

HB

18

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 18

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act amending the statute of limitations appli- BRU: Legal Services
able to civil actions brought against peace officers and coroners." Component: Operations
 Sponsor: Representative Therriault
 Requester: Representative Therriault COMPONENT SERIAL NO. 0093

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 09.10 to reduce the time in which a civil action may be brought against a peace officer or coroner, from three years to two years, for a liability incurred by the doing of an act in an official capacity or by the omission of an official duty. This change in the statute of limitations for peace officers and coroners is consistent with the general statute of limitations of two years for most other persons. The bill will not have a fiscal impact.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 1/30/95
 Date: 1/30/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 18

Revision Date: _____
Title: "An Act Amending the Statute of Limitations Applicable to Civil Actions Brought Against Peace Officers..."
Sponsor: Therriault
Requestor: _____

Department Affected: Administration
BRU: Risk Management
Component: Risk Management
COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Division of Risk Management.

Prepared by: Brad Thompson
Division: Risk Management

Phone: 465-2180
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 1/30/95

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of the improvement, a person may bring a negligence action to recover damages if the negligence action is brought within one year after the date on which the personal injury, death, or property damage occurs.

(c) This section does not apply

(1) to an action against a person who was in actual possession and lawful control of the improvement at the time the defect caused the personal injury, death, or property damage;

(2) if the personal injury, death, or property damage was caused intentionally or resulted from gross negligence, fraud, fraudulent concealment, fraudulent misrepresentation, or breach of an express warranty or guarantee; or

(3) if a longer period of time for bringing the action was provided under a contract.

(d) In this section, "substantial completion" means the date when construction is sufficiently completed to allow the owner or a person authorized by the owner to occupy the improvement or use the improvement in the manner for which it was intended. (§ 2 ch 61 SLA 1967; am § 3 ch 28 SLA 1994)

Cross references. — For legislative findings in connection with the 1994 amendment of this section, and for applicability of those amendments, see §§ 1 and 4, ch. 28, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1994 amendment, effective August 5, 1994, rewrote this section.

NOTES TO DECISIONS

Constitutionality. — Section violates equal protection clause of Alaska Constitution because it bears no substantial relationship between exempting design professionals from liability, shifting liability for defective design and construction to

owners and material suppliers, and the goal of encouraging construction. *Turner Constr. Co. v. Scales*, 752 P.2d 467 (Alaska 1988) (decided prior to the 1994 amendment).

Collateral references. — What statute of limitations governs action by contractor for defective or improper performance of work by private building contractor, 1 ALR3d 914.

When statute of limitations begins to run on negligent design claim against architect, 90 ALR3d 507.

Validity and construction, as to claim alleging design defects, of statute impos-

ing time limitations upon action against architect or engineer for injury or death arising out of defective or unsafe condition of improvement to real property, 93 ALR3d 1242.

Statutes of limitation — actions by purchasers or contractees against vendors or contractors involving defects in houses or other buildings caused by soil instability, 12 ALR4th 866.

Sec. 09.10.060. Actions against peace officers or coroners, for certain statutory penalties, or for sexual abuse to be brought in three years. (a) A person may not bring an action against a peace officer or coroner upon a liability incurred by the doing of an act in an official capacity or by the omission of an official duty, including the

nonpayment of money collected upon an execution, unless the action is brought within three years. This section does not apply to an action for an escape.

(b) A person may not bring an action upon a statute for penalty or forfeiture where the action is given to the party aggrieved or to that party and the state unless the action is brought within three years, except where the statute imposing it prescribes a different limitation.

(c) A person who was the victim of sexual abuse may not maintain an action for recovery of damages against the perpetrator of the act or acts of sexual abuse based on the perpetrator's intentional conduct for an injury or condition suffered as a result of the sexual abuse unless the action is commenced within three years. In this subsection, "sexual abuse" means an act committed by the defendant against the plaintiff maintaining the cause of action if the defendant's conduct would have violated a provision of AS 11.41.410 — 11.41.440 or 11.41.450 — 11.41.455 at the time it was committed. (§ 1.06 ch 101 SLA 1962; am § 1 ch 4 SLA 1990)

Revisor's notes. — In 1994, "A person may not" was substituted for "No person may" in (a) and (b) of this section, and "the action is" was inserted after "unless" in (a), (b), and (c) of this section to conform this section to the current style of the Alaska Statutes.

Cross references. — For provisions related to (c) of this section, see AS 09.10.140(b).

Effect of amendments. — The 1990 amendment, effective February 2, 1990, added subsection (c).

NOTES TO DECISIONS

Abuse of process and false imprisonment. — In the case of a complaint against city police officers for abuse of process, false arrest (imprisonment) and a violation of civil rights under 42 U.S.C. § 1983, this section applied to the actions for abuse of process and false arrest (im-

prisonment), and AS 09.10.070 applied to the action for an alleged civil rights violation. *Jenkins v. Daniels*, 751 P.2d 19 (Alaska 1988).

Cited in *Farmer v. State*, 788 P.2d 43 (Alaska 1990).

