

SB

1

5-0193L  
Hein  
3/18/87

Original sponsors: Duncan, Szymanski,  
Uehling and Sturgulewski

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 1 (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 the rights of physically and  
7 mentally disabled persons."

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

9 \* Section 1. AS 09.20.010 is amended by adding new subsections to read:

10 (b) A person is not disqualified from serving as a juror solely  
11 because of the loss of hearing or sight in any degree or a disability  
12 that substantially impairs or interferes with the person's mobility.

13 (c) The court shall provide, and pay the cost of services of, an  
14 interpreter or reader when necessary to enable a person with impaired  
15 hearing or sight to act as a juror.

16 \* Sec. 2. AS 09.65 is amended by adding a new section to read:

17 Sec. 09.65.150. DUTY TO DISABLED PEDESTRIANS. (a) The driver  
18 of a vehicle approaching a physically disabled pedestrian who is  
19 carrying a white or metallic-colored cane, or using special equipment  
20 for mobility, or using a service animal, shall take precautions neces-  
21 sary to avoid injury to the pedestrian or the service animal. A  
22 driver who fails to take necessary precautions and, as a result,  
23 causes injury to the pedestrian or the service animal is liable in  
24 damages for the injury caused.

25 (b) In this section

26 (1) "physically disabled pedestrian" means a person who has  
27 a physical condition that limits the person's ability to function as a  
28 pedestrian without the assistance of another person, a service animal,  
29 a cane, or other equipment or device;

1 (2) "service animal" means a dog guide or other animal that  
 2 assists a physically disabled person to function as a pedestrian.

3 \* Sec. 3. AS 11.76 is amended by adding a new section to read:

4 Sec. 11.76.130. INTERFERENCE WITH RIGHTS OF DISABLED PERSON.

5 (a) A person commits the crime of interference with the rights of a  
 6 disabled person if the person prevents or restricts

7 (1) a physically or mentally disabled person from having  
 8 full and free pedestrian use of a street, highway, sidewalk, walkway,  
 9 or other thoroughfare, to the same extent that any other person has a  
 10 right to pedestrian use; or

11 (2) a physically disabled person from being accompanied or  
 12 assisted by a certified service animal, without an extra charge for  
 13 the service animal, in a common carrier, place of public accommoda-  
 14 tion, or other place to which the general public is invited, except as  
 15 provided in (b) of this section.

16 (b) A physically disabled person who is accompanied or assisted  
 17 by a certified service animal in a common carrier, place of public  
 18 accommodation, or other place to which the general public is invited,  
 19 is liable for property damage done by the animal.

20 (c) In this section

21 (1) "certified service animal" means an animal trained to  
 22 assist a physically disabled person and certified by a school or  
 23 training facility for service animals as having completed such train-  
 24 ing;

25 (2) "physically or mentally disabled" has the meaning given  
 26 in AS 18.80.300.

27 (d) Interference with the rights of a disabled person is a class  
 28 B misdemeanor.

29 \* Sec. 4. AS 12.55.155(c)(22) is amended to read:

1 (22) the defendant knowingly directed the conduct consti-  
2 tuting the offense at a victim because of that person's race, sex,  
3 color, creed, physical or mental disability, ancestry, or national  
4 origin;

5 \* Sec. 5. AS 18.80.050 is amended by adding a new subsection to read:

6 (b) The commission shall adopt regulations relating to dis-  
7 crimination because of physical and mental disability. The regula-  
8 tions shall furnish guidance concerning the circumstances under which  
9 it is necessary to make a reasonable accommodation for a physically or  
10 mentally disabled person when providing employment, financing or  
11 credit, public accommodations, the sale or rental of real property, or  
12 other goods, services, facilities, advantages, or privileges under  
13 this chapter.

14 \* Sec. 6. AS 18.80.060(a) is amended to read:

15 (a) In addition to the other powers and duties prescribed by  
16 this chapter the commission shall

17 (1) appoint an executive director approved by the governor;

18 (2) hire other administrative staff as may be necessary to  
19 the commission's function;

20 (3) exercise general supervision and direct the activities  
21 of the executive director and other administrative staff;

22 (4) accept complaints under AS 18.80.100;

23 (5) study the problems of discrimination in all or specific  
24 fields of human relationships, and foster through community effort or  
25 goodwill, cooperation and conciliation among the groups and elements  
26 of the population of the state, and publish results of investigations  
27 and research as in its judgment will tend to eliminate discrimination  
28 because of race, religion, color, national ancestry, physical or  
29 mental disability [HANDICAP], age, sex, marital status, changes in

1 marital status, pregnancy or parenthood;

2 (6) make an overall assessment, at least once every three  
3 years, of the progress made toward equal employment opportunity by  
4 every department of state government; results of the assessment shall  
5 be included in the annual report made under AS 18.80.150.

6 \* Sec. 7. AS 18.80.200 is amended to read:

7 Sec. 18.80.200. PURPOSE. (a) It is determined and declared as  
8 a matter of legislative finding that discrimination against an inhabi-  
9 tant of the state because of race, religion, color, national origin,  
10 age, sex, physical or mental disability, marital status, changes in  
11 marital status, pregnancy or parenthood is a matter of public concern  
12 and that this discrimination not only threatens the rights and privi-  
13 leges of the inhabitants of the state but also menaces the institu-  
14 tions of the state and threatens peace, order, health, safety and  
15 general welfare of the state and its inhabitants.

16 (b) Therefore, it is the policy of the state and the purpose of  
17 this chapter to eliminate and prevent discrimination in employment, in  
18 credit and financing practices, in places of public accommodation, in  
19 the sale, lease, or rental of real property because of race, religion,  
20 color, national origin, sex, age, physical or mental disability,  
21 marital status, changes in marital status, pregnancy or parenthood.  
22 It is also the policy of the state to encourage and enable physically  
23 and mentally disabled persons to participate fully in the social and  
24 economic life of the state and to engage in remunerative employment.  
25 It is not the purpose of this chapter to supersede laws pertaining to  
26 child labor, the age of majority or other age restrictions or require-  
27 ments.

28 \* Sec. 8. AS 18.80.210 is amended to read:

29 Sec. 18.80.210. CIVIL RIGHTS. The opportunity to obtain

1 employment, credit and financing, public accommodations, housing  
2 accommodations and other property without discrimination because of  
3 sex, physical or mental disability, marital status, changes in marital  
4 status, pregnancy, parenthood, race, religion, color or national  
5 origin is a civil right.

6 \* Sec. 9. AS 18.80.220(a) is amended to read:

7 (a) It is unlawful for

8 (1) an employer to refuse employment to a person, or to bar  
9 a person from employment, or to discriminate against a person in  
10 compensation or in a term, condition, or privilege of employment  
11 because of the person's race, religion, color or national origin, or  
12 because of the person's age, physical or mental disability [HANDICAP],  
13 sex, marital status, changes in marital status, pregnancy or parent-  
14 hood when the reasonable demands of the position do not require dis-  
15 tinction on the basis of age, physical or mental disability [HANDI-  
16 CAP], sex, marital status, changes in marital status, pregnancy or  
17 parenthood;

18 (2) a labor organization, because of a person's sex, mari-  
19 tal status, changes in marital status, pregnancy, parenthood, age,  
20 race, religion, physical or mental disability, color or national  
21 origin, to exclude or to expel a person from its membership, or to  
22 discriminate in any way against one of its members or an employer or  
23 an employee;

24 (3) an employer or employment agency to print or circulate  
25 or cause to be printed or circulated a statement, advertisement, or  
26 publication, or to use a form of application for employment or to make  
27 an inquiry in connection with prospective employment, which expresses,  
28 directly or indirectly, a limitation, specification or discrimination  
29 as to sex, physical or mental disability, marital status, changes in

1 marital status, pregnancy, parenthood, age, race, creed, color or  
 2 national origin, or an intent to make the limitation, unless based  
 3 upon a bona fide occupational qualification;

4 (4) an employer, labor organization or employment agency to  
 5 discharge, expel or otherwise discriminate against a person because  
 6 the person has opposed any practices forbidden under AS 18.80.200 -  
 7 18.80.280 or because the person has filed a complaint, testified or  
 8 assisted in a proceeding under this chapter;

9 (5) an employer to discriminate in the payment of wages as  
 10 between the sexes, or to employ a female in an occupation in this  
 11 state at a salary or wage rate less than that paid to a male employee  
 12 for work of comparable character or work in the same operation, busi-  
 13 ness or type of work in the same locality; or

14 (6) a person to print, publish, broadcast or otherwise  
 15 circulate a statement, inquiry or advertisement in connection with  
 16 prospective employment that expresses directly, a limitation, speci-  
 17 fication or discrimination as to sex, physical or mental disability,  
 18 marital status, changes in marital status, pregnancy, parenthood, age,  
 19 race, religion, color or national origin, unless based upon a bona  
 20 fide occupational qualification.

21 \* Sec. 10. AS 18.80.230 is amended to read:

22 Sec. 18.80.230. UNLAWFUL PRACTICES IN PLACES OF PUBLIC ACCOMMO-  
 23 DATION. It is unlawful for the owner, lessee, manager, agent or  
 24 employee of a public accommodation

25 (1) to refuse, withhold from or deny to a person any of its  
 26 services, goods, facilities, advantages or privileges because of sex,  
 27 physical or mental disability, marital status, changes in marital  
 28 status, pregnancy, parenthood, race, religion, color or national  
 29 origin;

1 (2) to publish, circulate, issue, display, post or mail a  
2 written or printed communication, notice or advertisement that states  
3 or implies

4 (A) that any of the services, goods, facilities,  
5 advantages or privileges of the public accommodation will be  
6 refused, withheld from or denied to a person of a certain race,  
7 religion, sex, physical or mental disability, marital status,  
8 color or national origin or because of pregnancy, parenthood, or  
9 a change in marital status, or

10 (B) that the patronage of a person belonging to a  
11 particular race, creed, sex, marital status, color or national  
12 origin or who, because of pregnancy, parenthood, physical or  
13 mental disability, or a change in marital status, is unwelcome,  
14 not desired or solicited.

15 \* Sec. 11. AS 18.80.240 is amended to read:

16 Sec. 18.80.240. UNLAWFUL PRACTICES IN THE SALE OR RENTAL OF REAL  
17 PROPERTY. It is unlawful for the owner, lessee, manager or other  
18 person having the right to sell, lease or rent real property

19 (1) to refuse to sell, lease or rent the real property to a  
20 person because of sex, marital status, changes in marital status,  
21 pregnancy, race, religion, physical or mental disability, color or  
22 national origin; however, nothing in this paragraph prohibits the  
23 sale, lease or rental of classes of real property commonly known as  
24 housing for "singles" or "married couples" only;

25 (2) to discriminate against a person because of sex, mari-  
26 tal status, changes in marital status, pregnancy, race, religion,  
27 physical or mental disability, color or national origin in a term,  
28 condition or privilege relating to the use, sale, lease or rental of  
29 real property; however, nothing in this paragraph prohibits the sale,

1 lease or rental of classes of real property commonly known as housing  
2 for "singles" or "married couples" only;

3 (3) to make a written or oral inquiry or record of the sex,  
4 marital status, changes in marital status, race, religion, physical or  
5 mental disability, color or national origin of a person seeking to  
6 buy, lease or rent real property;

7 (4) to offer, solicit, accept, use or retain a listing of  
8 real property with the understanding that a person may be discrimin-  
9 ated against in a real estate transaction or in the furnishing of  
10 facilities or sources in connection therewith because of a person's  
11 sex, marital status, changes in marital status, pregnancy, race,  
12 religion, physical or mental disability, color, national origin or  
13 age;

14 (5) to represent to a person that real property is not  
15 available for inspection, sale, rental, or lease when in fact it is so  
16 available, or to refuse to allow a person to inspect real property  
17 because of the race, religion, physical or mental disability, color,  
18 national origin, age, sex, marital status, change in marital status or  
19 pregnancy of that person or of any person associated with that person;

20 (6) to engage in blockbusting;

21 (7) to make, print or publish, or cause to be made, printed  
22 or published, any notice, statement or advertisement, with respect to  
23 the sale or rental of real property that indicates any preference,  
24 limitation, or discrimination based on race, color, religion, physical  
25 or mental disability, sex, or national origin, or an intention to make  
26 the preference, limitation or discrimination.

