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158



REPRESENTATIVE RANDY  
**Phillips**  
HOUSE DISTRICT 8

TO: THE HONORABLE PAT RODEY  
CHAIRMAN, SENATE JUDICIARY COMMITTEE  
ROOM 125, CAPITOL BUILDING

FROM: REPRESENTATIVE RANDY ~~PHILLIPS~~ <sup>REE</sup>

DATE: APRIL 15, 1981

RE: CS HB 158

Attached is some backup information on the captioned bill for your committee's review.

I would appreciate an early scheduling of this bill for hearing before your committee. If you have any questions, please do not hesitate to contact me at 4949.

Thank you for your consideration.

# Alaska State Legislature



IN SESSION:  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4949

BOX 142  
EAGLE RIVER, ALASKA  
99577  
(907) 694-4949

Representative Randy Phillips

HOUSE DISTRICT 8  
MEMORANDUM

TO: ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

DATE: MARCH 30, 1981

FROM: REPRESENTATIVE RANDY PHILLIPS *R.C.P.*

RE: BILL ANALYSIS  
CSHB 158 (JUDICIARY)

The main thrust of the bill is:

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.

Through research and testimony, the following conclusions were reached:

1. That these insurance requirements do in fact discriminate in favor of the large out-of-state fireworks companies. The little in-state companies have experienced difficulties in obtaining insurance 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 1969, allegedly in response to lobbying by a large fireworks outfit. No evidence arose to the contrary.

The secondary changes in the bill are:

1. Reduction of the permit fee from \$500 to \$50.
2. Reduction of required public liability insurance for bodily injury from \$300,000 to \$200,000.
3. Reduction of required public liability insurance for property damage from \$100,000 to \$50,000.

NOTE: In the past, as indicated by the State Fire Marshall's Office, there have been very few damages or injuries in the State due to fireworks.

Attachments

# 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.

Oechipinti has issued a preliminary injunction to prevent the state from enforcing the insurance provision of the law.

In the preliminary injunction order, Judge Oechipinti 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; P. B. Hagglund, R-Fairbanks; Jay Hammond, R-Naknek; C. R. Lewis, R-Anchorage; Lowell

Thomas Jr., R-Anchorage, Sen. W. I. Palmer, R-Ninilchuk, 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."

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS HB 158 (JUD)

Title An Act relating to state regulation of fireworks.

Requested by House Judiciary

Date 3/24/81

II. FISCAL DETAIL

Agency Affected Department of Commerce & Economic Development

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected Division of Insurance

(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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0					
200 TRAVEL	0					
300 CONTRACTUAL	0					
400 COMMODITIES	0					
500 EQUIPMENT	0					
600 LAND & STRUCTURES	0					
700 GRANTS, CLAIMS, ETC.	0					
<b>TOTAL</b>	<b>0</b>					

FUNDING (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER (Specify Fund Source)	0					

POSITIONS

FULL TIME	0					
PART TIME	0					
TEMPORARY	0					

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

IV. DATE March 27, 1981

PREPARED BY Kenneth C. Moore, Director of Insurance

AGENCY Department of Commerce & Economic Development

PHONE 465-2515

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

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

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

February 27, 1970

MEMORANDUM

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.

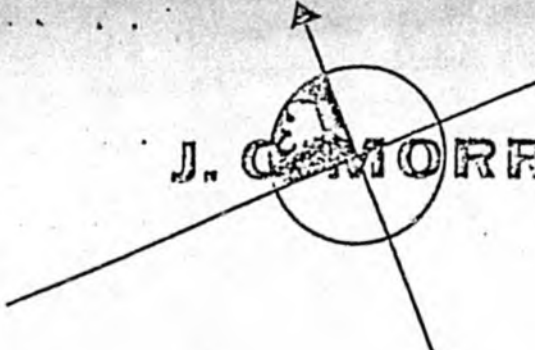
The bill does not remove the authority of the state fire marshall to enforce the law and regulations issued under the fire safety code with respect to use of fireworks (a copy of the current regulations is attached).

