired". Section 22 defines the term "substantially impaired" consistent with existing jury instructions. The "substantially impaired" language was included in the Commission's draft of the code

because the statute applied to all deadly weapons (such as knifes and explosives) and not only to firearms. Because of the expanded range of instruments covered by the statute, it was felt that the test for determining impairment should be made more restrictive. In the legislature the statute was amended to apply only to firearms. However, the standard for determining impairment was not specifically addressed.

Section 23. AS 11.61.220(b)(1). Misconduct Involving Weapons in the Third Degree.

This amendment clarifies that a defendant has an affirmative defense to the carrying a concealed weapon prohibition of the weapons statute if he is in his dwelling or on land owned or leased by him which is appurtenant to his dwelling. As drafted, the defense applied when the defendant was in his dwelling or on "property" appurtenant to his dwelling. This amendment clarifies the provision consistent with the legislative intent expressed at the time the Code was enacted.

The proposed amendment makes it clear that the defense should only apply to situations where the person is in his back yard or on any other land owned or leased by him directly attached to his dwelling. Additionally, it avoids the possibility that a bar owner or other merchant will claim that possession of a concealed weapon while on business

premises attached to his dwelling was authorized by this provision.

Section 24. AS 11.66.230(a). Possession of Gambling Records in the First Degree.

By requiring that the gambling record actually be used or intended for use in an unlawful gambling enterprise, this amendment eliminates the possibility of a prosecution when a document is not used or intended for use in prohibited activity.

CHAPTER 66. OFFENSES AGAINST PUBLIC HEALTH AND DECENCY

No amendment proposed.

CHAPTER 76. MISCELLANEOUS OFFENSES

No amendments proposed.

CHAPTER 81. GENERAL PROVISIONS

ARTICLE 1. GENERAL PURPOSES

No amendments proposed.

ARTICLE 2. APPLICABILITY OF CRIMINAL STATUTES

No amendments proposed.

ARTICLE 3. CLASSIFICATION OF OFFENSES

No amendments proposed.

ARTICLE 4. GENERAL PRINCIPLES OF JUSTIFICATION

Section 25. AS 11.81.300. Justification: Defense.

Because of the specification of AS 11.81.400(a)(2) as an affirmative defense (discussed in conjunction with sec. 26, infra) this conforming amendment is required.

Section 26. AS 11.81.400. Justification: Use of Force in Resisting Arrest.

This amendment makes two changes to the statute describing when a person may resist an unlawful arrest. Subsection (c) makes the defense an affirmative one which the defendant must prove by a preponderance of the evidence. The defense provided for is one that should be appropriately made an affirmative defense consistent with other provisions of the code because it exists only as a matter of legislative policy and involves a matter that is subjectively in the possession of the defendant. Additionally, because this defense expands the current rule of law with respect to the circumstances when resistance is allowed, shifting the burden of proof on the issue is clearly permissible.

Subsection (d) provides that the issue of whether there was probable cause to arrest is a question of law that is to be determined by the cour . While the current provision would undoubtedly be interpreted to include this provision consistent with other similar provisions in the criminal law, it is preferable to specifically set out this procedure.

ARTICLE 5. GENERAL PRINCIPLES OF CRIMINAL LIABILITY

Section 27. AS 11.81.600. General Requirements of Culpability.

This amendment makes two changes regarding the code's general rules on culpability. The first is to clarify the general rule concerning culpability and to make clear that, with certain specified exceptions, a culpable mental state must be proven for every crime. For example, to commit Burglary in the Second Degree the state must establish that the defendant entered or remained unlawfully in a building with intent to commit a crime. The culpable mental state in this case is the intent to commit a crime. If the state establishes a voluntary act by the defendant in entering or remaining in a building, and in addition shows he acted with the intent to commit a crime, the crime of Burglary in the Second Degree has been established.

The second change provides that culpability need not be established if a legislative intent to dispense with the culpability requirement appears. While the decision to

eliminate the culpable mental state requirement must comport with constitutional due process guarantees, the courts should be specifically authorized to consider the legislature's intent (and most importantly, the commentary accompanying passage of the code) in determining whether the legislature intended to dispense with the culpability requirement in a particular statute.

Section 28. AS 11.81.620. Effect of Ignorance or Mistake Upon Liability.

This amendment emphasizes that in order for a defendant's mistake of fact to constitute a defense to a crime the mistake must be a reasonable one. While the reasonableness requirement is probably already included in this statute, this amendment is desirable to avoid potential litigation in the area.

ARTICLE 6. DEFINITIONS

Section 29. AS 11.81.900(b)(11). Definition of "dangerous instrument.

This amendment is required in order to make it specifically clear that all "deadly weapons" (including unloaded firearms) are "dangerous instruments" consistent with the legislative intent expressed with enactment of the code.

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Section 30. AS 11.81.900(b)(12), Definition of "deadly force".

During the legislature's consideration of the justifiable use of force, the issue whether deadly force could be threatened in situations when its actual use would be improper was frequently discussed. Because of the possibility that such threats could tragically escalate a conflict, the legislature concluded that only peace officers making an arrest should have the authority to threaten deadly force in situations where the actual use of deadly force was not justified. See AS 11.81.370.

While making this specific change in AS 11.81.370 no corresponding change was made in the definition of "deadly force". While it can be argued that because of the express inclusion in AS 11.81.370 of the phrase "a peace officer may use nondeadly force and may threaten to use deadly force" nondeadly force does not include a threat of deadly force, the definition of deadly force appears to provide otherwise. This amendment provides that pointing a firearm in the direction of another person as well as intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument constitutes deadly force.

Section 31. AS 11.81.900(b)(21). Definition of "Firearm".

This amendment is included to correct a potential

drafting oversight and clarifies that an inoperable firearm is included within the definition of firearm. While it would seem to be the case that inoperable firearms are already included within paragraph (B) of the current definition of firearm ("any weapon, whether loaded or unloaded, designed for discharging a shot capable of causing death or serious physical injury"), it is preferable to specifically state that inoperable firearms are included in order to avoid unnecessary issues being raised during trials.

Section 32. AS 11.81.900(b)(49). Definition of "Serious Physical Injury".

This amendment provides that serious injury to a body member as well as a body organ will specifically qualify as serious physical injury This amendment is identical to the definition of "great bodily injury" appearing in the former aggravated assault statute, AS 11.15.225, which was enacted in 1976 and which the legislature intended to parallel in the definition of "serious physical injury". However, because of a drafting oversight, the word body member did not appear in the definition of "serious physical injury".

Section 33. AS 12.25.030(b). Arrest Authority.

This technical amendment is necessary in light of the amendment made in section 6.

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Section 34. AS 12.25.180. When Peace Officer has Option to Take Person Before Judge or Magistrate.

Though the criminal code provided for noncriminal offenses called violations (e.g., littering) it did not provide a specific enforcement mechanism for dealing with a suspect who has committed a violation. This amendment authorizes the use of citations and provides that a peace officer will ordinarily issue a suspect a citation for a violation consistent with the provisions in existing AS 12.25.190 -- AS 12.25.220. However, if the suspect refuses to identify himself or refuses to accept the citation, authority is given to the officer to bring the suspect directly before a judge or magistrate.

Section 35. AS 12. 30.025. Release in Cases Involving Domestic Violence.

This section of the bill adds a new provision to the bail statutes applicable to cases involving domestic violence. It is intended to emphasize to the court that in cases involving domestic violence certain conditions for release on a person's own recognizance, or conditions for release on bail, should be considered and applied as the court considers appropriate.

Section 36. AS 12.30.040. Release After Conviction.

This amendment makes conforming amendments in the statute prohibiting bail upon conviction for four specified crimes. The names of the four crimes have been changed to reflect the corresponding new names for the crimes under the Code.

Section 37. AS 12.55.015. Authorized Sentences.

AS 12.55.015(b) lists three circumstances when a judge is required to impose imprisonment in situations where a nonincarcerative alternative is not otherwise precluded. Because the presumptive sentencing scheme will usually require the imposition of some period of imprisonment for repeat felons, absent mitigating factors or extraordinary circumstances, this section is of particular importance in the sentencing of misdemeanants and first time felons.

The amendment changes paragraph (3) to more narrowly define the circumstances when imprisonment is required. The amendment addresses the specific concerns expressed by the Advisory Committee on Minority Judicial Sentencing Practices and eliminates the possibility that imprisonment will be required whenever a court on a single occasion in the past has imposed a sentence of lesser severity on the defendant. The amendment additionally conforms this provision to the underlying legislative intent that accompanied enactment of presumptive sentencing.

Section 38. AS 12.55.045. Restitution.

As presently drafted, the code requires that before a court may order restitution the victim of the crime must be notified. Several judges have criticized this provision as unduly burdensome since in many cases the location of the victim will not be known by the court. This amendment eliminates the necessity of notifying the victim every time restitution is ordered. While notification will occur as a matter of course in most cases, the failure to provide notification should not prevent the court from imposing a sentence of restitution.

Section 39. AS 12.55.155(c)(8). Modification of Aggravating Factor.

In response to a further suggestion by the Advisory Committee on Minority Judicial Sentencing Practices, this amendment more narrowly describes the aggravating factor that the defendant has a prior criminal history of assaultive behavior, including misdemeanor convictions.

Section 40. AS 12.55.155(c). Aggravating Factors Added.

This amendment adds four aggravating factors that a judge may consider in imposing a presumptive sentence. The first treats the presence of three or more prior felony convictions as an aggravating factor. This amendment is required since the Code recognizes that two or more prior

felony convictions will place the defendant in the most serious category for purposes of presumptive sentencing. However, no provision specifically allows the judge to consider the fact that the defendant may have, for example, six prior felonies as opposed to only two. This amendment allows the judge to consider prior felonies beyond those necessary to place the defendant in the most serious category of presumptive sentencing as an aggravating factor.

The second and third additional factors are intended to be applicable in the sentencing of "white-collar" criminals. These include the fact that the defendant intended to obtain substantial gain under circumstances where the risk of prosecution and subsequent punishment were minimal and the fact that a defendant's crime was part of a continuing series of offenses in futherance of an illegal business from which the defendant derives substantial income.

The fourth additional aggravating factor is applicable to crimes involving domestic violence. Its scope is restricted to crimes against the person (AS 11.41) directed against a spouse, a former spouse or a member of the social unit comprised of those living together in the same dwelling as the defendant. Its addition reflects a legislative determination that crimes against the person involving domestic violence represent one of the more serious criminal justice problems in Alaska.

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Section 41. AS 12.55.155(d). Mitigating Factor Added.

This section adds an additional factor that can be used to reduce a presumptive sentence. This mitigating factor allows the judge to consider that the aggregate harm caused by the defendant's criminal conduct, including his prior offenses, was consistently minor and inconsistent with a substantial period or imprisonment. One situation where this factor might be applicable is when the defendant has committed a number of felony property offenses, such as check forgeries, but they all involve relatively small amounts of money. This amendment is also proposed in response to the suggestions and recommendations of the Advisory Committee on Minority Judicial Sentencing Practices.

Section 42. AS 12.80.040. Violations and Infractions.

This amendment should be considered in conjunction with section 34 of the bill discussed supra. It allows peace officers to arrest a person for a violation or an infraction if the person refuses to identify himself or to accept a citation.

Section 43. AS 28.35.135(a). Conforming Amendment to Motor Vehicle Law.

AS 28.35.135(a) deals with false statements on forms required under Title 28. The penalty for this conduct

has been classified as unsworn falsification, rather than perjury, since the statements referred to under AS 28.35.135(a) will include statements not made under oath.

Section 44. Repeal of AS 11.41.115(d), and 11.81.610(a).

This amendment repeals two provisions in the criminal code. The first is AS 11.41.115(d) which provides that an unreasonable but honest belief as to the circumstances giving rise to a defense of justification (e.g., self-defense) will mitigate what would otherwise be murder to manslaughter. This section was not recommended by the Criminal Code Revision Commission but was added by the legislature subsequent to a discussion during committee consideration that it correctly stated the applicable law in Alaska.

In a recent decision, Houston v. State, _____ P.2d _____, Op. No. 1970 (Nov. 16, 1979) the Alaska Supreme Court noted that the law in effect in Alaska at the time did not recognize the defense of unreasonable belief as to justification. The effect of the repeal of AS 11.41.115(d) is to make the Code consistent with the law that existed prior to January 1, 1980 and to provide that only reasonable beliefs as to the right of justification will excuse what would otherwise be a murder. Note also that a conforming amendment has also been made in sec. 1 of the bill reflecting the elimination of AS 11.41.115(d).

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The second amendment repeals AS 11.81.610 (a) which provides that the use of one culpable mental state in a statute rebutably presumes that the mental state applies to all elements of the crime. This rule is inappropriately broad and ignores the fact that, by definition, particular mental states only apply to particular elements of a crime. For example, "intentionally" only applies to elements of crimes that can be classified as "results" as opposed to "circumstances" or "conduct" to which the culpable mental "knowingly" applies. Because of the requirement set forth in AS 11.81.600(b) (Section 27) that ordinarily only one culpable mental state is required to be established for each crime, this section is superfluous and misleading.

SB

514

COMMITTEE REPORT

SENATE

FURTHER: None

3/7/80

Date: 3/7/80

Mr. President:

The Committee on JUDICIARY has had SB 514
amending the classification of the criminal provisions relating to cruelty to animals

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for [ ] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Sen. Sumner	SB 514

DEPARTMENT POSITION

Support

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Col. Fred Woldstad	3/11/80	William R. Nix by HC	3/11/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL

(3) PROGRAM EFFECTS OF BILL

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

In addition to the penalty provided, on conviction of an act defined in (a)(2) or (a)(3) of this section, there should be a forfeiture clause. "Upon conviction or upon judgement of the court having jurisdiction, dogs, equipment, vehicles, money, and paraphenalia used in or possessed for training, staging, or promoting cruelty to animals under (a)(2), (a)(3) of this section shall be forfeited to the State".

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

March 18, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 514

Dear Senator Ziegler:

At a recent hearing before the Senate Judiciary Committee you requested the Department of Law to draft a proposed committee substitute for SB 514, an act amending the penalty provisions for cruelty to animals.

To address the committee's concerns, it was necessary to separate the conduct of cruelty to animals from the conduct of promoting an exhibition of fighting animals. Two separate crimes therefore appear in the enclosed proposed committee substitute. The proposed committee substitute makes the following two changes regarding the penalty structure of the bill:

1. The penalty for Promoting an Exhibition of Fighting Animals is made a class C felony. This differs from the current classification of this conduct as a class A misdemeanor and the classification in the original version of the bill as a class B felony.

2. While a person who attends an exhibition of fighting animals is guilty of the offense of Promoting an Exhibition of Fighting Animals, the penalty for this conduct is a violation, punishable by a maximum $300 fine for the first offense and a class B misdemeanor for second and subsequent offenses. This penalty structure differs from the current

classification of the conduct as a class A misdemeanor and the original version of the bill which classified the conduct as a class B felony.

In addition to these two changes, a separate provision has been added to AS 11.61.145 which authorizes forfeiture of items that are used to facilitate the crime of Promoting an Exhibition of Fighting Animals. This provision was added pursuant to a requested by the Department of Public Safety that was forwarded to your committee.

If we can be of further assistance to you on this matter, please let us know at your earliest convenience.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: _____
Barry J. Stern
Assistant Attorney General

BJS:gm

AS 11.61.140

CRUELTY TO ANIMALS

NEW CRIMINAL CODE

Sec. 11.61.140. CRUELTY TO ANIMALS. (a) A person commits the crime of cruelty to animals if, except as authorized by law, he

(1) intentionally inflicts severe and prolonged physical pain or suffering on an animal;

(2) owns, possesses, keeps, or trains an animal with intent that it be engaged in an exhibition of fighting animals; or

(3) instigates, promotes, attends or has a pecuniary interest in an exhibition of fighting animals.

(b) It is a defense to a prosecution under this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) As used in this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor.

PRIOR CRIMINAL CODE

Sec. 11.40.480. CRUELTY TO ANIMALS. A person who cruelly beats or tortures or otherwise maltreats or neglects

an animal, whether it belongs to himself or to another, upon conviction, is punishable by imprisonment in a jail for not less than 10 days nor more than 30 days, or by a fine of not less than $5 nor more than $50.

See also former AS 11.40.490, Penalties for cruelty to domestic animals; AS 11.40.500, Abandoning disabled animals to die; AS 11.40.510, Use of live birds as targets; AS 11.40.520, Fighting or baiting animals or creatures and related offenses; AS 11.40.530, Maintaining kennel or pet shop in unsanitary or inhumane manner.

COMMENTARY

From Senate Journal, 98-99:

The Code classifies as an A misdemeanor the intentional infliction of "severe and prolonged physical pain or suffering on an animal." "Animal" is defined in subsection (c) to exclude human beings, fish and nonvertebrates. If the animal is simply killed without the consent of the owner and without the defendant inflicting severe pain, the conduct constitute criminal mischief under AS 11.46.482-486.

Subsection (b) provides that it is a defense that the conduct conformed to accepted veterinary practice or was part of scientific research governed by accepted standards. The additional granting of the defense when the conduct is necessarily incident to lawful hunting or trapping activities avoids unnecessary overlap and potential conflict with rules and regulations established by the Board of Fish and Game.

Subsections (a)(2) & (3) substantially restate existing AS 11.40.520. Under subsection (3), as under existing law, persons who attend exhibitions of fighting animals are held to be equally culpable as persons who organize such conduct.

See also TD V, 90-91.

CROSS REFERENCES

Definition of "law", "defense", "possess" - AS 11.81.900(b)
Definition of "intentionally" - AS 11.81.900(a)

FCC.

Alaska State Legislature

House

Pete Collins

JUNEAU, ALASKA

MESSAGE TO THE SENATE DATE May 19, 1980

MR. PRESIDENT:

The House has passed CSSB 514 (amending the criminal provisions relating to cruelty to animals and establishing the crime of promoting an exhibition of fighting animals; eff date) with the following amendment:

HCS CSSB 514amH
(amending the criminal provisions relating to cruelty to animals and establishing the crimes of promoting an exhibition of fighting animals, and for the destruction of animals by the use of a decompression chamber; eff date)

and it is transmitted herewith for consideration.

Irene Cashen
Chief Clerk of the House

Original sponsor: Resources Committee by Request

Offered: 5/15/80
Referred: Rules

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 514 am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act amending the criminal provisions relating to cruelty to animals and establishing the crimes of promoting an exhibition of fighting animals, and for the destruction of animals by the use of a decompression chamber; and providing for an effective date."

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

* Section 1. AS 11.61.140 is repealed and re-enacted to read:

Sec. 11.61.140. CRUELTY TO ANIMALS. (a) A person commits the crime of cruelty to animals if he

(1) intentionally inflicts severe and prolonged physical pain or suffering on an animal;

(2) recklessly neglects an animal and, as a result of that neglect, the person causes severe pain or suffering to the animal; or

(3) kills an animal by the use of a decompression chamber.

(b) It is a defense to a prosecution under this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor.

* Sec. 2. AS 11.61 is amended by adding a new section to read:

Sec. 11.61.145. PROMOTING AN EXHIBITION OF FIGHTING ANIMALS. (a) A person commits the crime of promoting an exhibition of fighting animals if he

(1) owns, possesses, keeps, or trains an animal with intent that it be engaged in an exhibition of fighting animals;

(2) instigates, promotes or has a pecuniary interest in an exhibition of fighting animals; or

(3) attends an exhibition of fighting animals.

(b) The animals, equipment, vehicles, money and other items used by a person in a violation of (a)(1) or (2) of this section shall be forfeited to the state if the person is convicted of an offense under this section.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Promoting an exhibition of fighting animals

(1) under (a)(1) or (2) of this section is a class C felony;

(2) under (a)(3) of this section is a violation for the first offense and a class B misdemeanor for the second and each subsequent offense.

* Sec. 3. AS 03.60 is amended by adding a new section to read:

Sec. 03.60.005. USE OF DECOMPRESSION CHAMBER PROHIBITED. It is unlawful for a veterinarian or other person to destroy an animal by the use of a decompression chamber.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-070(c).

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 March 24, 1980

SUBJECT: CSSB 514, relating to cruelty to animals and defining the crime of promoting fighting animals

TO: Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Attn: Guy Van Doren, A.A.

FROM: John B. Chenoweth
Legislative Counsel

I would like to eliminate the two references to "except as authorized by law" at lines 12 and 27 of page 1. While the phrase appears in current law, the criminal code revision commentary does not indicate the exceptions the phrase was intended to cover, and I cannot think of any, either. If there are applicable exceptions, the bill would be better drafted if those could be specifically cited as references, if necessary, rather than providing indefinite exceptions as in the present statute and as proposed in this draft.

As our conversation concluded, Guy, the forfeiture of animals and property clause, AS 11.61.145(b) is limited to post-conviction situations.

JBC:ljb

Enclosure

Original sponsor: Resources Committee
by Request

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 514

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act amending the criminal provisions relating to cruelty to animals and establishing the crime of promoting an exhibition of fighting animals; and providing for an effective date."

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(b) It is a defense to a prosecution under this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor. # 5,000 and 1 year

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that it be engaged in an exhibition of fighting animals;

(2) instigates, promotes or has a pecuniary interest in an exhibition of fighting animals; or

(3) attends an exhibition of fighting animals.

(b) The animals, equipment, vehicles, money and other items used by a person in a violation of (a)(1) or (2) of this section shall be forfeited to the state if the person is convicted of an offense under this section.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Promoting an exhibition of fighting animals

(1) under (a)(1) or (2) of this section is a class C felony;

(2) under (a)(3) of this section is a violation for the first offense and a class B misdemeanor for the second and each subsequent offense.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-070(c).



THE ALASKA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, INC.

ANIMAL CONTROL SHELTER
3600 E. TUDOR ROAD
ANCHORAGE, ALASKA 99507
PHONE: 279-0578

SPCA STATE HEADQUARTERS
P.O. BOX 776
ANCHORAGE, ALASKA 99510
PHONE: 279-9853

April 22, 1980

Sen. Robert H. Ziegler, Sr.
Pouch V
Juneau, Alaska 99811

Dear Sen. Ziegler,

Thank you for your support of the dog fighting bill and passage of SB 514.

We now urge you to please, please, help to get the bill out of the House Judiciary Committee and on to the House floor for a vote.

We have enclosed a brochure that may be of interest to you and as you may note in reading it, SB 514 is comparable to the effective California law.

Again thank you for your fine support.

Sincerely,

Jenine Brown

Jenine Brown
Alaska S.P.C.A.

April 30, 1980

I shot my bolt when I pushed the bill through the Senate. Charles Parr, Chairman of the House Judiciary Committee, and I don't always see eye to eye. I suggest you have members of your society who live in the Fairbanks area get in touch with Representative Parr; he probably wouldn't pay too much attention to my request.

Bob

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 March 24, 1980

SUBJECT: CSSB 514, relating to cruelty to animals and defining the crime of promoting fighting animals

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Chairman, Senate Judiciary Committee
Attn: Guy Van Doren, A.A.

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Legislative Counsel

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As our conversation concluded, Guy, the forfeiture of animals and property clause, AS 11.61.145(b) is limited to post-conviction situations.

JBC:ljb

Enclosure

AS 11.61.140

CRUELTY TO ANIMALS

NEW CRIMINAL CODE

Sec. 11.61.140. CRUELTY TO ANIMALS. (a) A person commits the crime of cruelty to animals if, except as authorized by law, he

(1) intentionally inflicts severe and prolonged physical pain or suffering on an animal;

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(3) instigates, promotes, attends or has a pecuniary interest in an exhibition of fighting animals.

(b) It is a defense to a prosecution under this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) As used in this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor.

PRIOR CRIMINAL CODE

Sec. 11.40.480. CRUELTY TO ANIMALS. A person who cruelly beats or tortures or otherwise maltreats or neglects

an animal, whether it belongs to himself or to another, upon conviction, is punishable by imprisonment in a jail for not less than 10 days nor more than 30 days, or by a fine of not less than $5 nor more than $50.

See also former AS 11.40.490, Penalties for cruelty to domestic animals; AS 11.40.500, Abandoning disabled animals to die; AS 11.40.510, Use of live birds as targets; AS 11.40.520, Fighting or baiting animals or creatures and related offenses; AS 11.40.530, Maintaining kennel or pet shop in unsanitary or inhumane manner.

COMMENTARY

From Senate Journal, 98-99:

The Code classifies as an A misdemeanor the intentional infliction of "severe and prolonged physical pain or suffering on an animal." "Animal" is defined in subsection (c) to exclude human beings, fish and nonvertebrates. If the animal is simply killed without the consent of the owner and without the defendant inflicting severe pain, the conduct will constitute criminal mischief under AS 11.46.482-486.

Subsection (b) provides that it is a defense that the conduct conformed to accepted veterinary practice or was part of scientific research governed by accepted standards. The additional granting of the defense when the conduct is necessarily incident to lawful hunting or trapping activities avoids unnecessary overlap and potential conflict with rules and regulations established by the Board of Fish and Game.

Subsections (a)(2) & (3) substantially restate existing AS 11.40.520. Under subsection (3), as under existing law, persons who attend exhibitions of fighting animals are held to be equally culpable as persons who organize such conduct.

See also TD V, 90-91.

CROSS REFERENCES

Definition of "law", "defense", "possess" - AS 11.81.900(b)
Definition of "intentionally" - AS 11.81.900(a)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM March 24, 1980

SUBJECT: CSSB 514, relating to cruelty to animals and defining the crime of promoting fighting animals

TO: Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Attn: Guy Van Doren, A.A.

FROM: John B. Chenoweth
Legislative Counsel

I would like to eliminate the two references to "except as authorized by law" at lines 12 and 27 of page 1. While the phrase appears in current law, the criminal code revision commentary does not indicate the exceptions the phrase was intended to cover, and I cannot think of any, either. If there are applicable exceptions, the bill would be better drafted if those could be specifically cited as references, if necessary, rather than providing indefinite exceptions as in the present statute and as proposed in this draft.

As our conversation concluded, Guy, the forfeiture of animals and property clause, AS 11.61.145(b) is limited to post-conviction situations.

JBC:ljb

Enclosure

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

March 18, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 514

Dear Senator Ziegler:

At a recent hearing before the Senate Judiciary Committee you requested the Department of Law to draft a proposed committee substitute for SB 514, an act amending the penalty provisions for cruelty to animals.

To address the committee's concerns, it was necessary to separate the conduct of cruelty to animals from the conduct of promoting an exhibition of fighting animals. Two separate crimes therefore appear in the enclosed proposed committee substitute. The proposed committee substitute makes the following two changes regarding the penalty structure of the bill:

1. The penalty for Promoting an Exhibition of Fighting Animals is made a class C felony. This differs from the current classification of this conduct as a class A misdemeanor and the classification in the original version of the bill as a class B felony.

2. While a person who attends an exhibition of fighting animals is guilty of the offense of Promoting an Exhibition of Fighting Animals, the penalty for this conduct is a violation, punishable by a maximum $300 fine for the first offense and a class B misdemeanor for second and subsequent offenses. This penalty structure differs from the current

classification of the conduct as a class A misdemeanor and the original version of the bill which classified the conduct as a class B felony.

In addition to these two changes, a separate provision has been added to AS 11.61.145 which authorizes forfeiture of items that are used to facilitate the crime of Promoting an Exhibition of Fighting Animals. This provision was added pursuant to a requested by the Department of Public Safety that was forwarded to your committee.

If we can be of further assistance to you on this matter, please let us know at your earliest convenience.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: _____
Barry J. Stern
Assistant Attorney General

BJS:gm

SB
519

COMMITTEE REPORT

SENATE

FURTHER: None

3/18/80

Date: 4/10/80

Mr. President:

The Committee on JUDICIARY has had SB 519
use of limited entry permits as collateral for loans

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

SB 519 An Act relating to the use of limited permits as collateral for loans By State Affairs

Summary

Amends statutes concerning "Fish and Game, Regulation of Entry into Alaska Commercial Fisheries, Terms and conditions of entry permit; annual renewal" to provide for the use of entry permits as collateral for loans as already provided under existing statutes AS 44.54.230-44.54.250.

The section dealing with "Transfer of entry permits" under the same chapter is also amended to provide for the transfer of entry permits in the event of foreclosure of a loan as already provided under AS 44.54.230-44.54.250.

Background

This bill appears to be simply a house-cleaning measure to bring statutes under AS 16.43 into compliance with existing statutes under AS 44.54 ("State Government, Commercial Fishing and Agriculture Bank").

Statutes under AS 44.54.230-44.54.250 discuss state loans through the Commercial Fishing and Agriculture Bank for purchase of limited entry permits. They include provisions for using permits as collateral for such loans. This bill would make this use of permits as collateral consistent with statutes under AS 16.43.150 and AS 16.43.170.

Official Business

Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

SB 519 - An Act relating to the use of limited entry permits as collateral for loans.

BY: State Affairs Committee

Existing statutes under the Commercial Fishing and Agriculture Bank (AS 44.54, attached) allow the use of entry permits as collateral for state loans. However, this is not presently allowed under AS 16.43 TERMS AND CONDITIONS OF ENTRY PERMIT. Therefore, a conflict exists between the statutes. Section 1 of this bill would amend AS 16.43 to allow the use of entry permits as collateral for loans from the Commercial Fishing and Agriculture Bank and would resolve the statutory conflict.

Similarly, existing statutes under the Commercial Fishing and Agriculture Bank allow the transfer of a permit by the bank, in the event of foreclosure of a loan. This is not allowed under AS 16.43. Section 2 would amend AS 16.43 to allow this, thus resolving the statutory conflict.

HOUSECLE

SB 519 An Act relating to the use of limited entry permits as collateral for loans By State Affairs

Summary

Existing statutes under the Commercial Fishing and Agriculture Bank allow the use of entry permits as collateral for state loans.

However, this is not presently allowed under AS 16.43, "Terms and conditions of entry permit"--so a conflict exists between the statutes. This bill would amend AS 16.43 to allow the use of permits as collateral for lonas from the Commercial Fishing and Agriculture Bank, so the statutes would not conflict.

To resolve the

Section 2 would allow the transfer of a permit by the Bank in the event of foreclosure of a loan, which would again resolve the conflict between the statutes under AS 16.43 and AS 44.50

44.50.250 In the event of foreclosure, the Bank shall offer the Entry Commission the right of first refusal. If the Commission doesn't exercise the right, the debtor may nominate a person qualified to assume the note. If the debtor is unable to nominate a qualified person, the Entry Commission shall provide the bank with a list of qualified applicants, and the bank shall allow the first applicant meeting the qualifications to assume the note.

March 13, 1980

SB 519 An Act relating to the use of limited entry permits as collateral for loans.

SUMMARY:

Statutes under AS 16.43 state that an entry permit may not be pledged, mortgaged, leased, or in any way encumbered and may not be transferred with any right of repossession or foreclosure. Statutes under AS 44.54.230 - 44.54.250 allow the use of an entry permit as collateral for a state loan from the Commercial Fishing and Agriculture Bank, and provide for the transfer of the permit in the event of foreclosure. This bill would amend the statutes under AS 16.43 to comply with the existing statutes under AS 44.54

(16) provide technical services to shareholders; for the purposes of this paragraph, "technical services" includes services that will enhance the ability of the shareholder to obtain financial assistance from the bank;

(17) make loans, as provided in (1) of this section, secured by liens subordinate to valid first liens and security agreements granted to private lending institution;

(18) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and agriculture in the state;

(19) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter.

(20) make loans to individual commercial fishermen for limited entry permits; a loan under this paragraph may be made only to an individual commercial fisherman who has been a state resident for a continuous period of five years immediately preceding the date of application for the loan and who has had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who has actively participated in the fishery during that period; loans made under this paragraph are subject to the provisions of AS 44.54.230. (§ 3 ch 159 SLA 1978, am § 4 ch 53 SLA 1979)

Effect of amendment. — The 1979 amendment added paragraph (20).

Sec. 44.54.220. Transition. Upon the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state, the provisions of this chapter lapse and the bank may proceed to operate as a private cooperative corporation under the terms of its bylaws and subject to the provisions of AS 10.15.005 — 10.15.600. (§ 3 ch 159 SLA 1978)

Sec. 44.54.230. Loans for purchase of Alaska limited entry permits. (a) A loan under AS 44.54.210(20) for the purchase of a limited entry permit may be made only upon certification by the Alaska Commercial Fisheries Entry Commission (AS 16.43.020) that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commission.

(b) Upon approval by the bank, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the executive director of the bank as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the bank in administering the loan.

(c) Upon satisfaction of the note by the debtor, the executive director shall certify to the commission that the note has been satisfied.

(d) Upon certification as provided in (c) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner. (§ 5 ch 53 SLA 1979)

Sec. 44.54.240. Default and foreclosure of loans for limited entry permits. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 44.54.230, the executive director of the bank shall provide the debtor, by registered or certified mail sent to his last known address on file with the bank, with a notice of default which includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the Alaska Commercial Fisheries Entry Commission;

(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;

(5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;

(6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;

(7) the place where reinstatement or payment in full may be made; and

(8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his equitable interest is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the executive director of the bank. (§ 5 ch 53 SLA 1979)

Sec. 44.54.25
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Chapter 55.

Section
10. Creation of auth
20. Membership
30. Officers and quo
40. Compensation
50. Staff
60. Legal counsel
70. Purpose of auth
80. General powers
90. Bonds of the aut
100. Submission of f
impact plan
110. Legislative appro
115. Nomination of a

Sec. 44.54.250. Deficiencies and transfer of entry permits after foreclosure. (a) Upon a foreclosure on an entry permit as provided in AS 44.54.240, the executive director of the bank shall offer the Alaska Commercial Fisheries Entry Commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the bank directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the bank shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 44.54.230(a). If qualified, he may assume all rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who shall assume the note subject to all rights and liabilities of the original debtor. The Alaska Commercial Fisheries Entry Commission shall provide the bank with a list of persons chosen by lottery who qualify as transferees of entry permits under AS 16.43 and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of AS 44.54.210(20). The executive director of the bank shall then determine, in order of presentation, any remaining qualifications. The executive director shall allow the first applicant meeting all qualifications to assume the note.

(d) Nothing in this section affects the right of the executive director of the bank to institute legal action for a deficiency resulting from a default on a note given under AS 44.54.230. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 5 ch 53 SLA 1979)

Chapter 55. Alaska Gas Pipeline Financing Authority.

Section

10. Creation of authority
20. Membership
30. Officers and quorum
40. Compensation
50. Staff
60. Legal counsel
70. Purpose of authority
80. General powers
90. Bonds of the authority
100. Submission of financial and Alaska impact plan
110. Legislative approval
115. Nomination of a member of the board
120. Trust indentures and trust agreements
130. Nonliability on bonds
140. Pledge of the state
150. Exemption from taxation
160. Bonds legal investments for fiduciaries
170. Regulations
180. Annual audit
190. Annual report
200. Definitions

THE LEGISLATURE OF TI'S STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 519
Title "An Act relating to the use of limited entry permits as collateral for loans"
Requested by The State Affairs Committee Date 3/20/80

II. FISCAL DETAIL Office of the Governor
Agency Affected Alaska Commercial Fisheries Entry Commission
Program Category Affected NRMEC
BRU, Program, or Subprogram(s) Affected ACFEC
(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 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
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)

SB 519 will not in itself require sig[illegible]icant expense for the Commission. However, this bill and any increase in the State' [illegible]it loan program will likely increase the number of transfers processed by th[illegible]on. At present the permanent transfer request rate is approximately 2,000 per year. We are presently one month behind in processing transfer requests. Any increase in transfer rates and loan applicat'on evaluations will necessitate the creation of a transfer officer position. 1/

1/ Presently, the supervisor of the Commission's licensing section also handles transfer requests. Because of the financial worth of these permits, we must use qualified Commission personnel who are thoroughly familiar with the Commission's operations to evaluate, approve and effect transfers. The increases realized in licensing and transfer requests (both permanent and emergency) has created a backlog, even though this employee contributes an average of 15 hours per week of overtime during the heaviest licensing months.

IV. DATE March 20, 1980 PREPARED BY Derrill L. Johnson
Director of Administration
AGENCY Commercial Fisheries Entry Commission
PHONE 465-4081

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

33 001 (Rev. .2/78)

(16) provide technical services to shareholders; for the purposes of this paragraph, "technical services" includes services that will enhance the ability of the shareholder to obtain financial assistance from the bank;

(17) make loans, as provided in (1) of this section, secured by liens subordinate to valid first liens and security agreements granted to a private lending institution;

(18) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and agriculture in the state;

(19) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter.

(20) make loans to individual commercial fishermen for limited entry permits; a loan under this paragraph may be made only to an individual commercial fisherman who has been a state resident for a continuous period of five years immediately preceding the date of application for the loan and who has had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who has actively participated in the fishery during that period; loans made under this paragraph are subject to the provisions of AS 44.54.230. (§ 3 ch 159 SLA 1978; am § 4 ch 53 SLA 1979)

Effect of amendment. — The 1979 amendment added paragraph (20).

Sec. 44.54.220. Transition. Upon the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state, the provisions of this chapter lapse and the bank may proceed to operate as a private cooperative corporation under the terms of its bylaws and subject to the provisions of AS 10.15.005 — 10.15.600. (§ 3 ch 159 SLA 1978)

Sec. 44.54.230. Loans for purchase of Alaska limited entry permits. (a) A loan under AS 44.54.210(20) for the purchase of a limited entry permit may be made only upon certification by the Alaska Commercial Fisheries Entry Commission (AS 16.43.020) that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commission.

(b) Upon approval by the bank, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the executive director of the bank as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the bank in administering the loan.

(c) Upon satisfaction of the note by the debtor, the executive director shall certify to the commission that the note has been satisfied.

(d) Upon certification as provided in (c) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner. (§ 5 ch 53 SLA 1979)

Sec. 44.54.240. Default and foreclosure of loans for limited entry permits. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 44.54.230, the executive director of the bank shall provide the debtor, by registered or certified mail sent to his last known address on file with the bank, with a notice of default which includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the Alaska Commercial Fisheries Entry Commission;

(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;

(5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;

(6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;

(7) the place where reinstatement or payment in full may be made; and

(8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his equitable interest is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the executive director of the bank. (§ 5 ch 53 SLA 1979)

Sec. 44.54.250
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Chapter 55. A

Section

10. Creation of autho
20. Membership
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40. Compensation
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70. Purpose of autho
80. General powers
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115. Nomination of a

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(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the bank shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 44.54.230(a). If qualified, he may assume all rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who shall assume the note subject to all rights and liabilities of the original debtor. The Alaska Commercial Fisheries Entry Commission shall provide the bank with a list of persons chosen by lottery who qualify as transferees of entry permits under AS 16.43 and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of AS 44.54.210(20). The executive director of the bank shall then determine, in order of presentation, any remaining qualifications. The executive director shall allow the first applicant meeting all qualifications to assume the note.

(d) Nothing in this section affects the right of the executive director of the bank to institute legal action for a deficiency resulting from a default on a note given under AS 44.54.230. In addition to any deficiency, the debtor is liable for the costs of administering the note and for cost and attorney fees. (§ 5 ch 53 SLA 1979)

Chapter 55. Alaska Gas Pipeline Financing Authority.

Section

10. Creation of authority
20. Membership
30. Officers and quorum
40. Compensation
50. Staff
60. Legal counsel
70. Purpose of authority
80. General powers
90. Bonds of the authority
100. Submission of financial and Alaska impact plan
110. Legislative approval
115. Nomination of a member of the board
120. Trust indentures and trust agreements
130. Nonliability on bonds
140. Pledge of the state
150. Exemption from taxation
160. Bonds legal investments for fiduciaries
170. Regulations
180. Annual audit
190. Annual report
200. Definitions

(16) provide technical services to shareholders; for the purposes of this paragraph, "technical services" includes services that will enhance the ability of the shareholder to obtain financial assistance from the bank;

(17) make loans, as provided in (1) of this section, secured by liens subordinate to valid first liens and security agreements granted to a private lending institution;

(18) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and mariculture in the state;

(19) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter.

(20) make loans to individual commercial fishermen for limited entry permits; a loan under this paragraph may be made only to an individual commercial fisherman who has been a state resident for a continuous period of five years immediately preceding the date of application for the loan and who has had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who has actively participated in the fishery during that period; loans made under this paragraph are subject to the provisions of AS 44.54.230. (§ 3 ch 159 SLA 1978; am § 4 ch 53 SLA 1979)

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(c) Upon satisfaction of the note by the debtor, the executive director shall certify to the commission that the note has been satisfied.

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(1) a description of the security given for the note including the number assigned to the pledged permit by the Alaska Commercial Fisheries Entry Commission;

(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;

(5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;

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Sec. 44.54.25
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Chapter 55.

Section
10. Creation of aut
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(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the bank shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 44.54.230(a). If qualified, he may assume all rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who shall assume the note subject to all rights and liabilities of the original debtor. The Alaska Commercial Fisheries Entry Commission shall provide the bank with a list of persons chosen by lottery who qualify as transferees of entry permits under AS 16.43 and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of AS 44.54.210(20). The executive director of the bank shall then determine, in order of presentation, any remaining qualifications. The executive director shall allow the first applicant meeting all qualifications to assume the note.

(d) Nothing in this section affects the right of the executive director of the bank to institute legal action for a deficiency resulting from a default on a note given under AS 44.54.230. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 5 ch 53 SLA 1979)

Chapter 55. Alaska Gas Pipeline Financing Authority.

Section

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180. Annual audit
190. Annual report
200. Definitions

Official Business

Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

SB 519 - An Act relating to the use of limited entry permits as collateral for loans.

BY: State Affairs Committee

Existing statutes under the Commercial Fishing and Agriculture Bank (AS 44.54, attached) allow the use of entry permits as collateral for state loans. However, this is not presently allowed under AS 16.43 TERMS AND CONDITIONS OF ENTRY PERMIT. Therefore, a conflict exists between the statutes. Section 1 of this bill would amend AS 16.43 to allow the use of entry permits as collateral for loans from the Commercial Fishing and Agriculture Bank and would resolve the statutory conflict.

Similarly, existing statutes under the Commercial Fishing and Agriculture Bank allow the transfer of a permit by the bank, in the event of foreclosure of a loan. This is not allowed under AS 16.43. Section 2 would amend AS 16.43 to allow this, thus resolving the statutory conflict.

SB 519 An Act relating to the use of limited permits as collateral for loans By State Affairs

Summary

Amends statutes concerning "Fish and Game, Regulation of Entry into Alaska Commercial Fisheries, Terms and conditions of entry permit; annual renewal" to provide for the use of entry permits as collateral for loans as already provided under existing statutes AS 44.54.230-44.54.250.

The section dealing with "Transfer of entry permits" under the same chapter is also amended to provide for the transfer of entry permits in the event of foreclosure of a loan as already provided under AS 44.54.230-44.54.250.

Background

This bill appears to be simply a house-cleaning measure to bring statutes under AS 16.43 into compliance with existing statutes under AS 44.54 ("State Government, Commercial Fishing and Agriculture Bank").

Statutes under AS 44.54.230-44.54.250 discuss state loans through the Commercial Fishing and Agriculture Bank for purchase of limited entry permits. They include provisions for using permits as collateral for such loans. This bill would make this use of permits as collateral consistent with statutes under AS 16.43.150 and AS 16.43.170.

HOUSECLEAN

SB 519 An Act relating to the use of limited entry permits as collateral for loans By State Affairs

Summary

Existing statutes under the Commercial Fishing and Agriculture Bank allow the use of entry permits as collateral for state loans.

However, this is not presently allowed under AS 16.43, "Terms and conditions of entry permit"--so a conflict exists between the statutes. This bill would amend AS 16.43 to allow the use of permits as collateral for lonas from the Commercial Fishing and Agriculture Bank, so the statutes would not conflict.

To resolve the

Section 2 would allow the transfer of a permit by the Bank in the event of foreclosure of a loan, which would again resolve the conflict between the statutes under AS 16.43 and AS 44.54.

44.51.230 In the event of foreclosure, the Bank shall offer the Entry Commission the right of first refusal. If the Commission doesn't exercise the right, the debtor may nominate a person qualified to assume the note. If the debtor is unable to nominate a qualified person, the Entry Commission shall provide the bank with a list of qualified applicants, and the bank shall allow the first applicant meeting the qualifications to assume the note.

March 13, 1980

SB 519 An Act relating to the use of limited entry permits as collateral for loans.

SUMMARY:

Statutes under AS 16.43 state that an entry permit may not be pledged, mortgaged, leased, or in any way encumbered and may not be transferred with any right of repossession or foreclosure. Statutes under AS 44.54.230 - 44.54.250 allow the use of an entry permit as collateral for a state loan from the Commercial Fishing and Agriculture Bank, and provide for the transfer of the permit in the event of foreclosure. This bill would amend the statutes under AS 16.43 to comply with the existing statutes under AS 44.54

SB

524

COMMITTEE REPORT

SENATE

FURTHER: Finance

3/18/80

Date: _____

Mr. President:

The Committee on JUDICIARY has had SB 524 allowing credits against fisheries taxes

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

March 25, 1980

The Honorable Robert Ziegler, Sr.
Chairman
Senate Judiciary Committee
Room 107 - Capitol Building
Juneau, Alaska 99811

Dear Senator Ziegler:

Re: Senate Bill No. 524

Senate Bill No. 524, an Act allowing credits against fisheries taxes, was introduced in the Senate on March 18, 1980 and was referred to the Senate Judiciary and Finance Committees.

For the consideration of the Senate Judiciary Committee, I am enclosing copies of Fiscal Notes prepared by Gary Jenkins, Director, Audit Division and Vincent Wright, Research Section, Department of Revenue concerning the proposed legislation.

Sincerely,

R. D. Stevenson
Special Assistant

cc: The Honorable John Sackett
Chairman
Senate Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Gary Jenkins, Director
Audit Division
Department of Revenue

Vincent Wright
Research Section
Department of Revenue

04-D2LH

02-0018 (Rev. 10/79)

STATE of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: March 24, 1980

FILE NO.

TELEPHONE NO.

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: Senate Bill No. 524

This bill provides for the establishment of fisheries industry trade associations which would be funded by the State of Alaska through the form of a special tax credit given to fish processors on their fish processing tax returns. Each processor would be allowed a credit on a dollar for dollar basis for contributions to the fishery association in an amount up to 15 percent of the fish processors' tax due.

There would appear to be a legitimate question regarding whether there is a clear need for the State of Alaska to directly fund trade associations for the fishing industry, an industry which, incidentally, is largely dominated by Japanese interests. The fishing industry is already provided income tax incentives to improve their processing facilities in the form of the investment credit, both at the federal and state levels. It should also be noted that any expenditures made by a processor which are in any way a business expense related to processing or marketing of fish products, are tax deductible under the corporate income tax. Further, it would seem logical that all processors would be putting forth maximum effort to produce a product which has the best possible appeal in the market place.

With regard to enhancing the quality of the product itself, the State of Alaska already has inspectors from the Department of Health and Social Services and the Department of Natural Resources working with processors in an effort to ensure proper quality of the product produced.

Inasmuch as every processor doing business in the State of Alaska could form a seafood association as defined in the proposed law, we are requesting one permanent full time Auditor position to handle the auditing functions provided for in the proposed Section 43.75.035(b)(8).

1	POSITION TITLE: Revenue Auditor III			RANGE/STEP: 18 A	BARG. UNIT: G	LOCATION: Juneau	GOV	APPROV / DISAPP
2	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG	

	TYPE OF EXPENDITURE	1	2	AMOUNT 3
4	PERSONAL SERVICES: SALARY		29,580	
5	BENEFITS		4,399	
6	FICA		1,967	
7	HEALTH INS.		1,524	
8	TOTAL PERSONAL SERVICES			37,470
9	TRAVEL			5,500
10	CONTRACTUAL			3,160
11	COMMODITIES			450
12	EQUIPMENT			1,200
13	OTHER			
14	TOTAL COST			47,780

	CODE	FUNDING SOURCE	
15		FED RCPTS.	
16		GF MATCH.	
17		GEN. FUND	47,780
18		I-A RCPTS.	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION	X	

FOR OMB USE ONLY

TAX KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

Inasmuch as every fish processor doing business in the State of Alaska could form a seafood association as defined in the proposed law, we are requesting one permanent full time Auditor position to handle the auditing functions provided for in the proposed Section 43.75.035(b)(8).

AGENCY Department of Revenue PROGRAM AREA Revenue Collection and Management

BRU Audit Division

COMPONENT _____

13 REQUEST FOR NEW POSITION.

Page ____ of _____

REVISED DATE _____

FY 81

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 524
Title An Act allowing credits against fisheries taxes.
Requested by Senate Judiciary & Finance Committees Date 3/24/80

II. FISCAL DETAIL
Agency Affected Revenue
Program Category Affected Fiscal Services
BRU, Program, or Subprogram(s) Affected Audit Division
(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		37.5	37.5	37.5	37.5	37.5
200	TRAVEL		5.5	5.5	5.5	5.5	5.5
300	CONTRACTUAL		3.1	3.1	3.1	3.1	3.1
400	COMMODITIES		.5	.5	.5	.5	.5
500	EQUIPMENT		1.2	1.2	1.2	1.2	1.2
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		47.8	47.8	47.8	47.8	47.8

FUNDING (Thousands of Dollars)

GENERAL FUND		47.8	47.8	47.8	47.8	47.8
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		1	1	1	1	1
PART TIME						
TEMPORARY						

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

See attached memorandum to R. D. Stevenson dated 3/24/80.

IV. DATE March 24, 1980 PREPARED BY [signature]
AGENCY Department of Revenue, Audit Division
PHONE 465-2320

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

33-001 (Rev. 12/79)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. S B 524
Title An act lowing credits against Fisheries Taxes
Requested by _____ Date 3-25-80

II. FISCAL DETAIL
Agency Affected _____
Program Category Affected _____
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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Millions of Dollars)

GENERAL FUND	---	(1.2)	---	---	unknown	---
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

The above mentioned assumes that 95% of the taxpayer credits are actually taken. The basis for the Fy 81 data is the forecast in the Revenue Source Book which incorporates catch and price projections.

The cost to the general fund in subsequent fiscal years is indeterminate but dependant on varying credits, harvests and prices. It is likely that there will be a slight increase over time in credits taken.

IV. DATE 3/25/80 PREPARED BY Vincent L Vaught
AGENCY Revenue
PHONE 2271

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

33-001 (Rev. 12/79)

SB

548

(9)

COMMITTEE REPORT

HOUSE

4/23/80

FURTHER:

Date: _____

Mr. Speaker:

The Committee on JUDICIARY has had CSSB 548

"An Act relating to the processing of permits by state agencies; and providing for an effective date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60 (Rev. 12/78)

OVERKILL



OR

HAVE WE ARRIVED AT THE POINT WHERE IT IS NO LONGER POSSIBLE TO GET THERE FROM HERE?

Part of the life blood of any logging operation in Southeast Alaska is the ability to establish logging camps and the facilities to put logs into the water and boom and raft them preparatory to towing them to a mill site or shipping point. Because these facilities involve uplands, tidelands and navigable waters, an applicant must clear the activity necessary for construction with an upland owner (if other than his own private property), the Alaska Department of Natural Resources (DNR) because they are custodians of the State's tidelands and the Corps of Engineers, Department of the Army (Corps) as the agency responsible for issuing permits for facilities in navigable waters.

To illustrate the total "overkill" of procedures and duplication one must struggle through in obtaining the necessary permits and approvals, it is necessary to track the procedure. Neets Bay 10 and 12 are a good example of such facilities and their record.

Neets Bay is within the Ketchikan Pulp Company (KPC) (KPC is a wholly-owned subsidiary of Louisiana-Pacific Corporation)long term timber sale and the original need for camp, log transfer and boom and rafting facilities was recognized and reviewed by the Forest Service (FS) multi-discipline team when designating areas for the 1974-79 five-year operating area for which an environmental impact statement (EIS) was written. Therefore, as the upland owners, the Forest Service reviewed and approved the site for these facilities and included them in the EIS prior to commencing logging operations on the five-year period beginning July 1, 1974.

On April 26, 1977 (Exhibit A) a letter was sent to the Corps together with application for permit described as "proposed standing log boom retained in position by 5 ton anchors, log transfer facility using approximately 1,000 cubic yards of upland shot rock and employing an A-frame lift-off device, an offloading ramp consisting of a lashed log crib filled with shot rock from an upland source, a small boat dock and ramp to aid in construction of roads and facilities".

On June 15, 1977 we were sent a letter by the Corps notifying us of their receipt of our application, the assignation of Reference No. 071-OYD-2-770123 and the notification of assessment of a $100.00 processing fee should approval be granted. (Exhibit B)



On July 19, 1977 we received from the Corps (Exhibit C) a copy of a letter from the U. S. Environmental Protection Agency (EPA) requesting the permit, if issued, contain the following special conditions:

1. The permittee shall implement, once per year for a period of three years, a bottom sampling program to determine whether lost solids have accumulated in the project waters associated with the log transfer site. Each such sampling shall be completed not later than September 1 of each sampling year.

2. The permittee shall submit a brief report of the findings of each sampling effort and a sketch showing location of sampling sites, to the Corps of Engineers, the Alaska Department of Environmental Conservation and the U.S. Environmental Protection Agency not later than October 15, of each sampling year.

3. The permittee shall remove all significant accumulations of lost wood solids, if any, and dispose of them in an upland fill approved by the U.S. Forest Service and/or the Alaska Department of Environmental Conservation and concurred in by the Environmental Protection Agency. The permittee shall modify log transfer procedures, including possibly the relocation of the transfer site if significant accumulations of lost wood solids are found as a consequence of any sampling program conducted by the permittee or the Environmental Protection Agency.

