

ALASKA LEGISLATURE

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HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

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# AlaskaUSA

Federal Credit Union

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February 17, 1995

Representative Brian Porter  
State House of Representatives  
State Capitol  
Juneau, Alaska 99801

Dear Representative Porter:

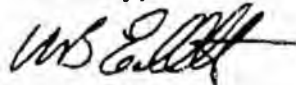
On behalf of Alaska USA Federal Credit Union, I would like to express support for H.B.72, the Uniform Fraudulent Transfer of Debt Act.

There are two primary reasons for this support. First, it is important to keep updated the financial management tools available to both consumers and lenders. Our economy is dynamic and undergoes dramatic swings. Only by keeping pace can lending institutions maintain a responsive and appropriate availability of credit to fuel our economy and serve Alaska's consumers. H.B. 72 serves to accomplish this. It brings Alaska into parity with a growing number of states who recognize that the rules of the early half of this century no longer assure a proper balance between debtor and lender.

Second, H.B. 72 recognizes that the costs associated with bankruptcy are not merely to the lender, but to all consumers who desire access to credit. As a financial cooperative, Alaska USA is particularly sensitive to effects of one members' behavior on other members' ability to access credit. For example, during the period of 1990 to 1994, 3,031 accounts were the subject of bankruptcy proceedings. This resulted in a total loss to the credit union of \$7,578,991; or over \$42 per member. The credit union's staff who deal daily with these issues estimate 30% of the losses were the result of debtors abusing bankruptcy protection. Alaska cannot afford a system that penalizes the conscientious and rewards the abuser. H.B. 72 provides a reasonable approach to assuring that this does not happen.

Thank you for the opportunity to write in support of this legislation and for your initiative in introducing it to the Legislature again this session.

Sincerely,



William B. Eckhardt  
President

Law Offices  
 DAVIS & GOERIG  
 405 West 36th Street, Suite 200  
 Anchorage, Alaska 99503  
 (907) 561-4420

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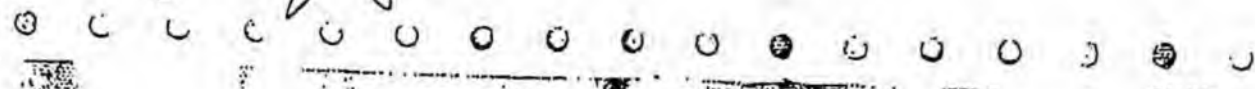
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THE UNIFORM FRAUDULENT TRANSFER ACT

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A Few Facts About

THE UNIFORM FRAUDULENT TRANSFER ACT

PURPOSE: Providing a creditor with the capacity to procure assets a debtor has transferred to another person to keep them from being used to satisfy the debt.

ORIGIN: The Uniform Fraudulent Transfer Act, completed by the Uniform Law Commissioners in 1984, revises the Uniform Fraudulent Conveyance Act of 1918.

ENDORSED BY: American Bar Association

STATE	Alabama	Maine	Ohio
ADOPTIONS:	Arizona	Minnesota	Oklahoma
	Arkansas	Missouri	Oregon
	California	Montana	Rhode Island
	Colorado	Nebraska	South Dakota
	Connecticut	Nevada	Texas
	Florida	New Hampshire	Utah
	Hawaii	New Jersey	Washington
	Idaho	New Mexico	West Virginia
	Illinois	North Dakota	Wisconsin

1993  
INTRODUCTIONS: Virginia

For any further information regarding the Uniform Fraudulent Transfer Act, please contact John McCabe or Katie Robinson at 312-915-0195.

(4/15/93)

## UNIFORM FRAUDULENT TRANSFER ACT

When we say a person "owns" something, we tend to think in all or nothing terms. Whatever a person owns is at that person's disposal - to sell, to give, to abandon, or to pledge as security for a debt. But relationships between people over property are never so simple or so unqualified. A creditor-debtor relationship, for example, may materially change an owner's power over the property owned. A mortgage, clearly, restricts what an owner may do with mortgaged real estate. The creditor has legally protected rights in the real estate securing the debt. Under Article 9 of the Uniform Commercial Code, secured creditors, also, obtain rights in collateral that are protected.

A less clear category, but important to the maintenance of credit, is that of the unsecured creditor-debtor relationship in which the debtor manipulates property to defeat the creditor's interest solely for that purpose and for no other. Perhaps the debtor foresees insolvency and tries to conceal property that a creditor might use to satisfy the debt. Perhaps the debtor never intends to satisfy the debt and manipulates property to make himself judgment-proof. Should the creditor be without recourse, and should the debtor's rights to deal with property be unrestricted in these kinds of cases?

The National Conference of Commissioners on Uniform State Laws (ULC) proposed the Uniform Fraudulent Conveyance Act (UFCA) in 1918 as an answer to that question. It was created to supersede the Statute of 13 Elizabeth which was enacted in some form by many states, and which introduced the concept of the fraudulent conveyance into the law of every American jurisdiction, with or without enactment. The UFCA was adopted in twenty-six states, and its provisions were incorporated into the Federal Bankruptcy Act.

In 1984, this 1918 Act was revised and renamed the Uniform Fraudulent Transfer Act (UFTA). The intent of the UFTA is the same as the UFCA - it classifies a category of transfers as fraudulent to creditors and provides creditors with a remedy for such transfers. The fundamental remedy is the recovery of the property for the creditor. Why a new Act at this time? The terminology of the UFCA had become considerably archaic, and needed to be modernized. The Bankruptcy Reform Act of 1978 changed the federal law on fraudulent transfers in significant ways, and made it imperative to reconsider state law. And creditor-debtor relationships have changed and become more complicated, so that the whole issue of fraudulent transfers needed rethinking. In 1984, the UFTA is ready to promote the modernization of this subject area of law.

UFTA creates a right of action for any creditor against any debtor and any other person who has received property from the debtor in a fraudulent transfer. A fraudulent transfer occurs when a debtor intends to hinder, delay, or defraud a creditor, or transfers property under certain conditions to another person without receiving reasonably equivalent value in return. But not all such transfers are fraudulent to every creditor.

UFTA distinguishes between present and future creditors, and specifies the kinds of transfers that are fraudulent to each of the two categories of creditors. Both present and future creditors may recover property when there is a transfer with intent to defraud. Both may recover when a transfer is made without receiving reasonably equivalent value when the result is to make the debtor's assets unreasonably small in relation to the business or transaction in which the debtor is engaged or about to be engaged. Also, present and future creditors can both recover when a debtor transfers property without receiving reasonably equivalent value when intending to incur debts beyond the ability to pay.

Present creditors, however, can recover property when it is transferred by a debtor to another person without receiving reasonably equivalent value if the debtor is insolvent or becomes insolvent as a result of the transfer. A transfer to an "insider" without receiving reasonably equivalent value when the debtor is insolvent, is also fraudulent to present creditors. The term "insider" is defined, and is someone with a special relationship to the debtor. Examples are relatives or business partners (when the debtor is a partner). To be liable, an "insider" must have reasonable cause to believe that the debtor is insolvent.

The fundamental relief for a creditor when there is a fraudulent transfer is recovery of the property from the person to whom it has been transferred. UFTA allows "avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim...." Whatever is necessary to obtain the property is provided for, including attachment, injunctive relief, appointment of a receiver, or "any other relief the circumstances may require." If the creditor has reduced the claim to a judgment, the court may levy execution against the recovered assets. This means that the property can be sold to satisfy the amount of the judgment.

Much of the UFTA resembles the UFCA, its predecessor. What, then, are some of the differences? (A more detailed comparison is available from the ULC.) To begin with, the term "transfer" taken from the Federal Bankruptcy Act replaces the term "conveyance." UFCA uses the term "fair consideration" instead of "reasonably equivalent value." "Reasonably equivalent value" does not include the element of good faith as "fair consideration" does, and is more sharply defined than "fair consideration" is in the UFCA. UFTA overcomes the problem raised in the case of

Durrett v. Washington National Insurance Co., 621 F.2d 201 (5th Cir. 1980), a case that jeopardized mortgage foreclosure sales. Under UFTA, a properly conducted foreclosure sale is not a fraudulent transfer, notwithstanding the fact that it does not recover an amount somewhat near the actual market value of the property. The concept of the "insider" is new in the UFTA. UFTA provides for defenses of transferees and for a statute of limitations. Both issues are not addressed in the UFCA.

The Uniform Fraudulent Transfer Act continues the concept of a civil action for transfers fraudulent to creditors first created in the Statute of 13 Elizabeth, and comprehensively continued in the Uniform Fraudulent Conveyance Act. The new Act takes into account the considerable development in both law and practice in creditor-debtor relationships since 1918. The ULC hopes that it will be adopted uniformly in all states.

WHY STATES SHOULD ADOPT  
THE UNIFORM FRAUDULENT TRANSFER ACT

Are we only as good as the extent to which we honor our obligations? Many would argue for this proposition. And when our obligations are financial, the argument is reinforced by law. It is to this proposition that the Uniform Fraudulent Transfer Act is addressed. If we have acquired debt we should not be able to manipulate our assets so that creditors will be deprived of their value when we default on our debt. We should not be able to plan an artificial insolvency by transferring assets to others against the interests of our creditors.

The Uniform Fraudulent Transfer Act works as a deterrent, preventing such transgressions against obligations incurred, and provides creditors with a remedy when debtors transfer or hide assets that would otherwise be available to satisfy legitimate debts.

While the issue of obligation is preeminent, the economic issue is no less important. Credit is essential to the economic life of this country. Consumer credit, commercial credit, secured and unsecured credit enter into our lives, everyday. Credit remains available so long as those who extend it are given certain assurances about their rights at default. The Uniform Fraudulent Transfer Act provides assurances to creditors that help make credit available to all of us.

This economic issue leads directly to the issue of uniformity. The availability and the health of the credit mechanism require national standards. The principles of the old Uniform Fraudulent Conveyance Act became applicable to every person in every state because it was incorporated into the Federal Bankruptcy Act. Much of what is in the newer Fraudulent Transfer Act duplicates the Bankruptcy Reform Act of 1978. Uniformity has become not only a question of law between states, but also between state and federal law. Without uniformity, credit becomes less available, and the credit mechanism is less reliable. To avoid confusion and expense, the same rules must apply throughout the country. Public expectations are the same in every state and jurisdiction.

Associated with the issue of uniformity is the issue of modernity. The original Fraudulent Conveyance Act, which the Fraudulent Transfer Act replaces, was promulgated in 1918. Changes in federal bankruptcy law, in creditor-debtor relations in general, even in the rules governing the conduct of lawyers, make it clear that a modernization is overdue. The Uniform Fraudulent Transfers Act answers that immediate need.

# THE UNIFORM FRAUDULENT TRANSFER ACT

by

FRED H. MILLER

Professor of Law at the University of Oklahoma

## Section by Section Analysis of the Act

Section 1 contains definitions. Section 2 also contains the definition of "insolvent," and Section 3 the definition of "value." The definition of "asset" in Section 2(2), together with the latter definitions of "insolvent" and "value," in a general sense formulate the core concept of the act: the transfer of an asset (or incurring an obligation) for inadequate value by an insolvent debtor or one rendered insolvent by the transaction is a fraudulent transfer. Subsection 3(B) is worth particular note in this respect because it overrules for state law the controversial holding in Durrett v. Washington Nat. Ins. Co., 621 F.2d 201 (5th Cir. 1980), that a regularly conducted mortgage foreclosure that produces a price "too low" may be avoided as a fraudulent conveyance. By clouding property titles the Durrett rule virtually is a self-fulfilling prophecy.

Section 4 Subsection a(1) states the basic rule of the act: a transfer made or an obligation incurred with actual intent to hinder, delay or defraud creditors is actionable by creditors. How does a creditor prove the debtor's actual intent? Subsection b sets out "badges of fraud" if several of these appear it is strong evidence. Subsection a(2), on the other hand, sets out two cases where the law decrees the intent exists if the facts are as stated.

Section 5 states two further cases where the law decrees the transaction is fraudulent, but only as to present creditors and not also as to creditors arising later as is the case for transfers covered by Section 5.

Section 6 defines when a transaction occurs. It occurs when it can prejudice the rights of third parties, and not when it actually occurs between the parties to it. For example, a creditor does not need this act to set aside a fraudulent security interest that is never filed; the creditor can defeat that interest under the Uniform Commercial Code. Subsection 5 of this Section also states the time when an obligation is incurred.

Section 7 describes the remedies a creditor has to attack and avoid a fraudulent transfer or obligation.

Section 8, however, protects a good faith purchaser for reasonably equivalent value who did not share in the debtor's fraudulent purpose and subsequent good faith transferees for value who are sufficiently remote. Subsection (d) also gives a good faith transferee or obligee against whom the transaction can be avoided protection for any value given.

Subsection (e) is important as protecting lease terminations and security interest enforcement against "Durrett type" attacks, and Subsection (f) allows "workouts" and the like to occur.

Section 9 prescribes statutes of limitation specifically for the act.

Section 10 states the act is supplemented by other law and Section 11 specifies that in interpreting the act, precedent from other states that have enacted it should be used to maintain uniformity.

Section 12 provides the title.

Section 13 repeals the current statutes on the subject, including any old predecessor versions of this act.



## NOTES TO DECISIONS

The safe and proper rule of construction of mechanic's lien statutes is that, while the remedial portions of the statutes should be liberally construed, with a view to avoid defeating the purpose of the statute, yet those parts upon which the right to the existence of a lien depends, being in derogation of the common law, should be strictly construed. *Sullens & Hoss, Inc. v. Favour*, 14 Alaska 492, 117 F. Supp. 535 (D. Alaska 1954).

Applied in *Fjeldahl v. Homer Co-Op. Ass'n*, 11 Alaska 112 (1948); *Stephenson v. Ketchikan Spruce Mills, Inc.*, 412 P.2d 496 (Alaska 1966).