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

C. 1970



# 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

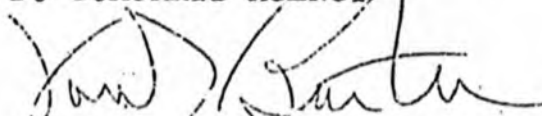
Dear Mr. Norene:

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 Lloyd's 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



please reply via





PHONES WA 2-8716 OR WA 2-8717

**DISTRIBUTING CO., Inc.**

P. O. BOX 258 ■ TACOMA, WASHINGTON 98401

DISTRIBUTORS OF  
**RED DEVIL**  
**FIREWORKS.**

Office located 1/4 mile north of Puyallup River Bridge on Old Seattle-Tacoma Highway

September 30, 1969

Mr. Jim Norene  
717 Erwin Street  
Anchorage, Alaska

Dear Jim:

I appreciated the time you gave me when I was in your area several weeks ago. When I arrived in Juneau, I discussed the fireworks bill with Mr. Andre Schalk, the Assistant State Fire Marshal. He was quite disturbed about this fireworks law and is looking forward to a change in the law to make it easier for his department to operate.

The attorney we spoke of in Seattle, is Mr. De Witt Williams, Attorney-at-Law, Washington Building, Seattle, Washington. We are checking on the insurance possibilities for you to see what expenses will be incurred.

Thanks again, Jim. I really enjoyed my visit to Alaska.

Best regards,

ZEBRA DISTRIBUTING COMPANY, INC.

Bernard L. Crowell,  
Vice-President

BLC/pm

LAW OFFICES

BOYKO AND WALTON

330 "L" STREET

ANCHORAGE, ALASKA 99501

TELEPHONE  
277-2671

EDGAR PAUL BOYKO  
PETER B. WALTON  
JAMES H. LACK  
STEPHEN C. COWPER  
ROBERT H. WAGSTAFF

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 sell 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



# Alaska State Legislature

## House of Representatives

### Committee on State Affairs

Official Business

May 9, 1978

Pouch V  
State Capitol  
Juneau, Alaska 99811

Mr. James E. Norene  
717 Irwin Street  
Anchorage, Alaska 99504

Dear Jim:

Enclosed please find a memorandum I have sent to Senator "Brad" Bradley, Chairman of the Senate Commerce Committee where HB-546 now resides. You will also find a copy of the bill analysis and the Letter of Intent.

So far it looks good, but I will keep you informed as to the progress of the bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Bradley".

REP. BOB BRADLEY  
Chairman  
House State Affairs Committee

*Thanks again for your efforts in the past!*

BB/ch

Enclosure(s)

PATRICK RODEY  
SPENARD

601 W. 5TH AVE. SUITE 820  
ANCHORAGE, ALASKA 99501

Alaska State Senate

JUNEAU, ALASKA 99811

DURING SESSION

POUCH V  
JUNEAU, ALASKA 99811

May 8, 1978

Mr. James Noreer  
717 Irwin  
Anchorage, Alaska

Dear Jim:

Just wanted to drop you a note to let you know that I enjoyed talking with you.

In view of your interest, I wanted to enclose a copy of Committee Substitute for House Bill 546, which has been referred to the Senate Commerce Committee for further consideration.

I'll speak with Chairman Bradley about the bill, and am glad to have the benefit of your views on the legislation.

If there are any other legislative proposals of concern to you, Jim, please feel free to let me know.

Kindest regards,



Patrick Rodey

PR/ks

*Jim, I'll speak with Bradley so  
we'll as Zigler to keep this  
bill moving.*

POSITION PAPER

CS for House Bill No 158 (Judiciary)

"An Act relating to State regulation of fireworks."

CSHB No. 158 eases the requirements for an entrepreneur of fireworks to open a business. The required amount of liability insurance is decreased as is the cost of the annual license fee. One result of passage will most likely be an overall increase in the number of fireworks sales locations as well as an increase in the amount of fireworks sold in the State. This will in all probability cause a rise in the number of injuries associated with the use of fireworks.