27 \* Sec. 12. AS 18.80.250(a) is amended to read:

28 (a) It is unlawful for a financial institution or other commer-  
29 cial institution extending secured or unsecured credit, upon receiving

1 an application for financial assistance or credit for the acquisition,  
2 construction, rehabilitation, repair or maintenance of a housing  
3 accommodation or other property or services, or the acquisition or  
4 improvement of unimproved property, or upon receiving an application  
5 for any sort of loan of money, to permit one of its officials or  
6 employees during the execution of the official's or the employee's  
7 duties

8 (1) to discriminate against the applicant because of sex,  
9 physical or mental disability, marital status, changes in marital  
10 status, pregnancy, parenthood, race, religion, color or national  
11 origin in a term, condition or privilege relating to the obtainment or  
12 use of the institution's financial assistance or credit, except to the  
13 extent of a federal statute or regulation applicable to a transaction  
14 of the same character;

15 (2) to make or cause to be made a written or oral inquiry  
16 or record of the sex, physical or mental disability, marital status,  
17 changes in marital status, pregnancy, parenthood, race, religion,  
18 color or national origin of a person seeking the institution's finan-  
19 cial assistance or credit, unless the inquiry is for the purpose of  
20 ascertaining the creditor's rights and remedies applicable to the  
21 particular extension of credit and is not made or used in order to  
22 discriminate in a determination of creditworthiness;

23 (3) to refuse to extend credit, issue a credit card or make  
24 a loan to a married person or a person with a physical or mental  
25 disability, who is otherwise creditworthy, if so requested by the  
26 person;

27 (4) to refuse to issue a credit card to a married person in  
28 that person's name, if so requested by the person, provided, however,  
29 that the person so requesting a card may be required to open an

1 account in that name.

2 \* Sec. 13. AS 18.80.250 is amended by adding a new subsection to read:

3 (d) This section does not prohibit an institution described in  
4 (a) of this section from refusing to contract with a person if the  
5 person lacks the legal capacity to contract or if the institution is  
6 reasonably in doubt about the person's legal capacity to contract.

7 \* Sec. 14. AS 18.80.255 is amended to read:

8 Sec. 18.80.255. UNLAWFUL PRACTICES BY THE STATE OR ITS POLITICAL  
9 SUBDIVISIONS. It is unlawful for the state or any of its political  
10 subdivisions

11 (1) to refuse, withhold from or deny to a person any local,  
12 state or federal funds, services, goods, facilities, advantages or  
13 privileges because of race, religion, sex, color or national origin;

14 (2) to publish, circulate, issue, display, post or mail a  
15 written or printed communication, notice or advertisement that states  
16 or implies that any local, state or federal funds, services, goods,  
17 facilities, advantages or privileges of the office or agency will be  
18 refused, withheld from or denied to a physically or mentally disabled  
19 person or a person of a certain race, religion, sex, color or national  
20 origin or that the patronage of a physically or mentally disabled  
21 person or a person belonging to a particular race, creed, sex, color  
22 or national origin is unwelcome, not desired or solicited; it is not  
23 unlawful to post notice that facilities to accommodate the physically  
24 or mentally disabled are not available;

25 (3) to refuse or deny to a person any local, state, or  
26 federal funds, services, goods, facilities, advantages or privileges  
27 because of physical or mental disability.

28 \* Sec. 15. AS 18.80.300 is amended by adding new paragraphs to read:

29 (15) "major life activities" means functions such as caring

1 for one's self, performing manual tasks, walking, seeing, hearing,  
2 speaking, breathing, learning, and working;

3 (16) "physical or mental disability" means

4 (A) a physical or mental impairment that substantially  
5 limits one or more major life activities,

6 (B) a history of, or a misclassification as having, a  
7 mental or physical impairment that substantially limits one or  
8 more major life activities; or

9 (C) having

10 (i) a physical or mental impairment that does not  
11 substantially limit a person's major life activities but  
12 that is treated by the person as constituting such a limita-  
13 tion;

14 (ii) a physical or mental impairment that sub-  
15 stantially limits a person's major life activities only as a  
16 result of the attitudes of others toward the impairment; or

17 (iii) none of the impairments defined in this  
18 paragraph but being treated by others as having such an  
19 impairment;

20 (D) a condition that may require the use of a prosthe-  
21 sis, special equipment for mobility or service animal;

22 (17) "physical or mental impairment" means

23 (A) physiological disorder or condition, cosmetic  
24 disfigurement, or anatomical loss affecting one or more of the  
25 following body systems: neurological, musculoskeletal, special  
26 sense organs, respiratory including speech organs, cardiovascu-  
27 lar, reproductive, digestive, genito-urinary, hemic and lymph-  
28 atic, skin, and endocrine; or

29 (B) mental or psychological disorder, including mental

1           retardation, organic brain syndrome, emotional or mental illness,  
2           and specific learning disabilities.

3           \* Sec. 16. AS 18.06 and AS 18.80.300(11) are repealed.  
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A M E N D M E N T

Offered in the SENATE

By Josephson

TO: CSSB 1 (HESS)

Page 10, after line 22:

Insert a new bill section to read:

\*Sec. 14. AS 18.80 is amended by adding a new section to read:

Sec. 18.80.256. CAPACITY TO CONTRACT. This chapter does not prohibit a person from

(1) refusing to contract with an individual who lacks legal capacity to contract or whose capacity is in doubt to such person; or

(2) making or causing to be made a written or oral inquiry or record of an individual's mental disability if

(A) the person, before making the inquiry, reasonably doubts that the individual has the legal capacity to contract; and

(B) the inquiry or record is limited to information that is relevant to the question of whether the individual has the legal capacity to contract."

Renumber following bills sections accordingly.

# STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 12, 1987

SUBJECT: Sectional analysis of CSSB 1(HESS) -- rights  
of physically and mentally disabled persons

TO: Senator Jim Duncan

FROM: Edward H. Hein *E.H.H. / lms*  
Legislative Counsel

Section 1 adds two new subsections to AS 09.20.010, relating to qualifications of jurors. Subsection (b) provides that persons who suffer from loss of hearing, sight, or mobility are not automatically disqualified from jury service. Subsection (c) requires the court system to provide and pay for interpreters and readers for deaf and blind jurors.

Sec. 2 is the so-called "white cane" law that imposes on motor vehicle drivers a higher duty of care with respect to pedestrians who are physically disabled and identifiable because they are using a white or metallic cane, a wheel chair, crutches or other mobility equipment, or a service animal, such as a dog guide. This provision has been placed in AS 09, the Code of Civil Procedure, because it relates to civil liability. The mentally disabled are omitted from this section because they do not use white canes, mobility equipment, or service animals, and are not readily identifiable by motorists. Definitions are inserted for "physically disabled pedestrian" and "service animal".

Sec. 3 establishes the crime of interference with the rights of a disabled person. This provides that it is a class B misdemeanor to prevent or restrict a physically or mentally disabled person from using streets, sidewalks, and walkways to the same extent as any other pedestrian. It is also a class B misdemeanor under this section to refuse to allow a physically disabled person to bring his or her service animal into a common carrier or other place open to the public. The service animal must be certified as having

completed a training course, and the disabled person is liable for any damage the animal does to the property.

Sec. 4 amends the criminal presumptive sentencing provisions by making it an aggravating factor to commit certain felonies against a physically or mentally disabled person because of the person's disability. The finding of an aggravating factor allows the court to increase what would otherwise be the presumptive sentence.

Sec. 5 directs the state Human Rights Commission to adopt regulations about when reasonable accommodations must be made for disabled persons in employment, financing, credit, public accommodations, housing, and government of services. The commission would have the authority to adopt regulations requiring some alteration necessary to make reasonable accommodation for a disabled person.

Secs. 6 - 13 amend various sections of AS 18.80 to ensure that those sections cover physically and mentally disabled persons. The amended sections require the State Human Rights Commission to study problems of discrimination. The sections amended also make certain discriminatory practices unlawful. These include discrimination in housing, employment, public accommodation, sale and rental of real property, lending, and the provision of state or federal funds, services, goods, facilities, advantages, and privileges. Sec. 7 also transfers to AS 18.80.200 the statement of state policy in AS 18.06 and amends it to say that it is the state's policy to encourage and enable mentally disabled persons, as well as physically disabled persons, to participate fully in the social and economic life of the state and to be employed. Sec. 13 also provides that it is not unlawful to post notice that facilities to accommodate the physically or mentally disabled are not available.

Sec. 14 adds new definitions to AS 18.80 in order to incorporate federal definitions of "physical and mental disability".

Sec. 15 repeals AS 18.06. The provisions of that chapter have been transferred to AS 09, AS 11, and AS 18.80. Sec. 15 also repeals AS 18.80.300(11), which is the definition of "physical handicap" for purposes of AS 18.80.

Law Offices  
**Beard & Lawer**

First National Building  
425 G. Street  
Suite 630  
Anchorage, Alaska 99501  
907/277-4531

Re: SBI

John R. Beard  
David A. Lawer

March 3, 1987

Richard C. Enberg, President  
Alaska Bankers Association  
P.O. Box 100600  
Anchorage, AK 99510-0600

Re: Senate Bill 1

Dear Dick:

You have asked that we elaborate upon the comments we made February 3 concerning this bill. To illustrate our concern that the bill's provisions respecting mental disability will conflict with the law governing the contracts of incompetent persons, let me suggest some examples.

In each of the following illustrations, "A" is a person who has a "mental impairment" within the meaning of the bill's definition [§18.80.300(17)(B)] which constitutes both "mental disability" for purposes of the bill [§18.80.300(16)] and incompetence for purposes of determining his common law capacity to bind himself by contract [e.g., his mental impairment so affects his mind as to make him unable to understand the nature or consequences of his acts -- unable, as the bill would put it, to care for himself, §18.80.300(15)]. "B", "C", and "D" are persons who know of A's mental impairment, mental disability, and incompetence.

1. B owns, wants to sell, and has listed for sale with a broker, real property in Alaska (Blackacre). A offers to buy Blackacre, for cash, at B's listed price (\$100,000), and he has the cash necessary for payment of that price.

An apparent purpose of the proposed statute is to prohibit B from refusing A's offer because of A's mental disability/incompetence. The only thing that distinguishes A from any other cash purchaser is A's disability, and the bill would forbid B from recognizing that distinction. It would effectively compel B to accept A's offer not simply in spite of, but precisely because of, A's mental disability/incompetence. [§18.20.240]

So B complies with the new statute. He accepts A's offer, receives A's \$100,000, and conveys Blackacre to A.

Richard C. Enberg, President  
March 3, 1987  
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Real property values fall (Blackacre's included). A's disability/incompetence ends (or, alternatively, leads to the appointment of a conservator or guardian for A), and A (or his conservator or guardian) immediately seeks to disaffirm the purchase of Blackacre. Contract law entitles him to do that precisely because A was, and B knew him to be, mentally disabled/incompetent when he contracted to purchase Blackacre. Contract law entitles him to require B to return A's \$100,000 (perhaps with interest); it may or may not require A to return Blackacre (now worth \$75,000) to B.

Note: It is precisely because B knows of A's mental disability/incompetence that (a) contract law will allow A to avoid the contract and, so, encourage B not to accept A's offer and (b) the proposed statute will compel B not to decline A's offer.

2. Short of cash by reason of his recent purchase of Blackacre, A applies to C, a "financial institution or other commercial institution extending . . . credit", for a "loan of money". He tells C that he is proposing to launch a meat packing business in Palmer and wants to borrow \$50,000 to finance the costs of an expedition to round up cattle on an Aleutian island. He offers to repay the loan, with interest, in six months, and he has the resources (\$100,000 in U.S. treasury bills which mature in six months) to do so without regard to the success or failure of his proposed venture. He offers to give C his negotiable, promissory note. He offers, perhaps, to pledge his treasury bills to C to secure payment in accordance with his note. But for his mental disability/incompetence, he is creditworthy by every standard applied by C.

An apparent purpose of Senate Bill 1 is to prohibit C from refusing to make the loan A is requesting. As A's mental disability/incompetence is the only thing that distinguishes him from the most creditworthy of borrowers, and as the bill would forbid C's noticing that distinction, the bill would effectively compel C to make the loan. [§18.80.250]

So C complies with the new statute. It loans A \$50,000 upon A's written negotiable promise to pay \$50,000 and interest in six months. When, six months later, C seeks to enforce A's promise, A (or his conservator) asserts his mental disability/incompetence as a defense. The law of contracts recognizes A's incapacity as a defense against even a holder in due

Richard C. Enberg, President  
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course -- a person who, by definition, gave value in good faith and without any notice of A's mental disability/incompetence -- of A's negotiable promissory note [A.S. 45.03.305(2)(B)]. And beyond enabling A to defeat C's demand for payment, contract law also entitles A to recover from C any payment he might have made (or that C might have effected by resort to the treasury bill collateral) while A was mentally disabled/incompetent. The very most C can expect of the law is that it will oblige A to pay (or prevent A from recovering) so much of the \$50,000 as C can persuade the court to have been spent for "necessaries" -- a task that would be difficult enough if "necessaries" were, as it is not, a concept of reasonably precise or consistent meaning, and likely impossible if A did spend the money on an unprofitable voyage to the Aleutians. It is very uncertain that C could expect even that much of the law if, as we are assuming, C knew of A's mental disability/incompetence when it made the loan.