Although EPA saw fit to copy the Alaska Department of Environmental Conservation (DEC), the U.S. National Marine Fisheries Service (NMFS), the U.S. Fish & Wildlife Service (USF&WS) and the Forest Service with their letter, they did not see fit to send it to the applicant thus requiring a copy of the letter to come from the Corps with their notice to us and our return agreement July 29, 1977 to the Corps (Exhibit D) with copy to EPA.

On August 29, 1977 and after advertisement of request for public comment, the Corps sent a letter (Exhibit E) informing us to submit our processing fee and we would receive our permit. On September 15, 1977 having submitted the required fee we received a cover letter and our permit from the Corps (Exhibit F). This permit contained standard Corps conditions a-x (24 in number) plus the three additional conditions of EPA. Included in the 24 Corps conditions are the conditions for applicant

to "at all times be consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to Sections 301,302,306 and 307 of the Federal Water Pollution Control Act of 1972 (P.L. 92-500; 86 Stat. 816), or pursuant to applicable State and local law".

Another subsequent section also adds, "...if applicable water quality standards are revised or modified during the term of this permit the permit will be modified if necessary to conform with such revised standards within 6 months of the revision..."

On September 30, 1977 we applied to the Department of Natural Resources for a tideland permit for this same area. However, due to market changes affecting our need for logs, scheduling our logging operations, together with the need to recover blown down timber in other areas, it became apparent we would not be moving into this area as planned.

It is difficult to be precise in these schedules when we must get our Corps permits started a minimum of six months prior to construction and construction must precede logging by at least one year. This means we are estimating our logging needs one and one-half to as much as three years in advance in relation to needing permits, and we are working with the Forest Service preparatory to writing environmental impact statements as far as eight years in advance of construction for some of these facilities.

In any event, we did not start the work applied for in either the DNR tidelands permit or the Corps permit as expected. On April 16, 1979 we received notice from DNR (Exhibit G) to notify them of our intentions on the tidelands permit or they would close the file. We advised DNR by letter of April 20, 1979 (Exhibit H) of our new estimated dates of construction schedule starting on March 1, 1980 and completion on August 1, 1980.

It was now apparent our logging activities in this area would not be completed during the 1974-79 five-year period but would now fall within the 1979-84 period. This necessitated the FS multi-discipline team review and the inclusion of this area and its facilities in yet another EIS.

We also wrote the Corps on August 8, 1979 (Exhibit I) requesting extension of our permit to cover our new schedule. On October 4, 1979 (after a period of almost two months) we received word from the Corps (Exhibit J) stating they could not extend our permit because we had not commenced work by April 26, 1978 or a year after our original application and must reapply.



On October 16, 1979 we sent a cover letter and application to the Corps (Exhibit K). The letter, application and drawing were basically the identical ones used for our original application of April 26, 1977. On or about October 23, 1979 we received from the Corps a letter (undated) (Exhibit L) designating our application NPACO-RF-P Neets Bay 12 with the reference number 071-OYD-2-790398. We were further informed by the Corps that further action on our permit was suspended because the permit area was within the Alaska coastal zone and we must provide a certification that our activity would comply with the Alaska Coastal Management Program. Also, they advised us that a permit cannot be issued until we have obtained a Certificate of Reasonable Assurance or Waiver of Certification as required by Section 401(a)(1) of the Clean Water Act. This certification or waiver is to be issued by the DEC.

We next received a letter dated November 30, 1979 from DNR (Exhibit M) informing us that our tideland permit ADL 100073 for Neets Bay was to be advertised as shown on the attached notice. We then received a copy of the Corps public notice dated December 7, 1979 (Exhibit N) and attached was a copy of the public notice from the Office of the Governor, Division of Policy Development & Planning (DPDP) for Application for Certification of Consistency with the Alaska Coastal Management Program and also attached was the DEC public notice of Application for Water Quality Certification. This latter certification is assurance that any discharge to waters of the United States resulting from the project described in the Corps permit will comply with the Clean Water Act and applicable state laws, even though the applicant must agree to abide by these laws as a condition of obtaining the permit from the Corps and the permit itself so stipulates (see Corps permit General Conditions part b).

A letter dated December 12, 1979 was sent to the Corps from DPDP (Exhibit O) advising them they had received the application, were reviewing it for Alaska Coastal Management Program Consistency Determination and had distributed the material to the appropriate governmental agencies for a review which they were scheduled to close on January 10, 1980, soon after which they would send the review decision to the Corps. Also, the State Clearinghouse has now assigned State ID No. FD280-79121111FP.

On December 28, 1979 we had a telephone call from the NMFS questioning whether there was enough water under the transfer site to float the log bundles at all tides. We directed him to the plat submitted with our application indicating 50 to 60 feet and pointed out that the site would be of no use for our purposes if the bundles did not float. We agreed to make ourselves available to travel to the site with them. However, we later found they had visited the site without contact with us.



On January 4, 1980 we were copied on a letter sent from the Alaska Department of Fish & Game (ADF&G) (Exhibit P) requesting a one month extension to permit a more thorough evaluation and assessment of the impacts of this development. ADF&G sent copies of this letter to USF&WS, NMFS, EPA, two recipients (Juneau and Anchorage) at DNR, two recipients (both Juneau) at DEC, one other recipient at ADF&G and the State Clearinghouse.

Also, on January 4, 1980 the DPDP wrote the Corps (Exhibit Q) notifying them the Alaska State Clearinghouse was extending the closing date for review from their original January 10, 1980 by fifteen days which they calculated would be a closing date of February 2, 1980. (Actually, 15 days from January 10, 1980 is January 25, 1980).

On January 17, 1980 we received a copy of a letter from EPA to the Corps (Exhibit R) advising them the proposal may have adverse impacts on water quality and/or the aquatic resources and accordingly, coordination with appropriate State and Federal resource agencies was needed and they would expect to provide additional comments within 30 days. The EPA copied USF&WS, ADF&G, DEC and NMFS.

On January 18, 1980 we received a copy of a letter from the Corps to NMFS (Exhibit S) agreeing to extend the review period to February 7, 1980.

On January 29 we received notice and billing from DNR (Exhibit T) for the advertisement for our State Tideland Permit.

On February 8, 1980 we received a copy of a letter from EPA to the Corps (Exhibit U) informing them of no objection to issuance of this permit "provided the applicant complies with all State & Federal resource agency conditions that may be needed to protect the aquatic resources". A copy of this letter went to USF&WS, NMFS, ADF&G, and DEC. Had EPA read the requirements written into a Standard Corps Permit they would have noted the applicant must not only agree to comply with all State and Federal conditions but must also agree to currently comply if rules or regulations are added or modified and we would not now at this late date have to agree with what we must agree with to obtain the valid permit.

On February 15, 1980 we received a letter from the Corps (Exhibit V) enclosing a copy of a letter they received from the ADF&G saying they had reviewed the application and "find this project consistent with those Coastal Zone Management standards we have responsibility for reviewing and have no objections to issuance of a permit, provided the following special stipulations are included:

1. A non violent log transfer facility is employed.



2. The permit is limited to a five year period".

Copies of this letter dated February 1, 1980 were sent to NMFS, USF&WS, EPA, 2 recipients at DNR, 2 recipients at DEC, ADF&G, Clearinghouse and to the Applicant.

It is interesting to note that at this late date there is a requirement for a non violent dump when both the original and subsequent applications for permit detailed in the drawings of the facilities as well as in the verbal description a lift-off, non violent type of equipment to be used. Also, the insistence of a five year limitation with no explanation whatsoever of why they think this is necessary or investigation as to whether this limitation is consistent with the applicant's requirements.

We next heard directly from DPDP on February 19, 1980 (Exhibit W). They informed us that, "As currently planned, we have found the proposal to be inconsistent with ACMP. It will be consistent with the ACMP provided the attached stipulations are met.

INCONSISTENT DETERMINATION ATTACHMENT

Conditions related to South Neets Bay Timber Project
(State I.D. # FD 280-79121111 FP):

1. The Department of Environmental Conservation must first issue a Certificate of Reasonable Assurance stating that the proposed activity will comply with the requirements of Section 401 of the Federal Water Pollution Control Act Amendments of 1972 as modified by the Clean Water Act of 1977.

2. A non-violent log transfer facility must be employed.

Copies of this letter were sent to Office of Coastal Management (OCM), Department of Law, COE(Corps) and DEC. Again, we have the requirement for a non violent log transfer in the permit application.

OVERKILL

At this point we seem to be in the position of not being able to get approval from DPDP until DEC goes to public notice and issues a Certificate of Reasonable Assurance that the project will be in compliance with Section 401 of the Federal Water Pollution Control Act even though this is stipulated by the Corps as a general condition of the permit.

We next received a letter from the Corps dated February 21, 1980 (Exhibit X) and relaying to us a letter they received from NMFS and indicating they had made two on-site inspections of the area to be covered by this application. They state, "As a result of these investigations, we believe that the proposed action will not significantly harm marine, estuarine, or anadromous fisheries resources if the following stipulations are incorporated into the permit:

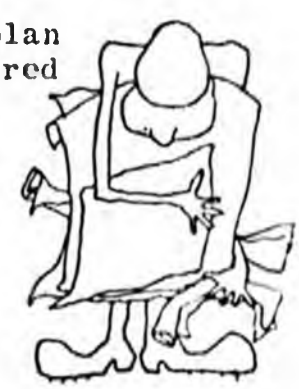
1. Log transfer methods should be non violent. This will reduce the amount of bark debris knocked off in the transfer process.
2. This permit shall expire in five years.
3. A sufficient amount of clean shot rock shall be placed over all fill material so that erosion and leaching of fill material will not occur".

We were not copied on this letter, necessitating the Corps send us a copy and request our comments to NMFS who must then contact the Corps of our agreement. Also, had this agency read either the original or second application for this facility they, too, would have noted it was specifically for a lift-off (non violent) type and was to be filled entirely by shot rock. They also deemed a five year limitation on the permit without any explanation of the necessity or inquiry of the applicant.

Also on February 21, 1980 we wrote DPDP (Exhibit Y) agreeing to a non violent dump, even though this was the intention from the original application for this permit on April 26, 1977.

On March 3, 1980 we received from the DEC by Certified Mail, Return Receipt Requested (Exhibit Z) a cover letter transmitting to us a State of Alaska Department of Environmental Conservation Certificate of Reasonable Assurance. This document states the log transfer facility consisting of 1,000 cubic yards of shot rock fill and an A-frame lift-off device will be constructed along with other facilities. It then stipulates the following provisions:

1. A spill prevention control and counter measures plan in accordance with 40 CFR 112.4(c)*has been prepared by the applicant and submitted to ADEC.



2. A non-violent log transfer facility is employed.

3. A clean shot rock cap is placed over all fill material to prevent surface erosion.

4. ADEC 401 certification expires in five (5) years.

Copies of this letter were sent to Corps, EPA, ADL(DNR), ADF&G, NMFS, USF&WS, SERO(?), OCM and State Clearinghouse.

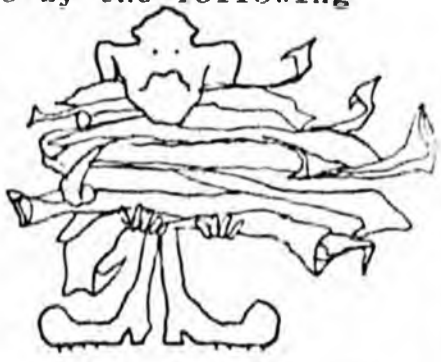
Although we do not understand why a spill prevention control and countermeasure plan is needed for approval of this permit we will submit one to DEC because to argue it would be time consuming and it will be required by the Coast Guard, FS and EPA prior to fuel being stored in the area. We will agree to a non violent log transfer as stipulated on both plans and description of our permits since April 26, 1977 and we will agree to a clean shot rock cap because all of the fill material will be clean shot rock as stated in application. We are still curious as to why so many agencies (or is it really one agency with a lot of shadows?) insist on a five-year limit without inquiring of us how long we will need the facility. In this case, we will most likely agree to the five year stipulation, only so we can commence the project and hope for an extension if we need the facility longer.

On March 3, 1980 we also received a copy of a letter from DPDP to the Corps (Exhibit AA) informing them they had received a Certificate of Reasonable Assurance from DEC stating that the subject project will comply with the requirements of Section 401 of the Federal Water Pollution Control Act. They further state they have now completed their ACMP review of the subject proposal and find it consistent with ACMP. Copies of this letter were sent to OCM, two recipients at ADF&G, DEC and Commissioner McAnerney of Regional Affairs (CRA).

As of this writing, on March 10, 1980, we do not have our permit and we do not have a DNR tideland permit. Our construction season has started and our construction people are on the ground constructing the road and developing quarry sites and are badly in need of this permit to properly schedule their work.

Neets Bay 12, NPACO-RF-P, No. 071-OYD-2-790396, State I. D. No. FD280-79121111FP and ADL No. 100073 has been reviewed by two FS multi-discipline team reviews including participants from other State and Federal agencies, been included within two Environmental Impact Reports in which all agencies could (and most did) make comments, as well as any private citizen and has now been reviewed by, or copied with, some correspondence by the following agencies in relation to this application:

FS U.S. Forest Service



Corps	Corps of Engineers, Dept. of Army
EPA	U.S. Environmental Protection Agency
DNR	Alaska Department of Natural Resources
DPDP	Office of the Governor, Division of Policy Development and Planning
ADF&G	Alaska Department of Fish & Game
DEC	Alaska Department of Environmental Conservation
ADL	Alaska Department of Law
CRA	Commissioner of Regional Affairs
	State Clearinghouse
OCM	Alaska Department of Coastal Management
SERO	Unable to identify
NMFS	National Marine Fisheries Service
USF&WS	U.S. Fish & Wildlife Service

The question needing an answer is, why so much duplication, delay and totally unnecessary paperwork is required for a routine non-controversial permit such as this? Is it really necessary for nine State Departments or Agencies and probably twice that number of State employees along with five Federal Agencies and their employees to review, make comments and shuffle the paper? This chronology illustrates how rapdily the bureaucracy has come upon us when one reviews the rather direct route to the permit received in 1977 as compared to the frightening growth and duplication that has sprung up by 1979, even when applied to an area for which there had been a previous permit issued.

We do not fault the Corps, as their practice is to be helpful in notifying the applicants of agency input, but their regulations force them to respond to each and every comment, no matter how duplicative, until all participants are satisfied. We also think that if all agencies would read and analyze the General Conditions an applicant must consent to in order to get a permit they would realize many of their concerns are already well protected and much of their review and comments unnecessary. Attached is a current copy of the Corps General Conditions for a permit, for your information.

We sincerely feel this process is non productive, wasteful, inflationary and in need of review, particularly in respect to the State's duplicative reviews. It is only for this purpose this review has been written and circulated. If it accomplishes some reduction in what we consider a decided OVERKILL the effort will have been worthwhile.

3/80



I. General Conditions:

a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Federal Water Pollution Control Act of 1972 (P.L. 92-500, 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

g. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings attached hereto.

i. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

j. That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of this notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevant to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the permit will either be reinstated, modified or revoked.

k. That this permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and the conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral and written evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

o. That if the activity authorized herein is not started on or before _____ day of _____, 19 _____ (one year from the date of issuance of this permit unless otherwise specified) and is not completed on or before _____ day of _____, 19 _____, (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition t hereof, he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

s. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

t. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

II. Special Conditions: (Here list conditions relating specifically to the proposed structure or work authorized by this permit):

The following Special Conditions will be applicable when appropriate:

STRUCTURES IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

a. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

b. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

c. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

e. Structures for Small B[illegible] That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

MAINTENANCE DREDGING

a. That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for _____ years from the date of issuance of this permit (ten years unless otherwise indicated).

b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the FWPCA and published in 40 CFR 230.

b. That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

c. That the fill created by the discharge will be properly maintained to prevent erosion and other non point sources of pollution, and

d. That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

DUMPING OF DREDGED MATERIAL INTO OCEAN WATERS

a. That the dumping will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228.

b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or dumping of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

EXHIBITS INCLUDED

Exhibit A	Application to Corps	4/26/77
Exhibit B	Corps letter	6/15/77
Exhibit C	Corps letter w/EPA letter	7/19/77
Exhibit D	KPC to Corps & EPA	7/29/77
Exhibit E	Corps to KPC	8/29/77
Exhibit F	Corps permit	9/15/77
Exhibit G	DNR letter	4/16/79
Exhibit H	LP to DNR	4/20/79
Exhibit I	LP to Corps	8/8/79
Exhibit J	Corps denying extension	10/4/79
Exhibit K	Letter & application to Corps	10/16/79
Exhibit L	Letter from Corps recognizing application	Undated
Exhibit M	Notice of DNR tideland ad.	11/30/79
Exhibit N	Corps Public Notice + DPDP and DEC	12/7/79
Exhibit O	DPDP to Corps	12/12/79
Exhibit P	ADF&G to Corps	1/2/80
Exhibit Q	DPDP to Corps	1/4/80
Exhibit R	EPA to Corps	1/14/80
Exhibit S	Corps to NMFS	1/18/80
Exhibit T	DNR to LP	1/25/80
Exhibit U	EPA to Corps	2/5/80
Exhibit V	Corps to KPC(ADF&G)	2/15/80
Exhibit W	DPDP to KPC	2/19/80
Exhibit X	Corps to KPC(on NMFS)	2/21/80
Exhibit Y	KPC to DPDP	2/21/80
Exhibit Z	DEC to KPC	3/3/80
Exhibit AA	DPDP to Corps	3/3/80

Alaska
STATE CHAMBER of COMMERCE

310 Second Street
Juneau, Alaska 99801
Phone 586-2323

PLEASE REPLY TO:
Pouch 6 - 612
Anchorage, Alaska 99502

April 11, 1980

Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Alaska State Senate, Pouch V
State Capitol Building
Juneau, Alaska 99811

Dear Senator Ziegler:

The purpose of this letter is to reflect the total support of the Alaska State Chamber of Commerce for SB 548 which I understand will be the subject of a hearing before your Committee next week.

Included in the State Chamber legislative goals which were prepared last November was the matter of regulatory review and reform. SB 548 reflects very accurately one of our hopes in regulatory reform.

I am certain that you and your committee are also aware of a problem of equal magnitude, i.e., conflicting and overlapping regulations among the various State departments. In respect to this problem I sent to Senator Bennett on April 8 a package of specific problems in this area of conflict. I am sure Senator Bennett will be glad to share this information with you.

In the meantime I would like to say again that SB 548 is a good bill and solves some major problems for businesses of all sizes operating in Alaska.

Yours very truly,

Charlie Elder
Chairman

CRE:bc

cc: Senator E. Dankworth, Vice Chairman
Senator H. D. "Pete" Meland
Senator D. Bennett
Senator B. Ray

April 16, 1980

Mr. Charlie Elder,
Chairman
Alaska State Chamber
of Commerce
310 Second Street
Juneau, Alaska 99801

Dear Charlie:

We had a hearing on SB 548 on April 15th, as a result of which a committee substitute is in the process of being prepared. I have no doubt but what a majority of my Senate Judiciary Committee members will sign "Do pass", and that thereafter a majority of the Senate will approve the committee substitute.

However, there are some technical problems which will have to be resolved as the bill goes through the legislative process.

At least we have start. the ball rolling.

Regards,

Robert H. Ziegler, Sr.

RHZ:lk

Alaska
STATE CHAMBER of COMMERCE

310 Second Street
Juneau, Alaska 99801
Phone 586-2323

PLEASE REPLY TO:
Pouch 6-612
Anchorage, Alaska 99502

April 11, 1980

Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Alaska State Senate, Pouch V
State Capitol Building
Juneau, Alaska 99811

Dear Senator Ziegler:

The purpose of this letter is to reflect the total support of the Alaska State Chamber of Commerce for SB 548 which I understand will be the subject of a hearing before your Committee next week.

Included in the State Chamber legislative goals which were prepared last November was the matter of regulatory review and reform. SB 548 reflects very accurately one of our hopes in regulatory reform.

I am certain that you and your committee are also aware of a problem of equal magnitude, i.e., conflicting and overlapping regulations among the various State departments. In respect to this problem I sent to Senator Bennett on April 8 a package of specific problems in this area of conflict. I am sure Senator Bennett will be glad to share this information with you.

In the meantime I would like to say again that SB 548 is a good bill and solves some major problems for businesses of all sizes operating in Alaska.

Yours very truly,

Charlie Elder
Chairman

CRE:bc

cc: Senator E. Dankworth, Vice Chairman
Senator H. D. "Pete" Meland
Senator D. Bennett
Senator B. Ray

Louisiana-Pacific Corporation

Ketchikan Division

Post Office Box 6600
Ketchikan, Alaska 99901 U.S.A.
Telephone 907-225-2151
Telex 090-55-251
Answerback KAYPUL CO KET

April 1, 1980

Mr. James E. Caruth, Chief
Regulatory Functions Branch
Department of the Army
Alaska District, Corps of Engineers
P.O. Box 7002
Anchorage, Alaska 99510

Re: NPACO-RF-P, Ward Cove 23
071-OYD-2-790391

Dear Mr. Caruth:

Enclosed is a self-explanatory letter we have sent to the Division of Parks of the Alaska Department of Natural Resources. We hope we are able to convince the ADP there is a better way and trust our letter will permit continued processing of our application.

Sincerely,

D. L. Finney, Manager
Forestry & Government Affairs

hr
Enclosure

Louisiana-Pacific Corporation

Post Office Box 4609
Ketchikan, Alaska 99901
Telephone 907-225-2151
Telex 090-55-251
Answerback: KAYPULPCO KET

April 1, 1980

Mr. Chip Dennerlein, Director
Division of Parks, State of Alaska
Department of Natural Resources
619 Warehouse Drive, Suite 210
Anchorage, Alaska 99501

Re: Ward Cove 23

Dear Chip:

Our first reaction to your comment on our Corps permit is that you have read the "Overkill" paper and felt left out by not having your agency mentioned. If this is the case, please accept our apologies as we had no intention of slighting you or your department. Just in case you haven't seen the "Overkill" paper, one is enclosed, so you can see how we have come to develop a prejudice toward any agency feeling it necessary to comment on Corps permits.

There are several things about your request for assurance on which we would like to comment. First, by writing the Corps without copying us, you necessitate the Corps writing to us (copy enclosed), us writing you and giving you assurance, then you writing the Corps and telling them it's all right, then the Corps writing us and telling us it's all right, before the processing of our permit can continue. If you really feel you must continue to be involved, please have the courtesy of sending us a copy of your request. Or, if you really intend to join the ranks of the "overkillers", you could let us know you intend to so respond to all permits and we can head off a lot of nonsense by notifying the Corps we will abide by your every wish at the time we apply. This would save you, us and the Corps a lot of letter writing, postage and, most importantly to us, valuable time.

Another observation we have is that the cultural resources you wish to protect are already covered by the American Antiquities Act of 1906 (16 USC 431-433), National Historic Preservation Act of 1966 (16 USC 470) and Executive Order 11593(1971). Provisions of a Corps permit require an applicant to be in compliance with all Federal, State and Municipal laws. Also, our long term timber sale with the Forest Service has been recently modified to include an obligation for us to report any historic cultural resources immediately. Your added request for assurance does seem to be an "overkill".

One last observation is, if you have read the permit application we submitted, you will have noted it is for placing fill material and setting piling. It strikes us that there is not even the remotest possibility of discovering cultural resources with these activities.

Chip, as you can probably tell, you rattled our chain. We have decided to take head-on all unnecessary State Agency involvement in Corps permits because it really is coming to the point where we can no longer get there from here. Your agency just happens to be the first new customer since we wrote our exposé. Hopefully, our efforts will be rewarded by getting some logic in to the system and if such is the case, it will be well worth the time spent.

Now, so our application for NPACO-RF-P Ward Cove 23 Reference No. 071-OYD-?-790391 to Construct Berm and Place Piling in Ward Cove, Ketchikan, Alaska may proceed, we hereby notify you we agree, if any cultural resources are uncovered during the period of construction, our project engineer will halt all work that may disturb such resources and contact the Division of Parks (and probably the Guinness Book of Records) at once.

We shall, by copy of this letter, notify the Corps of our agreement but respectively request that you also contact the Corps at the soonest possible time, informing them you have our assurance and have no objection to the futher processing of our permit.

Louisiana-Pacific Corporation

We would be most interested in any comments you might have concerning your continued involvement in Corps permits.

Sincerely,

D. L. Finney, Manager
Forestry & Government Affairs

hr
Enclosure

cc: J. Hammond - w/cc of Corps & Parks letters
T. Miller "
J. Reinwand "
R. LeResche "
W. McConkey "
& a host of others

DEPARTMENT OF THE ARMY
ALASKA DISTRICT, CORPS OF ENGINEERS
P.O. BOX 7002
ANCHORAGE, ALASKA 99510

REPLY TO
ATTENTION OF:
NPACO-RF-P
Ward Cove 23

MAR 2 1 1980

Ketchikan Pulp Company
P.O. Box 6600
Ketchikan, Alaska 99901

Reference: 071-OYD-2-790391
Construct Berm & Piling
Ward Cove
Ketchikan, Alaska

Gentlemen:

Inclosed is a copy of a letter dated 12 March 1980 concerning your application for a Department of the Army permit for the referenced work.

It is the policy of the Department of the Army to provide an applicant the opportunity for a resolution or rebuttal to all objections and/or recommendations received on a proposed project. In this regard, the Alaska Division of Parks (ADP) has reviewed your proposal and requested that if any cultural resources are uncovered during the period of construction, your project engineer halt all work that may disturb such resources and contact them at once.

I would appreciate receiving any comments that you may have on the request by ADP. If you intend to comment, please give your immediate attention to this matter so processing of your permit application can be expedited.

Sincerely,

Larry L. Reeder
for JAMES E. CARUTH
Chief, Regulatory Functions Branch

1 Incl
As stated

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS

619 Warehouse Dr., Suite 210
Anchorage, Alaska 99501

March 12, 1980

File No.: 1130-2-1

Subject: Ward Cove 23

Mr. D. L. Robbins, Chief
Construction/Operations Division
Corps of Engineers
Box 7002
Anchorage, AK 99510

Dear Mr. Robbins:

We have reviewed the subject proposal and would like to offer the following comments:

STATE HISTORIC PRESERVATION OFFICER

No probable impacts. Should cultural resources be found during the construction, we request that the project engineer halt all work which may disturb such resources and contact us immediately.

William S. Hanable
State Historic Preservation Officer

STATE PARK PLANNING

Consistent with ACMP.

LWCF

No comment.

Sincerely,

for Chip Dennerlein
Director

CD/cw

TO
"OVERKILL" - 3/80

Louisiana-Pacific Corporation

Ketchikan Division

Post Office Box 6600
Ketchikan, Alaska 99901 U.S.A.
Telephone: 907-225-2151
Telex: 090-55-251
Answer back: KAYPULPCO KET

April 1, 1980

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Regulatory Functions Branch
Department of the Army
Alaska District, Corps of Engineers
P.O. Box 7002
Anchorage, Alaska 99510

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071-OYD-2-790391

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Sincerely,

D. L. Finney, Manager
Forestry & Government Affairs

hr
Enclosure

Louisiana-Pacific Corporation

Ketchikan Division

Post Office Box 6600
Ketchikan, Alaska 99901, U.S.A.
Telephone (907) 225-2151
Telex 023-55-251
Answerback: KAYPULPCO KET

April 1, 1980

Mr. Chip Dennerlein, Director
Division of Parks, State of Alaska
Department of Natural Resources
619 Warehouse Drive, Suite 210
Anchorage, Alaska 99501

Re: Ward Cove 73

Dear Chip:

Our first reaction to your comment on our Corps permit is that you have read the "Overkill" paper and felt left out by not having your agency mentioned. If this is the case, please accept our apologies as we had no intention of slighting you or your department. Just in case you haven't seen the "Overkill" paper, one is enclosed, so you can see how we have come to develop a prejudice toward any agency feeling it necessary to comment on Corps permits.

There are several things about your request for assurance on which we would like to comment. First, by writing the Corps without copying us, you necessitate the Corps writing to us (copy enclosed), us writing you and giving you assurance, then you writing the Corps and telling them it's all right, then the Corps writing us and telling us it's all right, before the processing of our permit can continue. If you really feel you must continue to be involved, please have the courtesy of sending us a copy of your request. Or, if you really intend to join the ranks of the "overkillers", you could let us know you intend to so respond to all permits and we can head off a lot of nonsense by notifying the Corps we will abide by your every wish at the time we apply. This would save you, us and the Corps a lot of letter writing, postage and, most importantly to us, valuable time.

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We would be most interested in any comments you might have concerning your continued involvement in Corps permits.

Sincerely,

D. L. Finney, Manager
Forestry & Government Affairs

hr
Enclosure

cc: J. Hammond - w/cc of Corps & Parks letters
T. Miller "
J. Reinwand "
R. LeResche "
W. McConkey "
& a host of others

DEPARTMENT OF THE ARMY
ALASKA DISTRICT, CORPS OF ENGINEERS
P.O. BOX 7002
ANCHORAGE, ALASKA 99510

REPLY TO
ATTENTION OF:
NPACO-RF-P
Ward Cove 23

RECD LPK
MAR 1 1 1980
MAR 2 1 1980

Ketchikan Pulp Company
P.O. Box 6600
Ketchikan, Alaska 99901

Reference: 071-OYD-2-790391
Construct Berm & Piling
Ward Cove
Ketchikan, Alaska

Gentlemen:

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I would appreciate receiving any comments that you may have on the request by ADP. If you intend to comment, please give your immediate attention to this matter so processing of your permit application can be expedited.

Sincerely,

Larry L. Reeder
for JAMES E. CARUTH
Chief, Regulatory Functions Branch

1 Incl
As stated

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS

619 Warehouse Dr., Suite 210
Anchorage, Alaska 99501

March 12, 1980

File No.: 1130-2-1

Subject: Ward Cove 23

Mr. D. L. Robbins, Chief
Construction/Operations Division
Corps of Engineers
Box 7002
Anchorage, AK 99510

Dear Mr. Robbins:

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William S. Hanable
State Historic Preservation Officer

STATE PARK PLANNING

Consistent with ACMP.

LWCF

No comment.

Sincerely,

for Chip Dennerlein
Director

CD/cw

Please review for possible C.S. for captioned bill.

Guy

TESTIMONY OF ALASKA LUMBER AND PULP CO., INC.

On Senate Bill 548

Before the Senate Judiciary Committee

April 15, 1980

By Elizabeth Cuadra

Alaska Lumber and Pulp Co., Inc. (ALP) supports enactment of S. B. 548 into law.

ALP requests, however, an amendment to make it very clear that state reviews of applications for federal agency permits are also to be included within the applicability of the time limits placed upon state agency processing. Examples would be state agency Section 401 certification of applications for Corps of Engineers Clean Water Act Section 404 "dredge and fill" permits, Section 401 certification of applications for EPA Clean Water Act Section 402 (NPDES) permits, and "federal consistency" determinations which the Alaska Office of Coastal Management makes regarding applications for federal permits for projects within the coastal zone.

Suggested text for the amendment we request is attached.

Thank you for the opportunity to present ALP's views.

RECOMMENDED BY ALASKA LUMBER AND PULP CO., INC.

Amend S. B. 548 in Section 2 beginning at p. 1, line 25:

"Sec. 44.62.632. TIME LIMIT ON THE PROCESSING OF PERMITS. (a) Upon receipt of a permit application or receipt of a federal agency request for state review of an application for a federal permit, the responsible state agency shall issue a final decision granting, denying or conditioning the issuance of the permit, or issue a final response to the federal agency's request for state review, within 30 days from date of receipt of the application, unless the person filing the application has designated the application as a master application under AS 46.35.030 or unless another statute provides a specific time pericd in which the agency must act with respect to the subject matter of the permit application or federal agency request for review."

If there is doubt as to whether functions in the Office of the Governor are included within the phrase "department, commission, board or other agency of the state," then also amend the definition of "state agency" [in

AS 44.62.640, proposed new subsection (c), item (6)] by amending bill Sec. 3, at page 4 line 26 through page 5 line 2, as follows:

"(6) 'state agency' means a state department, commission, board or other agency of the state <u>including the Office of Coastal Management</u>; for the purposes of AS 44.62.632 - 44.62.636, "state agency" also means a local or regional air pollution control authority established under AS 46.03.210, and a coastal resource district and a coastal resource service board established under AS 46.40.010 - 46.40.210."

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER _____

DEPARTMENT Senate - Judiciary

ATTENTION Robert Ziegler

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

Room # 107 - Capitol

FROM:
MAIL STATION NUMBER _____

DEPARTMENT Public Safety

BY Clemens DATE 5-6-80

02-002 (REV.10/73)

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	Rules Committee	CS SB 548

DEPARTMENT POSITION

Neutral

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Ronald Hendrie, State Fire Marshal	5/5/80	for William R. Nix	5/5/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL

(3) PROGRAM EFFECTS OF BILL

(4) FISCAL IMPACT: ☐ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

The concerns outlined in th attached bill analysis for SB 548 also apply to CSSB 548.

BILL ANALYSIS

ASSIGNMENT DATE 4-8-80

UNASSIGNED

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety	By the Rules Committee by request of the Administrative Regulations Review Committee	SB 548

DEPARTMENT POSITION

Neutral (support concept)

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Ronald A. Hendrie by: G Greene	4-14-80	William R. Nix	4/15/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING) (1) Unknown
(2) OTHER AGENCIES AFFECTED BY BILL (2) Various state agencies

(2) a. ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
Unknown	Unknown

(3) PROGRAM EFFECTS OF BILL

The 30 day time limit for issuance of a final decision concerning a permit application, under sec. 2 of the bill, will necessitate increased personal services and operating support funds.

The major programs affected would be (a) life and fire safety surveys (inspections) that we conduct at the request of other local, state and federal agencies to meet their permit, licensing or certification fire safety regulations and/or requirements and (b) construction plan checks and approvals. Modification and/or waiver request applications processed under these programs would also be affected.

(4) FISCAL IMPACT: ☐ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS: (3-continued)

The primary impact will be in program (a). CY and FY81 staffing requires this Division to maintain and more rigidly adhere to its current policy of limiting the survey program to current active files needing action, requests for surveys from licensing agencies which are accomplished subject to a time, manpower and travel funds available basis and to surveys necessitated by receipt of a formal complaint.

To work within the constraints that would be imposed by sec. 2 we will need to increase our professional field staff and operating support funds.

As for program (b) our average "turn around" time for a plan check, from receipt of the plans and specifications through review and the processing of our approval letter or letter stipulating additional life and fire safety design features necessary for incorporation i:

(continued on attached page)

MEMORANDUM State of Alaska

TO: Wilson L. Condon
Deputy Attorney General
Dept. of Law

DATE: April 15, 1980

FILE NO.:

TELEPHONE NO.: 465-432.

SUBJECT: SB 548

FROM: Michael J. Clemens
Acting Director
Div. of Administrative Services
Dept. of Public Safety

The attached bill analysis on SB 548 was prepared by the Assistant State Fire Marshal, Gary Crouse. Because testimony today revealed that a Committee Substitute would be prepared by your office, the attached bill analysis is forwarded for use in preparing the Committee Substitute instead of being sent out in the normal manner. You can reach Mr. Crouse at #465-4331 if you have questions on his bill analysis or the regulatory provisions requiring life and safety inspections or building plan reviews.

cc: Gary Crouse, Ass't. State Fire Marshal
with attachment

a project, is approximately seven (7) to ten (10) work days. Sec. 2 of the bill may not present a problem in program (b), depending on legislative intent. During the course of a plan check, from start to final approval, we are often dealing with design professional firms (architects, engineers etc.) who are not physically located in one of the three cities where we maintain offices (Anchorage, Fairbanks, Juneau) or are out-of-state firms. This necessitates the use of the mails and requires written communications both ways in order to conclude a project check. Plans and specifications often need revision.

Because of the above operating constraints projects requiring modification and/or incorporation of changed or additional fire safety features, in order to meet state fire safety regulations, may present a problem in so far as our ability to comply in all respects with sec. 2 of the bill, i.e. issuance of a final decision granting, denying or conditioning the issuance of a plan approval.

Other programs affected but probably only requiring permit application or permit or license form modifications and possibly a revision of our operating procedures would include: fire extinguisher servicing permits, fireworks wholesalers license, fireworks retailers permits, use of dangerous fireworks permits and applications for exemption from plan reviews (plan checks).

Note: The personal services and associated operational support costs for survey services of this Division, requested by other local, state or federal agencies to meet their regulatory (licensing) and/or certification programs, should be reimbursed by the requesting (user) agency.

EMPIRE 4/10/80

Briefly

Alaska

Mine regs 'hit high point'

FAIRBANKS (AP) — J.P. Tangen, the Juneau lawyer representing the Alaska Miners Association, said regulations hampering mining in Alaska may have hit their high point.

Speaking at the second annual Placer Mining Conference, Tangen said permits and regulations have created a heavy burden for miners.

"The administrative burden is so heavy it's difficult for major operations to bear it. And it's almost impossible for one, two or even five-man operations to try to respond."

He said in the past, small miners have feared compliance with regulations would draw attention to their operations, and that such scrutiny would hamper mining.

SB
582

COMMITTEE REPORT

SENATE

FURTHER: Finance

5/1/80

Date: 5/12/80

Mr. President:

The Committee on JUDICIARY has had SB 582

assessment, levy and collection of property taxes on transient aircraft

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for [ ] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

Introduced: 5/1/80
Referred: Judiciary and Finance

IN THE SENATE

BY THE RULES COMMITTEE
BY REQUEST

SENATE BILL NO. 582

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the assessment, levy and collection of property taxes on transient aircraft; and providing for an effective date."

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

* Section 1. AS 44.25.020 is amended by adding a new paragraph to read:

(5) assess the value of transient aircraft in accordance with AS 29.53.038.

* Sec. 2. AS 29.53 is amended by adding a new section to read:

Sec. 29.53.038. TRANSIENT AIRCRAFT. (a) The Department of Revenue shall assess the value of transient aircraft. The Department of Revenue shall determine the value of aircraft assessed under this section at its full and true value and shall determine the value of the aircraft as of January 1 annually.

(b) The Department of Revenue may require by notice each person having ownership or control of an interest in aircraft assessed under this section to submit a return in the form prescribed by the Department of Revenue, based on values existing on January 1 of each year. The Department of Revenue by written notice may require a person to provide additional information within 30 days of the notice.

(c) The Department of Revenue may investigate aircraft on which a return has been filed or on which no return has been filed. In either case, the department may make its own valuation of the aircraft, which is prima facie evidence of full and true value. An employee or agent of the Department of Revenue may enter an aircraft as necessary for the in-

vestigation during reasonable hours and may examine appropriate records. When requested by an employee or agent of the Department of Revenue, the owner of the aircraft shall furnish to the employee or agent reasonable assistance required for the investigation. If refused entry, the Department of Revenue may seek a court order to compel entry. For the purpose of the investigation, the owner of the aircraft or his representative may be required to present himself for examination under oath by the Department of Revenue.

(d) The Department of Revenue shall prepare annually the assessment roll for taxation of transient aircraft by municipalities. The assessment roll shall contain

(1) a description of all aircraft assessed under this section;

(2) the assessed value of the aircraft;

(3) the names and addresses of persons owning aircraft assessed under this section.

(e) On or before March 1 of each year, the Department of Revenue shall send to each owner of aircraft named in the assessment roll a notice of assessment, showing the assessed value of the aircraft. Notice of assessment is effective on the date of mailing.

(f) The Department of Revenue shall send to each municipality levying a real property tax a copy of the notice of assessment on aircraft which is assessed under this section.

(g) An owner of aircraft or a municipality receiving an assessment notice may object to the assessment by advising the Department of Revenue in writing of the objections to the assessment within 20 days of the effective date of the notice.

(h) The Department of Revenue shall provide by regulation for notices of appeals to interested persons and municipalities.

(i) Following an objection, the Department of Revenue may adjust

the assessment and the assessment roll. An adjustment based on an objection from an owner of aircraft or a municipality shall be made within 30 days of the effective date of the notice of assessment.

(j) After a ruling by the Department of Revenue on an appeal made under (g) of this section, the owner of aircraft or a municipality may appeal to the State Assessment Review Board. The appeal must be filed in writing within 20 days of the effective date of the notice of assessment. The State Assessment Review Board shall provide by regulation for notices of appeals to interested persons and municipalities.

(k) The State Assessment Review Board shall hear appeals filed under (i) of this section. A majority of the State Assessment Review Board constitutes a quorum required to transact business under this section. The State Assessment Review Board shall provide by regulation for notices of hearings to interested persons and municipalities. If an appellant fails to appear at the hearing, the State Assessment Review Board may proceed with the hearing in his absence. The appellant bears the burden of proof at a hearing under this subsection.

(l) The only grounds for adjustment of assessed value is proof of unequal, excessive or improper valuation or valuation not determined in accordance with the standards set out in this section, based on facts stated in a written appeal timely filed or proved at the hearing.

(m) The State Assessment Review Board shall certify its determination of an appeal to the Department of Revenue within seven days of the hearing.

(n) An owner of aircraft ~~or a municipality~~ may appeal to the superior court for, and is entitled to, trial de novo of the action of the State Assessment Review Board.

(o) No later than June 1 of each year, the Department of Revenue shall certify the final assessment roll.

(p) The Department of Revenue shall include aircraft omitted from the assessment roll on a supplementary assessment roll, using the procedures set out in this section for the original assessment roll.

(q) In this section, "transient aircraft" means

(1) aircraft used in commerce by an air carrier to furnish transportation to the public for compensation, hire or lease;

(2) equipment included in aircraft described in (1) of this subsection; and

(3) ground cargo handling and containerization equipment which can be transported in aircraft described in (1) of this subsection and which is so transported.

* Sec. 3. AS 29.53 is amended by adding a new section to read:

Sec. 29.53.162. LEVY AND COLLECTION OF PROPERTY TAX ON TRANSIENT AIRCRAFT. (a) A municipality may levy and collect property tax on transient aircraft only under this section.

(b) A municipality may levy a property tax on transient aircraft by applying the rate of levy, determined under AS 29.53.170(b), to a value for all transient aircraft under the same ownership determined by

(1) adding the value of all transient aircraft owned by the same taxpayer; and

(2) multiplying the value determined under (1) of this subsection by the ratio of the number of landings of transient aircraft owned by the taxpayer in the municipality levying the tax during the year preceding the assessment year to the total number of landings of all transient aircraft owned by the taxpayer.

(c) In this section, "transient aircraft" means

(1) aircraft used in commerce by an air carrier to furnish transportation to the public for compensation, hire or lease;

(2) equipment included in aircraft described in (1) of this

subsection; and

(3) ground cargo handling and containerization equipment which can be transported in aircraft described in (1) of this subsection and which is so transported.

* Sec. 4. Notwithstanding any other provision of AS 29.53, an assessment return filed by the owner of transient aircraft under AS 29.53.070 for a municipality for [the 1980] all previous assessment years assessment year is valid for determining the tax due for that assessment year. If two or more municipalities levy a property tax on transient aircraft under AS 29.53 for the 1980 assessment year, the owner of the aircraft may ask the commissioner of revenue to determine the tax due to each municipality. Upon receipt of the request of the taxpayer, the commissioner of revenue shall apportion the tax due by applying to the assessment of transient aircraft reported to a municipality under AS 29.53.070 the amount determined under AS 29.53.162, added by sec. 3 of this Act.

* Sec. 5. Sections 1 - 3 of this Act take effect January 1, 1981.

* Sec. 6. Sections 4 - 6 of this Act take effect immediately in accordance with AS 01.10.070(c).

AMENDMENT

OFFERED IN THE SENATE: BY: The Judiciar Committee

TO: _____ SENATE BILL No. SB 582

HOUSE BILL No. _____

PAGE: 2 and 3 LINE: 21 and 23 on Page 2 25 on page 3

Line 21, After the word "a" delete "real".

Line 23, Delete "An owner of aircraft or a municipality".
Insert "A municipality or an owner of aircraft".

Line 25, Delete "An owner of an aircraft or a municipality".
Insert "A municipality or an owner of aircraft".

ALASKA AIR ALASKA, INC.

April 18, 1980

The Honorable Mike Colletta
Pouch V, Mail Stop 3100
Juneau, AK 99811

Dear Senator Colletta:

I am writing ~~to bring~~ an urgent matter to your attention that can only get worse if not dealt with in a timely fashion. The matter is the multiple taxation of transient aircraft by the several boroughs.

Multiple taxation of transient aircraft occurs for two simple reasons. First, there is no agreed upon formula by which to allocate a fair portion of the aircraft fleet to each of the boroughs. Presently each borough decides for itself how many aircraft are within its jurisdiction. If a single allocation formula were adopted, then the entire aircraft fleet could be spread over the various boroughs by assigning a portion to each (e.g., 7 aircraft to one borough, 3.3 aircraft to another, etc.). The second way in which multiple taxation creeps into property taxation is through valuation because, once again, each borough decides for itself the value of the transient aircraft. These two concepts, of course, work together in property taxation. For example, it is very possible for a jurisdiction to decide that its portion of the fleet is small but then ascribe a huge valuation to that portion.

In order to rectify multiple taxation of transient aircraft, the legislature needs to addres these two issues. A single fleet valuation needs to be accepted by all the boroughs, such as is done with valuation of the Trans Alaska Pipeline. I suggest that this valuation task be given to the Department of Revenue and that its determination be accepted by the boroughs. Finally, a single allocation formula needs to be decided upon that will allocate the fleet among the boroughs. Any rational method is acceptable. I suggest that landings be considered because that data is objective and is relatively easy to retrieve.

I am enclosing a draft bill which addresses these matters. It also provides that previous property returns, if not fraudulent, be accepted as already filed with the various boroughs.

It should be emphasized that we are not seeking to avoid or reduce our share of property taxes. We are simply requesting that we not be subject to multiple taxation merely because we happen to own transient property.

Our legislative liaison, Rick Urion, is available to answer any specific questions you may have. I am also available to discuss the matter with you.

Very truly yours,

WIEN AIR ALASKA. INC.

James J. Flood
Chairman of the Board,
President, & Chief
Executive Officer

cc: Rick Urion

JJF/mls

Enclosure

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 April 30, 1980

SUBJECT: Municipal taxation of transient aircraft
(Work Order Number 8529)

TO: Senator Mike Colletta
Chairman, Senate Rules Committee

FROM: John B. Chenoweth
Legislative Counsel

In its draft form, this bill is somewhat more complex than the one-page proposal offered as an attachment to the letter directed to you which pointed out the problems involving multiple assessment, levy and collection of a property tax on aircraft. This bill is made longer by the fact that, while the municipal code contains extensive procedures relative to assessment, levy and collection of general property taxes, and AS 43.56 contains extended provisions relating to state assessment, levy and collection of property subject to the tax jointly laid on oil exploration, production and pipeline transportation properties, the suggested mechanism for taxation of aircraft required preparation of a "hybrid" approach, allowing the commissioner of revenue to assess while leaving to municipalities the right to levy, subject to specific limitations.

This is a property tax levied for municipal purposes. The bill draft, therefore, adds sections to AS 29. I think the first three sections are fairly self-explanatory, though I would advise you to assure yourself that the definition of "transient aircraft" meets all aircraft you would intend to reach.

Section 4 speaks only to assessment year 1980 and would apply the formula offered in an earlier section to the assessment reported by the taxpayer under the law as it currently reads.

The permanent law portions of the bill are made effective January 1, 1981. The bill could have been given retroactive effect to January 1, 1980, (in which case section 4 would be deleted as unnecessary) but, because the principal provisions of the permanent law sections require the Department of Revenue to complete an assessment within a time frame of a few months at the outset of a calendar year, and because that time period has passed for 1980, it seemed preferable to delay the effective date and to provide an interim solution to problems posed by multiple claims of municipalities for just this one year based on the assessments which the taxpayers themselves reported. In other words, while the legislature could provide a complete form of relief in subsequent years, the "status quo" would be only marginally distrubed in the current assessment year. I do not know whether this approach would have an effect on litigation which may now be pending to resolve the legal questions presented, and cannot assure you that proposed sec. 4 of the bill would preclude litigation over issues presented. It is, at best, an effort at an interim, partial solution.

JBC:ljb

Enclosure

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811

May 8, 1980

The Honorable Robert H. Ziegler, Sr.
Chairman
Senate Judiciary Committee
Room 107 - Capitol Building
Juneau, AK 99802

Dear Senator Ziegler:

SENATE BILL NO. 582

Senate Bill No. 582, an Act relating to the assessment, levy and collection of property taxes on transient aircraft, was introduced in the Senate on May 1, 1980 and was referred to the Senate Judiciary and Finance Committees.

For the consideration of the Senate Judiciary Committee, I am enclosing copies of two Fiscal Notes prepared by Robert M. Johnson, Director Petroleum Revenue Division, Department of Revenue.

Sincerely,

R. D. Stevenson
Special Assistant
Phone (907) 465-2397

cc: The Honorable John Sackett
Chairman
Senate Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Robert M. Johnson, Director
Petroleum Revenue Division
Department of Revenue

04-D2LH

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 582
Title Assessment and levy on transient aircraft
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Revenue
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Petroleum Revenue
(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	6	7	7	7	7	7
300 CONTRACTUAL	2	1	1	1	1	1
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	8	8	8	8	8	8

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

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

Assuming the responsibilities under SB 582 are assigned to Pet Rev, no new positions are needed. However, additional travel expenses of $5000 for each year are requested in order to cover such field audit trips as are needed in the assessment of aircraft, and an additional $3000 would be required to fund additional per diem and travel expenses incurred by the Assessment Review Board through appeals based on the bill.

IV. DATE 5/6/82 PREPARED BY Robert M. Johnson
AGENCY Revenue
PHONE 276-1363

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

33-001 (Rev. 12/79)

02-0018 (Rev. 10/79)

STATE
of ALASKA

MEMORANDUM

TO: Joseph K. Donohue, Deputy Commissioner
Department of Revenue

DATE: May 6, 1980

FILE NO:

TELEPHONE NO:

FROM: Robert M. Johnson, Director
Petroleum Revenue Division

SUBJECT: SB 582
(Aircraft Assessments)

To meet some of the problems perceived in this bill, I would suggest the following amendments:

> Page 1, sec. 2, lines 14-15. Sec. 29.53.038. TRANSIENT AIRCRAFT. The Department of Revenue shall assess the value of transient aircraft, when the value of such transient aircraft is relevant for purposes of levying a tax under AS 29.53.162. The Department. . . .
>
> Page 3, sec. 2, line 7. "20 days" should be "50 days."
>
> Page 4, sec. 2, line 5 and sec. 3, line 27. ". . . In this section, 'transient aircraft' means (1) aircraft with a gross operating weight in excess of 12,500 lbs. used. . . ."

The foregoing provisions reduce the total number of assessments the Department must make to those which are relevant. Thus, if Anchorage does not tax internationally-based carriers like Japan Airlines, the Department does not have the duty to assess. Also, the weight limitation on "transient aircraft" would avoid the assessment of hundreds of bush planes. (An FAA list of certified air taxi operations is being sent by pouch mail. It shows the volume of aircraft covered.) Those planes under the weight limit would continue to be taxed by municipalities as under present law and ordinance--that is, full assessment and tax if the plane has nexus in the municipality. It is my understanding that SB 582 was designed to cover large aircraft and their taxpaying owners, not bush aircraft. The 12,500 lbs. limit is an FAA break-point. Finally, the 20 to 50 day amendment is designed to insure consistent procedure before the Assessment Review Board.

RMJ/rdm

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 582
Title Assessment and levy on transient aircraft
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Revenue
Program Category Affected General Government
RU, Program, or Subprogram(s) Affected Petroleum Revenue
(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	6	7	7	7	7	7
300 CONTRACTUAL	2	1	1	1	1	1
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	8	8	8	8	8	8

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

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

The bill imposes the duty of assessing aircraft without the addition of taxes to the State for that effort. The burden of determining the value of aircraft is potentially onerous if the bill in fact requires the valuation of all aircraft of even international carriers such as Japan Airlines and the like. The proposed valuation formula works like this:

$$\frac{\text{landings}_{\text{municipality}}}{\text{landings}_{\text{worldwide}}} \times \text{assessed value}_{\text{worldwide}}$$

I am not sure how the "worldwide" scope can be reduced and still result in a realistic apportionment formula. However, Anchorage does not presently assess a tax on internationally-based carriers, such that there is no actual need to assess those aircraft. Nevertheless, the bill does not exempt such carriers from the mandatory duty to assess, but simply leaves the option of levying a tax to the

IV. DATE 5/6/82 PREPARED BY Robert M. Johnson
AGENCY Revenue
PHONE 276-1363

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

33-001 (Rev. 12/79)

municipality. Whether these internationally-based aircraft can in fact be taxed is a question for the Attorney General's Office.

