

H

B

114



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORBYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-8228

February 13, 1987

Representative John Sund
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

It is my understanding that the House Judiciary Committee will be hearing HB 114 relating to surety insurance next Wednesday, February 18.

This bill would enable the courts to refuse to accept bail bonds from a surety who has not paid forfeited bonds. By way of background, the primary bail statute [AS 12.30.020(b)(5)] authorizes the court to accept bail bonds with sufficient solvent sureties. Under current law, corporate sureties (i.e., insurance companies) are licensed and regulated by the Division of Insurance (see generally, AS 21.27) AS 21.63.020 states that a surety insurer which is qualified to act as surety or guarantor as authorized in the insurance statutes, and which executes a bond, is entitled to recognition:

...all courts, judges, ... shall accept and treat accordingly the bond, undertaking, obligation, recognizance or guarantee when so executed by the insurer, as conforming to and fully and completely complying with every requirement of every law, charter, ordinance, rule or regulation.

The court has no statutory power over corporate sureties. As long as the surety is licensed and in good standing with the Division of Insurance, under current law the court must accept bail bonds properly written by a surety.

Representative John Sund
February 13, 1987
Page Two

The court does not want to assume licensing or regulatory authority over corporate sureties writing bail bonds. That power appropriately lies with the Division of Insurance. However, it would be desirable for the court to have the ability to refuse to accept bail bonds from a corporate surety if forfeited bonds are unpaid and delinquent, even if the Division of Insurance has not yet completed an investigation or taken any action against the license of such a surety or its agent. The proposed legislation would give the court that authority.

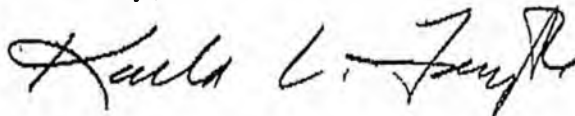
With regard to the language of the proposed bill, the court system suggests a minor wording change in paragraph (b), to read as follows:

(b) A court may, under AS 12.30.020(b), refuse to accept a surety bond if the surety is more than 90 days delinquent in making payment on a [FORFEITED] bond previously executed by the surety and forfeited by the court. The 90-day period begins the day that the surety receives notice of the forfeiture of the bond.

The language would clarify the relationship between the forfeited bond and the bond which the court is refusing to accept.

Thank you for considering these comments. I will be glad to answer any questions from the committee.

Sincerely,



Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Arthur H. Snowden, II, Administrative Director
Stephanie J. Cole, Deputy Administrative Director

2/13/87-5

(2)

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	3-10-87	1:30 p.m.
H. JUD.	2-18-87	1:30 p.m.
H. JUD.	2-16-87	1:30 p.m.

5-0458B ✓
Ford
2/18/87

Original sponsor: Judiciary Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 114 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to surety insurance."

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

8 * Section 1. AS 21.63.020 is repealed and reenacted to read:

9 Sec. 21.63.020. SURETY BONDS. (a) If a surety bond or other
10 surety obligation is required or permitted by law, the bond or other
11 obligation may be executed by a surety insurer as authorized under
12 this title. A bond executed by a surety insurer is full and complete
13 compliance with every requirement of law that the bond or other
14 obligation must be executed by a surety. Except as provided under (b)
15 of this section, a surety bond or other surety obligation executed
16 under this section may not be refused for failure to conform to law.

17 (b) A court may, under AS 12.30.020(b), refuse to accept a
18 surety bond if the surety is more than 90 days delinquent in making
19 payment on a bond previously executed by the surety and forfeited by
20 the court. The 90-day period begins the day that the surety receives
21 notice of the forfeiture of the bond.
22

23
24 *Prospective only - bonds issued after a date certain.*
25
26
27
28
29

5-0458B ✓
Ford
2/18/87

Original sponsor: Judiciary Committee

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 114 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to surety insurance."