Note, again: It is precisely because C knows of A's mental disability that (a) contract law will allow A to avoid his promise to pay and, so, encourage C to decline A's request for credit and (b) Senate Bill 1 will compel C to extend A the credit he requests.

3. A variant of 2: Instead of a six-month loan, A seeks a 15-year loan and offers real property he owns as collateral. C makes such loans if, but only if, it can first obtain the prior commitment of an investor to buy the loan. C knows that A's credit and proposed collateral satisfy the requirements of two of its investors -- the Alaska employees retirement fund and a stateside insurance company -- for a loan in the amount, and on the terms, A is seeking.

Would Senate Bill 1 permit C to inform the investor of A's mental disability/incompetence when it seeks the investor's commitment to buy the proposed loan? How else could C avoid making -- and exposing itself to liability on -- a warranty to the investor that A has no good defense against C on the note C will be selling to the investor? [See A.S. 45.03.417(b)(4); and note, again, that A's incompetence defense is so good that it is available against the investor as well as against C, A.S. 45.03.305(2)(B).] Would the bill's §18.80.255 prohibit the state retirement fund (or, e.g. AHFC, or the Alaska permanent fund) from declining to buy A's loan if it were told by C,

Richard C. Enberg, President  
March 3, 1987  
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---

or otherwise learned, of A's mental disability/incompetence? If so, could C escape warranty liability simply by selling A's loan to the state or a political subdivision of the state, with or without notice of A's incompetence defense?

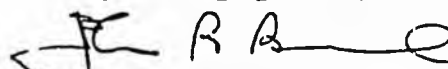
4. D provides deposit services to the general public. If, as seems probable, that constitutes D a "public accommodation" [A.S. 18.80.300(12)], Senate Bill 1 would appear to forbid D from either declining to continue its business with A, or refusing to accept A's deposit business, by reason of A's mental disability/incompetence. [§18.80.230]

At least in the former instance (continuing services pursuant to a contract with A made before D knew of A's disability/incompetence), and perhaps even in the latter instance (contracting to provide services knowing of A's disability/incompetence), D seems to be shielded by A.S. 45.04.405 from risk in complying with Senate Bill 1's requirements so long as D does not know that A's affairs are being administered by a conservator or other fiduciary in protective proceedings pursuant to A.S. 13.26. But unlike the protection of A.S. 45.04.405, the compulsion of Senate Bill 1 does not end when D (or, for that matter, B or C in the previous illustrations) learns that A has been adjudicated incompetent.

[The protection of A.S. 45.03.405 is uniquely available to D (and other banks in connection with the deposit, collection of items), in whose favor it establishes the rule that an adjudication is the only fact whose knowledge by D will enable A to avoid his contractual obligations. There is nothing comparable in contract law to protect others -- B or C in the previous illustrations, for example -- in their dealings with known (or suspected) incompetents prior to an adjudication of incompetence.

[It is possible, of course, that B and C will have no reason to know of, or suspect, A's mental disability/incompetence other than knowledge or notice of an adjudication. That even that knowledge will not, under Senate Bill 1, allow B or C -- any more than it would allow D -- to decline to deal with A. This illustrates the bill's direct conflict with those rules of contract which underlie A.S. 13.26.]

Very truly yours,

  
John R. Beard

JRB/11j

March 11, 1987

The Honorable Jim Duncan  
Senator  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Senator Duncan:

I appreciate the opportunity to respond to Mr. Beard's letter of March 3, 1987, regarding his concerns about portions of Senate Bill 1.

The commentary presented in this letter appears to be based on the same assumptions that we see in most forms of discrimination and in fact is, in my opinion, a good example of why Senate Bill 1 needs to be passed. The following are a few of the assumptions found in Mr. Beard's letter and my responses:

1. throughout this letter it is assumed that the mentally disabled person is also incompetent - this type of stereotyping has resulted in some very unfortunate examples of discrimination. Many members of the lay public do not understand that most mentally disabled persons are not incompetent. A mentally disabled person may or may not have experienced mental illness. It also may be true that a mentally disabled person who is now mentally restored would fall under the definition cited in Senate Bill 1 only because they are wrongfully regarded as being mentally disabled.
2. The examples given in Mr. Beard's letter also assume that all agents described know that the mentally disabled person referred to as "A" is incompetent. In this country it is the role of the courts to determine whether an individual is competent or not. Therefore, the three agents ("B", "C", and "D") could only "know of" the mentally disabled person's competency by viewing court documents, not by assumption, hearsay, or gossip, as implied. If official documents are presented and do indeed determine that the individual is mentally incompetent and is prohibited from entering into a contract without benefit of a guardian or conservator, that may be a valid point to be presented in a written notice explaining a bank's choice to deny a loan or credit. Since federal banking regulations require that a written statement be provided explaining the reasons for such denials, I cannot imagine that any agent or lending institution would

care to sign a statement which cites the reason for denial of credit or a loan was due to the impression that the individual "appeared", or "sounded" or was "regarded" as incompetent.

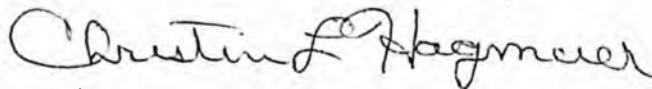
3. Mr. Beard's letter also refers to a hypothetical scenario where an individual who is regarded as being incompetent is deemed credit worthy and enters into a financial agreement which he/she later seeks to rescind. It is my opinion (and the opinion of most professionals in the field of mental health) that this situation is extremely unlikely to occur. In fact, most professionals in the field of mental health are observing precisely the opposite outcome. That is, mentally disabled applicants who have successfully maintained a good credit history are less likely to default on financial agreements than non-handicapped applicants.

It is unfortunate that history so often repeats itself without learning from its own examples. The assumptions made in Mr. Beard's letter are virtually identical to those made in past arguments which sought to restrict the rights of blacks, women, and other members of the protected classes.

Hopefully Senate Bill 1 will help us get past these assumptions and stereotypes and demonstrate that mentally and physically disabled can, and must be treated equally under the law.

Thank you for your continuing interest in this matter.

Sincerely,



Christine L. Hagmeier

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 1/29/87 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY  
FINANCE

\*\*FISCAL NOTE(S) ATTACHED 3 \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

1/19/87  
Mr. President:

DATE TURNED INTO OFFICE 3/24/87

HESS Committee considered SB 1

relating to the rights of physically and mentally disabled persons.

and recommended:

- replace with CS SB 1 (HESS)  same title
- attached amendment(s) and  new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_
- letter of intent adopted and attached

\*\* Committee  attached or  adopted fiscal note(s)  
1  zero 2  fiscal impact 2/zero

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]  
[Signature]  
[Signature]  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Paul A. Finch Do Pass  
Chairman signature and recommendation

Committee Backup Attached

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

**REQUEST:**

Bill Version: SSB-1 HESS  
 Publish Date: 1987 3-5-87

Revision Date: \_\_\_\_\_  
 Title: Rights of Physically and  
 Mentally Disabled Persons  
 Sponsor: Duncan and Szymanski  
 Requestor: Health, Education and Social  
 Services, Judiciary & Finance

Agency Affected: Office of the Governor  
 BRU: Commissions/Special Offices  
 Components: Human Rights Commission

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		46.9	46.9	46.9	46.5	
TRAVEL		10.5	10.5	10.5	10.5	
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		.5	.5	.5	.5	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		57.9	57.9	57.9	57.9	

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		57.9	57.9	57.9	57.9	
FEDERAL FUNDS						
OTHER						
TOTAL		57.9	57.9	57.9	57.9	

**POSITIONS:**

FULL-TIME		1.0	1.0	1.0	1.0	
PART-TIME						
TEMPORARY						

**ANALYSIS :**

Establish (1) PFT position HRFER III to handle the increased caseload (intake and processing) of complaints anticipated to be filed by disabled persons due to SB-1.

Prepared by: Michael A. Nizich, Director *MN*  
 Division: Administrative Services

Phone: 465-3616  
 Date: Feb. 2., 1987

Approved by Commissioner: Carol P. Kastelic *CPK*  
 Agency: Exec. Assistant, Office of the Governor

Date: Feb. 2, 1987.

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version:  
Publish Date:

*CS SB 1 HESS*  
*3-5-87*

REQUEST:  
Revision Date:  
Title: Rights of physically and  
mentally disabled persons  
Sponsor: Duncan & Fischer  
Requestor:

Agency Affected: Alaska Court System  
BRU: Trial Courts

Components:

<u>EXPENDITURES/REVENUES:</u> (Thousands of Dollars)						
OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	4.6	4.6	4.6	4.6	4.6
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	4.6	4.6	4.6	4.6	4.6
CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

<u>FUNDING:</u> (Thousands of Dollars)						
General Funds	0.0	4.6	4.6	4.6	4.6	4.6
Special Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	4.6	4.6	4.6	4.6	4.6

<u>POSITIONS:</u>						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS:

See attached analysis.

Prepared by: Robert G. Fisher, Fiscal Officer  
Division: Alaska Court System  
Approved by: *Stephanie J. Cole*  
Stephanie J. Cole, Deputy Director  
Agency: Alaska Court System

Phone: 264-8215  
Date: 2-24-87  
Date: 2-24-87

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

ALASKA COURT SYSTEM  
SB 1 - RIGHTS OF PHYSICALLY AND MENTALLY  
AND DISABLED PERSONS

FISCAL IMPACT

This legislation allows physically and mentally disabled individuals to serve on juries. Additionally, interpreters are provided for deaf persons while on jury duty. Providing interpreters for deaf persons will impact the Court's contractual budget. The other aspects of the legislation will not impact the Court.

Historically, six to eight percent of all eligible persons are required to perform jury duty. The Center for Deaf Adults estimates that between 250 and 300 deaf individuals would be eligible for jury duty. The Center estimates that 200 are located in Anchorage, 10 are in Juneau, and 10 are in Fairbanks. The remainder live outside urban areas. To be eligible for jury service, the deaf juror would have to be proficient in the use of sign language. Each deaf juror would require an interpreter for all activities in the court.

Based on past experience, it is estimated that approximately fourteen deaf individuals could be called for service in a year. Based on probabilities of jury service for 1986, it is projected that thirteen of the jurors would be called for service in Anchorage and the other juror would be called in either Fairbanks or Juneau. Qualified interpreters are available in these locations.

Interpreter fees are estimated to cost \$4,600 per year.

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

Bill Version CS S.B. 1 HESS  
Publish Date: 3-5-87

**REQUEST:** \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An Act Relating To The Rights Of  
Physically & mentally disabled persons.  
Sponsor: Duncan  
Requestor: \_\_\_\_\_

Agency Affected: Health & Social Services  
BRU: Community Mental Health  
and Developmental Disabilities  
Components: Developmental Disabilities

**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						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :**

\_\_\_\_\_

Prepared by: Christine L. Hagmeier Phone: 465-3370  
Division: Mental Health and Developmental Disabilities Date: 1/22/87

Approved by Commissioner: Kam Rudul Date: 1/30/87  
Agency: Health and Social Services

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

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 23, 1987

SUBJECT: Comparative analysis of CSSB 1 (HESS)  
and SB 1

TO: Senator Paul Fischer  
Chairman, Senate HESS Committee

FROM: Edward H. Hein *E.H.*  
Legislative Counsel

CSSB 1 (HESS) (2/20/87 draft) would remedy several problems with SB 1. First, it would eliminate a conflict between criminal penalties under AS 18.06.040 and AS 18.80.270. Both penalty sections (if the bill is passed in its unamended form) make it a misdemeanor to discriminate against a physically or mentally disabled person with regard to public accommodations. Yet, the penalty under AS 18.80 is only half the penalty provided under AS 18.06. Therefore, there is a potential for a constitutional due process violation because of the prosecutor's discretion to choose differing penalties for the same conduct.

Second, the CS removes questions and ambiguities about the state Human Rights Commission's authority and duty to enforce provisions relating to discrimination.

Third, the CS eliminates some very badly drafted language in AS 18.00 that makes certain provisions unenforceable criminally. For example, at page 3, lines 16 - 17 of the bill, the phrase "or otherwise interferes with the rights of a physically or mentally disabled person" is probably impermissibly vague.

Section 1 is identical in both versions.

