

HB

539

Alaska State Legislature



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Representative Lesil McGuire

Chair, Judiciary Committee

SPONSOR STATEMENT

HB 539

"An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage."

HB 539 provides the same employment liability for university practicum programs that already exist in statute for high schools throughout the state.

University health and construction programs have had difficulty obtaining sites for unpaid practicum placement positions. This has been especially problematic with dental students, but can be expected to also be a problem with other professions, especially medical professions where the risk of serious injury is a potential. The legitimate concern of placement sites is that without statutory clarification students could be considered as employees of the site for:

- 1.) Negligence liability;
- 2.) Fair Labor Standards Act responsibility for minimum wage and overtime compensation; and

Though they are unpaid, practicum positions need the exemption from the Fair Labor Standards Act and Workers Compensation to ensure that experimental benefits, which accrue to the intern, cannot be equated to wages for purposes of compensation, liability and Workers comp.

Given the current legal structure, practicum placement sites have suggested that the university agree to indemnify the site for claims based on the acts of the students, or to agree that the students will be the employees of the university for liability purposes. From the university's perspective, neither of these suggestions is realistic. The university does not supervise the students. There is a substantial risk that indemnity could be interpreted to cover damages which are caused by the negligence of the site. The time required to negotiate around these potential liabilities is substantial. All of which is counterproductive to training Alaskans for good in-state jobs.

HB 539 proposes three cumulative statutory fixes designed to protect the sites that offer their services to UA interns on an unpaid basis. The threshold requirement that the students not be paid ensures that sites will not use practicum placement immunity to take advantage of employees who are also students.

From a liability perspective, this proposal is designed to leave each participant—the university, the student, and the site—responsible for its own fault. Thus, this proposal does not alter a party's responsibility for its own negligence, but it does limit vicarious liability of one party for the fault of another.

LEGAL SERVICES

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MEMORANDUM

April 16, 2004

SUBJECT: Student Practicum Immunity, CSHB 539(),
(Work Order No. 23-LS1837/D)

TO: Representative Lesil McGuire
Attn: Heath Halyard

FROM: Barbara R. Craver *BRC*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. This section adds a new section to the University of Alaska title, AS 14.40, to define a student practicum and to state that a person who provides the practical experience is not considered to be an employer of the student in a lawsuit based on the vicarious liability of the employer for an employee.

Section 2. This section adds a student who is participating in a student practicum to the list of exemptions to the Alaska Wage and Hour Act.

Section 3. This sets an effective date for this bill.

BRC:mdr
04-157.mdr

As enrollments rise across the UA system, more students are entering fields of study which require placements in the work world as a portion of their study. Two such courses of study are construction and health education.

For instance, enrollment in health education programs such as nursing, dental, medical laboratory, and radiology are growing rapidly. As a portion of their study, students must complete clinical practicum with providers in their offices, clinics and hospitals.

Health providers have been hosting UA students for many years, and with great success. To date there have not been any liability claims against providers for actions that students have taken while working with providers. UA has long-standing and successful partnerships with hospitals, doctors, dentists and many other health care professionals. These are formalized in agreements between the University and the provider which state that the providers are not responsible or liable for any malpractice claims, workers compensation claims, or fair labor standards actions of the student.

Why do we need legislation to address liability if we have not had problems and if we have provider agreements? As more students are enrolled in programs and as programs branch out to more communities, UA is finding that potential new providers are reluctant to participate in practicum programs due to liability concerns. UA can no longer rely on historic arrangements that were put in place when liability concerns of providers were not as critical as they are today.

This last year, for instance, UAF needed clinical sites for its dental assisting students. The dental assisting program is growing rapidly in Fairbanks and new dentists needed to be recruited into the practicum program. While dentists were very interested in taking students, many declined. A bare minimum of practicum were obtained so existing students could graduate. Without this legislation, it is unlikely the dental education programs across the state will continue and grow to meet community needs. Lack of clarity about liability is having a negative impact on the private sector's willingness to be involved in vital practicum programs.

Legislation is needed to state clearly what the University believes is existing policy. The legislation clarifies that students are not employees, and therefore not subject to negligence liability, fair labor standards for minimum wage and overtime compensation.

This legislation is intended to give providers and placement sites the clarity in statute to protect them when offering their facilities and services to University students. The threshold requirement that students not be paid ensures that the sites will not use practicum students immunity to take advantage of employees who are also students. From a liability perspective, this proposal is designed to leave each entity - the university, the student, and the site responsible for their own liability.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 539(L&C)
 (H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act excepting a person who allows a student RDU CIVIL
of the University of Alaska...from liability as an employer..." Component Torts and Workers' Compensation
 Sponsor House Judiciary Committee
 Requester House Labor and Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill allows an employer to allow a university student to gain practical work experience as part of the student's curriculum without incurring vicarious liability as an employer, and exempting the student from the Alaska Wage and Hour Act and workers' compensation coverage.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhetea, Director Phone 465-3673
 Division Administrative Services Date/Time 4/14/04 11:52 AM
 Approved by: Kathryn Daughhetea for Gregg D. Renkes, Attorney General Date 4/14/2004
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 539(L&C)
 (H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Univ. Student Practicum Liability/Wages RDU: Workers' Compensation
 Component: Workers' Compensation
 Sponsor: House Judiciary
 Requester: House L&C Component Number: 344

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: None
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Paul Lisankle, Director Phone 465-2790
 Division: Division of Workers' Compensation Date/Time 4/12/04 9:47 AM
 Approved by: Greg O'Claray, Commissioner Date 4/12/2004
 Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 539(L&C)
(H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: Univ. Student Practicum Liability/Wages RDU: Labor Standards & Safety
Sponsor: House Judiciary Component: Wage & Hour
Requester: House L&C Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: None
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Grey Mitchell, Director Phone 465-4855
Division: Labor Standards & Safety Date/Time 4/12/04 7:55 AM
Approved by: Greg O'Clary, Commissioner Date 4/12/2004
Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 539(L&C)
 (H) Publish Date: 4/19/04

Revision Date/Time (Note if correction):
 Title UNIV. STUDENT PRACTICUM LIABILITY/WAGES

Dept. Affected: University of Alaska
 RDU _____
 Component _____

Sponsor Judiciary
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill would have no fiscal impact on the University.

Prepared by: Pat Pitney Phone 907-474-7958
 Division: University of Alaska Date/Time 4/12/04 10:47 AM
 Approved by: Pat Pitney Date 4/12/2004
 Agency: University of Alaska