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

8 * Section 1. AS 21.63.020 is repealed and reenacted to read:

9 Sec. 21.63.020. SURETY BONDS. (a) If a surety bond or other
10 surety obligation is required or permitted by law, the bond or other
11 obligation may be executed by a surety insurer as authorized under
12 this title. A bond executed by a surety insurer is full and complete
13 compliance with every requirement of law that the bond or other
14 obligation must be executed by a surety. Except as provided under (b)
15 of this section, a surety bond or other surety obligation executed
16 under this section may not be refused for failure to conform to law.

17 (b) A court may, under AS 12.30.020(b), refuse to accept a
18 surety bond if the surety is more than 90 days delinquent in making
19 payment on a bond previously executed by the surety and forfeited by
20 the court. ^{in accordance with the rules of court} The 90-day period begins the day that the surety receives
21 notice of the forfeiture of the bond.

22
23 section 2. This Act applies only to bonds forfeited
24 after the effective date of this Act
25
26
27
28
29

Proposed by Alaska Court System

3/10/87

CS FOR HOUSE BILL NO. 114 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
FIFTEENTH LEGISLATURE - FIRST SESSION
A BILL

For an Act entitled: "An Act relating to surety bonds."

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

*Section 1. AS 12.30.020(b) is amended to read:

(b) If a judicial officer determines under (a) of this section that the release of a person will not reasonably assure the appearance of the person, or will pose a danger to other persons and the community, the judicial officer may

(1) place the person in the custody of a designated person or organization agreeing to supervise the person;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the person to return to custody after daylight hours on designated conditions;

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, a sum not to exceed 10 percent of the amount of the bond; the deposit to be returned upon the performance of the condition of release;

(5) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(6) Impose any other condition considered reasonably necessary to assure the defendant's appearance as required and the safety of other persons and the community.

~~(6)~~ The court may refuse to accept a bond from a surety if the court determines that refusal is in the best interest of the state.



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 284-8228

March 10, 1987

Representative John Sund
Chair, House Judiciary Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

Thank you for forwarding Mr. George's letter regarding HB 114. The court system has no objection to the approach proposed by Mr. George. I have attached a proposed draft amending AS 12.30.020(b) along the lines he suggests. It is my understanding that the Committee will discuss this bill at its meeting this afternoon.

A copy of this letter will be delivered to Mr. Haggart's office today. Also, I am forwarding a copy of Mr. George's letter to the court rules revisor, and asking him to bring it to the attention of the Criminal Rules Committee.

The court system appreciates your efforts and the efforts of your staff to help formulate a workable amendment to meet the court's concerns.

Sincerely,

A handwritten signature in cursive script that reads "Karla L. Forsythe".

Karla L. Forsythe
Staff Counsel

KLF:bs

Att.

cc: Arthur H. Snowden, II, Administrative Director
Stephanie J. Cole, Deputy Administrative Director
William T. Cotton, Court Rules Attorney
Richard Haggart
John George, Director, Division of Insurance

3/10/87-1

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: HB 114
Publish Date:

REQUEST:

Revision Date: _____ Agency Affected: Alaska Court System
Title: An act relating to surety insurance BRU: Trial Courts
Sponsor: House Judiciary Committee Components:
Requestor: House Judiciary Committee

EXPENDITURES/REVENUES:		(Thousands of Dollars)					
	OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL
REVENUE

FUNDING:		(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:		(Thousands of Dollars)					
Full-time
Part-time
Temporary

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System

Phone: 264-8228
Date: 2-18-87

Approved by: *Stephanie Cole*
Stephanie J. Cole, Deputy Director
Agency: Alaska Court System

Date: 2-18-87

- Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: HB 114
Publish Date:

REQUEST: _____

Revision Date: 1-6-88 Agency Affected: Alaska Court System
Title: An act relating to surety BRU: Trial Courts
insurance
Sponsor: House Judiciary Committee Components:
Requestor: House Judiciary Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL
REVENUE

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Jan Strandberg* Jan Strandberg, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 1-6-88
Approved by: *Stephanie Cole, for* Arthur H. Snowden, II, Administrative Director Date: 1-6-88
Agency: Alaska Court System

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 284-8228

March 10, 1987

Representative John Sund
Chair, House Judiciary Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

Thank you for forwarding Mr. George's letter regarding HB 114. The court system has no objection to the approach proposed by Mr. George. I have attached a proposed draft amending AS 12.30.020(b) along the lines he suggests. It is my understanding that the Committee will discuss this bill at its meeting this afternoon.