Collateral references. — Running of limitations against action for civil damages for sexual abuse of child, 9 ALR5th 321.

Sec. 09.10.070. Actions for torts and certain statutory liabilities to be brought in two years. A person may not bring an action (1) for libel, slander, assault, battery, seduction, false imprisonment, or for any injury to the person or rights of another not arising on contract and not specifically provided otherwise; (2) upon a statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years. (§ 1.07 ch 101 SLA 1962)

Revisor's notes. — In 1994, "A person may not" was substituted for "No person may" and "the action is" was inserted after "unless" to conform this section to the current style of the Alaska Statutes.

Opinions of attorney general. — Revocation proceedings against a commercial fisheries permit holder, who allegedly submitted false information with respect

to his residency in his initial application for an entry permit and in his requests for renewal of the permit, were governed by the six-year period set forth in AS 09.10.120 (actions by state or political subdivision), not the two-year statute of limitation found in AS 09.10.070(2) (forfeiture or penalty). Aug. 17, 1984, Op. Att'y Gen.

NOTES TO DECISIONS

- I. General Consideration.
- II. Torts.
 - A. Generally.
 - B. Strict Liability.
 - C. Misrepresentation and Negligence.
 - D. Libel.
- III. Forfeiture or Penalty to State.
- IV. Other Statutory Liability.
- V. Procedure.
 - A. Generally.
 - B. Tolling Statute.

I. GENERAL CONSIDERATION.

The policy of the law is to allow a reasonable but definitely limited time for the bringing of an action after which the matter is put to rest. *Byrne v. Ogle*, 488 P.2d 716 (Alaska 1971).

Purpose of statute of limitations. — The goal of the statute of limitations and the substituted service procedure is to provide speedy adjudication of claims. *Byrne v. Ogle*, 488 P.2d 716 (Alaska 1971).

The purpose of statutes of limitations is to encourage promptness in the prosecution of actions and thus avoid the injustice which may result from the prosecution of stale claims. *Byrne v. Ogle*, 488 P.2d 716 (Alaska 1971); *McCracken v. Davis*, 560 P.2d 771 (Alaska 1977); *Johnson v. City of Fairbanks*, 583 P.2d 181 (Alaska 1978).

Statutes of limitations attempt to protect against the difficulties caused by lost evidence, faded memories and disappearing witnesses. *McCracken v. Davis*, 560 P.2d 771 (Alaska 1977).

This section reflects a state policy that a plaintiff's commencement of action is the affirmative step necessary to assure that his assertion of a claim is timely. *Johnson v. City of Fairbanks*, 583 P.2d 181 (Alaska 1978); *DeHusson v. City of Anchorage*, 583 P.2d 791 (Alaska 1978).

This section and AS 09.55.580 compared. — See *Hankanson v. Wakefield Seafoods, Inc.*, 600 P.2d 1087 (Alaska 1979).

Action for interference with contract rights. — Alleged acts of interference with contract rights were one-time occurrence, even though they might have continuing consequences; in determining the time from which the period of limitations is measured, such acts were not analogous to a continuing trespass or nuisance, where repeated and continued tortious acts are committed. *Blake v. Gilbert*, 702 P.2d 631 (Alaska 1985), overruled on other grounds, *Bibo v. Jeffrey's Restaurant*, 770 P.2d 290 (Alaska 1989).

Suit for breach of implied duty in construction contract. — This section was applicable to a suit against an electrical contractor alleging breach of an implied duty to perform a restaurant construction contract in a workmanlike manner. *St. Paul Fire & Marine Ins. Co. v. Sauer Elec., Inc.*, 648 F. Supp. 959 (D. Alaska 1986).

Actions for breach of a fiduciary duty arising out of professional service relationships which primarily involve economic injury, because the duty allegedly breached does in part arise from the contract, are governed by AS 09.10.050 and not this section. *Lee Houston & Assocs. v. Racine*, 806 P.2d 848 (Alaska 1991).

Action under federal Civil Rights Act. — Statute of limitations for a civil rights action by a state employee challenging his discharge is two years, since, if *Wilson v. Garcia*, 471 U.S. 261, 105 S. Ct. 1938, 85 L. Ed. 2d 254 (1985), is ap-

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Alaska State Legislature

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House District 33

House Of Representatives

HB 18: "An act amending the statute of limitations applicable to civil actions brought against peace officers and coroners."

Sponsor: Representative Gene Therriault

Sponsor Statement:

This legislation is intended to bring the statute of limitations for civil actions brought against peace officers and coroners into conformity with the statute of limitations for general civil actions. It proposes to reduce from three years to two the period in which civil actions may be brought against peace officers and coroners based on an act performed in an official capacity or based on failure to perform an official duty.

The three year statute relating to peace officers was enacted for Alaska by Congress in 1900. Congress took the statutes from Oregon, which in turn took them from New York. New York's peace officer statute was enacted in 1829. Its purpose was to benefit peace officers by providing a period of limitations shorter than the general statute, which was six years. In the intervening years, however, the statute of limitations for general tort claims has been reduced to two years, with no corresponding change in the peace officer statute. Thus what started as a protective measure for police officers is no longer serving that purpose. This legislation would serve a twofold purpose of affording police officers the same protection as is provided to the general public and bringing an antiquated statute into conformity with more recent law.