S. 1 of 1

WIEN AIR ALASKA, INC.
PERSONAL PROPERTY TAX EXAMPLE

ASSUMPTIONS

1. ASSESSED VALUE PER AIRCRAFT $1,000,000
   " " " FLEET $4,000,000

2. ASSUME 2 JURISDICTIONS ONLY FOR SIMPLICITY

3. ASSUME #1 JURISDICTION ASSESSES BASED ON ONE AIRCRAFT'S TIME OVER IT, CALCULATED TO BE 30%

4. ASSUME #2 JURISDICTION IS THE SITUS OF THE FLEET. ALSO ASSUME THAT #2 ASSESSES BASED ON THE FULL AND TRUE VALUE OF THE FLEET, WITH CREDIT GIVEN ON ASSESSED VALUE BASED ON THE FOLLOWING:

   **Value per landing x (Ave.* Daily Landings in #1 Jurisdiction) = Assessment Credit

5. ASSUME THAT AN AIRCRAFT WILL SPEND 30 minutes on the ground per landing. Therefore, 1,000,000 ÷ 48 = $20,800 = VALUE PER LANDING **
   (there being 48 (½) hour periods in 1 day)

6. ASSUME THAT THE NUMBER OF LANDINGS BY FLEET IN PRIOR YEAR IN TOTAL WERE 20,129 AND THE NUMBER IN JURISDICTION #1 WERE 1838.
   THEREFORE, 1838 ÷ 365 = 5.03 Ave. Daily * Landings

WIEN AIR ALASKA, INC. 5-1-00
PERSONAL PROPERTY TAX EXAMPLE 2nd

JURISDICTION # 1

PRESENT METHOD		PROPOSED METHOD	
AVE. AIRCRAFT VALUE	1,000,000	FLEET VALUE	4,000,000
TIME OVER BOROUGH	X .30	PROPORTIONATE LANDINGS X	1538 / 20,729
ASSESSED VALUE #1	300,000	ASSESSED VALUE #1	355,000

JURISDICTION # 2

VALUE OF FLEET	4,000,000	FLEET VALUE	4,000,000
**20,800		Proportionate LANDINGS X	18,841 / 20729
X*5.03			
ASSESSED CREDIT	(104,624)		
ASSESSED VALUE #2	3895,376	ASSESSED VALUE #2	3,645,000
TOTAL FLEET Assessed value	4,NS,376	TOTAL FLEET ASSESSED VALUE	4,000,000
ACTUAL FLEET VALUE	4,000,000		
over ASSESSED	195,376		
1994 JUNE. MILL RATE	.01444		
OVER TAXED	2,800		

1838 LANDINGS IN #1
÷ 365 DAYS

= *5.03 LANDINGS / DAY

1,000,000
÷ 48 (30 minutes of 24 HOURS)
**20,800 VALUE PER LANDING

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 April 30, 1980

SUBJECT: Municipal taxation of transient aircraft (Work Order Number 8529)

TO: Senator Mike Colletta
Chairman, Senate Rules Committee

FROM: John B. Chenoweth
Legislative Counsel

In its draft form, this bill is somewhat more complex than the one-page proposal offered as an attachment to the letter directed to you which pointed out the problems involving multiple assessment, levy and collection of a property tax on aircraft. This bill is made longer by the fact that, while the municipal code contains extensive procedures relative to assessment, levy and collection of general property taxes, and AS 43.56 contains exterded provisions relating to state assessment, levy and collection of property subject to the tax jointly laid on oil exploration, production and pipeline transportation properties, the suggested mechanism for taxation of aircraft required preparation of a "hybrid" approach, allowing the commissioner of revenue to assess while leaving to municipalities the right to levy, subject to specific limitations.

This is a property tax levied for municipal purposes. The bill draft, therefore, adds sections to AS 29. I think the first three sections are fairly self-explanatory, though I would advise you to assure yourself that the definition of "transient aircraft" meets all aircraft you would intend to reach.

Section 4 speaks only to assessment year 1980 and would apply the formula offered in an earlier section to the assessment reported by the taxpayer under the law as it currently reads.

The permanent law portions of the bill are made effective January 1, 1981. The bill could have been given retroactive effect to January 1, 1980, (in which case section 4 would be deleted as unnecessary) but, because the principal provisions of the permanent law sections require the Department of Revenue to complete an assessment within a time frame of a few months at the outset of a calendar year, and because that time period has passed for 1980, it seemed preferable to delay the effective date and to provide an interim solution to problems posed by multiple claims of municipalities for just this one year based on the assessments which the taxpayers themselves reported. In other words, while the legislature could provide a complete form of relief in subsequent years, the "status quo" would be only marginally distrubed in the current assessment year. I do not know whether this approach would have an effect on litigation which may now be pending to resolve the legal questions presented, and cannot assure you that proposed sec. 4 of the bill would preclude litigation over issues presented. It is, at best, an effort at an interim, partial solution.

JBC:ljb

Enclosure

SJR
52

COMMITTEE REPORT

SENATE

FURTHER: Finance

4/11/89

Date: 4/24/80

Mr. President:

The Committee on JUDICIARY has had SSSJR 52

Proposing an amendment to the Constitution of the Saate of Alaska relating to limiting increases in expenditures

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Bill Kay NO REC

_____
CHAIRMAN

S 60 (Rev. 12/78)

May 12, 1980

Anchorage Women's Club
FREE Committee
1539 West Ninth Avenue
Anchorage, Alaska 99501

Dear Ladies:

It was a pleasure to have had your group appear before the Senate Judiciary Committee on SJR 52 on April 24th.

I was the only "Do pass" in my committee; I suggest you now individually get in touch with your respective Anchorage Legislators.

The resolution is in the Senate Finance Committee, which is chaired by Senator John Sackett.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk



Federation's Role in our Enterprise Economy

May 2, 1980

Senator Robert Ziegler
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler,

Thank you for giving a member of our committee the opportunity to testify regarding limiting government growth before the Senate Judiciary Committee on Thursday, April 24.

The FREE Committee is dedicated to the preservation and propagation of the American way of life through private enterprise. Limiting the growth of government is an excellent step toward our goals.

We appreciate very much the efforts of those senators who sponsored Senate Resolution 52.

Sincerely,

Anchorage Women's Club
FREE Committee

Barry McKean
Jennie Barrie Lolley
Teddy Cartwright
Janice Falk

1539 West Ninth Avenue • Anchorage, Alaska 99501 • 272-5015
A committee of the Anchoroge Woman's Club

April 25, 1980

I was the only "Do pass" in the Senate Judiciary Committee on April 24th. I suggest you write to your Senator.

Regards,

3

#

02658 POM TDA KENAI ALASKA 15 04-23 230P AST

PMS SENATOR ROBERT ZIEGLER

JUNEAU AK

WE SUPPORT THE PASSAGE OF THE BILL SSSJR52

HAROLD DALE

PO BOX 1360

KENAI AK 99611

TELEGRAM
ALASCOM, INC.
[illegible]-0442
[illegible] 99802

APR 23 PM 10 26

April 25, 1980

I was the only "Do pass" in the Senate Judiciary Committee on April 24th. I suggest you write to your Senator.

Regards,

#

80 APR 23

02629 POM TDA KENAIA ALASKA 15 04-23 13[illegible] PLAIN

PMS SENATOR ROBERT ZIEGLER

JUNEAU AK

PLEASE REPORT SSSJR52 OUT OF COMMITTEE.

ALASKANS SHOULD BE ABLE TO VOTE ON ISSUE.

C R BALDWIN BOX 4210 KENAI AK 99661

TELEGRAM
ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

April 25, 1980

I was the only "Do pass" in the Senate Judiciary Committee on April 24th. I suggest you write to your Senator.

Regards,

3

#

02653 POM TDA KENAI ALASKA 15 04-23 230P

PMS SENATOR ROBERT ZIEGLER

JUNEAU AK

WE SUPPORT THE PASSAGE OF THE BILL SSSJR52

LEO OBERTS

PO BOX 1360

KENAI AK 99611

TELEGRAM

'80 APR 25 P1:10

ALASKA, INC.

JUNEAU, AK 99802

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 22, 1980

Plse read before today's meeting
3

The Honorable Mike Colletta
Alaska State Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Colletta:

I would like to take this opportunity to express my qualified support for the concept of a constitutional amendment to limit increases in State spending. My staff has expended considerable effort in researching this question in previous years. Due to the technical difficulties in implementing constitutional spending limits, I decided that increased contributions to the Permanent Fund provide a superior alternative for absorbing State revenue surpluses and putting them to good use. Nevertheless, I remain interested in constitutional spending controls and am prepared to work with you in developing your proposal as contained in SSSJR 52.

My support is qualified due to the following considerations. First, I would not exclude appropriations for capital improvements, because the vast majority of capital improvements require future expenditures for operating expenses. Thus if you feel that expenditures need to be limited, you must confront the reality of capital projects and their long-term costs.

Second, real problems exist in selecting and utilizing indicators for "the estimated rate of growth of the economy of the State as determined by law." I would like to discuss this question with you and reach some consensus on the specifics of this mechanism before fully endorsing SSSJR 52.

Finally, while I fully endorse excepting appropriations to the Permanent Fund from the spending limit, I do not agree that all remaining surplus revenues should be distributed to State residents. Surplus revenues today represent the "cashing-out" of Alaska's one-time oil resources and as such these revenues

belong to future as well as present generations of Alaskans. I would prefer a requirement that all revenues in excess of expenditures under the allowed limits be placed in the Permanent Fund, and that residents continue to receive dividends based on the earnings of the Fund. In this manner the principal is retained collectively by all residents over time, while individual residents receive their portion of the on-going income stream. I would also consider an allocation of surplus revenues to my proposed PACE program as an acceptable alternative to direct distribution of the principal amounts of our oil wealth.

In closing, I wish to emphasize that our objectives here are one and the same, i.e., to prevent the irresponsible expenditure of our extraordinary one-time oil wealth as it accrues. While I continue to support the $900 million appropriation to the Permanent Fund as a means to save a significant portion of this year's oil reserves, I feel there is merit in pursuing adoption of a constitutional amendment to limit State spending. I have introduced legislation of similar intent, SJR 26, which is a proposed constitutional amendment to increase Permanent Fund contributions from twenty-five to seventy-five percent. I look forward to discussing this matter with you soon.

Sincerely,

Jay S. Hammond
Governor

cc: Keith Specking, Legislative Assistant to the Governor
Commissioner Williams, Department of Revenue
Ron Lehr, Director, Budget and Management
Fran Ulmer, Director, Policy Development and Planning

SR
4

COMMITTEE REPORT

SENATE

2/8/79

FURTHER: None

Date: 1-17

Mr. President:

The Committee on JUDICIARY has had SR 4

termination of the Mutual Defense Treaty with the Republic of China

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

ZIEGLER
Alaska State Senate

Letter: On the Taiwar Treaty New York Times Feb. 8, 1979

Has the President Broken the Law?

To the Editor:

Your Jan. 20 editorial "Unmaking a Treaty" frankly does not get to the point. You state that the Constitution is "silent" on how treaties can be undone and then suggest that "constitutional ambiguity has its own value."

The question I have raised by my lawsuit is too fundamental to be left up for grabs, depending on what party holds the White House or controls the Congress at any given moment of history. The real question is not "What does policy dictate?" but "Does the President have the power by law or under the Constitution to unilaterally abrogate treaties of mutual defense?"

There is absolutely no precedent for Presidential termination of defense treaties, and my suit wants to establish whether he has broken the law or not. If he has that power, then I say look out, because that is heading down the road to a dictatorship.

For your information, courts have ruled against Presidential power in at least three major areas in the last five years. If the courts had accepted your present line of reasoning, they would not have settled as they did the issues of executive privilege, pocket veto and impoundment, each of which raised questions of policy as well as law.

Yet the Supreme Court ruled against President Nixon in the subpoenaed tapes case in 1974, and in 1975 it ruled for the first time on the power of the President to impound funds appropriated by Congress by holding unanimously that President Nixon had exceeded his authority in refusing to allocate to the states $9 billion in water pollution funds. The U.S. Court of Appeals for the District of Columbia ruled against the practice of the Presidential pocket veto during intrasession adjournments of Congress in 1974. It is worth noting that in each of these cases the executive branch claimed the existence of a long line of practice, but the courts made clear that those precedents "cannot create" an executive power.

Rather, the courts insisted that "it is emphatically the province and duty of the judicial department to say what the law is." All my case does is ask the court what the law is. I believe you are wrong in mixing policy with law, when it is obvious the latter is best resolved by the courts.

BARRY GOLDWATER
U.S. Senator from Arizona
Washington, Jan. 24, 1979

TO. Sen Ziegler From Jay K.

HB
45

COMMITTEE REPORT

SENATE

FURTHER: None

4/3/79

Date: _____

Mr. President:

The Committee on JUDICIARY has had HB 45
powers of the Alaska Legislative Council and the Legislative Budget and Audit Committee

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ _____

_____

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_____

CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

45

JUNEAU ALASKA

M E M O R A N D U M

TO: Senator Bob Mulcahy, Chairman
Senate State Affairs Committee

FROM: J. W. Hogan, Director
Legislative Finance Division

SUBJECT: HB 45 - Arguments in Favor

At your request I have prepared the following arguments in support of HB 45. HB 45 grants the Legislative Council and the Legislative Budget & Audit Committee statutory authority to bring suit in the name of the Legislature during the interim. As the bill came to your committee, it was the same bill approved by the Legislature last year and vetoed by the Governor (SB 432 - since SB 432 was enacted by the last legislature this legislature could not override the veto this January, and a new bill had to be introduced, i.e., HB 45).

In the veto message for SB 432 the Governor stressed that the Legislature could always file an amicus brief in suits brought by others. The problem with this of course is that if "others" don't file suit against some executive action/inaction, then the Legislature has no case in which to file an amicus brief. Using the Budget & Audit Committee's Kelley v. Hammond case as an example, the 1976 legislature enacted Ch. 26, SLA 1976 which prohibited transfers between appropriations. Then in the General Appropriations Act (Ch. 279, SLA 1976) the Legislature modified the prohibition to allow transfers when approved by the Governor and the Legislative Budget & Audit Committee. The Attorney General advised the Governor to proceed with transfers but not to submit them to the Budget & Audit Committee for their approval. A list of transfers so approved is contained in LR 67, SLA 1977, attached.

Putting yourself in the place of the then Budget & Audit Chairman, the time is August 1976, the beginning of the 1977 fiscal year, and the Governor is transferring between appropriations against the expressed will of the Legislature. The Budget & Audit Committee votes to bring suit to stop the transfers, but has to search for four months to find a "private citizen" to file the suit. By the time the suit is

filed in January, the fiscal year is one-half over, and $2,637,385 has been transferred outside the approval mechanism set up by the Legislature. In brief, the real argument in favor of this bill is as follows:

> If the Legislature creates interim committees, as the Constitution allows, to look after its interests during the interim, then it must grant those committees the power to act--in this case bring suit--against the executive branch when the expressed interests of the Legislature are ignored. Otherwise, the interim committees can only anguish, publicly and/or privately.

The amendment added by your committee would authorize the presiding officer of each house to appoint one alternate member to the Budget & Audit Committee. The sole purpose of this amendment is to make it easier to obtain the necessary six-member quorum to accomplish Budget & Audit Committee interim business (normally a full day's agenda at least once a month). The extreme travel distances and divergent interests of our legislators has made it very difficult to obtain a comfortable quorum throughout the history of the Budget & Audit Committee's existence (established 1971).

JHH:pw
Attachment

cc: Jim Duncan, Chairman
Budget & Audit Committee

STATE OF ALASKA

THE LEGISLATURE

1977

Source: SCR 19

Legislative Resolve No.: 67

Relating to transfers of funds.

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

WHEREAS Revised Program 77-83 transferred $598,000 from the Department of Health and Social Services, Alaska Methodist University nursing home program appropriation, to the University of Alaska to continue nursing education in Alaska; and

WHEREAS Revised Program 77-39 transferred $90,000 in the Department of Military Affairs from the Alaska National Guard minor construction fund ($40,000) and the Juneau armory roof repair ($50,000) capital appropriations to provide the general fund match for federal construction of maintenance shops at Juneau, Nome and Bethel; and

WHEREAS Revised Program 77-106 transferred $33,000 and one position in the Department of Natural Resources from the Commissioner's Office appropriation to fund the newly organized Division of Mineral and Energy Management; and

WHEREAS Revised Program 77-121 transferred $19,700 and one position in the Department of Natural Resources from the Division of Lands appropriation to fund the newly organized Division of Mineral and Energy Management; and

WHEREAS Revised Program 77-122 transferred $16,500 in the Department of Health and Social Services from the Harborview facility appropriation to the Mental Health Administration to fund a Medicaid auditor position; and

WHEREAS Revised Program 77-126 transferred $146,900 and five positions in the Department of Community and Regional Affairs from the Local Government Assistance, Senior Citizens Tax Exemption, Juneau Indemnification, and Agricultural Lands Exemption appropriations to the newly established State Assessor budget request unit, Administration components; and

WHEREAS Revised Program 77-134 transferred $51,700 and one position in the Department of Education from the Boarding Home Program appropriation to the Administration and Support appropriation, Field Services allocation, to assist 21 new rural school districts in school financing; and

WHEREAS Revised Program 77-135 transferred $185,834 in the Office of the Governor from the Executive Office to the Alaska Fisheries Council for additional funding; and

WHEREAS Revised Program 77-143 transferred $7,600 in the Department of Revenue from the Audit and Treasury Management appropriations to the Administrative Services Division to establish an Information Officer position; and

WHEREAS Revised Program 77-168 transferred $20,400 and one position in the Department of Health and Social Services from the Public Assistance Administration and Support appropriation to Eligibility Determination; and

WHEREAS Revised Program 77-169 transferred $113,400 in the Department of Education from the CETA Administration ($63,400) and Vocational Education grants ($50,000) appropriations to Adult Vocational Education to restructure the Adult and Continuing Education section; and

WHEREAS Revised Program 77-171 transferred $10,000 in the Department of Administration from the salary increase appropriation to the Division of Personnel, Employee Relations component, to fund the Salary Commission; and

WHEREAS Revised Program 77-183 transferred $320,000 in the Department of Health and Social Services from Assistance Payments, AFDC, to Contract Institutions for a contract with Hope Cottage for patient care "if a supplemental is denied by the Legislature"; and

WHEREAS Revised Program 77-184 transferred $129,800 from the Department of Health and Social Services, Program Services Day Care appropriation to the Department of Community and Regional Affairs, Child Assistance Day Care appropriation, and

WHEREAS Revised Program 77-186 transferred $8,100 in the Department of Commerce and Economic Development from the Tourism appropriation to the Economic Enterprise appropriation to provide additional funds for a tourism study; and

WHEREAS Revised Program 77-187 transferred $60,000 from the Office of the Governor, Contingency Fund appropriation, to the Department of Community and Regional Affairs to provide the matching grant for a prematernal home in Bethel; and

WHEREAS Revised Program 77-194 transferred $40,000 in the Department of Environmental Conservation from Waters Programs ($6,000), Terrestrial Programs ($26,000), Program Coordination ($5,000), Regional Offices ($1,000) and Administration and Support Technical Services ($2,000) appropriations to the Office of the Commissioner to implement Senate Bill 406 (relating to oil terminal facilities and the marine transportation

of crude oil, refined petroleum products or their by-products), and

WHEREAS Revised Program 77-195 transferred $31,600 and one position in the Department of Public Works from the Division of Buildings appropriation to the Facilities Procurement Office to develop an overall project budgeting system, and

WHEREAS Revised Program 77-196 transferred $10,300 in the Department of Public Works from the Trunk and Secondary Airport appropriation to the Division of Aviation, Administration and Support appropriation, to fund a Leasing Officer position, and

WHEREAS Revised Program 77-197 transferred $100,000 from the Office of the Governor, Contingency Fund appropriation, to the Department of Commerce and Economic Development for a management audit of the Alaska Pipeline Services Company by the Alaska Pipeline Commission; and

WHEREAS Revised Program 77-200 transferred $20,000 from the Office of the Governor, Contingency Fund appropriation, to the Department of Law, Legal Services Administration appropriation, for legal representation at ICC pipeline rate hearings; and

WHEREAS Revised Program 77-201 transferred $3,000 in the Department of Education from the Education Program Support, Federal Program Administration appropriation, to the Boards and Commissions budget request unit for special education unit travel, and

WHEREAS Revised Program 77-206 transferred $90,751 in the Department of Education from the Rural and Military Tuition appropriation to the Supplemental Programs appropriation to pay the State's share of excess operations and maintenance for Nome-Beltz Regional High School; and

WHEREAS Revised Program 77-219 transferred $97,700 and one position from the Department of Health and Social Services, Alcantra Budget request unit, to the Department of Military Affairs, Alaska National Guard State Armories, to operate and maintain the Alcantra facility as a national guard armory; and

WHEREAS Revised Program 77-221 transferred $100,000 in the Office of the Governor from the Lieutenant Governor ($50,000) and Elections ($50,000) appropriations to the Executive Office for the Governor's Management and Efficiency Office and the Alaska Fisheries Council; and

WHEREAS Revised Program 77-238 transferred $100,000 in the Office of the Governor from the Alaska Pipeline Commission to the Governo 's Contingency Fund to negate Revised Program 77 197 which transferred $100,000 from the Governor's Contingency Fund to the Alaska Pipeline Commission to pay for the first stages of a management audit of the Alyeska Pipeline Service Company; and

WHEREAS Revised Program 77-242 transferred $14,100 and two positions in the Department of Administration from Archives and Records to the Office of the Commissioner to effect the transfer of the Uniform Commercial Code function; and

WHEREAS the aforementioned revised programs were approved solely by the governor, using as a basis of authority sec. 13(3), ch. 279 SLA 1976, as interpreted by the attorney general in his opinion dated July 22, 1976; and

WHEREAS the aforementioned revised programs have transferred a total of $2,637,385; and

WHEREAS sec. 13(3), ch. 279 SLA 1976 provides that "transfers may be made between appropriation items on approval by the governor and the Legislative Budget and Audit Committee";

BE IT RESOLVED by the Alaska State Legislature that it directs the Legislative Budget and Audit Committee to take all steps it considers advisable to assure compliance with the entire mandate adopted by the legislature as sec. 13(3) of ch. 279 SLA 1976 including proceeding with its suit Kelley v. Hammond, Civil Action No. 77-4, Superior Court of the State of Alaska, First Judicial District, and other court action it considers advisable.

LAWS OF ALASKA

1977

Source: HCSSB 204

Chapter No. 74

AN ACT

Relating to revisions of appropriations; and providing for an effective date.

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

* Section 1. AS 24.20.201(a)(5) is amended to read:

(5) review and approve proposed changes to agency authorized budgets as provided in the Executive Budget Act (AS 37.07);

* Sec. 2. AS 37.07.080(c) is amended to read:

(c) Transfers or changes between objects of expenditures or between allocations may be made by the head of a state agency upon approval of the division. No transfers may be made between appropriations except as provided in (h) of this section.

* Sec. 3. AS 37.07.080 is amended by adding a new subsection to read:

(h) Appropriations may be revised on approval by the governor and the Legislative Budget and Audit Committee to allow for

(1) increase of an appropriation item based on additional federal or other program receipts;

(2) establishment of a new, permanent position not authorized in the appropriated operating budget; or

(3) reallocation between appropriation items.

* Sec. 4. The requirement of approval by both the governor and the Legislative Budget and Audit Committee of revision of appropriations to the extent permitted in AS 37.07.080(h) is intended to provide a degree of flexibility in administration of the budget provided both required approvals are obtained. It is not intended that these revisions may be made with the sole approval of the governor. If a court of competent jurisdiction invalidates the requirement of approval by the Legislative Budget and Audit Committee for revision as authorized in AS 37.07.080(h)(1) (2) or (3), the entire paragraph or paragraphs for which that requirement was invalidated shall be totally void and of no effect whatsoever. If that requirement is invalidated for the entire subsection AS 37.07.080(h), that entire subsection shall be totally void and of no effect whatsoever.

* Sec. 5. Executive Order No. 20 dated June, 1962 is repealed.

* Sec. 6. This Act takes effect July 1, 1977.

Vetoed; veto over-ridden on May 27, 1977
Actual Effective Date: July 1, 1977

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 27, 1977

The Honorable John L. Rader
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

I have today vetoed HCSSB 204, (An Act relating to revision of appropriations under the Executive Budget Act). I have done so because I believe it to be clearly unconstitutional. The courts have consistently ruled that delegating the right to make modifications in a state's budget to a legislative committee is impermissible under our Constitution.

If you feel that the Constitution should be changed to confer that power to a legislative committee, then the matter should be placed directly before the people as a constitutional amendment. I hope that you will agree, sustain my veto and approve a resolution to submit to the electorate a constitutional amendment authorizing what the Constitution now prohibits.

If an amendment is adopted, I hope that a procedure will be established to require the interim committee to disapprove transfers and expenditure of federal or program receipts within a specific period of time. If the committee does not take action to refuse the request, by majority vote of the committee, the revisions would be effective and approved. The current system of approval permits veto by one member of the Budget and Audit Committee. If only a quorum is in attendance at the meeting (which has often been the case), a request can be defeated by the no vote of one member of the committee. Currently one member of the legislature can veto not only the Governor and the rest of the committee, but the legislature as well.

Sincerely,

Jay S. Hammond
Governor

Alaska State Legislature

House of Representatives

STATE CAPITOL
POUCH V
JUNEAU, ALASKA 99811
465-3019

HOME ADDRESS
RR 4 BOX 4316
JUNEAU, ALASKA 99803
789-9792

REPRESENTATIVE JIM DUNCAN
CHAIRMAN
BUDGET & AUDIT COMMITTEE

MEMBER
FINANCE COMMITTEE

M E M O R A N D U M

TO: Senator Bob Mulcahy
Chairman, State Affairs Committee

FROM: Rep. Jim Duncan
Chairman, Budget & Audit Committee

SUBJECT: House Bill No. 45 DATE: March 27, 1979

Attached is a copy of a proposed amendment to House Bill No. 45.

The amendment would allow for the appointment of alternate members to the Legislative Budget & Audit Committee. Often during the interim, the Legislative Budget & Audit Committee has difficulty establishing a quorum. The appointment of alternate members would allow the committee the flexibility to establish a quorum on a regular basis.

I do strongly support the amendment. Jay Hogan of Legislative Finance will be in attendance at your meeting to testify on the amendment.

If I can provide further information, please feel free to contact me.

JD:jp

July 3, 1978

The Honorable John Rader
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

After due consideration, I have decided that I must veto HCSSB 432 (Rules) which would empower both the Legislative Council and Budget and Audit Committee to bring suit in the name of the legislature.

Legislation authorizing legislative agents to bring civil actions in the name of the legislature in support of its orders and subpoenas is constitutional, and their doing so would be quite proper were the executive to fail to do so at the legislature's request. It would also be proper to authorize legislative agents to appear as amici curiae in cases challenging the validity of legislative acts, particularly as, for instance, in cases such as A.L.I.V.E. Voluntary, where the executive is challenging their validity. No one could possibly question the legislature's empowering its interim committee to act on these matters.

But bringing civil actions to compel the executive to act in accordance with the constitution and laws of the state exceeds the power vested in the legislative branch. Buckley v. Valeo, 424 U.S. 1 (1976). Circumstances compel me to infer that the legislature intends this bill to serve that purpose, that is, as it has in Croft v. Thomas (enforce election laws); Kelley v. Hammond (enforce finance laws); Bradner v. Hammond (enforce personnel laws); Hammond v. Chance (enforce constitution); and SCR 112 (enforce land laws).

At the present time, the Legislative Council has apparent authority to file amicus briefs in suits brought by others in which the legislature's laws or acts are challenged and

the executive's position is not in support of the legislature's, for example, as in A.L.I.V.E. Voluntary. So that is no problem. There has never been so much as a hint that the executive would fail to support the legislature's issuance of a subpoena or order. So that is no problem either. Accordingly, there is no pressing need for any authorizing legislation such as this bill at this particular time. There is time in which to develop legislation on the subject which will include standards and guidelines to steer the interim committees away from the shoals of the separation-of-powers doctrine.

Given the recent -- and continuing -- examples of the litigiousness of the interim committees, this bill, which is absolutely devoid of any standards or guidelines for bringing suit, is an open invitation to usurp executive power. As the United States Supreme Court said in Buckley:

> The enforcement power, exemplified by [the] discretionary power to seek judicial relief, is authority that cannot possibly be regarded as merely in aid of the legislative function of Congress. A lawsuit is the ultimate remedy for a breach of the law and it is to the president, and not to the Congress, that the Constitution entrusts the responsibility to 'take care that the laws be faithfully executed.'

The Constitution of Alaska dictates the same result. Public Defender Agency v. Superior Court, 3rd Jud. Dist., 534 P.2d 947 (Alaska 1975).

Accordingly, I have vetoed HCSSB 432 (Rules).

Sincerely,

Jay S. Hammond
Governor

OPINIONS OF HB 45 Bob Mulcahy

ROD PEGUES - DEPARTMENT OF LAW

This bill is unconstitutional and violates the separation of powers. The legislative branch enacts laws, the executive branch executes the law and the judicial branch adjudicates. It is clearcut. This bill would in effect usurp, by the legislative branch, the powers of the executive branch. The governor's first obligation is to uphold the constitution. There are cases when the legislature could litigate when exercise of legislative powers is being thwarted (via amicus briefs). He feels that the legislature should have certain powers of sueing (see attached bill draft from law) but cannot and should not have the power to sue the governor. Please see attached article which gives the Dept. of Law's basic position.

BILL BARRIER - LEGISLATIVE AFFAIRS, LEGAL SERVICES

Although he feels that this is a separation of powers issue, Mr. Barrier does not believe that this bill is in violation of the separation of powers concept of American Democracy. In some instances the legislature must be allowed to sue the executive in order to defend their powers. If the legislature wants to give the Legislative Council the power to sue it should be made specific, by statute, if they do or do not have this power. Best example of this type of situation. A few years ago there was a ballot proposition on exchange of lands. The legislature said that the ballot title was misleading and couldn't wait for the next session to do something about it as the election would be over by then. So the Legislative Council sued the executive through the Legislative Affairs Division of Legal Services. The court ruled that constitutionally the legislature cannot sue and that the Legislative Council does not have statutory authority to bring suit.

PROPOSITION #2, A CONSTITUTIONAL AMENDMENT

In last election to voters failed to pass proposition #2. This proposed amendment would have given the legislature the ability to vest one of its interim committees the authority to approve or disapprove revisions to the budget. The amendment would also permit the legislature to delegate to the interim committee its power to appropriate federal or other monies received from non-state sources.

GARY PESCA SACKETT'S A.A.

Legislative Finance- This bill has been introduced to give the legislature the power to sue the Governor. The LB&A Committee and the Legislative Council tried to sue Hammond for transferring money between appropriations (revising programs) during the interim without the approval of the LB&A Committee. (Kelly vs. Hammond). The issue of the right to sue came up after the preliminary judgement. Governor said it was unconstitutional. Ramona Kelly was on the LB&A Committee at the time.* They tried to make it a personal suit but it didn't work. Hammond has pressed this point to a much further extent than other governors. But it is a problem that has been and will be faced with any governor. There will always be a difference of opinion between the Legislative and Executive branches as to their powers as equal but separate branches and how far beyond their powers each can step. LB&A was trying to get the 3rd branch (Judicial) involved as a referee. Buth without the power to sue the legislative branch has no power to ask for 3rd party involvement. When the legislature is in session the law is clear and the governor has the power to transfer between appropriations by going thru the budget process (supp. or special appropriations). During the interim he does not have this vehicle and just does it on his own. At this point he cannot legally be stopped during the

interim. So unless the legislature is physically here, the governor can do anything he wants with bills and appropriations Courts say the issue doesn't matter. The legislature does not have the authority to bring a suit against the Governor so even though she was a private party (who can sue) it was considered a suit by LB&A.

ROB C FOR HOHMAN

This bill is to insure that legislative intent is implemented. When the governor circumvents the intent of legislation the only alternative is to sue him. Last election Prop. 2 (shich would have given the legislature the power to sue) was voted down by the people.

HB
195

COMMITTEE REPORT

SENATE

FURTHER: State Affairs and Finance

3/8/79

Date: 3/13/79

Mr. President:

The Committee on JUDICIARY has had HB 195 am providing for an advisory committee on judicial sentencing practices

under consideration and (a majority of the committee) (~~the committee~~) reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

T H E B L A C K C O A L I T I O N , I N C .

Anchorage, Alaska

April 2, 1979

Robert Ziegler, Chairman
Judicial Council
Pouch V
Juneau, Alaska 99811

Dear Chairman Ziegler:

Thank you for taking the time to meet with members and friends of the Black Coalition, Inc. while we were in Juneau recently.

Your comments regarding positions on the Advisory Board were appreciated. We will also be watching developments in the killing of Phillip Moore by the police department. We feel that Judicial Council review is a good suggestion.

We look forward to other meetings of this type, where concerns may be aired and addressed.

Sincerely,

Phillip Pleasant

gw

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
165 SOUTH FRANKLIN STREET
JUNEAU, ALASKA 99801
TELEPHONE 586-6425

M E M O R A N D U M

TO: Representative Anderson

FROM: Don Clocksin

DATE: February 16, 1979

SUBJECT: Sentencing Studies

1. Summary of Findings

In April, 1977, the Alaska Judicial Council issued a Preliminary Report analyzing felony sentencing patterns in Alaska from 1974 to 1976. On September 6, 1978, the Council issued a follow-up report documenting one finding from their studies - that race affected the length of a sentence. In October, the Alaska Court System prepared their own analysisof the Judicial Council data, and on October 30, the Judicial Council submitted a response to the Court System critique.

Though the statistical battle rages, a couple facts seem to be accepted by both the Council and the Court System. This memo addresses only the questions regarding Natives, not Blacks.

a. Particularly in Fairbanks, Natives convicted of felonies receive jail time much more often than whites.

b. Natives convicted of misdemeanors receive longer sentences than whites.

2. Discussion

The Court System has rejected the Judicial Council study as incomplete and inaccurate.

> If racial disparity in sentencing does indeed exist in Alaska, the Judicial Council study has not proven it to what we would consider an acceptable degree.

However, when one reads the Court System analysis and compares it with the study, it is clear that both agree a disparity exists and that it is based on race. This general rejection of the Judicial Council's efforts is contradicted by the following, quoted from the Court System analysis.

> "The Black and Native races have significantly lower probation rates."
>
> "Natives receive higher sentences across the board . . ."
>
> ". . . the finding of potential racial disparity appears probable for Natives on misdemeanor sentences . . ."

Once we conclude that a disparity exists, the next step is to look at all other explanations for the disparity. A number are mentioned in the two reports, while some others are not adequately considered. First, the findings indicate that a greater percentage of Natives are unemployed. The Court System concludes from that fact that more Natives get jail time because more of them are unemployed and thus cannot be put on probation.

Second, a substantially larger percentage of crimes by Natives are alcohol-related. The implication is that a greater sentence was imposed because alcohol was involved, not because a Native was involved.

Third, indications are that Natives have fewer ties to the community (Anchorage or Fairbanks) and that it is this "instability" which results in no probation, not the fact a Native is involved.

Fourth, a factor which seems to have been missed by all parties to this dispute is what kind of lawyer was available. Natives are much more likely to be represented by the Public Defender and much more likely to get jail time and longer sentences. The data seems to indicate that representation by appointed counsel has much more effect on length of sentence than most other factors. Since Public Defender defendants get longer sentences, and Natives more often must use the P.D., this factor should be looked at more carefully.

Fifth, another factor all but ignored by the studies is the demeanor of the defendant in open court. We may hypothesize that bush Natives, with different language and cultural backgrounds, handle themselves poorly when talking with the judge. We may also assume that, despite all the talk of objective sentencing criteria, the way a person behaves in front of a judge substantially affects the judge's sentence.

The important point to make about all these other "explanations" for the disparity in sentencing is that they tend to prove the racism rather than disprove it. Natives who 1) come from the bush; 2) cannot find jobs there; 3) have alcohol problems because of dramatic socio-cultural changes; 4) are poorer; 5) have no choice as to their lawyer; and 6) are forced into a foreign justice system, are suffering from those characteristics. Since they are uniquely Native characteristics in Alaska, heavier sentences based upon those characteristics are racist.

The difficulty with the Court System response is that it agrees with the data but rejects the hypothesis. Their attitude does not seem particularly constructive. A few examples: 1) Neither the Court System nor the Judicial Council lend any significance to the greater presence of alcohol in Native crimes or the almost non-existent role of drugs in Native crimes; 2) The Court System spends 10 pages

critiquing the findings on felony sentencing but only 3 pages on the misdemeanor sentences, when the latter clearly shows a racial disparity; and 3) The Court System discusses variables which absolve them of responsibility (e.g., unemployment) but do not discuss other explanations which place more responsibility on the justice system (e.g., demeanor in court; the pre-sentence report). By arguing that racial disparity has not been proven, the Court System unnecessarily delays any study of solutions.

3. Recommended Actions

Further study is clearly needed. The resolutions and bills on the subject are correct in their assumption that the disparity exists and methods for addressing it must be looked at. The study should look at the following:

a. comparison of alcohol-related crimes by Natives with alcohol-related crimes by whites;
b. comparison of crimes by unemployed Natives with crimes by unemployed whites;
c. comparison of sentencing patterns of rural courts with those of urban courts;
d. comparison of pre-sentencing reports on Natives with those on whites;
e. the importance of demeanor and visual and oral communication between probation officer and defendant and between judge and defendant in sentencing decisions;
f. the correlation between representation by a public defender and by private counsel and whether lower quality representation, if it occurs, affects Natives more than whites; and
g. the effect of alcohol on charges filed by the police and prosecutor and whether any such variable affects Natives more than whites.

Two general points to be made: First, it is likely, based upon any comparison between rural and urban courts, that Natives receive fairer sentences if they are sentenced close to home. If the lack of ties to the community is relevant to the sentencing decision, then sentencing by a court closer to the defendant's home is likely to be less harsh. We should consider making an effort of getting community-based correction facilities in rural areas and more effort at returning the defendant to his or her home for sentencing.

A second but related point is that, if a person is sentenced to jail time, he or she often is sent outside the state to do time. This hurts Natives particularly since their language and cultural differences make them an oddity in the lower 48. Rehabilitation is very difficult the further a person is taken from their home and relatives. Without family contact and assistance in finding

jobs, the ability to readjust to society becomes overwhelmingly difficult. If you are interested in the state's practice of shipping prisoners out of the state to serve their time, you may want to look at SB 32 which makes it easier to do so. It would adopt the Interstate Corrections Compact to facilitate out-of-state transfers and allow the Division of Corrections to avoid its obligation to encourage rehabilitation.

DC:vtb

STATE OF ALASKA

HUMAN RIGHTS COMMISSION

JAY S. HAMMOND, GOVERNOR

POUCH AH – JUNEAU 99811
PHONE: 586-8726c 465-3560

Statement of Niel Thomas
Executive Director
Alaska State Commission for Human Rights
before
House Judiciary Committee
Monday, February 26, 1979
On Racial Issues in Sentencing

The Human Rights Commission supports legislative efforts designed to address the question of what role race plays in the sentencing process in Alaska. Statistical studies by the Judicial Council over a two year period indicate that race is a significant factor which influences the sentences which individuals of different races receive.

These data may indicate that bias can enter into the process in a number of ways. Although subjective bias in the judge himself can be part of the problem, the Commission does not believe that judicial discretion is the only factor. Bias in the criminal justice system can enter at any stage. What the arresting officer views as "suspicious," given two people of different races who are doing the same thing, may be tainted by the officer's racism. Who the prosecutor chooses to prosecute may reflect the prosecutor's bias. The dynamics of trial and the mechanism of jury determinations can be similarly infected.

At sentencing, the judge must make his decision based upon information that is put before him, both by testimony and by sentencing reports. How the convicted individual behaves and expresses himself, his living conditions and lifestyle, may be related to cultural factors which can work for or against him in the judge's mind. How any given individual is described in a sentencing report may reflect the racial bias of the author of the report. For example, two individuals, one white and one minority, with identical working records may be described differently. The white person may be described as having an ability to obtain regular employment by virtue of his having held a succession of jobs. With the same work record, a minority individual's work history may be described as "irregular and spotty".

A judge who has been trained to assess facts and evidence impartially may not fully recognize the bias inherent in what he sees. Therefore, the ultimate sentence may reflect this collective bias. The proof has come out inferentially in the statistical averages compiled by the Judicial Council. Pinpointing prejudicial actions in individual cases is difficult if not impossible.

The Human Rights Commission has been requested by the Alaska Court System to join with the U.S. Department of Justice, Community Relations Service, to prepare training on these issues for Alaska's judges. A session of approximately one and a half days is now being planned for the annual Judicial Conference in Sitka this June. The training will familiarize judges with the ways in which prejudice can enter into the sentencing process so that judges may be more alert to it. The goal is to reduce sentencing disparities through increased judicial awareness.

The Commission supports any efforts of the legislature which would increase the body of information about sentencing disparities contained in studies which are now over two years old. Updating this information, possibly with statistics which identify the performance of individual judges over a longer time span, would deepen our understanding of the nature of the problem and what can be done about it.

LAII 2161 14.09 JA01 0035 14.09 02/26/79

TO REP. NELS ANDERSON

FROM: BERTRAND C. CAMPBELL, 3204 LATOUCHE, ANCHORAGE 99504 264-7730

AS PAST PRESIDENT OF THE ALASKA NATIVE CAUCUS AND TSIMSHIAN TRIBAL ASSOCIATION, I FEEL THAT HB 195 AND HB 196, ALONG WITH HCR 5, ARE ABSOLUTELY NECESSARY IN ORDER TO CORRECT THE OBVIOUS INEQUITIES IN THE JUDICIAL SYSTEM. THE STUDIES OF THE JUDICIAL COUNCIL AND THE ALASKA COURT SYSTEM HAVE CORROBORATED MY LIFE-LONG FEELING THAT ALAKAN NATIVES DO NO RECEIVE EQUAL OR JUST CONSIDERATIONS IN THE COURTS OF ALASKA.

THESE BILLS AND RESOLUTION ARE A FIRST STEP IN IDENTIFYING THE PROBLEMS AND CORRECTING THESE PROBLEMS.

CD EOM/

HB 195 - 196 - HCR 5

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
165 SOUTH FRANKLIN STREET
JUNEAU, ALASKA 99801
TELEPHONE 586-6425

MEMORANDUM

TO: Representative Anderson

FROM: Don Clocksin

DATE: February 16, 1979

SUBJECT: Sentencing Studies

1. Summary of Findings

In April, 1977, the Alaska Judicial Council issued a Preliminary Report analyzing felony sentencing patterns in Alaska from 1974 to 1976. On September 6, 1978, the Council issued a follow-up report documenting one finding from their studies - that race affected the length of a sentence. In October, the Alaska Court System prepared their own analysisof the Judicial Council data, and on October 30, the Judicial Council submitted a response to the Court System critique.

Though the statistical battle rages, a couple facts seem to be accepted by both the Council and the Court System. This memo addresses only the questions regarding Natives, not Blacks.

a. Particularly in Fairbanks, Natives convicted of felonies receive jail time much more often than whites.

b. Natives convicted of misdemeanors receive longer sentences than whites.

2. Discussion

The Court System has rejected the Judicial Council study as incomplete and inaccurate.

> If racial disparity in sentencing does indeed exist in Alaska, the Judicial Council study has not proven it to what we would consider an acceptable degree.

However, when one reads the Court System analysis and compares it with the study, it is clear that both agree a disparity exists and that it is based on race. This general rejection of the Judicial Council's efforts is contradicted by the following, quoted from the Court System analysis.

> "The Black and Native races have significantly lower probation rates."
>
> "Natives receive higher sentences across the board . . ."
>
> ". . . the finding of potential racial disparity appears probable for Natives on misdemeanor sentences . . ."

Once we conclude that a disparity exists, the next step is to look at all other explanations for the disparity. A number are mentioned in the two reports, while some others are not adequately considered. First, the findings indicate that a greater percentage of Natives are unemployed. The Court System concludes from that fact that more Natives get jail time because more of them are unemployed and thus cannot be put on probation.

Second, a substantially larger percentage of crimes by Natives are alcohol-related. The implication is that a greater sentence was imposed because alcohol was involved, not because a Native was involved.

Third, indications are that Natives have fewer ties to the community (Anchorage or Fairbanks) and that it is this "instability" which results in no probation, not the fact a Native is involved.

Fourth, a factor which seems to have been missed by all parties to this dispute is what kind of lawyer was available. Natives are much more likely to be represented by the Public Defender and much more likely to get jail time and longer sentences. The data seems to indicate that representation by appointed counsel has much more effect on length of sentence than most other factors. Since Public Defender defendants get longer sentences, and Natives more often must use the P.D., this factor should be looked at more carefully.

Fifth, another factor all but ignored by the studies is the demeanor of the defendant in open court. We may hypothesize that bush Natives, with different language and cultural backgrounds, handle themselves poorly when talking with the judge. We may also assume that, despite all the talk of objective sentencing criteria, the way a person behaves in front of a judge substantially affects the judge's sentence.

The important point to make about all these other "explanations" for the disparity in sentencing is that they tend to <u>prove</u> the racism rather than disprove it. Natives who 1) come from the bush; 2) cannot find jobs there; 3) have alcohol problems because of dramatic socio-cultural changes; 4) are poorer; 5) have no choice as to their lawyer; and 6) are forced into a foreign justice system, are suffering from those characteristics. Since they are uniquely Native characteristics in Alaska, heavier sentences based upon those characteristics are racist.

The difficulty with the Court System response is that it agrees with the data but rejects the hypothesis. Their attitude does not seem particularly constructive. A few examples: 1) Neither the Court System nor the Judicial Council lend any significance to the greater presence of alcohol in Native crimes or the almost non-existent role of drugs in Native crimes; 2) The Court System spends 10 pages

critiquing the findings on felony sentencing but only 3 pages on the misdemeanor sentences, when the latter clearly shows a racial disparity; and 3) The Court System discusses variables which absolve them of responsibility (e.g., unemployment) but do not discuss other explanations which place more responsibility on the justice system (e.g., demeanor in court; the pre-sentence report). By arguing that racial disparity has not been proven, the Court System unnecessarily delays any study of solutions.

3. Recommended Actions

Further study is clearly needed. The resolutions and bills on the subject are correct in their assumption that the disparity exists and methods for addressing it must be looked at. The study should look at the following:

a. comparison of alcohol-related crimes by Natives with alcohol-related crimes by whites;
b. comparison of crimes by unemployed Natives with crimes by unemployed whites;
c. comparison of sentencing patterns of rural courts with those of urban courts;
d. comparison of pre-sentencing reports on Natives with those on whites;
e. the importance of demeanor and visual and oral communication between probation officer and defendant and between judge and defendant in sentencing decisions;
f. the correlation between representation by a public defender and by private counsel and whether lower quality representation, if it occurs, affects Natives more than whites; and
g. the effect of alcohol on charges filed by the police and prosecutor and whether any such variable affects Natives more than whites.

Two general points to be made: First, it is likely, based upon any comparison between rural and urban courts, that Natives receive fairer sentences if they are sentenced close to home. If the lack of ties to the community is relevant to the sentencing decision, then sentencing by a court closer to the defendant's home is likely to be less harsh. We should consider making an effort of getting community-based correction facilities in rural areas and more effort at returning the defendant to his or her home for sentencing.

A second but related point is that, if a person is sentenced to jail time, he or she often is sent outside the state to do time. This hurts Natives particularly since their language and cultural differences make them an oddity in the lower 48. Rehabilitation is very difficult the further a person is taken from their home and relatives. Without family contact and assistance in finding

jobs, the ability to readjust to society becomes overwhelmingly difficult. If you are interested in the state's practice of shipping prisoners out of the state to serve their time, you may want to look at SB 32 which makes it easier to do so. It would adopt the Interstate Corrections Compact to facilitate out-of-state transfers and allow the Division of Corrections to avoid its obligation to encourage rehabilitation.

DC:vtb

HB

213

COMMITTEE REPORT

SENATE

3/27/79

FURTHER: None

Date: 4/4/79

Mr. President:

The Committee on JUDICIARY has had HB 213
relating to the Alaska Police Standards Council

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

SENATE AMENDMENT

By Senate Judiciary Committee

To: _____ SENATE BILL No. _____

To: Amend _____ HOUSE BILL No. HB 213

PAGE: 2 LINE: 21

Change update to July 1, 1997

Introduced: 2/14/79
Referred: State Affairs

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 213

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Police Standards Council; and providing for an effective date."

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

* Section 1. AS 18.65.150 is amended by adding new paragraphs to read.

(4) the special agent in charge of the Federal Bureau of Investigation in Alaska or his designee, if approved by the appropriate official of the bureau;

(5) the director of the Criminal Justice Center, University of Alaska, or his designee.

* Sec. 2. AS 18.65.220 is amended by adding a new paragraph to read:

(5) employ an administrator and other employees necessary to implement the provisions of AS 18.65.130 - 18.65.290.

* Sec. 3. AS 18.65.240 is amended by adding a new subsection to read:

(c) The council may revoke the certificate of a police officer who does not meet the standards adopted under (a)(2) of this section.

* Sec. 4. AS 18.65.280 is amended to read:

Sec. 18.65.280. EXEMPTIONS. (a) The commissioner and deputy commissioner of public safety and the chief administrative officer of participating local police agencies are exempt from the requirements of AS 18.65.240 [SEC. 240 OF THIS CHAPTER]. However, a chief of police of a participating local police agency, except a person serving as chief of police on the effective date of this chapter, who performs operational duties in addition to administrative duties, must meet the requirements of AS 18.65.240(a)(1).

(b) Any municipality with an established police training program which meets the requirements of AS 18.65.220(2) and (3) may exclude itself from the provisions of this Act by ordinance. The exclusion has [SHALL HAVE] no effect on eligibility to receive or expend federal or state grants.

* Sec. 5. AS 18.65.290(2) is amended to read:

(2) "police officer" means a full-time employee of the state or a municipal [A] police department with authority to arrest and issue citations; detain a person taken into custody until that person can be arraigned before a judge or magistrate; conduct investigations of violations of and enforce criminal laws, regulations, and traffic laws; search with or without a warrant persons, dwellings, and other forms of property for evidence of a crime; carry a concealed weapon; and take other action which is consistent with and necessary for the exercise of these enumerated powers when necessary to maintain the public peace; [WHICH IS A PART OF OR ADMINISTERED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE PARTICIPATING IN A PROGRAM ESTABLISHED UNDER SECS. 130-290 OF THIS CHAPTER, WHO IS RESPONSIBLE FOR THE PREVENTION AND DETECTION OF CRIME AND THE ENFORCEMENT OF THE PENAL, TRAFFIC OR HIGHWAY LAWS OF THIS STATE.]

* Sec. 6. AS 18.65.290 is amended by adding a new paragraph to read:

(3) "chief administrative officer" means the chief of police or other official who is head of a police department in a participating political subdivision.

* Sec. 7. This Act takes effect July 1, 1979.

March 28, 1979

Senator Robert Ziegler,
Chairman, and Members
Senate Judiciary Committee

James F. Mayer
Administrator
Alaska Police Standards Council

HB 213, "An Act Relating to the Alaska Police Standards Council"

Following is a brief section-by-section analysis of HB 213:

AS 18.65.150 (4)(5)

These sections add two members to the existing nine-member council, which is responsible for coordinating the training and education efforts for all full-time police officers in Alaska. The new members would be the director of the Criminal Justice Center of the University of Alaska or his designee, because of his programs of post-secondary education for police officers, and the Agent in Charge of the F.B.I. in Alaska or his designee, since they provide a significant amount of specialized and in-service training programs to police officers throughout Alaska.

The addition of these two members will supply valuable input to the council's coordinating efforts.

AS 18.65.220 (5)

This section is a standard housekeeping measure giving the council the statutory authority to employ staff. This is presently accomplished through the budgetary process.

AS 18.65.240 (c)

This section gives the council enforcement authority to revoke a police officer certificate (under the Administrative Procedure Act) if the officer at any time does not meet the minimum standards of employment set forth in (a)(2) of this section.

For example, an officer could receive certification from the council and it later be found that he did not meet the minimum standards for employment, or an incident might take place which would be disqualifying. As it stands, inadequate revocation authority exists.

Passage of this section would alleviate this situation and preserve the integrity of the law enforcement profession.

AS 18.65.280 (a)

This section will require a police chief who performs operational duties (i.e. patrol, traffic, etc.) in addition to strictly administrative duties to meet the minimum training standards in AS 18.65.240 (a)(1). It will effect mostly smaller communities whose chiefs actually perform police functions but will not effect their right to employ whomever they want as chief.

It is the council's strong feeling that whoever has policing responsibility, regardless of rank, should have the required minimum police officer training.

AS 18.65.280 (b)

This is also a housekeeping measure to assure that any municipality which desires to exclude itself from the provisions of the Police Standards Act must have an established police training program which meets the minimum requirements of the Act.

AS 18.65.290 (2)

This is a housekeeping measure to more clearly define "police officer" and correct the ambiguity of the original statute.

AS 18.65.290 (3)

This defines "chief administrative officer" as used throughout the Act and regulations promulgated thereunder.

Please note that this proposed legislation has been discussed in detail with the Alaska Chiefs of Police Association and the Public Safety Committee of the Alaska Municipal League and has their full support.

JFM/mas

LATI 3328 16.01 JA01 0072 16.01 04/06/8?

TO SENATOR ROBERT ZIEGLER
FROM: ADULT PROBABTION/PAROLE OFFICERS
SUPERIOR COURT BUILDING
941 WEST 4TH AVENUE
ANCHORAGE, AK 99501 274-1534

ALTHOUGH YOU VOTED AGAINST OUR SB 162, WE UNDERSTAND YOU HAE BEEN WORKING TO HAVE US MOVED TO A MORE APPROPRIATE AGENCY AND OUT OF H&SS. THANK YOU FOR YOUR EFFORTS AND PLEASE VOTE AGAINST THE RIDER ON HB 213 WHICH WAS INTRODUCED TO SUBVERT SB 162.