Quoted in *Mitchell v. Beaver Dredging Co.*, 8 Alaska 566 (1935); *Gleason v. Diamond*, 9 Alaska 621 (1939); *Clay v. Sanddal*, 369 P.2d 890 (Alaska 1962); *Moore v. Alaska Metal Bldg., Inc.*, 448 P.2d 681 (Alaska 1968).

## Chapter 40. Fraudulent Transfers, Revocations, and Trusts.

## Section

- 10. Invalidity generally
- 20. Invalidity as against purchasers
- 30. Purchasers with notice
- 40. Invalidating effect for revocation, determination or alteration
- 50. Conveyance in exercise of power to revoke and reconvey
- 60. Conveyance before accrual of right to execute power of revocation
- 70. Requirement of writing for grant or assignment of trust

## Section

- 80. Invalidity against heirs, successors, representatives, or assigns
- 90. Fraudulent intent question of fact
- 100. When title of purchaser for value not affected
- 110. Invalidity of transfers of personal property in trust
- 120. "Land" and "estate and interest in land" defined
- 130. "Conveyance" defined

**Sec. 34.40.010. Invalidity generally.** A conveyance or assignment, in writing or otherwise, of an estate or interest in land, or in goods, or things in action, or of rents or profits issuing from them or a charge upon land, goods, or things in action, or upon the rents or profits from them, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, or a bond or other evidence of debt given, action commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed, or defrauded is void. (§ 22-4-1 ACLA 1949)

## NOTES TO DECISIONS

**Common law.** — Under the common law, a transfer by an insolvent debtor to pay or to secure an antecedent debt has never been treated as a transfer to hinder, delay, or defraud creditors, although it is self-evident that other creditors are necessarily hindered and delayed by such a transfer. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

At common law it was not illegal for a debtor to pay one of his creditors in full,

even though he did not have enough left to pay his other creditors in full or even in part. Such a payment was not, and is not now, a fraudulent conveyance. The payment is merely the performance of an existing legal duty. Nor is it illegal for the debtor to transfer property as security for an existing debt; the value of the property in excess of the debt remains available to other creditors. The conveyance of property to a creditor in satisfaction of an ex-

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ating debt is a fraudulent conveyance only in case its value is in excess of the debt and the purpose of the debtor is to keep that excess out of the hands of his other creditors. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

This section provides Alaska's basic prohibition against transactions in fraud of creditors. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

And AS 34.40.090 complements this basic prohibition by providing that the existence of fraudulent intent is a question of fact. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

The court never presumes fraud. *Matheson v. Patenaude*, 8 Alaska 238 (1930).

Under normal circumstances, fraud will not be presumed. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

And the burden of proof under this section is on the plaintiff. *Matheson v. Patenaude*, 8 Alaska 238 (1930).

Fraud is established by preponderance of evidence; clear and convincing proof is not required. *Gabaig v. Gabaig*, 717 P.2d 836 (Alaska 1986).

AS 09.25.060 qualifies the provisions of this section and AS 34.40.090 by erecting a prima facie presumption of fraud in cases where a sale of personal property is not "accompanied by the immediate delivery and the actual and continued possession" by the vendee. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Where the creditor offered a satisfactory explanation for his failure to take more overt steps in attempting to reestablish possession of a vessel, and where he further showed that the quitclaim deed delivered by the debtor was issued in exchange for valuable consideration, the trial court was unjustified in relying on the statutory presumption to invalidate as fraudulent the conveyance in question. Under these circumstances, the trial court should have considered the validity of the transaction as a question of fact pursuant to this section and AS 34.40.090. Accordingly, the court should have ruled on the issue whether, in the conveyance of the vessel to the creditor, there was an actual, as opposed to a presumed intent to hinder, delay, or defraud other creditors. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

The badges of fraud here are as clearly apparent as they are multitudinous. The compelling ones in terms of long-recognized indicia of fraud are: (1) The consideration is inadequate. (2) The transfer of the property was in anticipation of a pending suit. (3) The transferor debtor was insolvent. (4) There was a failure to record the instrument within a reasonable length of time. (5) The conveyance was a transfer of all or substantially all the debtor's property. (6) The retention of possession of the premises by the grantor from the date of the execution of the deed stands unexplained. (7) The transfer so completely depleted the assets of the debtor that his creditor, the plaintiff, has thereby been hindered and delayed in recovering any part of his judgment. (8) The relationship of the parties becomes an additional badge of fraud when there also appear other circumstances which of themselves incite distrust and suspicion. *First Nat'l Bank v. Enzler*, 637 P.2d 617 (Alaska 1976).

When a conveyance is alleged to have been made fraudulently, the court may consider whether the disparity between the true value and the price paid is so great as to shock the conscience and strike the understanding at once with the conviction that such transfer never could have been made in good faith. *Gransbury v. United Bldg. Supply, Inc.*, 631 P.2d 1247 (Alaska 1976).

Badges of fraud at most are only evidentiary facts tending to prove the ultimate fact, which is that fraud was intended. *Matheson v. Patenaude*, 8 Alaska 238 (1930); *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Badges of fraud must be viewed within the context of each particular case, and, where their presence is satisfactorily accounted for, or where their existence is not inconsistent with a construction of the transaction as a valid one, they deserve to be accorded little weight. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971); *First Nat'l Bank v. Enzler*, 627 P.2d 517 (Alaska 1976).

Where the totality of the circumstances surrounding a transaction has failed to indicate fraud, or where a strong showing of good faith in a transaction has been made, courts have frequently discounted the significance of badges of fraud as indicia of the character of the transaction. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Evidence of post-transfer events is

clearly admissible to show intent at an earlier point in time, although the probative value of the evidence decreases as the elapsed time increases. *Gabaig v. Gabaig*, 717 P.2d 835 (Alaska 1986).

Hasty and unexplained departure of seller after sale of lots as evidence that conveyance was fraudulent. — See *Gransbury v. United Bldg. Supply, Inc.*, 531 P.2d 1247 (Alaska 1975).

Decree only avoids conveyance as to creditor who is party. — When fraud has been established as to one creditor, it has not the effect to vitiate the conveyance as to all other creditors. The decree in such a suit merely avoids the conveyance as to the plaintiff therein, and as to all the other creditors it remains as though no proceedings had been taken. *Ellis v. Reed*, 238 F. 341 (9th Cir. 1917).

Debtor-creditor relationship necessary. — The acts condemned by this section are, by the terms of the statute, dependent upon the existence of debtor-creditor relationship. *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

A contingent debt may be the basis of a debtor-creditor relationship under this section. *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

Although the liability for a debt in the interim period before the collateral is sold at an execution sale is contingent in that it will only arise should the collateral sell for less than the amount owing, this fact does not preclude the present existence of a debt owed by the contingently liable party to the secured creditor. *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

Distinction between transfer by contingent debtor and transfer by debtor anticipating suit. — In the context of proving an intent to defraud creditors, there must be a distinction made between the transfer of property by a contingent debtor who, while aware of the possibility of owing a debt at some future time, reasonably concludes that that possibility will not arise, and the debtor who believes a suit is in the offing and who, in anticipation thereof, conveys property. The bona fide nature of the transfer in the former case is significantly less subject to suspicion than in the latter. *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

A preferential transfer does not constitute a fraudulent conveyance. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

A preferential payment to one of several

creditors by an insolvent debtor is not in itself an unlawful or fraudulent act. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

In the absence of bankruptcy laws or express statutory prohibition, an insolvent debtor may convey property to one creditor, even if it means that the debtor's assets will thereby be depleted, and the claims of other creditors will be defeated. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Barring the applicability of bankruptcy laws or similar statutory provisions insuring equal distribution of an insolvent debtor's assets among all general creditors, there is nothing improper or unlawful about a preference being given to one creditor, even if it means that other creditors will be precluded from recovery. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

A bona fide preference of one creditor over others will be upheld even where the debtor is or will be rendered insolvent, or where other creditors are threatening suit, or where the preferred creditor is aware of the debtor's insolvency. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

For a list of cases upholding the right of a debtor to prefer one among his creditors, see *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

The rule against fraudulent conveyances may be availed of by a single creditor. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Effect of permitting single creditor to set aside preferential transfer. — To allow a single creditor, acting in his own interest alone, to set aside a preferential transfer as one in fraud of creditors would amount to substituting that creditor as the person preferred in place of the creditor chosen by the debtor. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Conveyance of marital property in anticipation of divorce. — Husband's secret conveyance of his interest in a bar to his brother three days after receiving service of divorce papers was intended to defraud the wife of her fair share of a primary marital asset. *Pattee v. Pattee*, 744 P.2d 658 (Alaska 1987). See also *Gabaig v. Gabaig*, 717 P.2d 835 (Alaska 1986).

Transfer by husband of all assets to wife held not void under this section. — See *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

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Applied in *Rollins v Leibold*, 512 P 2d 937 (Alaska 1973)

Quoted in *Dean v Firor*, 681 P 2d 321 (Alaska 1984)

Collateral references. — 37 Am Jur. 2d, *Fraudulent Conveyances*, § 1 et seq. 37 C.J.S. *Fraudulent Conveyances*, § 1 et seq.

Right to relief as affected by fact that parties are not in pari delicto. 7 ALR 150. Estoppel to claim invalidity. 9 ALR 358. Fraudulent conveyance as cloud on title. 78 ALR 250.

Liability of one who assists or encourages in making fraudulent reasonable to a third person. 112 ALR 1250.

Purpose to defraud as defense to suit to recover property. 117 ALR 1464.

Right as between creditors of grantor or transferor and those of grantee or transferee. 148 ALR 520.

Right of creditor to set aside transfer of property as fraudulent as affected by the fact that his claim is barred by statute of limitations. 14 ALR2d 598.

**Sec. 34.40.020. Invalidity as against purchasers.** A conveyance of an interest in land, or the rents or profits of it, or a charge upon land or upon the rents and profits thereof, that is made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the land, rents, or profits, as against these purchasers, is void. (§ 22-4-2 ACLA 1949)

NOTES TO DECISIONS

Applied in *Crossly v. Champion Min. Co.*, 1 Alaska 391 (1901).

**Sec. 34.40.030. Purchasers with notice.** A conveyance or charge is not considered fraudulent in favor of a subsequent purchaser who has actual or legal notice of it at the time of the purchase, unless it appears that the grantee in the conveyance, or person to be benefited by the charge, was privy to the fraud intended. (§ 22-4-3 ACLA 1949)

NOTES TO DECISIONS

Applied in *Crossly v. Champion Min. Co.*, 1 Alaska 391 (1901).

Cited in *Walker v. Fairbanks Inv. Co.*, 268 F.2d 48 (9th Cir. 1959).

Collateral references. — 37 Am. Jur. 2d, *Fraudulent Conveyances*, §§ 152-154.

**Sec. 34.40.040. Invalidating effect of provision for revocation, determination, or alteration.** A conveyance or charge of or upon an estate or interest in land containing a provision for the revocation, determination, or alteration of the estate or interest, or a part of it, at the will of the grantor, is void as against subsequent purchasers from the grantor for a valuable consideration of an estate or interest liable to be revoked or determined, although the estate or interest is not expressly revoked, determined, or altered by the grantor by virtue of

the power reserved or expressed in a prior conveyance or charge. (§ 22-4-4 ACLA 1949)

**Sec. 34.40.050. Conveyance in exercise of power to revoke and reconvey.** Where a power to revoke a conveyance of land, or the rents and profits from it, and to reconvey the land or the rents and profits is given to a person other than the grantor in the conveyance, and the person subsequently conveys the land, rents, or profits to a purchaser for a valuable consideration, the subsequent conveyance is valid in the same manner and to the same extent as if the power of revocation were recited in it and the intent to revoke the former conveyance expressly declared. (§ 22-4-5 ACLA 1949)

**Sec. 34.40.060. Conveyance before accrual of right to execute power of revocation.** If a conveyance to a purchaser under either AS 34.40.040 or 34.40.050 is made before the person making the conveyance is entitled to execute the power of revocation, it nevertheless is valid from the time the power of revocation actually vests in the person, in the same manner and to the same extent as if then made. (§ 22-4-6 ACLA 1949)

**Sec. 34.40.070. Requirement of writing for grant or assignment of trust.** A grant or assignment of an existing trust in land, goods, or things in action, unless the grant or assignment is in writing, subscribed by the person making it, or a lawfully authorized agent of the person, is void. (§ 22-4-7 ACLA 1949)

**Sec. 34.40.080. Invalidity against heirs, successors, representatives, or assigns.** A conveyance, charge, instrument, or proceeding declared by law to be void as against the creditors, purchasers, or mortgagees is equally void as against the heirs, successors, personal representatives, or assigns of the creditors, purchasers, or mortgagees. (§ 22-4-8 ACLA 1949)

**Sec. 34.40.090. Fraudulent intent question of fact.** The question of fraudulent intent in a case arising under the provisions of this chapter is a question of fact, and not of law. (§ 22-4-9 ACLA 1949)

#### NOTES TO DECISIONS

AS 34.40.010 provides Alaska's basic prohibition against transactions in fraud of creditors. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

And this section complements that basic prohibition by providing that the existence of fraudulent intent is a ques-

tion of fact. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

AS 09.25.060 qualifies the provisions of this section and AS 34.40.010 by erecting a prima facie presumption of fraud in cases where a sale of personal property is not "accompanied by the immediate delivery and the actual and con-

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tinued possession" by the vendee. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Where the creditor offered a satisfactory explanation for his failure to take more overt steps in attempting to reestablish possession of a vessel, and where he further showed that the quitclaim deed delivered by the debtor was issued in exchange for valuable consideration, the trial court was unjustified in relying on the statutory presumption to invalidate as fraudulent the conveyance in question. Under these circumstances, the trial court should have considered the validity of the transaction as a question of fact pursuant to this section and AS 34.40.010. Accordingly, the court should have ruled on the issue whether, in the conveyance of the vessel to the creditor, there was an actual, as opposed to a presumed intent to hinder, delay or defraud other creditors. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

Fraud is not presumed. — Fraud, not shown by the evidence to have existed, will not be presumed. *Courtney v. Brenneman*, 6 Alaska 233 (1920).