The statute of limitations would remain three years for civil actions currently in progress.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

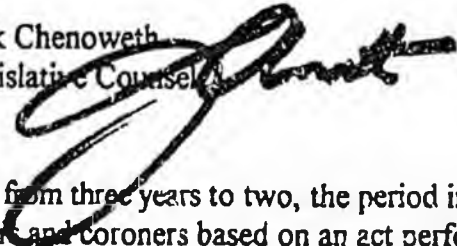
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 19, 1995

SUBJECT: House Bill 18: sectional analysis (Work Order No. 9-LS0100\A)

TO: Representative Gene Theriault
ATTN: Wilda Whittaker

FROM: Jack Chenoweth
Legislative Counsel 

The bill proposes to reduce, from three years to two, the period in which civil actions may be brought against peace officers and coroners based on an act performed in an official capacity or based on failure to perform an official duty.

Bill section 1 sets the statute of limitation for these civil actions at two years.

Bill section 2 repeals the current three-year statute of limitations for those actions.

Bill section 3 makes the two-year limitation applicable to actions commenced on or after the bill's effective date. Until the bill becomes law, as to civil actions in progress, the statute of limitations for these civil actions would remain three years under current law.

JBC:lmb
95-072.lmb

SECTIONAL ANALYSIS

of the improvement, a person may bring a negligence action to recover damages if the negligence action is brought within one year after the date on which the personal injury, death, or property damage occurs.

(c) This section does not apply

(1) to an action against a person who was in actual possession and lawful control of the improvement at the time the defect caused the personal injury, death, or property damage;

(2) if the personal injury, death, or property damage was caused intentionally or resulted from gross negligence, fraud, fraudulent concealment, fraudulent misrepresentation, or breach of an express warranty or guarantee; or

(3) if a longer period of time for bringing the action was provided under a contract.

(d) In this section, "substantial completion" means the date when construction is sufficiently completed to allow the owner or a person authorized by the owner to occupy the improvement or use the improvement in the manner for which it was intended. (§ 2 ch 61 SLA 1967; am § 3 ch 28 SLA 1994)

Cross references. — For legislative findings in connection with the 1994 amendment of this section, and for applicability of those amendments, see §§ 1 and 4, ch. 28, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1994 amendment, effective August 5, 1994, re-wrote this section.

NOTES TO DECISIONS

Constitutionality. — Section violates equal protection clause of Alaska Constitution because it bears no substantial relationship between exempting design professionals from liability, shifting liability for defective design and construction to

owners and material suppliers, and the goal of encouraging construction. *Turner Constr. Co. v. Scales*, 752 P.2d 467 (Alaska 1988) (decided prior to the 1994 amendment).

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to his residency in his initial application for an entry permit and in his requests for renewal of the permit, were governed by the six-year period set forth in AS 09.10.120 (actions by state or political subdivision), not the two-year statute of limitation found in AS 09.10.070(2) (forfeiture or penalty). Aug. 17, 1984, Op. Att'y Gen.

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- I. General Consideration.
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 - A. Generally.
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Purpose of statute of limitations. — The goal of the statute of limitations and the substituted service procedure is to provide speedy adjudication of claims. *Byrne v. Ogle*, 488 P.2d 716 (Alaska 1971).

The purpose of statutes of limitations is to encourage promptness in the prosecution of actions and thus avoid the injustice which may result from the prosecution of stale claims. *Byrne v. Ogle*, 488 P.2d 716 (Alaska 1971); *McCracken v. Davis*, 560 P.2d 771 (Alaska 1977); *Johnson v. City of Fairbanks*, 583 P.2d 181 (Alaska 1978).

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This section and AS 09.55.580 compared. — See *Haakanson v. Wakefield Seafoods, Inc.*, 600 P.2d 1087 (Alaska 1979).

Action for interference with contract rights. — Alleged acts of interference with contract rights were one-time occurrences, even though they might have continuing consequences; in determining the time from which the period of limitations is measured, such acts were not analogous to a continuing trespass or nuisance, where repeated and continued tortious acts are committed. *Blake v. Gilbert*, 702 P.2d 631 (Alaska 1985), overruled on other grounds, *Bibo v. Jeffrey's Restaurant*, 770 P.2d 290 (Alaska 1989).

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Actions for breach of a fiduciary duty arising out of professional service relationships which primarily involve economic injury, because the duty allegedly breached does in part arise from the contract, are governed by AS 09.10.050 and not this section. *Lee Houston & Assocs. v. Racine*, 806 P.2d 848 (Alaska 1991).

Action under federal Civil Rights Act. — Statute of limitations for a civil rights action by a state employee challenging his discharge is two years, since, if *Wilson v. Garcia*, 471 U.S. 261, 105 S. Ct. 1938, 85 L. Ed. 2d 254 (1985), is ap-