

**HB**

**175**

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# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB175-LAW-L&SA-1-16-  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An Act relating to the creation of a civil legal services fund." RDU CIVIL  
Sponsor Representative McGuire Component Labor & State Affairs  
Requester House Finance Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill amends AS 37.05.146 to add a new subsection under c creating a civil legal services fund funded with punitive damages collected by the state under AS 09.17.020(j). The legislature may make appropriation from the fund to organizations that provide civil legal services to low-income individuals. Passage of this legislation will have no foreseeable impact on the Department of Law.

Prepared by: Kathryn Daughhelee, Director Phone 465-3673  
Division Administrative Services Division Date/Time 1/16/06 11:36 AM  
Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 1/16/2006  
Agency Department of Law

# FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 175  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue, Admin.  
Title Civil legal services fund RDU \_\_\_\_\_  
Component \_\_\_\_\_  
Sponsor Rep. McGuire  
Requester House Finance Committee Component No. \_\_\_\_\_

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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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation would not have a significant fiscal impact on any state agency.

Prepared by: Jack Kreinheder, Senior Analyst Phone 465-4676  
Division Office of Management and Budget Date/Time 1/13/06 3:22 PM  
Approved by: Cheryl Frasca, Director Date 1/13/2006  
Agency Office of Management and Budget

# Alaska State Legislature

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Juneau, Alaska 99801-1182  
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Chair, Judiciary Committee  
Vice-Chair, House Committee on  
Economic Development,  
Trade and Tourism

Member  
Oil & Gas Committee

## Representative Lesil McGuire

*House District 28*

### Sponsor Statement

**HB 175**

**"An Act relating to the creation of a civil legal services fund."**

CSHB 175(JUD) is designed to provide a financial mechanism whereby the legislature may make appropriations to organizations that provide civil legal services to low-income Alaskans. This would be accomplished through the creation of a civil legal services account funded by provisions required under AS 09.17.020(j). This section of Alaska law requires that 50% of all punitive damage awards be turned over to the state and deposited into the general fund.

The civil legal needs of economically disadvantaged Alaskans are generally no different than anyone else's. Family law, health, will and probate issues know no socio-economic boundaries. Yet when these needs arise, self-represented litigants quite often find themselves unable to effectively represent their interests. Furthermore, these situations often place the judge in the inappropriate position of offering legal advice or even mediating between parties.

Since 1966, the Alaska Legal Services Corporation (ALSC) has assisted low-income Alaskans with their civil legal needs. The ALSC is not a state agency but rather a non-profit entity. The ALSC has been funded by a combination of state, federal and private sources. However, over the last several years these funds have been on the decline.

The inherent logic of CSHB 175(JUD) lies in the fact that the funds utilized to assist the disadvantaged in civil legal matters flow out of the civil legal system itself. So, high-stakes civil cases provide the funding mechanism for smaller, but no less important cases impacting low-income Alaskans. Furthermore, necessary efficiencies are achieved throughout the entire process by working these cases through a non-profit entity such as ALSC.

CSHB 175(JUD) identifies an ongoing source of funding designed to aid the ALSC in its efforts to provide civil legal assistance to low-income Alaskans. This is accomplished through use of the state's 50% share of civil damage awards deposited to the general fund. It is important to note that CSHB 175(JUD) does not create a mandatory expenditure. Each legislature possesses an option to appropriate these monies to a civil legal services fund.

**Suzanne Cunningham**

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**From:** May Sue E MWR ACS Victim Advocacy [sue.may@us.army.mil]  
**Sent:** Wednesday, January 18, 2006 10:24 AM  
**To:** Rep. Kevin Meyer  
**Subject:** HB 175

As a Victim Advocate, I am all too familiar with women who are victims of domestic violence and sexual assault, who have limited means and have great difficulty accessing legal services. Many times the abuser has economic control over a victim, and loss of marital financial assets leaves victims with no resources to use for obtaining counsel. In many cases these women, who have already been traumatized, are faced with a daunting legal system that could help them if they had competent representation, or leave them worse off without. Free or low cost legal services are essential to them so that they are aware of their rights and are able to establish strong protective orders and have their needs met. Please put your weight behind passage of HB 175 this afternoon so that legal services may continue to be available to victims. Thank you.