A copy of this letter will be delivered to Mr. Haggart's office today. Also, I am forwarding a copy of Mr. George's letter to the court rules revisor, and asking him to bring it to the attention of the Criminal Rules Committee.

The court system appreciates your efforts and the efforts of your staff to help formulate a workable amendment to meet the court's concerns.

Sincerely,

Karla L. Forsythe
Staff Counsel

KLF:bs

Att.

cc: Artur H. Snowden, II, Administrative Director
Stephanie J. Cole, Deputy Administrative Director
William T. Cotton, Court Rules Attorney
Richard Haggart
John George, Director, Division of Insurance

3/10/87-1



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

503 K Street
Anchorage, Alaska 99501

(907) 264-6228

February 24, 1987

Representative John Sund
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

The Alaska Court System offers several comments in response to testimony presented at the committee's hearing on House Bill 114 relating to surety insurance.

Mr. Adkerson questions the need for this legislation. In his view the Division of Insurance has adequate authority to address the problem of unpaid bonds. He also believes that properly forfeited bonds are being paid in a timely manner.

This legislation was proposed in response to an actual problem facing the court system. A surety (now no longer operating in the state) had an authorized agent who was writing bail bonds, some of which were subsequently forfeited when a defendant failed to appear. These forfeited bonds were not being paid; many were over one year old. The Division of Insurance indicated that an investigation was under way but was not in a position to take immediate action. When the court became aware of the extent of the problem, the court undertook to examine its options to control such a situation. Although the court system had every reason to believe that it would never receive payment on these forfeited bonds, under existing law the courts had no authority to decline to accept further bonds from this surety until some definitive action was taken by the Division of Insurance. This legislation would prevent this situation from recurring in the future. The bill focuses on corporate rather than private sureties because a continuing pattern of unpaid forfeited bonds arises with a surety who is writing bonds in volume, rather than with a private surety who usually is posting security only in one case.

Although in some jurisdictions courts closely regulate bail bondsmen, the Alaska Court System believes this responsibility properly lies with the executive branch. The court is not seeking to undertake an executive branch collection function. The court simply seeks the ability to decline to accept bonds if a surety has not paid bonds in the past. This is in keeping with good business practice and avoids the need to create additional bureaucratic procedures.

Mr. Adkerson suggests three changes to House Bill 114. First, Mr. Adkerson proposes that the bill specifically state that the court can refuse to accept a bond only after notice and hearing. The court system proposes instead that House Bill 114 be redrafted to provide that the court may refuse to accept payment only after a bond has been forfeited in accordance with court rules. At present, Criminal Rule 41(d) requires notice and hearing before bonds are forfeited. A proposal currently under consideration by the Criminal Rules Committee requires notice to the surety but would provide for a hearing only upon request, with forfeiture to occur after 60 days elapses from notice without a request for hearing. The mechanics of forfeiting bonds are matters well within the court's administrative authority under the rules of practice and procedure.

The court system proposes the following language (underlined):

"A court may, under AS 12.30.202(b), refuse to accept a surety bond if the surety is more than 90 days delinquent in making payment on a bond previously executed by the surety and forfeited by the court in accordance with Rules of Court. The 90-day period begins the day that the surety receives notices of the forfeiture of the bond."

Second, Mr. Adkerson suggests that 120 days should elapse before the court can refuse to accept further bonds. In the view of the court system, even three months may be excessively lengthy. The court needs to take action as quickly as reasonably possible, and 90 days affords more than sufficient time for a surety to make payment.