Under normal circumstances, fraud will not be presumed. *Blumenstein v. Phillips Ins. Center, Inc.*, 490 P.2d 1213 (Alaska 1971).

The intent to defraud will not be presumed. Rather, it is a question of fact usually to be proved by circumstantial evidence. *First Nat'l Bank v. Enzler*, 537 P.2d 517 (Alaska 1975).

General allegations of fraud must be supported by specific allegations. — The general words of fraud and conspiracy can have no more force and effect towards rendering a mortgage void than the truth as disclosed by the specific allegations will warrant. *Schwabacher Bros. Co. v. Palmer*, 4 Alaska 75 (1910).

Applied in *Matheson v. Patenzude*, 8 Alaska 238 (1930).

**Sec. 34.40.100. When title of purchaser for value not affected.** The provisions of AS 34.40.010 and 34.40.070 — 34.40.130 may not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration unless it appears that the purchaser had previous notice of the fraudulent intent of the purchaser's immediate grantor, or of the fraud rendering void the title of the grantor. (§ 22-4-10 ACLA 1949; am § 52 ch 21 SLA 1985)

Cross references. — For provisions relating to purchasers from distributees of an estate, see AS 13.16.680.

Collateral references. — 37 Am. Jur. 2d, *Fraudulent Conveyances*, § 152 et seq.

**Sec. 34.40.110. Invalidity of transfers of personal property in trust.** A deed of gift, a conveyance, or a transfer or assignment, oral or written, of goods and chattels or things in action made in trust for the person making the deed, conveyance, transfer, or assignment is void as against the creditors, existing or subsequent, of the person. (§ 22-4-13 ACLA 1949)

NOTES TO DECISIONS

Chattel mortgage allowing mortgagor to treat property as own is void. — If a chattel mortgage is coupled with a condition or agreement that the mortgagor may treat the goods as if he were the owner of them, that is, may sell them at his option and receive the proceeds to his own use, such condition or agreement

avoids the mortgage. In legal effect it is a sham, a nullity, a mere shadow of a mortgage, only calculated to ward off other creditors, and is a conveyance in trust for the benefit of the person making it, and therefore void as against creditors. In re *Minkove*, 6 Alaska 68 (1918).

**Sec. 34.40.120. "Land" and "estate and interest in land" defined.** The term "land" as used in AS 34.40.010 and 34.40.070 — 34.40.130, shall be construed as coextensive in meaning with "lands, tenements, and hereditaments," and the term "estate and interest in land" shall be construed to embrace every interest, freehold, and chattel, legal and equitable, present and future, vested and contingent in land as defined in this section. (§ 22-4-11 ACLA 1949)

Collateral references. — 28 Am. Jur. 2d, Estates, §§ 1, 2.

**Sec. 34.40.130. "Conveyance" defined.** The term "conveyance," as used in AS 34.40.010 and 34.40.070 — 34.40.130, shall be construed to embrace every instrument in writing except a last will and testament, of whatever form and by whatever name it may be known in law, by which an estate or interest in lands is created, aliened, assigned, or surrendered. (§ 22-4-12 ACLA 1949)

### Chapter 45. Unclaimed Property.

#### Article

1. Consignees and Bailees (§§ 34.45.010 — 34.45.080)
2. Personal Property Presumed Abandoned; General Rules (§§ 34.45.110 — 34.45.120)
3. Conditions Leading to Presumption of Abandonment of Particular Types of Personal Property (§§ 34.45.140 — 34.45.260)
4. Reporting and Disposition of Personal Property (§§ 34.45.280 — 34.45.340)
5. Administration of Abandoned Property (§§ 34.45.360 — 34.45.430)
6. Enforcement and Penalties (§§ 34.45.450 — 34.45.470)
7. General Provisions (§§ 34.45.700 — 34.45.780)

#### Article 1. Consignees and Bailees.

<p><b>Section</b></p> <p>10. Record of consignee or bailee</p> <p>20. Consignee's or bailee's notice to owner</p> <p>30. Sale</p> <p>40. Presale inventory and notice</p>	<p><b>Section</b></p> <p>50. Order of sale</p> <p>60. Sale at public auction</p> <p>70. Proceeds of sale</p> <p>80. Sale of perishable property</p>
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Revisor's notes. — Pursuant to § 3, ch. 24, SLA 1966, in AS 34.45.010 — 34.45.090 "district magistrate" was changed to "district judge" and "deputy magistrate" was changed to "magistrate".

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**Sec. 34.45.010. Record of consignee or bailee.** When personal property is consigned to or deposited with a forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of a depot for the reception and storage of trunks, baggage, merchandise, or other personal property, the consignee or bailee shall immediately record a

**HB**

**73**

**HFIN**

**FILE**

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 28, 1996

FURTHER REFERRALS:

Date of Committee Action: 3/11/96

The FINANCE Committee considered:

HB 73

HOUSE BILL NO. 73

LICENSURE OF MANICURISTS

"An Act relating to licensure of manicurists."

recommends it be replaced with the following committee substitute (S HB 73 (E.C.)) [X] 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) [X] fiscal note(s) DEC 2/16/96

[X] zero fiscal note(s) DEC [ ] zero fiscal note(s)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Richard Foster</i>	X			
<i>Mark Hanley</i>			X	
<i>Edmond Mulder</i>			X	
<i>Terry Martin</i>		X		
<i>John Kehrings</i>			X	
<i>Ben Grussendorf</i>			X	
<i>Harold Brown</i>	X			
<i>Pat Kelly</i>		X		
<i>Gene Therrigall</i>			X	

CO-CHAIR'S SIGNATURE *Mark Hanley* *Richard Foster*  
HANLEY FOSTER

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB73(HES)

Revision Date: \_\_\_\_\_  
Title: Licensure of manicurists  
Sponsor: Brice  
Requestor: \_\_\_\_\_

Department Affected: Environmental Conservation  
BRU: Division of Environmental Health  
Component: Seafood and Sanitation Inspections

COMPONENT SERIAL NO. 1936

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<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>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<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 (FY96) cost: \$ 0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill adds manicuring shops and schools to the list of facilities for which DEC is supervises health and sanitary conditions. The department currently lacks the staff to conduct any routine inspections of these facilities. Inspections are conducted only if there are complaints of sufficient concern to warrant a response.

Prepared by: Janice Adair  
Division: Director, Division of Environmental Health

Phone: 269-7645  
Date: 3/5/96

Approved by Commissioner: *K. J. ...*  
Agency: Department of Environmental Conservation

Date: \_\_\_\_\_

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 73(HESS)

Revision Date: \_\_\_\_\_  
 Title: An Act relating to licensure of manicurists.  
 Sponsor: Representative Brice  
 Requestor: House HESS

Department: Commerce and Economic Development  
 BRU: Occupational Licensing  
 Component: Operations  
 COMPONENT SERIAL NO. 1844

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	5.8	5.8	5.8	5.8	5.8	5.8
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	36.2	4.8	4.8	4.8	4.8	4.8
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>43.0</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES</b>	54.6	0.0	23.2	0.0	23.2	0.0
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	43.0	11.6	11.6	11.6	11.6	11.6
<b>TOTAL</b>	<b>43.0</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>

Estimate of any current year (FY 96) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

CSHB 73(HESS) establishes a licensing category for manicurists to be regulated by the Board of Barbers and Hairdressers. The number of individuals that would be affected by the bill is not known therefore, a number of assumptions are made in this fiscal note. Information obtained from the Business Licensing files indicate there are approximately 295 manicure/pedicure salons licensed to do business. For the purposes of this fiscal note, we have doubled the number (590) assuming that most salons would have more than one manicurist. An explanation of the costs is attached.

Prepared by: Jennifer Strickler, Administrative Officer  
 Division: Occupational Licensing  
 Approved by Commissioner: William L. Hensley  
 Agency: Commerce and Economic Development

Phone: 465-2144  
 Date: February 16, 1996  
 Date: 2-16-96

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO.: CSHB 73(HESS)

ANALYSIS: (Continued)

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FISCAL NOTE CALCULATIONS

### PERSONAL SERVICES

\$ 5.8

This fiscal note assumes that the duties for examination and licensure of manicurists will require dedicated staff time especially in the first year to implement the new requirements. This funding assumes reclassifying a present Administrative Clerk position to a Licensing Examiner position to help manage the workload affected by adding this new category.

### TRAVEL

\$ 0.0

No travel is anticipated.

### CONTRACTUAL SERVICES

\$36.2

Contractual Services are based on the following costs -

#### Examinations:

\$32.5

Examination costs at \$55 per candidate x 590 candidates.  
*(Note: Exam candidates pay the State for the cost of the examination. In turn, the State pays the examination agency for use of its examinations. This is considered to be a pass-through cost.)* After the first year, the assumption is made that at least 20 applicants will take the examination each year at a cost of \$1.1 (20 x \$55).

#### Exam Facilities:

\$0.5

Examination facility rentals: one day exams at \$125 per site x 2 sites = \$250 x 2 exams per year = \$500.

#### Proctor Fees:

\$0.6

Based on one-day exams, 8 hours per day, given in Anchorage and Fairbanks, at least two times per year by two proctors at each site. The proctor fee is \$10 per hour x 8 hrs. = \$80 x 2 proctors = 160 x 2 sites = \$320 x 2 exams per year = \$640.

Continuation of CSHB 73(HESS) Fiscal Note

Regulations: \$1.2  
- One public notice printed in three newspapers, estimated at \$200 per paper x 3 = \$600  
- Printing of regulations consisting of 6 pages, back-to-back, at \$12 per 100 x 6 pages = \$72 x 6.0 (to produce 600 copies) = \$432  
- Postage for 600 pieces x .32 = \$192

Daily Communication Costs: \$1.0

Printing Costs: \$ 0.4  
- Applications and other forms will be needed to implement the licensing requirements. A large supply will be required for the initial mailing and to have forms available in each division office in Juneau, Anchorage, and Fairbanks. Assuming application forms are at least 3 pages, back-to-back, at \$12 per 100 x 3 pages = \$36 x 10 (to produce 1,000 copies) = \$360

After the first year, it is anticipated that costs associated with the examinations will drop as explained above.

<u>SUPPLIES</u>	\$ 1.0
<b>TOTAL:</b>	<b>\$ 43.0</b>

**REVENUE/FUND SOURCE:** In accordance with AS 08.01.065, all licensees are required to pay the costs of regulating their profession. The revenue generated from fees are labeled Designated Program Receipts.

This fiscal note identifies the additional expenses the division expects as a result of licensing manicurists. It *does not* describe the existing division resources which may be used to support licensing of manicurists and then charged to licensees. For example, the division's regulations specialist, complaint investigators, Department of Law attorneys, and licensing examiners that may include manicurists projects into their work. Manicurists licensing fees will be adjusted to cover these costs as will the fees of other occupations whose services may change as a result of licensing manicurists.

To determine the projected annual cost per licensee, 590 licensed manicurists are assumed. Only Direct costs are shown on the fiscal note. To calculate the Board of Barbers and Hairdressers indirect costs and Administrative indirect costs, 590 manicurists are added to the 3,698 barber and hairdresser licensees and divided into the total FY 95 indirect costs (\$75,340 Barber and Hairdresser Indirect divided by 4,288 = \$17.57; \$117,500 Administrative Indirect divided by 4,288 = \$27.41).

Continuation of CSHB 73(HESS) Fiscal Note

This fiscal note assumes that manicurists license fees will cover only the direct regulatory costs for the start-up year, FY 97; and both direct and indirect costs for FY 98 and beyond. Administrative indirect costs charged to other programs will be reduced to offset the manicurists' contribution.

Therefore, the manicurist license fee for FY 97 is projected to be:

\$ 37.55	Direct Costs for FY 97 & FY 98
\$ 17.57	Board of Barbers & Hairdressers Indirect Costs for FY 98
<u>\$ 27.41</u>	Administrative Indirect Costs for FY 98
\$ 82.53	
<u>+ \$ 55.00</u>	Examination Fee
\$ 137.53	TOTAL

590 Manicurists x \$137.53 FY 97 Fee =	\$ 81,142.70
Indirect Costs reduced to other programs =	<u>- 26,538.20</u>
Increased Designated Program Receipts	\$ 54,604.50

The manicurists fee in FY 98 and beyond is projected to be higher than FY 97 because the manicurists will have to cover both years of indirect costs instead of just one year.

# Representative Tom Brice

## ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293  
*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-465-3466

### Sponsor Statement

### CSHB 73 (L&C)

### Licensure of Manicurists

The practice of manicuring involves the use of tools and chemicals which, when used incorrectly or improperly, may be dangerous and constitute a health threat to consumers. The practice of manicure is completely unregulated in Alaska, one of only eight states with no oversight in this area. Over the years the legislature has recognized and acted on the need to oversee the practice of vocations where the health, safety, and welfare of the public are at stake, including similarly situated vocations such as barbering and cosmetology.

The bill would simply add manicuring to the list of vocations controlled by the Board of Barbers and Hairdressers. CSHB 73 (L&C) would empower the Board with the duties and responsibilities relating to manicure, including issuing examinations, setting standards and qualifications, and approving licenses for manicurists in order to give the public some assurance that those who practice manicure have the appropriate education and vocational training to ensure public health and safety. This legislation also contains a transitional provision designed to grandfather licenses to those who have, prior to the effective date of this bill, actively engaged in the practice or teaching of manicure and hold proper educational and practical credentials. The Board of Barbers and Hairdressers, as well as members of the barbering and hairdressing vocation, have long recognized the need to regulate this aspect of their industry.