Sue Ellen May, MSW  
Victim Advocate  
Army Community Services, Family Advocacy Program  
907-384-0504; DSN 317-384-0504  
FAX: 907-384-0551  
sue.may@us.army.mil

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March 3, 2005

Honorable Lesil McGuire, Chair  
House Judiciary Committee  
Alaska State Capitol, Room 118  
Juneau, Alaska 99801-1182

Dear Chair McGuire:

RE: HB 175 (McGuire) – Support

On behalf of the AARP members in Alaska, we encourage your colleagues on the House Judiciary Committee to support your bill to create a civil legal services fund.

HB 175 would provide a mechanism to provide some financial support for legal assistance programs that benefit low-income Alaskans. Many older Alaskans and their families need legal support for civil issues but, due to recent funding declines, such assistance is limited. HB 175 would not draw on General Funds but would be funded through punitive damage awards that are turned over to the state. Many states have worked creatively to continue low-income legal assistance programs. HB 175 is another example of good, positive creative public policy.

AARP recommends an "AYE" vote on HB 175.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Marie Darlin".

Marie Darlin, Coordinator  
AARP Capital City Task Force  
415 Willoughby Avenue, Apt. 506  
Juneau, AK 99801  
586-3637 (voice)  
463-3580 (fax)

CC: Representative Tom Anderson  
Representative John Coghill  
Representative Nancy Dahlstrom  
Representative Pete Kott

Representative Les Gara  
Representative Max Gruenberg

B-6 Friday, July 23, 2010

Anchorage Daily News



## Anchorage Daily News

Michael E. Sedore  
President and PublisherPatricia Dougherty  
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Richard E. Gray, Publisher, 1968-1982Kathleen Fleming, Editor and Publisher, 1971-1983  
Lawrence Fleming, Editor and Publisher, 1983-1973

## OPINION

## OUR VIEW

# Legal aid

## *Small veto is big mistake*

**G**ov. Frank Murkowski went easy with his veto pen this year, trimming only \$5 million in spending. Thanks to record-high oil prices, he didn't need huge cuts to balance the budget. And he didn't need to make huge cuts to right-size the government. Fifteen years of shrinking oil revenues have enforced sufficient austerity. Alaska's challenge is finding new, recurring revenue to sustain essential services without gambling on high oil prices or eating up rainy-day reserves.

Though Gov. Murkowski's reductions were small, one in particular was a big mistake. The \$62,500 he cut from legal aid to the poor is a serious hit to a shoestring operation that tries to fulfill the nation's promise of equal justice for all.

Alaska Legal Services handles civil cases, such as divorces, child custody, child support, evictions and domestic violence restraining orders. A 2002 study by the Justice Center at UAA found that the agency is "short-staffed, with stretched budgets" and relies heavily on recruiting volunteer lawyers, which eats up significant staff time.

Getting volunteers for the Bush is especially difficult. Private lawyers there are few, and it costs a lot to fly out volunteers from urban areas. In fact, Legal Services "is still almost the only source of civil legal assistance for the majority of the population" in the Bush, according to the Justice Center.

Gov. Murkowski is wrong when he says that funding legal aid to the poor "is not a basic responsibility of state government." Justice is not a commodity to be bought and sold in the free market. Funding legal aid for the poor levels the playing field and upholds the American ideal of equality under the law. While the governor's cut is small in total dollars, it has a big impact on a struggling agency doing an important job for vulnerable members of society.



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## My Turn: Veto of legal service funds hurts little guy

Sunday, July 25, 2004

By Janell Hafner

Last Tuesday, in what can only be deemed an attempt to further refine his message of lack of concern for the little guy, Gov. Frank Murkowski vetoed \$62,500 from the state budget earmarked for of the Alaska Legal Services Corp.

ALSC is a nonprofit with the singular purpose of reducing the legal consequences of poverty and providing legal assistance and equal access to the court system for individuals who would otherwise be unable to afford counsel.

The governor's position on his cuts to a program aimed at helping low-income Alaskans navigate the legal system was to state that the "state's support to this nonprofit organization has declined over the years." That sort of nonsensical reasoning is indicative of Murkowski's term in office; yet as an individual potentially aware of the legal inequality in our state I remain dismayed at his cavalier attitude.

Murkowski asserts that "providing a grant to an organization that provides legal assistance to individuals is not a basic responsibility of state government." I would argue otherwise. Alaska courts are bound to provide an impartial and accessible forum for all persons, and our government is charged with protecting and ensuring due process and equality for all Alaskans.