Finally, Mr. Adkerson proposes that this measure apply only to bonds executed after the effective date of the act. The court system alternately proposes that this measure apply to any bonds forfeited after the effective date of this act, since the language proposed above would specifically require compliance with court rules.

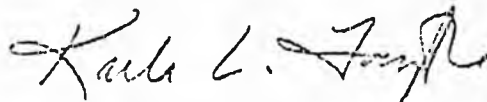
The committee also asked the court system to review paragraph (a) of this bill, which redrafts the existing statute. The redraft does not modify any existing rights, and is much easier to understand than the existing law.

The court system respectfully disagrees with Representative Gruenberg's view that this bill is in bad shape, and believes that the bill as currently drafted with the modifications suggested by the court system will provide an easy, understandable and fair procedure for assisting the court in exercising its fiduciary responsibilities to the State of Alaska with regard to delinquent bail bonds.

Representative John Sund
February 24, 1987
Page Three

I hope this information is helpful to the committee. Please let me know if I can provide further information.

Sincerely,



Karla L. Forsythe
Staff Counsel

KL:ms

cc: Arthur H. Snowden, II, Administrative Director
Stephanie J. Cole, Deputy Administrative Director
Representative Max F. Gruenberg, Jr.
Vice Chairwoman Fran Ulmer
Representative Sam Cotten
Representative Mike Navarre
Representative Ramona Barnes
Representative Robin Taylor
Richard Haggart

REQUESTED REPLACEMENT LANGUAGE FOR HOUSE BILL 114
SUBMITTED BY MR. FRED ADKERSON, OWNER OF FRED'S BAIL BONDING

(b) The Court may, under A.S. 12.30.020(b), refuse to accept a surety bond if the surety is more than 120 [90] days delinquent in making payment on a forfeited bond, PROVIDED HOWEVER, THAT THE COURT MAY NOT REFUSE TO ACCEPT A SURETY BOND UNDER THIS SUBSECTION IF THE FORFEITURE GIVING rise to the delinquency occurred without notice and hearing. The 120-DAY [90-day] period begins the day that the surety receives notice of the forfeiture of the bond AND AFTER NOTICE AND HEARING.

(c) The provisions of Subsection (b) apply only to bonds executed after the effective date of this act.

TESTIMONY OF RICHARD G. HAGGART

ON BEHALF OF FRED ADKERSON, OWNER OF FRED'S BAIL BONDING
BEFORE THE HOUSE JUDICIARY COMMITTEE
FEBRUARY 17, 1987

Mr. Chairman, Madam Vice Chairman, members of the Committee:

My name is Richard Haggart and I am appearing today with and on behalf of Mr. Fred Adkerson with respect to House Bill 114, "An act relating to surety insurance."

As this Committee knows, Mr. Adkerson and his business is deeply affected by any legislation touching on the rights and responsibilities of corporate sureties in this State.

At the outset we want to make clear that Mr. Adkerson has doubts about the need for this legislation. At the present time, the Division of Insurance has full authority to regulate corporate sureties, and to Mr. Adkerson's knowledge, is doing so. The problem meant to be addressed by this legislation simply does not exist: bonds forfeited after hearing are in fact being paid by solvent corporate sureties in a timely manner. While another bail bonding company did fail to pay off a number of bonds, this was because of the bankruptcy of the bondsmen's insurance company. We respectfully suggest that the legislation sought by the court system in House Bill 114 would have only a nominal affect on reducing losses due to bankruptcy of the surety.

Second, it is unclear why corporate sureties are being singled out in this legislation. A large number of the bonds issued in the criminal courts of this State are secured by private cash, private property, or private surety. When bonds of private sureties are forfeited, the court system has made no effort to collect or enforce the underlying security. To Mr. Adkerson's knowledge, not one piece of real property has been taken, nor one promissory note pursued where private sureties have been involved in a forfeiture; when the court system is leaving hundreds of thousands of dollars of forfeited security on the table each year, it is a fair question to ask where the resources and expertise to enforce this legislation against corporate sureties will be coming from. Even more important, why is the State focusing on corporate sureties and ignoring the large number of private sureties that have, to date, been allowed to thumb their nose at the court system without consequence?