CSHB 73 (L&C) allows for reasonable control of a vocation that carries serious public health implications, thus giving the Board of Barbers and Hairdressers the ability to address this area of concern and ensure the health and safety of Alaskan consumers.



## CHANGES AMONG THE DIFFERENT VERSIONS OF HB 73

### **HB 73 to CSHB 73 (HESS) changes:**

The changes that CSHB 73 (HESS) makes to the original are found in sec. 19, concerning the definition of manicuring, and adds a new section (sec. 20), a transitional provision, to the bill.

The change to sec. 19 in the HESS Committee Substitute is an expansion of the definition of manicuring to cover those procedures relating to artificial nails. The exact language added in the CS is "affixing by artificial means for the addition to, or extension of the natural nail,".

Section 20 is a transitional provision that allows for grandfathered licensing. Applicants for grandfathered licenses must apply within 150 days after the effective date of the Act. People not licensed in the field of manicuring may practice or instruct without a license for 180 days. The thirty day difference is intended to allow processing of applications. The transitional provision pertains to the following groups of people:

1. Individuals who file a notice of intent to apply for a license under sec. 20(a), which requires an examination and proof of 350 hours of manicuring practice in the 12 months preceding the effective date of the act.
2. Individuals who already hold a practitioners license under AS 08.13
3. Individuals who already hold an instructors license under AS 08.13

The transitional provision effectively gives the Division of Occupational Licensing and the industry nine months to make all necessary preparations and begin the process of licensing. The division has indicated that nine months is sufficient time to make preparations and begin licensing.

### **CSHB 73 (HESS) to CSHB 73 (L&C) changes:**

The Labor & Commerce Committee Substitute further clarifies the definition of manicuring in Section 19 by separating the language relating to the definition of manicuring from activities that are not to be included in the definition. The phrase, "for a fee" (page 6, line 21) was also added to ensure that only individuals who engage in manicuring for compensation are required to be licensed.

**States Participating  
in National Testing  
(as of June 1992)**

<b>Basic Cosmetology</b>	Montana Nebraska Nevada New Hampshire New Mexico North Carolina North Dakota Oklahoma Pennsylvania Rhode Island South Carolina Tennessee Texas Virginia West Virginia	<b>Estheticians</b> Alabama Alaska Arizona Arkansas Delaware District of Columbia Georgia Idaho Illinois Indiana Louisiana Maine Maryland Mississippi Nebraska Nevada New Mexico Pennsylvania Rhode Island South Carolina Tennessee Vermont Wisconsin
<b>Manicurists</b>	Alabama Arizona Arkansas Delaware District of Columbia Georgia Idaho Indiana Kansas Louisiana Maine Maryland Mississippi Missouri Montana Nevada New Hampshire New Jersey New Mexico North Carolina North Dakota Ohio Oklahoma Pennsylvania Rhode Island South Carolina South Dakota Tennessee Vermont Virginia West Virginia	<b>Electrology</b> Idaho Kansas Montana Nevada New Mexico Ohio Utah
<b>Instructors</b>	Ohio Oklahoma Pennsylvania Rhode Island South Carolina Tennessee Texas Vermont Virginia West Virginia	<b>Managers</b> District of Columbia North Dakota Pennsylvania

**States having  
Licensed  
Manicurists**

State	Hours
Alabama	300
Arizona	300
Arkansas	350
California	350
Colorado	850
Delaware	250
District of Columbia	125
Florida	120
Georgia	None
Hawaii	350
Idaho	300
Indiana	300
Iowa	40
Kansas	350
Kentucky	300
Louisiana	500
Maine	200
Maryland	100
Massachusetts	100
Michigan	300
Minnesota	350
Mississippi	250
Missouri	350
Montana	350
Nevada	500
New Hampshire	150
New Jersey	200
New Mexico	500
North Carolina	150
North Dakota	350
Ohio	200
Oklahoma	300
Oregon	350
Pennsylvania	200
Rhode Island	300
South Carolina	300
Tennessee	300
Texas	250
Virginia	150
Vermont	150
Washington	500
West Virginia	400
Wisconsin	300
Wyoming	350

**Total for 44 States**

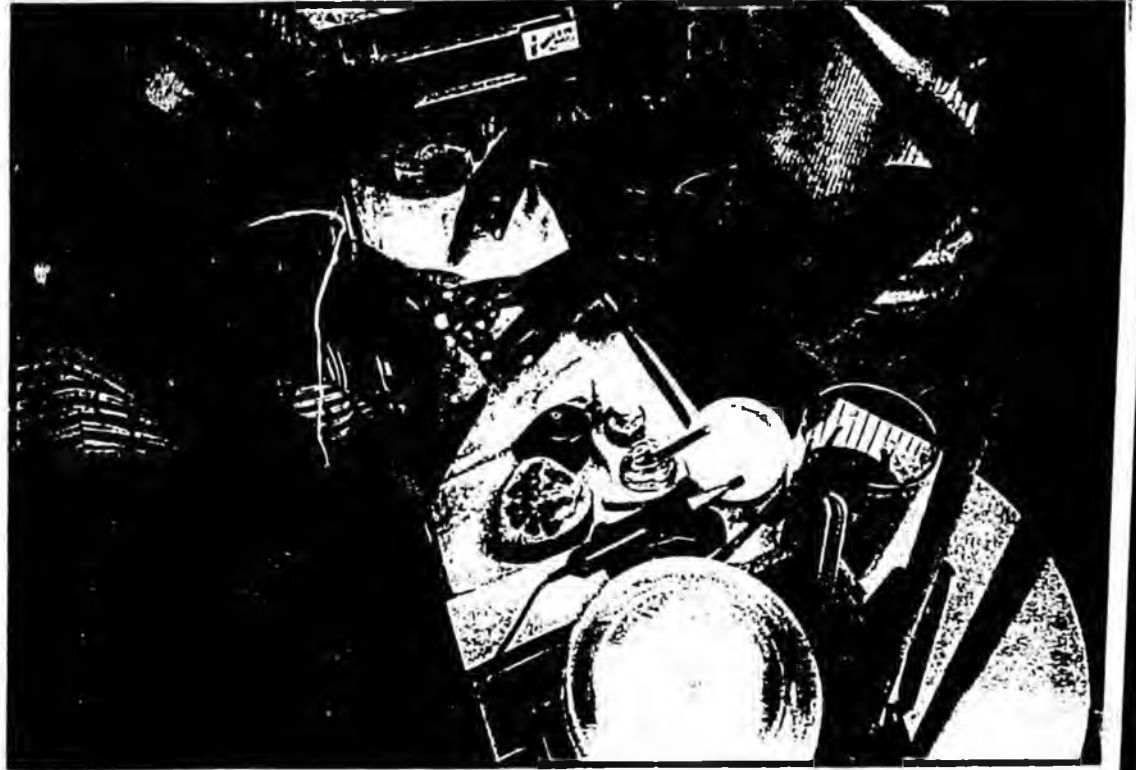
1—None	4—300 hours
1—40 hours	3—250 hours
2—100 hours	11—300 hours
1—120 hours	11—350 hours
1—125 hours	1—400 hours
4—150 hours	4—500 hours

# Fingernails

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## Looking Good While Playing Safe

by Paula Kurtzweil



With the ease that comes from years of practice, Julie Le, of Nails R Us in Alexandria, Va., sets out to remake customer Natalie Harris' nails. She buffs, files, snips, clips, smooths, and then, with a nod from Harris, paints on ruby red polish.

It's a process repeated every day throughout the country as thousands of women like Harris—and men, too—strive for beautiful nails. They seek the services of nail and beauty salons or manicure their nails themselves with a host of nail products available on the market.

The reason, said Kim Siridavong, owner of Nails R Us, is simple: "Everybody wants to look good."

But achieving that look is not without potential hazard. Infections and allergic

reactions can occur with some nail services and products. Some chemicals in nail products, if ingested, are poisonous. Many are flammable.

Relying on nail and beauty salons is not risk free, either. They use the same products, and they may present a greater risk for disease transmission.

Federal and state regulations help reduce the risks, but consumers also need to take care that their pursuit of beautiful nails ensures healthy nails.

### Growth of an Industry

With the increased use of nail services and products in recent years has come growing concern about safety. According to *Nails 1995 Fact Book*, U.S. consumers will spend an estimated \$5.2 billion on nail services in 1995, half a

*Above, manicurist Julie Le trims a customer's cuticle area. At right, she adds the finishing touch—polish.*

hillion more than in 1994. They can choose from 34,852 freestanding nail salons across the country—nearly 2,000 more than a year ago—or hundreds of thousands of beauty salons that offer nail services.

The most requested service, according to the *Fact Book*, is artificial nails. Manicures are No. 2. Other popular services include nail jewelry and nail art.

Because of the variety of nail services, the preferred term for a person who pro-

vides nail services is "nail technician" rather than manicurist, said Suzette Hill, managing editor for *Nails*, a magazine for professionals and students.

vides nail services is "nail technician" rather than manicurist, said Suzette Hill, managing editor for *Nails*, a magazine for professionals and students.

"Twenty years ago, they mainly did manicures," she said. "Now, they're doing so much more."

They use a range of products, including polishes, paints, artificial nails, glues, and laminates, many of which are available for home use, too.

#### Nail Products as Cosmetics

Nail products for both home and salon use are regulated by the Food and Drug Administration. Under the Federal Food, Drug, and Cosmetic Act, these products are considered cosmetics because they are "articles other than soap which are applied to the human body for

cleansing, beautifying, promoting attractiveness, or altering the appearance." (See "Cosmetic Safety: More Complex Than at First Blush" in the November 1991 *FDA Consumer*.)

By law, nail products sold as cosmetics in the United States must be free of poisonous or deleterious substances that might injure users under the usual or customary conditions of use intended by the manufacturer. These uses are printed on the package or on a package insert.

Many nail products contain poisonous substances, such as acetonitrile in glue removers, but are allowed on the market because they are not harmful when used as directed. They're poisonous only when ingested, which is not their intended use.

Products sold for home use also must be labeled properly, with the names of the ingredients listed in descending order of predominance. (See "Decoding the Cosmetic Label" in the May 1994 *FDA Consumer*.)

FDA does not review or approve nail products and other cosmetics before they go on the market. However, the agency inspects cosmetic manufacturers and samples and analyzes cosmetics as needed. If a safety problem arises, the agency can take legal action against the product.

FDA also tracks safety problems through its Cosmetic Voluntary Registration Program, in which cosmetic manufacturers voluntarily report to FDA the types of adverse reactions their customers have reported to them. FDA uses this information to determine a baseline reaction rate for specific product categories, such as cuticle softeners, nail extenders (artificial nail ends), and nail polishes. The agency gives this information to participating companies so they can compare their adverse reaction rates to FDA's determined baseline.

FDA also learns about potentially harmful products from manufacturers' competitors, consumers, doctors, and nail technicians, who report adverse reactions directly to the agency.

#### Salon Safety

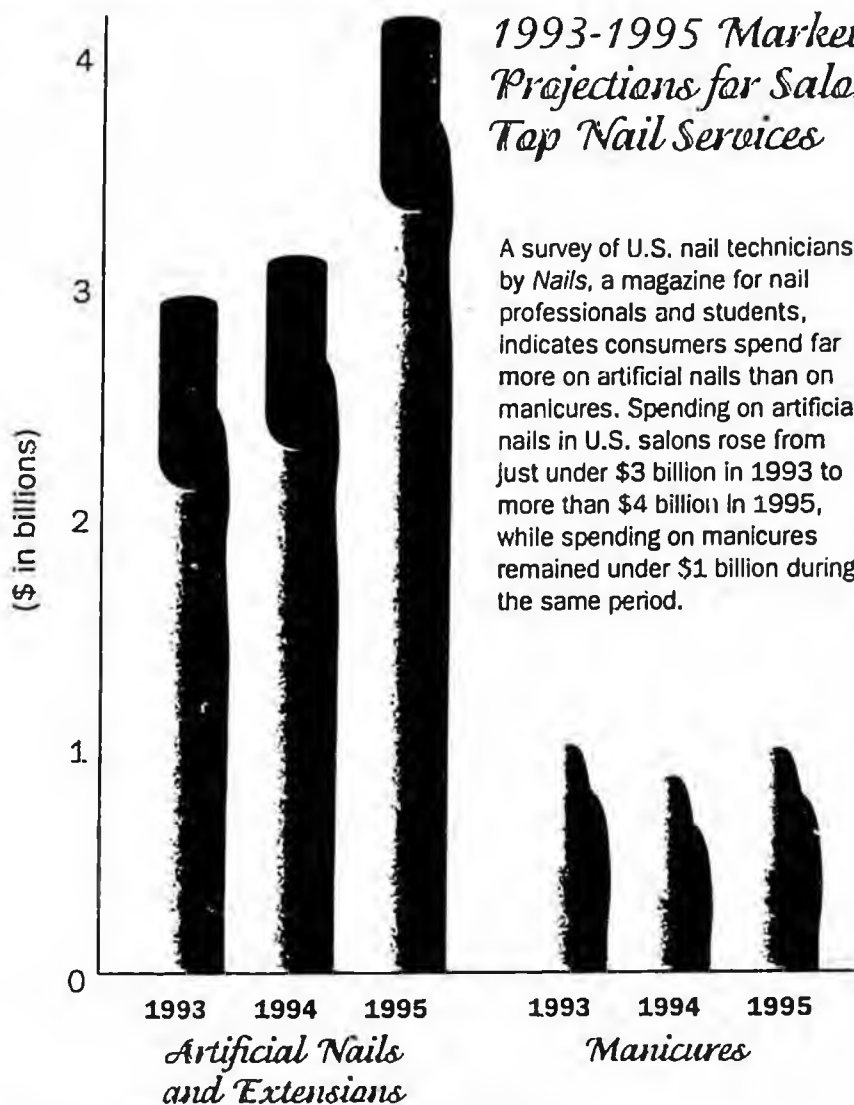
The salons and their technicians are regulated by the states, usually their cosmetology boards. Lois Wiskur, past-president of the National Interstate Council of State Cosmetology Boards, said that as far as she knows, every state has some type of licensing requirements for nail salons, nail technicians, or both.