For a government official to provide lip service on working for a better Alaska while simultaneously engaging in practices that erode the ability of everyday Alaskans to educate themselves and properly navigate the laws of our state is not only dishonest, it's downright immoral. It is the sort of behavior we've grown accustomed to in politics of late but something that many of us, in moving here from the Lower 48, thought we might escape.

Alexander Hamilton once said that "justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit." The sum of \$62,500 might mean only a little "belt-tightening" to the D.C. expats now

circulating in Juneau and Anchorage, but it sure sends a potent message about the priority this administration places on the rights of working poor. It might well mean ALSC loses a branch office, or a couple of staff attorneys, or both, but it certainly means that deserving Alaskans who desperately need legal assistance will be met with a sign reading "closed due to budget cuts."

Low-income Alaskans aren't usually kicking out big campaign contributions, and so the groups that cater to their constitutional needs aren't generally first on the list to receive the administration's praise. If the governor's Web site is accurate, and he believes the opportunity and responsibility to make a better Alaska lies with all of us, perhaps he could set the example by leading. Perhaps he could "tighten another belt," or be a little more honest with himself and his staff about impact of legal services in peoples lives, even if it isn't popular and even if it isn't cost-effective. Our constitution might not always come cheap, but \$62,500 isn't much.

- Janell Hafner is a lawyer employed at Reges & Boone, LLC, in Juneau.



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## ALSC is important, needs its funding

Letter to the editor

Tuesday, July 27, 2004

Janell Hafner's "My Turn" article in Sunday's Empire, criticizing Gov. Frank Murkowski's veto of the legislature's appropriation to the Alaska Legal Services Corp., is excellent. Her analysis of its effect on "the little guy" is right on the mark. We have to hope that the governor's veto will be overridden.

ALSC has been helping low-income Alaskans since 1967. Organized under Alaska law, it is part of a nationwide program that provides free civil-law assistance - legal advice as well as representation in court. It helps assure that people without much money can have their rights and interests protected, whether in matters of domestic violence, housing, subsistence, improper governmental action, and a range of other issues. It helps protect basic human dignity and traditional American values. Clearly, this activity is to the benefit of all Alaskans.

Attorneys in Alaska - those in private as well as those in public practice - support one of the best pro bono publico programs in the country by donating their time and effort to cases for which the litigants cannot afford to pay. Alaska Legal Services, as an organization, along with a couple of other organizations, serves as a structural foundation for this kind of work, and it needs to pay its employees - the lawyers, the paralegals, the secretaries, and other staff - who have their own families to support.

The great cost-efficiency of the legal-aid program, represented by ALSC in Alaska, is astounding. The lawyers work for a fraction of the salary they could receive in the private sector, and typically they put in huge amounts of uncompensated overtime, simply because they are dedicated to the principle of equal access to the legal system. It's a program that provides the biggest "bang for the buck." Apparently, Murkowski believes in neither this principle nor this degree of efficiency.

Hafner is to be praised for her efforts, the ALSC staff is to be thanked for its continued work on behalf of low-income Alaskans, and the governor's veto of the ALSC appropriation needs to be overridden.

**Art Peterson**

**Vanessa Tondini**

---

**From:** Andy Harrington [aharrington@alasc-law.org]  
**Sent:** Thursday, March 03, 2005 11:51 AM  
**To:** Brian Hove; Vanessa Tondini  
**Cc:** Vance Sanders; Art Peterson  
**Subject:** SB 19 & HB 175

Dear Brian and Vanessa,

First, thanks again for your work on the civil legal services fund!

Vanessa, thanks also for yesterday's phone message about the hearing; I left a message for you this morning, but thought I'd email as well. I'm home today with a head cold, but feel free to call me at 479-3990. I'll be at the Fairbanks LIO tomorrow afternoon for the hearing - I can make a brief statement, and be available for any questions. I think Art Peterson will be there in person in Juneau.

There were two minor changes suggested by the Department of Law in conversations subsequent to the Senate Judiciary hearing in January.

The first was a phone call I had from former Dept of Law attorney (soon to be District Court Judge) Keith Levy, calling to ask if it would create any problems for ALSC if the reference to "maximum income levels for Alaska determined by the Legal Services Corporation" were changed to "maximum income levels for Alaska determined under 45 CFR Part 1611 or successor provisions." I told him I didn't think it would create any problems from my perspective. I think his thought behind that change was that it was better to cross-reference a duly enacted federal regulation.