Finally, the Division of Insurance which currently regulates corporate sureties in all respects, is fully empowered to act against any corporate surety who violates state law. It is perhaps worth considering whether the Insurance Division should explain why it cannot handle its regulatory responsibilities to the satisfaction of the court system. Dividing responsibilities of regulatory measures among different bureaucracies invites mismanagement and confusion both from a governmental standpoint,

and for those who are regulated. Before such a step is taken, it should be clearly demonstrated that there is a substantial need for the divided authority. There simply has not been any such showing with respect to House Bill 114.

Mr. Adkerson's previous comments have been directed to whether or not House Bill 114 should be enacted at all; if it is enacted, however, there are two absolutely vital modifications to be made in the legislation. First, it must be made explicit that the 90 day waiting period following a forfeiture begins to run only when the forfeiture was ordered after proper notice and hearing.

If this change is not made, the very existence of Mr. Adkerson's business is threatened. At the present time, there are a number of outstanding bonds which have been technically ordered forfeited by the court, but which Mr. Adkerson has not yet paid. The reason for this failure to pay is that all of these forfeitures took place without hearing or without notice to Mr. Adkerson. A great many of the forfeitures went unnoticed until recently when the matter was brought to the attention of the court system by Mr. Adkerson himself.

So far, three different District Court Judges in Anchorage have held the forfeitures without notice and hearing as required under Criminal Rule 41 are improper, and Mr. Adkerson cannot therefore be deemed in default on the bond. Whether or not

hearings and notice can take place now, in some cases years after the fact, is a matter which is under negotiation between Mr. Adkerson and the court system and which must necessarily be determined on a case by case basis.

The point is, however, that Mr. Adkerson is technically more the ninety days in arrears on a large number of these bonds, at least as far as they are recorded in the state court system computer. As this legislation is written, Mr. Adkerson would become immediately subject to the penalty provisions of the legislation and could be forced to either shut down his business, or immediately up pay all outstanding bonds, regardless of whether he had ever had an opportunity to contest the forfeiture at hearing or even has been given notice of the forfeiture. Such a result would be fundamentally unfair and is simply not necessary in the context of the stated objectives of this legislation's sponsors. To cure this problem, Mr. Adkerson is submitting separate draft language which amends Subsection (b) of House Bill 114.

The second important change which needs to be made is to make the Bill prospective in effect only. Thus, Mr. Adkerson requests that this legislation be amended so that it will effect only bonds issued after a future date certain. Consequently, Mr. Adkerson respectfully requests the Committee to add a new Subsection (c) that specifically states the legislation covers

only surety bonds executed after the effective date of the Bill, if enacted.

A third change, not as important as the first two, but nonetheless significant would be to extend the waiting period between forfeiture and when the court system could impose penalties, from 90 to 120 days. Mr. Adkerson does a volume business in corporate surety bonds; hundreds are written every month. Given the volume of the business, and the tightness of court calendars, Mr. Adkerson believes a longer period of time in which to work out problems that arise on disputed bonds would be appropriate. For this reason, we urge the Committee to expand the waiting period in House Bill 114 from 90 to 120 days before the court may impose penalties on a non-paying or contesting surety.

In conclusion, we respectfully ask the Committee to look searchingly at this legislation and determine whether or not putting the court system in the enforcement and collection business, is appropriate. We also urge the Committee to take a good close look at the Division of Insurance, and if they are not in fact doing their job, find out why that is the case. We also urge the Committee to consider very seriously whether or not the problem perceived by the court system exists to the degree and extent that makes this kind of a legislative solution necessary or appropriate.