Sec. 2 is the so-called "white cane" law that imposes on motor vehicle drivers a higher duty of care with respect to pedestrians who are physically disabled and identifiable because they are using a white or metallic cane, a wheel chair, crutches or other mobility equipment, or a service

animal, such as a dog guide. This provision has been placed in AS 09, the Code of Civil Procedure, because it relates to civil liability. In SB 1, the white cane law appears in Sec. 5. In the CS, the mentally disabled are omitted from this section because they do not use white canes, mobility equipment, or service animals, and are not readily identifiable by motorists. Definitions are inserted for "physically disabled pedestrian" and "service animal". Language in SB 1 at page 3, lines 2 - 11, was deleted. The language there relating to rights of disabled in accommodations is covered under Sec. 10 of the CS; the language providing that failure to carry a cane is not evidence of contributory negligence is obsolete because Alaska now recognizes comparative negligence, not contributory negligence.

Sec. 3 establishes the crime of interference with the rights of a disabled person. This provides that it is a class B misdemeanor to prevent or restrict a physically or mentally disabled person from using streets, sidewalks, and walkways to the same extent as any other pedestrian. It is also a class B misdemeanor under this section to refuse to allow a physically disabled person to bring his or her service animal into a common carrier or other place open to the public. The service animal must be certified as having completed a training course, and the disabled person is liable for any damage the animal does to the property. In SB 1, these criminal provisions appeared in Secs. 4 and 6.

Sec. 4 is identical to Sec. 2 of SB 1.

Sec. 5 in the CS is an amended version of Sec. 8 of SB 1. Sec. 5 directs the state Human Rights Commission to adopt regulations about when reasonable accommodations must be made for disabled persons in employment, financing, credit, public accommodations, housing, and government of services. Sec. 8 of SB 1 required the commission to adopt regulations specifying when it would be permissible to consider a person's disability. In conjunction with this change, Sec. 17 of SB 1 was deleted. Sec. 17 provided that AS 18.80 does not require any alterations or remodeling of buildings or vehicles. Under Sec. 5 of the CS, the commission would have the authority to adopt regulations requiring some alteration necessary to make reasonable accommodation for a disabled person.

Senator Fischer  
February 23, 1987  
Page 3

Sec. 6 of the CS was Sec. 9 of SB 1. The CS deletes paragraph (7), which would have required the state Human Rights Commission to enforce AS 18.06.

Sec. 7 of the CS was Sec. 10 of SB 1. The new language at page 4, lines 15 - 18 of the CS was moved from page 5, lines 16 - 18 of SB 1. This change made this provision a finding rather than policy to avoid the implication that the state Human Rights Commission was being required to develop and implement public education programs about physical and mental disabilities. At page 4, lines 25 - 27 of the CS, new policy language appears. This language was transferred from Sec. 3 of SB 1.

Secs. 8 - 13 of the CS are identical to Secs. 11 - 16 of SB 1.

Sec. 14 of the CS is a definitions section and is identical to Sec. 18 of SB 1.

Sec. 15 repeals AS 18.06. The provisions of that chapter have been transferred to AS 09, AS 11, and AS 18.80. Sec. 15 also repeals AS 18.80.300(11), which is the definition of "physical handicap" for purposes of AS 18.80.

EHH:csh  
c7/066

POSITION PAPER

SENATE BILL 1

"An Act relating to the rights of physically and mentally disabled persons."

EFFECT OF SENATE BILL 1

A.S. 09.20.010(b) is amended to prohibit the disqualification of persons from serving as jurors solely on the basis of their visual, hearing or mobility impairments.

A.S. 09.20.010(c) is added to require the court system to pay for the costs of interpreters or readers when a hearing or visually impaired person requires such services while serving as a juror.

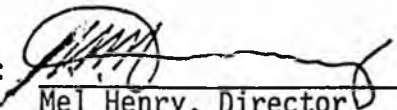
A.S. 12.55.155(c)(22) is amended to include physically and mentally disabled persons among the protected class of individuals to be considered under this statute.

A.S. 18.060 is amended to include physically and mentally disabled persons among the protected class of individuals who are entitled to full and equal access to public accommodations, services, employment, credit and financing, housing, and other property.

A.S. 18.060 also entitles physically and mentally disabled persons to be accompanied or assisted by service animals when accessing any of the locations or services listed in this section.

RECOMMENDATION

The Department of Health and Social Services supports the passage of Senate Bill 1.

Recommended by:   
Mel Henry, Director

Date: 1-30-87

Approved by:   
Myra M. Munson, Commissioner

Date: 1-30-87

NY Times Sunday Feb. 22, 1987

share of an additional... cases with undetermined causes may have spread through heterosexual intercourse as well.

Part of the mystery and fear about AIDS arises from the fact that many carriers of the virus are not aware of it. The virus can lurk in the body without causing disease and, among those who develop AIDS, the average time between infection and diagnosis of AIDS may be five years or more.

While much remains to be learned about AIDS, scientists assert with confidence that studies of victims and disease patterns have provided a clear picture of how the virus has spread in this country, and how it has not.

Q. How does AIDS spread?

Many studies have documented the spread of the AIDS virus to an uninfected person through anal or vaginal

cause anal sex often involves breaks in rectal tissues, thus allowing easier entry of the virus into the bloodstream. Studies suggest that the receptive partner in anal sex is at greater risk. One study has suggested that the virus may be able to directly infect cells in the colon.

Q. Can the virus spread from an infected person in vaginal intercourse?

believe the virus may also enter through mucous membranes or other soft tissues in the genital areas. No one knows if the virus can penetrate the lining of the male urethra, the tubelike passage through which urine flows.

Q. What is the risk of getting the virus from a single act of vaginal intercourse with an infected person?

Precise data are lacking. From indirect evidence, Federal scientists judge the risk of transmission in a single encounter to be low. Quantification is complex: Some infected people have said they had only a single exposure, while other people who have had hundreds of exposures have escaped infection. Still, several studies have shown that with repeated intercourse, as many as half the sexual partners of infected men or women become infected.

In Africa, where vaginal intercourse is believed to be the major means of spreading AIDS, studies suggest that the virus may pass more easily among people who have had gonorrhea, genital herpes or other sexually transmitted diseases, perhaps as a result of open sores in the skin of the genital area and the presence there of larger than usual numbers of the types of white blood cells that the virus invades.

Q. Can the virus spread through oral sex?

and condoms are... high degree of protection. However, condoms are not foolproof: They may tear, slip or be misused, and in one study two cases were documented in which the virus passed between partners who used condoms in intercourse over an extended period. Because the virus may be present in men's pre-ejaculation emissions and in vaginal secretions, experts recommend that

Bishops Say Condoms May Not Prevent AIDS

DALLAS, Feb. 14 (AP) — More than 150 Roman Catholic bishops meeting here have concluded that abstinence and marital fidelity are better weapons to fight AIDS than are condoms, which they believe create a false sense of security, a bishop said Friday.

The group determined that health officials, in promoting condoms, might be misleading the public since condoms do not always prevent transmission of the disease, said Bishop Leroy Matthiesen of Amarillo. The Catholic church has long opposed artificial birth control.

Catholic bishops from the United States, Mexico and Central America took part in the conference this week on medical research. The group plans to develop an educational program emphasizing abstinence for single people and fidelity for married couples, the Bishop said.

At the conference, Dr. Lamber N. King of St. Vincent's Hospital in New York presented a paper citing studies that showed condoms offered 70 percent protection from acquired immune deficiency syndrome.

If condom advertisements are put on television, "It's going to boomerang with people who do not listen carefully," Bishop Matthiesen said.

Msgr. William B. Smith, professor of moral theology at St. Joseph Seminary in New York, outlined an ethical pastoral approach for the bishops.

Bishop Matthiesen said the monsignor's theme was that the bishops should be kind when dealing with AIDS victims. The Bishop said: "The way he phrased it is that is we don't condone sin, but neither do we condone self-righteousness, judging people. There's a natural temptation to do that."

"We want to have a strong emphasis on marital fidelity," he said, adding that the threat of AIDS was a new argument in support of fidelity. "And for those who are not married," he added, "we are going to emphasize celibacy."

Deaf Woman Sues Over Jury

PITTSBURGH, Feb. 14 (AP) — A woman barred from serving on a jury because she is deaf has sued the Blair County judge who dismissed her, alleging she was a victim of discrimination.

The woman, JoAnn DeLong, alleged in her suit that the judge, R. Bruce Brunbaugh, violated a Federal act that prohibits discrimination against the handicapped in any activity in which Federal funds are used when he dismissed her in October.

The lawsuit, filed Wednesday in Federal District Court, is intended to establish that Federal funds help finance county court operations, her lawyer, Robert W. Lape, said Thursday.

Ms. DeLong is seeking no financial damages, only a court order to permit the disabled to participate on juries.

Judge Brunbaugh did not return telephone calls made to his office.

Ms. DeLong was called as a potential juror for a civil case, but Judge Brunbaugh rejected her before lawyers for either side questioned her, Mr. Lape said.

Ms. DeLong had full hearing until the age of 7 and "can speak amazingly well," he said. An illness left her without any hearing.

She uses an interpreter who translates word by word under the Signed English system, Mr. Lape said. Under another system, American Sign Language, translators skip some words in favor of concepts, he said.

In dismissing Ms. DeLong, Judge Brunbaugh cited a Pennsylvania case in which a criminal defendant received a new trial after it was learned that one juror's hearing was impaired.

A general argument against seating deaf jurors is that jurors often must weigh the credibility of witnesses by subtle aspects of the way they answer questions.

"That's probably the major argument," Mr. Lape said. "We say the deaf are used to judging from facial expressions and other nonverbal demeanor. Deaf people may even be more perceptive visually."

Hearing impairment probably not discovered until after trial.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

March 3, 1987

Honorable Paul Fischer  
Chair  
Health, Education & Social  
Services Committee  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811

MAR 3 1987

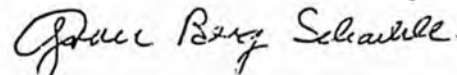
Re: SB 1 (disabled persons)

Dear Senator Fischer:

Yesterday, your assistant, Margaret Leavitt, called Assistant Attorney General Art Peterson, to ask for this department's "position" on sec. 1 of SB 1. Essentially, that section provides for blind and deaf people to serve on juries.

This department has no position on that proposal. I understand that Assistant Attorney General Gayle Horetski testified before your committee on February 25 concerning the issues raised by sec. 1. While we certainly support the idea of removing as many barriers as possible for people with various types of disabilities, the issues mentioned by Gayle, including constitutional ones, are significant. Similarly, we have no position on the remainder of the bill.

Yours truly,



Grace Berg Schaible  
Attorney General

GBS:AHP:md

cc: Hon. Jim Duncan  
Alaska State Senate

George Sullivan  
Legislative Liaison  
Governor's Office

## JUSTICE

# Can Justice Be Deaf, Too?

## A fight over jury service

When Allen Hammel was called to jury duty in Blair County, Pa., last month, he attracted more attention than the assault case he helped decide. The 3-year-old postal worker is deaf, and he has assisted throughout the two-day trial and jury deliberations by an interpreter using sign language. Hammel performed well, according to fellow jurors. "He was more observant than some people with all their senses," said foreman Josette Shiffler of Altoona. But Hammel is one of only a handful of hearing-impaired people who have been allowed to serve on juries. Earlier this month, JoAnn DeLong, a deaf assembly-line worker in the same county, filed suit in federal court challenging her exclusion from a jury by a different Blair County judge. "I didn't feel like an American citizen anymore," she says.

Only a few years ago exclusion of deaf



PAUL SINGER—ALTOONA MIRROR

'I didn't feel like a citizen': DeLong with interpreter

people from juries was automatic; Arkansas still has a court-approved ban on seating deaf jurors. "With so many people who don't want to serve on jury duty, it's really incredible that deaf people are still excluded," says Muriel Strassler of the National Association of the Deaf, which is lobbying states for new jury laws.

Few states have laws governing jury service by the deaf. Most, including Pennsylvania, leave the decision to individual trial judges, and practices differ widely,

sometimes within the same courthouse. But as the hearing-impaired press for full opportunities, prohibitions are crumbling. A few states—including California, Colorado, Connecticut, Illinois and Michigan—not only permit the practice, but pay for courtroom interpreters. One deaf woman spent months as a grand juror in Florida. Another served as foreman of a federal trial jury in Denver last year.

Those who oppose the idea argue that jurors who can hear may be distracted by an interpreter's hand movements and lose track of testimony. Others say deaf jurors may miss crucial nuances in a trial; an interpreter may not be able to convey emotions or a witness's tone of voice. Some opponents also believe that the presence of a 13th person in the jury room violates the sanctity of deliberations.

**Body posture:** That's nonsense, contends Kenneth Rust, a board member of the Registry of Interpreters for the Deaf, which certifies translators. Through such tactics as body posture and speed of gestures, interpreters can convey the meaning of language as accurately as the spoken word, he

says. Rust believes that the presence of an extra person during deliberations is irrelevant, because interpreters are ethically bound to convey only the conversation, without injecting their feelings or opinions. Most states already require the courts to provide interpreters for deaf defendants and witnesses in criminal cases. "What's the difference?" Rust asks.