The second arose during a discussion which ALSC President Vance Sanders and I had last week with Acting Attorney General Scott Nordstrand about the bill, at the suggestion of Chief of Staff Jim Clark. Mr. Nordstrand's only concern was that any costs of collection the State might incur with respect to the punitive damage assignments should come out of the proceeds before they were put into the civil legal services fund. He didn't think these had been major, but he thought that, although he wouldn't mind the money going into the civil legal services fund, he didn't want the bill to create a disincentive for the Dept of Law to collect the funds. We talked a bit about whether this should be done as a percentage of the proceeds, or whether the Department of Law would want to keep track of those costs and report them annually, and he indicated a preference for the latter approach, to avoid over- or under-estimating those costs. He said it would address his concern if there was language in the bill making reference to the costs of collection. We also talked about ALSC helping with a public information campaign to make sure the bar was informed about the requirement, and working with the court system to see if judgment forms could be amended to specifically reference the statute, as ways of minimizing the effort the Dept of Law would need to put into collection efforts.

Brian, as you suggested this morning, I'm attaching a draft that includes language addressing these Dept of Law concerns.

And, again, thanks for your help!

Sincerely,

Andy Harrington  
Alaska Legal Services Corporation  
1648 South Cushman, Suite 300  
Fairbanks AK 99701  
907-452-5181  
Fax 907-456-6359

3/3/2005

[Code of Federal Regulations]  
[Title 45, Volume 4, Parts 1200 to End]  
[Revised as of October 1, 1999]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 45CFR1611.3]

[Page 414]

TITLE 45--PUBLIC WELFARE

CHAPTER XVI--LEGAL SERVICES CORPORATION

PART 1611--ELIGIBILITY--Table of Contents

Sec. 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines. The maximum annual income levels are set forth in Appendix A.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

(1) Cost-of-living in the locality;

(2) The number of clients who can be served by the resources of the recipient;

(3) The population who would be eligible at and below alternative income levels; and

(4) The availability and cost of legal services provided by the private bar in the area.

(d) Unless authorized by Sec. 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance under the Act.

(e) This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damage.

(b) Except as provided under (c) of this section, the damages awarded by a court or a jury under (a) of this section for all claims, including a loss of consortium claim, arising out of a single injury or death may not exceed \$400,000 or the injured person's life expectancy in years multiplied by \$8,000, whichever is greater.

(c) In an action for personal injury, the damages awarded by a court or jury that are described under (b) of this section may not exceed \$1,000,000 or the person's life expectancy in years multiplied by \$25,000, whichever is greater, when the damages are awarded for severe permanent physical impairment or severe disfigurement.

(d) Multiple injuries sustained by one person as a result of a single incident shall be treated as a single injury for purposes of this section. (§ 1 ch 139 SLA 1986; am § 9 ch 26 SLA 1997)

**Cross references.** — For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

**Effect of amendments.** — The 1997 amendment, effective August 7, 1997, rewrote this section.

**Editor's notes.** — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

#### NOTES TO DECISIONS

**Constitutionality.** — Damages caps on noneconomic and punitive damages under AS 09.17.010 and 09.17.020 do not violate Alaska Const., art. I, § 16, or the Seventh Amendment to the United States Constitution. *Evans v. State*, 56 P.3d 1046 (Alaska 2002).

**Non-economic cap did not apply.** — Because permanently losing the normal use of a body system necessary for day-to-day life constitutes severe physical impairment, and the former section imposed a \$500,000 cap on non-economic damages unless the victim has suffered "severe physical impairment," the superior court properly removed this issue from the jury's consideration. *State v. Johnson*, 2 P.3d 56 (Alaska 2000).

**Multiple claims of injury.** — In a personal injury suit, a court properly instructed the jury that it could

assess damages for each instance of sexual contact by two different defendants as the legislature intended to allow multiple claims of injury based on multiple incidents. *Kodiak Island Borough v. Roe*, 63 P.3d 1009 (Alaska 2003).

**Non-economic cap instructions.** — In a personal injury suit, an erroneous damages cap instruction did not prejudice defendants where plaintiff did not exploit the error by arguing that the cap should guide the jury in considering appropriate awards, the jury permissibly found four separate incidents of assault, which meant that more than one cap applied, and the jury's non-economic award of \$1,000,000 was half the total amount allowable under the caps. *Kodiak Island Borough v. Roe*, 63 P.3d 1009 (Alaska 2003).

