

SB

106

(7)
Date Referred to Committee: March 14, 1997

FURTHER REFERRALS:

Date of Committee Action: 4/25/97

The JUDICIARY Committee considered:

SB 106

SENATE BILL NO. 106

NOTARY PUBLIC BOND

"An Act relating to the bond required of a notary public."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) COURTS

| <u>SIGNING WITH RECOMMENDATIONS</u> | | DP | DNP | NR | AM |
|-------------------------------------|-----------|----|-----|----|----|
| <i>Brian Hunter</i> | PORTER | ✓ | | | |
| <i>John Porter</i> | GREEN | ✓ | | | |
| <i>William James</i> | JAMES | ✓ | | | |
| <i>William Bunde</i> | BUNDE | ✓ | | | |
| <i>Cheryl Berkowitz</i> | BERKOWITZ | ✓ | | | |
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CHAIR'S SIGNATURE *[Signature]*

FISCAL NOTE

No. 1

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. Bill Verson: SB 106
(S) Publish Date: 3/10/97

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Notary Public Bond BRU: Trial Courts
 Component: _____
 Sponsor: Judiciary by request
 Requestor: _____ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|-------|-------|-------|-------|-------|-------|
| 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 | | | | | | |
| CHANGE IN REVENUES () | | | | | | |

Fund Source (Thousands of Dollars)

| | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY 97) cost: None

Positions

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-Time | | | | | | |
| Part-Time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228
 Agency: Alaska Court System Date: 03/06/97
 Approved by: Stephanie J. Cole, Administrative Director *B7 CSC* Date: 03/06/97
 Agency: Alaska Court System

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

The lieutenant governor is charged by statute with accepting notary applications and appointing notaries. However, a law enacted shortly after statehood requires the clerk of the superior court to approve the \$1000 notary bond that is required to be submitted with the application. This means that applicants for a notary commission must hand carry or mail their application and bond to the nearest superior court location (only 15 statewide) before they can be sent to the lieutenant governor. The court clerk merely looks at the bond to make certain that it is filled out and signed; this is obviously not a function that court clerks have any special expertise at performing, and it results in delay for the applicant. This bill draft allows notary applications and bonds to be sent directly to the lieutenant governor, removing one layer of bureaucracy and a week or two of time from the notary appointment process.

At the present time, marriage licenses are issued by the Alaska Court System. After the ceremony, the licenses (which are then called certificates) are filed with the Bureau of Vital Statistics. The Bureau is part of the Department of Health & Social Services and is administered by the State Registrar who is authorized to appoint local registrars throughout the state.

Under this bill, the issuance of marriage licenses will become an executive branch rather than a judicial function. Judges will remain empowered to solemnize marriages and appoint marriage commissioners, but the issuance of licenses will be under the auspices of the Bureau rather than the judiciary. In practice, in those areas where the Bureau does not have a field office, court system employees will continue to act as local registrars. The difference will be that they will do so on behalf of the Bureau rather than as judicial employees.

Inasmuch as the Bureau of Vital Statistics creates the marriage license form and is the ultimate keeper of these and other vital human records, it is more efficient for the Bureau to manage the distribution and issuance of the licenses.

In locations where the Bureau has opened field offices, this bill will benefit the public by providing one location for applications, licensing, and recording. This bill will also increase the efficiency and streamline yet another function performed by government. The legislation has been drafted jointly by the court system and the Bureau of Vital Statistics.

2/3/97 draft

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE Jud COMMITTEE *by Request*

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the transfer of marriage licensing functions from the judiciary to the
2 executive branch of government."

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

4 * Section 1. As 18.50.310 is amended by adding a new section:

5 (i) marriage license applications shall be open for public inspection or examination
6 during normal business hours.

7 * Sec. 2. AS 18.50.330 is amended to read:

8 AS 18.50.330 FEES FOR SERVICES (a) The state registrar shall prescribe the fees to
9 be paid for certified copies of certificates, for issuing marriage licenses, for searches of the files
10 or records, for the filing of delayed or substitute certificates, for making amendments, for
11 supplying documentary evidence for these purposes, and for special services rendered by the
12 Bureau.