Under these requirements, salons providing nail services usually must meet certain requirements, such as:

- Employing nail technicians who have had a minimum number of hours of classroom and practical training.
- Properly sterilizing manicure implements. The preferred methods are autoclaving (heat sterilization) or chemical sterilization.
- Undergoing a state inspection periodically.
- Maintaining sufficient equipment, such as at least one manicure table and one sink that runs hot and cold water.
- Making sure that employees wash their hands before beginning work on a customer.

To prevent blood-borne infections, such as HIV and hepatitis, the national Centers for Disease Control and Prevention recommended similar sanitary practices for salon employees in guidelines





A survey of U.S. nail technicians by *Nails*, a magazine for nail professionals and students, indicates consumers spend far more on artificial nails than on manicures. Spending on artificial nails in U.S. salons rose from just under \$3 billion in 1993 to more than \$4 billion in 1995, while spending on manicures remained under \$1 billion during the same period.

manicuring—if, for example, too much of the cuticle is cut or pushed back too far. If the cuticle is cut or separated from the fingernail, infectious agents can get into the exposed area. This is why dermatologists recommend leaving cuticles intact.

Symptoms of an infection include pain, redness, itching, and pus in or around the nail area. Yellow-green, green, and green-black nail discolorations are signs of a *Pseudomonas* bacterial infection. A blue-green discoloration signals a fungal infection.

If an infection appears while wearing artificial nails, they should be removed and the area cleaned thoroughly with soap and water. If symptoms persist, the person should consult a doctor, who may prescribe a topical or oral anti-infective medicine.

There are no approved nonprescription products to treat fungal nail infections, and over-the-counter products to treat other types of fungal infections should not be used for nail infections. In a review of OTC antifungal products, FDA found that fungal infections of the nails respond poorly to topical therapy, partly because of the nail's thickness. So, in 1993, the agency ruled that any OTC product labeled, represented or promoted as a topical antifungal to treat fungal infections of the nail is a new drug and must be approved by FDA before marketing. This rule, which went into effect in 1994, does not include prescription antifungal products.

Despite the rule, some companies continue to sell unapproved OTC nail products, such as nail glues, with antifungal claims. FDA has warned these companies it might take legal action: if they don't stop selling the products.

#### Allergies and Other Hazards

Other common problems associated with nail products are allergic reactions, such as contact dermatitis, a skin rash characterized by redness and itching and sometimes tiny blisters that ooze. (See "Contact Dermatitis: Solutions to Rash Mysteries" in the May 1990 *FDA Consumer*.)

Certain nail ingredients are known for their tendency to cause allergic reactions. Residual traces of the basic building blocks of acrylic resins ("acrylics")

issued in 1985. The guidelines targeted, among others, personal-service workers, such as manicurists and pedicurists. To date, there have been no reports of transmission of blood-borne diseases to or from a personal service worker, according to CDC.

#### Nail Infections

More common nail problems, dermatologists report, are infections from bacteria, such as *Staphylococcus*; fungi, such as *Candida* (also known as yeast); and skin viruses, such as warts.

Bacterial and fungal infections frequently result from artificial nails, whether applied at home or in a salon. A bump or knock to a long artificial nail may cause it to lift from the natural nail at the base, leaving an opening for dirt to get in. If the nail is reglued without

proper cleaning (with rubbing alcohol, for example), bacteria or fungi may grow between the nails and spread into the natural nail.

Also, as the natural nail grows, an opening develops between the natural nail and artificial nail. If this space is not filled in regularly, it can increase the chances for infection.

A fungal infection can take hold when an acrylic nail is left in place too long—such as three months or more—and moisture accumulates under the nail.

Bacterial, fungal and viral infections also can occur from using insanitary nail implements, especially in a salon, where the same implements are used on many people.

Unclean implements are especially dangerous if the skin around the nail is broken. This can occur with overzealous

## Precautions for Artificial Nails

- If there is any question about sensitivity to the materials in artificial nails, have one nail done as a test and wait a few days to see if a reaction develops.
- Never apply an artificial nail if the natural nail or skin around it is infected or irritated. Let the infection heal first.
- Read the directions for do-it-yourself nails before applying them, and follow the directions carefully. Save the ingredient list for your doctor in case you have an allergic reaction or other injury.
- Treat your artificial nails with care. They may be stronger than your own, but they still can break and separate. Try not to bump or knock them. Find new ways to do ordinary tasks, like using a pencil to dial or depress the numbers on the phone.
- If an artificial nail separates, dip the fingertip into rubbing alcohol to clean the space between the natural and artificial nails before reattaching the artificial nail. This will help prevent infection.
- Never use household glues for nail repairs. Use only products intended for nail use, and follow directions.
- Don't wear artificial nails for longer than three months at a time. Remove them for one month to give nails a rest.
- Keep nail glues and other poisonous substances out of the reach of children. ■

—P.K.



## Reporting Adverse Nail Product Reactions

Doctors, nail technicians, and consumers should report adverse reactions from nail products to the nearest FDA office, listed in the blue section of the telephone book. Or, write to:

Food and Drug Administration  
Center for Food Safety and Applied Nutrition  
Office of Cosmetics and Colors (HFS-100)  
200 C St., S.W.  
Washington, DC 20204

used in artificial nails, for example, can cause redness, swelling and pain in the nail bed. In some cases, the reaction is so severe that the natural nail separates from the nail bed, and although a new nail usually grows in, it may be imperfect if the nail root has been damaged.

Nail strengtheners that contain "free formaldehyde" may cause an irritation or reaction, as can certain other chemicals in nail glues and polishes.

In the late 1970s, use of methyl methacrylate, then a common ingredient in artificial nail products, resulted in FDA receiving a number of reports of injuries and allergic reactions, including damage and deformity of fingernails and contact dermatitis. The ingredient now is rarely used because of legal action against a former manufacturer of methyl methacrylate-containing products and numerous seizures and recalls of such products. Methyl methacrylate has since been replaced with other chemicals, such as ethyl methacrylate. However, according to John B. Riley, Ph.D., acting director of FDA's office of cosmetics and colors, the replacement chemicals have never been fully studied for safety, and they may be as harmful as methyl methacrylate.

"Our current guidance is that products containing ethyl methacrylate should be used only by trained nail technicians under conditions that minimize exposure and skin contact because of their potential to cause allergies," he said.

Whatever the cause, allergic reactions usually take place where the product has been applied or where it has inadvertently come in contact with other skin surfaces, such as the face, eyelids and neck.

When the offending agent is no longer used, reactions clear up. Sometimes, the user can identify the chemical causing the allergic reaction and avoid it.

Though rare, some nail products can cause illness and even death, particularly if ingested by children. In 1987, a 16-month-old toddler died of cyanide poisoning after swallowing a mouthful of solvent used to remove sculptured artificial fingernails. At least one other youngster was rushed to the emergency room for intensive care after swallowing a similar product. These products

## Selecting a Safe Nail Salon

To help you decide if a salon provides sanitary nail services, nail and public health experts suggest considering the following:

- Is the salon licensed? Licenses often are posted. If you don't see one, ask.
- Are the nail technicians licensed? These licenses also are usually posted. Ask if you don't see one for your technician.
- How are nail implements sanitized? Autoclaving (heat sterilization) is best, says Ralph Daniel, M.D., a dermatologist in Jackson, Miss. But most states allow chemical sterilizing as long as the implements are immersed in the solution for at least 10 minutes between custom-

ers. Ask the technician what the salon's practices are. If they're using a chemical solution, check the product's label for words like "germicidal" to indicate that it is strong enough to kill bacteria. If in doubt, bring your own implements, Daniel suggests.

- Is there a pre-service scrub? Both the nail technician and the client should wash their hands with an antimicrobial soap before nail work begins.
- Is each customer given a fresh bowl of soapy water to soak their nails in and is a new nail file used for each customer? Both practices should be followed.
- Is the facility neat and clean? Paul Kechijian, M.D., a clinical associate professor of dermatology and chief of

the nail section at New York University, compares selecting a salon to selecting a restaurant. "Ask yourself when you walk in: Would you want to eat there?" he says.

- Is there a strong smell of fumes? If there is, it's a sign that the facility is poorly ventilated, says John Bailey, Ph.D., acting director of FDA's office of cosmetics and colors. Inhaling the fumes from nail products can make you sick.

If you have a complaint about a salon providing nail services, contact your state board of cosmetology. ■

—P.K.

contained acetonitrile, a chemical that breaks down into cyanide when swallowed. Since 1990, the Consumer Product Safety Commission has required household glue removers containing more than 500 milligrams of acetonitrile in a single container to carry child-resistant packaging. This includes glue removers for artificial nails.

Nail products also can be dangerous if they get in the eyes. And they can easily catch on fire if exposed to the free flame of the pilot light of a stove, a lit cigarette, or even the heating element of a curling iron.

Consumers should read labels of nail products carefully and heed any warnings.

### Healthy Nails

From current consumer habits, one might surmise that the main function of nails is to look good. But nails serve several physiological purposes: They enhance fine touch and fine motor skills and protect the fingers and toes. Doctors also may examine them for indications of serious underlying diseases; for example, clubbed nails (a condition in

which fingers or toes thicken and the nails wrap around them) is a classic sign of chronic lung and heart disorders. For those reasons, it's important to keep nails healthy.

With proper care and precautions, nails can be both healthy and attractive. ■

*Paula Kurtzweil is a member of FDA's public affairs staff.*

## SCULPTURE QUIK ARTIFICIAL NAIL REMOVER

- Dissolves all sculptured nails, gels, wraps, and glue.
- Economical, can be used for several removers.

**WARNING: FLAMMABLE. KEEP AWAY FROM HEAT AND FLAME. DO NOT INGEST. INHALE OR GET INTO EYES. MAY BE HARMFUL OR FATAL IF INGESTED. IF INGESTED OR EYE CONTACT OCCURS, GET IMMEDIATE MEDICAL HELP. KEEP OUT OF THE REACH OF CHILDREN. DO NOT USE IF FINGERS OR NAILS ARE RED, INFLAMED OR INFECTED.**

**INGREDIENTS: Acetone, Gamma Butyrolactone, PPG-15 Stearyl Ether, Matricaria Chamomilla Extract.**



*The dangers listed on the label of this artificial nail remover apply to many nail products.*

Mariann Stoffel  
1352 Pioneer Peak Dr.  
Wasilla, Ak. 99654  
January 13, 1996

Representative Brice  
Legislative Office Bldg  
Juneau, Alaska

Dear Representative Brice:

I am writing in regards to house bill 73 referring to  
"An Act relating to the licensure of manicurists"

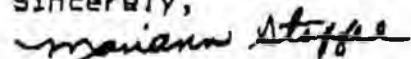
First of all I'd Like to thank you for drafting this bill. As  
a Hairdresser working in the industry for nearly 30 years it  
is a wonder to me that manicuring ever was taken away from  
the regulation of the Board of Barbers and Hairdressers.

I have been serving on the Barber and Hairdresser board since  
Nov. 1992 (I was confirmed by the Legislature in '93) ever  
since that time the licensing of manicurist in the State of  
Alaska has been on our agenda. We have heard testimonies of  
others in our industry who come from all over the State to  
testify of the need to regulate manicurist. The primary need  
is to protect the public from those practicing without proper  
training and sanitary skills.

In our March 5th and 6th Board meetings we discussed at  
length House Bill 73 I can assure you the the Board is  
unanimous in favor of this bill.

If you have any further questions please do not hesitate to  
contact me.

Sincerely,



Mariann Stoffel  
Chair. Board of  
Barbers and Hairdressers

NEW CONCEPTS BEAUTY SCHOOL INC.  
3677 COLLEGE ROAD UNIT IV  
FAIRBANKS, AK. 99709

JAN. 11, 1996


ATTENTION TOM BRICE:

As the owner of New Concepts Beauty School, INC. I have supported House Bill 73 because I feel the the Health, Safety and Trust of the public has been compromised by unlicensed, untrained individuals practicing manicuring in an unsafe and unsanitary manner.

It has been frustrating when a consumer comes to me seeking advise as to whom they should contact to report a person who has caused permanent damage and disfigurement. I have to tell them there is no regulation in this area. I can compare this to a Doctor or Dentist using implements that were just used on another person.

I would ask the committee to look at this Bill seriously and "PASS IT".

Thank you



Sally S. "Sara" Eddings  
President / C.O.E.

Jan. 11, 1996

ATTENTION TOM BRICE:

Dear Sir:

I'm writing to express my concern regarding House Bill 73. I have worked as a wholesale / retail distributor of beauty products for fifteen years, and currently hold three professional licenses in the field. During this time frame I have referred numerous consumers to seek medical assistance due to damage incurred by unlicensed, untrained individuals working out of their homes or in a salon.

The damage and injuries I have seen are not of a minor nature but demanding medical attention. Example, fungus to the degree of nail deterioration and infection, nail deformities with furrows and grooves due to improper filing or application of acrylic products.

The implements and products used during basic manicuring and artificial application are very strong chemicals that require proper knowledge of their safe use.

I cannot express strongly enough my concern for the consumer if we continue to allow unlicensed individuals to perform manicuring services to the public. For the safety and well-being of the consumer, I respectfully urge you to pass House Bill 73.