**Sec. 09.17.020. Punitive damages.** (a) In an action in which a claim of punitive damages is presented to the fact finder, the fact finder shall determine, concurrently with all other issues presented, whether punitive damages shall be allowed by using the standards set out in (b) of this section. If punitive damages are allowed, a separate proceeding under (c) of this section shall be conducted before the same fact finder to determine the amount of punitive damages to be awarded.

(b) The fact finder may make an award of punitive damages only if the plaintiff proves by clear and convincing evidence that the defendant's conduct

- (1) was outrageous, including acts done with malice or bad motives; or
- (2) evidenced reckless indifference to the interest of another person.

(c) At the separate proceeding to determine the amount of punitive damages to be awarded, the fact finder may consider

- (1) the likelihood at the time of the conduct that serious harm would arise from the defendant's conduct;
- (2) the degree of the defendant's awareness of the likelihood described in (1) of this subsection;
- (3) the amount of financial gain the defendant gained or expected to gain as a result of the defendant's conduct;
- (4) the duration of the conduct and any intentional concealment of the conduct;
- (5) the attitude and conduct of the defendant upon discovery of the conduct;

(6) the financial condition of the defendant; and

(7) the total deterrence of other damages and punishment imposed on the defendant as a result of the conduct, including compensatory and punitive damages awards to persons in situations similar to those of the plaintiff and the severity of the criminal penalties to which the defendant has been or may be subjected.

(d) At the conclusion of the separate proceeding under (c) of this section, the fact finder shall determine the amount of punitive damages to be awarded, and the court shall enter judgment for that amount.

(e) Unless that evidence is relevant to another issue in the case, discovery of evidence that is relevant to the amount of punitive damages to be determined under (c)(3) or (6) of this section may not be conducted until after the fact finder has determined that an award of punitive damages is allowed under (a) and (b) of this section. The court may issue orders as necessary, including directing the parties to have the information relevant to the amount of punitive damages to be determined under (c)(3) or (6) of this section available for production immediately at the close of the initial trial in order to minimize the delay between the initial trial and the separate proceeding to determine the amount of punitive damages.

(f) Except as provided in (g) and (h) of this section, an award of punitive damages may not exceed the greater of

(1) three times the amount of compensatory damages awarded to the plaintiff in the action; or

(2) the sum of \$500,000.

(g) Except as provided in (h) of this section, if the fact finder determines that the conduct proven under (b) of this section was motivated by financial gain and the adverse consequences of the conduct were actually known by the defendant or the person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greatest of

(1) four times the amount of compensatory damages awarded to the plaintiff in the action;

(2) four times the aggregate amount of financial gain that the defendant received as a result of the defendant's misconduct; or

(3) the sum of \$7,000,000.

(h) Notwithstanding any other provision of law, in an action against an employer to recover damages for an unlawful employment practice prohibited by AS 18.80.220, the amount of punitive damages awarded by the court or jury may not exceed

(1) \$200,000 if the employer has less than 100 employees in this state;

(2) \$300,000 if the employer has 100 or more but less than 200 employees in this state;

(3) \$400,000 if the employer has 200 or more but less than 500 employees in this state;

and

(4) \$500,000 if the employer has 500 or more employees in this state.

(i) Subsection (h) of this section may not be construed to allow an award of punitive damages against the state or a person immune under another provision of law. In (h) of this section, "employees" means persons employed in each of 20 or more calendar weeks in the current or preceding calendar year.

(j) If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover punitive damages.

(k) In a civil action in which an employer is determined to be vicariously liable for the act or omission of an employee, punitive damages may not be awarded against the employer under principles of vicarious liability unless (1) the employer or the employer's managerial agent (A) authorized the act or omission and the manner in which the act was performed or omission occurred; or (B) ratified or approved the act or omission after the act or omission occurred; or (2) the employee (A) was unfit to perform the act or avoid the

omission and the employer or the employer's managerial agent acted recklessly in employing or retaining the employee; or (B) was employed in a managerial capacity and was acting within the scope of employment. In this subsection, "managerial agent" means a management level employee with the stature and authority to exercise control, discretion, and independent judgment over a certain area of the employer's business and with some power to set policy for the employer. (§ 1 ch 139 SLA 1986; am § 10 ch 26 SLA 1997; am § 1 ch 85 SLA 2003)

**Cross references.** — For prohibition on recovery of punitive damages against the state, see AS 09.50.280. For provisions relating to the effect of 1997 addition of subsections (e) and (j) on Rules 26 and 58, Alaska Rules of Civil Procedure, respectively, see §§ 48 and 49, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

**Effect of amendments.** — The 1997 amendment, effective August 7, 1997, rewrote this section.

The 2003 amendment, effective September 11, 2003, added subsection (k).

