

H B

3 5 5

HOUSE STATE AFFAIRS COMMITTEE

NEXT COMMITTEE: JUDICIARY

BILL: HB 355

CURRENT VERSION:

SCHEDULED: 2/5/88

SPONSOR: ULMER

PHONE NO: 4947

CONTACT FILE: _____

BILL SUBJECT: RELATING TO DAMAGES FOR DEATH OF A MINOR; AND DISTRIBUTION OF A MINOR'S ESTATE

SPONSOR BACKUP: _____

AFFECTED AGENCIES:

<u>DEPARTMENT</u>	<u>CONTACT/PHONE</u>	<u>COMMENT</u>
COURTS	JAN STRANDBERG/264-8228	

FISCAL NOTES

<u>AGENCY</u>	<u>REQUESTED</u>	<u>DATED</u>	<u>FY 88 AMT</u>	<u>FY 89 AMT</u>
COURTS	2/3/88	2/4/88	-0-	-0-

ACTION

<u>DATE</u>	<u>COMMENT</u>
2/5/88	HEARING - CSHB 355 (SA) adopted & passed from committee

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/12/88

FURTHER REFERRALS: Judiciary

DATE: 2-5-88

The State Affairs Committee has considered HB 355

"An Act relating to damages for death of a minor; and distribution of a minor's estate."

RECOMMENDS:

- replace with CS HB 355 (SA) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

W.A. Boush

Cliff Davidson

Terry Martin

Frank [unclear]

Tom Ulmer

David Douley

SIGNING OTHER RECOMMENDATIONS:

Tom Ulmer
Chairman's signature

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

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

House State Affrs:

Feb 5, 1988



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

STATE AFFAIRS COMMITTEE HOUSE BILL 355

FILE CONTENTS

1. HB 355: AN ACT RELATING TO DAMAGES FOR DEATH OF A MINOR; AND DISTRIBUTION OF A MINOR'S ESTATE
2. DRAFT SPONSOR SUBSTITUTE FOR HOUSE BILL 355
3. MEMORANDUM FROM JACK CHENOWETH TO REPRESENTATIVE ULMER, DATED SEPTEMBER 25, 1987
4. ALASKA STATUTES 13.11.300 THROUGH 13.11.580
5. LETTER FROM PAUL COSSMAN TO REPRESENTATIVE ULMER, DATED JANUARY 26, 1988, AND RESPONSE, DATED FEBRUARY 1, 1988
6. ARTICLES FROM JUNEAU EMPIRE RE: PINKERTON

FISCAL NOTE

- A. ALASKA COURT SYSTEM: -0-

STATE OF ALASKA



REPRESENTATIVE
FRAN ULMER

HOUSE OF REPRESENTATIVES

P.O. Box V
JUNEAU, ALASKA 99811
(907) 465-4947

MEMORANDUM

February 4, 1988

TO: House State Affairs Members

FROM: Representative Fran Ulmer

SUBJECT: House Bill 355

House Bill 355, relating to damages for the death of a minor and distribution of a minor's estate, was introduced to change the laws of inheritance for deceased minors. This statutory change is intended to preclude a parent or other heir of a child who caused that child's death by criminal acts from benefitting or recovering damages through the estate of the child.

Several cases in recent years have pointed out the need to tighten the inheritance laws. The most recent case was one here in Juneau last year. It seems evident that a criminally negligent parent should not benefit from the death of their child.

The Sponsor Substitute for HB 355 clarifies that a parent would have had to be criminally convicted before the proposed statute applied.

Thank you for your consideration of HB 355.

5-1371L ✓

Chenoweth
2/5/88

Original sponsors: Ulmer and Hudson



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
CS FOR HOUSE BILL NO. 355 (State Affairs)
IN THE LEGISLATURE OF THE STATE OF ALASKA
FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to damages for death of a minor; and
distribution of a minor's estate."