We realize fireworks have roots deep in American history and tradition, however, we are concerned about accidental injuries associated with their usage. The U.S. Consumer Product Safety Commission (CPSC) has advised that presently Nationwide injuries are running at about 8,000 per year; up from of approximately 5,000 per year in 1974 and 1975. This rise in the annual number after 1975 is thought to be because of the resurgence of national spirit associated with the bicentennial celebration in 1976 and the annual Fourth of July celebrations. CPSC advises 80% of the accidents associated with fireworks come from misuse rather than malfunctioning or other causes.

Many towns and boroughs in the State have become so concerned about the dangers, the sale to untrained persons is prohibited.

The Department of Health and Social Services does not enforce this law. We are presenting this paper for your consideration and are taking a neutral position on its status.

Recommended by: David Bruce  
David Bruce, Deputy Director  
Division of Public Health

Date: April 1, 1981

Approved by: Helen D. Beirne  
Helen D. Beirne  
Commissioner

Date: 4/7/81

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for House Bill No. 158 (Judiciary)

Title "An Act relating to State regulation of fireworks."

Requested by Commissioner's Office

Date April 1, 1981

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Health/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 81	FY 82	FY 83	FY 84	FY 85	FY 86
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)

IV. DATE April 1, 1981

PREPARED BY David Bruce

AGENCY Division of Public Health

PHONE 465-3090

Original: Legislative Finance  
cc: Budget and...

## Fireworks Displays— Contractor's Risks

This class of OL&T General Liability insurance has always been a difficult class of business to insure, even though there are many competent contractors engaged in setting off fireworks displays for various types of programs sponsored by others. At one time Fourth of July and special celebrations were the only times that fireworks were displayed, but today there are numerous occasions where shopping centers, municipalities, civic and fraternal organizations plan fireworks displays as attractions for the public. The insurance is written on each exhibition and is rated on the basis of contractor's receipts. Because of the inherent dangerous characteristics of explosives and the catastrophe hazard when large gatherings of the public are present, often with little spectator control on the part of the sponsoring organization, this is a very hard to place coverage. It is particularly difficult to obtain insurance on small contractors because little premium can accrue from such accounts. The class is underwritten on a highly selective basis by the following specialty insurers:

- Admiral Insurance Co.
- †Ambassador Insurance Co.
- †American Interinsurance Exchange
- America's Insurance Center
- Amusement Business Underwriters
- Associated Underwriters Inc.
- DallaFonte Group
- Geo. F. Brown & Sons, Inc.
- Capacity Managers International
- †Capitol Indemnity Corp.
- †Cravens, Dargen & Co. Special Risks
- †John H. Crowther, Inc.
- Delaware Valley Underwriting Agency, Inc.
- Gryden & Co.
- †EMC Underwriters, Ltd.
- †Empire Fire and Marine Insurance Co.
- Ensign Insurance Co.
- †Executive Excess Ltd.
- First Financial Insurance Co.
- †General Agents Insurance Co. of America
- †Great Southwest Fire Co.
- Horan, Goldman Co.
- Hull & Company, Inc.
- HAW Insurance Services
- †Illinois Surplus Lines Underwriters
- Insurance Co. of North America
- International Indemnity Co.
- ISI Corp.
- Lexington Insurance Co.
- Market Service, Inc.
- †Market Finders Insurance Corp.
- NAS Ltd.
- †National Indemnity Co.
- National Savings Insurance Co.
- †North East Insurance Co.
- †Penn-America Insurance Co.
- Phelan Special Risks, Inc.
- Risk Specialists Cos.
- Stewart Smith Mid America, Inc.
- Surplus Insurance Brokers of No. America
- Tower Special Facilities, Inc.
- Tudor Insurance/Westco Insurance Managers
- USA Alliance
- Western World Insurance Co.
- Wohlreich & Anderson Group
- Zurich American Insurance Co. of Illinois
- Underwriters at Lloyd's, London