**Editor's notes.** — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

Section 2, ch. 85, SLA 2003 provides that subsection (k) applies "to a cause of action accruing on or after September 11, 2003."

#### NOTES TO DECISIONS

**Constitutionality.** — Damages caps on noneconomic and punitive damages under AS 09.17.010 and 09.17.020 do not violate Alaska Const., art. I, § 16, or the Seventh Amendment to the United States Constitution. *Evans v. State*, 56 P.3d 1046 (Alaska 2002).

AS 09.17.020(j), which requires successful plaintiffs who receive any type of punitive damages to pay half of that award to the state treasury, does not effect an unconstitutional taking without just compensation under the United States and Alaska Constitutions. *Evans v. State*, 56 P.3d 1046 (Alaska 2002).

Worker's claim for punitive damages is protected property only insofar as permitted by subsection (j) of this section; the allocation of 50 percent of the punitive damages award to the State was not an unconstitutional taking. *Anderson v. State ex rel. Cent. Bering Sea Fishermen's Ass'n*, 78 P.3d 710 (Alaska 2003).

**Applicability of section.** — This section applies to all cases accruing after its effective date, August 7, 1997, and cannot be applied to cases accruing before that date, because of express legislative intent to the contrary. *Norcon, Inc. v. Kotowski*, 971 P.2d 158 (Alaska 1999).

**Pleading requirements.** — In an injured child's covenant settlement agreement case, a court erred by awarding punitive damages where the conduct alleged in the counterclaim was not necessarily outrageous or recklessly indifferent, nor was it so characterized, the allegation that the insurer violated the implied covenant of good faith and fair dealing was

not sufficient to support a claim for punitive damages, and the body of the complaint sought only a judgment for the full amount of the liability the original insureds incurred as a result of the child's injuries, with no claim for personal wrongs to the original insureds for their treatment by the insurer. *Great Divide Ins. Co. v. Carpenter*, 79 P.3d 599 (Alaska 2003).

**Burden of proof.** — In an instruction on punitive damages, failure to instruct the jury on the clear and convincing evidence burden of proof was plain error. *Alaska Marine Pilots v. Hendsch*, 950 P.2d 98 (Alaska 1997).

**Clear and convincing evidence.** — While peaceful picketing is a protected form of speech, threats of bodily harm, personal assaults, and property destruction on a picket line are not constitutionally protected, and such actions provided ample evidence of conduct which justified a punitive damage award under the clear and convincing standard. *International Bhd. of Elec. Workers, Local 1547 v. Alaska Util. Constr., Inc.*, 976 P.2d 852 (Alaska 1999).

**Quoted in** *State Farm Mut. Auto. Ins. Co. v. Weiford*, 831 P.2d 1264 (Alaska 1992); *Ace v. Aetna Life Ins. Co.*, 139 F.3d 1241 (9th Cir. 1998), cert. denied, 525 U.S. 930, 119 S. Ct. 338, 142 L. Ed. 2d 279 (1998).

**Cited in** *Johnson & Higgins of Alaska, Inc. v. Blomfield*, 907 P.2d 1371 (Alaska 1995); *MAPCO Express, Inc. v. Faulk*, 24 P.3d 531 (Alaska 2001); *Fleegel v. Estate of Boyles*, 61 P.3d 1267 (Alaska 2002).

**Collateral references.** — Availability and scope of punitive damages under state employment discrimination law. 81 ALR5th 367.

Validity of state statutory cap on punitive damages. 103 ALR5th 379.

Liability of cigarette manufacturers for punitive damages. 108 ALR5th 343.

Exemplary or punitive damages for pharmacist's wrongful conduct in preparing or dispensing medical prescription — Cases not under Consumer Product Safety Act (15 U.S.C.A. § 2072). 109 ALR5th 397.

*See* 09.17.030. [Renumbered as AS 09.65.210.]