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

* Section 1. AS 09.55.580(a) is amended to read:

(a) Except as provided under (f) of this section, when [WHEN]
the death of a person is caused by the wrongful act or omission of
another, the personal representatives of the former may maintain an
action therefor against the latter, if the former might have main-
tained an action, had the person lived, against the latter for an
injury done by the same act or omission. The action shall be com-
menced within two years after the death, and the damages therein shall
be the damages the court or jury may consider fair and just. The
amount recovered, if any, shall be exclusively for the benefit of the
decedent's spouse and children when the decedent is survived by a
spouse or children, or other dependents. When the decedent is surviv-
ed by no spouse or children or other dependents, the amount recovered
shall be administered as other personal property of the decedent but
shall be limited to pecuniary loss. When the plaintiff prevails, the
trial court shall determine the allowable costs and expenses of the
action and may, in its discretion, require notice and hearing thereon.
The amount recovered shall be distributed only after payment of all
costs and expenses of suit and debts and expenses of administration.

* Sec. 2. AS 09.55.580 is amended by adding a new subsection to read:

(f) A person whose criminal negligence is a cause of the death

1 of a minor may not recover damages for the death of the minor, either
2 directly or as a personal representative of the minor's estate.

3 * Sec. 3. AS 13.11 is amended by adding a new section to article 8 to
4 read:

5 Sec. 13.11.310. EFFECT OF CRIMINAL NEGLIGENCE ON DISTRIBUTION OF
6 MINOR'S ESTATE. (a) A person whose criminal negligence is a cause of
7 the death of a minor decedent is not entitled to benefit under the
8 will or under this chapter.

9 (b) The estate of a minor decedent described in (a) of this
10 section passes as if the person who acted with criminal negligence had
11 predeceased the decedent.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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

September 25, 1987

SUBJECT: Work order 5-1371, precluding recovery of damages for personal injury or death incurred or caused during commission of a felony.

TO: Representative Fran Ulmer

FROM: Jack Chenoweth
Legislative Counsel

This work order is based on the instruction of your assistant, Judy Knight, to limit its operation to felonies, omitting misdemeanors and violations. The essential operative provision responding to your request adds the language "or who causes another person to suffer personal injury or death" as a part of the portion of the current law designated as subsection (a).

This draft incorporates a suggestion of Assistant Attorney General Bill Mellow, the chief of the Special Litigation Section, made in response to a different work order, urging addition of provisions:

(1) to preclude a person from securing an "indirect" recovery of a damage award through distribution of the decedent's estate (appearing as the second addition in subsection (a)); and

(2) to prevent the person from securing a damage award in the event there is no criminal conviction by allowing proof of commission of the felony in a civil proceeding to cut off the person's entitlement to the award (appearing as new material in (a)(2)(B) of the draft).

Mr. Mellow's suggestions made sense to me, and I have included them. They may, of course, be modified or deleted as you may wish.

Please contact me if you have any questions, suggestions, or comments concerning the enclosed draft.

JC:mkr
m13/003

Enclosure

LAW OFFICES
BERNARD P. KELLY & ASSOCIATES

A PROFESSIONAL CORPORATION
310 K STREET, SUITE 506
ANCHORAGE, ALASKA 99501-2040
(907) 276-3188

BERNARD P. KELLY
PAUL COSSMAN
STEVEN PRADELL

January 26, 1988

Alaska House of Representatives
State Affairs Committee
Room 102, Capitol
Juneau, Alaska 99811

Re: House Bill 355

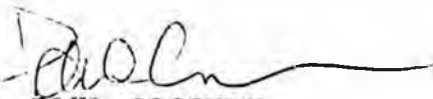
Dear Members of the House State Affairs Committee:

I vehemently oppose the passage of House Bill 355. This bill would change the current law so that any parent who is even the least bit negligent could not recover for the wrongful death of their child. The ramifications of this are severe. Consider the following example. A parent is driving their automobile with one of their minor children as a passenger. They are involved in an automobile accident in which the minor is killed. At a subsequent trial, the parent is found five percent negligent and the defendant driver is found 95 percent negligent. The parent would not be allowed to recover for the wrongful death of their child, since the parent's negligent or wrongful act or omission would be a cause of the death of their child.

House Bill 355 would create an open hole in the law which would return us to the old days of contributory negligence where even one percent of negligence on the part of a plaintiff will defeat their entire recovery. The example of an automobile collision is not an unusual one. Please do not allow House Bill 355 to hit the House floor. It is an inequitable and regressive piece of legislation.