Opponents also fear that interpreters could prove costly. But advocates say the cost averages only around \$20 an hour. One deaf juror in Oregon answered that argument with finality. When the court refused to pay for his interpreter, he footed the \$400 bill himself.

That same brand of determination gave birth to JoAnn DeLong's lawsuit. "I've been fighting for my rights all my life," said DeLong, who lost her hearing at seven to spinal meningitis.

change things for other deaf people." If necessary, she says, she'll ask the U.S. Supreme Court to determine if justice can be deaf as well as blind.

GINNY CARROLL

## RELIGION

## The Condom Preacher—And His Pantless Past

Two weeks ago the Rev. Carl F. Thitchener became famous as the minister who handed out condoms at his church outside Buffalo, N.Y. (NEWSWEEK, Feb. 16). The point, said Thitchener, was not to promote promiscuity but to educate the public on the danger of AIDS and how to slow its deadly spread. Now the Unitarian Universalist's sudden notoriety has plunged him into deeper controversy: according to police files, Thitchener has an arrest record that stretches back 30 years.

Thitchener's last brush with the law occurred in 1984, when he was put on five years' probation following his second conviction for drunken driving. Two years earlier a woman Scout leader who was conducting a meet-

ing in a church with a group of Brownies told police that a man with no pants or underwear was parading outside. Later, police arrested Thitchener after he drove through a MacDonald's restaurant in a similar state of undress. He pleaded guilty to disorderly conduct and was fined \$75. His record also includes a conviction for public exposure in 1958. And the year before that, charged with attempted rape and attempted burglary, he had pleaded guilty to second-degree assault.

Thitchener, who was ordained in 1980 and hired a year later by the Unitarian Universalist church in Williamsburg, N.Y., claimed the 1982 incidents involve someone who stole his driver's license. The police disagree.

Nevertheless, the church's board of trustees unanimously voted to support their beleaguered preacher. "I think his message on AIDS is going to save lives," says former board member Victor Doyno. "If any of this material about his past is true, he was very brave for having gone ahead with his sermon."

Notorious: Thitchener  
JOE TRAVEL—GAMMA-LIAISON





# PEOPLE - ANIMAL - CONNECTION

February 11, 1987

Dear Senator Fischer:

I am president of People-Animal-Connection/Delta Society. This letter is in support of SB1. We are the group which in conjunction with Alaska SPCA train the service animals for the physically/mentally disabled individual. Alaska is the only state in the USA which does not have legislation regarding service animals.

We presently have 20 service animals in Alaska with requests for many more, but need the legislation before we can place these animals.

We define a service animal as an animal which is trained as a hearing/blind guide animal or as a support animal for a person who has physical disabilities such as stroke or accident patient *WHO MAY BE CONFINED TO BED OR WHEELCHAIR*

Our trainer is a certified obedience trainer who has trained with numerous other institutions that train and place service animals. Our main facility is at the training center of the Alaska SPCA and our trainers home kennel as well as field work areas.

These animals pass a vigorous physical/temperment test and upon completion of their training are certified by a committee ~~from~~ the PAC/Delta Society.

These animals are then provided with the proper ID colored collar/harness and the owner is given a certified card which states the animal to be a certified service animal. Our animals have been placed in Anchorage, Valdez, Palmer, and Fairbanks.

The animals provide a vital function for many people in our state. They provide physical support, mental support and love to persons who otherwise may not have any support network. These service dogs and their owners need this legislation as protection for their rights and abilities to work together and live together as a team.

If SB1 cannot find support for its passage then I encourage the HESS committee to take the service animal portion out of SB1 and introduce it as a separate bill. Originally, the service animal bill was separate legislation but in the last 2 years it has become "hung up" with other legislation. I urge strongly either the passage of SB1 or separate legislation for the service animal. Many people in Alaska are concerned with this and I hope they will be contacting the committee members over the next few days.

I would be willing to answer any questions regarding my letter or support of legislation for the service animal. *WE DO HAVE NO DEL LEGISLATION FROM OTHER STATES OR ORGANIZATIONS WHICH WE WOULD BE HAPPY TO PROVIDE*  
Thank you very much.

Sincerely,

*Joyce M. Murphy*  
Joyce M. Murphy, D.V.M.



THE ALASKA  
**ALLIANCE FOR THE MENTALLY ILL**

*"An affiliate of the National Alliance for the Mentally Ill"*

February 7, 1987  
Box 211247  
Auke Bay, 99801

Senator Jim Duncan  
Alaska State Senate  
Juneau, Alaska, 99801

Dear Senator Duncan and Members of  
the Senate Health and Social Services  
Committee:

The Alaska State Alliance for the Mentally Ill endorses Senate Bill 1 as introduced this year. We believe the draft as presented offers substantial gains in equity for disabled persons in Alaska. By including the disabled populations in this Statute, discrimination is prohibited in many significant areas. Since this law is parallel to Federal legislation, the disabled have long been denied equal protection under the law.

In particular, we wish to commend you on solving some of the more difficult problems with the bill that were advanced last session. The decision to submit to the regulation process those details which caused concern to the banking and housing industries is a much fairer way to address the issue. To what extent and under what circumstances an employer, a lender, or landlord has a right to know of a persons disability, whether or not it is physical or mental, must be carefully determined on the greater need and we believe the Civil Rights Commission has the expertise to make that determination.

One of the most controversial parts of the bill last year was whether or not to include the mentally ill among the disabled population. We would like to advance the following supportive information on this issue:

\* The mentally ill are no more "dangerous" than the general population, and courts are now supporting the civil rights of the mentally ill in cases involving zoning laws restricting group homes.

\* Those with long time or serious mental illness are among the minority of those who have had mental illness. For example in the State of Alaska, of the 8,000 cases treated by the Community Mental Health Centers, only 613 of these have serious mental illness. Should those who just have one episode or who have a situational distress which causes them to receive treatment be required for the rest of their lives to disclose that treatment? Among those with even the most serious mental illness schizophrenia, about 1/3 of the cases recover after only one episode.

\* The mentally ill are the most stigmatized of any subgroup in the United States. Last year our members reported several incidents of discrimination. One of them involved a person having to disclose being under treatment for mental illness on their drivers license and another was denied general health insurance because of a nervous breakdown. In both cases, the question was not related to the request. Being a safe driver does not necessarily relate to having had an incidence of mental illness whereas perhaps a more appropriate question would be " Are you under medication which would make you drowsy ?" Why should someone be a greater risk of breaking a leg or contracting cancer simply because they have experienced mental illness? We know of no research which supports this. Certainly having cancer would be of concern to lenders but there is no requirement for persons with illnesses which might be considered "terminal" to have to disclose their condition.

This is not to say that the mentally ill are all worthy of extended credit, every individual in our State must qualify according to the rules of the lending agency providing assurances of their assets etc. Decisions must be made on a case by case basis. However, to the extent that they are functioning members of society the mentally ill should have the same rights to seek employment, have access to public facilities and other rights afforded citizens of the State of Alaska.

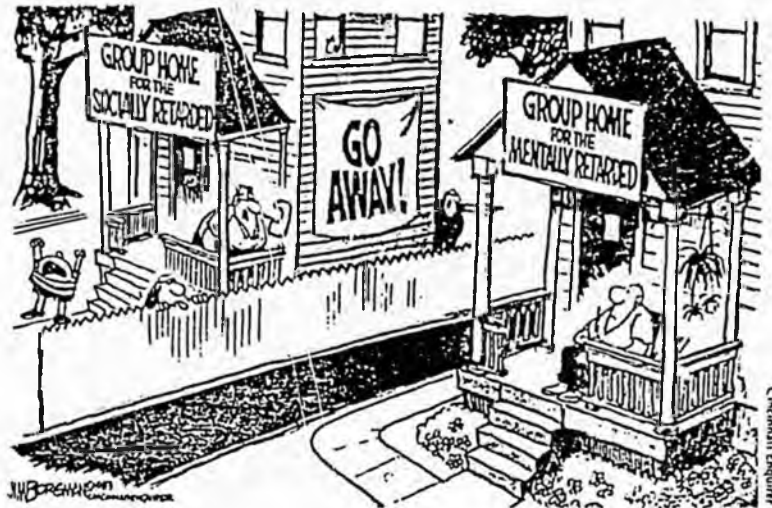
Sincerely,

Sharon Lobaugh  
Pres. Alaska Alliance  
for the Mentally Ill

# Mainstreaming Group Homes

By Daniel Lauber

A recent U.S. Supreme Court decision put some new twists on zoning for group homes. Here, questions and answers about how to adapt to the changes.



**Z**oning made it to the U.S. Supreme Court this year in the form of a case regarding group homes for developmentally disabled adults. The result was a landmark decision that should change the way most zoning ordinances treat group homes. Further, the decision will force local officials to confront the popular misconceptions about group homes and their residents that so frequently lead to stiff neighborhood opposition.

Group homes pose a zoning challenge that nearly every community in the country eventually will face. Over the past decade, the number of group homes increased from 700 to over 6,000. There's no end in sight because the need for them remains so great. The disabled are living longer, thanks to better health care and increasing deinstitutionalization.

Local officials often are at a loss when it comes to zoning for group homes. Most zoning ordinances fail to provide for them, as cities typically (and improperly) treat group homes as hospitals for the insane or feeble-minded. In other places, ordinances contain exclusionary provisions that keep group homes out of the very residential districts in which they function best.

Here are answers to some of the most frequent questions local officials and planners ask about zoning for group homes, particularly in light of the Supreme Court's latest edict on this type of zoning provision.

**What are they?**

**Q** Before we go any further, what are group homes and who lives in them?

**A** A group home usually houses individuals who are mentally ill or developmentally disabled. Congress defines "developmental disability" as a severe, chronic, and permanent disability due to a mental and/or physical impairment, manifested before age 22, that results in substantial functional limitations in at least three of the following major life activities: self-care, language, learning, mobility, capacity for independent living, economic self-sufficiency, and self-direction.

Traditionally, these special, "service-dependent" individuals were warehoused in large institutions. But as the professionals who work with these special populations came to understand them, they realized that large institutions hindered the recovery of the mentally ill and the progress of the developmentally disabled. If they are ever to overcome or cope with their conditions, these people need to live in a relatively normal household environment in the community.

The group home provides that setting. Depending on the size of the house, anywhere from two to about 15 service-dependent people live in the group home with professional staff, who function as surrogate parents. Residents and staff seek to emulate a traditional family. The group

home constitutes a single housekeeping unit in which residents share responsibilities, meals, and recreation.

The group home's primary purpose is to provide supervision and support, in a family-like setting, for persons unable to live independently in the community. It is not a clinic or hospital, where treatment is the principal or essential service. While a treatment regime may be incorporated into the daily routine of handicapped persons wherever they live—whether with their own families, in an institution, or in a group home—treatment is merely incidental to the group home's primary purpose of helping residents adjust to community living, and in many cases to live on their own in the community.

**Q** Then why are group homes a zoning problem?

**A** Many zoning ordinances simply don't provide for group homes. When a group home sponsor seeks to open a group home under such an ordinance, city officials often stretch their imaginations to fit the proposed group home under the zoning definition of some other use. Most often, they claim the group home is a nursing home or hospital for the insane or feeble-minded.

**Q** We have to do that all the time with uses that didn't exist when our zoning ordinances were written. What's so bad about that?

**A** Group homes are not nursing homes



Photograph by Michael Portney

An ordinary dinner table? That's exactly the point for group home residents functioning as a family.

or hospitals. A group home is a residential use—a place where inhabitants live as a family, albeit a generic family, as one court put it. In contrast, nursing homes and hospitals are primarily medical institutions that provide no education or simulated family setting for patients. Group homes are most appropriate in residential areas, while nursing homes and hospitals belong in commercial areas.

**Q** Didn't the U.S. Supreme Court case deal with a Texas city that treated group homes for the developmentally disabled as a hospital for the feeble-minded?

**A** Yes, the zoning ordinance for Cleburne, Texas, didn't provide for group homes. So city officials decided that the Cleburne Living Center's proposed group home for 13 developmentally disabled adults would be treated as a "hospital for the insane or feeble-minded."

**Q** How did that decision lead all the way to the Supreme Court?

**A** Cleburne's zoning ordinance allows all hospitals, except those for the "insane or feeble-minded or alcoholics or drug addicts," as permitted uses in the R-3 residential zone where the Cleburne Living Center (CLC) sought to locate its group home. It also allows apartments, boarding and lodging houses, and fraternities, sororities, and dormitories as of right in that zone.