CD EOM

April 10, 1979

Adult Probation/Parole Officers
Superior Court Building
941 West 4th Avenue
Anchorage, Alaska 99501

Gentlemen:

House Bill 213 is in the Senate Judiciary committee and has been since it passed the House on March 23rd. The bill was introduced at the request of the Governor just one day after Senator Bennett introduced Senate Bill 162 (February 13th). The bill came over from the House in unamended form, and I am not sure to what you are referring when you mention "the rider which was introduced to subvert SB 162." You may have in mind the new language on lines 7 through 16 on page two of the bill (enclosed). According to the Governor's transmittal letter which accompanied the bill, the purpose of this language is to differentiate "police officer" from "peace officer." You will note that the bills are amending two entirely separate statutes. On the face of it, at least, I would not think that the provisions of HB 213 do any violence to that which you are trying to accomplish with the passage of SB 162.

If I err, or there is something in the legislation which I do not see, please let me know. We are not planning to schedule this bill in the near or foreseeable future, but we would certainly welcome any written testimony you would like to offer.

Regards,

Robert H. Ziegler, Sr.

RHZ/pkz

RECEIVED
MAR 6 1979
Police Standards Council

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION
FBI Academy
Quantico, Virginia 22135

In Reply, Please Refer to File No.

March 1, 1979

Mr. James F. Mayer
Executive Director
Alaska Police Standards Council
Pouch AS
Juneau, Alaska 99811

Dear Jim:

Your letter to Judge Webster dated February 15, 1979, concerning the addition of Special Agent in Charge Simon Tullai to the Alaska Police Standards Council has been referred to me for reply.

The FBI's commitment to police training is one of long standing and we are most desirous of continuing our training for those agencies who seek our assistance. As you are aware, Special Agents in Charge of many FBI field offices are designated members of training councils such as yours. We are honored that you have requested the legislated addition of the Special Agent in Charge of our Anchorage Division to serve on your Council.

I am indeed pleased to advise that authority has been granted for Special Agent in Charge Simon Tullai, his designee, and successors to serve as a mandated member of the Alaska Police Standards Council. It is our sincere desire to be of whatever assistance possible to your Council in its efforts to maintain the high quality of law enforcement in the state of Alaska.

I wish you success in this legislation and I am looking forward to a continued excellent relationship between the FBI and the Alaska Police Standards Council.

Sincerely yours,

Kenneth E. Joseph, Ph.D.
Assistant Director

STATE
of ALASKA

MEMORANDUM

TO: Senator Robert Ziegler,
Chairman, and Members
Senate Judiciary Committee

DATE: March 28, 1979

FILE NO.

TELEPHONE NO.

FROM: James F. Mayer
Administrator
Alaska Police Standards Council

SUBJECT: HB 213, "An Act Relating to the Alaska Police Standards Council"

Following is a brief section-by-section analysis of HB 213:

AS 18.65.150 (4)(5)

These sections add two members to the existing nine-member council, which is responsible for coordinating the training and education efforts for all full-time police officers in Alaska. The new members would be the director of the Criminal Justice Center of the University of Alaska or his designee, because of his programs of post-secondary education for police officers, and the Agent in Charge of the F.B.I. in Alaska or his designee, since they provide a significant amount of specialized and in-service training programs to police officers throughout Alaska.

The addition of these two members will supply valuable input to the council's coordinating efforts.

AS 18.65.220 (5)

This section is a standard housekeeping measure giving the council the statutory authority to employ staff. This is presently accomplished through the budgetary process.

AS 18.65.240 (c)

This section gives the council enforcement authority to revoke a police officer certificate (under the Administrative Procedure Act) if the officer at any time does not meet the minimum standards of employment set forth in (a)(2) of this section.

For example, an officer could receive certification from the council and it later be found that he did not meet the minimum standards for employment, or an incident might take place which would be disqualifying. As it stands, inadequate revocation authority exists.

Passage of this section would alleviate this situation and preserve the integrity of the law enforcement profession.

AS 18.65.280 (a)

This section will require a police chief who performs operational duties (i.e. patrol, traffic, etc.) in addition to strictly administrative duties to meet the minimum training standards in AS 18.65.240 (a)(1). It will effect mostly smaller communities whose chiefs actually perform police functions but will not effect their right to employ whomever they want as chief.

It is the council's strong feeling that whoever has policing responsibility, regardless of rank, should have the required minimum police officer training.

AS 18.65.280 (b)

This is also a housekeeping measure to assure that any municipality which desires to exclude itself from the provisions of the Police Standards Act must have an established police training program which meets the minimum requirements of the Act.

AS 18.65.290 (2)

This is a housekeeping measure to more clearly define "police officer" and correct the ambiguity of the original statute.

AS 18.65.290 (3)

This defines "chief administrative officer" as used throughout the Act and regulations promulgated thereunder.

Please note that this proposed legislation has been discussed in detail with the Alaska Chiefs of Police Association and the Public Safety Committee of the Alaska Municipal League and has their full support.

JFM/mas

The State Affairs Committee has had HOUSE BILL NO. 213 (relating to the Alaska Police Standards Council; effective date) under consideration and a majority of the committee recommends it do pass and attaches a new fiscal note. Concurring: Miller (Chairman), Eliason, Fuller, Parker, Metcalfe and Martin. HB 213

A new fiscal note on HB 213 appears in House Journal Supplement No. 20.

HB 213 was referred to the Rules Committee for placement on the calendar.

The State Affairs Committee's letter of intent for HB 213 appears as follows:

STATE AFFAIRS COMMITTEE LETTER OF INTENT

HB 213

The State Affairs Committee heard testimony on HB 213 ("An Act relating to the Alaska Police Standards Council; and providing for an effective date") March 1 and although the committee was unanimous in its recommendation that the bill pass and that the Alaska Police Standards Council be expanded, there was not unanimity in the view that additional state dollars need be spent to fund the bill. The feeling of the committee (on a 4 to 2 vote) was that the representative on the council from the FBI and the representative from the Criminal Justice Center should be able to fund their own travel from federal or other funds already under their control. Therefore, the committee voted that the fiscal note on this legislation should be zero and that no additional funding be provided.

Mike Miller, Chairman

The Resources Committee has had HOUSE BILL NO. 239 (making a special appropriation to the Legislative Affairs Agency for a gas liquids line feasibility study and an instate royalty gas and gas liquids line feasibility study; effective date) under consideration and a majority of the committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 239 (same title) and that it do pass. Concurring: Miles (Co-Chairman), Osterback (Co-Chairman), Halford, Chatterton, Carney and Fuller. HB 239

HB 239 was referred to the Finance Committee.

FISCAL NOTE

HB 213

I. REQUEST
Bill/Resolution No House Bill 213
Title An Act relating to the Police Standards Council
Requested by State Affairs Date March 1, 1979

II. FISCAL DETAIL Office of the Governor
Agency Affected
Program Category Affected Administration of Justice
BRU, Program, or Subprogram(s) Affected Alaska Police Standards Council
(Note: If more than one budget component is affected, separate the dollar amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

The recommendation of the State Affairs Committee was that the F.B.I. and the Criminal Justice Center should provide their own funds for per diem and travel.

IV. DATE 3-1-79 PREPARED BY
AGENCY State Affairs Committee
PHONE 465-4906

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

33-001 (Rev. 12/78)

ALASKA STATUTES

Article 2. Alaska Police Standards Council.

Sec. 18.65.130. Policy. The administration of criminal justice affects the health, safety and welfare of the people of this state, and requires education and training of a professional quality. It is in the public interest that education and training be made available to persons seeking to become police officers, police officers who are serving in a temporary or probationary capacity, and police officers already in regular service.

Sec. 18.65.140. Creation. There is created in the Office of the Governor the Alaska Police Standards Council.

Sec. 18.65.150. Composition of council. The council consists of the following persons:

(1) four chief administrative officers or chiefs of police of participating local governments;

(2) the commissioner of public safety or his designee;

(3) four members of the public at large with at least two from the communities of 2,500 population or less.

Sec. 18.65.160. Appointment. The commissioner of public safety or his designee shall serve during his continuance in office. Other members of the council shall be appointed by the governor for terms of four years, except that no member may serve beyond the time he holds the office which made him eligible for appointment. The terms of members initially appointed to the council by the governor shall be two for one year, two for two years, two for three years, and two for four years. A vacancy on the council shall be filled for the remainder of a member's unexpired term in the same manner as the original appointment.

Sec. 18.65.170. Chairman and vice chairman. The council shall select its chairman and vice chairman annually.

Sec. 18.65.180. Holding another office. Membership on the council does not disqualify a member from holding any other public office or employment.

Sec. 18.65.190. Compensation and expenses. The members of the council receive no salary, but are entitled to per diem and travel expenses authorized by law for other boards and commissions.

Sec. 18.65.200. Meetings. The council shall meet at least twice a year. The chairman shall set the time and place of the meeting, either on his own motion or on written request by any three members of the council.

STATE
of ALASKA

MEMORANDUM

TO: Senator Robert Ziegler,
Chairman, and Members
Senate Judiciary Committee

DATE: March 28, 1979

FILE NO:

TELEPHONE NO:

FROM: James F. ...yer
Administrator
Alaska Police Standards Council

SUBJECT: HB 213, "An Act Relating to the Alaska Police Standards Council"

Following is a brief section-by-section analysis of HB 213:

AS 18.65.150 (4)(5)

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For example, an officer could receive certification from the council and it later be found that he did not meet the minimum standards for employment, or an incident might take place which would be disqualifying. As it stands, inadequate revocation authority exists.

Passage of this section would alleviate this situation and preserve the integrity of the law enforcement profession.

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This is a housekeeping measure to more clearly define "police officer" and correct the ambiguity of the original statute.

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Please note that this proposed legislation has been discussed in detail with the Alaska Chiefs of Police Association and the Public Safety Committee of the Alaska Municipal League and has their full support.

JFM,'mas

HB
261

COMMITTEE REPORT

SENATE

FURTHER: Finance

3/12/79

Date: _____

Mr. President:

The Committee on JUDICIARY has had HB 261

supplemental appropriation to the Dept. of Law for training program on the revised criminal code

under consideration and (a majority of the committee) (~~the committee~~) reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

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CHAIRMAN

S 60 (Rev. 12/78)

The second session of the tenth Alaska Legislature adopted a new criminal code for the state. The new code is a sweeping and comprehensive revision of Alaska's criminal law. The code becomes effective on January 1, 1980. The eighteen month delayed effective date was specified to allow sufficient time to devise and implement a training program to ensure that all segments of the criminal justice system would be familiar with the code once it went into effect. Though envisioning this training program, the Legislature failed to provide funds for its development and implementation. The funding of a training program is critical to ensure a smooth transition from existing [illegible] the new criminal code.

The attached pages discuss in detail the training program to be conducted by the Department of Law. The program has two phases. The first begins on April 1, 1979 and continues until June 30, 1979. During April and May of this year a criminal code manual will be prepared by the Department of Law. The manual will include the provisions of the new criminal code, the relevant corresponding sections of the prior criminal code, the commentary adopted by the legislature expressing its intent in passing the criminal

code, cross-references for each statute to other relevant provisions in the criminal code, a derivation chart listing the states upon which the revised criminal code was based and a compilation of judicial decisions in states having statutes similar to those appearing in the new criminal code. The manual will be approximately five-hundred pages and will be distributed to all district attorneys, public defenders and judges. Extra copies of the manual will be available at cost to members of the defense bar.

The first phase of instruction will begin in Sitka in early June for all district attorneys. A twelve-hour session conducted over two days is planned. Training manuals will be distributed at or before the session. All members of the eight district attorneys offices will leave the session with a working knowledge of the criminal code along with a manual which will address many of the questions which will arise once the code becomes effective.

Also being held in Sitka at the same time as the district attorney's conference is the annual judicial conference. Members of the criminal division of the Department of Law will present an overview of the criminal code at the judicial conference and distribute the criminal code manual. Also envisioned is a program on the new criminal code to be

presented at the Alaska Bar Association Convention in Sitka prior to the judicial conference.

The second phase of the training program will commence on July 1, 1979. Drafting will begin on a criminal code work book which will be distributed to all law enforcement officers (both state and municipal) in Alaska. The work book will be drafted in conjunction with the efforts of the Department of Public Safety Academy to devise a training program for new recruits. The work book will emphasize those provisions of the criminal code which are of particular relevance to peace officers (i.e., assault, disorderly conduct, homicide, theft, joyriding). A number of questions regarding the statutes will also be included. These questions will be answered by the officers at the training sessions described below. An instruction manual will also be prepared which will be used by the eight prosecuting attorney instructors who will be assigned primary responsibility for training law enforcement officers.

In early fall a five-day intensive review of the criminal code will be conducted in Anchorage. Eight prosecuting attorneys, one from each of the eight state district attorney offices located in Ketchikan, Juneau, Anchorage, Bethel, Nome, Kenai, Fairbanks, and Kodiak will attend this session.

Each of the eight prosecuting attorney instructors with the assistance of the attorney coordinator will be responsible for the training of all law enforcement officers in their city and surrounding communities. The five day meeting will acquaint the prosecuting attorney instructors with the training program for law enforcement officers.

Instruction of law enforcement officers will be conducted from October 1 to December 15, 1979 by the attorney coordinator and the prosecuting attorney instructors. The primary sessions will be held in the eight cities having district attorney offices. The sessions will be two days long, with several sessions contemplated in the larger communities. All local law enforcement offices as well as officers from surrounding communities having less than five peace officers will attend these sessions. Similar sessions will also be held in surrounding communities having five or more peace officers.

Upon completion of the training program for law enforcement officers, the coordinating attorney will begin work on sample complaints to be used in charging under the criminal code. Work will also begin in conjunction with the court system on a set of jury instructions to be used with the criminal code.

The final phase of the training program will be conducted at the eight district attorney offices during May 15-June 30. The attorney coordinator will conduct reviews of selected areas of the code as well as address problems that have arisen since the code's implementation.

SUMMARY OF COST OF CRIMINAL CODE TRAINING PROGRAM
April 1, 1979 - June 30, 1980

Personal Services	$ 77,371.67
Travel	28,897.43
Printing and video costs	18,200.00
Commodities	7,350.00
	$131,819.10

PHASE I COSTS: April 1, 1979 - June 30, 1979

I. Attorney Coordinator

A. Prepare Criminal Code Manual to include new criminal code, corresponding provisions of old criminal code, commentary adopted by legislature, derivation information listing states with similar statutes and judicial decisions interpreting statutes, cross references to other relevant statutes in new criminal code.

B. Conduct first phase of training for all district attorneys and assistant district attorneys in Sitka. June 11-12.

C. Present programs on criminal code at:

1. Judicial Conference - Sitka, June 11-13

2. Bar Association Convention - Sitka, June 6-8

3 months x 1,620.36 $13,861.08

II. Legal Intern - Research judicial decisions in other states with statutes similar to those appearing in criminal code. Compile decisions for placement in criminal code manual.

3 months x $1,800 5,400.00

III. Travel and per diem (see detailed cost analysis attached) 12,865.28

IV. Printing of criminal code manual and distribution to all district attorneys, public defenders and judges (including postage).

350 sets x $12 4,200.00

V. Video tape production: includes cost of tapes, filming and reproduction costs of recording training program for district attorneys. Tapes to be used for training district attorneys hired after June 1979 and in training district attorneys unable to attend training program in Sitka. 3,000.00

VI. Telephone - $200 per month 600.00

VII. Commodities and office consumables

$250 per month 750.00

VIII. Secretarial support:

$1,836 x 3 5,508.00

$46,184.36

III. Secretarial support:

12 months 1/2 time x $1,836.56	11,019.35

IV. Printing of workbook for law enforcement officers:

1,000 x $8.00	8.000.00

V. Video tape production: includes cost of tapes, filming and reproduction costs of recording training program for law enforcement officers. Tapes to be used for training law enforcement officers hired after December 15, 1979 and in training of officers who are unable to attend programs conducted October 1 to December 15, 1979. 3,000.00

VI. Telephone: $200 per month 2,400.00

VII. Commodities and office consumables: $250 per mo. 3,600.00

$85,634.74

TRAVEL AND PER DIEM COSTS - PHASE I

Travel costs for 45 district attorneys and assistant district attorneys to Sitka to attend two-day training session on criminal code:

To Sitka from:

Juneau - 7 x $64.24	=	$ 449.68
Ketchikan - 2 x $93.16	=	186.32
Anchorage - 21 x $180.08	=	3,781.68
Kenai - 2 x $216.08	=	432.16
Kodiak - 2 x $275.49	=	550.98
Bethel - 1 x $328.90	=	328.90
Nome - 1 x $333.72	=	333.72
Fairbanks - 9 x $235.76	=	2,121.84
		$8,185.28
Per diem: 45 participants at $52 per day x 2 days	=	$4,680.00
TOTAL		$12,865.28

TRAVEL AND PER DIEM COSTS - PHASE II

A. Training program for prosecuting attorney instructors in Anchorage. September 17 to September 21.

Round trip airfare of prosecuting attorney instructors to Anchorage from:

1.	Juneau	$ 171.16
2.	Ketchikan	222.42
3.	Kenai	36.00
4.	Kodiak	95.41
5.	Bethel	148.82
6.	Fairbanks	102.12
7.	Nome	191.12
		$ 967.05

Per diem: 7 participants x 5 days x $55 per day $1,925.00

TOTAL $2,892.05

B. Trips of attorney coordinator to district attorney offices. October 1 to December 15.

Round trip airfare from Anchorage to:

1.	Juneau	$ 171.16
2.	Ketchikan	222.42
3.	Kenai	36.00
4.	Kodiak	95.41
5.	Bethel	148.82
6.	Fairbanks	102.12
7.	Nome	191.12
		$ 967.05

Per diem for attorney coordinator for trips to district attorneys offices. October 15 to December 15:

Juneau - 3 days x $55	=	$ 165.00
Ketchikan - 3 days x $50	=	150.00
Kenai - 3 days x $54	=	162.00
Kodiak - 2 days x $54	=	108.00
Bethel - 2 days x $65	=	130.00
Fairbanks - 5 days x $58	=	290.00
Nome - 2 days x $82	=	164.00
		$1,169.00

TOTAL 2,136.05

C. Trips of peace officers from cities having less than five peace officers to nearest district attorney's office. October 1 to December 15.

		Number of Officers
To Ketchikan from:	Metlakatla	2
	Craig	2
To Juneau from:	Haines	4
	Skagway	3
	Hoonah	2
	Pelican	1
	Yakutat	1
To Anchorage from:	Whittier	1
To Fairbanks from:	North Pole	3
	Nenana	2
To Kenai from:	Seldovia	1
To Kodiak from:	Dillingham	2
	Unalaska	2
		26

26 officers at approximately $200 per trip including per diem . . . . . $ 5,200.00

D. Trips of prosecuting attorney instructor and coordinating attorney to Petersburg, Wrangell, Valdez, Palmer, Glenallen, Tok, Cordova, Barrow, Seward, Homer, Kotzebue. October 15 to December 15.

10 cities at approximately $200 per trip including per diem x 2 . . . . . 4,000.00

E. Trips of attorney coordinator to district attorney's offices. April 15 to May 15:

1.	Juneau	$ 171.16
2.	Ketchikan	222.42
3.	Kenai	36.00
4.	Kodiak	95.41
5.	Bethel	148.82
6.	Fairbanks	102.12
7.	Nome	191.12
		$ 967.05

Per diem for attorney coordinator for trips to district attorneys offices. April 15 to May 15:

Juneau - 2 days x $55	=	$ 110.00
Ketchikan - 2 days x $50	=	100.00
Kenai - 2 days x $54	=	108.00
Kodiak - 2 days x $54	=	108.00
Bethel - 2 days x $65	=	130.00
Fairbanks - 3 days x $58	=	116.00
Nome - 2 days x $82	=	165.00
		$ 837.00

TOTAL 1,804.05

$16,032.15

STATE
of ALASKA

MEMORANDUM

TO Barry Stern
Coordinator, Criminal Code Training
Department of Law

DATE February 27, 1979

FILE NO

TELEPHONE NO

FROM James F. Mayer
Executive Director
Alaska Police Standards Council

SUBJECT Criminal Code Training/
Village Police Officers

The following list identifies the communities and number of police officers in the "village" category which will require training in the Criminal Code revision. They are broken down regionally, based on the already proposed training centers.

Training Center	Municipality	Number of Officers
Anchorage	St. Paul	1
	King Cove	1
	McGrath	1
Bethel	Kotlik	2
	Emmonak	2
	Grayling	1
	Alakanuk	1
	Sheldon Point	1
	Shageluk	3
	Holy Cross	2
	Mountain Village	1
	Scammon Bay	2
	St. Mary's	1
	Fortuna Ledge	1
	Chevak	2
	Chuathbaluk	2
	Lower Kalskag	1
	Aniak	1
	Newtok	2
	Tununak	2
	Toksook Bay	3
	Nightmute	1
	Chefornak	1
	Akolmiut	4
	Atmautluak	2
	Akiachak	2
	Akiak	2
	Kwethluk	2
	Napakiak	2
	Quinhagak	4
	Ekwok	1
	Aleknagik	1
	Goodnews Bay	2
	Platinum	2
	Togiak	2
	Manokotak	2

Training Center	Municipality	Number of Officers
Fairbanks	Fort Yukon	1
Ketchikan	Klawock	1
Petersburg	Kake	2
Juneau	Tenakee Springs	1
Kotzebue	Kivalina	1
	Kiana	1
	Ambler	1
	Noorvik	2
	Kobuk	1
	Selawik	5
	Shishmaref	3
	Deering	1
	Buckland	1
Kenai	Soldotna	8
Kodiak	Ouzinkie	1
Nome	Diomede	1
	Wales	1
	Brevig Mission	1
	Teller	1
	Elim	1
	White Mountain	1
	Golovin	1
	Koyuk	2
	Unalakleet	4
	Galena	1
	Stebbins	3
	Savoonga	2
	St. Michael	2
Sitka	Angoon	2
	65 Municipalities	116 Officers

The following budget is proposed to provide transportation and per diem for these officers to go to the listed regional training centers:

Round-trip Transportation:

116 officers @ $200.	$23,200

Per Diem:

116 officers @ $50. x 3 days	17,400
TOTAL	$40,600.

These estimates are based on two-day training sessions, air charter costs, and are exclusive of administrative costs and any necessary additional travel and per diem for the instructors.

JFM/mas

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 261
Title "An Act making a supplemental Appropriation...on the revised Criminal Code..."
Requested by Legislative Finance Division Date Mar. 6, 1979

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
Budget Request Unit(s) Affected Prosecution

EXPENDITURES (Thousands of Dollars)

		FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES	24.7					
200	TRAVEL	12.9					
300	CONTRACTUAL	7.8					
400	COMMODITIES	.7					
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	46.1					

FUNDING (Thousands of Dollars)

GENERAL FUND	46.1						
FEDERAL FUNDS							
OTHER (Specify)							

POSITIONS

FULL TIME	2						
PART TIME	0						
TEMORARY	0						

2 Positions 3 months each

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
This bill provides supplemental funds to the Department of Law to initiate training for the Revised Criminal Code. A detailed training plan is attached which spells out the steps which should be taken over the next 15 months to prepare members of the Criminal Justice System for implementation of the revised code. It is therefore important that training begin in the very near future. A phase I budget is included with the attached training plan which spells out the use of the funds to be provided by this bill. A separate Fiscal note has been prepared for phase II training, funds for which are requested in CSHB 262.

Richard L. Pegues

IV. DATE 3/8/79 PREPARED BY Richard L. Pegues, Admin. Officer
AGENCY Law
PHONE 465-3693

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

33-001 (Rev. 10/78)

HB

262

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST (See fiscal note for HB 261 for back-up on Revised Criminal Code-Training Program.)
Bill/Resolution No. CSHB 262
Title "An Act making a special Appropriation...for training...on Revised Criminal Code..."
Requested by Legislative Finance Division Date March 6, 1979

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
Budget Request Unit(s) Affected Prosecution

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES		52.6				
200 TRAVEL		56.6				
300 CONTRACTUAL		13.4				
400 COMMODITIES		3.6				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		126.2	Ø	Ø	Ø	Ø

FUNDING (Thousands of Dollars)

GENERAL FUND		126.2	Ø	Ø	Ø	Ø
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME	1	Ø	Ø	Ø	Ø	Ø
PART TIME	1					
TEMPORARY						

The attorney coordinator position will be full-time for 6 mos. and then become part-time for 6 mos. The secretarial position will be part-time for 12 mos.

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
This bill provides special funds to carry out a training program to prepare members of the Criminal Justice System for implementation of the Revised Criminal Code which goes into effect on 1/1/80. Monies from this special appropriation will be used to fund training during the last 12 months of a 15 month training program. Training for the first 3 months of the program will be provided with funds from HB 261 and for which a separate fiscal note has been prepared. A description of the training, including a detailed budget, is attached. Costs provided by this bill are denoted as phase II training in the description.

IV. DATE March 8, 1979 PREPARED BY Richard I. Pegues, Admin. Officer
AGENCY Law
PHONE 465-3695

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

33-001 (Rev. 10/78)

REVISED CRIMINAL CODE-TRAINING PROGRAM

The second session of the tenth Alaska Legislature adopted a new criminal code for the state. The new code is a sweeping and comprehensive revision of Alaska's criminal law. The code becomes effective on January 1, 1980. The eighteen month delayed effective date was specified to allow sufficient time to devise and implement a training program to ensure that all segments of the criminal justice system would be familiar with the code once it went into effect. Though envisioning this training program, the Legislature failed to provide funds for its development and implementation. The funding of a training program is critical to ensure a smooth transition from existing law to the new criminal code.

The attached pages discuss in detail the training program to be conducted by the Department of Law. The program has two phases. The first begins on April 1, 1979 and continues until June 30, 1979. During April and May of this year a criminal code manual will be prepared by the Department of Law. The manual will include the provisions of the new criminal code, the relevant corresponding sections of the prior criminal code, the commentary adopted by the legislature expressing its intent in passing the criminal

code, cross-references for each statute to other relevant provisions in the criminal code, a derivation chart listing the states upon which the revised criminal code was based and a compilation of judicial decisions in states having statutes similar to those appearing in the new criminal code. The manual will be approximately five-hundred pages and will be distributed to all district attorneys, public defenders and judges Extra copies of the manual will be available at cost to members of the defense bar.

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presented at the Alaska Bar Association Convention in Sitka prior to the judicial conference

The second phase of the training program will commence on July 1, 1979. Drafting will begin on a criminal code work book which will be distributed to all law enforcement officers (both state and municipal) in Alaska. The work book will be drafted in conjunction with the efforts of the Department of Public Safety Academy to devise a training program for new recruits. The work book will emphasize those provisions of the criminal code which are of particular relevance to peace officers (i.e., assault, disorderly conduct, homicide, theft, joyriding). A number of questions regarding the statutes will also be included. These questions will be answered by the officers at the training sessions described below. An instruction manual will also be prepared which will be used by the eight prosecuting attorney instructors who will be assigned primary responsibility for training law enforcement officers.

In early fall a five-day intensive review of the criminal code will be conducted in Anchorage. Eight prosecuting attorneys, one from each of the eight state district attorney offices located in Ketchikan, Juneau, Anchorage, Bethel, Nome, Kenai, Fairbanks, and Kodiak will attend this session.

Each of the eight prosecuting attorney instructors with the assistance of the attorney coordinator will be responsible for the training of all law enforcement officers in their city and surrounding communities. The five day meeting will acquaint the prosecuting attorney instructors with the training program for law enforcement officers.

Instruction of law enforcement officers will be conducted from October 1 to December 15, 1979 by the attorney coordinator and the prosecuting attorney instructors. The primary sessions will be held in the eight cities having district attorney offices. The sessions will be two days long, with several sessions contemplated in the larger communities. All local law enforcement offices as well as officers from surrounding communities having less than five peace officers will attend these sessions. Similar sessions will also be held in surrounding communities having five or more peace officers.

Upon completion of the training program for law enforcement officers, the coordinating attorney will begin work on sample complaints to be used in charging under the criminal code. Work will also begin in conjunction with the court system on a set of jury instructions to be used with the criminal code.

The final phase of the training program will be conducted at the eight district attorney offices during May 15-June 30. The attorney coordinator will conduct reviews of selected areas of the code as well as address problems that have arisen since the code's implementation.

SUMMARY OF COST OF CRIMINAL CODE TRAINING PROGRAM
April 1, 1979 - June 30, 1980

Personal Services	$ 77,371.67
Travel	28,897.43
Printing and video costs	18,200.00
Commodities	7,350.00
	$131,819.10

PHASE I COSTS: April 1, 1979 - June 30, 1979

I. Attorney Coordinator

A. Prepare Criminal Code Manual to include new criminal code, corresponding provisions of old criminal code, commentary adopted by legislature, derivation information listing states with similar statutes and judicial decisions interpreting statutes, cross references to other relevant statutes in new criminal code.

B. Conduct first phase of training for all district attorneys and assistant district attorneys in Sitka. June 11-12.

C. Present programs on criminal code at:

1. Judicial Conference - Sitka, June 11-13

2. Bar Association Convention - Sitka, June 6-8

3 months x $4,620.36 — $13,861.08

II. Legal Intern - Research judicial decisions in other states with statutes similar to those appearing in criminal code. Compile decisions for placement in criminal code manual.

3 months x $1,800 — 5,400.00

III. Travel and per diem (see detailed cost analysis attached) — 12,865.28

IV. Printing of criminal code manual and distribution to all district attorneys, public defenders and judges (including postage).

350 sets x $12 — 4,200.00

V. Video tape [illegible]ction: includes cost of tapes, filming and [illegible]oduction costs of recording training pro[illegible]m for district attorneys. Tapes to be used for training district attorneys hired after June 1979 and in training district attorneys unable to attend training program in Sitka. — 3,000.00

VI. Telephone - $200 per month — 600.00

VII. Commodities and office consumables

$250 per month — 750.00

VIII. Secretarial support:

$1,836 x 3 — 5,508.00

$46,184.36

PHASE II COSTS: July 1, 1979 - June 30, 1980

I. Attorney Coordinator

A. Coordinate training program for law enforcement officers (Alaska State Troopers and municipal peace officers) in conjunction with and relying on expertise of Department of Public Safety Academy and Alaska Police Standards Council. Prepare criminal code workbook for use by law enforcement officers and instructor's manual for use by prosecuting attorney instructors. July 1 to August 31.

B. Conduct training program of prosecuting attorney instructors. September 17 to September 21, Anchorage. Familiarize instructors with training program for law enforcement officers.

C. Supervise training by prosecuting attorney instructors of law enforcement officers. October 1 to December 15.

D. Preparation of sample complaints. December 15 to March 15.

E. Preparation of jury instructions in conjunction with Court System. January 15 to June 30.

F. Follow up training in district attorney's offices. May 15 to June 30.

6 months full time x $4,620.36
6 months 1/2 time x $2,310.18 $41,583.24

II. Travel and per diem (see detailed cost analysis attached)

A. Anchorage training program of eight prosecuting attorney instructors. September 17 to September 21.

B. Trips of attorney coordinator from Anchorage to Ketchikan, Juneau, Kenai, Soldotna, Kodiak, Bethel, Fairbanks, and Nome. October 1 to December 15.

C. Trips of peace officers from communities having less than five peace officers to nearest district attorney's office. October 1 to December 15.

D. Trips of prosecuting attorney instructors and attorney coordinator to Petersburg, Wrangell, Sitka, Valdez, Palmer, Glenallen/Tok, Cordova, Barrow, Seward, Homer, Kotzebue. October 1 to December 15.

E. Follow up training in district attorney offices. May 15 to June 15.

16,032.15

III.	Secretarial support:	
	12 months 1/2 time x $1,836.56	11,019.35
IV.	Printing of workbook for law enforcement officers:	
	1,000 x $8.00	8,000.00
V.	Video tape production: includes cost of tapes, filming and reproduction costs of recording training program for law enforcement officers. Tapes to be used for training law enforcement officers hired after December 15, 1979 and in training of officers who are unable to attend programs conducted October 1 to December 15, 1979.	3,000.00
VI.	Telephone: $200 per month	2,400.00
VII.	Commodities and office consumables: $250 per mo.	3,600.00
		$85,634.74

TRAVEL AND PER DIEM COSTS - PHASE I

Travel costs for 45 district attorneys and assistant district attorneys to Sitka to attend two-day training session on criminal code:

To Sitka from:

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Kodiak - 2 x $275.49	=	550.98
Bethel - 1 x $328.90	=	328.90
Nome - 1 x $333.72	=	333.72
Fairbanks - 9 x $235.76	=	2,121.84
		$8,185.28
Per diem: 45 participants at $52 per day x 2 days	=	$4,680.00
TOTAL		$12,865.28

TRAVEL AND PER DIEM COSTS - PHASE II

A. Training program for prosecuting attorney instructors in Anchorage. September 17 to September 21.

Round trip airfare of prosecuting attorney instructors to Anchorage from:

1.	Juneau	$ 171.16
2.	Ketchikan	222.42
3.	Kenai	36.00
4.	Kodiak	95.41
5.	Bethel	148.82
6.	Fairbanks	102.12
7.	Nome	191.12
		$ 967.05

Per diem: 7 participants x 5 days x $55 per day $1,925.00

TOTAL $2,892.05

B. Trips of attorney coordinator to district attorney offices. October 1 to December 15.

Round trip airfare from Anchorage to:

1.	Juneau	$ 171.16
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Fairbanks - 5 days x $58	=	290.00
Nome - 2 days x $82	=	164.00
		$1,169.00

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To Juneau from:	Haines	4
	Skagway	3
	Hoonah	2
	Pelican	1
	Yakutat	1
To Anchorage from:	Whittier	1
To Fairbanks from:	North Pole	3
	Nenana	2
To Kenai from:	Seldovia	1
To Kodiak from:	Dillingham	2
	Unalaska	2
		26

26 officers at approximately $200 per trip including per diem . . . . . $ 5,200.00

D. Trips of prosecuting attorney instructor and coordinating attorney to Petersburg, Wrangell, Valdez, Palmer, Glenallen, Tok, Cordova, Barrow, Seward, Homer, Kotzebue. October 15 to December 15.

10 cities at approximately $200 per trip including per diem x 2 . . . . . 4,000.00

E. Trips of attorney coordinator to district attorney's offices. April 15 to May 15:

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Per diem for attorney coordinator for trips to district attorneys offices. April 15 to May 15:

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Ketchikan - 2 days x $50	=	100.00
Kenai - 2 days x $54	=	108.00
Kodiak - 2 days x $54	=	108.00
Bethel - 2 days x $65	=	130.00
Fairbanks - 3 days x $58	=	116.00
Nome - 2 days x $82	=	165.00
		$ 837.00

TOTAL 1,804.05

$16,032.15

Training Center	Municipality	Number of Officers
Fairbanks	Fort Yukon	1
Ketchikan	Klawock	1
Petersburg	Kake	2
Juneau	Tenakee Springs	1
Kotzebue	Kivalina	1
	Kiana	1
	Ambler	1
	Noorvik	2
	Kobuk	1
	Selawik	5
	Shishmaref	3
	Deering	1
	Buckland	1
Kenai	Soldotna	8
Kodiak	Ouzinkie	1
Nome	Diomede	1
	Wales	1
	Brevig Mission	1
	Teller	1
	Elim	1
	White Mountain	1
	Golovin	1
	Koyuk	2
	Unalakleet	4
	Galena	1
	Stebbins	3
	Savoonga	2
	St. Michael	2
Sitka	Angoon	2
	65 Municipalities	116 Officers

The following budget is proposed to provide transportation and per diem for these officers to go to the listed regional training centers:

Round-trip Transportation:

116 officers @ $200. $23,200

Per Diem:

116 officers @ $50. x 3 days		17,400
	TOTAL	$40,600.

These estimates are based on two-day training sessions, air charter costs, and are exclusive of administrative costs and any necessary additional travel and per diem for the instructors.

JFM/mas

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 2, 1979

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

It is the intent of the House Judiciary Committee that under House Bill 262 first priority be given to the training of police officers and village magistrates, second priority to the training of district attorneys and public defenders. Training of judges and members of the private bar has the lowest priority.

The Committee recommends that the Finance Committee seek testimony from the office of the Public Defender.

Sincerely,

Charles H. Parr
Chairman

STATE
of ALASKA

MEMORANDUM

TO: Barry Stern
Coordinator, Criminal Code Training
Department of Law

DATE: February 27, 1979

FILE NO:

TELEPHONE NO:

FROM: James F. Mayer
Executive Director
Alaska Police Standards Council

SUBJECT: Criminal Code Training/
Village Police Officers

The following list identifies the communities and number of police officers in the "village" category which will require training in the Criminal Code revision. They are broken down regionally, based on the already proposed training centers.

Training Center	Municipality	Number of Officers
Anchorage	St. Paul	1
	King Cove	1
	McGrath	1
Bethel	Kotlik	2
	Emmonak	2
	Grayling	1
	Alakanuk	1
	Sheldon Point	1
	Shageluk	3
	Holy Cross	2
	Mountain Village	1
	Scammon Bay	2
	St. Mary's	1
	Fortuna Ledge	1
	Chevak	2
	Chuathbaluk	2
	Lower Kalskag	1
	Aniak	1
	Newtok	2
	Tununak	2
	Toksook Bay	3
	Nightmute	1
	Chefornak	1
	Akolmiut	4
	Atmautluak	2
	Akiachak	2
	Akiak	2
	Kwethluk	2
	Napakiak	2
	Quinhagak	4
	Ekwok	1
	Aleknagik	1
	Goodnews Bay	2
	Platinum	2
	Togiak	2
	Manokotak	2

COMMITTEE REPORT

SENATE

FURTHER: Finance

3/12/79

Date: _____

Mr. President:

The Committee on JUDICIARY has had HB 262 am

special appropriation to Dept. of Law for a training program on the revised criminal code

under consideration and ~~(a majority of the committee)~~ ~~(the committee)~~ reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation;

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

HB
389

COMMITTEE REPORT

SENATE

FURTHER: None

4/17/80

Date: 5/1/80

Mr. President:

The Committee on JUDICIARY has had HB 389
state regulation of fireworks

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4949

BOX 142
EAGLE RIVER, ALASKA
99577

Representative Randy Phillips

HOUSE DISTRICT 8

April 15, 1980

MEMORANDUM

TO: All Members of the House of Representatives

FROM: Representative Randy Phillips R.E.P.

RE: Bill Analysis of HB 389 Fireworks

The main thrust of the bill amounts to the following changes:

A. Elimination of the requirement that the state and all governmental subdivisions of the state be named as insured parties on the person's insurance policy.

B. Deletion as a prerequisite to selling salable fireworks the acquisition of product liability insurance.

Through research and testimony from the Administration and in various committees, the following conclusions were reached:

1. That these insurance requirements do in fact discriminate in favor of large out-of-state fireworks companies. The little in-state guys cannot get insurance even from Lloyd's of London because of the statutory requirements.

2. No clearly justified benefits--either to the state or a possible injured party--exist with the inclusion of these provisions.

3. These items were enacted into the statutes back in 1968 or 1969, allegedly in response to lobbying by a large fireworks outfit. No evidence arose to the contrary.

The secondary changes in the bill are:

A. Reduction of the permit fee from $500 to $100.

B. Reduction of required public liability insurance for bodily injury from $300,000 to $200,000.

C. Reduction of required public liability insurance for property damage from $100,000 to $50,000.

NOTE: There have been very few damages or injuries in the state due to fireworks.

Phillips Says Legislature Goofed

By BOB MILLER
Times Staff Writer

Senate President Brad Phillips has sworn in an affidavit that the final hours of the last legislature "were marked by a frenzied effort to dispose of unfinished business and on some occasions resulted unavoidably in hasty and uninformed actions on important legislative matters . . ."

The Anchorage Republican made the statement in an affidavit that is being used in a court attempt to set aside a law that was passed by the legislature to regulate fireworks in the state.

Phillips said, "It is my intention to press for the repeal or appropriate amendment of this law at the next session of the legislature and I do not believe it is in the public interest that it be enforced or allowed to be enforced in its present form."

At issue is Senate Bill 362 which became Chapter 116 of the Alaska Statutes after it was signed by Gov. Keith H. Miller last May 22. James E. Norene of Western States Fireworks and Joseph Bagwill of Alaska Fireworks are seeking to have the law set aside because it allegedly creates a monopoly for an "Outside" firm, Ace Fireworks Co.

Defendants in the case are Ace, State of Alaska, Empire Fire and Marine Insurance and Kenneth J. Tobey Inc., an insurance firm. Edgar Paul Boyko, who represents Norene and Bagwill, is using Phillips' affidavit in the case.

Superior Court Judge C. J. Occhipinti has issued a preliminary injunction to prevent the state from enforcing the insurance provision of the law.

In the preliminary injunction order, Judge Occhipinti indicated Ace has a monopoly on the fireworks business in the state because it is the only one that can get insurance as prescribed by the law.

In his affidavit, Phillips said "To my knowledge, this particular piece of legislation did not receive the proper attention or investigation and it was passed

Due To Haste In 'Final Hours'

and approved by the legislature in this manner only because of representations made to affiant and others by persons believed to be reliable that such legislation was non-controversial . . ."

Henry Pratt of Anchorage was the lobbyist for Ace Fireworks during the last session and worked for passage of the bill. Phillips said he has subsequently come to the conclusion that the law created "an unlawful monopoly."

The affidavit strongly hints that the bill passed in the final days of the legislature which adjourned May 1. The record shows that the bill was approved by the Senate on April 15 and finally by the House on May 1. It was considered first April 11 in the Senate after the Local Affairs Committee reported it out with a "do pass" recommendation.

The only senators who voted against it were:

Robert Blodgett, D-Teller; I. B. Hagglund, R-Fairbanks; Jay Hammond, R-Naknek; C. R. Lewis, R-Anchoage; Lowell Thomas Jr., R-Anchoage, Sen. W. I. Palmer, R Ninilchik, was absent.

Phillips continued, "Being personally in the insurance business and in order to test the claims of the Alaskan business interests affected, I made an effort to obtain either in the domestic and foreign markets coverage as required by this law, for the legitimate members of the Alaska industry supplying fireworks to the Alaska retailers, and discovered that the kinds of insurance coverage which is written into this law cannot be obtained either on the domestic or foreign markets, or only at prohibitive rates; if at all, because it entails risks which are virtually impossible of proper ascertainment or evaluation."

He indicated the bill passed because just before adjournment legislators found it necessary "to rely on the representations of persons believed to be trustworthy, who urged such last minute legislative actions upon members of the legislature."

James E. Norene
717 Irwin St.
Anchorage, Ak. 99504

Mr. Randy Phillips
House of Representatives
Pouch Y
Juneau, Alaska 99801

Dear Mr. Phillips:

As you know, I have handled firework sales for over thirty years in Alaska, and am still supplementing my pension with firework sales.

In 1969, a bill was passed in the legislature (S.B. 302 am, Chapter 116 amended to add a new Chapter 72, State regulation of fireworks). The bill was introduced by Ace Fireworks Co. of Seattle, to gain a monopoly in the State of Alaska, as the insurance requirements were such that it was impossible to obtain the policy even through Lloyds of London. Even Ace Fireworks Company's insurance company refused me a policy. The case was taken to court, I was able to get an injunction through the courts, including the State Supreme Court, which eliminated the insurance clause, and I was able to stay in business.

Now, I have just learned that in 1972, I was supposed to appear in court within 60 days to substitute the State of Alaska as party defendant in place of the individual defendants originally named, and failing to do so the case would be dismissed. I was never notified nor issued a subpoena and only learned of the action as of yesterday through the State Fire Marshal's office in Anchorage. Once again, I am denied a State fireworks license while the large companies in Seattle, Tacoma, and Denver can monopolize the State of Alaska because the State law prohibits the small companies in Alaska from obtaining insurance as called for in the Act.

I know that it is almost sine die, in legislature, but with your cooperation and other members of both houses I feel sure that the amendment that I am submitting can be pushed through before adjournment. I am not trying to eliminate other firework companies, only amend the Act so Alaska businessmen can stay in business and not be subjected to monopolies. I am including a copy of a bill and memorandum from the Legislative Affairs Agency which was sent to Brad Phillips in 1970 and never introduced or passed, which would have eliminated the problem. I would appreciate your consideration and help, as the present Act is discriminatory to Alaskans.

I'm sorry that I am sending this request at such a late date, but as I mentioned before, it only came to my attention yesterday.

It is imperative that action be taken. Our orders were placed in January, and it will create an economic disaster if not corrected before July 1st.

Sincerely yours,

James E Norene

James E. Norene
Former Legislator

LAW OFFICES
BOYKO AND WALTON
330 "L" STREET
ANCHORAGE, ALASKA 99501

EDGAR PAUL BOYKO
PETER B. WALTON
JAMES H. LACK
STEPHEN C. COWPER
ROBERT H. WAGSTAFF

TELEPHONE
277-2671

May 13, 1970

Honorable Brad Phillips
President, Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Brad:

I have your secretary's note of April 21, 1970 requesting my comments on the memo from Greg Machyowsky of the legislative affairs agency with respect to the fireworks insurance requirements of AS18.72.020(a)(1).

I agree with what he says, but feel that the matter has to be resolved by the legislature, since the final outcome of the litigation is still in doubt and in any event will not be ascertained prior to the 1970 fireworks season.

Accordingly, I have prepared a proposed amendment to the statute which would be acceptable to the local industry. I note, that the Governor's office is reported to be interested in considering introduction of an appropriate measure. Perhaps you could tell this to them, bearing in mind that our friend Hank Pratt has a conflict of interest as does our other good friend Senator Joe Josephson (who is the attorney of record for the outside fireworks company which was named as a defendant in the pending law suit).

For your convenience I am also enclosing a copy of Machyowsky's memorandum, so that you won't have to hunt for it.

Your response to the foregoing will be sincerely appreciated.

Cordially,

Edgar Paul Boyko

EPB:ss
CC: Mr. James Norene
Mr. Joseph Bagwill

encl

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

February 27, 1970

M E M O R A N D U M

TO: Senator Brad Phillips

FROM: Greg Machyowsky, Legislative Counsel

SUBJECT: Attached bill relating to state fireworks control

As we discussed, the attached bill amends AS 18.72 to eliminate the requirement that wholesalers of fireworks obtain insurance for products liability and reduces the amounts of public liability insurance required. In addition, the bill reduces the amount of the annual license fee required to engage in the business of wholesale sale of fireworks.

The bill does not remove the authority of the state fire marshall to enforce the law and regulations issued under the fire safety code with respect to use of fireworks (a copy of the current regulations is attached).

As you know, the state supreme court, in State v. Norene (457 P.2nd 926, August, 1969) has enjoined enforcement of the existing law insofar as it requires insurance policies to provide for coverage of the state and political subdivisions of the state as additional insureds. The fire marshall's regulations (at 13 AAC 51.010(b)) now omit the requirement for the state and political subdivisions as additional insureds on a policy.

In addition, from the supreme court's opinion, there is a possibility that the entire requirement for insurance may at least temporarily be unenforceable, pending any future determination of the validity of the provisions. However, at present neither the insurance requirement nor that part of it requiring additional insureds has been actually declared unconstitutionally discriminatory. In view of the unusual legal status of the provisions, though, the legislature may wish to revise the provisions, particularly the requirements for additional insureds. Consideration of deletion of the additional insureds requirement is recommended by the revisor in this year's Legislative Oversight of the Administration of Statutes.

Enclosures

TELEPHONE 272-2924

J. C. MORRIS AGENCY, INC.

INSURANCE AGENTS: GENERAL • CASUALTY • BOND • LIFE
938 5TH AVENUE • ANCHORAGE, ALASKA 99501
(ON 5TH AVENUE FACING CAPTAIN COOK HOTEL)

June 14, 1969

Mr. James Norene
717 Irwin St.
Anchorage, Alaska

Dear Mr. Norene:

We were unsuccessful in obtaining liability coverage for you on fireworks sales in the State to meet the new Law. None of our Standard markets will consider a risk of this type. We also submitted the risk to Lloyds of London for their consideration, but they too have declined.

We are sorry we can not assist you in this case,

Sincerely,

J. C. MORRIS AGENCY

Von R. Baxter

YOUR Independent Insurance AGENT

please reply via

PUBLIC SAFETY

CHAPTER 51. FIREWORKS

Section
10. Use of Dangerous Fireworks
20. Permits for the Sale of Saleable Fireworks
30. Storage of Dangerous and Saleable Fireworks by a Wholesaler
40. Discharge of Fireworks
50. Revocation of Licenses and Permits
60. Seizure

13 AAC 51.010. USE OF DANGEROUS FIREWORKS. (a) A permit is required for the use of dangerous fireworks under AS 18.72.010 (b) and may be granted upon verified application to the state fire marshal on forms provided by him.

(b) There shall be attached to the application for a permit under this section a policy or certified true copy of a policy of public liability insurance and products liability insurance coverage, including both accident and occurrence in the amount of at least $500,000 for bodily injury and death and at least $300,000 for property damage, provided by the applicant or his employer.

(c) The use of dangerous fireworks shall be handled by a competent operator certified as to competency by the state fire marshal.

(d) A permit granted under this section for the use of dangerous fireworks shall be lawful for that purpose only.

(e) No permit granted under this section for the use of dangerous fireworks is transferrable. (Eff. 6/25/69;reg.30).

Authority: AS 18.70.080

13 AAC 51.020. PERMITS FOR THE SALE OF SALEABLE FIREWORKS. (a) A permit is required for the sale of saleable fireworks under AS 18.72.020(a) and may be granted upon verified application to the state fire marshal on forms provided by him.

(b) No permit shall be granted to a person who desires to sell fireworks at retail within 250 feet of any place of habitation or place of public assembly.

(c) A permit granted under this section for the sale of saleable fireworks shall be lawful for that purpose only.

(d) No permit granted under this section is transferrable. (Eff. 6/25/69; reg. 30).

Authority: AS 18.70.020

13 AAC 51.030. STORAGE OF DANGEROUS AND SALEABLE FIREWORKS BY A WHOLESALER. (a) NFPA 2405 (1968-69 edition) and AIA, Article 12.6(q), Construction of Storage Facilities, is adopted.

(b) A wholesaler of dangerous and saleable fireworks who fails to comply with this section may have his license revoked pursuant to 13 AAC 51.050. (Eff. 6/25/69; reg. 30).

Authority: AS 18.70.080

13 AAC 51.040. DISCHARGE OF FIREWORKS. (a) No fireworks of any kind may be discharged within the state within 250 feet of any establishment that sells fireworks at retail or wholesale.

(b) The discharge of dangerous fireworks within the state, except for those purposes for which a permit is required under AS 18.72.010, and this chapter, is prohibited. (Eff.6 /25 /69; reg. 30).

Authority: AS 18.70.080

13 AAC 51.050. REVOCATION OF LICENSES AND PERMITS. The state fire marshal shall revoke a permit or license where the permittee or licensee fails to comply with the requirements of this chapter or with the provisions of AS 18.72, or where the permittee or licensee conducts his business in a manner so as to constitute a hazard to life and property. (Eff. 6/25/69; reg. 30).

Authority: AS 18.70.080

13 AAC 51.060. SEIZURE. The state fire marshal shall seize, take, remove, or cause to be removed at the owner's expense, all stocks of dangerous or saleable fireworks from persons who do not have a valid permit or license under AS 18.72, or this chapter. (Eff.6 /25/69; reg. 30).

Authority: AS 18.70.080

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 389

Title An Act relating to state regulation of fireworks

Requested by _____ Date 4-14-80

II. FISCAL DETAIL

Agency Affected Public Safety

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected Fire Safety

(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						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND	_	(2.0)	(2.0)	(2.0)		
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No significant impact as far as our program. The average yearly license fees (wholesalers) collected would be reduced from $2500. to $500.

IV. DATE 4-14-80

PREPARED BY Gary Crouse, Deputy Director

AGENCY Division of Fire Prevention, Department of Public Safety

PHONE 465-4331

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

HB389

Phillips Says Legislature Goofed

By BOB MILLER
Times Staff Writer

Senate President Jack Phillips has sworn in an affidavit that the final hours of the last legislature "were marked by a frenzied effort to dispose of unfinished business and on some occasions resulted unavoidably in hasty and uninformed actions on important legislative matters . . ."

The Anchorage Republican made the statement in an affidavit that is being used in a court attempt to set aside a law that was passed by the legislature to regulate fireworks in the state.

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Due To Haste In 'Final Hours'

and approved by the legislature in this manner only because of representations made to affiant and others by persons believed to be reliable that such legislation was non-controversial . . ."

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Robert Blodgett, D-Teller; P. B. Haggland, R-Fairbanks; Jay Hammond, R-Naknek; C. R. Lewis, R-Anchorage; Lowell Thomas Jr., R-Anchorage. Sen. W. I. Palmer, R-Nimlchik, was absent.

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HB
392

COMMITTEE REPORT

SENATE

FURTHER: FINANCE ~~MMMEX~~

2/21/80

Date: 5/24/80

Mr. President:

The Committee on JUDICIARY has had CSHB 392 am

relating to domestic violence; and changing Rules 3, 65, and 76, Rules of Civil Procedure

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for CSHB 392 am [✓] same title [ ] new title

and recommends SCS CSHB ~~[illegible]~~ and

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

May 20, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

I have enclosed a short section analysis of the domestic violence bill that may be of some assistance to you should the bill be discussed on the floor. I will be in Anchorage this Wednesday and Thursday, but will be back Friday afternoon should you need to contact me on this, or any other matter.

