

SB

369

# ALASKA STATE SENATE



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## SENATE JUDICIARY COMMITTEE

Senator Ralph Seekins, Chairman  
District D

### Senate Bill 369 Sponsor Statement

"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.

Senate Bill 369 amends current law by exempting University of Alaska students participating in practicum programs from wage and hour provisions. It also provides certain protections relating to vicarious liability. The Bill's intent is to revitalize private sector involvement in a key element of the educational process.

The University offers certain fields of study which require students achieve experience and proficiency in a "real world" setting before a degree can be conferred. By and large, these involve medically oriented endeavors such as the dental profession. Over the years it has become increasingly difficult for the University to entice private sector placement sites to become involved in an internship program.

The legitimate concern expressed by placement sites is that, absent statutory clarification, practicum students could be considered as *employees* with respect to certain labor laws. But of particular distress is the exposure to vicarious liability. High costs associated with potential liability have effectively chilled the private sector's willingness to be involved in vital practicum programs.

Senate Bill 369 proposes a statutory fix designed to protect practicum sites interested in offering their facilities to University interns. 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 entity — the university, the student, and the site — responsible for its own liability.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSSB 369(L&C)  
 (S) Publish Date: 4/28/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: University of Alaska  
 Title UNIV. STUDENT PRACTICUM LIABIL RDU Systemwide  
 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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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: UA Statewide Budget and Institutional Research Date/Time 4/19/04 1:49 PM  
 Approved by: Wendy Redman Date 4/19/2004  
 Agency: University Relations

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSSB 369(L&C)  
(S) Publish Date: 4/28/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: Univ. Student Practicum Liability/Wages RDU: Labor Standards & Safety  
Sponsor: Senate JUD Component: Wage & Hour  
Requester: Senate 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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: Division of Labor Standards & Safety Date/Time 4/16/04 1:56 PM  
Approved by: Greg O'Clary, Commissioner Date 4/16/2004  
Agency: Department of Labor and Workforce Development

**The Legislature should exclude practicum placement situations from the laws that create vicarious liability for damages, liability for workers' compensation, and liability for minimum wages and overtime:**

University health and construction programs have had difficulty obtaining sites for unpaid practicum placement. 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 AIDS or serious injury is a potential. The legitimate concern of placement sites is that the students could arguably be considered as employees of the site for

- A. negligence liability,
- B. Fair Labor Standards Act responsibility for minimum wage and overtime compensation, and
- C. workers compensation responsibility.

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.

Below I propose three cumulative statutory fixes designed to protect the sites that offer their services to our practicum students on an unpaid basis. The threshold requirement that the students not be paid assures that sites will not use practicum placement immunity to take advantage of employees who are also students.

**A. Negligence liability**

On the liability side, I would add a new section:

AS 14.40.065 Students not employees. Public or private employers shall not be considered employers of, or be vicariously liable for, the acts or omissions of students participating in work and/or learning activities as part of an unpaid University of Alaska externship, practicum, or other course or program that combines academic instruction with work experience.

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.

**B. Fair Labor Standards Act responsibility for minimum wage and overtime compensation**

For minimum wage and overtime, I would add a subsection (17) to 23.10.055, to exclude unpaid practicum students of the University of Alaska from the operation of the employment security provisions of Alaska statutes. AS 23.10.055 provides:

**Exemptions.** The provisions of AS 23.10.050 - 23.10.150 do not apply to

(1) an individual employed in agriculture, which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

(2) an individual employed in the catching, trapping, cultivating or farming, netting or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

(3) an individual employed in the hand picking of shrimp;

(4) an individual employed in domestic service, including a baby-sitter, in or about a private home;

(5) an individual employed by the United States or by the state or political subdivision of the state, except as provided in AS 23.10.065(b), including prisoners not on furlough detained or confined in prison facilities;

(6) an individual engaged in the nonprofit activities of a nonprofit religious, charitable, cemetery, or educational organization or other nonprofit organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis and are related only to the organization's nonprofit activities; for purposes of this paragraph, "nonprofit activities" means activities for which the nonprofit organization does not incur a liability for unrelated business income tax under 26 U.S.C. 513, as amended;

(7) an employee engaged in the delivery of newspapers to the consumer;

(8) an individual employed solely as a watchman or caretaker of a plant or property that is not in productive use for a period of four months or more;

(9) an individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis;

(10) an individual employed in the search for placer or hard rock minerals;

(11) an individual under 18 years of age employed on a part-time basis not more than 30 hours in a week;