Sincerely yours,

BERNARD P. KELLY & ASSOCIATES


PAUL COSSMAN

PC:kjn
1053n



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

February 1, 1988

Paul Cossman
Bernard P. Kelly & Associates
310 K Street, Suite 506
Anchorage AK 99501-2040

Dear Mr. Cossman:

Thank you for your comments regarding House Bill 355, "An Act relating to damages for death of a minor; and distribution of a minor's estate." I have had a sponsor substitute drafted which I believe addresses your concerns. I have enclosed this for your review and look forward to hearing from you again.

Thank you, again, for pointing out this deficiency in the bill.

Sincerely,

A handwritten signature in dark ink, appearing to read "Fran Ulmer".

Fran Ulmer, Chair
House State Affairs Committee

Enclosure

Father sues mother over death of child



PETER D. PAULO

EMPIRE FILE PHOTO



NATALIE IRIS PINKERTON

EMPIRE FILE PHOTO

By ED SCHOENFELD

THE JUNEAU EMPIRE

A local woman convicted in April on charges stemming from the 1986 death of her 20-month-old son is being sued by the child's father.

The civil lawsuit, filed today, asks for half a million dollars in damages from Natalie Iris Pinkerton.

Pinkerton, 23, was convicted of one count of criminally negligent homicide, a Class C felony, for her role in the death of Richard Johnson. The child died March 30, 1986, from internal injuries sustained when he was struck in the abdomen.

Pinkerton was convicted last April following a jury trial for failing to provide medical care that would have prevented the death of her son. She was sentenced in August to six months in jail but remains free while she appeals her conviction.

Peter D. Paulo, 30, who was living with Pinkerton at the time of the boy's death, was indicted in September 1986 on a manslaughter charge alleging he was responsible for the fatal blow. He was convicted and sentenced to five years in jail and a \$10,000 fine after pleading no contest to a reduced charge, criminally negligent homicide, as a result of a plea-bargain.

The suit filed this morning was authored by attorney Michael O'Brien on behalf of the estate of the boy, represented by his father,

Burnheart Johnson Jr.

O'Brien said the suit was filed in part to prevent Pinkerton from collecting half of a \$105,000 out-of-court settlement between Johnson and the state Department of Health and Social Services over alleged mishandling of reports that the younger Johnson was being beaten by Paulo.

The state has paid the settlement to the estate, but O'Brien said Pinkerton, as the child's mother, has a legal right to half that money. Her conviction in connection with the death does not prevent her from receiving the payment as laws covering such legal awards prevent them from being made only when a person is convicted of an intentional killing.

Pinkerton has never been accused of taking an active role in her son's death.

Thomas Findley, Pinkerton's attorney in the civil matter, this morning said he had not yet had a chance to review the suit. He said his client has no desire to profit from Johnson's settlement with the state, but that she also feels the child's father should not gain financially from the death.

When the issue was raised earlier this year Findley said, "She has real concerns about the process, which she has been told will result in the father, who did not provide care for the child, obtaining large sums of money

Please turn to Page 8

WEATHER

A few snow showers tonight, early Tuesday, before clearing. High 30. Page 8

Suit...

Continued from Page 1 from the state."

In sentencing Pinkerton, Juneau Superior Court Judge Walter Carpeneti ordered her not to have any financial gain from her son's death. If the sentence is imposed, the order would prevent Pinkerton from collecting her share of the settlement.

Pinkerton's attorney in the criminal case, Tricia Collins, has appealed the conviction and sentence, including the condition that would force Pinkerton to give up her right to the money. Imposition of the sentence is delayed until higher courts act on the appeal.

Findley this morning said action on the civil suit should wait until the appeal is processed.

During Pinkerton's sentencing hearing, Collins also said her client had no desire to profit from her son's death but also felt no one else should benefit financially.

O'Brien has said if his suit succeeds, the money would go to Johnson and his parents, Ken and Francine Perkins. The Perkinses became active in Justice for Children, a Juneau-based group pushing for stronger penalties for people convicted of abusing children, following their grandson's death.

O'Brien said the family considered filing suit against Paulo, but has tentatively decided not to be-

cause any judgment would likely not be collected because he has no assets.