If some legislation is ultimately necessary, however, the changes Mr. Adkerson has requested in House Bill 114 are vital to the continued existence of his business. While bail bonding is hardly the world's most glamorous profession, it provides an important service in a society where the right to bail is constitutionally mandated. Most of Mr. Adkerson's clients are persons of slender income and limited resources. Each month in the State of Alaska, two to three hundred people are released on bond of a corporate surety. Without the availability of a bondsman, these people would fill to overflowing the State's already overcrowded jails. In this regard, Mr. Adkerson serves an important and useful role in our criminal justice system. The changes he has requested will permit him to continue that role; if they are not adopted and this legislation goes forward, the existence of his business would be unfairly and immediately threatened, without advancing any reasonable interest of the State of Alaska or its court system.

Thank you for your attention. Mr. Adkerson and I stand ready to answer any questions the Committee may have.

WORK:44

Rule 41. Bail.

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to AS 12.30.010—12.30.080.

(b) **Prosecuting Attorney — Appearance and Notice.** The prosecuting attorney may appear and be heard in all proceedings relating to bail. The judge or magistrate, in his discretion, may require that notice of such proceedings be given the prosecuting attorney.

(c) **Surrender of Defendant.** At any time before forfeiture of the undertaking or the cash deposit in lieu thereof, the sureties on the undertaking or the owner of the deposit may surrender the defendant to the custody of a peace officer or the defendant may surrender himself to the officer. There shall be delivered to the officer at the time of surrender a certified copy of the undertaking or a certificate as to the cash deposit executed by the clerk of court. The peace officer shall thereupon detain the defendant in custody as upon a commitment and acknowledge the surrender by a written certificate.

(d) **Forfeiture.**

(1) **Declaration.** If the person released on bail on the giving or pledging of security fails to appear before a court or judicial officer as required, the judge or magistrate before whom the person released was to appear shall set a time for hearing to determine if the nonappearance was willful. Notice of the hearing shall be furnished and opportunity to be heard shall be granted to the prosecuting attorney, the defendant, the defense attorney, and the person giving or pledging the security. Nothing in this section shall interfere with the issuance of a summons or bench warrant for a person who fails to appear as required before a court or judicial officer.

(2) **Judgment of Forfeiture.** If after the hearing the judge or magistrate determines that the nonappearance of the person released on bail was willful, the security, given or pledged, shall be forfeited. An appeal may be taken of the judgment of forfeiture in the manner of other appeals.

See AS 21.09.150 (B)(3) Director shall
revoke the certificate of any company who
fails to pay a final judgement within 30 days

(3) *Enforcement.* Execution shall issue on judgments of forfeiture in the same manner as on other judgments for the payment of money. (Amended by Supreme Court Order 157 effective February 15, 1973)

Generally:

CROSS REFERENCES: Crim. Forms 55—59, 61—64, 66, 69—72

(a) CROSS REFERENCES: AS 12.30.010—AS 12.30.080 (as amended by c. 20 SLA, 1966); Crim. Forms 53, 54

(c) CROSS REFERENCES: AS 12.30.020; Crim. Form 60

(d)(1) CROSS REFERENCE: Crim. Form 65

(d)(2) CROSS REFERENCES: Crim. Forms 67, 68

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

March 3, 1987

Mr. John Hartel
Office of
Representative John L. Sund
P.O. Box V
Juneau, AK 99811

Dear Mr. Hartel:

Re: Bail Bond Forfeiture - HB 114

Per your request I have reviewed HB 114. It appears to me that (a) properly falls within the insurance code. I have no problem with this wording although it certainly limits the scope of who can be a surety.

Part (B) seems better suited to be added to AS 12 rather than AS 21. As I perceive the problem being addressed, the proposed subsection (B) is ineffective. First, I believe the court should be able to refuse to accept a surety bond from a particular surety if it feels it is in the state's best interest regardless of other delinquencies. Second, I believe the problem the court has with its collection is its failure to meet the requirements set out in the court's own criminal rule 41 to forfeit a surety bond. Once a bond is properly forfeited, AS 21.09.150(b)(3) can be used to leverage payment. Proper forfeiture could be expedited if the court rule were changed to provide that the date for the defendant's appearance is also automatically the date the surety must appear to show why the bond should not be forfeited if the defendant does not show up. Then the judge could order the bond forfeited if the defendant is not present and the surety does not appear to contest the forfeiture. Once forfeited, the court orders payment from surety, and failing to receive payment within 30 days, notifies the Division of Insurance.