13 *(b) Repealed, § 28 ch 90 SLA 1991.]*

14 * Sec. 3. AS 22.15.100 is amended to read:

15 AS 22.15.100. FUNCTIONS AND POWERS OF DISTRICT JUDGE AND
16 MAGISTRATE. Each district judge and magistrate has the power

(1) to issue writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty, returnable before a judge of the superior court, and the same proceedings shall be had on the writ as if it had been granted by the superior court judge under the laws of the state in such cases;

(2) of a notary public;

(3) to [ISSUE MARRIAGE LICENSES AND TO] solemnize marriages;

(4) to issue warrants of arrest, summons, and search warrants according to manner and procedure prescribed by law and the supreme court;

* Sec. 4. AS 25.05.081 is amended to read:

AS. 25.05.081. MARRIAGE COMMISSIONERS. The presiding judge in each judicial district may, if the public interest requires, appoint one or more suitable persons as marriage commissioners. The presiding judge shall describe the marriage commissioner's area of jurisdiction in the order of appointment. A marriage commissioner may, within that jurisdiction, [ISSUE MARRIAGE LICENSES AND] solemnize marriages in the same manner as a district judge or magistrate and may exercise any power necessarily incident to the [DUTIES OF A MARRIAGE COMMISSIONER] solemnization of marriage. The clerk of court shall issue to the marriage commissioner a copy of the order of appointment and shall keep a copy of each order of appointment for one year.

* Sec. 5. AS 25.05.191 is repealed and reenacted to read:

AS 25.05.191. MARRIAGE LICENSE APPLICATION. A licensing officer shall make available the application for marriage license for completion by the parties who wish to be married. The officer shall keep the applications, a record of licenses issued, and all other information which the officer is required by law to obtain. These records shall be kept in the office of the licensing officer and shall be open for public inspection or examination during office hours.

* Sec. 6. AS 25.05.221 is amended to read:

AS 25.05.221 FORMS. (a) Forms for application, statements, consent of parents, affidavits, licenses, and other forms necessary to comply with this chapter shall be prescribed by the registrar and provided at the expense of the state. The registrar shall furnish all necessary forms to each licensing officer. [THE REGISTRAR SHALL ALSO PROVIDE THE OFFICER

1 WITH A SUITABLE BOOK IN WHICH TO KEEP THE MARRIAGE LICENSE DOCKET.]

2 (b) The registrar shall supervise the record work and required reporting of the licensing
3 officers. [IN OTHER RESPECTS THE LICENSING OFFICERS ARE UNDER THE
4 SUPERVISION OF THE SUPREME COURT].

5 * Sec. 7. AS 25.05.241 is amended to read:

6 AS 25.05.241 FEES. The registrar [SUPREME COURT] shall establish marriage
7 license fees and provide for accounting for and disposing of the fees.

8 * Sec. 8. AS 25.05.251 is amended to read:

9 AS 25.05.251. RELATIONSHIP TO VITAL STATISTICS ACT. Nothing in this
10 chapter repeals or abrogates any part of AS 18.50 (Vital Statistics Act). The records and
11 requirements leading up to and including the issuance of the marriage license are [NOT] included
12 in the definition of "vital statistics" under AS 18.50. The registrar shall supply the necessary
13 forms and instructions for [THE RECORD WORK OF] the licensing officers.

14 * Sec. 9. AS 25.05.321 is amended to read:

15 AS 25.05.321. CERTIFICATES. The person solemnizing the marriage shall, on the
16 forms provided by the bureau, complete two short-form certificates, and, after that person and
17 the two witnesses have signed them, give one to each of the parties to the marriage. A church
18 or congregation may design and furnish its own form for this purpose, containing as a minimum
19 the items contained in the form furnished by the bureau. The original marriage certificate [AND
20 ANY REQUIRED COPIES] shall be filed as required by AS 18.50 (Vital Statistics Act) and
21 regulations adopted under it. The person solemnizing the marriage shall complete the certificate
22 as required and submit it to the local registrar within seven days of the date the marriage
23 is solemnized [SHALL KEEP THE LICENSE].