Although the proposed group home complied with all federal and state licens-

ing regulations that ensured the house itself would be adequate to house the 13 mentally retarded residents plus staff, Cleburne denied the special use permit application. CLC sued. While the federal district court found that the city's denial "was motivated primarily by the fact that the residents of the homes would be persons who are mentally retarded," it held that no fundamental rights had been violated and that the ordinance, as written and applied, was rationally related to the city's legitimate interests in "the legal responsibility of CLC and its residents, . . . the safety and fears of residents in the adjoining neighborhood," and the number of people to be housed in the home.

After the Fifth Circuit U.S. Court of Appeals reversed in favor of CLC, the city appealed to the U.S. Supreme Court. The Court unanimously invalidated the zoning ordinance as applied to CLC (although three justices would have invalidated the ordinance on its face) in *City of Cleburne v. Cleburne Living Center*, 105 S.Ct. 3249 (1985).

#### The Court speaks

**Q** Why is this decision so important?

**A** The Court put cities on notice that they need a clear, rational reason if they want to treat group homes for the developmentally disabled (and probably for other service-dependent populations as

well) differently from other residential uses. The Court started its analysis by noting that the equal protection clause of the Fourteenth Amendment essentially requires that "all persons similarly situated should be treated alike."

Cleburne, though, had created a classification in which a group home for the mentally retarded must obtain a special use permit in an R-3 zone even though apartment houses, boarding and lodging houses, fraternity and sorority houses, nursing homes for the aged, and other specific uses were allowed as of right. Although a city's zoning ordinance is presumed valid, the classifications it creates must be "rationally related to a legitimate state interest" to be upheld.

The Court noted that while the "mentally retarded as a group are indeed different from others" who don't share "their misfortune" and are allowed to locate in an R-3 zone without a special use permit, "this difference is largely irrelevant unless the [group] home and those who would occupy it would threaten legitimate interests of the city in a way that other permitted uses such as boarding houses and hospitals would not." The Court searched the trial record and could find no rational basis to believe that the group home "would pose any threat to the city's legitimate interests."

**Q** You mean that none of the city's reasons for denying the special use permit were legitimate?

Open house at the Cleburne group home.



A Right. Opposition from neighbors, based on unsubstantiated fears, continues to be the major reason that cities deny special use permits for group homes. But the Court confirmed a long line of rulings that "mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like." While neighbors may have biases against group home residents, "the law cannot, directly or indirectly, give them effect."

The Court rejected all of the city's reasons for denying the permit. The city council had doubts about who had legal responsibility for the actions of the mentally retarded group home residents. But the Court found that the council had no concern about the legal responsibility for other uses permitted in the zoning district, such as boarding houses and fraternities. The Court could not see how the group home would present a hazard different from other uses. Nor could the Court understand how the city could object to the location of the group home because it was on a 500-year floodplain, yet not be concerned about other uses located on the floodplain.

Q Given the Court's decision, for what reasons can a city deny a special use permit for a group home?

A Remember that the Court said the denial was based on prejudices and unsubstantiated fears. The most common fears are that group home residents will engage in criminal behavior, that the home will be poorly maintained, and that the mere presence of the home will depress property values in the neighborhood. If true, these are legitimate reasons to deny a special-use permit.

Q Can any of these fears be substantiated?

A So far, fairly extensive research says, "Not at all!" A large body of research shows that the mentally ill are no more criminally prone than the rest of us. And 66 years of studies have found the developmentally disabled to be harmless. The most pertinent study covered the state of Virginia. *The Report on the Incidence of Client Crime Within Community-Based Programming* (1979) found a crime rate of 0.8 percent among the developmentally disabled who lived in group homes, as compared to a four to six percent crime rate among the general population.

Q And what about property maintenance and property values?

A Every one of the 20 or so studies on this topic has found that group homes simply do not affect the selling prices of neighboring properties or the turnover rate of properties. The studies uniformly report that group homes are invariably well-maintained—often better maintained than

neighboring private homes. The few studies that have inquired have found that group homes are so inconspicuous that barely half the people on the same block know they exist, fewer than half on the next block know of them, and fewer than 30 percent of the residents three block away are aware of them. Small wonder that group homes have virtually no effect on property values.

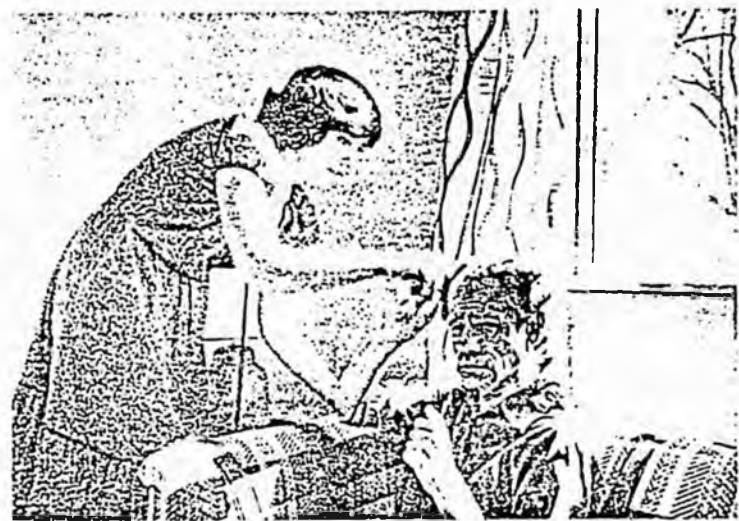
Q If group homes are so innocuous, why regulate them at all?

A One study did find that five group homes on the same block might, in fact, have an adverse effect on the neighborhood. Further, if large numbers of group homes cluster on the same block or in the same neighborhood, they could undermine a basic premise of group homes—namely that, to be effective, they must locate in "normal" residential neighborhoods where able-bodied neighbors can serve as role models for the disabled or mentally ill.

At some indeterminate point, the capacity of the neighborhood to absorb service-dependent people could be exceeded, and the proportion of service-dependent persons in the neighborhood could become so great as to recreate the institutional atmosphere from which the group home is supposed to provide an escape. So there is a need to ensure that group homes do not cluster on the same block and that they are spread throughout



People who might once have been institutionalized receive closer attention in group homes. Below, a visiting nurse in a Detroit-area group home.



the safe neighborhoods of a city.

For a variety of reasons, however, group homes frequently have been forced to cluster. As a 1983 study by the U.S. General Accounting Office reported, more than a third of the group homes for developmentally disabled persons were located within two blocks of another group home or an institution. A disproportionately high number of group homes locate in poor neighborhoods because political opposition to them is weak there and because they are excluded from better neighborhoods due to well-organized and politically powerful community opposition or exclusionary zoning.

To protect the welfare of group home residents, it is essential to ensure that group home operators comply with state or local licensing requirements. A zoning ordinance should not allow a group home to open unless it is licensed or will be licensed by the proper authority.

#### The bottom line

**Q** Given the *Cleburne* ruling, what's the bottom line: how should my city or county zone for group homes?

**A** In a word, rationally. The *Cleburne* decision is a bit deceptive. While the Court says it is applying the standard "rational relationship" test, its inquiry into *Cleburne's* reasons for denying the special use permit is really an example of the sort of heightened judicial scrutiny

usually reserved for cases of discrimination based on sex, race, or religion. The lesson of *Cleburne* is that the zoning provisions for group homes must be based on the sound planning principles that call for zoning provisions grounded in an understanding of what group homes are, what their impacts are, and the types of neighborhoods in which they function best.

**Q** What are these sound principles on which we should base our zoning provisions for group homes?

**A** There are four. By following them, you'll be able to write zoning provisions that should withstand even the Supreme Court's new version of the rational relationship test.

- Group homes, being residential in nature, are appropriate uses in all residential zoning districts.

- Group home residents are service-dependent persons who require special protection to ensure their safety in the home. Those protections—that the group home must provide adequate safety, sanitation, and program standards—define the subject matter of licensing requirements.

However, the zoning ordinance is not the place to specify licensing criteria—that's the business of the licensing agency. One of the simplest ways to require licensing is to include the licensing requirement in your ordinance's definition of a group home.

- Controls are needed to prevent concentrations of group homes. Two types of controls will prevent clustering and ensure dispersal throughout a community. The first is a spacing requirement by which the zoning ordinance imposes a minimum distance between group homes and between group homes and institutions.

It is vital, however, that there be some rational basis for this distance. According to one widely accepted theory, the most elementary form of social impact is the degree to which neighborhood residents become aware of a change. Because the research shows that few residents living three blocks from a group home even know it exists, it seems appropriate to establish a spacing requirement equal to at least three city blocks so that each group home will be beyond the "impact area" of any other group home or institution.

However, the ability of a neighborhood to absorb service-dependent residents is thought to vary with density. Presumably, higher-density neighborhoods have a higher absorption level that would warrant a shorter spacing requirement than lower-density neighborhoods.

The Westchester County Planning Department has suggested spacing requirements of 200 to 300 feet for urban areas where the population density is less than 1,000 persons per square mile, 300 to 400 feet for densities of 1,000 to 2,000 persons per square mile, and 400 to 500 feet for den-

Teaching residents to function in the community is an important aspect of group homes.



sities of 5,000 to 9,999; and 800 to 400 feet for densities over 10,000 persons per square mile. In contrast, Evanston, Illinois, has arbitrarily established an unusually high 2,500-foot spacing requirement between group homes. With no rational reason for that great a distance in an inner-ring suburb like Evanston, *Cleburne*-style judicial review could invalidate Evanston's requirement.

The second control is a dispersal or density requirement that establishes a cap on the total population permitted to live in group homes and institutions in a designated geographic area. Ideally, this figure should approximate the proportion of service-dependent individuals a neighborhood can absorb. For example, if three percent of a state's population is service-dependent, the proportion of service-dependent population per census tract could be limited to three percent.

• Zoning should recognize that group homes come in different sizes. The smaller home, for six or fewer residents, is roughly the size of a large family. There is no sound planning reason not to allow such "family homes" in all residential zoning districts as of right as long as they obtain or prove they are eligible for a license, meet the specified spacing and density requirements, and obtain an administrative occupancy permit.

This permit is needed to ensure that the home complies with these requirements and to provide a record for the planning

agency so it can enforce spacing and density requirements. The ordinance should provide a special use permit process to allow for circumstances that might justify exceptions to the spacing and dispersal requirements for family homes. These should be similar to those suggested below for larger group homes.

Because group homes for seven to 15 persons exceed the size of all but the very largest families, municipalities should subject proposals for these "family group homes" to somewhat greater scrutiny than the smaller family homes. Family group homes, however, should be allowed in all residential districts as special uses. There's no sound planning principle for excluding family group homes from even the largest-lot single-family district. In fact, when the sponsoring agency can afford the cost, the larger houses in lowest-density districts offer excellent sites.

However, to minimize subjectivity and lessen the influence of fear, prejudice, and political pressure on decisions about group homes, the zoning ordinance should state reasonably objective relevant standards by which the special use permit application is to be evaluated. Appropriate standards should require the applicant to: obtain a license or evidence of eligibility for a license from the appropriate agency; meet specified spacing and density requirements; register with the municipality's planning department; submit a statement of the

exact nature of the home planned, the qualifications of the home operator, the type and number of personnel, and the number of residents; conform to the general zoning requirements for the residential district, with the exception of the number of unrelated individuals permitted and the off-street parking requirements; and conform, to the extent possible, to the type and outward appearance of the residences in the area.

The ordinance should allow for a waiver of the spacing and dispersal requirements under certain conditions. Primarily, the decision-making body must find that the cumulative effect of allowing the group home (in addition to existing group homes and institutions for service-dependent populations) will not alter the residential character of the neighborhood, create an institutional setting, nor exceed the capacities of existing community recreational and social service facilities.

Daniel Lamber, APA President, consultant and attorney who has been involved in zoning for group homes since 1974. His recent draft paper, *Toward a Sound Zoning Treatment of Group Homes for the Developmentally Disabled*, includes model definitions for a group home provision in a zoning ordinance. It is available for \$17.00 from Planning Communications, 20337 60th St., Evanston, IL 60202.

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THE FEDERATION, THE HEALTH SPA, THE LEGISLATOR,  
AND THE ATTORNEY GENERAL

by Marc Maurer

Dr. Jacobus tenBroek drafted the Model White Cane Law in 1966. The intent of this model law is clear and to the point. The blind face discrimination in all activities of daily life. This inequality and second-class status must be eradicated.

Dr. tenBroek was a scholar. He knew that revolutions do not start in the streets. They start in the library and the classroom. But he also knew that the road from classroom to health spa, from library to the office of the Attorney General is often long and rough, spanning decades of hope and heartache. Yet, the journey must begin; the foundation must be laid—and if the initial work has been carefully and thoroughly done, the ultimate success is certain. It is not a question of whether but only of when.