The only statutory change required, if my previous comments are true, is to provide the courts the statutory ability to refuse a particular surety if it deems it in the state's best interest. This would apply to corporate as well as personal surety, negating the need for changes to subsection (a). All other changes could be incorporated in a new court rule.

Thank you for allowing me to comment.

Sincerely,

John L. George
Director

JLG/sa2792s
30387a

Rule 41. Bail.

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to AS 12.30.010—12.30.080.

(b) **Prosecuting Attorney — Appearance and Notice.** The prosecuting attorney may appear and be heard in all proceedings relating to bail. The judge or magistrate, in his discretion, may require that notice of such proceedings be given the prosecuting attorney.

(c) **Surrender of Defendant.** At any time before forfeiture of the undertaking or the cash deposit in lieu thereof, the sureties on the undertaking or the owner of the deposit may surrender the defendant to the custody of a peace officer or the defendant may surrender himself to the officer. There shall be delivered to the officer at the time of surrender a certified copy of the undertaking or a certificate as to the cash deposit executed by the clerk of court. The peace officer shall thereupon detain the defendant in custody as upon a commitment and acknowledge the surrender by a written certificate.

(d) **Forfeiture.**

(1) **Declaration.** If the person released on bail on the giving or pledging of security fails to appear before a court or judicial officer as required, the judge or magistrate before whom the person released was to appear shall set a time for hearing to determine if the nonappearance was willful. Notice of the hearing shall be furnished and opportunity to be heard shall be granted to the prosecuting attorney, the defendant, the defense attorney, and the person giving or pledging the security. Nothing in this section shall interfere with the issuance of a summons or bench warrant for a person who fails to appear as required before a court or judicial officer.

(2) **Judgment of Forfeiture.** If after the hearing the judge or magistrate determines that the nonappearance of the person released on bail was willful, the security, given or pledged, shall be forfeited. An appeal may be taken of the judgment of forfeiture in the manner of other appeals.

See AS 21.09.150 (B)(3) Director shall
revoke the certificate of any company who
fails to pay a final judgement within 30 days

(3) *Enforcement.* Execution shall issue on judgments of forfeiture in the same manner as on other judgments for the payment of money. (Amended by Supreme Court Order 157 effective February 15, 1973)

Generally:

CROSS REFERENCES: Crim. Forms 55—59, 61—64, 66, 69—72

(a) CROSS REFERENCES: AS 12.30.010—AS 12.30.080 (as amended by c. 20 SLA 1966); Crim. Forms 53, 54

(c) CROSS REFERENCES: AS 12.30.020; Crim. Form 60

(d)(1) CROSS REFERENCE: Crim. Form 65

(d)(2) CROSS REFERENCES: Crim. Forms 67, 68

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

HOUSE BILL NO. 114

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to surety insurance."

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

8 * Section 1. AS 21.63.020 is repealed and reenacted to read:

9 Sec. 21.63.020. SURETY BONDS. (a) If a surety bond or other
10 surety obligation is required or permitted by law, the bond or other
11 obligation may be executed by a surety insurer as authorized under
12 this title. A bond executed by a surety insurer is full and complete
13 compliance with every requirement of law that the bond or other
14 obligation must be executed by a surety. Except as provided under (b)
15 of this section, a surety bond or other surety obligation executed
16 under this section may not be refused for failure to conform to law.

17 (b) A court may, under AS 12.30.020(b) refuse to accept a
18 surety bond if the surety is more than 90 days delinquent in making
19 payment on a [forfeited] bond. The 90-day period begins the day that
20 the surety receives notice of the forfeiture of the bond.

*Previously executed by the surety and
forfeited by the court.*