Sincerely,



Ilene S. Thompson

License #  
5503 - 7436 - 7435

Debra Long

Karmen Shoemaker

7529 - 6238

Michelle Wright

9875

Mary Kelley

5075 - 9106

Arnellia O'Neill

9071

Jeffrey Lincoln Wagar apprentice

ATTN: Tom BRICE

All of the above are in  
favor of House Bill 73  
enforcing nail techs to be licensed.

Mary's Hair Em  
3419 Airport Way  
Fairbanks, AK, 99709

C  
(7)

HOUSE COMMITTEE REPORT

2/28/96

Finance

Date Referred to Committee: February 16, 1996

FURTHER REFERRALS:

Date of Committee Action: 2-28-96

The LABOR AND COMMERCE Committee considered:

HB 73

HOUSE BILL NO. 73

LICENSURE OF MANICURISTS

"An Act relating to licensure of manicurists."

recommends it be replaced with the following committee substitute CS HB 73 (L&C)  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) CEP 2/16/96  
 fiscal note(s) \_\_\_\_\_  fiscal note(s)

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Nancy Rokeberg</u> Rokeberg			✓	
<u>E Hon</u> E Hon			✓	
<u>Steve Kubina</u> Kubina	✓			
<u>Brian Porter</u> Porter			✓	
<u>Jan Sanders</u> Sanders			✓	
<u>Pete Kott</u> Kott			✓	
	(1)		(5)	

CHAIR'S SIGNATURE Pete Kott  
Kott

HOUSE COMMITTEE REPORT

2/16/96

(9)

Date Referred: January 16, 1995

FURTHER REFERRALS:

Labor & Commerce  
Finance

Date of Committee Action: 2/15/96

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 73

HOUSE BILL NO. 73

LICENSURE OF MANICURISTS

"An Act relating to licensure of manicurists."

recommends it be replaced  
with the following committee substitute

CS HB 73 (Hes)

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) C+ED

fiscal note(s)

zero fiscal note(s)

zero fiscal note(s)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i> G. Davis	✓			
<i>[Signature]</i> Lakeberg			✓	
<i>[Signature]</i> Bunde			✓	
<i>[Signature]</i> Toohy	✓			
<i>[Signature]</i> Robinson	✓			
<i>[Signature]</i> Bille	✓			
	(4)		(2)	

CHAIR'S SIGNATURE

*[Signature]*  
Bunde

**HB**

**73**

**SFIN**

**FILE**

# FISCAL NOTE

N. 2

Bill Version: CSHB 73(L&C)

(H) Publish Date: 3/12/96

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: Licensure of manicurists  
Sponsor: Brice  
Requestor: \_\_\_\_\_

Department Affected: Environmental Conservation  
BRU: Division of Environmental Health  
Component: Seafood and Sanitation Inspections

COMPONENT SERIAL NO. 1936

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<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>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<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 (FY96) cost: \$ 0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill adds manicuring shops and schools to the list of facilities for which DEC is supervises health and sanitary conditions. The department currently lacks the staff to conduct any routine inspections of these facilities. Inspections are conducted only if there are complaints of sufficient concern to warrant a response.

Prepared by: Janice Adair  
Division: Director, Division of Environmental Health

Phone: 269-7645  
Date: 3/5/96

Approved by Commissioner: *Ken S. Lundberg*  
Agency: Department of Environmental Conservation

Date: \_\_\_\_\_

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

No. 1  
Bill Version: C SHB 73(HES)  
(H) Publish Date: 2/16/96

Revision Date: \_\_\_\_\_  
Title: An Act relating to licensure of manicurists.  
Sponsor: Representative Brice  
Requestor: House HESS

Department: Commerce and Economic Development  
BRU: Occupational Licensing  
Component: Operations  
COMPONENT SERIAL NO. 1844

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	5.8	5.8	5.8	5.8	5.8	5.8
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	36.2	4.8	4.8	4.8	4.8	4.8
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>43.0</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	106.6	0.0	23.2	0.0	23.2	0.0
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	43.0	11.6	11.6	11.6	11.6	11.6
<b>TOTAL</b>	<b>43.0</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>	<b>11.6</b>

Estimate of any current year (FY 96) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

HB 73 establishes a licensing category for manicurists to be regulated by the Board of Barbers and Hairdressers. The number of individuals that would be affected by the bill is not known therefore, a number of assumptions are made in this fiscal note. Information obtained from the Business Licensing files indicate there are approximately 295 manicure/pedicure salons licensed to do business. For the purposes of this fiscal note, we have doubled the number (590) assuming that most salons would have more than one manicurist. An explanation of the costs is attached.

Prepared by: Jennifer Strickler, Administrative Officer  
Division: Occupational Licensing  
Approved by Commissioner: William L. Hensley  
Agency: Commerce and Economic Development

Phone: 465-2144  
Date: January 12, 1996  
Date: 1-15-96

## FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO.: HB 73

ANALYSIS: (Continued)

### DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FISCAL NOTE CALCULATIONS

#### PERSONAL SERVICES

\$ 5.8

This fiscal note assumes that the duties for examination and licensure of manicurists will require dedicated staff time especially in the first year to implement the new requirements. This funding assumes reclassifying a present Administrative Clerk position to a Licensing Examiner position to help manage the workload affected by adding this new category.

#### TRAVEL

\$ 0.0

No travel is anticipated.

#### CONTRACTUAL SERVICES

\$36.2

Contractual Services are based on the following costs -

##### Examinations:

\$32.5

Examination costs at \$55 per candidate x 590 candidates.  
(Note: Exam candidates pay the State for the cost of the examination. In turn, the State pays the examination agency for use of its examinations. This is considered to be a pass-through cost.) After the first year, the assumption is made that at least 20 applicants will take the examination each year at a cost of \$1.1 (20 x \$55).

##### Exam Facilities:

\$0.5

Examination facility rentals: one day exams at \$125 per site x 2 sites = \$250 x 2 exams per year = \$500.

##### Proctor Fees:

\$0.6

Based on one-day exams, 8 hours per day, given in Anchorage and Fairbanks, at least two times per year by two proctors at each site. The proctor fee is \$10 per hour x 8 hrs. = \$80 x 2 proctors = 160 x 2 sites = \$320 x 2 exams per year = \$640.

Continuation of HB 73 Fiscal Note

Regulations: \$1.2

- One public notice printed in three newspapers, estimated at \$200 per paper x 3 = \$600
- Printing of regulations consisting of 6 pages, back-to-back, at \$12 per 100 x 6 pages = \$72 x 6.0 (to produce 600 copies) = \$432
- Postage for 600 pieces x .32 = \$192

Daily Communication Costs: \$1.0

Printing Costs: \$ 0.4

- Applications and other forms will be needed to implement the licensing requirements. A large supply will be required for the initial mailing and to have forms available in each division office in Juneau, Anchorage, and Fairbanks. Assuming application forms are at least 3 pages, back-to-back, at \$12 per 100 x 3 pages = \$36 x 10 (to produce 1,000 copies) = \$360

After the first year, it is anticipated that costs associated with the examinations will drop as explained above.

<u>SUPPLIES</u>	\$ 1.0
<b>TOTAL:</b>	<b>\$ 43.0</b>

**REVENUE/FUND SOURCE:** In accordance with AS 08.01.065, all licensees are required to pay the costs of regulating their profession. The revenue generated from fees are labeled Designated Program Receipts.

This fiscal note identifies the additional expenses the division expects as a result of licensing manicurists. It *does not* describe the existing division resources which may be used to support licensing of manicurists and then charged to licensees. For example, the division's regulations specialist, complaint investigators, Department of Law attorneys, and licensing examiners that may include manicurists projects into their work. Manicurists licensing fees will be adjusted to cover these costs as will the fees of other occupations whose services may change as a result of licensing manicurists.

To determine the projected annual cost per licensee, 590 licensed manicurists are assumed. Direct costs are shown on the fiscal note. To calculate the Board of Barbers and Hairdressers indirect costs and Administrative indirect costs, 590 manicurists are added to the 3,698 barber and hairdresser licensees and divided into the total FY 95 indirect costs (\$75,340 Barber and Hairdresser Indirect divided by 4,288 = \$17.57; \$117,500 Administrative Indirect divided by 4,288 = \$27.41).

Continuation of HB 73 Fiscal Note

Therefore, the annual cost per licensed manicurists is projected to be:

\$ 17.89 Direct Costs	
\$ 17.57 Board of Barbers & Hairdressers Indirect Costs	
<u>\$ 27.41</u> Administrative Indirect Costs	
\$ 62.87 Per Licensee, Per Year;	\$125.74 Biennially
	+ <u>55.00</u> Examination Fee
	\$180.74 INITIAL LICENSE FEE

The Revenue assumes that 590 applicants will seek licensure in the first year. Thereafter, revenue will be received from new applicants only except during the renewal year.

Name of Examiner \_\_\_\_\_

Department of Commerce  
and Economic Development  
Board of Barbers and Hairdressers

State No. \_\_\_\_\_

Date of Examination \_\_\_\_\_

**PRACTICAL EXAMINATION SCORE SHEET FOR HAIRDRESSER**

Subject	Points	Subject	Points	Subject	Points	Subject	Points	Subject	Points
<b>HAIRSTYLE</b>		<b>PERM</b>		<b>VIRGIN TINT</b>		<b>BLEACH</b>		<b>HAIRCUT</b>	
On Mannequin: (60 min.)		On Mannequin: (30 min.)		On Mannequin: (30 min.)		TOUCH-UP AND HIGHLIGHTING		On Model: (30 min.)	
Fingerwave (16)		Sections	8	Explanation (12)		On Mannequin: (30 min.)		Patron Protection	10
Use of Comb and Fingers	5	Tension	10	To Include:		Explanation (12)		Remove at Least One Inch of Hair	10
Uniform in Width & Depth	5	Rod Selection & Wrap	10	a. Client Card	2	To Include:		Use of Razor	10
Open and Closed Ends	5	Application	10	b. Hair Analysis	2	a. Client Card	2	Use of Shears	10
Rollers (16)		Explanation (17)		c. Patch Test	2	b. Hair Analysis	2	Appropriate Sections	10
Section Size to Roller	5	To Include:		d. Mix to Manufacturers Directions	2	c. Mix to Manufacturers Directions	2	Blending	10
Roller Placement	5	a. Client Care	5	e. Test for Shade	2	d. Test for Stage	2	Evenness of Perimeter	10
Wrapped Even and Smooth	5	b. Hair Analysis	2	f. Rinsing	2	e. Proper Rinsing	2	Follows Directions	10
Pinecuts (16)		c. Test Curl	2	Patron Protection	20	f. Toner Application	2	Sanitation	10
Clip Placement	4	d. Rinse	2	Section	10	Patron Protection	20	Property Equipped	10
Section Size	5	e. Towel Blot	2	Application — Lighter & Darker	20	Partings	5		
Full Stem	2	f. Neutralizing	2	Labeling and Sanitation	13	Application	20	(The "blow dry" and "curling iron" sections are listed under the Hairstyle category and there is a 30- minute time allotment.)	
1/2 Stem	2	g. Manufacturers Directions	2	Follows Directions	15	Labeling and Sanitation	13		
No Stem	2	Patron Protection	15	Property Equipped	10	Follows Directions	10		
Follow Directions	5	Labeling and Sanitation	10			Demonstrates the Use of a Weaving Method of Highlighting	10		
On Model: (30 min.)		Follows Directions	10			Property Equipped	10		
Patron Protection	10	Property Equipped	10			Examiner Scores			
Blow Dryer	5	Examiner Scores							
Curling Iron	5	<b>TOTAL POINTS</b>	<b>100</b>	<b>TOTAL POINTS</b>	<b>100</b>	<b>TOTAL POINTS</b>	<b>100</b>	<b>TOTAL POINTS</b>	<b>100</b>
Tools & Supplies	10	<b>TIME</b>	<b>30 MIN.</b>	<b>TIME</b>	<b>30 MIN.</b>	<b>TIME</b>	<b>30 MIN.</b>	<b>TIME</b>	<b>30 MIN.</b>
Finished Results	20								
Examiner Scores									

WRITTEN EXAMINATION SCORE: \_\_\_\_\_

I HEREBY STATE THAT I AM ASSOCIATED WITH THE EXAMINATION CANDIDATE IN THE FOLLOWING WAY:

COMMENTS: \_\_\_\_\_

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 3/28/96

FURTHER: FINANCE

DATE TURNED INTO OFFICE: 5/4/96

The Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 73(L&C)

"An Act relating to licensure of manicurists."

and recommends:

- be replaced with Sen CS HB 73 (L&C)
- adopt previous CS ( )
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Mike Miller</i>	<input checked="" type="checkbox"/>		
		<i>John Ryan</i>	<input checked="" type="checkbox"/>		
<i>J. E. Sald</i>	<input checked="" type="checkbox"/>				
<i>CHAIR: Tim Kelly</i>	<input checked="" type="checkbox"/>	<i>CHAIR:</i>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
DEC	3/5/96	X	
DCED	1/15/96		106.6

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

**HB**

**74**

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 10, 1995

FURTHER REFERRALS:

Date of Committee Action: 2/22/95

The FINANCE Committee considered:

HB 74

HOUSE BILL NO. 74

ASSAULT BY ADULTS ON CHILDREN

"An Act relating to the assault of children by adults."

recommends it be replaced with the following committee substitute CS HB 74 (Fin)  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) 1-Law 2/10/95  
1-PS 2/10/95  
1-Corrections 2/11/95

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Richard Foster			X	X
Mark Hanley	X			
Gene Therriault	X			
Mike Navarre	X			
Glen Mulder	X			
Paul Parnell	X			
Vic Kohring	X			
Ben Gussendorf	X			
Larry Martin	X			
Kate Kelly			X	
Tan Brown				X

CHAIR'S SIGNATURE Mark Hanley Richard Foster  
 Hanley Foster

# FISCAL NOTE

No. 1

Bill Version HB 74

(H) Publish Date: 2/1/95

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act relating to the assault of children by adults BRU: all  
 Component: all  
 Sponsor: Rep. Bunde  
 Requester: Rep. Bunde COMPONENT SERIAL NO. \_\_\_\_\_

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

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

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**POSITIONS**

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME						
PART-TIME						
TEMPORARY						

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

This bill amends AS 11.41.220 (a) by extending it's application to the assault of someone 10 through 15 years old by another, 18 years of age or older. { sub section (3) added } It further provides for an affirmative defense in AS 11.41.220 (d)

The number of individuals sentenced to prison under the changes that would result from this bill is expected to extremely small.