In April of 1984 Daryl and Jeanine Diller (a blind couple living in Laurel, Maryland) decided to get some exercise. They tried to join the Grecian Health Spa and Fitness Center and were met with misunderstanding, condescension, prejudice, and a flat denial of their application for membership. Their letter to the Maryland state President, Jim Omvig, shows the treatment they received. It reads:

Laurel, Maryland  
May 7, 1984

Dear Mr. Omvig:

My husband and I are a blind couple who live in Laurel, Maryland. Approximately one month ago I became interested in becoming more physically fit. At that time I began calling the health spas in Laurel to gather information concerning length of fitness programs, costs of programs, etc. When I called the Grecian Health Spa and Fitness Center in Laurel, I could get no information over the phone. Therefore, on Saturday, April 21, 1984, between three and five p.m. my family and I went into the Grecian Health Spa and Fitness Center to see what we could find out about their fitness programs. We were told, very rudely and very unceremoniously, that it was not the policy of the Grecian Health Spa and Fitness Center to allow blind people to use their facility. When we asked why this was the case, we were only given the name of the owner of the Grecian Health Spa and Fitness Center and a phone number where we could reach him on the following Wednesday. Needless to say, we were not very pleased to learn of the Grecian Health Spa and Fitness Center's policy.

On Monday, April 23, 1984, I was contacted, by phone, Mr. Lou Andrews,

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who is the owner of the Grecian Health Spa and Fitness Center. Mr. Andrews told my husband that he would not accept the responsibility for having blind people in his place of business due to insurance reasons.

After my husband and I had talked over what Mr. Andrews had said, we decided that even though he would not permit us to use his facility, we would ask him to take us on a noncommittal tour of his spa so that we might learn what nautilus equipment was available and how it worked. We had never seen nautilus equipment before and did not know whether we could even use it. Of the three fitness centers in Laurel, the Grecian Health Spa and Fitness Center is the closest one to our home.

On Tuesday, April 24, 1984, my husband again contacted Mr. Andrews by phone and asked him for the noncommittal tour. He also told Mr. Andrews that his spa was the closest one to our home, and Mr. Andrews again flatly refused us access.

We refused to accept Mr. Andrew's decision, contacted you by phone, and were advised to write you this letter...

Sincerely,  
Mr. & Mrs. Daryl L. Diller

The response of the National Federation of the blind to this call for help was characteristically fast and vigorous. Jim Omvig protested this discrimination in a letter to Mr. Lou Andrews. Mr. Andrews was urged to be reasonable and to deal with blind people in a courteous and forthright manner. He was also informed of our organization and treated as normal human beings with all

of the rights and responsibilities which that implies:

Baltimore, Maryland  
May 23, 1984

Dear Mr. Andrews:

Let me begin by telling you that I find you truly to be an "amazing" individual, and no, I do not use the word "amazing" with all of its usual positive connotations. Let me show you what I mean.

I have been aware since the early fall of 1983 that you have a policy of violating the laws of the state of Maryland by discriminating in membership against blind citizens in this state. Two individuals have previously contacted me about your behavior, but for various reasons we chose not to pursue the matter at that time. The reason I indicated above that I find you to be "amazing" is that I am fully aware that at the time you denied membership to other blind citizens of Maryland you were advised that your policy is in direct violation of law established by the General Assembly of this state. Yet, witness the attached letter from Daryl and Jeanine Diller. In the past you might have been able to plead ignorance (although this is not a legal defense) for your behavior. But, in the instant situation, you have done what you have done in the full knowledge that you are in violation of the law of the state.

In case you are not aware, you should know that in 1983 the Maryland General Assembly amended our anti-discrimination law to increase the fine for violation

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from \$50 to \$500 and also to establish a new provision which gives blind persons the right to bring a private action for damages in civil court. I am confident that the state General Assembly did not make these changes for frivolous reasons. The state of Maryland respects those of us who are blind and intends to see to it that our rights are protected. We intend to do likewise!

According to the attached letter, your great fear seems to be that your insurance rates will be increased if you permit blind persons to enjoy their civil rights. This is nonsense and I am sure that you know that it is. Maryland has one of the strongest anti-discrimination laws concerning the availability of insurance for blind persons of any state in this nation. You might better have said, "My only concern is for your welfare." This is the phrase most commonly used by those feebly attempting to justify discrimination against persons who are blind. This excuse won't wash either.

Your response to this letter will determine our course for further action. If you respond with reason rather than emotion and prejudice, the Dillers will be admitted to membership and the matter will be closed. If you choose to respond negatively or, indeed, fail to respond at all, you will leave us no alternative but to take certain steps. We may or may not file a formal complaint against you with the state of Maryland. Or we may or may not file a civil action for damages. Or we may or may not decide to take the issue to the press so that the public can have knowledge of your attitude toward human beings who happen to be blind. Or we may or may not bring a group of blind

persons (with appropriate media coverage) to your facility and insist upon our right to enter. Or we may or may not simply remain outside, picket your facility, and encourage others to refrain from doing business with you. Or we may or may not do all of the above. As I say, your attitude and your reaction to this letter will determine the course of action we must take. I can assure you of this: We of the National Federation of the Blind are simply no longer willing to be treated as second-class citizens and to be walked on like rugs.

Ah, what a great row over a simple issue which should be no issue at all since you are fully aware of existing Maryland law. But the issue is not simple to us—it is significant to us. For we are talking about civil rights: The right to be independent; the right to be free; the right to live with dignity and self-respect; and the right to enjoy those pleasures which are available to other of our citizens.

It is my earnest hope that you will consider this letter with reason and logic and that you will admit the Dillers (and other blind persons who may request it) into membership. We wish no strife or controversy with anyone.

Sincerely,  
James H. Omvig, President  
National Federation of the Blind  
of Maryland

P.S. Enclosed for your information please find a copy of "What Is The National Federation of the Blind."

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The response of the Grecian Health Spa was not encouraging. Mr. Andrews' letter was poorly written and full of condescension. The letter itself demonstrates the discriminatory attitude of Mr. Andrews. It reads:

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Fulton, Maryland  
May 30, 1984

Dear Mr. Omvig:

To your reply of May 23, 1984. For the past 15 years we have never discriminated anyone at our spa.

If the Dillards or any blind person can use our facilities and equipment freely without any special assistance by our staff and there would be no liabilities, injury to themselves or other members also follow or workout procedures and our rules and regulations that is required by all our members we would consider admitting them as members.

Sincerely,  
Louis W. Andrews, President  
Grecian Health Spa

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The next step was to assure Mr. Andrews that we meant what we said, and we would do what we promised. This we did. We told Mr. Andrews that we intended to meet with him, and we intended to tour the Grecian Health Spa. He told us that he would not meet with us, but we were welcome to speak with his lawyer. We responded that we would come to the health spa and demand admittance. We intended to do it in the presence of the press. If Mr. Andrews would not

talk with us inside, we would meet with reporters outside.

On July 18, 1984, approximately thirty-five blind people and their friends appeared before the Grecian Health Spa to insist upon the right of blind persons to fair and equal treatment. Delegate Elijah Cummings, the Chairman of Maryland's Black Caucus, was prominent in insisting that blind people not be victims of discrimination. He went with us to confront Mr. Andrews. Delegate Cummings was familiar with the White Cane Law, because he had worked closely with leaders of the National Federation of the Blind of Maryland to have that law strengthened. In the midst of television cameras and newspaper reporters Mr. Louis Andrews (apparently having decided that he would meet with us after all) attempted to explain why the blind would not be admitted. It was unsafe for the blind, he said, and the insurance rates would go up. Mr. Andrews insisted that he knew all about discrimination, for he was the son of immigrant parents. But, he said, "The blind people might stumble over others who were exercising, they might bump into the machinery and hurt themselves, or they might accidentally fall into the pool." Mr. Andrews protested that he didn't have a nurse on the premises, and what would he do in case of injury?

Finally, he agreed to show five people through the spa. In this tour Mr. Andrews attempted to demonstrate just how unsafe the health spa was for the blind. He dropped weights on the floor in the walkway; he showed Mr. Omvig a weight machine; and he bumped Mr. Omvig with a metal bar and said that if Mr. Omvig wasn't careful, he might hurt himself.

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At the conclusion of the tour Mr. Andrews had not changed his position. He would not permit blind people in his spa unless they could prove that no accident could happen—a test which is impossible for anyone.

The Baltimore Sun reported it this way:

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**Blind Couple Tour Spa  
That Doesn't Want Them In**

by Richard H. P. Sia  
Sun Staff Correspondent  
July 19, 1984

Laurel—The maze of humid, narrow hallways leading to the swimming pool, whirlpool, exercise rooms, lockers and sauna at the Grecian Health Spa and Fitness Center on Washington Boulevard here did not deter Daryl and Jeanine Diller yesterday.

The Dillers, both of whom are blind, toured the center with their guide dogs to find out what lay inside the exercise rooms they had been barred from entering since April.

"We were told very unceremoniously they had a policy not to allow blind people in," said Mrs Diller as she stepped into a room jammed with equipment and about a dozen women lifting weights or dancing to the beat of an aerobics routine on a television screen.

"I only wanted to see what's in there. I never said I wanted to join," said the 33-year-old mother of three children.

In seeking legal help, she and her husband, a 35-year-old computer engineer for the U.S. Defense Department, placed state Senator Thomas P. O'Reilly (D-Prince Georges) in a political quandary.

As a lawyer, Mr. O'Reilly represents the spa's owner, Louis W. Andrews. As a state senator, he voted last year for a bill that increased the penalty for discriminating against the blind from \$50 to \$500.

Mr. O'Reilly declined to discuss a contention by others close to the dispute that he had advised Mr. Andrews to permit the blind to join his spa. "I feel very uncomfortable being quoted in any way against my client," he said.

Late yesterday afternoon, Mr. Andrews agreed to let the couple inside when they showed up with Delegate Elijah E. Cummings (D-Baltimore) and the president and several members of the National Federation of the Blind of Maryland. Delegate Cummings was the sponsor of last year's legislation.

Mr. Andrews, a trim, balding man of 62 who has owned the business for 15 years, admitted in an interview that he told his receptionist to deny the Dillers entrance when they asked for a tour last April 21.

"I've accepted people who've had epileptic fits and cerebral palsy," he said. "One man came in, and on the first night had a seizure. We didn't know what to do.

"I do not know how I can let blind people in. They might cause damage and injuries to other people," he said. But Andrews added: "If they can show me they can use the facilities, well, that's all I ask. I'm not trying to discriminate. I know what that is, coming from two immigrant Greek parents."

Mr. Andrews met last evening with two members of the Federation, but the session ended without agreement. He declined to sign a declaration prepared by

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the Dillers and the group vowing never to discriminate "on the basis of blindness."

James H. Omvig, the President of the Federation, who also is blind, said afterward that his group intended to file a complaint with the state Human Relations Commission within 10 days.

Mr. Andrews recalled that a few days after he denied the Dillers entry to the spa, they called him to protest. "I said, 'To be honest with you, I don't know how to accommodate you. I don't have facilities for the handicapped,'" he said.

He said Mrs. Diller disputed the label of "handicapped," and expressed confidence that she and her husband would be able to manage inside the spa including its swimming pool.

As he played guide to the couple, to the Delegate, and to Mr. Omvig, Mr. Andrews repeatedly told of problems he said blind exercisers would encounter at his spa.

He kicked a 20-pound weight that lay on the floor and complained loudly that people forget to put such things away. "How can he step over them?" he asked the Delegate, removing several dumbbells from a rack and dropping them to the floor.

"It is a complicated, complex kind of operation," he told the visitors. "You must have someone (to accompany the blind). I don't think a blind person can use the spa."

"Let us decide what we can and can't do," Mrs. Diller shot back. Her husband added quickly, "We couldn't even get a chance to decide."

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In addition to this article in the Baltimore Sun, there was widespread radio and television coverage. Our next step was to take the matter to Stephen H. Sachs, Maryland's Attorney General. We asked him for his opinion about the coverage of Maryland's White Cane Law. In a closely reasoned and thorough review of similar legislation from throughout the United States, Attorney General Sachs concluded that the health spa is covered by the White Cane Act, and it is unlawful to deny membership to the blind. Because of its detailed analysis and thorough treatment of the issues, this opinion should be of importance throughout the country, serving as an authoritative precedent:

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Baltimore, Maryland  
August 6, 1984

Dear Delegate Cummings:

You have requested our opinion on whether the exclusion of a blind person from membership in a health club or similar facility that is otherwise open to the general public violates this State's "White Cane Law," Article 30, Section 33 of the Maryland Code. More specifically, you ask whether such a health club is a "public facility" within the meaning of that law.

For the reasons given below, we have concluded that a health club which otherwise opens its membership to the general public is a public facility subject to the provisions of Article 30, Section 33. Accordingly, it is prohibited by law from denying the blind (or, indeed, any person with a visual or hearing impairment) "full and equal"

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access to and use of its facilities (footnote 1).