Hopefully this is the last time we will hear the phrase "domestic violence" (well, at least to next session anyway).

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: _____
Barry J. Stern
Assistant Attorney General

BJS:gm

Enclosure

03-C7LH

SECTION ANALYSIS OF

SENATE COMMITTEE SUBSTITUTE FOR CSHB 392 am

Section 1

Sec. 09.55.600. Injunctive Relief in Cases Involving Domestic Violence

This section allows a victim of domestic violence to obtain injunctive relief in superior court restraining the infliction of further domestic violence. The court may grant any order necessary to protect the health, safety or welfare of the victim, including restraining the respondent from contacting the victim and requiring the respondent to pay temporary support. Relief may only be granted after at least 10 days notice to the respondent and after a hearing before the court. The restraining order may last for a maximum of 45 days, but certain provisions may be extended for an additional 45 day period after the required notice and hearing.

Sec. 09.55.610 Emergency Injunctive Relief in Cases Involving Domestic Violence

This section is similar to Sec. 09.55.600 but provides for the issuance of a temporary order providing for emergency injunctive relief without notice to the respondent if the victim is in immediate danger of further harm. To obtain an emergency order without notice, the victim or the victim's attorney must inform the court of the efforts, if any, which

have been undertaken to provide notice to the respondent, and the reasons why the order should be issued without requiring notice. Notice should not be required if requiring this procedure would further endanger the applicant.

It should be noted that while the emergency order can be issued by a district court judge and magistrate as well as by a superior court judge, the applicant is required to apply to a superior court judge if one is located within the specified distance from the applicant's residence.

Sec. 09.55.620. Forms For Injunctive Relief and Emergency Injunctive Relief.

This section requires the court system to prepare forms for applicants seeking relief under Secs. 09.55.600 and 09.-55.610. Allowing petitions for injunctive relief to be handwritten recognizes that in some instances the victim may choose to proceed without the assistance of an attorney. False statements made in the form that the petitioner has been subjected to domestic violence constitutes the crime of unsworn falsification.

Sec. 09.55.630. Notification to Law Enforcement Authorities

This section requires a court that issues injunctive relief to notify the appropriate law enforcement agency of the terms of the order. Police officers are required to use reasonable means to enforce the order.

Sec. 09.55.640. Definitions

This section defines the term "domestic violence." The definition is derived from the section of the new criminal code allowing peace officers to make probable cause misdemeanor arrests for assaults committed against members of the same household. AS 12.25.030(b),(c).

Section 2

Sec. 12.55.135. Sentences of Imprisonment for Misdemeanors

This section amends the new criminal code to require a court to impose a mandatory minimum sentence of 10 days when a defendant commits assault in the third degree in violation of an order issued under secs. 09.55.600 or 09.55.610 restraining further domestic violence. The fact that the crime occurred in violation of a specific court order restraining such conduct warrants imposition of at least this mandatory term of imprisonment.

In cases covered by this section the committee expects that a defendant will simply be charged with the crime of assault in the third degree. At sentencing the prosecution will be required to establish by clear and convincing evidence that the assault was committed in violation of a court order. This approach to pleading and proof requirements is identical to the manner in which aggravating and mitigating factors are established for purposes of presumptive sentencing under the new criminal code. AS 12.55.155(f).

Section 3.

Sec. 18.65.510. Domestic Violence Training

This section requires police training programs to provide training on the subject of domestic violence, including applicable crimes, the techniques for handling incidents of domestic violence and the various programs that offer assistance to victims of domestic violence. In devising the program, police training programs are required to consult with organizations providing assistance to victims of domestic violence.

Sec. 18.65.520. Notification to Victims of Domestic Violence

This section specifies a notification that should be provided in substantially similar form, orally or in writing, by police officers to victims of domestic violence. The intent of this section is to inform victims of the various options that are available to them at the point of their first contact with the criminal justice system.

Section 4

Sec. 22.15.100 Functions and Powers of District Judge and Magistrate.

This section adds to the list of functions of district judges and magistrates the ability to issue an order for injunctive or emergency relief under secs. 09.55.600 and 09.55.610.

Section 5

This section amends various court rules to allow for an alternative procedure in obtaining injunctive relief in cases involving domestic violence.

LAW OFFICES OF

ALASKA LEGAL SERVICES CORPORATION

419 SIXTH STREET, SUITE 322

JUNEAU, ALASKA 99801

TELEPHONE 586 6425

MEMORANDUM

TO: Senate Judiciary Committee

FROM: Don Clocksin DC and Bruce Horowitz BJH

SUBJECT: CSHB 392 am H - Domestic Violence

DATE: April 1, 1980

I. The Problem

Victims of physical attacks by household members or spouses are in an unique position. Police often refuse to view these attacks as criminal conduct. The victim is often unaware of what options he or she has and continues to accept beatings as unavoidable. The economic and psychological dependence of battered wives and the fear of injury create a loss of self-respect. The social acceptance of wife-beating and the irrationality of most attacks make the woman feel she is to blame. It is this syndrome which makes spousal abuse an unique and particularly serious problem.

According to the preliminary study on The Status of Women In Alaska, Anchorage had an estimated 3.3 reported wife beatings each day. Alaska Legal Services Corporation reports that 70 to 75 percent of women seeking legal assistance have been beaten by their husbands. Another study indicates inter-spousal murders accounted for 12 percent of all murders in the United States in 1975.

Testimony in the House last session, during the interim is session established that domestic violence is a substantial problem in Alaska and that criminal solutions are not adequate.

II. The Solution

There is no immediate solution to the problem until people learn to solve their problems without the use of violence. Particularly, society must recognize spousal attacks as unacceptable conduct, and courts and prosecutors must treat them just like other crimes.

This bill seeks to inform the victim of the available options and to protect the victim from attack. It is an "intervention" bill which does not try to solve the social problem but only to protect the victim from serious injury. It establishes a new easy-to-get injunction and provides for police training on

domestic violence.

III. Section By Section Analysis

1. Section 1:

a. Sec. 09.55.650: A police officer called to the scene of a domestic attack is to advise the victim of his or her rights and provide assistance as the circumstances require.

b. Sec. 09.55.660: Allows the victim to obtain an emergency Order for Relief from a judge or magistrate for up to ten days. After a hearing, such an Order may be issued for 45 days. The Order is to protect the victim from future attacks.

c. Sec. 09.55.665: Requires the court system to prepare forms and instructions so the victim may file for this Order for Relief without the need for a lawyer.

d. Sec. 09.55.670: The Order for Relief must be provided to the police, and procedures must be established to assure all peace officers know of the Order.

e. Sec. 09.55.680: Law enforcement agencies must include in their training programs information on how to handle violence.

f. Sec. 09.55.690: Intentional violation of the Order for Relief is a class B misdemeanor. A second violation (i.e. the third attack) means 72 hours in jail.

g. Sec. 09.55.700: "Domestic violence" is defined. It includes assault or battery on the victim or the victim's child, and includes sexual abuse. The term is limited to such acts against relatives, household members and present or former spouses. Programs providing alternative, temporary shelter to victims of domestic violence are defined.

2. Section 2:

Amends the Criminal Code to allow arrest without a warrant for a violation of an Order for Relief committed outside the presence of a peace officer.

3. Section 3:

Provides alternative housing for victims of domestic violence

by granting a preference for ASHA housing, if otherwise eligible.

4. Section 4:

Allows magistrates and district judges to issue emergency ten-day Orders for Relief.

5. Section 5:

Amends certain Court Rules relating to filing of legal papers and issuance of injunctions.

DC/mlm

April 3, 1980

The Honorable Mike Gravel,
United States Senator
3121 Dirksen Senate Office Building
Washington, D. C. 20510

Good Senator:

Domestic violence is a problem. The concept behind HB 392 and HB 532 is excellent. However, the bills are in atrocious form and I am not sure that we have the time and the talent within which to do a proper job this year.

I'll give it a go, but no promises.

Best regards,

Robert H. Ziegler, Sr.

RHZ:lk

MIKE GRAVEL
ALASKA

United States Senate

WASHINGTON, D.C 20510

March 26, 1980

The Honorable Robert H. Ziegler, Sr.
Pouch V
Juneau, Alaska 99811

Dear Bob:

Recently I met with representatives of Alaskan programs designed to aid victims of domestic abuse; they were in Washington attending the First National Conference on Domestic Violence. We talked at some length about the incidence of domestic abuse in Alaska and I indicated my strong support for Federal legislation to assist state and local groups combating domestic violence.

During the course of our conversation, Caren Robinson, Staff Director of A.W.A.R.E., mentioned that two pertinent House bills, HB 392 and HB 532, were pending in your committee. I have read both bills and am encouraged that Alaska is moving in the right direction. Knowing the demands on your committee, I want to respectfully urge you to give expeditous consideration to these bills; I know you are concerned about this problem and will give every consideration to means of reducing and hopefully eliminating domestic violence in Alaska.

With warm personal regards.

Sincerely,

Mike Gravel

MG:njm

Best to Paula.

AWAIC *Abused Women's Aid in Crisis, Inc.*

March 19, 1980

Senator Robert H. Zeigler
Pouch V
Juneau, Alaska 99811

Dear Senator Zeigler:

I am writing regarding two bills that I understand are now in your committee, House Bill 392 and House Bill 532. I would like to urge your support for both of these bills. While they seem different in nature, I feel they speak to very similar issues. There have always been certain classes of persons who have found it difficult or intimidatingly painful to use the criminal justice system when they are victims of crimes. I feel strongly that it is time for the system to assist them, rather than increasing their sense of shock and powerlessness.

House Bill 392 adequately addresses serious barriers for victims of violence in their own homes. I find it specifically important the sections that: 1) provide victims specific information on action they may take to procure a temporary restraining order (TRO) and information on other steps they may take to insure the physical safety of themselves and their children; 2) establish that the violation of a TRO is a misdemeanor not just a civil contempt of court; provide for a mandatory sentence for repeated violations of TRO's.

House Bill 532 speaks directly to some attempt to alleviate further traumatizing of the child victim of sexual assault. As a mother, I have long been terrified of the damage that could be done to one of my children by such an assault and have struggled with how I could ever ask my child to face prosecuting in such a crime. Yet I have always been deeply aware that families who do not carry out such prosecution bear some responsibility for the violation of the next child victim. Anything that our legislature can do to make conviction of those who violate our children swifter, surer, and somehow less painful for the victim must be viewed as a top priority. Please give both these bills your attention and support. I would appreciate hearing from you regarding them.

Sincerely,

Kit Evans

Kit Evans

Community Office
417 W. 8th Avenue
Anchorage, AK 99501
(907) 279-9581

Women's Shelter
POB 4-819
Anchorage, AK 99509
(907) 274-4561

Male Awareness
417 W. 8th Avenue
Anchorage, AK 99501
(907) 279-9581

HR 411

April 21, 1980

Senator Robert Ziegler
Pouch V
Juneau, Alaska

Dear Senator Ziegler,

The Alaska Women's Resource Center wishes to be recorded in favor of HR 411. In our position paper we state,"Although the Alaska Women's Resource Center was founded to meet the needs of women in a changing society, we see men's needs to be intricately interwoven with those of women; therefore, we extend to men the opportunity to become change agents with us." With this in mind, we would ask you to vote for the passage of HR 411.

The Center did a needs assessment in October of 1979 and found the highest number of requests for service were in the employment program with many of these as displaced homemakers.

Since the beginning of the 1979 Fall reporting period the number of women deserted by their husbands has increased with about five or ten cases being logged per week. In many cases the husband has also taken the family assets with him leaving the woman with pressing financial problems as well as the obvious psychological ones. These women are forced into an economically independent role and for many of them it is instant poverty.

Homemakers are an unrecognized and unpaid part of the national work force who make an invaluable contribution to the welfare and economic stability of the nation but receive no health, retirement, or unemployment benefits in their own name as a result of their labor.

The traditional role of wife, mother or homemaker does not provide women with recognized job market skills. She often does not know how to translate her homemaking skills into marketable ones, to job hunt, or to fill out an application or to write a resume. The displaced homemaker is often subject to discrimination because of age, fear, health problems, and lack of recent work experience outside the home. The emotional trama is increased by lack of confidence and self-esteem.

A partial solution to the displaced homemaker's problems would be to encourage in the schools, at the earliest age possible, the necessity of everyone, boys and girls, to learn those skills that will enable them to become responsible for their own lives, their own health, their own marketable skills, and the wise use of leisure time. This would enable a woman to have a fair chance rather than being someone who becomes more helpless to survive as the years pass.

We hope that you will consider these things as you decide the bill.

Thank you.

Sincerely,

Helen Fisher

Helen Fisher
Executive Director

alaska women's RESOURCE CENTER
(907) 276-0528 p.o. box 188
anchorage, alaska 99510

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

March 14, 1980

The Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: CSHB 392 am H

Dear Senator Ziegler:

Mr. Van Doren requested on behalf of your committee that we review CSHB 392 am H, "an Act relating to domestic violence". Representative Hugh Malone, an original sponsor of the bill, also requested sometime ago that I review the bill and reduce to writing the substantive concerns we have with it as well as outline some general ideas for legislation that would address the problem of domestic violence.

Rather than simply repeat our concerns and suggestions in a separate letter to you, I thought that it would be satisfactory to also send you a copy of my letter to Representative Malone. Some of the suggestions we have made involve possible amendments to provisions contained in the revised criminal code particularly in the area of sentencing. SB 511 which proposes a series of amendments to the code and which is presently under consideration by your committee would be an appropriate vehicle for addressing the need for an increased emphasis on crimes involving domestic violence.

If you have any questions concerning the enclosed letter or if we can be of further assistance to your committee on this matter, please let us know.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: _____
Daniel W. Hickey
Chief Prosecutor

DWH:gm

03-C71.00

Enclosure

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

March 14, 1980

The Honorable Hugh Malone
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: CSHB 392 am H

Dear Representative Malone:

Please excuse the delay in sending you a letter outlining the concerns we have with respect to the referenced bill and some of the general ideas I briefly mentioned previously on the subject of domestic violence.

I share the concern which has been expressed throughout consideration of this bill that domestic violence is one of the most serious criminal justice problems in Alaska. It effects literally every community in the state and represents a significant percentage of criminal cases. The problem is one which also accounts for many divorce cases and touches literally every segment of the state's population.

As I indicated, however, in the brief discussion which we previously had, I don't think that the bill as presently drafted will substantially address the problem or result in meaningful improvement. In some instances certain provisions of the bill may be counterproductive and others will make a law enforcement officer's job more difficult and cumbersome to the detriment of other citizens in need of assistance in both domestic violence cases and others.

Proposed AS 09.55.650(a) largely restates current law enforcement practices in cases involving domestic violence. To the extent these practices are not being followed, there is no question that they should be. However, I don't believe that it would be good public policy to attempt to specify through statute the precise manner in which police officers should proceed when responding to a particular crime. Each incident requires the careful exercise of judgment by an individual officer based on his training and experience.

Additionally, specification of procedures in a statute could conceivably give rise to uncontemplated instances of civil liability for both the state and municipalities.

The procedures which are set out in proposed section 650(a) should be formulated by those agencies responsible for police training and individual officers should receive training consistent with those procedures. It would be entirely appropriate for the legislature to enact specific provisions that require police officers to receive training in the techniques of properly handling domestic disputes. This training could include, for example, requirements that officers become familiarized with the various organizations and resources available for providing assistance to victims of domestic violence. This legislation could be developed as amendments to AS 18.65.130 - 18.65.290 which establishes the Alaska Police Standards Council and provides for basic standards for certification as a police officer. I don't think, however, that it is a good idea for the legislature to attempt to specify with considerable particularity the procedure for handling a specific crime or category of crime.

Proposed AS 09.55.560(b) requires an officer to recite a one page notice of rights to a victim of domestic violence or in the alternative to deliver a written copy to the victim. There is, of course, nothing wrong with this approach on its face. However, it is likely to result in a mechanistic and formal "reading of rights" similar to Miranda warnings given to suspects in criminal cases. I am somewhat afraid that the mechanistic recitation of rights required by the bill may create an impression with individual victims that the officer is not sympathetic to her situation as an individual with a problem unique to her. Properly trained police officers do not do this now and there is a potential for a procedure like this to interfere with the genuine cooperation between a victim and an officer that is very important in cases involving domestic violence.

This criticism is not intended to imply that the officer should not be encouraged to inform a victim of the various criminal and civil remedies she has and of the various alternative programs that may offer her assistance. It just seems that human nature being what it is, that once something like this becomes reduced to a mandatory and precise formula it is likely to be applied in a very non-personal manner. Again, I think that this issue is one which involves the adequacy of law enforcement training. In order to do his job properly, an officer should receive necessary training in the area of domestic violence so that he will be sensitive

to the individual needs of victims and will be prepared to inform a victim of information relevant to her specific situation.

While the above comments relate to specific concerns with provisions set out in proposed AS 09.55.650, there is a more general observation to be made about this section in terms of whether this approach will result in any meaningful improvement in the handling of domestic violence cases. The difficulty in the approach taken by the bill is that it assumes that these situations occur in a reasonably rational setting once the police arrive and sort everything out. It assumes, for example, that things are happening much the way they do in taking a confession from a cooperative suspect back at the police station. Unfortunately, that is not the case. More often than not, police officers responding to a domestic violence scene are confronted with a highly emotional situation where a great deal of discretion and good judgment is required. It is generally not the sort of situation that is going to be helped by a neatly packaged and legislatively required set of procedures.

The concept embodied in proposed AS 09.55.660 of an expedited and streamlined process for obtaining appropriate civil orders in cases involving domestic violence is an excellent idea. There are, however, a few technical problems with individual provisions in this section which should be addressed. For example, subsection (d) doesn't specify whether the time period specified applies to a regular order issued by a superior court under subsection (a) or to a temporary order issued under subsection (c) if issued by a superior court or to both. If the time period contained in subsection (d) does apply to temporary orders then the bill fails to indicate how long such an order may remain in effect if issued by a district judge or magistrate as opposed to a superior court. If, on the other hand, subsection (d) does not apply to temporary orders then the bill fails to indicate how long temporary orders may remain in effect. Additionally, the expedited hearing provided for under subsection (c) for temporary orders raises potential constitutional problems because it would appear that a temporary order could be as broad as a subsection (a) order and thus would effect fundamental rights such as custody of children and access to one's home without notice and other procedural due process guarantees. Lastly, proposed AS 09.55.660(4) dealing with an order by a court that an assailant pay support for a petitioner and/or minor children appears to be unrelated to the objectives of an expedited hearing process in these cases.

Proposed AS 09.55.690(a) creates a separate criminal offense for intentional violations of orders issued under section 660(a)(1), (2) and (3). The difficulty with this approach is that it attempts in its language to make some very narrow distinctions between conduct encompassed by a section 660 order that will be a crime and conduct encompassed by an order that will not. Additionally, what this section does is to create a crime out of what would otherwise be civil contempt for conduct that is not defined in the statute and may fluctuate from case to case. In other words, what could be a crime in one case may not be in another case that may involve identical underlying circumstances other than the fact that different orders have been issued by different courts. The elments of a crime will vary in each instance without a precise definition of the crime set out in the statute. Consequently, it would be my suggestion that violations of section 660 orders be treated under the contempt statutes.

Correspondingly, AS 09.55.690(b) and AS 12.25.030(b), authorizing peace officers to make probable cause misdemeanor arrests for the offense of "failure to comply with a court order involving domestic violence" should be deleted. In most cases a probable cause determination will not involve physical evidence but rather, the competing claims of two parties and a legal interpretation of a court order. A police officer called to sort out the conflicting claims of two parties is frequently not going to be in a very good position to make a determination whether probable cause exists to believe that a possibly nebulous court order has been violated. Instead, the case should be taken before a district judge or magistrate if an arrest is necessary and appropriate.

Lastly, the definition of "domestic violence" set out in proposed AS 09.55.700(1) is very broad. The use of the term blood relative would include a fifth cousin who a defendant has never seen in his entire life while at the same time, the definition would not include a mother-in-law who is not a household member who the defendant may see every day. In any event, it would be our suggestion that if the statutory scheme embodied in the bill is retained, the definition of "domestic violence" be limited to included acts between household members and that the term "household member" be defined.

The real difficulty with cases involving domestic violence is that they involve highly emotional, interpersonal situations to which the criminal law does not easily apply. At the time of an incident, a victim is frequently more than willing to cooperate with law enforcement authorities

and to proceed with the arrest, prosecution and imprisonment of the other party. All too frequently, however, and sometimes as quickly as the next day, the victim has had a complete change of heart. If we insist on going forward, the victim at times is not only uncooperative but actually hostile and fully supportive of the defendant even though he or she may have been seriously injured on a number of occasions.

The problem we are confronted with is one of priorities and this is the real issue which needs to be addressed in these cases. Given our present system, it is very difficult if not impossible to proceed with an uncooperative victim. Courts and juries react negatively and wonder why time is being taken up with such cases when there are other cases which need to be addressed. The one thing in particular which law enforcement officers and prosecutors have in common is that they are "result oriented". It is very difficult to proceed with cases when the chances for success are minimal or non-existent and once a victim has become uncooperative in one case there is a tendency to assume that the same thing will happen in future cases.

Some specific suggestions that I can offer which address this problem are as follows:

First, it would be helpful for there to be a clear expression of legislative intent on the subject of domestic violence and enforcement policies. If the legislature believes that cases should be vigorously prosecuted however uncooperative a victim is, it would be helpful for this intent to be set out in the form of a mandatory jury instruction that must be given in cases involving domestic violence with uncooperative victims. The instruction in essence should state that the legislature is of the view that those cases should be prosecuted and that the unwillingness of a victim to cooperate should not be held against the state.

Second, the bail statute should be amended to require the imposition of specific conditions of release in any case involving domestic violence. These conditions should include items now included under proposed AS 09.55.660(a) of the referenced bill.

Third, "domestic violence" should be adopted as a factor that will require the imposition of a presumptive sentence for both felonies and misdemeanors. Presumptive sentencing now only applies in felony cases where there has been a previous felony conviction or in the case of a class A felony where a firearm has been used or serious physical

injury has resulted. This proposal could be accomplished through the addition of "domestic violence" to the use of a firearm and serious physical injury for class A felonies and through establishing presumptive sentences for all felony and misdemeanor assaults involving domestic violence. An alternative and somewhat less effective approach would be to add "domestic violence" to the list of aggravating factors set out in AS 12.55.155(c).

Fourth, with respect to the problem posed by the uncooperative victim, in addition to the mandatory jury instruction previously mentioned, it would be helpful to: (1) authorize the issuance of a court order for a mandatory medical examination of the victim the results of which would be admissible at trial; (2) eliminate the physician-patient and psychotherapist-patient privilege in cases involving domestic violence in order that evidence of both the present offense and any past unreported acts of domestic violence can be obtained; and (3) provide specifically that an uncooperative victim can be declared a hostile witness and may be impeached with prior inconsistent statements.

Fifth, specific provisions should be considered which would provide that a defendant in a domestic violence case can be impeached with prior convictions for offenses involving domestic violence and prior unprosecuted acts of domestic violence directed against the same victim.

Sixth, crimes involving domestic violence should be added to the crimes included in AS 12.30.040(b) for which bail may not be granted after conviction.

Lastly, consideration should also be given to an amendment to the sentencing statutes requiring that any suspended sentence in a case involving domestic violence must include as a condition of the suspended portion a requirement that the defendant have no contact with the victim for a legislatively prescribed minimum period. Such a provision should also mandate the imposition of the full suspended portion upon a violation of the condition.

These provisions would put some real teeth into the law as applied to domestic violence cases. They should serve to provide for a meaningful deterrent effect in future cases and will provide us with effective enforcement tools to deal with the problem.

The Senate Judiciary Committee has recently requested that we also provide them with comments on this bill and

I've enclosed for your information a copy of the letter we are sending to Senator Ziegler. If you feel that any of the ideas I've set out are worth pursuing, I would be happy to work with you or someone you designate in an effort to develop necessary legislative language.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Daniel W. Hickey
Daniel W. Hickey
Chief Prosecutor

DWH:gm

Enclosure

From: Bruce Horowitz BH
To: Hugh Malone
Date: May 20, 1980
Re: HB 392/Proposed amendment by Sen. Ray

Sen. Ray has proposed an amendment to HB 392 requiring that a notice be included in the form of petition that a false statement made therein that the respondent has subjected the petitioner to domestic violence constitutes the crime of unsworn falsification, (a class A misdemeanor) punishable by a maximum sentence of one year and a fine of $5000. See Appendix A for copy of the amendment. Appendix B, copy of AS 11.56.210.

The following comments may be made about the proposed amendment:

1. It has always been understood that the form of petition would contain an affidavit under oath that the contents were true and correct to the best of petitioner's knowledge. Therefore, the amendment would not apply to such a form of petition.

2. From our reading of AS 11.56.210, the unsworn falsification statute, the statute concerns public officers other than judges, because the judges are there for the specific purpose of deciding whether people are telling the truth. This is a less important criticism of the amendment.

3. This amendment would criminally punish a person who was mistaken as to the law. For instance, since it was decided to broaden the definition of "domestic violence" to include all offences under AS 11.41, a person could incorrectly claim that someone had coerced them or had committed the offence of "custodial interference", or had committed extortion. In each case, whether or not the act was extortion, or custodial interference or coercion is a legal issue to be decided by a judge, and yet if the judge decides that the crime was not committed, the petitioner's claim is false, and therefore punishable.

4. This amendment will obviously discourage some good faith petitioner's who are the victims of assault from filing the petition.

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
419 SIXTH STREET, SUITE 322
JUNEAU, ALASKA 99801
TELEPHONE 586-6425

PROPOSED AMENDMENTS TO CSHB 392 am H

April 1, 1980

1. On p. 4, line 12, delete the last sentence down through line 18 and insert:

> Every temporary order issued under this subsection shall be endorsed with the date and hour of issuance, shall forthwith be filed and entered of record, and shall state why the temporary order is being issued. If the temporary order is issued by a superior court, it shall include a notice of hearing on the order for relief and shall be served on the defendant. If a temporary order is issued by a district court or a magistrate, the superior court shall forthwith schedule a hearing on the order for relief and notify the respondent of the temporary order and of the hearing on the order for relief. A temporary order shall expire by its terms in ten days unless extended by the court or magistrate for good cause shown.

2. On p. 4, line 19, delete "by a superior court under this section" and insert "under (b) of this section"

3. On p. 6, line 14, delete ",or blood relative of the person" and insert "or" before the words "former spouse"

4. On p. 1, line 11, insert a new section to read:

> Sec. 09.55.600. STATEMENT OF PURPOSE. The legislature finds that assaults and harassment by household members or ex-spouses are a growing problem in Alaska and that special solutions to the problem are needed. The criminal justice system is often unable to provide an adequate remedy because of the economic and psychological dependence of victims of domestic violence on their attackers. The purpose of this legislation is to assure that victims of domestic violence will be advised of all available alternatives, that they will

have immediate access to the judicial system to obtain an injunction without excessive costs or the requirement of legal representation, that people who commit domestic violence will be dealt with fairly and firmly, and that peace officers will be trained to respond properly to domestic violence situations.

5. On p. 7, line 5, insert a new section and renumber accordingly:

Sec. 3. AS 12.25.020 (c) is amended by adding a new subsection to read:

(11) whether the offense charged is domestic violence as defined in AS 09.55.700.

6. On p.6, line 10, delete "AS 09.55.650" and insert "AS 09.55.600"

7. On p. 7, line 27, delete "AS 09.55.650" and insert "AS 09.55.600"

Original sponsors: Malone, Anderson,
Cotten, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 392

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to domestic violence; and changing Rules 3, 65, and 76, Rules of Civil Procedure."

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

* Section 1. AS 09.55 is amended by adding new sections to read:

ARTICLE 9. DOMESTIC VIOLENCE.

Sec. 09.55.600. INJUNCTIVE RELIEF IN CASES INVOLVING DOMESTIC VIOLENCE. (a) A person who is subjected to domestic violence may petition a superior court for injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent.

(b) Upon receiving a petition under (a) of this section, the superior court shall schedule a hearing and shall provide at least 10 days notice to the respondent of the hearing and of the respondent's right to appear and to be heard either in person or by attorney. If, at the hearing, the superior court finds that the petitioner has been subjected to domestic violence by the respondent, the superior court may issue any order it determines to be necessary for the protection of the health, safety or welfare of the petitioner or of a minor child in the care of the petitioner. An order under this subsection may include provisions which

(1) restrain the respondent from subjecting the petitioner to domestic violence;

(2) direct the respondent to vacate the home of the petitioner;

-1- SCS CSHB 392

(3) restrain the respondent from communicating directly or indirectly with the petitioner;

(4) direct the respondent to pay support for the petitioner or for a minor child in the care of the petitioner if there is an independent legal obligation of the respondent to support the petitioner or the child;

(5) award temporary custody of a minor child to the petitioner;

(6) direct the respondent to pay for medical expenses incurred by the petitioner as a result of the domestic violence.

(c) An order issued under this section shall remain in effect for a period of time not to exceed 45 days. However, the petitioner may petition the superior court for extensions of a provision of the order if the provision is described in (b)(1), (b)(2) or (b)(3) of this section. If the superior court, after notice to the respondent of and a hearing on the petition for the extension in accordance with the procedures described in (b) of this section, finds that an extension of the provision of the order is necessary to protect the petitioner from domestic violence, the superior court may extend those provisions of the order for a period of time not to exceed 45 days.

(d) Proceedings under this section do not preclude any other available civil or criminal remedies.

Sec. 09.55.610. EMERGENCY INJUNCTIVE RELIEF IN CASES INVOLVING DOMESTIC VIOLENCE. (a) A person who has been subjected to domestic violence may petition the superior court for a temporary order providing for emergency injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent. If there is no superior court within 50 road miles of the residence of the person subjected to domestic violence, the person may petition the nearest

district court for a temporary emergency injunctive relief order. If there is no district court within 50 road miles of the residence of the person subjected to domestic violence, the person may petition the nearest magistrate for a temporary emergency injunctive relief order. The district court or magistrate shall notify the superior court immediately upon issuance of an order granting emergency injunctive relief under this section.

(b) An order under this section may be granted without written or oral notice to the respondent if the court finds that the petitioner has been subjected to domestic violence and

(1) it clearly appears that there is a substantial likelihood of immediate danger from the respondent to the health, safety, or welfare of the petitioner or of a minor child in the care of the petitioner; and

(2) the petitioner or the petitioner's attorney certifies to the court in writing the efforts, if any, which have been made to provide notice to the respondent and the reasons supporting the claim that notice should not be required.

(c) An order issued under this section may include a provision described in AS 09.55.600(b). The order shall be endorsed with the date and hour of issuance, shall be filed in the clerk's office and entered in the records of the court, and shall state the reason that it was granted without notice. The order shall remain in effect for a period not to exceed 10 days, unless extended by the court for good cause. The reasons for the extension shall be entered in the records of the court.

(d) If an order under this section is granted without notice, a hearing before the superior court for injunctive relief under AS 09.55.600 shall be scheduled by the superior court at the earliest possible time consistent with the notice provisions of AS 09.55.600. If at the hearing the petitioner does not proceed with the petition for injunctive

relief, the superior court shall dissolve the emergency injunctive relief order.

(c) On two days notice to the petitioner, or on shorter notice as the superior court may prescribe, the respondent may make a motion to the superior court for the dissolution or modification of an order for emergency injunctive relief under this section. The superior court shall hear and rule on the motion in an expeditious manner.

(f) Proceedings under this section do not preclude other available civil or criminal remedies.

Sec. 09.55.620. FORMS FOR FILING PETITION. (a) The Alaska court system, in cooperation with interested persons and organizations, shall prepare forms and instructions for the use of persons seeking an order for relief under AS 09.55.600 or 09.55.610, including forms for waiving filing fees on the basis of indigency. The forms shall conform to the requirements of AS 09.55.600 and 09.55.610 and the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. The office of the clerk of each superior and district court shall make the forms and instructions available to the public.

(b) The form for a petition prepared under (a) of this section shall include a notice that a false statement made in it stating that the respondent has subjected the petitioner to domestic violence constitutes the crime of unsworn falsification under AS 11.56.210, which is punishable by a maximum term of imprisonment of one year and a $5,000 fine.

Sec. 09.55.630. NOTIFICATION TO LAW ENFORCEMENT AGENCIES. If a superior court, district court, or magistrate issues an order under AS 09.55.600 or 09.55.610 restraining a respondent from subjecting a petitioner to domestic violence, the superior court, district court, or

magistrate shall transmit a copy of the order to the appropriate local law enforcement agency. Each law enforcement agency shall establish procedures to inform their peace officers of copies of the orders received by the law enforcement agency under this section. Peace officers shall use every reasonable means to enforce an order issued under AS 09.55.600 or 09.55.610.

Sec. 09.55.640. DEFINITIONS. For the purposes of AS 09.55.600 - 09.55.640, "domestic violence" means a crime under AS 11.41 committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the respondent.

* Sec. 2. AS 12.55.135 is amended by adding a new subsection to read:

(c) A defendant convicted of assault in the third degree committed in violation of the provisions of an order issued under AS 09.55.600 or 09.55.610 shall be sentenced to a minimum term of imprisonment of 10 days. The execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served. Imposition of sentence may not be suspended, except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in this section, and the minimum sentence provided for in this section may not be otherwise reduced.

* Sec. 3. AS 18.65 is amended by adding new sections to read:

ARTICLE 6. DOMESTIC VIOLENCE.

Sec. 18.65.510. DOMESTIC VIOLENCE TRAINING. (a) Each established police training program in the state shall provide training that acquaints police officers with

(1) laws relating to substantive crimes and rules of criminal procedure applicable in cases involving domestic violence;

(2) techniques for handling incidents of domestic violence which promote the safety of the victim and the officer and which reduce

the likelihood of recurrence;

(3) organizations in the state that offer aid or shelter to victims of domestic violence;

(4) procedures applicable in the prosecution of cases involving domestic violence;

(5) orders that may be issued by a court under AS 09.55.600 and 09.55.610; and

(6) the notification that shall be given to victims of domestic violence under AS 18.65.520.

(b) In providing a training program under this section, each agency or institution offering an established police training program shall consult with interested individuals and organizations providing assistance to victims of domestic violence.

Sec. 18.65.520. NOTIFICATION TO VICTIMS OF DOMESTIC VIOLENCE. (a) During the course of responding to an offense involving domestic violence, a police officer shall orally or in writing inform the victim of services available to the victim and the rights of the victim, substantially as follows:

> As a victim of domestic violence you should be aware of the following:
>
> (1) In some places in Alaska there are organizations that provide aid and shelter to victims of domestic violence. The nearest such organization is located at_____.
>
> (2) If you feel that there is a continuing danger to your safety, please let me know and I will make all possible efforts to insure your safety.
>
> (3) Alaska law provides that you may file an

application with the nearest court for a court order protecting you and your children from further harm. The forms to obtain the order are available at the court. It is not necessary to have an attorney to obtain a court order but one may be of help to you. If you cannot afford to hire an attorney, you should contact the nearest Alaska Legal Services office which is located at _____.

(4) Additionally, the victim/witness assistance program of the Department of Law may be able to help you. The nearest district attorney's office is located at _____.

(b) If the victim of domestic violence does not understand English, the police officer shall make reasonable efforts to inform the victim of the services and rights specified in (a) of this section in a language the victim understands.

(c) As used in this section "domestic violence" means a crime under AS 11.41 committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the person who committed the crime.

* Sec. 4. AS 22.15.100 is amended by adding a new paragraph to read:

(9) to issue a temporary order for emergency injunctive relief in cases involving domestic violence as provided in AS 09.55.010.

* Sec. 5. Section 1 of this Act has the effect of changing Rule 3, Rules of Civil Procedure, by enacting a provision that allows a court to proceed upon the filing of a petition rather than a complaint, and Rule 76, Rules of Civil Procedure, by enacting a provision that allows a court to accept for filing petitions which are handwritten in part. Section 1 of this Act also

has the effect of changing Rule 65, Rules of Civil Procedure, by enacting a provision that establishes an alternate procedure for obtaining orders for relief from domestic violence.

HB

546

COMMITTEE REPORT

SENATE

FURTHER: Finance

3/11/80

Date: 4/15/80

Mr. President:

The Committee on JUDICIARY has had CSHB 546

increasing prejudgment and post-judgment interest rates

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for CSHB 546 [ ] same title [ ] new title

and recommends CSHB 546

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

with middle ground
+ee

HOUSE BILL 546: PRE. AND POST JUDGEMENT INTEREST RATES

PROS AND CONS

Effective Date

PRO

1. Eliminate Court congestion
2. Current law does not encourage settlement (87% v 18%)
3. Remedy the backlog of cases.
4. Reduction in number of cases pending
5. Expeditious resolution of claims
6. Inducement to settle
7. O.K. if around 10 %
8. No incentive to settle now..Expedite claims and clear court calendars.
9. Protect the rights of economicaly damaged persons in the state.

CON

1. Time for interest should begin a reasonable period after the claim has been filed rather than time of injury.
2. Plaintiff shoud pay expenses of defendant if there is zero award.
3. Defendent should pay interest only on Offer of Judgement, even if the jury awards a higher amount.
4. High settlement cost equal higher insurance rates.
5. Allows build-up of plaintiffs claim.
6. Increase in insurance premiums for liability insurance.
7. Plaintiff's attorneys will delay to maximize return and attorney will be rewarded by increased contingency fees
8. Malpractice insurance carriers have expressed the possibility of leaving the state if this bill passes.
9. Rate increase of up to 30 % if original CS passes, for malpractice insurance.
10. Disincentive for plaintiff to settle.
11. Ignores fair judicial procedure and due process for those being sued.
12. Settling cases should result from good faith by the people who are are being sued. This bill is coercion.

PROPOSED RULES COMMITTEE SUBSTITUTE FOR HB 546

*Section 1. AS 09.30.070 is amended to read:

Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on judgments and decrees for the payment of money is 10.5 [EIGHT] percent a year except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree [, BUT IN NO EVENT MAY IT BE MORE THAN 10 PERCFNT A YEAR].

*Sec. 2. AS 45.45.010(a) is amended to read:

(a) The rate of interest in the state is 10.5 [EIGHT] percent a year and no more on money after it is due except as provided in (b) of this section. [THE RATE OF INTERLST IN THE STATE IS SIX PERCENT A YEAR AND NO MORE ON (1) MONEY RECEIVED TO THE USE OF ANOTHER AND RETAINED BEYOND A REASONABLE TIME WITHOUT THE OWNER'S EXPRESS OR IMPLIED CONSENT; (2) MONEY DUE UPON THE SETTLEMENT OF MATURED ACCOUNTS FROM THE DAY THE BALANCE IS ASCERTAINED; OR (3) MONEY DUE OR TO BECOME DUE WHEN THERE IS A CONTRACT TO PAY INTEREST AND NO RATE IS SPECIFIED.]

*Sec. 3. AS 45.45.010 is amended by adding a new subsection to read:

(i) On or before the 60th day following the filing of an answer in a civil action, and on the day discovery closes as ordered by the court, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof, and thereupon the clerk shall enter judgment. An offer not accepted within ten days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is more favorable to the offeree than the offer, the interest awarded under (a) of this section and accrued up to the date judgment is entered shall be adjusted as follows: if the offeree is the party making the claim, the interest rate shall be increased by two percent per annum; if the offeree is the party defending against the claim, the interest rate shall be reduced by two percent per annum.

*Sec. 4. The interest rate provided in Sec. 1 of this Act applies only to judgments entered after the effective date of this Act. The interest rate provided in Sec. 2 of this Act applies only to cases filed after the effective date of this Act.

*Sec. 5. This Act takes effect July 1, 1980.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M December 13, 1979

SUBJECT: Post-Judgment Interest Rates
(Work Order Number 7547)

TO: Charles H. Parr, Chairman
House Judiciary Committee
Attn: Peggy Berck
Administrative Assistant

FROM: Thomas A. Sofo
Legislative Counsel TAS

At present post- and pre-judgment interest rates are both at eight percent. By amending the post-judgment interest rate in a manner which will undoubtedly make it higher than the eight percent pre-judgment rate of AS 45.45.010(a) we are creating a situation in which the big corporate defendant has financial incentive to delay litigation. It is only removed in degree from the earlier situation in which there was apparently post-judgment interest but no recognition of pre-judgment interest until the courts made it clear that such was necessary to counter certain abuses. A review of the case law indicates that we may be recreating a situation subject to the very misuses which the post-judgment and pre-judgment interests statutes and cases were designed to alleviate. Possibly we should consider amending or adding a section to AS 45.45.010 in such a manner as to reflect a calculation or the pre-judgment interest rate by the same manner post-judgment interest rates are calculated. Please let me know of your desires with regard to the above.

TAS:ljb

Enclosure

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 14, 1980

SUBJECT: Post-Judgment Interest Rates
(Work Order Number 7547)

TO: Representative Charles H. Parr, Chairman
House Judiciary Committee
Attn: Peggy Berck
Administrative Assistant

FROM: Thomas A. Sofo
Legislative Counsel

AS 45.45.010, the Alaska statute dealing with the legal rate of interest generally within the state, already requires the Department of Commerce and Economic Development to compile the 12th Federal Reserve District figure on a quarterly basis. If the intent behind the current amendment is to make the post-judgment interest rate more responsive to market conditions, this can be done on a quarterly basis (rather than semiannually as you have requested) without imposing any additional administrative burden on the bureaucracy.

TAS:ljb

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

TO: Legislative Affairs

FROM: Margaret W. Berck, Staff MWB

DATE: Jan. 30, 1980

RE: Request for (H) Judiciary Committee CS for HB 546.

Please furnish a CS by the House Judiciary Committee for HB 546 that would accomplish the following:

1. Quarterly determinations of interest rates for both prejudgment and post-judgment interest(said interest, in both cases shall be two points above the prime interest rate);

2. The interest in the prejudgment situation should begin to run from the date of injury, ie, date cause of action accrues--apparently the Alaska Supreme Court in Guin v. Ha, 591 P. 2d 1281, interpreted the language currently in AS 45.45.010 ("on money after it is due") to require such calculation.

3. Do not change the usury provisions in AS 45.45.010.

For your assistance in this matter I have attached a marked up bill, that I believe would accomplish the desires of the Committee.

Call me at 3718, I do have one question.

*Sec. 3. AS 45.45.010(a) is amended to read:

(a) The rate of interest in the state (IS EIGHT PER CENT A YEAR AND NO MORE) on money after it is due is two percentage points (EIGHT PER CENT A YEAR) above the annual rate charged member banks for advances b the 12th Federal Reserve District that prevailed on the 25th day of the month eceding the commencement of the calendar quarter during which the day the obligation to pay occurs except as provided in (b) of this section. (DELETE ALL REMAINING LANGUAGE IN THIS SUBSECTION, IE, SUBSECTION (a)).

*Sec. 4. AS 34.34.010 (d) is amended to read:

(d) Notice of the annual rate charged member banks for advances by the 12th Federal Reserve District prevailing on the 25th day of the month preceeding the commencement of each calendar quarter required for the (MAXIMUM INTEREST RATE COMPUTATION UNDER (b) OF THIS SECTION SHALL BE PROVIDED BY THE DEPARTMENT OF COMMERCE.) interest rate computation under (a) of this section and for the maximum interest rate computation under (b) of this section shall be provided by the Department of Commerce.

GARRETSON & JARVI
Attorneys at Law
750 WEST SECOND AVENUE
SUITE 201
ANCHORAGE, ALASKA 99501

WALTER H. GARRETSON
KENNETH O. JARVI
JACOB H. ALLMARAS
T. W. PATCH

TELEPHONE
(907) 278-5131

October 22, 1979

Honorable Joe L. Hayes
District 12
625 West 5th Avenue, Suite 1
Anchorage, AK 99501

Dear Joe:

I would be greatly honored by your sponorship of a bill in the legislature which would address the concern expressed in my letter of September 17, 1979. There was a minor error in the transcription of the wording suggested in my letter. I will restate the proposed addition to AS 15.45.010(a).

> In the event an action is filed in any court in this state, including any federal court, on a claim for money due on an express or implied contract for the payment of money, prejudgment interest shall accrue from the date the action is filed on any principal amount unpaid as of the date the action is filed at the highest rate allowed from time to time under (b) of this section until judgment, notwithstanding any agreement of the parties.

If I can be of any assistance, please do not hesitate to call upon me.

Very truly yours,

GARRETSON & JARVI

Walter H. Garretson

WHG/lw

From Tom Bliss

ALASKA BANK OF COMMERCE

MAIN OFFICE POUCH 7012, ANCHORAGE, ALASKA 99510

April 29, 1980

Kelly & Luce Attorneys at Law
Mr. Greg Grebe
1015 West 7th Ave.
Anchorage, Alaska 99501

Re: Request for information on correlation of the Prime rate to the Federal discount rate.

Dear Greg:

At your request, we have compiled from sources available and to the best of our knowledge, the attached discount/prime rate comparison and comparative graph. The graph and numeric comparison shows the 'spread' from 1942 to the present. As you will note, without sophisticated statistical analysis, there isn't a general statement that can readily be made as to the average 'spread' between the two rates.

Since we complied these figures from several sources, including some of our officers own personal records, we are unable to certify 100% accuracy of the figures, however, we do believe then to be the most accurate and complete set obtainable without investing substantial time and funds in research.

I hope this information will assist you in your presentation. If we may be of further assistance, please let us know.

Sincerely,

Richard J. Veale

Richard J. Veale
Commercial Loan Officer

RJV/sl
Enc.

COMPARISON DISCOUNT/PRIME RATES

April 17, 1980

(Prime 10/30/42 - 11/11/71/NY) (Prime 12/31/71 - S-FNB)

DATE	DISCOUNT %	PRIME %	SPREAD %	DATE	DISCOUNT %	PRIME %	SPREAD %
05/18/59	3.00	4.50	1.50	11/20/67	4.50	5.50	1.00
05/29/59	3.50	4.50	1.00	11/21/67	4.50	6.00	1.50
09/01/59	3.50	5.00	1.50	03/22/68	5.00	6.00	1.00
09/11/59	4.00	5.00	1.00	04/19/68	5.50	6.50	1.00
01/10/60	3.50	5.00	1.50	08/30/68	5.25	6.50	1.25
08/12/60	3.00	5.00	2.00	09/25/68	5.25	6.00 - 6.25	.75 - 1.00
08/23/60	3.00	4.50	1.50	11/13/68	5.25	6.25	1.00
07/17/63	3.50	4.50	1.00	12/02/68	5.25	6.50	1.25
11/24/64	4.00	4.50	.50	12/17/68	5.50	6.50	1.00
12/06/65	4.50	4.50	-	12/18/68	5.50	6.75	1.25
12/07/65	4.50	5.00	.50	01/07/69	5.50	7.00	1.50
03/10/66	4.50	5.50	1.00	04/04/69	6.00	7.00	1.00
06/29/66	4.50	5.75	1.25	06/09/69	6.00	8.50	2.50
08/16/66	4.50	6.00	1.50	03/25/70	6.00	8.00	2.00
01/27/67	4.50	5.75	1.25	09/21/70	6.00	7.50	1.50
03/23/67	4.50	5.50 - 5.75	1.00 - 1.25	11/10/70	5.75	7.50	1.75
03/27/67	4.50	5.50	1.00	11/12/70	5.75	7.25	1.50
04/07/67	4.00	5.50	1.50	11/20/70	5.75	7.00	1.25

COMPARISON DISCOUNT/PRIME RATES

April 17, 1980

(Prime 10/30/42 - 11/11/71/NY) (Prime 12/31/71 - S-FNB)

DATE	DISCOUNT %	PRIME %	SPREAD %	DATE	DISCOUNT %	PRIME %	SPREAD %
10/30/42	.50	1.50	1.00	08/05/55	2.00	3.25	1.25
04/25/46	1.00	1.50	.50	09/09/55	2.25	3.25	1.00
12/07/47	1.00	1.75	.75	10/14/55	2.25	3.50	1.25
01/12/48	1.25	1.75	.50	11/18/55	2.50	3.50	1.00
08/12/48	1.25	2.00	.75	04/13/56	2.75	3.75	1.00
08/13/48	1.50	2.00	.50	08/22/56	2.75	4.00	1.25
08/21/50	1.75	2.00	.25	08/24/56	3.00	4.00	1.00
09/22/50	1.75	2.25	.50	08/07/57	3.00	4.50	1.50
01/08/51	1.75	2.50	.75	08/23/57	3.50	4.50	1.00
10/16/51	1.75	2.75	1.00	11/15/57	3.00	4.50	1.50
12/19/51	1.75	3.00	1.25	01/22/58	3.00	4.00	1.00
01/16/53	2.00	3.00	1.00	01/24/58	2.75	4.00	1.25
04/27/73	2.00	3.25	1.25	03/07/58	2.25	4.00	1.75
02/05/54	1.75	3.25	1.50	04/18/58	1.75	4.00	2.25
03/17/54	1.75	3.00	1.75	04/22/58	1.75	3.50	1.75
04/16/54	1.50	3.00	1.50	09/12/58	2.00	4.00	2.00
04/15/55	1.75	3.00	1.25	11/07/58	2.50	4.00	1.50
08/04/55	1.75	3.25	1.50	03/06/59	3.00	4.00	1.00

COMPARISON DISCOUNT/PRIME RATES

April 17, 1980

(Prime 10/30/42 - 11/11/71/NY)

DATE	DISCOUNT %	PRIME %	SPREAD %
11/30/70	5.50	7.00	1.50
12/03/70	5.50	6.75	1.25
01/07/71	5.50	6.50	1.00
01/08/71	5.25	6.50	1.25
01/10/71	5.25	6.25	1.00
01/18/71	5.00	6.00	1.00
02/17/71	4.75	5.75	1.00
02/18/71	4.75	5.75	1.00
03/11/71	4.75	5.25	.50
04/26/71	4.75	5.50	.75
06/14/71	4.75	5.75	1.00
07/07/71	5.00	6.00	1.00
07/16/71	5.00	6.00	1.00
08/04/71	5.00	6.50	1.50
10/20/71	5.00	5.75	.75
11/05/71	5.00	5.50	.50
11/11/71	4.75	5.50	.75

(Prime 12/31/71 - S-FNB)

DATE	DISCOUNT %	PRIME %	SPREAD %
12/31/71	4.75	5.25	.50
01/10/72	5.00	5.00	-
01/26/72	5.00	4.75	.25
04/05/72	5.00	5.00	-
06/27/72	5.00	5.25	.25
08/29/72	5.00	5.50	.50
10/03/72	5.00	5.75	.75
12/28/72	5.00	6.00	1.00
02/26/73	5.25	6.25	1.00
03/26/73	5.25	6.50	1.25
04/19/73	5.25	6.75	1.50
05/07/73	5.25	7.00	1.75
05/25/73	5.25	7.25	2.00
06/07/73	5.25	7.50	2.25
06/22/73	5.25	7.75	2.50
07/02/73	5.25	8.00	2.75
07/06/73	5.25	8.25	3.00

COMPARISON DISCOUNT/PRIME RATES

April 17, 1980

(Prime 10/30/42 - 11/11/71/NY) (Prime 12/31/71 - S-FNB)

DATE	DISCOUNT %	PRIME %	SPREAD %	DATE	DISCOUNT %	PRIME %	SPREAD %
07/19/73	5.25	8.50	3.25	04/24/74	5.50	10.50	5.00
07/30/73	5.25	8.75	3.50	04/29/74	5.50	10.75	5.25
08/06/73	5.25	9.00	3.75	05/03/74	5.50	11.00	5.50
08/13/73	5.25	9.25	4.00	05/10/74	5.50	11.25	5.75
08/21/73	5.25	9.50	4.25	05/17/74	5.50	11.50	6.00
08/27/73	5.25	9.75	4.50	06/25/74	5.50	11.75	6.25
09/14/73	5.25	10.00	4.75	07/03/74	5.50	12.00	6.50
10/23/73	5.25	9.75	4.50	10/08/74	5.50	11.75	6.75
01/25/74	5.50	9.50	4.00	10/22/74	5.50	11.50	6.00
02/11/74	5.50	9.25	3.75	10/30/74	5.50	11.25	5.75
02/19/74	5.50	9.00	3.50	11/08/74	5.50	11.00	5.50
02/25/74	5.50	8.75	3.25	11/15/74	5.50	10.75	5.25
03/22/74	5.50	9.00	3.50	11/25/74	5.50	10.50	5.00
03/29/74	5.50	9.25	3.75	01/13/75	6.00	10.25	4.25
04/03/74	5.50	9.50	4.00	01/20/75	6.00	10.00	4.00
04/05/74	5.50	9.75	4.25	01/27/75	6.00	9.75	3.75
04/11/74	5.50	10.00	4.50	01/30/75	6.00	9.50	3.50
04/19/74	5.50	10.25	4.75	02/04/75	6.00	9.25	3.25

COMPARISON DISCOUNT/PRIME RATES

April 17, 1980

(Prime 10/30/42 - 11/11/71/NY) (Prime 12/31/71 - S-FNB)

DATE	DISCOUNT %	PRIME %	SPREAD %
02/11/75	6.00	9.00	3.00
02/18/75	6.00	8.75	2.75
02/26/75	6.00	8.50	2.50
03/10/75	6.00	8.25	2.25
03/12/75	6.00	8.00	2.00
03/19/75	6.00	7.75	1.75
04/01/75	6.00	7.50	1.50
05/20/75	6.00	7.25	1.25
06/09/75	6.00	7.00	1.00
07/18/75	6.00	7.25	1.25
07/25/75	6.00	7.50	1.50
08/11/75	6.00	7.75	1.75
09/15/75	6.00	8.00	2.00
10/27/75	6.00	7.75	1.75
11/05/75	6.00	7.50	1.50
12/01/75	6.00	7.25	1.25
01/12/76	6.25	7.00	.75
01/22/76	6.50	6.75	.50
05/28/76	6.25	7.00	.75
06/07/76	6.25	7.25	1.00
08/02/76	6.25	7.00	.75
10/04/76	6.25	6.75	.50
11/02/76	6.25	6.50	.25
12/13/76	6.25	6.25	-
05/13/77	6.50	6.50	-
05/31/77	6.50	6.75	.25
08/22/77	6.50	7.00	.50
09/16/77	6.50	7.25	.75
10/07/77	6.50	7.50	1.00
10/24/77	6.50	7.75	1.25
01/10/78	6.75	8.00	1.25
05/03/78	6.75	8.25	1.50
05/26/78	6.75	8.50	1.75
06/16/78	7.00	8.75	1.75
06/30/78	7.00	9.00	2.00
08/31/78	7.00	9.25	2.25

April 17, 1980

COMPARISON DISCOUNT/PRIME RATES

(Prime 10/30/42 - 11/11/71/NY)

DATE	DISCOUNT %	PRIME %	SPREAD %
09/15/78	7.50	9.50	2.00
09/28/78	7.50	9.75	2.25
10/13/78	7.50	10.00	2.50
10/27/78	7.50	10.25	2.75
11/01/78	7.50	10.50	3.00
11/03/78	7.50	10.75	3.25
11/17/78	7.50	11.00	3.50
11/24/78	7.50	11.50	4.00
12/26/78	7.50	11.75	4.25
06/19/79	7.50	11.50	4.00
07/27/79	7.50	11.75	4.25
08/16/79	10.25	12.00	1.75
08/28/79	10.25	12.25	2.00
09/07/79	10.25	12.75	2.50
09/14/79	10.25	13.00	2.75
09/21/79	10.25	13.25	3.00
09/28/79	11.00	13.50	2.50
10/09/79	12.00	14.50	2.50

(Prime 12/31/71 - S-FNB)

DATE	DISCOUNT %	PRIME %	SPREAD %
10/23/79	12.00	15.00	3.00
10/31/79	12.00	15.25	3.25
11/09/79	12.00	15.50	3.50
11/16/79	12.00	15.75	3.75
12/03/79	12.00	15.50	3.50
12/07/79	12.00	15.25	3.25
02/19/80	13.00	15.75	2.75
02/22/80	13.00	16.50	3.50
02/29/80	13.00	16.75	3.75
03/04/80	13.00	17.25	4.25
03/07/80	13.00	17.75	4.75
03/14/80	13.00	18.50	5.50
03/19/80	13.00	19.00	6.00
03/28/80	13.00	19.50	6.50
04/02/80	13.00	20.00	7.00
04/16/80	13.00	19.75	6.75
04/18/80	13.00	19.50	6.50
4/23/80	13.00	19.00	6.00

COMPARISON DISCOUNT/PRIME RATES

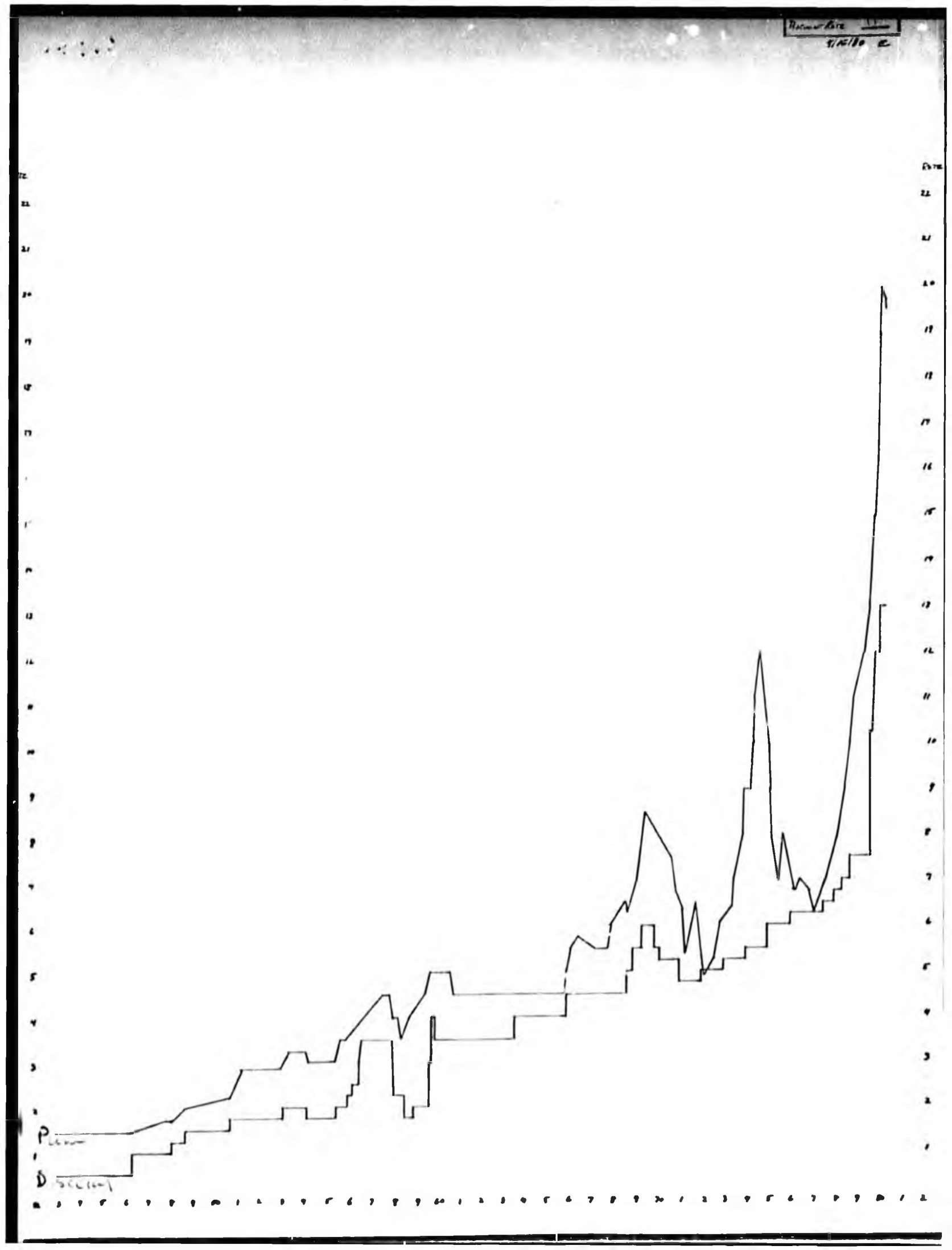
April 17, 1980

(Prime 10/30/42 - 11/11/71/NY)

DATE	DISCOUNT %	PRIME %	SPREAD %

(Prime 12/31/71 - S-FNB)

DATE	DISCOUNT %	PRIME %	SPREAD %



May 1, 1980

Mr. Roger F. Holmes,
Attorney at Law
Biss and Holmes
618 Christensen Drive
Anchorage, Alaska 99501

Dear Mr. Holmes:

Thanks for your letter of April 21.