24 * Sec. 10. AS 25.05.321 is amended to read:

25 Sec. 25.05.351. VIOLATION CONCERNING MARRIAGE LICENSE APPLICATION
26 [DOCKET]. A licensing officer who refuses or neglects to keep [ENTER UPON THE
27 MARRIAGE LICENSE DOCKET BEFORE THE LICENSE HAS BEEN ISSUED] a complete
28 record of each application and of each marriage license issued, or who fails to keep [THE]
29 marriage license applications [DOCKET] open for inspection or examination by the public
30 during office hours is guilty of a misdemeanor, and upon conviction is punishable by a fine of

1 not more than \$50. Each failure, neglect, or refusal constitutes a separate offense.

2 * Sec. 11. AS 25.05.381 is amended to read:

3 Sec. 25.05.381. DEFINITIONS. In this chapter

4 (1) "bureau" means the Bureau of Vital Statistics;

5 (2) "department" means the Department of Health and Social Services;

6 (3) "licensing officer" means the registrar or a local registrar [ANY DISTRICT JUDGE OR
7 MAGISTRATE OR A MARRIAGE COMMISSIONER APPOINTED UNDER AS 25.05.081];

8 (4) "registrar" means the state registrar of vital statistics;

9 (5) "local registrar" means any person appointed by the state registrar pursuant to AS
10 18.50.080.

11 * Sec. 12. AS 25.05.211 is repealed.

12

BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY: THE Jed COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the bond required of a notary public."

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

3 * Section 1. AS 44.50.120 is amended to read:

4 Sec. 44.50.120. Bond. Every person appointed a notary public after July 1,
5 1961 shall execute an official bond of \$1,000[, APPROVED BY THE CLERK OF
6 THE SUPERIOR COURT].

-1-

New Text Underlined [DELETED TEXT BRACKETED]

It has become common in recent years for "patriot" groups to record liens against the property of public officials with whom they disagree. The public official generally finds out about the lien when he attempts to obtain a loan or sell property, and discovers that he can't do so until the lien is released. This may take many months.

Until recently, this activity was most common in places like Montana and Idaho. Last year, however, a number of employees of the Municipality of Anchorage discovered that nonconsensual common law liens had been recorded against their property. It took the municipal attorney a substantial amount of time to release the liens.

The draft legislation attached makes it a misdemeanor to record a nonconsensual common law lien without the specific authorization of a court. It streamlines the judicial process for releasing a lien, and authorizes the attorney for a public official to record a "notice of invalid lien" pending the release of the lien by a court. Finally, it provides for civil remedies against persons who record or benefit from nonconsensual common law liens.

Filing false liens
updates the penalty for;
11.401.550 = first degree - C felony
11.402.500 = second " - A Misdem

BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY: THE Jud COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to nonconsensual common law liens."

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

3 * Section 1. AS 11.46.550 is amended to read:

4 Sec. 11.46.550. Offering a false instrument for recording in the first degree. (a)

5 A person commits the crime of offering a false instrument for recording in the first degree if,
6 knowing that a written instrument relating to or affecting property or directly affecting a
7 contractual relationship contains a false statement or false information, and with intent to
8 defraud, the person presents or offers it to a public office or public servant intending that it
9 be registered, filed, recorded or become part of the records of that public office or public
10 servant.

11 (b) Offering a false instrument for recording in the first degree is a class C felony.

12

1 * Sec. 2. AS 11.46 is amended by adding a new section to read:

2 **Sec. 11.46.560. Offering a False Instrument for Recording in the Second Degree.**

3 (a) A person commits the crime of offering a false instrument for recording in the second
4 degree if the person presents a lien to the recorder under AS 40.17 for registration, filing, or
5 recording, with reckless disregard that the lien

6 (1) is not provided for by a state or federal statute; and

7 (2) is not a lien imposed or authorized by a court recognized under state or
8 federal law.

9 (b) In a prosecution under (a) of this section it is an affirmative defense that the owner
10 of the property affected consented to the lien.

11 (c) In this section,

12 (1) "lien" means an encumbrance on property as security for the payment of
13 a debt;

14 (2) "recorder" means the commissioner of Department of Natural Resources
15 or the commissioner's designee.

16 (d) Offering a false instrument for recording in the second degree is a class A
17 misdemeanor.