Prepared by: Jerry Shriner  
 Division: Comm. Office  
 Approved by Commissioner: Margaret M. Paul  
 Agency: Department of Corrections

Phone: 465-5582  
 Date: 1/20/95  
 Date: 1-21-95

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Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An Act relating to the assault  
of children by adults." Component: Alaska State Troopers  
 Sponsor: Representative Bunde Component: Detachments  
 Requestor: (H) State Affairs COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( )	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)  
 No significant impact on the Alaska State Troopers is anticipated

Prepared By: Francis C. Allan Phone: 269-5691  
 Division: Alaska State Troopers Date: 01/26/95  
 Approved by Commissioner: *Ronald L. Orte* Date: 1/30/95  
 Agency: Ronald L. Orte, Dept. of Public Safety

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# FISCAL NOTE

No. 3

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Bill Version: HB 74

(H) Publish Date: 2/10/95

Revision Date: _____	Dept. Affected: <u>Department of Law</u>
Title: <u>*An Act relating to the assault of children by</u>	BRU: <u>Prosecution</u>
adults.*	Component: <u>All</u>
Sponsor: <u>Representative Bunde</u>	COMPONENT SERIAL NO. <u>0085-0090</u>
Requester: <u>Representative Bunde</u>	

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

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

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**POSITIONS**

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

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

This bill amends AS 11.41.220(a) to provide that a person commits the crime of assault in the third degree if the person, while being 18 years of age or older, causes physical injury to a child under 16 years of age but at least 10 years of age and the injury reasonably requires medical treatment. Assault in the third degree is a class C felony. It would be an affirmative defense that, at the time of the alleged offense, the defendant reasonably believed the victim to be 16 years of age or older, unless the victim was under 13 years of age at the time of the alleged offense. Currently, such behavior would be chargeable as assault in the fourth degree, a class A misdemeanor. Although there will be some impact, it should not be significant because prosecutors would use their discretion sparingly by bringing felony charges in those egregious cases that warrant tougher punishment.

Prepared by: <u>Richard I. Peques, Director</u>	Phone: <u>465-3672</u>
Division: <u>Administrative Services Division</u>	Date: <u>1/23/95</u>
Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u>	Date: <u>1/23/95</u>
Agency: <u>Department of Law</u>	

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**COMMITTEE COPY**



House of Representatives

**SPONSOR STATEMENT**  
**HB 74**

November of 1994 was a turning point for one 14 year old Anchorage boy. While delivering newspapers, via his snow machine, early one morning Sean Jensen was viciously attacked by 3 adults over the age of twenty. These "adults" held Sean while they punched out his two front teeth and ran over him with his own snow machine before they chased him home.

Sean's three attackers are charged with a misdemeanor. The public is outraged. If Sean was 10 years old or less his attackers would be charged with a felony for this vicious attack.

HB 74 will give prosecutors the ability to charge people over the age of 18 with a felony if they cause a physical injury that reasonably requires medical treatment to a child between the ages of 10 and 16.

In order to avoid unnecessary felony charges, HB 74 provides the prosecutor with the flexibility to charge a defendant with a misdemeanor (as they are charged under current statute) if the defendant reasonably believes the victim was 16 years of age or older. This provision protects those who should not have a felony charge as well as, minimizing the fiscal impact to the state.

Thank you for your positive consideration of HB 74.

# METRO

THURSDAY, December 15, 1994

ANCHORAGE DAILY NEWS

SECTION C

## No felony charges in carrier assault

By S.J. KOMARNITSKY  
Daily News reporter

Three men accused of beating up a 14-year-old newspaper delivery boy in November have been charged with criminal mischief and fourth-degree assault — both misdemeanors.

Jason Harding, 20, Matthew Rios, 21, and Billy Mazoch Jr., 20, are accused of running over Shaun Jensen with a snowmachine and punching him twice in the face before chasing him away from Har-

ding's South Anchorage home.

Harding and Mazoch also were charged with underage drinking.

Jensen, an eighth-grader at Polar Alternative School, suffered a bruised neck and lost his two front teeth in the attack.

According to court documents, the three men had been drinking and playing pool at Mazoch's house the morning of the attack.

About 5:30 a.m., they decided to drive to a cabin in Hope owned by Rios' father.

They split up and planned to regroup at Harding's house on Norak Place just off Huffman Road.

Jensen delivers papers in the area on his snowmachine, and when he saw a car pull up to Harding's house he figured he would give the person his paper.

Instead, Harding accused Jensen of driving his snowmachine in the yard and then jumped on the boy, knocking him to the ground, according to court documents. Mazoch and Harding then held Jensen

down while Rios ran over his leg and foot with the snowmachine.

Jensen said in an interview after the attack that he could smell alcohol on their breath as they jerked his head back and forth trying to rip off his helmet.

One of them finally undid the helmet and Harding punched the boy twice in the face, knocking one tooth out completely.

Please see Page C-2, ATTACK

## ATTACK: Men face charges in assault on carrier

Continued from Page C-1

and leaving the other dangling by a thread, according to court documents.

Assistant District Attorney Kevin Fitzgerald said Wednesday that he wanted to charge the men with a more serious crime of felony assault.

Criminal mischief and fourth degree-assault are both misdemeanors, punishable by up to a year in jail and a \$5,000 fine.

Charging the three men with a felony would have required that a deadly weapon be involved or that Jensen be hurt more seriously.

"If he'd had his two front teeth knocked out with a bat, then we could have done it," Fitzgerald said.

As it was, the two teeth aren't on the same scale as a police officer being slashed in the cheek with a knife — another recent case where the person was charged with second-degree assault, he said.

He added that while the snowmachine could be considered a deadly weapon, Jensen wasn't hurt when they ran him over with it.

"This was a cowardly act: Three men ganging up on a young boy to beat him

the level of a felony," he said.

Jeff Jensen, Shaun's father, said he's angry the men won't face more serious charges and wants the law changed so those who attack juveniles are automatically charged with a felony.

"I'm absolutely upset," he said. "I don't feel the punishment or the charge

fits the crime at all."

Jensen said his son has suffered psychological damage from the attack and will need surgery to replace the two front teeth he lost.

"I think these guys are going to get off with a hand slap, and if these kids are allowed to get off easily, it will happen again," he said.

**DIVISION OF LEGAL SERVICE**  
**LEGISLATIVE AFFAIRS AGENCY**  
**STATE OF ALASKA**

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

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

**MEMORANDUM**

January 20, 1995

**SUBJECT:** Sectional Summary of HB 74. (Work Order No. 9-LS0368\A)

**TO:** Representative Con Bunde  
Attn: Pattie Swenson

**FROM:** Gerald P. Luckhaupt *GLP*  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 11.41.220(a) by providing that a person commits assault in the third degree<sup>1</sup> if the person is 18 years of age or older and causes physical injury that reasonably requires medical treatment to a child between the ages of 10 and 16.<sup>2</sup>

Section 1 of the bill amends AS 11.41.220 by providing a new subsection that provides an affirmative defense<sup>3</sup> to a prosecution under section 1 of the bill to a defendant that reasonably believes the victim was 16 years of age or older unless the victim was under 13 years of age at the time of the offense.

GPL:glc  
95-077.glc

---

<sup>1</sup> Assault in the third degree is a class "C" felony punishable as provided in AS 12.55.125.

<sup>2</sup> Recklessly causing physical injury reasonably requiring medical treatment to a child under 10 years of age is punishable as assault in the third degree under AS 11.41.220(a)(1)(C)(i).

<sup>3</sup> AS 11.81.900(b)(1) provides "'affirmative defense' means that  
(A) some evidence must be admitted which places in issue the defense; and  
(B) the defendant has the burden of establishing the defense by a preponderance of the evidence".



## **Anchorage School District**

January 27, 1995

4600 DeBarr Road  
P.O. Box 196614  
Anchorage, Alaska 99519-6614  
Phone: (907) 333-9561

Representative Con Bunde  
Alaska State Legislature  
Juneau, Alaska 99801-1182

### **SCHOOL BOARD**

Debbie Ossiander  
President

Peggy Robinson-Wilson  
Vice President

Patti Higgins  
Clerk

Lorraine M. Ferrell  
Treasurer

Harriet A. Drummond

Joe A. Marks

Sharon Richards  
Past President

### **SUPERINTENDENT**

Bob Christal

Dear Representative Bunde:

The Administration of the Anchorage School District supports House Bill 74, an Act relating to the assault of children by adults.

Sincerely,

Larry Wiget, Director  
Government Relations



Anchorage Pioneer Schoolhouse, built 1915



*Rick Mystrom,  
Mayor*

# ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599

Telephone (907) 786-8500



*Service since 1921*

January 24, 1995

Representative Con Bunde  
Alaska State Legislature  
Juneau, Alaska 99801-1182

Dear Representative Bunde:

The Anchorage Police Department strongly supports House Bill 74, which relates to the assault of children by adults. This law, if passed, will provide penalties more appropriate to the crime when adults, who must be completely responsible for their acts, injure children who cannot, in most cases, defend themselves.

Sincerely,

Kevin M. O'Leary  
Chief of Police

Municipality  
of  
Anchorage



P.O. Box 196650  
Anchorage, Alaska 99519-6650  
Telephone: (907) 343-4433

*Rick Mystrom, Mayor*

OFFICE OF THE MUNICIPAL MANAGER

January 20, 1995

Representative Con Bunde  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Bunde:

There has been an outpouring of indignation over the fact that the three adults who viciously beat up a young paperboy leaving him with permanent physical damage can only be charged with misdemeanor assault.

Correction of this inequity is one of the top priorities in the Mayor's 1995 legislative program. House Bill 74 represents an important step toward making similar crimes subject to felony prosecution. We support your efforts in this area and may offer comments and suggestions as the bill moves through the various committees.

Thank you for taking the initiative on this issue of utmost importance to the citizens of Anchorage.

Sincerely,

  
Larry D. Crawford  
Municipal Manager

# Police question 3 men in attack on paperboy

By S.J. KOMARNITSKY  
Daily News reporter

A 14-year-old boy delivering newspapers in a South Anchorage neighborhood was attacked Friday by three men who pushed him to the ground, ran over him with a snowmachine and punched out his two front teeth before fleeing the area.

Shaun Jensen, an eighth-grader at Polar Alternative School, suffered a bruised neck and permanently lost two teeth. The attackers were identified as Jason I. Harding, 20; Billy Mazoch Jr., 21; and Matthew R. Rios, 21.

State troopers said Harding apparently was the one who punched Jensen. All three were being questioned late Friday and could face assault charges. Sgt. Greg Tanner said. The three live near one another with their parents, and Harding lives at the home where the attack occurred.

Resting at his home Friday afternoon, Jensen said he was driving his snowmachine down Norak Place just off Huffman Road when he saw a car pull up to a home he delivers to and a man get out. "I

Please see Back Page, **TEETH**

## **TEETH:** Paperboy loses pair in early morning attack

Continued from Page A-1

light, 'Oh, maybe someone's home, I'll give them a paper.'"

Instead as he strode up to the man, he was attack-

Jensen said the man pushed him down and was screaming at him while driving through the area — something he said he didn't do. The man then ran over him with the snowmachine, he said.

Two other men then emerged from the car and tried trying to pull his head off, he said. The paperboy said he could feel alcohol on their breath as they jerked his head back and forth trying to remove the helmet.

Finally, one of them unhooked the strap, and another punched him twice, knocking one of his front teeth out and leaving another hanging by a thread.

Jensen said he took off running with one of his teeth in his hand.

Shaun's dad, Jeff Jensen, said that when his son showed up at the door, screaming and missing two teeth, he was so enraged he picked up his gun and drove over to the Hardings' house.

He said he parked in front of the driveway, blocking the two vehicles in it. While he was there, a woman he identified as Harding's mother walked out with one of her sons.

He said he tried to talk to the woman, but she started yelling at him that she was going to be late for work, and that he would have to pay her salary if she was. The two got in separate cars and drove through snowbanks around his truck, Jensen said.

"It happened right in her driveway," he said. "But it seemed more im-

portant to her to get to work than see if someone needed help."

He said he later spoke with Harding's dad, who seemed more concerned about the attack. And he also spoke briefly with Rios' mother, who seemed shocked her son could be involved.

Neither man's parents would talk to a reporter Friday.

But Billy Mazoch's father, also named Billy, said he had been told his son was involved.

"At this point, all I know is Mr. Harding and a trooper came over and woke me up this morning," he said. "Supposedly there was a fight and a boy got his teeth knocked out. I was also told my son didn't do the knocking out, and all three pushed a little bit."

He said he hadn't been able to talk to his son, and

wasn't sure if what was said was true.

Jeff Jensen said he hoped the men would be brought to justice. As he spoke, a constant stream of relatives, including grandparents and younger cousins, filtered into the home to visit Shaun, who was sitting on a couch.

Many hugged him, while others ventured to a nearby table to look at a plastic bag containing his missing teeth. Doctors told the boy's parents the teeth were broken at the bone and can't be reattached. His father joked about him not losing the teeth to hockey, his favorite sport.