Comments noted and your proposals made sense.

I have no idea as to in what form the bill will be in final passage, but I'm sure that it will entail a compromise.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

BISS AND HOLMES
ATTORNEYS AT LAW
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS
ROGER F. HOLMES

618 CHRISTENSEN DRIVE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 277-8564

WASILLA OFFICE
SR BOX 5111
WASILLA, ALASKA 99687
TELEPHONE (907) 376-5318

April 21, 1980

Senator Robert Ziegler
State Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill 546

Dear Senator Ziegler:

I enclose a re-draft of your committee substitute bill including a new sub-paragraph (h) under AS 45.45.010(2) which is Section 2 of your Bill. Basically section (h) states that in a tort or negligence situation interest does not become due until the defendant is notified that a claim is being made against him.

This section eliminates the burdensome interest rate during those years in which a medical malpractice claim or products liability claim goes undetected by both the claimant and the manufacturer, doctor or hospital. As you are aware, some of these cases are in excess of twenty years old when finally brought to the attention of the defendant.

This change would allow the claimants to obtain interest from the date the defendant is on notice of the claim. Thus, it would seem to retain the desired affect of prompting defendants to settle claims as soon as they receive notice that the claim was pending.

I doubt that this change would prejudice any claimants. In the simple negligence case the plaintiff is aware of the injury at the outset and the identity of the defendant. Automobile insurance companies traditionally have investigators contact the plaintiff within a matter of days of the accident. In the ordinary negligence situation a claimant would probably not be deprived under this Bill of more than a month's interest. The interest rate in the Bill appears high enough such that the loss of interest over a short period of time should not work a hardship on plaintiffs generally.

In the situation where the claim is not discovered for years the verdict or settlement will reflect present day economics Thus, the claimant will not be deprived of a just result.

Thanks much for your consideration.

Very truly yours,

BISS & HOLMES



Roger F. Holmes

RFH/gd
Enclosures

cc: Charles Rigden
Ove Arvidson
William G. Brock
Michael Thomas, Esq.
Douglas Smith, M.D.
Gerhart Haas
Jeff Landry

Original sponsor: Judiciary Committee

IN THE HOUSE BY THE JUDICIARY COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 546

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act increasing prejudgment and post-judgment interest rates; and providing for an effective date."

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

* Section 1. AS 09.30.070 is amended to read:

Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on judgments and decrees for the payment of money is 12 [EIGHT] percent a year [, EXCEPT THAT A JUDGMENT OR DECREE FOUNDED ON A CONTRACT IN WRITING, PROVIDING FOR THE PAYMENT OF INTEREST UNTIL PAID AT A SPECIFIED RATE NOT EXCEEDING THE LEGAL RATE OF INTEREST FOR THAT TYPE OF CONTRACT, BEARS INTEREST AT THE RATE SPECIFIED IN THE CONTRACT IF THE INTEREST RATE IS SET OUT IN THE JUDGMENT OR DECREE, BUT IN NO EVENT MAY IT BE MORE THAN 10 PERCENT A YEAR].

* Sec. 2. AS 45.45.010(a) is amended to read:

(a) The rate of interest in the state is 12 [EIGHT] percent a year and no more on money after it is due except as provided in (b) and (h) of this section. [THE RATE OF INTEREST IN THE STATE IS SIX PERCENT A YEAR AND NO MORE

ON (1) MONEY RECEIVED TO THE USE OF ANOTHER AND RETAINED BEYOND A REASONABLE TIME WITHOUT THE OWNER'S EXPRESS OR IMPLIED CONSENT; (2) MONEY DUE UPON THE SETTLEMENT OR MATURED ACCOUNTS FROM THE DAY THE BALANCE IS ASCERTAINED; OR (3) MONEY DUE OR TO BECOME DUE WHEN THERE IS A CONTRACT TO PAY INTEREST AND NO RATE IS SPECIFIED.]

(h) Money does not become due as defined in Sec. (a) of this section in a tort or negligence case until written demand is made upon the person or entity from whom the money is claimed. Written demand may be made by any means permissible for service of process. Interest commences running only from at the time written demand is made.

* Sec. 3. The interest rate provided in Sec. 1 of this Act applies only to those judgments rendered after the effective date of this Act. The interest rate provided in Sec. 2 of this Act applies only to those causes of action which accrue after the effective date of this Act.

* Sec. 4. This Act takes effect July 1, 1980.

May 9, 1980

Mr. William H. Fuld,
Attorney at Law
Kay, Christie, Fuld,
Saville and Coffey
2600 Denali, Suite 503
Anchorage, Alaska 99503

Dear Mr. Fuld:

CSHB 546 is now in the Senate Rules Committee. It is chaired by Senator Mike Colletta. It is he to whom you should offer your suggestions.

However, because time is rapidly running out, I have delivered a copy of your May 1st letter, together with a copy of this letter, to the Good Senator.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

cc: Senator Colletta w/enc.

Law Offices of
KAY, CHRISTIE, FULD, SAVILLE & COFFEY
2600 DENALI, SUITE 503
ANCHORAGE, ALASKA 99503

WENDELL P. KAY
REGINALD J. CHRISTIE, JR.
WILLIAM H. FULD
SANDRA K. SAVILLE
DAN R. COFFEY
M. GREGORY OCZKUS

TELEPHONE
AREA CODE 907
276-4335

May 1, 1980

Hon. Robert H. Ziegler
Pouch V
Juneau, Ak. 99811

Dear Sen. Ziegler: Re: CS HB 546

This bill relates to pre-judgment and post-judgment rates. It is my understanding that prime opposition to the bill has come from insurance companies. The present situation is somewhat of a disgrace since just by stalling litigation, insurance companies and other defendants who owe money to injured parties, as well as businessmen and contractors, can make money by stalling. The reason for this is court congestion. There is a windfall by delaying litigation. The small loan companies have contractual agreements whereby they can get 15-18% interest, at least pre-judgment pursuant to terms of contracts. The person who is hit by a drunk driver and loses a leg is presently limited to 8% pre-judgment interest, as well as post-judgment, while attempts at collection or appeals are exhausted.

Meanwhile, the person who owes the money can easily make 15-20% on the other person's money. This is outrageous and that is why, as an attorney and citizen aware of the problem, I urge that this legislation relating to pre-judgment and post-judgment interest be passed by the legislature.

As a result of higher interest rates, there is bound to be greater interest in settlements, and court congestion should be eliminated. To the extent people who owe money are going to have to pay more, it's only fair since they're not really losing anything, they're just getting a windfall from present high interest rates and are legally required to pay low interest rates. If interest rates fall, the bill has a sliding scale so that the legal interest rates would fall also. This is certainly constructive legislation.

Very truly yours,

William H. Fuld

WHF:flf

April 25, 1980

Mr. Robert E. Collins,
Branch Manager
The Continental Insurance Companies
P. O. Box 1850
Seattle, Washington 98111

Dear Mr. Collins:

I essentially agree with the comments you made in your well-written, well-reasoned letter of April 16.

As the Chairman of the Senate Judiciary Committee, I am used to having been placed between to warring factions of the same profession. CSHB 546 is an excellent example.

Believe me, I know the pros and cons of the argument and I have endeavored to find a compromise position as you can see by the enclosure.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

Enclosure



The Continental Insurance Companies

THE CONTINENTAL INSURANCE COMPANY • FIREMEN'S INSURANCE COMPANY • PACIFIC INSURANCE COMPANY
THE FIDELITY AND CASUALTY COMPANY • COMMERCIAL INSURANCE COMPANY • BUCKEYE UNION INSURANCE COMPANY
NIAGARA FIRE INSURANCE COMPANY • THE GLENS FALLS INSURANCE COMPANY • NATIONAL-BEN FRANKLIN COMPANIES
KANSAS CITY FIRE & MARINE INSURANCE COMPANY • BOSTON OLD COLONY INSURANCE COMPANY

Fourth and Battery Building, P.O. Box 1850, Seattle, Washington 98111

April 16, 1980

Mr. Robert H. Ziegler, Sr., Esquire
Chairman, State Senate Judiciary Committee
510 Kennedy Street
Juneau, Alaska

Pre and Post Judgment Interest Legislation

Dear Senator Ziegler:

In simple terms, the above legislation represents a deceptively popular effort that promises to be a major thrust towards killing the goose that laid the golden egg. The welfare of the people of Alaska is threatened by irresponsible efforts that will undermine either reasonable insurance rates or the survival of responsible companies within the State of Alaska.

Defeat of efforts to raise pre and post judgment interest beyond reasonable rates is in the best interest of the people of the State of Alaska, and of course, to you for numerous reasons:

1. Inflationary trends

   This statutory built-in guarantee of excessive inflation will render Alaska underwriting beyond any reasonable figures. Responsible underwriting companies will be forced to leave the State of Alaska. Alaska judgments already greatly exceed the national average. To permanently inscribe as a matter of law the current or any post prime rate factor in a pre and post judgment interest would require, under any sound actuarial computation, insurance rates that not only would become prohibitive, and thus create a real problem for the public welfare, but exceedingly inflationary themselves.

2. Interference with the right to litigate

   While we realize that you are faced with the frenzied demands of the plaintiff's bar, the very right to litigate and the very future of the Alaskan bar is threatened by such a measure. As responsible underwriters are driven out of the State of Alaska, the essential compensatory nature of litigation as a substitute for the club and stick become threatened. The Judiciary Committee, in our opinion, should take an overview of the entire judicial process; any threat of pre and post judgment interest impedes the very fundamentals of procedural due process of law and a party's right to litigate, in fact, whether or not the court so holds.

Any legislation must apply both to insured claims and uninsured claims, and the citizens of Alaska must necessarily be short-changed in the judicial process if they are faced with excessive additional cost affecting their right to litigate. We respectfully suggest that any study by your committee will show that Alaska already has the highest percentage cost of litigation cost in the country.

3. Bread and circuses

At this time when governmental officials the nation over are being faced with a difficult decision of apparently popular action vs. the exercise of leadership and restraint, we emphathize with your difficult position. However, as a matter of national interest, this measure will only lead in the short or long run to socialization of the insurance industry and a deprivation to the citizens of Alaska of the benefits of perhaps one of the more efficient industries in our country. We have seen such governmental interference affecting the railroad industry, the coal industry, the fuel industry, the steel industry, the airline industry, and most recently the automobile industry. This legislation would not aid the people in Alaska by crippling the available insurance funds to the litigants of Alaska.

Insurance in Alaska is funded by Alaskan citizens. The expense and risks of this fund are decidedly controlled by your committee, and by each action you take you determine the availability of responsible insurers to your citizens. Recent Alaskan judgments indicate that there is no evil or harm that need be served by the proposed legislation, save a desire for even greater funds that have been awarded. You are really determining for the citizens of Alaska whether or not they will have financially solvent and responsible insurance available to them, and at what cost.

Examples:

Just as the donosaur encountered nonsurvival problems, industries in our country have been weakened and destroyed, at tremendous expense to the citizens, and at tremendous loss of efficiency on the part of our country to foreign nations, through harsh regulatory legislation. Time and again voters indicate, when true leadership emerges to point out such harshness, that we, as a people, are still in favor of the free enterprise system.

May we point to the states of New York, New Jersey, and North Carolina where there has been a great withdrawal of insurance funds from citizens, and exceedingly high rates resulting. This, as you know, not only increases the overall cost of litigation to all parties, but enhances the risk of uninsured exposure, problems with less responsible companies, and outright business failures.

We wish to point, as recent examples, to the leadership in the countries of Japan and West Germany, where the leaders have taken it upon themselves

to expose to the public the need for restraint and fiscal responsibility. In those countries the current inflation rate is less than half of what it is we are faced with. In those countries, the responsible people have received the support of their electorate.

Lastly, we would like to point out that The Continental Insurance Companies have championed remaining in Alaska, confident of the economic health of that state, despite withdrawals from the state by many large peer group companies. It is our estimate that this legislation would increase gross premiums by 17% to 18%. The very existence of this legislation threatens our continued ability to do business in Alaska.

We call upon you to assist in any way possible to defeat this legislation. We ask, for the continued economic success of the State of Alaska, the citizens of Alaska, and our continued ability to do business in Alaska that such harsh legislation interferring with the right to litigate, be defeated.

Sincerely,

Robert E. Collins
Branch Manager

cc Mr. John W. O'Connor
cc Mr. Patrick C. Leahy



P.O. BOX 1330
FAIRBANKS, ALASKA 99701



April 7, 1980

Honorable Robert H. Ziegler, Sr.
Pouch V
Juneau, Alaska 99811

RF: CSHB 546 - Regarding
Pre and Post Judgment
Interest Rates

Dear Senator Ziegler:

Thank you for requesting medical society input on this bill. The position of the Fairbanks Medical Association is that there already exists a significant imbalance in tort law, such that it is easier and often cheaper to sue than it is to defend. This encourages a settlement of non-meritorious suits in preference to bearing the cost of defense. This bill, if passed, would worsen this imbalance by further increasing the advantage to plantiff of prolonged litigation, and increasing the motivation of defendants to settle prematurely in non-meritorious cases. Although the "fairness" of an "appropriate" interest rate geared to economic conditions may appear logical on the surface, we believe that this is a bad proposed law - for this reason.

Please write or call if you would like to discuss this matter. Again, thank you for your interest.

Sincerely,

Donald E. Thieman, M.D.
President
Fairbanks Medical Association
1001 Noble Street
Fairbanks, Alaska 99701

DET:mb
cc: Douglas Smith, M.D., President
Alaska State Medical Association

Winthrop Fish, M.D., Chairman
Alaska State Medical Association Legislative Committee

Martha MacDermaid, Executive Secretary
Alaska State Medical Association

Alaska State Legislature

SENATOR MIKE COLLETTA

SENATE MAJORITY LEADER

Senate

MEMORANDUM

APRIL 12, 1980

TO: SENATOR BOB ZIEGLER
CHAIRMAN, SENATE JUDICIARY COMMITTEE

FROM: SENATOR MIKE COLLETTA Mike Colletta

I am forwarding for your review several letters regarding CSHB 546 relating to increasing pre and post-judgement interest rates, which I understand will be heard in Judiciary Committee on Tuesday.

Your consideration of the attached comments is appreciated. Thanks.

BRA. BOX 1468-K, ANCHORAGE 99502 • POUCH V JUNEAU 99811

ALASKA STATE MEDICAL ASSOCIATION

~~1136 W. Eighth Avenue • Suite 6 • Anchorage, Alaska 99501~~ • (907) 277-6891

4107 Laurel St. #1, Anchorage, AK 99504

March 24, 1980

APR 7 1980

Senator Mike Colletta
Chairman, Senate Rules Committee
Pouch V, M/S 3100
Juneau, AK 99811

Dear Senator Colletta:

CSHB 546, increasing pre and post-judgment, passed the House unanimously. Its apparent purpose is to prevent laggardly judgment payments or timely settlement in times of high interest investment return. The Alaska State Medical Association is opposed to this legislation for the following reasons:

1) Our insurance companies have stated that it will cause an immediate increased premium for liability insurance. This will have two (2) effects.

   a) The insurance companies will have <u>discounted the interest penalties up front</u> and will have created immediate investment funds from the increased premium before the fact of any legal action or judgment against their insured. It thus rewards the insurance companies directly.

   b) Increased liability insurance premiums will be borne by the entire insured public, contributing to the general inflation.

2) High pre-judgment interest will directly encourage plaintiff's attorneys to maximize the return by delaying valid actions. The plaintiff will be penalized by the delay, and the attorney rewarded by increased contingency fees.

3) The interest rates effectively and automatically increase the actual eventual award. The successful plaintiff could not hope to invest privately at these rates.

4) Malpractice insurance carriers serving Alaska have expressed the possibility of withdrawal from the state, which, of course, would simply reopen the old sore.

Thus, this legislation will penalize the insured public, and, potentially, the plaintiff, while rewarding the plaintiff's attorney and insurance companies. We do not consider this to be in the public interest. It can potentially disrupt or destroy the current well-functioning malpractice coverage in Alaska, achieved with great effort.

We therefore urge the Senate to act unfavorably on this legislation, and, further, to document the invalidity of its apparent purpose.

Sincerely,

W. Fish

Winthrop Fish, M.D., Chairman
Legislative Committee

WF/sel

cc: Alaska State Medical Association Council Members
Alaska State Medical Association Legislative Committee Members

JAMES M. MORGAN
ATTORNEY AT LAW

931 CLAY COURT
ANCHORAGE, ALASKA 99503

PHONE
(907) 272-5261

March 26, 1980

The Honorable Mike Colletta
Pouch V
Juneau, Alaska 99811

Re: House Bill 546

Dear Senator Colletta:

I am writing in support of House Bill 546 (an act increasing pre-judgment and post judgment interest rates) which I understand you will be considering very shortly. As an attorney, I have been heavily involved in litigation and have thus been exposed to the effect that the present 8% interest rate has on the litigation process.

My experience has shown that the bargain 8% rate encourages defendants to drag their feet and prolong the litigation process as long as possible even when the defendant has no realistic expectation of winning. Our Supreme Court has said that failure to award pre-judgment interest creates a substantial financial incentive for defendants to litigate even where liability is so clear and the jury award so predictable that they should settle, State v. Phillips, 470 P.2d 266 (Alaska 1970). That same philosophy would seem to apply when defendants are required to pay interest which is substantially below the market rate. The objective of House Bill 546 is to remove this disparity between the pre- and post-judgment interest rate and the prevailing market rate. This proposed floating interest rate would also have the advantage of keeping pace with future market fluctuations and would thus avoid the necessity of repeated legislative reviews.

It should be remembered that an aggrieved party is supposed to be compensated for his loss through the payment of interest until his loss is repaid by the responsible party and as long as the interest rates allowed under AS 09.30.070 and 45.45.010 remain unrealistically low, those Alaska citizens these statutes were meant to protect are being shortchanged.

Finally, the present interest situation is a major factor in creating the massive backlog of civil cases in our courts (particularly the superior courts). If House Bill 546 is passed into law, I feel we will see a substantial reduction in the number of pending cases in our court system at all levels which will continue into the future, thus reducing the pressure on the system and in the long run helping to keep down the rapidly expanding costs of the burgeoning court system.

Thank you for your support in this matter. If there is anything I can do to further support this effort, please let me know.

Sincerely,

James M. Morgan

JMM:lge

APR 1 1980

730 West 2nd Avenue, Suite 1 0
Anchorage, Alaska 99501

Telephone
(907) 276-3037
(907) 276-6200

Dennis Patrick James
Attorney at Law

March 26, 1980

Senator Colletta
Pouch V
Juneau, Alaska 99811

Dear Senator:

I wish to solicit your support for House Bill 456 which deals with pre-judgment and post-judgment interest. The current law does not encourage settlement in that the tort-feasor who is generally insured, has no incentive to settle the case with his innocent victim. The primary reason for this is that money can be invested during the pendency of litigation at a much higher rate than the current interest rate that the court will assess against the Defendant.

Please support this Bill so that innocent victims may get the full protection of our laws.

Sincerely,

Dennis P. James

DPJ/sdw

OHIO

The Lowest Tax State

According to the latest Census Bureau figures (as printed in U.S. Governmental Finances Report 1977-1978) Ohio has the lowest state and local taxes as a share of personal income. Here's the list of all the states:

	Share of Personal Income	Tax Collections Per Person		Share of Personal Income	Tax Collections Per Person		Share of Personal Income	Tax Collections Per Person
Alaska	17.5%	$1,870.71	Washington	12.7%	$929.01	West Virginia	11.3%	$675.32
New York	17.2%	$1,308.28	Michigan	12.7%	$958.84	Kansas	11.3%	$797.74
Wyoming	15.9%	$1,155.66	Utah	12.7%	$727.69	Kentucky	11.3%	$681.89
California	15.8%	$1,227.46	Colorado	12.6%	$881.72	Georgia	11.3%	$872.40
Massachusetts	15.1%	$1,098.06	Rhode Island	12.5%	$848.13	South Carolina	11.1%	$615.25
Vermont	14.5%	$ 836.75	New Jersey	12.4%	$993.05	Virginia	11.0%	$756.52
Arizona	14.3%	$ 906.54	Delaware	12.3%	$943.22	North Carolina	10.9%	$642.60
Minnesota	14.2%	$1,001.37	Louisiana	12.3%	$716.31	Tennessee	10.7%	$613.26
Wisconsin	14.2%	$ 969.99	Pennsylvania	12.2%	$861.25	Oklahoma	10.7%	$660.00
Hawaii	14.0%	$1,058.97	Nebraska	12.1%	$814.31	Florida	10.6%	$699.48
Montana	13.8%	$ 816.94	Idaho	12.0%	$700.91	Texas	10.5%	$707.37
D.C	13.6%	$1,256.08	Illinois	11.8%	$916.98	New Hampshire	10.5%	$669.46
Maine	13.3%	$ 757.74	Mississippi	11.8%	$588.52	Indiana	10.3%	$706.66
New Mexico	13.3%	$ 762.78	Connecticut	11.6%	$940.88	Alabama	10.2%	$565.93
Nevada	13.3%	$1,004.09	North Dakota	11.6%	$721.31	Arkansas	10.2%	$552.97
Maryland	13.0%	$ 984.36	Iowa	11.6%	$794.30	Missouri	9.9%	$653.06
Oregon	12.8%	$ 875.04	South Dakota	11.5%	$682.75	OHIO	9.9%	$700.52
						U.S average	12.8%	$ 888.00

In addition to low taxes, Ohio is the finest location for manufacturing in America. Nearly two thirds of the population of the U.S. and Canada combined live within 600 miles of Ohio's borders.

Ohio also has:

- The best transportation network in the country.
- The best skilled workers in the world.
- A higher education facility within 25 miles of every boy and girl in the state.
- The nation's most complete vocational and technical program.
- Abundant supplies of electricity, natural gas and coal.
- Virtually unlimited supplies of water.
- An attitude of cooperation and assistance to industry by state and local communities.
- The fewest state employees per capita of any state.

There are even more reasons why you will like Ohio. We'd like to tell you about them.

State of Ohio
James A. Rhodes
Governor

Department of
Economic and
Community
Development

James A. Duerk
Director

Write or Call: International Division.

• Columbus, Ohio Office
Box 1001
30 E. Broad Street
Columbus, Ohio 43216
Telephone (614)466-5017
or (614)466-7444
Telex: 24-5312

• Brussels Office
21 Avenue de la Toison
d'Or
B-1060 Brussels, Belgium
Telephone (32-2)513-0751
Telex 846-26698

• Tokyo Office
2-16-15 Kirakawa-Cho
Chiyoda-Ku, Tokyo,
102 Japan
Telephone 262-1312
Telex 251-232-4036

memo from the desk of...
DAVID H. THORSNESS

Senator Bob Jeffries

Bob
The attached letter
include some very
relevant court data as
concerns the insurance
consumers (gas rel) in Alaska

DH 7

RECEIVED

APR 9 1980

Hughes, Thorsness, Gantz
Powell & Brundin

April 4, 1980

The Honorable Richard L. Randolph
Representative State of Alaska
Pouch V
Juneau, AK 99811

Dear Dick:

RE: CS for House Bill 546
An Act Increasing Prejudgment
and Post Judgment Interest

My letter to you of March 18, 1980, contains some computation errors. HB 546 refers not to prime rate per se but to the annual rate charged by the 12th Federal Reserve District to their member banks - known more commonly as the "discount rate". Effective February 15, 1980, the "discount rate" for the 12th Federal Reserve District was 13%. Even though this figure is somewhat lower than the prime rate, it still produces an additional cost to the Alaska insurance consumer that is very substantial. It would increase the cost to each automobile insurance policyholder in Alaska from $11.16 per year, which is the additional cost of the present statute at 8% annual rate, to $20.91 per year. The overall effect for all automobile insurance policyholders in Alaska is an additional cost of more than $1,934,000 in premium to support this additional tax free interest. At the present time this interest at 8% requires $2,208,000 of additional automobile insurance premium dollars to support its cost to the Alaska consumer. The new automobile insurance premium cost, using a 13% discount rate plus 2% under HB 546, would require $4,141,900 additional automobile insurance premium dollars based upon a conservative projection of the most recent actual experience in Alaska experienced by the automobile insurance industry.

The faulty premise of prejudgment interest is that unless the person being sued has to pay interest from the day of the incident until paid, he has no incentive to settle. The history of litigation in Alaska since the enactment by the Supreme Court of prejudgment interest has not encouraged settlements at all. Most cases are not ready for settlement until facts have been aired and damages determined. This information is not immediately available at the time of the incident. The actual effect of this sort of legislation is to give the plaintiff and his attorney very little incentive to settle when a statute would allow annual tax free interest of 15% at present discount rates.

The statute proposed does not produce a fair judicial system for the consumer of Alaska. The bill actually is an attempt to further coerce the segment of society being sued with the cost being paid by all insurance consumers in the State. This

bill will not solve the litigation explosion problem in the State: it has the effect of ignoring fair judicial procedure and due process and it penalizes all the insurance consuming public in Alaska with higher insurance premiums - the only source of funds to pay for the additional costs.

Dick, I hope you can bring this updated corrected and more precise information to the attention of the Senate Judiciary Committee. I understand that the effect on medical malpractice liability premiums would be to increase premiums by one-third because of the long tails - a devastating effect.

Very truly yours,

John S. Glascock
Division Manager
Alaska/Oregon Division

JSG:jw

bcc: Power Holmes, Attorney
618 Christensen Dr.
Anchorage, AK 99501

Dave Thorseness, Attorney
509 West Third Avenue
Anchorage, AK 99501

April 8, 1980

Mr. Douglas B. Baily,
Attorney at Law
Dunn, Baily and Mason
510 L Street, Suite 312
Anchorage, Alaska 99501

Dear Mr. Baily:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

DUNN, BAILY AND MASON
LAWYERS
510 L STREET, SUITE 312
ANCHORAGE, ALASKA 99501

THEODORE RUSS DUNN
DOUGLAS B. BAILY
JULIAN L. MASON III
ROBERT J. BUCKALEW
CABOT CHRISTIANSON

TELEPHONE
AREA CODE 907
276-4331

March 31, 1980

Senator Robert Ziegler
First Floor
State Capitol Bldg.
Juneau, AK 99801

RE: CS for House Bill 546
Prejudgment and Postjudgment
Interest Rates

Dear Senator Ziegler:

In furtherance of our conversation during my recent visit to Juneau, I am pleased to have this opportunity to provide comments on various bills affecting prejudgment and postjudgment interest which are presently pending in the Alaska legislature. As I indicated when we spoke in Juneau I have among my clients persons across the entire spectrum of conflicting interests with respect to increasing prejudgment and postjudgment interest rates My firm represents claimants and defendants and judgment creditors and judgment debtors together with others who are in various stages of litigation or subject to potential claims which cut in all directions with respect to changes in prejudgment and postjudgment interest rates. According, I am to a substantial extent neutral with respect to the issue of whether these rates should be increased.

It is my primary concern that any bill which changes the rate of either prejudgment or postjudgment interest should contain sufficient particularity to resolve in advance any question concerning when the new rates become applicable. My study leads me to conclude that a simple change in the interest rate with an effective date would not be sufficient to resolve issues of the type posed.

For example one might ask whether an increase in the postjudgment interest rate would or would not affect judgments in existence on the effective date of the Act. Again, some judgments specify that they will carry interest "at 8% per annum" while other lawyers and judges specify that their judgment's interest "at the legal rate". Existing judgments

with these two forms of language might be affected differently by House Bill 546 if its applicability is not set out with some degree of certainty.

In order to resolve difficulties of the types suggested above and to avoid resolution of these issues by litigation, I would suggest consideration of a provision that any increase in postjudgment interest rates be deemed applicable only to judgments, decrees and orders rendered after the effective date of a new Act.

Similar difficulties arise from the potential increase of prejudgment interest rates. If a claim is in litigation at the time of increase of prejudgment interest rates, I see some unfairness in increasing the applicable rate from 8% to perhaps 16% based solely on the fact that the case is tried a week after the effective date of the Act as opposed to the week before the effective date of the Act based upon the mere unpredictability of the court calendars. With respect to prejudgment interest, I would suggest as a possibility that legislation increasing the rate would exempt matters presently in litigation or pending appeal. This would provide a clear delineation that only claims asserted after the effective date of the Act would be affected by the increased rate.

I have discussed my interests in resolving these issues in advance and without the need of litigation with Art Snowden of the Alaska Court System and he has advised me that he concurs with that goal. He may or may not concur with the particular methods which I have proposed of resolving those questions in advance. I have also taken the liberty of discussing my concerns with Senator Dankworth who has authored a Bill affecting interest rates and I am providing him with a copy of this letter expressing my concerns. I have further provided you with a draft attached to this letter of proposed language which might avoid the ambiguities which I foresee. I do not pride myself on my legislative drafting, but provide my proposals only as a base from which the problem can be addressed.

Thank you very much for your time relative to this concern while I was in Juneau. I appreciate having had the

opportunity to comment on this matter of somewhat widespread interest.

Very truly yours,

FDB Douglas B. Baily

DBB/nk

Encl.

cc: Senator Dankworth

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act increasing prejudgment and post-judgment interest rates."

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

* Section 1. AS 09.30.070 is amended to read:

Sec. 09.30.070. INTEREST ON JUDGMENTS. The annual rate of interest on judgments and decrees for the payment of money rendered before the effective date of this act is eight per cent [a year] and on judgments and decrees for the payment of money rendered on and after the effective date of this act is two percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District that prevailed on the 25th day of the month preceding the commencement of the calendar quarter during which the judgment or decree is rendered, except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree [, BUT IN NO EVENT MAY IT BE MORE THAN 10 PERCENT A YEAR].

* Sec. 2. AS 09.30.070 is amended by adding a new subsection to read:

(b) Notice of the annual rate charged member banks for advances by the 12th Federal Reserve District prevailing on the 25th day of the month preceding the commencement of each calendar quarter required for the maximum interest rate computation under (a) of this section shall be provided by the Department of Commerce and Economic Development.

* Sec. 3. AS 45.45.010(a) is amended to read:

(a) The rate of interest in the state [IS EIGHT PERCENT A YEAR AND NO MORE] on money after it is due is two percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District that prevailed on the 25th day of the month preceding the commencement of the calendar quarter during which the day the obligation to pay occurs except as provided in (b) of this section. [THE RATE OF INTEREST IN THE STATE IS SIX PERCENT A YEAR AND NO MORE ON (1) MONEY RECEIVED TO THE USE OF ANOTHER AND RETAINED BEYOND A REASONABLE TIME WITHOUT THE OWNER'S EXPRESS OR IMPLIED CONSENT; (2) MONEY DUE UPON THE SETTLEMENT OF MATURED ACCOUNTS FROM THE DAY THE BALANCE IS ASCERTAINED; OR (3) MONEY DUE OR TO BECOME DUE WHEN THERE IS A CONTRACT TO PAY INTEREST AND NO RATE IS SPECIFIED.]

* Sec. 4. AS 45.45.010(d) is amended to read:

(d) Notice of the annual rate charged member banks for advances by the 12th Federal Reserve District

prevailing on the 25th day of the month preceding the commencement of each calendar quarter required for the interest rate computation under (a) of this section and for the maximum interest rate computation under (b) of this section shall be provided by the Department of Commerce and Economic Development.

* Sec. 5. AS 45.45.010 is amended by adding a new subsection to read:

(i) Nothing in this act shall alter the interest rates presently applicable to matters in litigation or pending appeal upon the effective date of this act.

LIBERTARIAN
REPRESENTATIVE
RICHARD (DICK) L. RANDOLPH
1105 CUSHMAN ST.
FAIRBANKS, ALASKA 99701
Phone (907) 452-2206

Alaska State Legislature

House of Representatives

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811
Phone (907) 465-4955

Enclosed is some more up to date information on HB 546 which may help you in considering this bill.

Dick

April 12, 1980

I keep telling you I have an idea as to what should be done with HB 546.

If we are going to get together, leave us do it soon, because I'm taking it up before Senate Judiciary Committee on Tuesday, April 15th.

3

RHZ:lk

State Farm Insurance Companies

April 4, 1980

JOHN S. GLASCOCK
Northwest Office
4600 25th Avenue
Salem, Oregon
97313

The Honorable Richard L. Randolph
Representative State of Alaska
Pouch V
Juneau, AK 99811

Dear Dick:

RE: CS for House Bill 546
An Act Increasing Prejudgment
and Post-Judgment Interest

My letter to you of March 18, 1980, contains some computation errors. HB 546 refers not to prime rate per se but to the annual rate charged by the 12th Federal Reserve District to their member banks - known more commonly as the "discount rate". Effective February 15, 1980, the "discount rate" for the 12th Federal Reserve District was 13%. Even though this figure is somewhat lower than the prime rate, it still produces an additional cost to the Alaska insurance consumer that is very substantial. It would increase the cost to each automobile insurance policyholder in Alaska from $11.16 per year, which is the additional cost of the present statute at 8% annual rate, to $20.91 per year. The overall effect for all automobile insurance policyholders in Alaska is an additional cost of more than $1,934 000 in premium to support this additional tax free interest. At the present time this interest at 8% requires $2,208,000 of additional automobile insurance premium dollars to support its cost to the Alaska consumer. The new automobile insurance premium cost, using a 13% discount rate plus 2% under HB 546, would require $4,141,900 additional automobile insurance premium dollars based upon a conservative projection of the most recent actual experience in Alaska experienced by the automobile insurance industry.

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Dick, I hope you can bring this updated corrected and more precise information to the attention of the Senate Judiciary Committee. I understand that the effect on medical malpractice liability premiums would be to increase premiums by one-third because of the long tails - a devastating effect.

Very truly yours,

John S. Glascock
Division Manager
Alaska/Oregon Division

JSG:jw

April 14, 1980

Mr. Michael J. Schneider,
Attorney at Law
Mestas and Schneider
540 L Street, Suite 106
Anchorage, Alaska 99501

Dear Mr. Schneider:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to heaven I didn't have to be the ultimate arbitrator, or at least among them.

I have held those bills on that subject for several weeks and everybody will have a chance to be heard. HB 546 is scheduled for hearing on April 15, 1980 at 1:30 p.m.

No doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

LAW OFFICES

Mestas & Schneider

DENNIS M. MESTAS
MICHAEL J. SCHNEIDER

540 L STREET, SUITE 106
ANCHORAGE, ALASKA 99501

AREA CODE 907
277-4551

April 10, 1980

Senator Ziegler
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

This firm has been informed that CSHB 546 (which raises post judgment and prejudgement interest to two points above prime) is now before the Senate Judiciary Committee. My partner and I would like to take this opportunity to express our strong support for this Bill. The legislature has recently seen fit to authorize funds for an intermediate appellate court and for new judgeships in the Anchorage area. While we think these are wise decisions and valuable improvements to our judicial system, much of the heavy burden upon the appellate courts could be relieved by the passage of CSHB 546. The present legislation creates a great incentive for defendants to drag out litigation, refuse to settle on reasonable grounds, and pursue frivolous appeals. CSHB 546 would impose an equitable burden upon those involved in litigation; a burden that would change over time and accurately reflect the value of the funds tied up pending a final judicial determination of a dispute.

Again, we strongly urge your support of this Bill, and are hopeful that we will soon be greeted with its enactment.

Respectfully yours,

MESTAS & SCHNEIDER

By _____
MICHAEL J. SCHNEIDER

MJS/ck

April 10, 1980

Mr. Michael T. Thomas,
Attorney at Law
Robertson, Monagle,
Eastaugh and Bradley
P. O. Box 1211
Juneau, Alaska 99802

Dear Mr. Thomas:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to heaven I didn't have to be the ultimate arbitrator, or at least among them.

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Robert H. Ziegler, Sr.

RHZ:lk

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J. B. BRADLEY
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TELEX 090-26-486

April 9, 1980

The Honorable Robert Ziegler, Chairman
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill 546

Dear Senator Ziegler:

We have asked the American Insurance Association, and other friends in the industry, to provide us as much information as they can concerning the actual impacts of this bill relating to prejudgment and post-judgment interest. They are gathering that information, but as you might imagine, it is a little difficult to isolate the effect of interest rates in settlements and judgments in one state.

Without having the exact figures, we know that this bill which if it were currently law would have the effect of more than doubling the interest rate on claims prior to judgment, would do several things, none of which seem to be warranted. As you may be aware, tort cases which go to trial have shown in the last few years a remarkable tendency to produce defense judgments. Many others come in at verdict amount which are less than offers of judgment that have been made. Thus, the insurance companies or uninsured defendants have been making fairly good judgments, about the merits of the claims against them. That would seem to call into question the argument that delays in settlement are due to callous greed on the part of the defendants. We can also demonstrate that the insurance companies are averaging approximately the same 8% return on their investments, that the prejudgment interest rate would give the plaintiff on his claim. Thus, the prejudgment interest rate wipes out the investment earnings as a reason to delay settlement. The very high cost of litigation in this state, on the other hand, is in addition to the interest, and forces serious attention to business by insurers. At the same time, the

plaintiffs are seldom able to obtain a return of 18% on their verdicts, and would not have made that kind of money if they had been given the verdict amount on the date of the accident. From their point of view, then, the interest rate is a windfall.

From the foregoing, all of which we can substantiate, it would seem that this enormous increase in the prejudgment interest rate will tend to skew the system by forcing settlement at higher figures than they are worth, or forcing settlements in cases that should be tried because the trier of fact would find no liability, and finally in those cases where there is a recovery by the plaintiff, it overcompensates the plaintiff. All of these phenomena tend to add to the cost of insurance, since both the amounts of the settlements and of the judgments, are business expenses of the insurance companies and will be used to substantiate rate increases. In the case of some lines of insurance, such as automobile, this will have further adverse effects on the public of Alaska as a whole, since other factors have caused automobile insurance to be sufficiently expensive so that nearly half of our driving citizens do not insure themselves.

We will be forwarding statistical and other information as we obtain it from the industry. I would appreciate notice of any hearing on this bill.

Very truly yours,

M. T. Thomas

MTT:sd

April 14, 1980

Mr. Michael Moody,
Attorney at Law
Atkinson, Conway, Bell and Gagnon
420 L Street, Suite 500
Anchorage, Alaska 99501

Dear Mr. Moody:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to heaven I didn't have to be the ultimate arbitrator, or at least among them.

I have held those bills on that subject for several weeks and everybody will have a chance to be heard. HB 546 is scheduled for hearing on April 15, 1980 at 1:30 p.m.

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Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

KENNETH R. ATKINSON
JOHN M. CONWAY
JESSE C. BELL
BRUCE E. GAGNON
ROBERT J. DICKSON
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GEORGE M. KAPOLCHOK
JOHN A. TREPTOW
PATRICK B. GILMORE
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LAW OFFICES OF
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CABLE ADDRESS:
DOVER

TELEPHONE 279-5563
AREA CODE 907

TELEX NUMBER:
26-517

April 9, 1980

Robert H. Ziegler, Sr.
Chairman
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

It has come to my attention that your Committee is considering amendments to AS 09.30.070 and 45.45.010, dealing with pre-judgment and post-judgment interest. I have reviewed CSHB 546 and would encourage you to enact that or similar legislation.

Given the general inflationary trend over the past few years, such legislation is sorely needed. There was a time when the 8% interest rate was realistic. With inflation galloping along at 15% a year and the prime lending rate now at 20%, the old fixed interest rate is simply unrealistic. When an injured person is unable to work or a small businessman is not paid under a contract, they have to borrow money in the marketplace to survive. It is difficult to explain to them why they must pay interest in excess of 20% but are awarded only 8% interest by the court.

As you know, the theory of pre- and post-judgment interest is that it is part of the compensation required to make an injured party whole. Our supreme court has recognized the "economic fact that money awarded for any reason is worth less the later it is received." State v. Phillips, 470 P.2d 266, 273 (1970). Since the person has suffered a loss at the time the injury occurred, he is entitled to interest from that day forward in order to be made whole. Thus pre-judgment and post-judgment interest are part of the compensatory damages. Davis v. Chisum, 513 P.2d 475 (1973). The remedy is illusory, however, where the disparity is so great between the legislative interest rate and that of the marketplace.

The impact of the current fixed interest rate can best be illustrated by a hypothetical. Assume that a person's

uninsured home or automobile is destroyed by the negligence or intentional act of another. The wrongdoer refuses to pay the damage and a lawsuit is filed. To replace the damaged item, the injured party must obtain funds in the marketplace at the prevailing interest rate. If recovery is had after three years of litigation, the claimant receives 24% total simple interest on the court award. Yet at prevailing rates he would have paid in excess of 60% total interest on the comparable money he had to borrow over the same period. It is obvious that even though he prevailed in the case, he was not made whole.

Regardless of the economic climate, CSHB 546 establishes a more equitable scheme than the current fixed interest rate. At best, the fixed rate will only approximate the real cost of money at any given time. A floating rate would much more closely approximate the true rate. Although companies that are frequently defendants, such as insurance companies or large businesses, might oppose such a statute, that opposition focuses only on the short term economic climate. In different economic times it could work to their advantage. For example, if President Carter succeeds in creating the recession he has been striving for, the money market will change drastically. In that situation, the floating rate could well decrease to the point where it was advantageous to defendants as compared to a fixed rate. As compared to the realities of the money market, however, a floating rate would be fair to both parties at any given time.

There is one other salutary effect of a realistic interest rate. It prevents defendants from litigating cases solely to retain use of relatively cheap money for several years. Only a fool or a saint would pay a claim promptly to avoid paying 8% interest where he must then borrow replacement money at 22%. In such a case the innocent claimant is subsidizing the wrongdoer in the amount of the difference of the two rates. If the base amount of the claim were $100,000, the benefit to the wrongdoer would be $14,000 per year. Any candid attorney would have to admit that such economic decisions are commonplace in litigation. A realistic interest rate would eliminate manipulation of this economic leverage.

For t e foregoing reasons, I urge you to give favorable consideration to CSHB 5.6. Such action is necessary to remedy the current inequitable situation. Thank you for your time.

Very truly yours,

ATKINSON, CONWAY, BELL & GAGNON

By _____
W. Michael Moody

WMM:mm

cc: Senator Dankworth
Senator Bennett
Senator Meland
Senator Ray

MSGR

C2241 AL ANCHORAGE ALASKA 50 04-08 1130A APR 8 PM 10 15

PMS SENATOR ROBERT H ZIEGLER

JUNEAU AK 902

WE SUPPORT HB546 BY JUDICIARY COMMITTEE WHICH WILL DO MORE TO

ELIMINATE THE CONGESTED COURT CALENDARS THEN ANY OTHER MEASURE

AS IT IS A FAIR REFLECTION OF THE COST OF MONEY IN TODAYS MARKET.

PAUL J MANGLE

JULIE A CLERK

CARNEY M MIMMS III

101 CHRISTIANSON ANCHORAGE AK 99501

This bill is scheduled for April 15, 1980
1:30 P.M. Beltz committee room

March 27, 1980

Diane Niemi
R.R. 5, Box 5242
Juneau, Alaska 99803

Senator Robert H. Ziegler
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: House Bill #546

Dear Bob:

Thank you for taking time recently to discuss with me House Bill #546. It is my opinion that you should take whatever action within your power to see that this bill is not passed. As you know, my concern is not so much over the rate of prejudgement interest applied, but rather with the concept of over what time period the interest should be assessed. As I understand it prejudgement interest is assessed from the date of injury, accident or when the cause of action arose. It would seem far more judicial for such interest to be assessed over a time period beginning 90 days (or some reasonable amount of time) after the defendant received written notice of claim or demand. As you know, many Complaints are not filed until a year or more after the incident giving rise to the Complaint thus affording the plaintiff quite a bit of time to research his position and formulate various arguments in his favor and perform routine acts of discovery, but not affording those same opportunities to the defendant. In many cases the defendant is not aware that he has behaved in such a way that a lawsuit could result so he reports nothing to the insuror until he receives notice of suit from the plaintiff. It has always seemed odd to me that the insuror should be penalized by prejudgement interest from the date of injury when the plaintiff is not required by law to make a formal claim immediately but is given two (or three, or six) years to file suit.

The current system seems to award a plaintiff for waiting as long as the statute of limitations will allow to file his Complaint so that even if the defendant of insuror agreed with the plaintiff's allegations and agreed to pay every dime of the demand the plaintiff would stand to collect additional sums by nature of prejudgement interest. In spite of what plaintiff's attorneys may report there are cases in that category.

It is my understanding that one of the main purposes for prejudgement interest was to encourage prompt settlements. In my narrow scope of all the litigation which goes on in Alaska I have been aware of a number of cases in which the defendant did all in his power to schedule settlement conferences but the plaintiff's counsel was out of town, involved in another trial, ill, or just "out to lunch." I know of cases in which the defendant was prepared for trial and the Court granted continuance after continuance at the plaintiff's request. The Courts are booked

such that even when both parties are prepared for trial an actual trial date may not be available for six months or longer. Have you ever heard a plaintiff's attorney complain when a case is postponed? Consumers seem quite concerned when insurance premiums rise yet it seems obvious that it's you and I and the guy next door who ultimately pay for the injustice discussed here. While the concept of prejudgement interest may have been formulated with the idea of moving cases along it seems the net result is none other than to punish defendants and their insurors. I understand that a plaintiff who has truly been wronged by a defendant should not have to wait three or four years to prove his case and then collect money which one could say was due the date of the wrongful act, but as a practical matter there is no way such a debt could be paid on the date the action arose. One obvious reason is that quite often the plaintiff himself does not know the extent of his damages and is not in a position to make a demand for a year or so. Why should the defendant be required to pay interest on a debt over the period of time during which the amount of that debt cannot be established even by the plaintiff himself?