### Opinion of the Attorney General

Cite as: Opinion No. 84-020 (August 6, 1984) (to be published at 69 Opinions of the Attorney General (1984))

#### I. The Statute

Article 30, Section 33 (d) (1) and (g) of the Maryland Code makes it unlawful in this State to deny or interfere with the admittance to or enjoyment of "public facilities" by persons with visual or hearing impairments:

"(d)(1) The blind or the visually handicapped and the deaf or hearing impaired are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or other public conveyances or modes of transportation, hotels, lodging places, places of public accommodations, amusement, or resort, or other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable to all persons....

"(g) Any person or persons, firm, or corporation, or the agent of any person or persons, firm, or corporation, who denies or interferes with admittance to or enjoyment of the public facilities enumerated in this section, or otherwise interferes with the rights of a blind or visually handicapped person or a deaf or hearing impaired person under this section, is guilty of a misdemeanor and subject upon conviction to a fine not

exceeding \$500 for each offense."

As originally enacted in 1964, the law was designed to "prohibi[t] discrimination against blind persons in places of accommodations when such persons are accompanied by their dog guides." Chapter 137, Laws of Maryland 1964. The term "place of public accommodation" was then somewhat narrowly defined to include only an "establishment ... regularly engaged in the business of providing sleeping accommodations, or serving food, or both, for a consideration, and which is open to the general public."

In 1966 the law was revised to "mak[e] it unlawful for any person to prohibit, hinder, or interfere with" the right of a blind person "to take a dog guide into certain public places." Chapter 190, Laws of Maryland 1966. Again, the range of "public places" subject to the law was a relatively narrow one, limited to "any public building, restaurant or eating place, conveyance, hotel, inn, tourist cabin or motel, elevator, or other similar public place."

But, just one year later, in 1967, the scope of this law was significantly broadened. No longer did the statute focus primarily on the right of the blind to use guide dogs. Rather, the statute was revised generally to "make it unlawful to interfere or deny admittance to or enjoyment of public facilities or to otherwise interfere with the rights of blind ... persons." Chapter 663, Laws of Maryland 1967. And, for this purpose, the range of "public facilities" to which the blind were guaranteed "full" access was itself broadened to include "all ... places of public accommodation, amusement or resort, and other places ... which are

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general public is invited."

In 1971, this broad prohibition became part of a new "White Cane Law," providing for equal rights and treatment for blind or visually handicapped persons in employment, public accommodations, and housing." Chapter 390, Laws of Maryland 1971. New rights with respect to housing and public employment were added, and what is now Section 33(d)(1) was expanded to provide both "the blind [and] the visually handicapped" with "full and equal" access to the broad range of public facilities there enumerated—including, again, "all ... place of public accommodations, amusement, or resort, or other places to which the general public is invited" (footnote 2).

## II. Analysis

A health club, quite obviously, does not fall within the statute's more specific listing of "common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or other public conveyances or modes of transportation, hotels [and] lodging places." The question, then, is whether it falls within the statute's far broader reference to "places of public accommodations, amusement, or resort, or other places to which the general public is invited." We have no doubt but that it does (footnote 3).

The phrase "places of public accommodations, amusement, or resort" is not uncommon to public accommodations laws. And, when following a list of specifically described places, this and similar phrases have been construed by courts around the country to be an enlargement upon that list and, as such, to encompass a wide range of other

places and facilities not specifically listed. These include, for example, pool rooms, Village of Atwood v. Otter, 129 N.E. 573 (Ill. 1920); swimming pools, State of New Jersey v. Rosecliff Realty Co. 62 A.2d 488 (N.J. Super. Ct. App. Div. 1948); race tracks, Suttles v. Hollywood Turf Club, 114 P.2d 27 (Cal. Ct. App. 1941); roller skating rinks, Jones v. Broadway Ice Rink Co. 118 N.W. 170 (Wis. 1908); cemeteries, Pennsylvania Human Relations Comm'n v. Alto-Reste Park Cemetery Ass'n, 306 A.2d 881 (Pa. 1973); little league baseball organizations, National Organization for Women, Essex County Chapter v. Little League Baseball, Inc., 318 A.2d 33 (N.J. Super. Ct. App. Div. 1974); marathon courses, New York Roadrunners Club v. State Division of Human Rights, 437 N.Y.S. 2d 681 (N.Y. App. Div. 1981); amusement parks, Drews v. State, 236 Md. 349 (1964); golf clubs, Brown v. Loudon Golf and Country Club, Inc., 573 F.Supp. 399 (D. Va. 1983); recreational facilities, Smith v. Young Men's Christian Ass'n of Montgomery, 316 F.Supp. 899 (M.D. Ala. 1970); and reducing salons, Browning v. Slenderella Systems of Seattle, 341 P.2d 859 (Wash. 1959).

Indeed, at least one reported case has directly held the phrase, "places of public accommodation, amusement, and recreation" to encompass health and exercise clubs. Vidrich v. Vic Tanny International, Inc., 301 N.W.2d (Mich. Ct. App. 1980). Coincidentally, that case also involved, as here, a blind person who had been denied access to the club in question:

"The issue is whether a legally blind person may validly be refused unre-

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stricted membership in a health and exercise club on the ground that the physical limitations deriving from his blindness constitute a significant safety hazard effectively precluding his safe use of club facilities. We recognize no such 'safety exception' to the equal accommodations act and, consequently, reverse the trial court's determination that [the club's] exclusion of plaintiff was proper." 301 N.W.2d at 483.

In Vic Tanny, the court considered a Michigan equal accommodations law strikingly similar to Article 30, Section 33(d)(1):

"All persons within the jurisdiction of this state shall be entitled to full and equal accommodations, advantages, facilities and privileges of inns, hotels, motels, government housing, restaurants, eating houses, barber shops, billiard parlors, stores, public conveyances on land and water, theatres, motion picture houses, public educational institutions, in elevators, on escalators, in all methods of air transportation and all other places of public accommodation, amusement, and recreation, subject only to the conditions and limitations established by law and applicable alike to all citizens and to all citizens alike, with uniform prices." 301 N.W.2d at 483 (quoting M.C.L. Section 750.146; M.S.A. Section 28.343 (footnote 4)).

The defendant argued that the law did not apply to health clubs given the absence of "specific language encompassing such facilities." 301 N.W.2d at 484. The court responded:

"This argument is without merit in light of the comprehensive wording of [the statute] providing for equal accommodations in 'all other places of public accommodations, amusement, and recreation.' We hold that defendant's business is within the purview of that language." Id.

In reaching this conclusion, the court also rejected the defendant's argument that a "safety exception" be judicially incorporated into the equal accommodations act:

"Where, as here, the language of the act is clear, unequivocal, and absolute on its face, judicial construction or interpretation of the statutory language in the manner argued for by defendant would be improper. Our function is to give full credence to 'the legislative will as we find it, without regard to our own views as to the wisdom or justice of the act.'" 301 N.W.2d at 485 (citations omitted).

Article 30, Section 33 is, if anything, even broader than the Michigan statute construed and applied in Vic Tanny: Section 33 applies not only to "all ... places of public accommodations, amusement, or resort" but, indeed, to "all ... other places to which the general public is invited." Like the court in Vic Tanny, then, we have no hesitation in concluding that Article 30, Section 33 applies fully to health clubs and similar facilities in which membership is generally open to the public. Those clubs, therefore, are required to provide blind persons, as well as persons with hearing impairments, "full and equal access to their

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facilities, without discrimination in the scope, terms, or conditions of that access.

### III. Conclusion

In summary, it is our opinion that a health club or similar facility which otherwise opens its membership to the general public is a "public facility" subject to the provisions of Article 30, Section 33. As such, it is prohibited from denying persons with visual or hearing impairments "full and equal" access to and use of its facilities.

Very truly yours,  
Stephen H. Sachs  
Attorney General

Avery Aisenstark, Chief Counsel  
Opinions and Advice

### FOOTNOTES

1. You have not asked, nor do we here address, whether a health club might also be considered a "place of public accommodation" subject to this State's Public Accommodations Law, Article 49B, Section 5 of the Maryland Code. Article 49B, Section 5 defines "place of public accommodation" to include, among other things, a "place of exhibition or entertainment." It might well be that a health club is a "place of exhibition or entertainment" within the scope of that definition. See, e.g., *Daniel v. Paul*, 395 U.S. 298 (1969) (term "place of entertainment" in Civil Rights Act of 1964 not confined to spectator entertainment and includes a recreational facility that offers swimming, boating, miniature golf, and dancing). But see

*Draws v. State*, 236 Md. 349, 354 (1964) ("there is no provision in the public accommodation law enacted by the State ... with respect to amusement parks.")

In any event, we believe that questions about the scope and applicability of the Public Accommodations Law are, in the first instance at least, best left to the expertise of the Human Relations Commission, the agency charged with enforcing and administering that law. See *Maryland Comm'n on Human Relations v. Bethlehem Steel Corp.*, 295 Md. 586 (1983); *Maryland Comm'n on Human Relations v. MTA*, 294 Md. 225 (1982).

2. Three years later, in 1974, the provisions of the Public Accommodations Law, Article 49B, Section 5 [then Section 11], were expanded to encompass discrimination on the basis of "physical...handicap." See Chapter 875, Laws of Maryland 1974. That the General Assembly did not intend or consider the broad protections afforded by Article 30, Section 33 to be supplanted by this newly expanded Public Accommodations Law is evidenced by the fact that, since 1974, Article 30, Section 33 has itself been reenacted and amended several times by the General Assembly—most notably, in 1978 and 1979, to extend its protections to the deaf and hearing impaired [Chapter 929, Laws of Maryland 1978; Chapter 565, Laws of Maryland 1979] and, in 1983, to increase the criminal penalty from \$50 to \$500 [Chapter 649, Laws of Maryland 1983].

3. A possible, narrow exception might exist for a health club facility that is, in the true sense of the term, a "private club"—e.g., one composed of a select group of members who themselves have a say in admitting or rejecting new

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applicants, who themselves exercise control over club operations and facilities, and who themselves own equity in club property or share in club profits. See, e.g., *Daniel v. Paul*, 395 U.S. 298, 301 (1969) (respondent recreational facility not a private club but "simply a business operated for a profit with none of the attributes of self-government and member-ownership traditionally associated with private clubs.") Cf. *Roberts v. United States Jaycees*, U.S. (1984) [52 LW 5076 (June 26, 1984)] (national membership organization, having local chapters that are neither small nor selective, is a "place of public accommodation" under Minnesota Human Rights Act).

Most modern health clubs, we suspect, fail to exhibit these indicia of a private club. Certainly, the particular health club to which your inquiry

relates—the Grecian Health Spa and Fitness Center of Laurel, Maryland—is not a "private club." It is, rather, a commercial enterprise in which membership is open and nonselective, subject only to payment of a membership fee and adherence to the rules and regulations adopted by the facility's owner and operator, Grecian Health Spa, Inc.

4. An accompanying provision, not unlike Article 30, Section 33(g), imposed criminal sanctions upon "[a]ny...owner, lessee, proprietor, manager, superintendent, agent or employee of any such place who shall directly or indirectly refuse, withhold from or deny to any person any of the accommodations, advantages, facilities and privileges thereof...on account of...blindness." 301 N.W.2d at 483 (quoting M.C.L. Section 750.147; M.S.A. Section 28.344).

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

**REQUEST:** \_\_\_\_\_

Bill Version: SB-1  
Publish Date: 1-19-87

Revision Date: \_\_\_\_\_  
Title: Rights of Physically and  
Mentally Disabled Persons

Agency Affected: Office of the Governor  
BRU: Commissions/Special Offices

Sponsor: Duncan and Szymanski  
Requestor: Health, Education and Social  
Services, Judiciary & Finance

Components: Human Rights Commission

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		46.9	46.9	46.9	46.5	
TRAVEL		10.5	10.5	10.5	10.5	
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		.5	.5	.5	.5	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		57.9	57.9	57.9	57.9	
CAPITAL						
REVENUE						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		57.9	57.9	57.9	57.9	
FEDERAL FUNDS						
OTHER						
TOTAL		57.9	57.9	57.9	57.9	

**POSITIONS:**

FULL-TIME		1.0	1.0	1.0	1.0	
PART-TIME						
TEMPORARY						

**ANALYSIS : (Attach a separate page if necessary)**

Establish (1) PFT position HRFER III to handle the increased caseload (intake and processing) of complaints anticipated to be filed by disabled persons due to SB-1.

Prepared by: Michael A. Nizich, Director *MN*  
Division: Administrative Services

Phone: 465-3616  
Date: Feb. 2., 1987

Approved by Commissioner: Carol P. Kastelic *CPK*  
Agency: Exec. Assistant, Office of the Governor

Date: Feb. 2, 1987

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