18 * Sec. 3. AS 34.35 is amended by adding new sections to read:

19 **Article 14. Nonconsensual Common Law Liens.**

20 **Sec. 34.35.550. Nonconsensual Common Law Liens.** A nonconsensual common law
21 lien is invalid unless it is authorized by a court of competent jurisdiction recognized under
22 state or federal law. A person may not submit a nonconsensual common law lien to the

1 recorder under AS 40.17 for recording unless the lien is accompanied by a specific order from
2 such court authorizing the recording of the lien.

3 **Sec. 34.35.560. Lien Against Public Servant.** If a nonconsensual common law lien
4 is recorded against the property of a public servant based upon the performance or
5 nonperformance of the public servant's duties and is not accompanied by a specific order
6 from a court of competent jurisdiction recognized under state or federal law authorizing the
7 filing of such lien, a notice of invalid lien signed and submitted by the attorney representing
8 the public servant may be recorded. A copy of the notice of invalid lien shall be mailed by
9 the attorney to the person who filed the lien at the person's last known address.

10 **Sec. 34.35.550. Action for Release of Nonconsensual Common Law Lien.** (a) A
11 person whose real or personal property is subject to a recorded claim of nonconsensual
12 common law lien may file with a court of competent jurisdiction a petition requesting the court
13 to release the claim of lien. The petition shall state the grounds upon which relief is
14 requested, and shall be supported by the affidavit of the petitioner or the petitioner's attorney
15 setting forth a concise statement of the facts upon which the petition is based.

16 (b) The petition may request the court to order the lien claimant to appear at a hearing
17 within 20 days of service of petition and order, if facts alleging the need for an expedited
18 decision are averred. The order may be granted ex parte, and shall state that if the lien
19 claimant fails to appear at the time and place specified, the claim of nonconsensual common
20 law lien shall be released, and the lien claimant shall be ordered to pay the costs and actual
21 reasonable attorney's fees incurred by the petitioner.

1 (c) If the court determines that the claim of lien is invalid, the court shall issue an
2 order releasing the claim of lien and awarding costs and reasonable attorney's fees to the
3 petitioner. If the court determines that the claim of lien is valid, the court shall issue an order
4 so stating and shall award costs and actual reasonable attorney's fees to the lien claimant.

5 (d) A person who offers a claim of nonconsensual common law lien for recording
6 which is not accompanied by a specific order from a court of competent jurisdiction
7 recognized under state or federal law authorizing the recording of such lien shall be liable to
8 the owner of the property affected by the lien for actual and punitive damages, as well as costs
9 and actual reasonable attorney's fees. A grantee or other person purportedly benefited by a
10 recorded claim of nonconsensual common law lien who refuses to release such lien upon
11 request of the owner of the property affected by the lien shall be liable to the owner for actual
12 and punitive damages, as well as costs and actual reasonable attorney's fees.

13 **Sec. 34.35.570 Definitions.** In this article

14 (1) "nonconsensual common law lien" means a lien that

15 (A) is not provided for by a specific state or federal statute;

16 (B) does not depend on the consent of the owner of the property affected for
17 its existence; and

18 (C) is not an equitable lien imposed by a court recognized under state or
19 federal law;

20 (2) "public servant" means each of the following, whether compensated or not:

21 (A) an officer or employee of the state, a municipality or other political
22 subdivision of the state, or a governmental instrumentality of the state;

1 (B) a person who serves as a member of a board or commission created by
2 statute or by legislative, judicial, or administrative action by the state, a municipality
3 or other political subdivision of the state, or a governmental instrumentality;

4 (C) an officer or employee of the federal government as defined for purposes
5 of the federal tort claims act, 28 U.S.C. Sec. 2671;

6 (D) a person nominated, elected, appointed, employed, or designated to act in
7 a capacity defined in A - C of this paragraph, but who does not occupy the position;

8 (3) "record" means the acceptance of a document by the recorder that the recorder has
9 determined is recordable and that is presented for recording in the place of recording
10 designated for the recording district where affected property is located whether or not the
11 place of recording is in that district, and whether or not under applicable law the recorder is
12 directed to record the document;

13 (4) "recorder" means the commissioner of the Department of Natural Resources or
14 the commissioner's designee.

15 * Sec. 4. AS 34.35 is amended to read:

16 Article 15 [14] Miscellaneous Provisions.