It seems the current system has the effect of holding the defendant responsible UNLESS he is able to prove through trial that he is not. Guilty until proven innocent. Our society provides us with courts for the purpose of settling differences of opinion as to who may owe whom, yet penalizes the party who chooses to employ that system by saying, "I am not at fault." Perhaps lawmakers should give some consideration to the idea that prejudgement interest should work both ways. That is, if the defendant prevails at a trial and is found to be 0% liable to the plaintiff the plaintiff would then owe the defendant prejudgement interest from the date of injury assessed on the amount of dollars the insuror (or uninsured defendant) held in reserve as required by law. That way the risk of trial would seem more equally shared. I have handled numerous suits in which the jury returned a verdict for the defense and as the prevailing party we were awarded fees and costs to be paid by the plaintiff. The amount awarded is a very small percent of the actual fees and costs which I suppose is nearly irrelevant as the plaintiff generally trades his obligation to reimburse us for a promise not to appeal and we never see the $$$. I realize the same fate would likely befall the payment of prejudgement interest to the defendant, but such a concept would have to be considered by a plaintiff when determining his position and his risk. In some cases the possibility of having to pay the defendant prejudgment interest might be the very factor to cause a plaintiff to accept a settlement offer made by a defendant.

I would like to see some statistics comparing lawsuits in Alaska to those filed in states which do not have prejudgment interest. One could chart the date a Complaint was filed and the date and method by which the issue was resolved and perhaps statistically determine if the concept of prejudgment interest has any effect on timely settlements. I suspect it does not as there are so many other influencing factors.

And one last comment. In a case where an Offer of Judgement had been made in the amount of $20,000 but the jury awarded an amount greater than that it would seem more equitable to charge the defendant with pre-judgment interest on $20,000 to the date of the Offer and on the balance to the date of the trial. This would take into consideration that the defendant was willing to pay $20,000 as of that certain date and should not then be penalized with continuing interest on an amount which would have been paid but for the refusal of the plaintiff to accept.

Well, you asked for a "brief letter" outlining my ideas and suggesions. I guess you never really expected I could be brief, but hopefully I have supplied you with some ideas. It is my opinion prejudgment interest should be abolished altogether but if that is not in the cards I would hope for some equitable modifications and you're just the guy who should be able to help.

As you know, I am employed by a major insurance carrier but have not written to you on its letterhead as my superiors have not had the opportunity to review and approve my comments. Opinions expressed here are mine and may or may not be reflective of the position taken by my employer. Amen.

Sincerely,

Diane

Diane Niemi

P.S. This letter is not your birthday present!

April 3, 1980

Mr. H. Bixler Whiting,
Attorney at Law
Whiting and Rosie
548 1/2 Second Avenue, Suite 303
Fairbanks, Alaska 99701

Dear Bix:
O
Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

WHITING & ROSIE
ATTORNEYS AT LAW
348½ SECOND AVENUE, SUITE 303
FAIRBANKS, ALASKA 99701

H. BIXLER WHITING
THOMAS P. BLANTON
JOHN F. ROSIE

AREA CODE 907
452-3196 · 452-3287
452-2492 · 452-3738

March 31, 1980

Robert Ziegler, Senator
STATE CAPITOL
Pouch V
Juneau, Alaska 99811

Dear Bob:

I understand that the legislature is considering changing the statute which controls interest rates which judgments bear to be a floating rate consistent to some extent with the prime rate. I can not think of anything which would do more to remedy the backlog of cases in the court system. Somehow, people seem to forget that the purpose of insurance is to compensate for injury. That is, a nation-wide group pays premiums so that those who they injure can be compensated for the injury. When it comes time for the compensation payment, the realities of the business world become involved and those realities are separate and distinct from the realities of the legal world. If prejudgment interest is 6% or 8%, and an insurance company makes 18% to 20% on its investments by keeping the money, why should it pay the money until it absolutely has to? It simply does not make business sense to give up use of that money at those low interest rates until forced to do so. If $100,000 is owed and they can delay payment for four years through discovery, motions, delays, appeals and etc., they can easily clear 10% over and above the 8% which is due and earn $40,000 or $50,000 in the process.

The result of the low interest rate is to give insurance copanies little or no choice, but to delay settlement as long as possible. To do otherwise would be to exercise poor business judgment. A realistic interest rate would make the realities of the law consistent with realities of business and encourage rather than discourage early settlements. I support the bill.

Yours truly,

H. Bixler Whiting

HBW:vm

April 3, 1980

Mr. Dennis P. James,
Attorney at Law
750 West Second Avenue, Suite 110
Anchorage, Alaska 99501

Dear Mr. James:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

750 West 2nd Avenue, Suite 110
Anchorage, Alaska 99501

Dennis Patrick James
Attorney at Law

Telephone
(907) 276-3037
(907) 276-6200

March 26, 1980

Senator Ziegler
Pouch V
Juneau, Alaska 99811

Dear Senator:

I wish to solicit your support for House Bill 456 which deals with pre-judgment and post-judgment interest. The current law does not encourage settlement in that the tort-feasor who is generally insured, has no incentive to settle the case with his innocent victim. The primary reason for this is that money can be invested during the pendency of litigation at a much higher rate than the current interest rate that the court will assess against the Defendant.

Please support this Bill so that innocent victims may get the full protection of our laws.

Sincerely,

Dennis P. James

DPJ/sdw

April 8, 1980

Mr. Robert L. Richmond,
Attorney at Law
Richmond, Willoughby and Willard
880 H Street, Suite 201
Anchorage, Alaska 99501

Dear Mr. Richmond:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

LAW OFFICES
Richmond, Willoughby & Willard
A PROFESSIONAL CORPORATION

ROBERT L. RICHMOND
RICHARD J. WILLOUGHBY
DONNA C. WILLARD
AME W. IVANOV
R. N. SUTLIFF

880 "H" STREET, SUITE 201
ANCHORAGE, ALASKA 99501

TELEPHONE
AREA CODE 907
276-5727

March 26, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
307 Bawden Street
Ketchikan, Alaska 99901

Dear Senator Ziegler:

In recently returning to the state from vacation, I understand that a bill has passed the House which indicates that pre and post judgment interest in personal injury cases will be paid at a figure of two percent above the prime rate.

It seems to me that the bill does a great disservice to all defendants, which includes not just insurance companies, but those small defendants who believe they have the right to have their day in court.

I understand you are opposed to the bill and I thought one of the points that would be effective in arguing against this bill is that plaintiff's counsel frequently await up to the two year statute of limitation prior to even filing their lawsuits. Under this bill a plaintiff could build up almost thirty-five percent, or more, interest while investigating a case before filing a lawsuit. While I am against such an interest rate being added to a verdict or a judgment at any time, I do think that if this bill has enough support to pass, that at least something should be done to avoid the build up of interest over the period of time before the filing of a lawsuit.

I would be glad to discuss this with you at any time if you have any questions. My comments regarding plaintiff's lawyers delaying the filing of lawsuits, of course, is not an across-the-board indictment of plaintiff's counsel. In fact, one of the most tenacious and successful plaintiff's counsel that I have had occasion to deal with is your own partner, Hal Brown, who I had the pleasure of

FYI

dealing with in the so-called "Petersburg roof collapse case".

In any case, I would appreciate your attention to this matter.

Very truly yours,

RICHMOND, WILLOUGHBY & WILLARD

Robert L. Richmond

RLR:cb

cc. Charles J. Ossenkop

April 8, 1980

Mr. Winthrop Fish, M.D.
Chairman Legislative Committee
Alaska State Medical Association
4107 Laurel Street, #1
Anchorage, Alaska 99504

Dear Mr. Fish:

Obviously, pre and post judgment interest and the amount thereof pose problems I wish to heaven I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

ALASKA STATE MEDICAL ASSOCIATION

1135 W. Eighth Avenue • Suite 6 • Anchorage, Alaska 99501 • (907) 277-6891
4107 Laurel St. #1, Anchorage, AK 99504

March 24, 1980

Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V, M/S 3100
Juneau, AK 99811

Dear Senator Ziegler:

CSHB 546, increasing pre and post-judgment, passed the House unanimously. Its apparent purpose is to prevent laggardly judgment payments or timely settlement in times of high interest investment return. The Alaska State Medical Association is opposed to this legislation for the following reasons:

1) Our insurance companies have stated that it will cause an immediate increased premium for liability insurance. This will have two (2) effects.

   a) The insurance companies will have <u>discounted the interest penalties up front</u> and will have created immediate investment funds from the increased premium before the fact of any legal action or judgment against their insured. It thus rewards the insurance companies directly.

   b) Increased liability insurance premiums will be borne by the entire insured public, contributing to the general inflation.

2) High pre-judgment interest will directly encourage plaintiff's attorneys to maximize the return by delaying valid actions. The plaintiff will be penalized by the delay, and the attorney rewarded by increased contingency fees.

3) The interest rates effectively and automatically increase the actual eventual award. The successful plaintiff could not hope to invest privately at these rates.

4) Malpractice insurance carriers serving Alaska have expressed the possibility of withdrawal from the state, which, of course, would simply reopen the old sore.

Thus, this legislation will penalize the insured public, and, potentially, the plaintiff, while rewarding the plaintiff's attorney and insurance companies. We do not consider this to be in the public interest. It can potentially disrupt or destroy the current well-functioning malpractice coverage in Alaska, achieved with great effort.

We therefore urge the Senate to act unfavorably on this legislation, and, further, to document the invalidity of its apparent purpose.

Sincerely,

W. Fish

Winthrop Fish, M.D., Chairman
Legislative Committee

WF/sel

cc: Alaska State Medical Association Council Members
Alaska State Medical Association Legislative Committee Members

April 3, 1980

Mr. James M. Morgan,
Attorney at Law
931 Clay Court
Anchorage, Alaska 99503

Dear Mr. Morgan:

Senator Tillion requested me to respond to your letter of March 26.

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler Sr.

RHZ:lk

cc: Senator Tillion

HB 546 - in Sen Judiciary. then to Finance

JAMES M. MORGAN

ATTORNEY AT LAW

931 CLAY COURT
ANCHORAGE, ALASKA 99503

PHONE
(907) 272-5261

March 26, 1980

The Honorable Clem Tillion
Pouch V
Juneau, Alaska 99811

Re: House Bill 546

Dear Senator Tillion:

I am writing in support of House Bill 546 (an act increasing pre-judgment and post-judgment interest rates) which I understand you will be considering very shortly. As an attorney, I have been heavily involved in litigation and have thus been exposed to the effect that the present 8% interest rate has on the litigation process.

My experience has shown that the bargain 8% rate encourages defendants to drag their feet and prolong the litigation process as long as possible even when the defendant has a realistic expectation of winning. Our Supreme Court has said that failure to award pre-judgment interest creates a substantial financial incentive for defendants to litigate even where liability is so clear and the jury award so predictable that they should settle, State v. Phillips, 470 P.2d 266 (Alaska 1970). That same philosophy would seem to apply when defendants are required to pay interest which is substantially below the market rate. The objective of House Bill 546 is to remove this disparity between the pre- and post-judgment interest rate and the prevailing market rate. This proposed floating interest rate would also have the advantage of keeping pace with future market fluctuations and would thus avoid the necessity of repeated legislative reviews.

It should be remembered that an aggrieved party is supposed to be compensated for his loss through the payment of interest until his loss is repaid by the responsible party and as long as the interest rates allowed under AS 09.30.070 and 45.45.010 remain unrealistically low, those Alaska citizens these statutes were meant to protect are being shortchanged.

Finally, the present interest situation is a major factor in creating the massive backlog of civil cases in our courts (particularly the superior courts). If House Bill 546 is passed into law, I feel we will see a substantial reduction in the number of pending cases in our court system at all levels which will continue into the future, thus reducing the pressure on the system and in the long run helping to keep down the rapidly expanding costs of the burgeoning court system.

Thank you for your support in this matter. If there is anything I can do to further support this effort, please let me know.

Sincerely,

James M. Morgan

JMM:lge

March 27, 1980

Mr. L. Ames Luce
Kelly and Luce
Attorneys at Law
1015 West Fifth Avenue
Anchorage, Alaska 99501

Dear Ames:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Say hello to Bernie.

Regards,

Robert H. Ziegler, Sr.

RHZ:lk

LAW OFFICES
KELLY & LUCE
A PROFESSIONAL CORPORATION
1015 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 279-9571

BERNARD P. KELLY
L. AMES LUCE

KENAI OFFICE
HIGHLAND BUILDING
P. O. BOX 3762
KENAI, ALASKA 99611

March 20, 1980

Senator Robert Ziegler
Chairman, Senate Rules Committee
Pouch V
Juneau, Alaska 99811

Re: Pre/Post Judgment Interest Bill

Dear Senator Ziegler:

For a period in excess of one year I have been deeply involved, along with other members of the Bar Association, in addressing my attention to the continuing problem of court congestion and case resolution delay. These efforts have been directed toward participating in various committees and groups which have substantially streamlined the pretrial calendaring procedures in Anchorage, which will hopefully result in more expeditious case resolution. Also, substantial effort has been directed toward supporting the establishment of an interim appellate court, which has now come to be, and this should substantially reduce appellate delay, and for the addition of two new judges in the Anchorage area, which should help in expediting case resolution.

There is, however, still one important measure that needs to be implemented in order for all of these actions to produce their desired end - a more expeditious resolution of disputes. That is the enactment of the pre/post judgment bill that is presently pending before your committee.

As you will recall, pre and post judgment interest was initially established at 6%, and several years ago with rising inflation rates, was increased to 8%. Such an interest figure under present conditions, however, is unrealistic, and appeals and delay become advantageous economically for those against whom judgments have been rendered or whose liability will in all probability be established. In the Anchorage court system at the present time, it can be expected that from the time of the request for trial setting until resolution of the case by appeal, there will have elapsed a period of approximately four years. If judgment is obtained in the amount of $500,000 and if money can be generally invested at 18%, 10% per year would amount to a $50,000 difference between the pre or post judgment interest required to be paid and the money to be earned

if judgment were to be invested. This, coupled with a four year period of delay, would result in approximately $200,000 difference between the investment income to be produced and the pre or post judgment interest that would have to be paid. Reducing from this figure attorneys' fees and costs, we still would find in most cases that it is substantially more beneficial for a defendant to delay to the utmost extent possible and always use the appellate process, because the dictates of the marketplace make it financially desirable to do so. As long as the ethics of the marketplace make the delay in the resolution of disputes and the utilization of the appellate process more profitable than prompt and expeditious settlement at a claim's fair value, the trial court and appellate congestion, irrespective of the judicial resource available, will be the norm.

In some respects, this condition reminds me of what has been the experience in the astronomical increase in the cost of health care delivery services, where prepaid medical insurance, either through government or private industry sponsored plans, continually induces the escalating spiral of costs of medical delivery services far in excess of inflation or other responsible factors. While the analogy may not be exact, I think it serves as a model that should be avoided and not emulated by the legal profession.

House Bill No. 546 would place pre and post judgment interest at 2 percentage points above prime, which would effectively reflect the investment income that can be derived in the marketplace. In so doing, all financial benefit or inducement to engage in delay of case resolution, either at the trial or appellate level, would be removed.

It is to be anticipated that many special interest groups could claim that in some manner they are being substantially prejudiced by raising pre and post judgment interest to the actual marketplace level for the investment of funds. Such contentions, I believe, bear little merit. Suffice to say that the concept of pre and post judgment interest has proved to be meritorious and has withstood the test of time. All that needs now be done is have it reflect, in these economic times, the actual conditions of the marketplace.

I would appreciate your committee's support of this measure, which I believe will result in substantial elimination of much of the existing court backlog and ultimately result in a better quality of justice for Alaskans.

Yours truly,

L. Ames Luce

LAL/cb

LIBERTARIAN
REPRESENTATIVE
RICHARD (DICK) L. RANDOLPH
1108 CUSHMAN ST.
FAIRBANKS, ALASKA 99701
Phone (907) 452-2208

Alaska State Legislature

WHILE IN JUNEAU
[illegible]OUCH V
JUNEAU, ALASKA
99811
Phone (907) 465-4958

House of Representatives

March 25, 1980

Robert Ziegler
Chairman
Senate Judiciary Committee

Dear Bob

Enclosed is some information that I have received which I think may be helpful to you in your consideration of HB 546.

Regards,

Dick

March 27, 1980

I may have a solution. Why don't we get together sometime the first week of April?

Regards.

3/

State Farm Insurance Companies

March 18, 1980

JOHN S. GLASCOCK
Northwest Office
4600 25th Avenue
Salem, Oregon
97313

The Honorable Richard L. Randolph
Representative State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Dick:

RE: CS for House Bill No. 546
An Act Increasing Prejudgment and
Post-Judgment Interest Rates

Our best estimate of the cost of this bill to the insurance consumers of Alaska is conservatively $2,300,000. The present prejudgment interest rate of 8% costs Alaska insurance consumers $1,500,000 a year. State Farm Insurance Company's share of this is $250,000 a year. Present prime rate of 18½% as of last Friday plus 2% points generates a current interest of 20½% which is 12.25% points greater than the 8% prejudgment interest rate now required. This would increase the total cost to $3,800,000 a year. The difference between the present cost of $1,500,000 and $3,800,000 is $2,300,000.

This, of course, is not the only cost to the insurance consumer. Prejudgment interest places a penalty on individuals insured or uninsured alike and as a consequence places a penalty on a person's desire to have judicially determined the question of liability or damages. In addition, Alaska case law now requires that Rule 82 Attorneys Fees be computed on both the principal plus the interest. This computation will further magnify the effect of the proposed interest rate increase.

The faulty premise of prejudgment interest is that unless the person being sued has to pay interest from the day of the incident until paid, he has no incentive to settle. The history of litigation in Alaska since the enactment by the Supreme Court of prejudgment interest has not encouraged settlements at all. Most cases are not ready for settlement until facts have been aired and damages determined. This information is not immediately available at the time of the incident. The actual effect of this sort of legislation is to give the plaintiff and his attorney very little incentive to settle when a statute would allow annual tax free interest of more than 20% on the judgment. The additional disincentive for the plaintiff to settle would create even additional costs for the consumer. It is fair to estimate we believe that the total additional costs to the consumer would be something in the range of $3,500,000 to $4,000,000 for the insurance consumer of Alaska.

The statute proposed does not produce a fair judicial system for the consumer of Alaska. The bill actually is an attempt to further coerce the segment of society being sued with the cost being paid by all insurance consumers in the State. This bill will not solve the litigation explosion problem in the State; it has the effect of ignoring fair judicial procedure and due process and it penalizes all the insurance consuming public in Alaska with higher insurance premiums - the only source of funds to pay for the additional costs.

Dick, I hope that you are able to bring this information to the attention of the Senate Judiciary Committee which is now considering this proposed bill.

Very truly yours,

John S. Glascock
Division Manager
Alaska/Oregon Division

JSG:jw

March 31, 1980

Mr. James D. Rhodes,
Attorney at Law
Cole, Hartig, Rhodes,
Norman and Mahoney
717 K Street, Suite 201
Anchorage, Alaska 99501

Re: HB 546.

Dear Mr. Rhodes:

We'll do something with the captioned bill prior to terminating the session.

Certainly the current rate of interest on judgments is unacceptable, but on the other hand what is being sought is a little on the high side.

I suspect there is a compromise area someplace, and I hope to find it within the next few weeks.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

COLE, HARTIG, RHODES, NORMAN & MAHONEY
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
SUITE 201
717 K STREET
ANCHORAGE, ALASKA 99501
(907) 274-3576

HOYT M. COLE
ROBERT L. HARTIG
JAMES D. RHODES
JOHN K. NORMAN
ROBERT J. MAHONEY
BERNARD J. DOUGHERTY
MICHAEL W. SHARON
ROGER H. BEATY
EDGAR R. LOCKE

MICHAEL ROBBINS
WEV W. SHEA
C. WALTER EBELL
SPENCER C. SNEED
MELVIN M. STEPHENS, II
OF COUNSEL:
G. KENT EDWARDS

KODIAK OFFICE:
202 CENTER AVE., BOX 503
KODIAK, ALASKA 99615
(907) 486-3143
C. WALTER EBELL
MELVIN M. STEPHENS, II

March 25, 1980

REPLY TO: Anchorage

Honorable Robert H. Ziegler, Sr.
Pouch V
Juneau, Alaska 99811

RE: HB 546

Dear Senator Ziegler:

Please accept this letter as evidence of strong support for HB 546 or any substitute legislation which raises the interest rate attaching to judgments for both pre judgment and post judgment awards.

I feel I speak not only on behalf of many attorneys who have long felt that the present rates work an immense injustice on persons who must resort to the courts to secure monetary compensation, but also for a multitude of injured persons who seek redress against the Insurers of negligent and careless persons.

I personally represent several persons (or their estates) who were seriously injured or killed as a result of the negligence of others and who now must seek just compensation ultimately from an insurance carrier. As it now stands under the present interest rate on judgments there is no incentive for an insurance company to pay a just claim. In fact the opposite is true. At the present rate of 8% it is much more to the economic advantage of an insurance company to delay payment to the injuried victim as long as possible utilizing the money withheld to earn the insurance companies even more money at market interest rates of 15-20% and much more considering the actual yield on these investments.

In fact, and as a specific example, we secured a judgment against a Defendant for a wrongful death in Fairbanks in a judge tried case. The attorney representing the Defendant (appointed by the Defendant's insurance carrier) stated to

me in all candor that the insurance company was going to appeal the decision even though the chance of overturning the judge's decision and award was nil merely because it is cheaper to appeal than to pay because of the low interest rate on the judgment.

As a result, the widow and her three children continue to live in poverty and on welfare while the insurance carrier, Fidelity and Deposit Insurance Company of Maryland in this case, uses her money to invest for high returns and will ultimately pay her only 8% on her judgment when affirmed by the Supreme Court some two years after obtaining her right to compensation.

I am convinced, beyond any doubt whatsoever, that the legislation proposed will not only serve to expedite payment of insurance claims, it will have the additional benefit of clearing crowded court calendars of pending personal injury cases that are being contested not on merit, but on the grounds mentioned above.

I would only add, certainly only as constructive criticism, that the 2 point differential above the Federal Discount Rate, still leaves considerable disparity between the interest owed and the actual money market.

In other words, assuming a judgment entered today was effective pursuant to the terms of HB 546, the rate would be only 14%. The "prime rate" is 19% and the market availability of money in other areas is even higher, leaving insurance companies with a continuing incentive to procrastinate. A five percent addition would be even more logical and would not exceed the "usury" limitation in this State.

In any event HB 546 is a great effort to solve an important issue.

Good luck and thanks.

Sincerely,

COLE, HARTIG, RHODES,
NORMAN AND MAHONEY

BY: James D. Rhodes

JDR:cab

March 27, 1980

Roger E. Holmes
Biss and Holmes
Attorneys at Law
618 Christensen Drive
Anchorage, Alaska 99501

Dear Mr. Holmes:

Obviously, pre and post judgment interest and the amount thereof pose problems. I wish to Christ I didn't have to be the ultimate arbitrator, or at least among them.

I intend to sit on those bills on that subject for a few weeks until I've given everybody a chance to be heard.

Then, no doubt, I'll probably strive to find a middle ground, with which nobody will be ecstatically happy, but with which everybody will probably be able to live.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

BISS AND HOLMES
ATTORNEYS AT LAW
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS
ROGER F. HOLMES

618 CHRISTENSEN DRIVE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 277-8564

WASILLA OFFICE
SR BOX 511
WASILLA, ALASKA 99687
TELEPHONE (907) 376-5318

March 20, 1980

Robert H. Ziegler, Sr., Esq.
Chairman of the State Senate
Judiciary Committee
510 Kennedy Street
Juneau, Alaska 99801

Re: Pre and Post-judgment Interest Legislation

Dear Senator Ziegler:

I am the Corporate Secretary for the Medical Indemnity Corporation. I am sure you are aware that this corporation was set up a few years ago by the State to help solve the medical malpractice crisis in Alaska.

We are very concerned with legislation now pending before the House and Senate which would raise the prejudgment and post-judgment interest paid on liability claims to an amount which could be as high as 15 or 16%. This is, of course, double the present amount. Under the Bill the rates could go much higher.

MICA now insures all but one hospital in the State of Alaska. We also insure in excess of 100 physicians practicing in the State.

The Medical Indemnity Exchange of California, a private medical malpractice insurer, is now competing with MICA in the State of Alaska. MIEC now insures in excess of 30 physicians in the State of Alaska and possibly as high as 50.

We have not had an opportunity to receive a final opinion from our actuary on what doubling the interest rate will do to the malpractice premiums in the State. However, MIEC has informed the medical association that its actuary estimates that a rate increase of up to 33% could be necessary if these interest rate bills become law. We assume that our actuary will tell us approximately the same thing.

Malpractice premiums for physicians and hospitals are now at a very substantial rate. The health care providers will undoubtedly pass these substantial increases along to their patients. This will result in a further escalation of the already rising health care prices.

MICA has made it a policy to refer all claims to a panel of physicians here in the State. If that panel tells us that the care is not defensible, every effort is made to settle the case at the earliest opportunity. On the other hand, we have many cases now in litigation in which the plaintiffs are claiming substantial damages but which an independent panel of physicians tell us are defensible cases. Adequate reserves have been posted in case a trier fact finds against us.

By insurance code regulations we are strictly limited in the types of investments that can be made with our assets, including those which constitute our reserves. At the present time our portfolio of required securities is yielding less than 10% in a return to us. From that must be subtracted the expenses of investment and the cost of defense.

If these new interest rate bills pass, we will be exposing the premiums paid by our insureds as well as the $3,000,000.00 guarantee from the taxpayers of the State of Alaska, to interest rates at least 5% to 6% above what by law we are entitled to earn.

This exposure will in turn cause a further increase in rates in future years. Because of the substantial interest penalty that can be tacked on to any judgment, it will become extremely dangerous to let a trier of fact determine the issues in cases in which independent members of the health care community have determined that no negligence exists. By forcing more settlements in cases which might otherwise be successfully defended, a further rate increase is inevitable. By settling cases which might otherwise be defended, more suits will be brought which if the participants knew they must take their case to a jury, would probably never be brought.

I have been involved in litigation of this nature for ten years. I have yet to deal with an insurer who was not pushing me to resolve the case at the earliest opportunity. Many plaintiffs' cases are not brought until just prior to the expiration of the statute of limitations. Many of the long delays which occur

thereafter can be traced to a delay by the claimant's counsel in prosecuting the case. Substantial court delays at the trial and appellate level also contribute to the problem.

I have handled plaintiffs' personal injury and death cases. I have not found it difficult to force defendants into a trial or settlement posture when I have actively pressed the case except for court delays.

Thank you for your consideration in this matter.

Very truly yours,

MEDICAL INDEMNITY CORPORATION
OF ALASKA

Roger F. Holmes
Corporate Secretary

RFH/gd

cc: M. E. Dankworth
H. D. Meland
Bill Ray
Don Bennett
Ken Moore, Director, Division of Insurance

March 31, 1980

Mr. O. Nelson Parrish,
Attorney at Law
Parrish Law Office
536 Fourth Avenue
Fairbanks, Alaska 99701

Dear Mr. Parrish:

You and your brother Lance ought to communicate more closely.

I enclose a copy of a letter I wrote him the other week on the same subject.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

Enclosure

PARRISH LAW OFFICE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
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TELEPHONE
(907) 456-4070

March 24, 1980

Senator Robert Zeigler
Pouch V
Juneau, Alaska 99811

Dear Senator Zeigler,

It has come to my attention that there is a bill pending in the legislature, House Bill 546, that attempts to make an equitable adjustment regarding pre-judgment and post-judgment interest on civil litigation in Alaska. I wish to urge that you give this bill your complete support. In my opinion, passage of this bill is absolutely necessary to protect the rights of economically damaged people in the State of Alaska.

As you know, the rate of inflation in the United States is out of control. Extremely high interest rates on invested money go hand in hand with this inflation. (I was advised yesterday by a banker that sums in excess of $100,000.00 could be invested at a Seattle bank at between 18½ and 19%.) In my opinion, the insurance industry is taking advantage of these high interest rates to drag litigation out. The difference between actual interest rates and current pre-judgment and post-judgment interest rates gives insurance companies and other large corporations and in fact any other judgment debtor, no incentive to settle or otherwise resolve their liability.

A copy of a recent Supreme Court of Alaska opinion in which this office is involved, which provides an example of what I am talking about is enclosed. This case was tried and the judgment obtained in September or October of 1975. Since that time it has been on appeal, with the judgment running at 8% interest. As you can see from the opinion, the Supreme Court affirmed the judgment. Right now Continental Insurance Company is in the process of filing a Petition for Rehearing with the Supreme Court. This will undoubtedly occasion some further delay. Continental Insurance Company has been attempting to negotiate a settlement at substantially below the amount of the judgment plus interest. In my opinion, this is because they know every single day that passes deflates the value of our judgment.

As you can see, what occurs is in the nature of a vicious circle. Since there in no incentive to settle litigation even after judgment, the court system becomes overburdened with trials and appeals in cases that would otherwise be settled. This occasions more delay. The delay accrues to the advantage of the judgment debtor and to the disadvantage of the injured party. The situation is at present untennable.

I truly hope that you will give my remarks your closest consideration. If there is need, I would be happy to present my thoughts on this matter in more detail, in whatever manner you might desire.

Thank you.

Sincerely,

O. Nelson Parrish

ONP:mak

enclosure

AN Attorney, Doug Bailey
will be writing + seeing
you regarding this bill

HUGHES THORSNESS GANTZ POWELL & BRUNDIN
Attorneys at Law

JOHN C. HUGHES
DAVID H. THORSNESS
RICHARD O. GANTZ
JAMES M. POWELL
BRIAN J. BRUNDIN
*MARCUS R. CLAPP
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GARY W. GANTZ
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CARL J. D. BAUMAN
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MARY HUGHES PATCH
FRANK A. PFIFFNER
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GORDON J. TANS
R. CRAIG HESSER
ROBERT L. MANLEY
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BONNIE L. THIE
PAUL J. ERICKSON
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*Fairbanks Office

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Please reply to: ANCHORAGE

March 13, 1980

Senator Robert H. Ziegler, Sr.
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Bob:

Thanks for yours of March 10, 1980 and while I suspect we will continue to be plagued with prejudgment interest, unjust as it is, I would not be upset with a ten percent figure. The proponents of this change, as I understand, are beating the drums that this is a necessary change in order to force settlement of civil litigation which is the problem in the Superior Courts. I think we know that is not true either as a cause of the congested calendars, such as they are, or that higher interest force settlements. It indeed seems to me to be a strange position for the law to take to force the litigants, particularly one class of litigants, to settle under penalty of monetary sanctions and forego what I have always considered to be a right to have their questions judicially determined. However, that seems to be the official process under which we are operating in the State of Alaska. Bias in favor of defendants in criminal cases and against defendants in civil cases, to me, is so apparent as to be nauseating in the extreme.

In any event, for what assistance it may be to you in resolving this question, you will get no letters of complaint from me if the ten percent is adopted.

I have oftentimes thought, but I have never put it down in writing that I can recall, that your presence in the Senate, and particularly on the Judiciary Committee, is something the people of this State probably do not appreciate and will never appreciate. I, for one, am very happy you are serving in that position for the service you

have rendered in the past and the service you will render in the future. I must say I am not overly pleased with the contribution that the south-central district makes to the legislature, but it seems to be the best we are able to muster under the present circumstances.

Very truly yours,

David H. Thorsness

DHT/fws

March 6, 1980

Mr. E. G. King,
Attorney at Law
Ziegler, Cloudy, Smith,
King and Brown
307 Bawden Street
Ketchikan, Alaska 99901

Dear Ted:

Thanks for the comments on HB 674, HB 85 and the prejudgment interest bills. Comments noted.

If we ever, ala Shoesmith, have to go the surety bond route again, the enclosure may prove of interest.

Regards,

RHZ:lk

Enclosure

STATE OF ALASKA

PUBLIC NOTICE

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

Notice is hereby given that the Department of Commerce and Economic Development, under authority vested by AS 44.33.020, proposed to amend and adopt regulations in Title 12 of the Alaska Administrative Code to implement AS 08.18.071 and AS 44.33.020, as follows:

1) 12 AAC 090(b) is amended by requiring that when a time certificate of deposit is filed with the department in place of a surety bond, the certificate of deposit be issued "ITF the State of Alaska;"

2) 12 AAC 21.300 is amended by adopting a definition of "ITF" (in trust for).

Notice is also given that any person interested may present written statements or agruments relevant to the action proposed by mailing them so that they may be received by 4:30 p.m. on Monday, April 7, 1980, to:

Department of Commerce and Economic Development
Division of Occupational Licensing - Regulations
Pouch D
Juneau, Alaska 99811

Copies of the proposed regulations may be obtained by writing to the above address and requesting such.

The Department of Commerce and Economic Development, upon its own motion or at the instance of any interested person, may thereafter adopt the proposals substantially as described above without further notice or may decide to take no action on them.

Charles R. Hebber
Commissioner

Date

March 10, 1980

Mr. David H. Thorsness,
Attorney at Law
Hughes, Thorsness, Gantz,
Powell and Brundin
509 West Third Avenue
Anchorage, Alaska 99501

Dear Dave:

I appreciated your well written, well reasoned letter of March 4 in which you commented about prejudgment interest. It is to be expected that I'll be receiving letters from all over the state since I circulated the various bar associations.

Once again, and Jesus how I hate it, I find myself in the middle of two warring factions within the same profession.

What do you think about ten percent flat as a cop-out point? Eleven percent? Twelve percent?

I sure could stand some guidance.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

HUGHES THORSNESS GANTZ POWELL & BRUNDIN
Attorneys at Law

JOHN C. HUGHES
DAVID H. THORSNESS
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Please reply to: ANCHORAGE

March 4, 1980

Senator Robert H. Ziegler
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: CS for House Bill #546
Offered February 7, 1980
Original Sponsor: Judiciary Committee

Dear Bob:

It has come to my attention that Art Snowden or his deputy of the court system is lobbying mightily for the enactment of this legislation. I think I have probably expressed myself earlier with regard to prejudgment interest which our Supreme Court enacted in their legislative capacity on the faulty premise that as long as people and their insurers did not have to pay the money which the other side was seeking, there was no incentive to settle. Thus, if they had to pay interest on that money, an unliquidated sum, concerning which no liability had, at that point, been established, they would then be willing to settle to avoid the incurrence of further interest costs. The unfairness of this sort of a procedure, in my estimation, remains. Furthermore, prejudgment interest applies to individuals insured or uninsured alike, and in my estimation, places a penalty on one's desire to have judicially determined the question of liability and/or damages, as the case may be.

The faulty premise of prejudgment interest (i.e., interest, on the sum ultimately determined to be from the date of the incident) is that unless the party being sued and/or his insurer has to pay interest from the day of the incident until paid, he has no incentive to settle. This does not take into consideration reserve requirements, and thus that the money is available for use, as if it were unrestricted funds. In the days when it was the practice, in stand up bars, to furnish various types of

sandwich food, to encourage consumption of large quantities of beer, one beer hall philospher observed, "there ain't no such thing as a free bench." He was right. The money paid out has to come from somewhere, i.e., either greater product cost or greater insurance premiums.

I have been handling litigation in the territory and the State of Alaska since about 1955. Since the enactment by the Supreme Court of prejudgment interest, the obligation to pay prejudgment interest has not encouraged settlements at all. On the other hand, I have seen instances where counsel will be claiming, in addition to what is an agreeable settlement figure, prejudgment interest which results in a prolongation of the pendency of the action, and in some instances, the case going to trial rather than settling on an agreed basis. People generally react negatively to intimidation; and while it is popular to criticize, penalize, and otherwise treat unfairly, various types of business, including insurers, I do not find insurers reacting to this type of treatment by yielding to this pressure and paying demands as made. Most cases are simply not ready for settlement until the facts have been thoroughly aired and damages determined. Also, a certain level of stabilization as concerns one who is claiming damages as a result of personal injury.

The problem of the litigation explosion is indeed a difficult one and I do not mean to imply that I can offer a solution in one paragraph or less. But for the court system to take the position that they are going to apply an interest penalty for not settling a lawsuit, I believe is a recognition on their part that they have not solved the problem which is justly theirs.

It may well be that some definite interest figure might well be increased where the obligation to pay judgment has been established. However, to increase the interest rate as far as prejudgment interest is concerned, in my estimation, aggravates an already inequitable situation. In my experience, cases settle when the parties can agree, and they agree at such time as the various representatives have evaluated the liability question and have also evaluated the damage question. About 98% of the cases settle and they settle at various stages, depending upon the availability of the information upon which to make a final determination. While it is popular to suggest that cases settle on the courthouse steps, in my memory I have settled two or three cases during trial and probably less than that on the eve of trial. I well appreciate the court system has been receiving a lot of heat as a result of the backlog and their inability to handle cases in an orderly fashion and many of the circumstances that create this problem are not those of the court system, i.e., no plea bargaining, etc. We indeed have had a litigation explosion, and the State Supreme Court has been active in defining new ways

people can sue each other in an effort to obtain money recompense, this is not entirely the fault of the judicial system. In my estimation, judicial manpower has simply not kept pace with the increase in litigation arising at least partially out of the increase in population in various areas of the state. I note that two additional Superior Court judges have been requested for Anchorage and hopefully the legislature will approve. However, if we are going to have a fair judicial system then I submit that the prejudgment interest proposition as contained in the above referenced bill must not be enacted. The efficiency and success of any system of law, including the application and enforcement of that law depends entirely upon the faith of the people in that system. This rather transparent attempt at coercion of one segment of society, namely those people who are being sued, does nothing to reinforce the faith of the people in the system, and in fact, detracts from it substantially. I urge your opposition to this legislation.

Very truly yours,

David H. Thorsness

P.S. Since writing the above, I attended the Anchorage Bar Association weekly meeting and the president advised that it was his understanding that this prejudgment interest bill was the suggestion of L. Ames Luce, a prominent bodily injury lawyer which suggests some bias as concerns the entire idea and raises a serious question as to the propriety of the court system pushing such an idea.

DHT/fws

cc: Senator Ed Dankworth
Senator Mike Colletta
Senator Glenn Hackney
Senator Tim Kelly
Senator Pat Rodey

HOUSE BILL 546

HB 546 as passed by the House would raise the pre-judgment and post-judgment interest rates from the present 8% to a floating rate tied to the Twelfth District Discount Rate. That currently would mean 15% as pre-judgment interest. The Senate Judiciary Committee passed out a substitute raising the rate to a flat 12%. Some substantial misinformation has been given out in support of the higher rate.

FACTS AND FANCIES

Fancy: Plaintiffs are not being fairly compensated for their loss if they don't receive 15%.

Fact: Very few individuals would make 12% on their money, much less 15%, if given their verdicts on the date of incident. Long-term CD's are currently at 10 3/4%, but the rate is coming down. Retirement funds make 7 to 10%; savings accounts make 5 1/2%. It is in fact a windfall to plaintiffs and their attorneys.

Fancy: Defendants and insurance companies are making much more than 8% on their money by not settling cases.

Fact: Some uninsured defendants may be, but insurance companies aren't. Their return on the conservative investments they are required by law to make, net of investment expense, runs 6.8% to 8%. They lose money by not making a reasonable settlement as early as possible. In addition to interest, they have to pay costs of suit, which are much higher in Alaska than nationally.

Fancy: A high rate is necessary in order to force insurance companies to settle.

Fact: Of 31 civil trials reported by an Anchorage verdict reporting service, 19 resulted in plaintiff's verdicts, and 12 resulted in defense verdicts. At least 3, and probably more, of the 19 cases plaintiffs "won," were cases where plaintiffs had already rejected offers greater than the verdicts they won. So defendants are making reasonable judgments about when to resist paying what the plaintiffs ask. Court system statistics show that 95% of all civil cases settle without trial.

Fancy: Insurance companies will pay the bill anyway.

Fact: They will initially, but settlements and verdicts are costs of doing business, and will be reflected in rate filings. Ultimately, all Alaskans who buy insurance will pay. In a recent case, the verdict brought in by the jury was $6,000,000.00 for a dentist terribly injured in an automobile accident. With interest and attorney's fees, the judgment based on that verdict would have been over $11,000,000.

Compared with what most of us are able to get as a steady return on our assets, 8% is better than some do, and worse than others do. 12%, as a long-term guaranteed rate, is a very substantial and fair rate of return. 15% is a confiscatory penalty to defendants, and an inflationary pressure on insurance costs.

Michael Thomas
American Insurance Association

HB
686

COMMITTEE REPORT

SENATE

FURTHER: None

4/15/80

Date: 5/1/80

Mr. President:

The Committee on JUDICIARY has had CSHB 686
donors of food to nonprofit organizations

under consideration and (a majority of the committee) (the committee) reports it back with the ~~following recommendations:~~

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 3, 1980

LETTER OF INTENT

HOUSE JUDICIARY COMMITTEE

CS for HB 686

It is the intent of the House Judiciary Committee that this Act shall not limit or increase the liability of the nonprofit organization. The Committee intends that this Act shall have no effect on any questions arising about the liability of a nonprofit organization as that issue is not addressed in the Act.

Charles H. Parr
Chairman
House Judiciary Committee

I. REQUEST

Bill/Resolution No. House Bill No. 686

Title "An Act relating to donors of food to nonprofit organizations."

Requested by Commissioner's Office Date 3/17/80

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Health/Division of Public Health

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	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

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

Prepared by: M. Beaver Date: 3/17/80
Division/Office P.H. Admin. PH: 3090
Department of Health & Social Services

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

Approval DHSS Nat. & Bdgt: _____ Date: _____

Page ___ of ___

HB

723

COMMITTEE REPORT

SENATE

FURTHER: None

5/20/80

Date: 5/21/80

Mr. President:

The Committee on JUDICIARY has had CSHB 723
relating to a conditutional convention

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

JAY S. HAMMOND
GOVERNOR

TERRY MILLER
LIEUTENANT GOVERNOR

STATE OF ALASKA
LIEUTENANT GOVERNOR
JUNEAU

May 22, 1980

The Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: CSHB 723, Re: Constitutional Convention

Dear Bob:

Thank you for your memorandum of May 20, 1980 regarding Committee Substitute for House Bill 723, "An Act Relating to a Constitutional Convention; and providing for an effective date". Neither my office nor the Division of Elections has any problem with this particular piece of legislation; indeed some sort of statutory language to facilitate a convention, should the voters order one, is probably necessary.

Thank you, Bob, for the opportunity to comment.

Sincerely yours,

Terry Miller
Lieutenant Governor

May 20, 1980

To: The Honorable Terry Miller,
Lt. Governor of the State of Alaska

From: Robert H. Ziegler, Sr.,
Chairman, Senate Judiciary Committee

Through: Guy A. Van Doren,
Administrative Assistant
Senate Judiciary Committee

Re: CSHB 723, Re: Constitutional Convention.

I would appreciate your reviewing the attached bill. Basically, it sets up mechanisms for calling a constitutional convention should the voters approve the call in the 1982 election, or whenever.

This may be premature; however, there are no mechanical provisions for calling a constitutional convention at the present time.

Please let us know at your earliest possible convenience whether or not you would like this bill reported out of committee.

RHZ:GAVD:lk

Attachment

HB
917

COMMITTEE REPORT

SENATE

FURTHER: None

4/24/80

Date: 5/1/80

Mr. President:

The Committee on JUDICIARY has had CSHB 917 am foreign trade zones

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

SB 468 and CSHB 917 am

SB 468 was reported out of the Senate Judiciary Committee on April 10, 1980. HB 917 was the companion bill in the House and was referred to the Senate Judiciary Committee on April 17, 1980 as a Committee Substitute.

The Main substantive chan, es to the Senate version are:

(1) The Commissioner of Commerce and Economic Development may establish a foreign trade zone if the zone is to be operated and maintained by the State;

(2) Any municipality may establish and operate trade zones. The Senate version allowed foreign trade zones by Home Rule municipalities only;

(3) A corporation may establish, operate and maintain a foreign trade zone;

(4) The CS exempts property except real property from being taxed before clearing customs. The Senate version did not address the question of real property.

HB
997

COMMITTEE REPORT

SENATE

FURTHER: None

5/14/80

Date: 5/17/80

Mr. President:

The Committee on JUDICIARY has had CSHB 997 am

regulation of certified public accountants and continuing the existence of the Board of Public Accountancy

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 15, 1980

To: All Members of the
Senate Judiciary Committee

From: Robert H. Ziegler, Sr.,
Chairman

Re: SB 552 and CSHB 997 am,
Board of Accountants.

These bills deal with the Board of Accountants. I have checked with their representative, Ed Foster, and he has assured me that his clients think the House Committee Substitute is just "dandy".

I will be a "Do pass". The rest of you, as always, may sign as you wish.

A brief explanation of the changes follows:

Sections 1 - 6 - No changes.

Section 7 - The original bill changed the reciprocity clause from "may" to "shall", thus requiring a license to be issued to a former resident of another state or a foreign country.

The House Committee Substitute eliminated this section, thus making reciprocity permissive.

Section 7 - Of the House Committee Substitute: The House added a new section which provides that an applicant who has an application pending may be issued a temporary certificate until the Board notifies the person that the permanent certificate has been granted or rejected.

Section 8 - Makes several technical changes and cleans up language to AS 08.04.345.

Section 9 - Clean-up language.

Section 10 - The House Committee Substitute provides that the Board shall issue a permit to a partnership as long as each partner personally engaged in the practice of public accountancy holds a license or permit.

Section 11 - No change.
Section 12 - Just a change of wording.

Section 13 - The House Committee Substitute removed an unnecessary change in section AS 08.04.600 in the original bill.

Section 13 - In the House Committee Substitute and Section 14 in the original bill are the same.

Section 14 - In the House Committee Substitute, a new paragraph defining "attest function" which has not in the original bill.

Section 15 - No change in the repealer section or in Section 16, the effective date.

I will be responsible for the bill on the floor.

RHZ:lk

3—

HCR

3

COMMITTEE REPORT

SENATE

FURTHER: None

2/28/79

Date: 3/6/79

Mr. President:

The Committee on JUDICIARY has had HCR 3 am
enforcement of the Antiquities Act

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____ CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M March 6, 1979

SUBJECT: HCR 3 am - Enforcement of Antiquities Act

TO: Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee

FROM: Billy G. Berrier BGB
Director
Division of Legal Services

You have asked whether HCR 3 am which requests the governor to direct that no state personnel, time, facilities or funds be used to enforce or aid the federal government in enforcing the Antiquities Act or implementing regulations poses constitutional difficulties.

It is clear that under the Supremacy Clause of the United States Constitution, federal law is applicable within each state as if it were also the law of the state. It is equally clear that states have no power of interposition, they may not declare federal law not applicable within the state. Both statements are firmly recognized in the case law.

Although the first recital seems to suggest the State of Alaska is declaring federal action illegal, the operative provisions of the resolution do not go this far. They simply request that the state not provide active assistance in enforcement.

There is authority that Congress can constitutionally impose upon state officers the power and duty to enforce federal criminal law (e.g. Testa v. Katt (1947) 330 U.S. 386, 67 S. Ct. 810, 91 L. ed. 967) and there are cases holding that it is entirely proper and permissable for state officers to cooperate in enforcement of criminal law even though no federal requirement for that cooperation exists.

I have, in the time available, found no authority on the question directly involved which is, absent specific requirements for cooperation, is there an affirmative duty on the state to use its resources to enforce federal criminal law. The courts of a state are required to recognize and enforce federal law but the resolution is directed solely to the executive branch.

In logic, the authorities suggest that there is no requirement that a state take affirmative action through its executive branch to enforce federal law absent a mandate to do so.

BGB:nem:jdn

HCR

43

COMMITTEE REPORT

SENATE

FURTHER: None

4/14/80

Date: April 23, 1980

Mr. President:

The Committee on JUDICIARY has had CSHCR 43

endorsing concept and requesting implementation of the Indian Child Welfare Act of 1978

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

TELEGRAM

[illegible]
[illegible]
[illegible], AK [illegible]

[illegible] PDT FBA ANCHORAGE ALASKA 15 04-30 1210P ADT

[illegible] SENATOR ROBERT H ZIEGLER

[illegible] FAU AK

WE URGE YOUR SUPPORT OF HCR 43 AND FUNDING FOR THE

ALCOHOLISM PROGRAMS THROUGHOUT THE STATE

[illegible] AND [illegible]

CITY OF ANGOON BOX [illegible] ANGOON AK 99820

Passed Senate 4/29/80

Have always supported

3

CENTRAL COUNCIL
tlingit and haida indians of alaska
One Sealaska Plaza - Suite 200
Juneau, Alaska 99801
(907) 586-1432 or 586-3613

April 25, 1980

The Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V
Juneau, AK 99801

Dear Senator Ziegler:

We are writing to you to express our support for the Committee Substitute for House Concurrent Resolution No. 43, "a resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978".

We are pleased that this resolution was passed by the House so quickly, and it is our hope that the Senate action on the resolution will indicate the same support and commitment to the act. We understand that the Senate Judiciary Committee will soon consider the resolution, and we therefore wish to share our support with you.

As representatives of the Native community, we firmly believe that the Indian Child Welfare Act is necessary and desirable legislation, and we want to see it implemented as smoothly and quickly in Alaska as possible. To implement the act, informed and enthusiastic cooperation must exist between the Department of Health & Social Services, the court system and the various Native organizations that will be funded to provide services under the act. We believe that the resolution before you will provide the impetus for the needed cooperation.

It is our hope that the Judiciary Committee and the Senate as a whole will show support for the interest of Alaskan Natives by passing HCR #43.

Thank you for giving this matter your consideration.

Sincerely,

CENTRAL COUNCIL OF TLINGIT AND
HAIDA INDIAN TRIBES OF ALASKA

Raymond E. Paddock, Jr.
President

cc: Bill Ray
Don Bennett
Pete Meland
Ed Dankworth

April 30, 1980

Dear Ray:

HCR 43 passed the Senate on April 29.

May 1, 1980

Rep. E. J. Haugen
Alaska State House of Representatives
Pouch V State Capitol Building
Juneau, Alaska 99811

Dear Mr. Haugen;

As president of the Local A.N.B. Camp #7 it has been brought to my attention that shortly, you will be reviewing Bill HCR 43 pertaining to the Indian Child Welfare Act of 1978. We in Angoon have a population of 530, 90% are native and therefore support and request that you support the passage of HCR 43.

Passed both bodies a few days ago 3 vs

Sincerely,

Ivan Gamble
President
Angoon A.N.B. Local Camp #7

cc: Rep. Jim Duncan
Rep. Richard Eliason
Rep. Oral Freeman
Rep. Terry Gardiner
Rep. Mike Miller

Senator H.D. Meland
Senator Bill Ray
Senator Robert Ziegler

TELEGRAM

ALASCOM INC.
PHONE: 586-6462
JUNEAU, AK 99802

80 APR 18 PM 4 05

02040 TDA HOONAH ALASKA 27 04-18 1155A AST

PMS SENATOR ROBERT ZIEGLER

SENATE JUDICIARY COMMITTEE CHAIR MAN

2491

JUNEAU AK

I WOULD LIKE TO REFLECT MY ENDORSEMENT OF HOUSE CONCURRENT RESOLUTION 43. IT IS MY HOPE THAT THIS BILL PASSES. THANK YOU FOR THIS CONSIDERATION.

JOHN HINCHMAN JR PRESIDENT HUNA TOTEM CORPORATION

TELEGRAM

ALASCOM INC.
PHONE: 586-6442
JUNEAU, AK 99802

02227 POM TDA SITKA AK 15 04-18 130P AST

PMS SEN ROBERT ZIEGLER

JUNEAU

WE URGE YOU TO SUPPORT PASSAGE OF HCR43.

HENRY BENSON, PRESIDENT

SITKA COMMUNITY ASSOCIATION

TRIBAL COUNCIL

'80 APR 18 PM 9 18

CALL, HAYCRAFT & FENTON
AN ASSOCIATION OF
DAVID H. CALL AND THOMAS E. FENTON
PROFESSIONAL CORPORATIONS
1919 LATHROP - SUITE 206
FAIRBANKS, ALASKA 99701

DAVID H. CALL
THOMAS E. FENTON
JAMES D. DEWITT
PAUL A. BARRETT

TELEPHONE
907 - 452-2211
452-2296

March 13, 1980

Representative Charles H. Parr
Pouch V
Juneau, AK 99811

Re: House Concurrent Resolution No. 43
Indian Child Welfare Act of 1978

Dear Charlie:

I am writing to state my opposition to House Concurrent Resolution No. 43, "a resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978."

As background, I have never represented any parent whose parental rights were being terminated or involuntarily relinquished or otherwise being surrendered by force. I have never represented the State of Alaska in an action to take away parental rights. I have, however, on numerous occasions, represented the children in these proceedings for termination. My official title has always been "guardian ad litem" but my duties have frequently involved reconciliation, peacemaking and negotiation.

Under Alaska law, a guardian ad litem represents the "best interests of the child" in the proceeding; not necessarily what the child wants and not necessarily what the parents or the State of Alaska want. It is a difficult assignment and I confess I am uncomfortable with it in many situations. However, I accept appointments as guardian ad litem because all too frequently the children themselves are not otherwise a concern in a parental rights termination proceeding. It is very easy for the other parties involved to lose sight of the fact that while their lives may be impacted by whatever decision a court may reach, the children will live with the results and be affected by the results for the rest of their lives. The Alaska Supreme Court has begun to recognize that the children are a party in interest, that they have constitutional rights in custody and termination proceedings and that those rights deserve to be represented. The Indian Child Welfare Act, as to the class of children who happen to be of fractional Native blood, removes those rights and removes the right of the children to be represented in a meaningful sense in those kinds of proceedings.