The lawsuit that led to the settlement with the state, filed by O'Brien, alleged the department's Division of Family and Youth Services was called four times with reports that the boy was being abused but never fully investigated the matter.

A state ombudsman's investigation into the division's response to the reports of abuse determined they were mishandled, but said proper handling might not have saved the child's life.

Ken Perkins said the suit against the state was filed in part to force better handling of child abuse reports.

Pinkerton could get half of death lawsuit payment

By ED SCHOENFELD

THE JUNEAU EMPIRE

A local woman convicted of criminally negligent homicide in connection with the death of her son may be in line for half of a \$105,000 payment the state has offered the child's father as part of an out-of-court settlement.

Natalie Iris Pinkerton, 22, convicted April 24 for failing to provide medical care that would have saved the life of her 20-month-old son, Richard Johnson, apparently has a legal right to half of the settlement, stemming from a suit over the state's

handling of reports that the man Pinkerton was living with when the child died had been physically abusing the boy.

The man, Peter D. Paulo, 30, is currently serving a five-year jail term for his conviction on a charge of criminally negligent homicide, a Class C felony, in connection with the death. The boy died March 30, 1986, from injuries sustained when he was struck in the abdomen.

The boy's father, Burnheart Johnson Jr., filed a \$1 million lawsuit May 21 against the state Division of Family and Youth Services. John-

Please turn to Page 6



EMPIRE FILE PHOTO

NATALIE IRIS PINKERTON

Pinkerton...

Continued from Page 1
son's attorney, Michael O'Brien, on Monday said the state has agreed to pay \$105,000 in an out-of-court settlement.

O'Brien said the money has not been released because under state law Pinkerton, as the child's mother, has a right to half of the damages.

Her conviction in connection with the death does not prevent her from receiving the payment, the attorney said. Laws covering such legal awards prevent them from being made only when a person is convicted of murder, O'Brien said. Pinkerton was convicted of not providing care that could have saved her son's life and was never accused of taking any intentional action to injure the child.

Thomas Findley, Pinkerton's attorney in the matter, this morning said his client does not want to profit from the suit. But he said Pinkerton is worried about the amount the child's father may gain in the settlement.

"She has real concerns about the process, which she has been told will result in the father, who did not provide care for the child, obtaining large sums of money from the

state," Findley said.

He said once the process of sentencing Pinkerton is completed, a decision will be made on how to respond to the possibility that she might have a right to some of the money from the lawsuit.

At the time O'Brien filed the suit, Ken Perkins, Burnheart Johnson's stepfather and spokesman for the family, said the legal action was taken in part to force the state to do a better job of handling child abuse reports.

The suit alleged the state was called four times with reports the boy was being abused but never fully investigated the matter. An ombudsman's investigation into the state's handling of the reports of abuse determined they were mishandled, but said proper handling might not have saved the child's life. State officials said the office that received the calls was understaffed and could not properly respond.

O'Brien this morning said he or the state may take legal action to prevent Pinkerton from receiving any money from the suit.

In addition, Juneau District Attorney Rick Svobodny, the prosecutor in the criminal case against Pinkerton, this morning said he has asked Pinkerton's sentence to be designed to prevent her from benefiting finan-

cially from the suit.

Svobodny said he has asked Juneau Superior Court Judge Walter Carpeneti, who is handling the case, to fine Pinkerton \$50,000. He said he has asked the judge to base the fine on Pinkerton's ability to pay, which would reduce or eliminate the fine if she waives her right to her half of the settlement in the Burnheart Johnson suit.

Pinkerton is scheduled to be sentenced Aug. 27 and 28. A hearing to determine Pinkerton's sentence was originally scheduled for Monday but was delayed because of a lack of courtroom space.



STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____ Bill Version: HB355
 Publish Date: _____
 Revision Date: _____ Agency Affected: Alaska Court System
 Title: An act relating to damages for BRU: Trial Courts
 death of a minor...
 Sponsor: Ulmer Components:
 Requestor: State Affairs

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*, General Counsel Phone: 264-8228
 Division: Alaska Court System Date: 2-3-88
 Approved by: *Stephanie Cole, for* Arthur H. Snowden, II, Administrative Director Date: 2-3-88
 Agency: Alaska Court System

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