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\*\*\* THIS SECTION IS CURRENT THROUGH THE MARCH 10, 2005 ISSUE OF \*\*\*  
\*\*\* THE FEDERAL REGISTER \*\*\*

TITLE 45 -- PUBLIC WELFARE  
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE  
CHAPTER XVI -- LEGAL SERVICES CORPORATION  
PART 1611 -- ELIGIBILITY

*45 CFR 1611.3*

§ 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines. The maximum annual income levels are set forth in Appendix A.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

- (1) Cost-of-living in the locality;
- (2) The number of clients who can be served by the resources of the recipient;
- (3) The population who would be eligible at and below alternative income levels; and
- (4) The availability and cost of legal services provided by the private bar in the area.

(d) Unless authorized by § 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance under the Act.

(e) This part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

**HISTORY:** *48 FR 54205*, Nov. 30, 1983.

**AUTHORITY:** Secs. 1006(b)(1), 1007(a)(1), 1007(a)(2) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996c(b)(1), 2996f(a)(1), 299f(a)(2)).

218 words

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45 CFR PART 1611 APPENDIX A

Appendix A of Part 1611 -- Legal Services Corporation 2005 Poverty Guidelines

Legal Services Corporation 2005 Poverty Guidelines fn\*

Size of family unit	48 Contiguous States and the District of Columbia fni	Alaska fnii	Hawaii fniii
1	\$ 11,963	\$ 14,938	\$ 13,763
2	16,038	20,038	18,450
3	20,113	25,138	23,138
4	24,188	30,238	27,825
5	28,263	35,338	32,513
6	32,338	40,438	37,200
7	36,413	45,538	41,886
8	40,488	50,638	46,575

fn\* The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

fni For family units with more than eight members, add \$ 4,075 for each additional member in a family.

fnii For family units with more than eight members, add \$ 5,100 for each additional member in a family.

fniii For family units with more than eight members, add \$ 4,688 for each additional member in a family.

HISTORY: [58 FR 12336, Mar. 4, 1993; 59 FR 12550, Mar. 17, 1994; 60 FR 10809, Feb. 28, 1995; 61 FR 12041, Mar. 25, 1996; 62 FR 12751, 12752, Mar. 18, 1997; 63 FR 11376, Mar. 9, 1998; 64 FR 17108, Apr. 8, 1999; 64 FR 18372, Apr. 14, 1999; 65 FR 10717, 10718, Feb. 29, 2000; 66 FR 16013, Mar. 22, 2001; 66 FR 17082, Mar. 29, 2001; 67 FR 8484, Feb. 25, 2002; 68 FR 7718, Feb. 18, 2003; 68 FR 8856, Feb. 26, 2003; 69 FR 8114, 8115, Feb. 23, 2004; 70 FR 10327, Mar. 3, 2005]

AUTHORITY: Secs. 1006(b)(1), 1007(a)(1), Legal Services Corporation Act of 1974; (42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2)).

NOTES: [EFFECTIVE DATE NOTE: 70 FR 10327, Mar. 3, 2005, revised this section, effective Mar. 3, 2005.]



January 18, 2006

The Honorable Mike Chenault, Co-Chair  
House Finance Committee  
Alaska State Capitol, Room 505  
Juneau, AK 99801-1182

The Honorable Kevin Meyer, Co-Chair  
House Finance Committee  
Alaska State Capitol, Room 515  
Juneau, AK 99801-1182

RE: HB 175 (McGuire)—Support

Dear Co-Chairs Chenault and Meyer:

On behalf of the Alaska members of AARP, we encourage you and your colleagues on the House Finance Committee to support HB 175, authored by Representative Lesil McGuire and co-sponsored by Representatives Gara and Gruenberg.

HB 175 would provide a mechanism to provide some financial support for legal assistance programs that benefit low-income Alaskans. Many older Alaskans and their families need legal support for civil issues but, due to recent funding declines, such assistance is limited. HB 175 would not draw on General Funds but would be funded through punitive damage awards that are turned over to the state. Many states have worked creatively to continue low-income legal assistance programs. HB 175 is another example of good, positive creative public policy.

AARP recommends an "AYE" vote on HB 175.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

*Marie Darlin*

Marie Darlin, Coordinator  
AARP Capital City Task Force  
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CC: Vice-Chair Bill Stoltze  
Representative Lesil McGuire  
Representative Mike Kelly  
Representative Richard Foster  
Representative Bruce Weybrauch  
Representative Mike Hawker  
Representative Jim Holm  
Representative Beth Kerttula  
Representative Reggie Joule  
Representative Carl Moses