My first dispute is with the underlying premise for the Act, that "a highly disproportionate number of Native American children in Alaska are from families broken up by the removal of children. . .", with the inference that that statistical fact is somehow evidence of wrongdoing by the State of Alaska. The hard truth, however politically unpopular it may be, is that Native American families have the highest rate of alcoholism, the highest rate of broken, unstable homes, and the highest rate of child abuse in Alaska and that that, not any wrongdoing or excess of zeal by the Department of Health and Social Services or the State of Alaska, is the reason why Native American homes are broken up most frequently. I will leave it to sociologists, psychologists and anthropologists to describe why these statistical facts exist, but they do. Those problems may or may not be susceptible of solution, but you are treating a symptom when you remove the right of the children to be removed from abusive homes. If the Alaska Legislature wants to solve the problem of abused Native children and their statistically anomalous frequency, it should create programs to treat the underlying problems, not endorse a statute which forces the children to continue to live in those homes, regardless of consequences.

And it is effectively impossible to terminate the parental rights of a parent whose child is an Alaska Native. To terminate those parental rights, someone must prove beyond a reasonable doubt (1) that there is a clear and present physical danger to the children; (2) that the danger has caused harm or imminently will cause harm to the children; and (3) that that conduct constituting a clear and present danger is likely to continue. Check with your legislative counsel, but in my view it is effectively impossible to prove beyond a reasonable doubt that a pattern of conduct is likely to continue. It is hard enough to establish beyond a reasonable doubt that something has happened; ask any district attorney.

So the parental rights cannot be terminated, the parents will continue to have contact with their children, no matter how abusive they have been in the past and no matter how harmful that conduct may be to the children themselves.

In my view, the Indian Child Welfare Act of 1978 is unconstitutional since it unfairly imbalances the constitutional rights of the children as against the constitutional rights of their parents. I emphasize that is my opinion alone, and has not been endorsed by any court of which I am aware.

Another serious problem with the Act is its application in Alaska. Assuming the Act exists to preserve a Native culture, its avowed purpose, then it operates without regard to that avowed purpose. An Alaska Native family, regardless of its ties to its culture, is entitled to the protections of the Indian Child Welfare Act. If I may, I would like to analyze a specific hypothetical.

Let us assume that two fathers in Barrow, Alaska have sexually abused their five year old daughters. One family is caucasian, the other is one-quarter Eskimo. To terminate the parental rights of the caucasian father, the State of Alaska must establish by clear and convincing evidence that the child has suffered emotional harm and that it is likely that the conduct leading to the emotional harm will continue. That is not an easy matter, and is not likely to be proven by one specific bad act, in the absence of other conduct. Obviously, it is not going to be possible to terminate the parental rights of the Native father for a single act.

Now let us assume that each father again sexually abuses the five year old daughter. Probably, it will now be possible to terminate the parental rights of the caucasian father. In the view of most of the courts of Alaska, two specific, identical instances give rise to an inference that conduct is likely to continue and reach the burden of proof: clear and convincing evidence. While the matter has not been ruled upon, it is reasonably certain that it is not going to be possible to terminate the Native father's rights, even though the conduct takes place in the same community, even though the children are harmed in precisely the same way and to precisely the same degree. In fact, as long as there is even a slight doubt that the Native father will continue to sexually abuse his daughter, his parental rights may <u>not</u> be terminated.

Obviously I oppose House Concurrent Resolution No. 43. While I cannot pretend to make up your minds for you, I urge you to give the Act, its implications and the points I have raised in this letter serious consideration before proceeding further with this Resolution. The State of Alaska and the Department of Health and Social Services have not attempted to force all of the diverse cultures of Alaska into one white, suburban, middle class mold. Whatever the rationale for the Indian Child Welfare Act in other jurisdictions, Alaska has acted in every way to protect the cultural identities of its peoples. The Act is unnecessary, harmful to the children it is intended to protect and possibly unconstitutional. I urge you to resist adoption and passage of the Resolution.

Thank you for your time and patience in reviewing the points that I have set out. Please feel free to contact me if you have questions regarding my position.

Sincerely yours,

CALL, HAYCRAFT & FENTON

James D. DeWitt

JDD:so

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No.–1386

ESTABLISHING STANDARDS FOR THE PLACEMENT OF INDIAN CHILDREN IN FOSTER OR ADOPTIVE HOMES, TO PREVENT THE BREAKUP OF INDIAN FAMILIES, AND FOR OTHER PURPOSES

JULY 24, 1978.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 12533]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 12533) to establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, beginning on line 3, strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Indian Child Welfare Act of 1978".

SEC. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power*** To regulate Commerce*** with Indian tribes "and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

20-006—78——1

(2) Within seven months from the date of this Act, the Secretary shall present the proposed rules and regulations to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

(3) Within eight months from the date of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act.

(b) The Secretary is authorized to revise and amend any rules and regulations promulgated pursuant to this section: *Provided*, That prior to any revisions or amendments to such rules and regulations, the Secretary shall present the proposed revision or amendment to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives and shall, to the extent practicable, consult with tribes, organizations, and groups specified in subsection (b)(1) of this section, and shall publish any proposed revisions or amendments in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and to receive comments from, other interested parties.

TITLE IV—PLACEMENT PREVENTION STUDY

SEC. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provisions of educational facilities for children in the elementary grades.

SEC. 402. Within sixty days after enactment of this Act, the Secretary shall send to the Governor, Chief Justice of the highest court of appeal, and the Attorney General of each State a copy of this Act, together with Committee reports and an explanation of the provisions of this Act.

SEC. 403. If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

PURPOSE

The purpose of the bill (H.R. 12533) introduced by Mr. Udall et al.,[1] is to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes or institutions which will reflect the unique values of Indian culture and by providing for assistance to Indian tribes and organizations in the operation of child and family service programs.

BACKGROUND

> • • • I can remember (the welfare worker) coming and taking some of my cousins and friends. I didn't know why and I didn't question it. It was just done and it had always been done • • •.[2]

[1] H.R. 12533 was introduced by Representatives Udall, Roncalio, Baucus, Bingham, Blouin, Burke of California, Phillip Burton, Carr, Dellums, Fraser, Miller of California, Risenhoover, Selberling, Stark, Taongas, Vento, and Weaver. A similar bill, S. 1214, has been approved by the Senate.

[2] Testimony of Valancia Thacker before Task Force 4 of the American Indian Policy Review Commission.

The wholesale separation of Indian children from their families is perhaps the most tragic and destructive aspect of American Indian life today.

Surveys of States with large Indian populations conducted by the Association on American Indian Affairs (AAIA) in 1969 and again in 1974 indicate that approximately 25–35 percent of all Indian children are separated from their families and placed in foster homes, adoptive homes, or institutions. In some States the problem is getting worse: in Minnesota, one in every eight Indian children under 18 years of age is living in an adoptive home; and, in 1971–72, nearly one in every four Indian children under 1 year of age was adopted.

The disparity in placement rates for Indians and non-Indians is shocking. In Minnesota, Indian children are placed in foster care or in adoptive homes at a per capita rate five times greater than non-Indian children. In Montana, the ratio of Indian foster-care placement is at least 13 times greater. In South Dakota, 40 percent of all adoptions made by the State's Department of Public Welfare since 1967–68 are of Indian children, yet Indians make up only 7 percent of the juvenile population. The number of South Dakota Indian children living in foster homes is per capita, nearly 16 times greater than the non-Indian rate. In the State of Washington, the Indian adoption rate is 19 times greater and the foster care rate 10 times greater. In Wisconsin, the risk run by Indian children of being separated from their parents is nearly 1,600 percent greater than it is for non-Indian children. Just as Indian children are exposed to these great hazards, their parents are too.

The Federal boarding school and dormitory programs also contribute to the destruction of Indian family and community life. The Bureau of Indian Affairs (BIA), in its school census for 1971, indicates that 34,538 children live in its institutional facilities rather than at home. This represents more than 17 percent of the Indian school age population of federally-recognized reservations and 60 percent of the children enrolled in BIA schools. On the Navajo Reservation, about 20,000 children or 90 percent of the BIA school population in grades K–12, live at boarding schools. A number of Indian children are also institutionalized in mission schools, training schools, etc.

In addition to the trauma of separation from their families, most Indian children in placement or in institutions have to cope with the problems of adjusting to a social and cultural environment much different than their own. In 16 States surveyed in 1969, approximately 85 percent of all Indian children in foster care were living in non-Indian homes. In Minnesota today, according to State figures, more than 90 percent of nonrelated adoptions of Indian children are made by non-Indian couples. Few States keep as careful or complete child welfare statistics as Minnesota does, but informed estimates by welfare officials elsewhere suggest that this rate is the norm. In most Federal and mission boarding schools, a majority of the personnel is non-Indian.

It is clear then that the Indian child welfare crisis is of massive proportions and that Indian families face vastly greater risks of involuntary separation than are typical of our society as a whole

Standards

The Indian child welfare crisis will continue until the standards for defining mistreatment are revised. Very few Indian children are removed from their families on the grounds of physical abuse. One study of a North Dakota reservation showed that these grounds were advanced in only 1 percent of the cases. Another study of a tribe in the Northwest showed the same incidence. The remaining 99 percent of the cases were argued on such vague grounds as "neglect" or "social deprivation" and on allegations of the emotional damage the children were subjected to by living with their parents. Indian communities are often shocked to learn that parents they regard as excellent caregivers have been judged unfit by non-Indian social workers.

In judging the fitness of a particular family, many social workers, ignorant of Indian cultural values and social norms, make decisions that are wholly inappropriate in the context of Indian family life and so they frequently discover neglect or abandonment where none exists.

For example, the dynamics of Indian extended families are largely misunderstood. An Indian child may have scores of, perhaps more than a hundred, relatives who are counted as close, responsible members of the family. Many social workers, untutored in the ways of Indian family life or assuming them to be socially irresponsible, consider leaving the child with persons outside the nuclear family as neglect and thus as grounds for terminating parental rights.

Because in some communities the social workers have, in a sense, become a part of the extended family, parents will sometimes turn to the welfare department for temporary care of their children, failing to realize that their action is perceived quite differently by non-Indians.

Indian child-rearing practices are also misinterpreted in evaluating a child's behavior and parental concern. It may appear that the child is running wild and that the parents do not care. What is labelled "permissiveness" may often, in fact, simply be a different but effective way of disciplining children. BIA boarding schools are full of children with such spurious "behavioral problems."

One of the grounds most frequently advanced for taking Indian children from their parents is the abuse of alcohol. However, this standard is applied unequally. In areas where rates of problem drinking among Indians and non-Indians are the same, it is rarely applied against non-Indian parents. Once again cultural biases frequently affect decisionmaking. The late Dr. Edward P. Dozier of Santa Clara Pueblo and other observers have argued that there are important cultural differences in the use of alcohol. Yet, by and large, non-Indian social workers draw conclusions about the meaning of acts or conduct in ignorance of these distinctions.

The courts tend to rely on the testimony of social workers who often lack the training and insights necessary to measure the emotional risk the child is running at home. In a number of cases, the AAIA has obtained evidence from competent psychiatrists who, after examining the defendants, have been able to contradict the allegations offered by the social workers. Rejecting the notion that poverty and cultural differences constitute social deprivation and psychological abuse, the Association argues that the State must prove that there is actual physical or emotional harm resulting from the acts of the parents.

The abusive actions of social workers would largely be nullified if more judges were themselves knowledgeable about Indian life and required a sharper definition of the standards of child abuse and neglect.

Discriminatory standards have made it virtually impossible for most Indian couples to qualify as foster or adoptive parents, since they are based on middle-class values. Recognizing that in some instances it is necessary to remove children from their homes, community leaders argue that there are Indian families within the tribe who could provide excellent care, although they are of modest means. While some progress is being made here and there, the figures cited above indicate that non-Indian parents continue to furnish almost all the foster and adoptive care for Indian children.

Due process

The decision to take Indian children from their natural homes is, in most cases, carried out without due process of law. For example, it is rare for either Indian children or their parents to be represented by counsel to or have the supporting testimony of expert witnesses.

Many cases do not go through an adjudicatory process at all, since the voluntary waiver of parental rights is a device widely employed by social workers to gain custody of children. Because of the availability of the waivers and because a great number of Indian parents depend on welfare payments for survival, they are exposed to the sometimes coercive arguments of welfare departments. In a recent South Dakota entrapment case, an Indian parent in a time of trouble was persuaded to sign a waiver granting temporary custody to the State, only to find that this is now being advanced as evidence of neglect and grounds for the permanent termination of parental rights. It is an unfortunate fact of life for many Indian parents that the primary service agency to which they must turn for financial help also exercises police powers over their family life and is, most frequently, the agency that initiates custody proceedings.

The conflict between Indian and non-Indian social systems operates to defeat due process. The extended family provides an example. By sharing the responsibility of child rearing, the extended family tends to strengthen the community's commitment to the child. At the same time, however, it diminishes the possibility that the nuclear family will be able to mobilize itself quickly enough when an outside agency acts to assume custody. Because it is not unusual for Indian children to spend considerable time away with other relatives, there is no immediate realization of what is happening—possibly not until the opportunity for due process has slipped away.

Economic incentives

In some instances, financial considerations contribute to the crisis. For example, agencies established to place children have an incentive to find children to place.

Indian community leaders charge that federally-subsidized foster care programs encourage some non-Indian families to start "baby farms" in order to supplement their meager farm income with foster care payments and to obtain extra hands for farmwork. The disparity between the ratio of Indian children in foster care versus the number of Indian children that are adopted seems to bear this out. For example,

in Wyoming in 1969, Indians accounted for 70 percent of foster care placements but only 8 percent of adoptive placements. Foster care payments usually cease when a child is adopted.

In addition, there are economic disincentives. It will cost the Federal and State Governments a great deal of money to provide Indian communities with the means to remedy their situation. But over the long run, it will cost a great deal more money not to. At the very least, as a first step, we should find new and more effective ways to spend present funds.

Social conditions

Low-income, joblessness, poor health, substandard housing, and low educational attainment—these are the reasons most often cited for the disintegration of Indian family life. It is not that clear-cut. Not all impoverished societies, whether Indian or non-Indian, suffer from catastrophically high rates of family breakdown.

Cultural disorientation, a person's sense of powerlessness, his loss of self-esteem—these may be the most potent forces at work. They arise, in large measure, from our national attitudes as reflected in long-established Federal policy and from arbitrary acts of Government.

One of the effects of our national paternalism has been to so alienate some Indian patents from their society that they abandon their children at hospitals or to welfare departments rather than entrust them to the care of relatives in the extended family. Another expression of it is the involuntary, arbitrary, and unwarranted separation of families.

It has already been noted that the harsh living conditions in many Indian communities may prompt a welfare department to make unwarranted placements and that they make it difficult for Indian people to qualify as foster or adoptive parents. Additionally, because these conditions are often viewed as the primary cause of family breakdown and because generally there is no end to Indian poverty in sight, agencies of government often fail to recognize immediate, practical means to reduce the incidence of neglect or separation.

As surely as poverty imposes severe strains on the ability of familes to function—sometimes the extra burden that is too much to bear—so too family breakdown contributes to the cycle of poverty.

CONSTITUTIONALITY

The Department of Justice, in its reports to the committee of February 9 and May 23, 1978, raises questions regarding the constitutionality of certain of the provisions of the legislation. While the committee did not agree with the Department on these issues, certain changes were made in the legislation which will meet some of the Department's concerns. Other issues remain, however. In view of the constitutional doubts of the Department, the committee feels compelled to respond.

Supremacy clause

Clause 2 of article VI of the U.S. Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

When Congress legislates pursuant to its delegated powers, conflicting State law and policy must yield, *Gibbons* v. *Ogden*, 22 U.S. 1 (1824); *Hill* v. *Florida ex rel. Watson*, 325 U.S. 538 (1945); *Nash* v. *Florida Industrial Comm.*, 389 U.S. 235 (1967); *Lee* v. *Florida*, 392 U.S. 378 (1968); *Perez* v. *Campbell*, 402 U.S. 637 (1971).

The Constitution, laws, and treaties of the United States are as much a part of the law of every State as its own local laws and constitution. Their obligation "is imperative upon the State judges, in their official and not merely in their private capacities. From the very nature of their judicial duties, they would be called upon to pronounce the law applicable to the case in judgment. They were not to decide merely according to the laws or constitution of the State, but according to the laws and treaties of the United States—'the supreme law of the land.'" *Martin* v. *Hunter's Lessee*, 1 Wheat. 304 (1816); State courts have both the power and duty to enforce obligations arising under Federal law. *Claflin* v. *Houseman*, 93 U.S. 130 (1876); *Second Employers' Liability Cases*, 223 U.S. 1 (1912); *Testa* v. *Katt*, 330 U.S. 386 (1947).

Plenary power of Congress over Indian affairs

The question is then: "Does Congress have power to legislate as proposed in the bill?" Clause 3, section 8, article I of the Constitution provides:

> The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

In an unbroken line of Supreme Court decisions, beginning with Chief Justice John Marshall's decision in *Worcester* v. *Georgia*, 3 U.S. 515 (1832):

> (The Constitution) confers on Congress the powers of war and peace; of making treaties, and of regulating commerce with foreign nations, and among the several states, and with the Indian tribes. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They (Congress) are not limited by any restrictions on their free actions.

And ending with *United States* v. *Wheeler*—U.S.—(March 22, 1978

> (There is an) undisputed fact that Congress has plenary authority to legislate for the Indian tribes in all matters, including their form of government.

The Supreme Court has, time and again, upheld the sweeping power of Congress over Indian matters. The cases are far too numerous to cite, but two cases will serve to exemplify this position. In *U.S.* v. *Kagama*, 118 U.S. 375 (1886) the Court said:

> These Indian tribes are wards of the nation. They are communities *dependent* on the United States. Dependent largely for their daily food. Dependent for their political

rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen.

And in *United States* v. *Nice*, 241 U.S. 591 (1916), the Court held:

> The power of Congress to regulate or prohibit traffic with tribal Indians within a State whether upon or off an Indian reservation is well settled * * *. Its source is twofold; first, the clause of the Constitution expressly investing Congress with authority "to regulate Commerce * * * with the Indian tribes", and, second, the dependent relation of such tribes to the United States.

It cannot be questioned that Congress has broad, unique powers with respect to Indian tribes and affairs, There is only one caveat: While those powers may be plenary, the exercise may not be arbitrary. For example, Congress may not take Indian property without just compensation nor may it establish a religion for Indian tribes.

Plenary power and child welfare

The question then is: "Is the regulation of child custody proceedings and the imposition of minimum Federal standards an appropriate exercise of Congress plenary power over Indian affairs?"

We need only cite three cases to lay the foundation for the power of Congress to legislate in this area. In *U.S.* v. *Holliday*, 70 U.S. 407 (1866), the Court said:

> Commerce with foreign Nations, without doubt, means commerce between citizens of the United States and citizens or subjects of foreign governments as individuals. And so commerce with Indians tribes means commerce with the individuals composing those tribes.

In *Dick* v. *U.S.*, 208 U.S. 340 (1908), the Court held:

> As long as these Indians remain a distinct people, with an existing tribal organization, recognized by the political department of the Government, Congress has power to say with whom, and on what terms, they shall deal * * *.

Knoepfler, in *Legal Status of American Indian & His Property* (1922), 7 Ia. L.B. 232, stated: "Commerce with the Indian tribes has been construed to mean practically every sort of intercourse with the Indians either in the tribes or as individuals."

Finally, the Maryland Court of Appeals, in a case involving the attempted adoption of an Indian child (*Wakefield* v. *Little Light*, 276 Md. 333, 347 A. 2d 228 (1975)), stated:

> We think it plain that child-rearing is an "essential tribal relation" within * * * (the test of) *Williams* v. *Lee* (358 U.S. 217 (1959)).

And again:

> * * * (C)onsidering that there can be no greater threat to 'essential tribal relations' and no greater infringement on the right of the * * * tribe to govern themselves than to interfere with tribal control over the custody of their children, we agree with the conclusion expressed in *Wisconsin Potowatomies* (*Wisconsin Potowatomies* v. *Houston*, 393 F. Supp. 719 (1973)) that in determining subject matter jurisdiction in such circumstances, the only rational approach is to determine the domicile of the Indian child. By using the Indian child's domicile as the State's jurisdictional basis, the Indian tribe is afforded significant protection from losing its essential rights of childrearing and maintenance of tribal identity.

Even this State court recognized that a tribe's children are vital to its integrity and future. Since the United States has the responsibility to protect the integrity of the tribes, we can say with the *Kagama* court, "* * * there arises the duty of protection, and with it the power."

Geographic scope of plenary power

Is the Congress limited to Indian lands or to the reservation in the exercise of its plenary power over Indian affairs? The answer is clearly, "No". Again, we need only cite one or two cases to support this conclusion.

In *U.S.* v. *Holliday*, supra, the Court said:

> If commerce, or traffic, or intercourse is carried on with an Indian tribe, or with a member of such tribe, it is subject to be regulated by Congress; although within the limits of a State. The locality of the traffic *can have nothing to do with the power.* (Emphasis added.) The right to exercise it in reference to any Indian tribe, or any person who is a member of such tribe, is absolute, without reference to the locality of the traffic, or the locality of the tribe, or the member of the tribe with whom it is carried on.

In *Perrin* v. *U.S.*, 232 U.S. 487 (1914), the Court held:

> We come, then, to the objection that the prohibition in the act of 1894 confers an unnecessarily extensive territory and is not limited in duration, and so transcends the power of Congress. As the power is incident only to the presence of the Indians and their status as wards of the Government, it must be conceded that it does not go beyond what is reasonably essential to their protection, and that, to be effective, its exercise must not be purely arbitrary, but founded upon some reasonable basis. * * * On the other hand, it must also be conceded that, in determining what is reasonably essential to the protection of the Indians Congress is invested with a wide discretion and its action, unless purely arbitrary, must be accepted and given full effect by the courts.

We cite again *U.S.* v. *Nice*, supra: "The power of Congress to regulate or prohibit traffic with tribal Indians within a State *whether upon or off an Indian reservation* is well settled * * *." (Emphasis added.)

Membership and plenary power

The question occurs, as raised by the Department of Justice in its report: "Is the power of Congress limited, constitutionally, to only those individuals who are formally enrolled as members of an Indian tribe?" Again, the answer is negative.

In 1934, Congress enacted the Indian Reorganization Act of June 18, 1934 (48 Stat. 988). Section 19 defined "Indians" as:

> * * * all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood.

Categories two and three of this definition are clearly not enrolled members of a tribe, by definition; yet Congress conferred the rights and benefits of the act upon this class of Indians, including the right to preference in Federal employment in the Bureau of Indian Affairs and the Indian Health Service. When the Supreme Court was called upon to construe the constitutionality of the Indian preference section of the Indian Reorganization Act in the case of *Morton* v. *Mancari*, 417 U.S. 535 (1974), it was aware that Indians who were not enrolled members of a tribe were made eligible for this preference by act of Congress, but did not strike the law down as invidiously discriminatory.

The reason it did not was because it was aware of its own past decisions with respect to congressional power over Indians not members of a tribe, Congress may disregard the existing membership rolls and direct that per capita distributions be made upon the basis of a new roll, even though such act may modify prior legislation, treaties, or agreements with the tribe. *Stephens* v. *Cherokee Nation*, 174 U.S. 445 (1899). Thus, the Supreme Court in the case of *Sizemore* v. *Brady*, 235 U.S. 441 (1914), said:

> * * * Like other tribal Indians, the Creeks were wards of the United States, which possessed full power, if it deemed such a course wise, to assume full control over them and their affairs, to ascertain who were members of the tribe * * *.

In *Federal Indian Law*, at page 45 in note 10, it is said:

> It has been held that Congress is not bound by the tribal rule regarding membership and may determine for itself whether a person is an Indian from the standpoint of a Federal criminal statute. *United States* v. *Rogers*, 4 How. 567 (1846).

In the very recent case of *United States* v. *Antelope*, 45 U.S.L.W. 4361 (April 19, 1977), the Supreme Court said:

> It should be noted, however, that enrollment in an official tribe has not been held to be an absolute requirement for federal jurisdiction. * * *

Federal District Court Judge Battin, in *Dillon* v. *Montana*, (1978), ordered:

> 2. That for purposes of applying this (Federal) exemption, the class of "Indian persons" * * * shall include persons possessing the following qualifications:
>
> (a) that the person possess some quantum of Indian blood;
>
> (b) that the person be recognized as an Indian by the community in which he or she lives, and that the putative taxpayer's wardship status has not been terminated by the government;
>
> (c) that the person be an enrolled member of a federally recognized Indian tribe *or otherwise eligible to be recognized as an Indian ward by the Federal Government.* (Emphasis added.)

If the courts have found that Congress has the power to act with respect to nonenrolled Indians in the foregoing kinds of circumstances, how much more is its power to act to protect the valuable rights of a minor Indian who is eligible for enrollment in a tribe? This minor, perhaps infant, Indian does not have the capacity to initiate the formal, mechanical procedure necessary to become enrolled in his tribe to take advantage of the very valuable cultural and property benefits flowing therefrom. Obviously, Congress has power to act for their protection. The constitutional and plenary power of Congress over Indians and Indian tribes and affairs cannot be made to hinge upon the cranking into operation of a mechanical process established under tribal law, particularly with respect to Indian children who, because of their minority, cannot make a reasoned decision about their tribal and Indian identity.

Supremacy clause versus States' rights

From the foregoing, it is clear that Congress has full power to enact laws to protect and preserve the future and integrity of Indian tribes by providing minimal safeguards with respect to State proceedings for Indian child custody. The final question is, paraphrasing the Department of Justice; "Does Congress have power to control the incidents of child custody litigation involving nonreservation Indian children and parents pursuant to the Indian commerce clause sufficient to override the significant State interest in regulating the procedure to be followed by its courts in exercising jurisdiction over what is traditionally a State matter?"

First, let it be said that the provisions of the bill do not oust the State from the exercise of its legitimate police powers in regulating domestic relations.

The decisions of the Supreme Court will set to rest the principal objection. It is appropriate to begin with the landmark case of *McCulloch* v. *Maryland*, 17 U.S. 316 (1819), where the Court stated:

> Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

In *Brown* v. *Western Ry. Co.*, 338 U.S. 294 (1949), the Court said:

> The argument is that while state courts are without power to detract from "substantive rights" granted by Congress * * * they are free to follow their own rules of "practice" and "procedure" * * *. A long series of cases previously decided, from which we see no reason to depart,

> makes it our duty to construe the allegations of this complaint ourselves in order to determine whether petitioner has been denied a right of trial granted him by Congress. This federal right cannot be defeated by forms of local practice. * * * Strict local rules of pleading cannot be used to impose unnecessary burdens upon rights of recovery authorized by Federal laws.

In *Dice* v. *Akron, C.Y.Y. R.R. Co.*, 342 U.S. 359 (1952), the Court held:

> Congress * * * granted petitioner a right * * *. State laws are not controlling in determining what the incidents of this Federal right shall be."

Chief Justice Holmes, in *Davis* v. *Wechsler*, 263 U.S. 22 (1923), put it succinctly:

> Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made is not to be defeated under the name of local practice.

We will quote merely two other cases to support the proposition that Congress may, constitutionally, impose certain procedural burdens upon State courts in order to protect the substantive rights of Indian children, Indian parents, and Indian tribes in State court proceedings for child custody.

The Court, in *American Railway Express Co.* v. *Levee*, 263 U.S. 19 (1923), held that:

> The laws of the United States cannot be evaded by the forms of local practice * * *. The local rules applied as to the burden of proof narrowed the protection that the defendant had secured (under Federal law), and therefore contravened the law.

And finally, in an extensive quote from the landmark decision of the Court in *Second Employers' Liability Cases*, 223 U.S. 1 (1912), we examine the duty of State courts, otherwise having jurisdiction over the subject matter, to enforce Federal substantive rights:

> We come next to consider whether rights arising from congressional act may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local law, is adequate to the occasion * * *. (The State court was of the opinion that it could decline to enforce the Federal right) because * * * it would be inconvenient and confusing for the same court, in dealing with cases of the same general class, to apply in some the standard of right established by congressional act and in others the different standards recognized by the laws of the State. * * * It never has been supposed that courts are at liberty to decline cognizance of cases merely because the rules of law to be applied in their adjudication are unlike those applied in other cases.
>
> We conclude that rights arising under the (Federal) act in question may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local law, is adequate to the occasion.

Conclusion

Under the rules of the House, this committee has been charged with the initial responsibility in implementing the plenary power over, and responsibility to, the Indians and Indian tribes. In the exercise of that responsibility, the committee has noted a growing crisis with respect to the breakup of Indian families and the placement of Indian children, at an alarming rate, with non-Indian foster or adoptive homes. Contributing to this problem has been the failure of State officials, agencies, and procedures to take into account the special problems and circumstances of Indian families and the legitimate interest of the Indian tribe in preserving and protecting the Indian family as the wellspring of its own future.

While the committee does not feel that it is necessary or desirable to oust the States of their traditional jurisdiction over Indian children falling within their geographic limits, it does feel the need to establish minimum Federal standards and procedural safeguards in State Indian child custody proceedings designed to protect the rights of the child as an Indian, the Indian family and the Indian tribe.

SECTION-BY-SECTION ANALYSIS

As amended by the committee, the legislation completely rewrites S. 1214 as passed by the Senate. In addition, the amendment in the nature of a substitute for H.R. 12533, as further amended, differs significantly from H.R. 12533 as introduced. The following is a section-by-section analysis of the bill as reported with appropriate explanations.

Section 1

Section 1 provides that the bill may be cited as the "Indian Child Welfare Act of 1978".

Section 2

Section 2 contains congressional findings. As amended, it lays the foundations for the power and responsibility of the Congress to legislate in the field of Indian child welfare.

Section 3

Section 3 contains a congressional declaration of policy. As amended, the section makes clear that the underlying principle of the bill is in the best interest of the Indian child. However, the committee notes that this legal principle is vague, at best. In a footnote on page 835 in the decision of *Smith* v. *OFFER*, 431 U.S. 820 (1977), the Supreme Court stated:

> Moreover, judges too may find it difficult, in utilizing vague standards like "the best interests of the child", to avoid decisions resting on subjective values."

SECTION 4

Section 4 defines various terms used in the bill.

Paragraph (1) defines the term "child custody placement" by defining four discrete legal proceedings included within the term. S. 1214 and H.R. 12533, as introduced, used the term "placement" which proved to be ambiguous with respect to the various provisions

Public Law 95-608
95th Congress

An Act

To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

Nov. 8, 1978
[S. 1214]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Child Welfare Act of 1978".

Indian Child Welfare Act of 1978.

SEC. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

25 USC 1901 note.

25 USC 1901.

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

Congress, responsibility for protection of Indians.

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

25 USC 1902

SEC. 3. The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Definitions. 25 USC 1903.

SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

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(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689); 43 USC 1606.

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended; 43 USC 1602.

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

TITLE I—CHILD CUSTODY PROCEEDINGS

Indian tribes, exclusive jurisdiction over Indian child custody proceedings. 25 USC 1911.

SEC. 101. (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Foster care placement, court proceedings. 25 USC 1912.

SEC. 102. (a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court

shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Parental rights, voluntary termination.
25 USC 1913.

SEC. 103. (a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

25 USC 1914.

SEC. 104. Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of com-

petent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act.

Adoptive placement of Indian children. 25 USC 1915.

SEC. 105. (a) In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

Petition, return of custody. 25 USC 1916.

SEC. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is not in the best interests of the child.

Removal from foster care home.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

25 USC 1917.

SEC. 107. Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement,

the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Reassumption, jurisdiction over child custody proceedings. 25 USC 1918. 18 USC prec. 1151 note. 25 USC 1321. 28 USC 1360 note.

SEC. 108. (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b)(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

States and Indian tribes, agreements. 25 USC 1919.

SEC. 109. (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such

revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

Improper removal of child from custody.
25 USC 1920.

SEC. 110. Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

25 USC 1921.

SEC. 111. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

Emergency removal of child
25 USC 1922.

SEC. 112. Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

Effective date.
25 USC 1923.

SEC. 113. None of the provisions of this title, except sections 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

25 USC 1931.

SEC. 201. (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

42 USC 620, 1397.

Additional services.
25 USC 1932.

SEC. 202. The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

Funds.
25 USC 1933.

SEC. 203. (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended. 25 USC 13.

SEC. 204. For the purposes of sections 202 and 203 of this title, the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401). 25 USC 1934. 25 USC 1603.

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show— Final decree, information to be included. 25 USC 1951.

(1) the name and tribal affiliation of the child;
(2) the names and addresses of the biological parents;
(3) the names and addresses of the adoptive parents; and
(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

SEC. 302. Within one hundred and eighty days after the enactment of this Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act. Effective date. Rules and regulations. 25 USC 1952.

TITLE IV—MISCELLANEOUS

Day schools.
25 USC 1961.

SEC. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

Report to congressional committees.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

Copies to each State.
25 USC 1962.

SEC. 402. Within sixty days after enactment of this Act, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this Act, together with committee reports and an explanation of the provisions of this Act.

25 USC 1963

SEC. 403. If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

Approved November 8, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1386, accompanying H.R. 12533 (Comm. on Interior and Insular Affairs).
SENATE REPORT No. 95-597 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD:
Vol. 123 (1978): Nov. 4, considered and passed Senate.
Vol. 124 (1978): Oct. 14, H.R. 12533 considered and passed House; passage vacated, and S. 1214, amended, passed in lieu.
Oct. 15, Senate concurred in House amendments.

○

ALASKA FEDERATION OF NATIVES, INC.

1577 'C' Street, Suite 304 • Anchorage, Alaska 99501 • Phone 907-274-3611

1979 ANNUAL CONVENTION

Resolution 79-39

WHEREAS, the Congress of the United States has adopted the Indian Child Welfare Act of 1978 (P.L. 95-608) declaring "that it is the policy of this nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture...", and

WHEREAS, it is State policy to promote the stability and security of Native American families, and

WHEREAS, historically a highly disproportionate number of Native American children in Alaska are from families broken up by the removal of children with an alarmingly high percentage of these children being placed in non-native foster homes, adoptive homes or institutions, and

WHEREAS, the primary intent of the Act is to prevent the break up of Native American families and to preserve the cultural and social standards prevailing in Native culture, and

WHEREAS, the intent and policy of the Act accords with, and is a strong tool for implementation of, State policy,

THEREFORE BE IT RESOLVED, by the Alaska Federation of Natives that it supports and endorses the concept and policy of the Indian Child Welfare Act of 1978 (P.L. 95-608).

RESOLUTION COMMITTEE RECOMMENDATION Do Pass

CONVENTION RECOMMENDATION Passed

March 24, 1980

The Honorable Charles H. Parr,
Alaska State Representative
Room 124 Capitol Building
Juneau, Alaska

Dear Charlie:

I am already well aware of the imperfections and drawbacks in the Child Indian Welfare Act of 1979.

Mr. Dewitt's concerns and apprehensions are right on target and it was lousy legislation at the federal level.

Thanks,

Robert H. Ziegler, Sr.

RHZ:lk

cc: Senator Hackney

CHARLIE PARR

ALASKA LEGISLATURE

S. R. Box 50599
Fairbanks, Alaska 99701
456-5029

Po ıch V
Juneau, Alaska 99811
465-3797

March 19, 1980

M E M O R A N D U M

TO: Senator Glenn Hackney, Chairman
Health, Education and Social Services Committee

Senator Robert Ziegler, Chairman
Judiciary Committee

FROM: Representative Charles H. Parr

SUBJECT: House Concurrent Resolution No. 43

Enclosed is a letter from Mr. James DeWitt expressing what appear to be some valid concerns about HCR 43. I believe Mr. DeWitt's comments will be of interest to you as you consider the resolution.

CHP:vc
Encl.

CALL, HAYCRAFT & FENTON
AN ASSOCIATION OF
DAVID H. CALL AND THOMAS E. FENTON
PROFESSIONAL CORPORATIONS
1919 LATHROP - SUITE 206
FAIRBANKS, ALASKA 99701

DAVID H. CALL
THOMAS E. FENTON
JAMES D. DEWITT
PAUL A. BARRETT

TELEPHONE
907 - 452-2211
452-2296

March 13, 1980

Representative Sarah J. Smith
Pouch V
Juneau, AK 99811

Re: House Concurrent Resolution No. 43
Indian Child Welfare Act of 1978

Dear Sally:

I am writing to state my opposition to House Concurrent Resolution No. 43, "a resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978."

As background, I have never represented any parent whose parental rights were being terminated or involuntarily relinquished or otherwise being surrendered by force. I have never represented the State of Alaska in an action to take away parental rights. I have, however, on numerous occasions, represented the children in these proceedings for termination. My official title has always been "guardian ad litem" but my duties have frequently involved reconciliation, peacemaking and negotiation.

Under Alaska law, a guardian ad litem represents the "best interests of the child" in the proceeding; not necessarily what the child wants and not necessarily what the parents or the State of Alaska want. It is a difficult assignment and I confess I am uncomfortable with it in many situations. However, I accept appointments as guardian ad litem because all too frequently the children themselves are not otherwise a concern in a parental rights termination proceeding. It is very easy for the other parties involved to lose sight of the fact that while their lives may be impacted by whatever decision a court may reach, the children will live with the results and be affected by the results for the rest of their lives. The Alaska Supreme Court has begun to recognize that the children are a party in interest, that they have constitutional rights in custody and termination proceedings and that those rights deserve to be represented. The Indian Child Welfare Act, as to the class of children who happen to be of fractional Native blood, removes those rights and removes the right of the children to be represented in a meaningful sense in those kinds of proceedings.

My first dispute is with the underlying premise for the Act, that "a highly disproportionate number of Native American children in Alaska are from families broken up by the removal of children. . .", with the inference that that statistical fact is somehow evidence of wrongdoing by the State of Alaska. The hard truth, however politically unpopular it may be, is that Native American families have the highest rate of alcoholism, the highest rate of broken, unstable homes, and the highest rate of child abuse in Alaska and that that, not any wrongdoing or excess of zeal by the Department of Health and Social Services or the State of Alaska, is the reason why Native American homes are broken up most frequently. I will leave it to sociologists, psychologists and anthropologists to describe why these statistical facts exist, but they do. Those problems may or may not be susceptible of solution, but you are treating a symptom when you remove the right of the children to be removed from abusive homes. If the Alaska Legislature wants to solve the problem of abused Native children and their statistically anomalous frequency, it should create programs to treat the underlying problems, not endorse a statute which forces the children to continue to live in those homes, regardless of consequences.

And it is effectively impossible to terminate the parental rights of a parent whose child is an Alaska Native. To terminate those parental rights, someone must prove beyond a reasonable doubt (1) that there is a clear and present physical danger to the children; (2) that the danger has caused harm or imminently will cause harm to the children; and (3) that that conduct constituting a clear and present danger is likely to continue. Check with your legislative counsel, but in my view it is effectively impossible to prove beyond a reasonable doubt that a pattern of conduct is likely to continue. It is hard enough to establish beyond a reasonable doubt that something has happened; ask any district attorney.

So the parental rights cannot be terminated, the parents will continue to have contact with their children, no matter how abusive they have been in the past and no matter how harmful that conduct may be to the children themselves.

In my view, the Indian Child Welfare Act of 1978 is unconstitutional since it unfairly imbalances the constitutional rights of the children as against the constitutional rights of their parents. I emphasize that is my opinion alone, and has not been endorsed by any court of which I am aware.

Another serious problem with the Act is its application in Alaska. Assuming the Act exists to preserve a Native culture, its avowed purpose, then it operates without regard to that avowed purpose. An Alaska Native family, regardless of its ties to its culture, is entitled to the protections of the Indian Child Welfare Act. If I may, I would like to analyze a specific hypothetical.

Let us assume that two fathers in Barrow, Alaska have sexually abused their five year old daughters. One family is caucasian, the other is one-quarter Eskimo. To terminate the parental rights of the caucasian father, the State of Alaska must establish by clear and convincing evidence that the child has suffered emotional harm and that it is likely that the conduct leading to the emotional harm will continue. That is not an easy matter, and is not likely to be proven by one specific bad act, in the absence of other conduct. Obviously, it is not going to be possible to terminate the parental rights of the Native father for a single act.

Now let us assume that each father again sexually abuses the five year old daughter. Probably, it will now be possible to terminate the parental rights of the caucasian father. In the view of most of the courts of Alaska, two specific, identical instances give rise to an inference that conduct is likely to continue and reach the burden of proof: clear and convincing evidence. While the matter has not been ruled upon, it is reasonably certain that it is not going to be possible to terminate the Native father's rights, even though the conduct takes place in the same community, even though the children are harmed in precisely the same way and to precisely the same degree. In fact, as long as there is even a slight doubt that the Native father will continue to sexually abuse his daughter, his parental rights may <u>not</u> be terminated.

Obviously, I oppose House Concurrent Resolution No. 43. While I cannot pretend to make up your minds for you, I urge you to give the Act, its implications and the points I have raised in this letter serious consideration before proceeding further with this Resolution. The State of Alaska and the Department of Health and Social Services have not attempted to force all of the diverse cultures of Alaska into one white, suburban, middle class mold. Whatever the rationale for the Indian Child Welfare Act in other jurisdictions, Alaska has acted in every way to protect the cultural identities of its peoples. The Act is unnecessary, harmful to the children it is intended to protect and possibly unconstitutional. I urge you to resist adoption and passage of the Resolution.

Thank you for your time and patience in reviewing the points that I have set out. Please feel free to contact me if you have questions regarding my position.

Sincerely yours,

CALL, HAYCRAFT & FENTON

James D. DeWitt

JDD:so

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

CS FOR HOUSE CONCURRENT RESOLUTION NO. 43

"A resolution endorsing the concept and requesting implementation of the Indian Child Welfare Act of 1978."

Committee Substitute for House Concurrent Resolution No. 43 resolves that: 1) the legislature endorse and support the concept and policy of the Indian Child Welfare Act of 1978 (P.L. 95-608); 2) urgently requests the Governor to direct the Department of Health and Social Services to promptly take the steps necessary for implementation of the Act in Alaska and provide the financing necessary for this implementation; and 3) requests the Chief Justice of the Alaska Supreme Court to direct the court system to promptly take steps necessary to cooperate in the implementation of the Act.

The Department strongly supports the concepts and policies embodied in the Indian Child Welfare Act of 1978 and, therefore, supports the legislature's endorsement and support of the Act. The Department has been actively involved in implementing the Act since its passage in November, 1978. During calendar year 1979, the Department has taken numerous steps towards full implementation of the Act (report attached). The Department plans to increase its efforts during 1980 through close coordination with the various Indian Child Welfare programs established under Title II of P.L. 95-608 and recently funded by the Bureau of Indian Affairs, and through close monitoring and evaluation of its own programs to ensure compliance with the Act.

Attachment

RECOMMENDED BY: _____ DATE: 2/26/80
Art Holmberg, Director
Division of Social Services

APPROVED BY: Helen D. Beirne DATE: 3-3-80
Helen D. Beirne, Commissioner
Department of Health and Social Services

REPORT ON IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

The Department of Health and Social Services has been quite active since the passage of the Indian Child Welfare Act in working towards full implementation. As early as February 13, 1979 Department representatives met with the Area Director of BIA and representatives from various native non-profit corporations to begin mapping out strategies and procedures necessary for implementation. In early March Department Representatives met with the BIA contractors to further discuss implementation. On March 7, 1979 the Department testified at hearings held in Juneau regarding the first draft of federal regulations (testimony attached). These regulations were finally published as proposed regulations on April 23, 1979 and were not finalized until July of 1979.

During this interim period before finalization of the implementing regulations the Department's Regional Social Services Managers met with representatives of the native non-profit organizations as well as various village and IRA council leaders to discuss the Act and to begin informal working procedures. The Managers also met with court personnel and the attorney general's offices to establish appropriate court procedures. The Social Service's Field Director met with Art Snowden, the Court Administrator, his staff, the BIA Social Services Director, and the BIA Counsel to further work toward state-wide development of court procedures. As a result of this meeting the Court Administrator agreed to include a letter summarizing the Act in the next mailing to the Alaska Bar members.

Since the finalization of regulations the Department has not only attempted to comply with the formal procedures established by the regulations but has developed many cooperative projects for furthering the implementation of the Act. For example, the Division of Social Services has been working with Tanana Chiefs and United Crow Band on locating, studying, and licensing native foster homes. Similar projects have also been operating in Fairbanks (Fairbanks Native Association) and in Southeast Alaska (Tlingit-Haida). The Division also held a two day training session in Anchorage on Oct 8 & 9, 1979 on the Indian Child Welfare Act. The trainer was Bert Hirsh, one of the original drafters of the law. All the native non-profit organizations as well as state and private agencies were invited to attend. Finally, the Division's training director by request of the native non-profit in the Bethel area provided a training session in Bethel.

These are just some of the examples of the cooperative efforts that have been initiated state-wide. It should be noted however that the Department has supported the concepts embodied in the Indian Child Welfare Act before its passage in 1978. In fact the Department supported a change in 47.10.230 (Powers and duties of Department over care of child) which made placement with blood relatives mandatory if they requested custody.

The intent of this statute was to provide for placement of children in surroundings which meet their social and cultural needs.

The Department has attempted to implement this statute to the fullest extent possible. It has been very successful in areas such as Nome and Bethel but less successful in larger cities such as Anchorage, Fairbanks, and Juneau. For example, 10 years ago 92% of all native children placed for adoption were placed in non-native homes. This has been completely reversed. Presently 75% of the native children placed for adoption are placed in native homes. The only exceptions being some severely handicapped children who have special medical needs and some native children who have been in long term foster care with a non-native family. In addition, in the Nome Region in 1969 all but two Eskimo children were in non-native foster homes. Today in Nome the figures are: 32 native children in native homes and 7 in non-native homes. In the Bethel Region there are 42 native children placed in foster homes. All are placed in native foster homes. However, the placements of native children in native foster homes are significantly lower in the larger cities with Anchorage having the lowest percentage (20 out of 127 native children are in native foster homes). The Department has been working diligently to improve the situation. As noted earlier Tlingit-Haida and Fairbanks Native Association have had foster home finding projects in Juneau and Fairbanks respectively. The Department has supported and worked closely with the staff of these projects. However, the success has been limited.

In summary the Department has been supporting the concepts of the Indian Child Welfare Act for a number of years. It has implemented certain policies consistent with the Act prior to its passage. In addition the Department, has worked diligently to develop formal procedures to implement the Act as well as numerous cooperative projects. The Department realizes there is stil much to be accomplished and certainly agrees to continue its present efforts of implementation and to increase its efforts wherever necessary.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS FOR HOUSE CONCURRENT RESOLUTION NO. 43
Title endorsing concept/requesting implementation of the Indian Child Welfare Act of 1978
Requested by _____ Date February 26, 1980

II. FISCAL DETAIL
Agency Affected Department of Health and Social Sevices
Program Category Affected All Program Categories
BRU, Program, or Subprogram(s) Affected All BRU's
(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						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

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

This Resolution has no fiscal impact on the Department of Health and Social Services.

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

Prepared by: [illegible] Date: 2/27/80
Division/XXXXX: Social Services PH: 465-3170
Department of Health & Social Services

Approval DHSS Mgt. & Bdgt: [illegible] Date: 2/27/80

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

HCR

62

COMMITTEE REPORT

SENATE

FURTHER: None

3/31/80

Date: 4/1/80

Mr. President:

The Committee on JUDICIARY has had HCR 62 am federal census

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN DO PASS

S 60 (Rev. 12/78)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

465-3666

April 4, 1980

The Honorable Robert Ziegler
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: HCR 62 am, relating
to the federal census
Our file: J-66-587-80

Dear Senator Ziegler:

We enclose a copy of our letter of March 28 to Senator Fahrenkamp on the subject of census questions in which we concluded that, given the express legal authority of the census takers to ask their questions, the express legal duty to answer them, and the repeated judicial affirmation of both, it would be most inadvisable to counsel anyone to refuse to answer any of the questions asked by the census takers.

In our view, the final resolve of HCR 62 am could have the effect of making some persons believe that it would be safe to refuse to answer some census questions in the belief that the state will defend those who do so "responsibly." There is, however, absolutely no authority for the attorney general to defend persons who refuse to comply with the census laws, and even if there were, there appears to be no legal basis for refusing to answer the questions on which a defense could rely.

In short, passage of the resolution as it is now written could lull persons into violation of federal laws and resulting punishment.

We recommend that the resolution be amended to strike the final resolve and substitute the following:

FURTHER RESOLVED that the Alaska congressional delegation take prompt, vigorous, and effective steps to ensure the enactment of amendments to the census laws to prevent unnecessary intrusions into the privacy of the citizens

of this state and nation.

We appreciate this opportunity to comment on the resolution.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Rodger W. Pegues
Rodger W. Pegues
Assistant Attorney General

RWP/pjg

Enc.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

March 28, 1980

The Honorable Bettye Fahrenkamp
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Census questions
Our file: J-66-587-80

Dear Senator Fahrenkamp:

You have asked whether persons must answer the questions on the so-called long form used for the census.

The answer is that it is a violation of federal law, punishable by a fine of $100, for a person to refuse to answer the questions asked on any questionnaire submitted to him in connection with the census. United States v. Little, 321 F. Supp. 388 (D. Del. 1971).

The census administrators have express statutory authority to determine the questions to be asked, 13 U.S.C.S. § 5 (1978), and to determine the "form and content" of the census survey. 13 U.S.C.S. § 141 (1978). They are also empowered to use sampling techniques, i.e., long forms for some and short forms for others. 13 U.S.C.S. § 195 (1978). The federal constitution itself requires that the census be taken every ten years and that it be done in the manner provided by Congress by law. U.S. Const., art. I, § 2, cl. 3. Accordingly, there can be no question that under the Supremacy Clause, U.S. Const., art. VI, cl. 2, the federal census laws are controlling, and to the extent -- if any -- that their requirements come into conflict with the Privacy Clause of the state constitution, Alaska Const., art. I, § 22, the latter is superseded and must give way. If there is any bar to the census requirements, it must be found in the federal constitution.

Federal courts have already ruled that the questions asked by the census of households, i.e., by the long form do not violate the right to privacy under the federal constitution. United States v. Rickenbacker, 309 F.2d 462

(2d Cir. 1962), cert. denied, 371 U.S. 962 (1963), cited with approval in Wyman v. James, 400 U.S. 309 (1971); United States v. Little, 321 F.Supp. 388 (D. Del. 1971). We have no reason to believe that the questions on the 1980 census so far depart from those asked in the 1960 and 1970 censuses that the courts will arrive at a different result now.

In Rickenbacker, it was urged that the questions asked by the 1960 "supplementary household questionnaire" were invasive of privacy. The court responded:

> The questions . . . related to important federal concerns, such as, housing, labor, and health, and were not unduly broad or sweeping in their scope . . . . [T]hat some . . . experts might regard the . . . 'sample' [one-in-four households] as larger than necessary does not support a conclusion that the census was arbitrary . . . .

309 F.2d at 463-464.

In Little, the court relied expressly on Rickenbacker and also on the provisions of the census law, 13 U.S.C.S. § 9 (1978), which make the data collected on individuals strictly confidential in holding that the constitutional right of privacy is not invaded by the census questions. There is no question of confidentiality of these data in the hands of the census takers. St. Regis Paper Co. v. United States, 368 U.S. 208 (1961), reh. denied, 368 U.S. 972 (1961); motion to recall and amend or correct denied, 369 U.S. 809 (1962); Op. U.S. Atty. Gen. 362 (1930).

In view of the express legal authority for the census takers to ask their questions, the express legal duty to answer them, and the judicial affirmation of both, it would be most inadvisable to counsel anyone to refuse or willfully neglect to answer the questions requested by the federal census takers.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Rodger W. Pegues
Assistant Attorney General

RWP/pjg

HCR
80

COMMITTEE REPORT

SENATE

FURTHER: Finance

3/24/80

Date: 5/8/80

Mr. President:

The Committee on Judiciary has had HJR 80

Proposing an amendment to the Constitution of the State of Alaska relating to joint budget revision power of interim committees

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for HJR 80 [ ] same title [ ] new title

and recommends CSHJR 80 (J) 1953

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____
CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU ALASKA 99811
907·465·3800

M E M O R A N D U M

May 7, 1980

SUBJECT: Senate Judiciary CS for HJR 80

TO: Senator Robert H. Ziegler, Sr.

FROM: Billy G. Berrier
Director
Division of Legal Services

The draft of the committee substitute for HJR 80 omits reference in the title to joint budget revision power of the interim committees.

In Section 11 of Article II of the Constitution of the State of Alaska, the requirement appears that

> The subject of each bill shall be expressed in the title.

While the requirement does not explicitly include resolutions, in my opinion it is highly probable that it would be held applicable to resolutions proposing constitutional amendments.

The power to jointly revise budgets is a substantive provision that goes beyond merely creating committees since it is intended to lay to rest the argument that such revisions violate the separation of powers doctrine. Therefore, omitting to mention this in the title would seriously cloud the constitutionality of the amendment.

BGB:jdn

Enclosure

HJR

20

COMMITTEE REPORT

SENATE

FURTHER: None

5/27/80

Date: 5/27/80

Mr. President:

The Committee on JUDICIARY has had CSHJR 20 am

Proposing an amendment to the Constitution of the State of Alaska relating to appointment and confirmation of members of state boards and commissions

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] same title

[ ] replace with CS for _____ [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

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CHAIRMAN

S 60 (Rev. 12//8)

Bob:

1 Report on H.S.R. 20

Senator Mulcahy reported the resolution out of committee after a conversation with Terry Gardiner. There was NO pressure. Terry just convinced Bob that the resolution was desirable. The main reason Bob felt he should report it out is that because of recent Court decisions, the Governor feels that he need not send certain names to the Legislature for confirmation. If the amendment passes, the names will be sent to the Legislature for confirmation.