(12) employment by a nonprofit educational or child care facility to serve as a parent of children while the children are in residence at the facility if the employment requires residence at the facility and is compensated on a cash basis exclusive of room and board at an annual rate of not less than

(A) \$10,000 for an unmarried person; or

(B) \$15,000 for a married couple;

(13) an individual who drives a taxicab, is compensated for taxicab services exclusively by customers of the service, whose written contractual arrangements with owners of taxicab vehicles, taxicab permits, or radio dispatch services are based upon flat contractual rates and not based on a percentage share of the individual's receipts from customers, and whose written contract with owners of taxicab vehicles, taxicab permits, or radio dispatch services specifically provides that the contract places no restrictions on hours worked by the individual or on areas in which the individual may work except to comply with local ordinances;

(14) a person who holds a license under AS 08.54 and who is employed by a registered guide or master guide licensed under AS 08.54, for the first 60 work days in which the person is employed by the registered guide or master guide during a calendar year;

(15) an individual engaged in activities for a nonprofit religious, charitable, civic, cemetery, recreational, or educational organization where the employer-employee relationship does not, in fact, exist, and where services are rendered to the organization under a work activity requirement of AS 47.27 (Alaska temporary assistance program); or

(16) an individual who

(A) provides emergency medical services only on a voluntary basis;

(B) serves with a full-time fire department only on a voluntary basis; or

(C) provides ski patrol services on a voluntary basis.

(17) an individual who is engaged in work and/or learning activities as part of an unpaid University of Alaska externship, practicum, or other course or program that combines academic instruction with work experience with a public or private employer covered by this chapter.

Relative to minimum wage and overtime responsibility, this proposal

1. provides assurance—by applying only to placements under University of Alaska programs—that employers will not be able to take advantage of employees through sham on-the-job training schemes.
2. increases the availability of practicum placement opportunities by reducing the disincentive to sites to take on students who must get practical training in the field of endeavor of the site.
3. provides fair protection to the sites, in that students in practicum placements do not materially reduce costs to the sites—often, they increase the costs.

#### **C. Workers compensation responsibility.**

For workers' compensation, I would propose amending AS 23.30.230. Persons not covered, to include our practicum students:

AS 23.30.230

(a) The following persons are not covered by this chapter:

- (1) a part-time baby-sitter;
- (2) a cleaning person;
- (3) harvest help and similar part-time or transient help;
- (4) a person employed as a sports official on a contractual basis and who officiates only at sports events in which the players are not compensated; in this paragraph, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper, organizer, or other person who is a neutral participant in a sports event;
- (5) a person employed as an entertainer on a contractual basis;
- (6) a commercial fisherman, as defined in AS 16.05.940;

(7) an individual who drives a taxicab whose compensation and written contractual arrangement is as described in AS 23.10.055(13), unless the hours worked by the individual or the areas in which the individual may work are restricted except to comply with local ordinances;

(8) a participant in the Alaska temporary assistance program (AS 47.27) who is engaged in work activities required under AS 47.27.035 other than subsidized or unsubsidized work or on-the-job training; and

(9) a person employed as a player or coach by a professional hockey team if the person is covered under a health care insurance plan provided by the professional hockey team, the coverage is applicable to both work related and nonwork related injuries, and the coverage provides medical and related benefits as required under this chapter, except that coverage may not be limited to two years from the date of injury as described under AS 23.30.095(a); in this paragraph, "health care insurance" has the meaning given in AS 21.12.050.

(10) a participant who is engaged in work and/or learning activities as part of an unpaid University of Alaska externship, practicum, or other course or program that combines academic instruction with work experience with a public or private employer.

(b) The exclusion of certain persons under (a) of this section may not be construed to require inclusion of other persons as employees for purposes of compensation under this chapter.

(c) In this section,

(1) "on-the-job training" means training provided by an employer under a formal agreement with a department of the state, or an agent of a department, for which wages are paid by the employer to a participant in the Alaska temporary assistance program (AS 47.27) while the participant receives job training;

(2) "subsidized work" means employment, by an employer, of an Alaska temporary assistance program participant in a work placement for which the participant receives wages from the employer, subsidized by, and subject to an agreement between the employer and, a department of the state or an agent of a department; "subsidized work" does not include community work service, job sampling placements, or preplacement activities such as job readiness assessments, job searches, education, or vocational training;

(3) "unsubsidized work" means employment, by an employer, secured by an Alaska temporary assistance program participant, with or without the assistance of a department of the state or an agent of a department, for which the participant receives wages from the employer; "unsubsidized work" does not include self-employment.