"If it was a puck, we could understand that," his father said. "But this."

Shaun said he hoped his attackers would have to spend a long time in jail. But first, he said: "I'd like to ask them why they did it."

# Carrier assault

## *The search for justice continues*

The paperboy lost his two front teeth and took a bruising in the November early-morning encounter. While 14-year-old Shaun Jensen's alleged assailants were rapidly apprehended, justice in the case remains elusive.

The three young men arrested and accused of pounding Shaun and running over him with a snowmachine face only misdemeanors. Prosecutors say that if the perpetrators had used a deadly weapon or the boy had been hurt more seriously, a tougher charge would have followed.

"This was a cowardly act: Three men ganging up on a boy to beat him up," said Assistant District Attorney Kevin Fitzgerald, "But it doesn't rise to the level of a felony."

Public outrage has not subsided since the prosecutors' decision. Alaskans rightly feel that men who make unprovoked war on a boy — and leave the boy facing reconstructive dental work during his teen-age years — deserve the lash of the law.

What can prosecutors do if they're unable to bring felony charges? They can vigorously argue their case and ask for the maximum misdemeanor sentence if the defendants are convicted. That's a year in jail and a \$5,000 fine for each of the two Class A misdemeanors two of the defendants face, a penalty sure to jerk them to attention.

What can Alaskans do? Those familiar with the defendants can appear at sentencing to tell the judge what they know about the men. If the men have endangered others before, the judge should know about it. He's empowered to take such testimony into consideration while weighing sentencing possibilities.

Meanwhile, the Alaska Legislature should take a look at this case and related cases in which it seems impossible to impose felony charges on those who have committed brutal acts.

Perhaps lawmakers will find a new way to address some but not all of the cases that fall through the cracks. Perhaps lawmakers will find they cannot tailor the law to fit every outrageous case. But in the process of exploration, these lawmakers definitely will experience firsthand the pain the justice system delivers to victims when it can't deliver justice to criminals.

Friday Dec 23, 1994 ADN

11-30-94

To Whom it May Concern,

On November 11, 1994 at 5:45 a.m. Shaur Jensen a 14-yr. old paperboy was assaulted in South Anchorage by three men, have any arrests been made, or follow up done to assure us that these men have been punished?!!!! NO, and we are outraged!!! The undersigned want to express their unhappiness, outrage and confusion over the inaction concerning this assault !!! How dare the authorities ignore this case and let these men roam free after committing this brutal attack !! What will it take the loss of a li fe?

Let's change the way we handle and procecute the crimes against our children!!!

VIRGIL JENSEN  
12301 TRACY RD.

ANCH- D.E. 99518

BRENDAN C. MCKEE  
737 W. 22<sup>ND</sup> AVE.  
ANCHORAGE, AK 99503

Bill Cohen  
6423 Lone Tree Circle  
Anchorage, Ak 99516

NICK CLINE  
24145 PARK DR  
CHUGIAK AK 99567

PAUL J. PRICE  
2733 W. 66<sup>TH</sup>  
ANCH, AK, 99502.

SHAWN P. SNISARENKO  
6 74 CUTTY SARK ST.  
ANCHORAGE, AK 99502

ROBERT HANN  
1237 W 27<sup>TH</sup> F217  
ANCH- AK 99503

DAVID COOLIDGE  
P.O. BOX 101035  
ANCHORAGE, AK 99510

VIRGIL L. MCCRAW  
3306 E. 19<sup>TH</sup> CT.  
ANCHORAGE, AK 99508

Jim Driffitt  
628 Mumford #2  
Anch. AK 99508

JOHN CHAPMAN  
PO BOX 165  
EADLE RIVER AK  
99577

11-30-94

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Beere Airway Employees

Diane Sunderson  
Nerica Huff

Tom Verge Sr

Patricia [unclear]

Don Woody  
Robert [unclear]

Bob [unclear]

Mike Zarr

Stephen N. Kovall

[unclear signature]

Dwight Johnson

Lore [unclear]

Don [unclear]

Meri [unclear]

Wolfgang [unclear]

Dusti B. [unclear]

Craig Waters

Paul [unclear]

Sub [unclear]

Maed [unclear]

Bill [unclear]

Allyne [unclear]

[unclear signature]

Douglas [unclear]

11-30-94

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Let's change the way we handle and procecute the crimes against our children!!!

Kristen T. Hanson  
Sue Sabrowski  
The Jensen - Jans  
Michael J. Tuttle

Debbie J. Funder  
~~Sharon Jensen~~  
Cresca J. Jander  
Dany Lapinski  
Christine Stork  
Mary E. Murphy  
Ann Jensen  
Barbara Bradley  
Michael J. Hill  
Sally Weller  
Bonnie Fanner  
Lori A. Larsen  
Cary Stewart Kasikowitz  
Josh Warner

## TO WHOM IT DOES CONCERN

The undersigned want to express to you their unhappiness, outrage and confusion over the recent brutal attack and inaction concerning an assault on a paper boy in south Anchorage on November 9, 1994 at 5:45am.

We are concerned that there is a lack of action in this matter and can not understand how these three men are allowed to roam free after committing this obvious crime.

How dare the authorities ignore this matter! What will it take? A lost life?

**What has happened to justice for all?**

upset comm  
Karen Stary  
Michael Fry  
Janette Hall  
Gaelyn Berry  
Michelle M. Shin Sung  
B. Leigh Beckman

K. H. M. J.  
Janelle Vaughn  
Eddie Vaughn  
JISAM WILSON  
Charles Lever  
JH

November 18, 1994

11-30-94

To Whom it May Concern,

On November 11, 1994 at 5:45 a.m. Shaun Jensen a 14-yr. old paperboy was assaulted in South Anchorage by three men, have any arrests been made, or follow up done to assure us that these men have been punished?!!!! NO, and we are outraged!!! The undersigned want to express their unhappiness, outrage and confusion over the inaction concerning this assault !!! How dare the authorities ignore this case and let these men roam free after committing this brutal attack !! What will it take the lose of a li fe?

Let's change the way we handle and procecute the crimes against our children!!!

Bonnie J. Hamblin	4019 Brentwood Cir.	Anch. Ak
Glenn Hamblin	4019 BRENTWOOD CIR	99502
Wanda B. Sims	10520 Spruinfelt Dr	99502
Jewell K. Kausa	1013 Potlatch Cir	99515
Jackie Spence	1105 Potlatch Cir	99513
Beverly A. Bunker	7001 ELOHAUE AVE Anch	99513
Paula J. Murdoch	1849 Bellevue Dr. Anch. Ak.	99504
Wanda Belf	2109 Cornell Ct	99515
Robert L. Kline	3005 CARROLL LA ANCH AK.	99508
Jane L. L. L.	5510 S. W. St Anch	99517
Rosemary Elledge	3905 Hampton Dr	99504
Brother Daverny	2414 Lestina Dr.	99517
Jo Ann Jensen	12301 Stacy Rd.	99517

## Put end to abuse, violence

This is the first time I have ever sent you an opinion.

I have just read the article that appeared on the front page of the Metro section entitled "No felony charges in carrier assault." The incident described in this article angers me very much.

I found the article interesting because of the age of the criminals. I am a

22-year-old male and a member of their generation. I did not attend college. I am a musician and play in several local bands. I also vote, pay taxes, and hold a full-time job (which I have had for four consecutive years). Maybe I'm an exception; my generation has been stereotyped as slacker, lazy, and "grunge." Well, I want that stereotype to change.

These males are a disgrace and have

shamed my generation. (I refrain from using the word men, because men do not gang up three-to-one on 14-year-old boys.) I hope their actions are not ignored, condoned, or coddled. For those who have the authority and the obligation to do so, it is time to establish a moral boundary and say, "This is not acceptable; you are not allowed to behave this way; this kind of behavior will not be tolerated."

## Attack on carrier shameful

I was disturbed after I read the Daily News' article "Police question 3 men in attack on paperboy (Nov. 12)." I was a papergirl for four years when I was young and learned valuable lessons, including money management, responsibility and self-discipline (getting out of bed in the mornings). My earnings financed the boarding of my horse and I always had my own spending money.

I can't even imagine the effect it would have had on me to be physically beat up while out on my route. My heart goes out to Shaun Jensen. How many kids will now miss out on the benefits of having a paper route because of parents afraid for their safety (and rightly so). Look at our society. Who is gaining and who is losing here? Who in the end will be punished more? Shaun Jensen or his attackers? I believe the three attackers should be punished severely! Their parents also should be punished. What shame they should feel for raising children that behave like this! They have failed in their most important task in life.

— Catherine Bursch  
Homer

What if these bullies do not receive the justice due them? It will send a negative message to the innocent victim, as well as to his family, friends, classmates, and the sane of our generation. It will prove that safety, justice, and freedom no longer exist in America.

These males were also charged with underage drinking. The article says their intention was to travel to Hope. Who knows what disaster or death awaited them on the Seward Highway? I am disgusted, saddened, and tired of seeing friends and peers crushed by alcohol abuse and violence, whether by death, injury, or trashed lives. My plea to those in authority is this: Please do all that is in your power to put an end to this senselessness.

I believe that Jason Harding, Billy Mazoch Jr., and Matthew Rios deserve the maximum allowable sentence. I am overly willing to do anything I can to help change the way people look at my generation and its future.

— Kristian Rosentrater

11/22/94  
**Nation as strong as the fa. lles**

Why does it take numbers to assault a defenseless person? In regard to the three-man attack on young Shaun Jensen, anymore, one can look upon society as anarchistic. There are gangs which besiege one person, while there is the gun-toter who shoots an individual who has no weapon. Or there's the knife-wielder who stabs an innocent victim.

Savage is what the natives called the murderous foreigners. As history was written, it erred when it said the wild Indians were called savages. The descendants of the true savages have decided to prove history was recorded in error. Those descendants of foreign lands are jumping out of vehicles to attack the loner, the homeless drunk, the elderly poor on the streets, and the innocent pedestrian. The helpless are beaten up, shot at, robbed and sometimes murdered by several hands.

In villages and on other Native American homelands, the headlines cry the same violations: assault, murder, rape, robbery, bootlegging, and overwhelming chemical addictions.

My husband and I reared our children, the sons as men; the girls as ladies, their ages range from 37 to 21 years old. We will take the credit for the good they do and we will take the blame for their failures. A nation is only as strong as its families, and as it was quoted, "As the twig is bent, so shall the tree grow." All children have leaders, they are called parents or guardians. We agree with those who say parents are to blame when children become criminals.

Shaun Jensen, you are a far better man than the three savages. May you walk without fear, and walk always in peace.

— Elizabeth A. Wells, director  
*Oree Drumrite Walking Heritage*

11/17/94  
**Carrier attack an outrage**

Talk about overgrown bullies that are more than 20 years old and still don't know the proper way to settle problems. The 14-year-old is just that: 14 years old! Only now he has no teeth and has been beaten up. The assailants should do jail time. A parent of one assailant claims, "Supposedly there was a fight. . . ." Three adults against a 14-year-old kid. Wrong! These grown-ups viciously attacked a youngster. It is an outrage! These kind of creeps need to be taken off the streets for the safety of our children.

— Teresa Werner  
*Kenai*

**Punish assault of paperboy**

The three punks that attacked Shaun Jensen, the 14-year-old paperboy, must be held accountable for their actions. They must be punished. They should be made an example of. They should be required to work his paper route for one year in addition to paying all his medical bills and something for his pain and suffering. I hope young Jensen gets a good attorney.

This violent, unmitigated behavior must not and will not be tolerated in our community. We must stop this kind of action now before it gets totally out of hand.

Please do your part in the media and follow up on this. Pay more attention to the things going on here in Alaska. I find it hard to believe there have been but a few letters published in regard to this assault.

— Robert Bowling

**Attackers deserve worse**

I'm confused and outraged about our criminal justice system and how unjust it truly is. I'm referring to the 14-year-old Shaun Jensen case. The quote in the paper states that it wasn't a felony because a deadly weapon wasn't used.

Shaun's neck was badly bruised by one

of these animals tearing at his head while another man held him so yet another man could run over his legs with a snowmachine. Let me ask you Mr. District Attorney, if this isn't assault with deadly force, what the hell is?

These adult men could have broken his neck or severed his spine. If that would have happened, would we be adding a charge about equal to, let's say, jaywalking, to the list of ruthless crimes these felons committed and maybe add another day of community service to what these guys will probably get?

By knocking out his teeth, it's evident they meant business. By tearing at his head, it's evident these men need a hell of a lot more than they will get with these petty charges. What's the deal here?

Is it that the criminal lawyers are tougher and better and you're afraid to charge these guys with a crime with some teeth in it? I'd say no guts . . . no glory. Take a chance on shoving the rights of the innocent down their throats. If we don't start punishing our society's criminals like they punished Shaun, the day will come when we fear going to our newspaper box.

— Tim Stuart

## QUOTABLE

"There are bullets raining all over D.C."

— White House spokesman Carl Meyer, saying that shots fired at the White House may have been "just a stray couple of rounds."

"... are living at a time when these incidents of violence take place not just in cities and communities around this country, they take place here in Washington in front of the White House."

— Leon Panetta, White House chief of staff.

"I think these guys are going to get off with a hand slap, and if these kids are allowed to get off easily, it will happen again."

— Jeff Jensen, father of 14-year-old Shaun, who was assaulted by three men in their 20s who have been charged with misdemeanors in the attack.

Where is the justice in this system? The paper this week is full of fraud charges against a president of a bank and three women in the Valley — arrests made and suspects in custody. An Anchorage Daily News carrier was beaten by three men who have been identified, yet are they in custody?

The scales of justice need work.

Are people that run that money scam more of a danger to society than cowards that prey on children? The adults who participated in the pyramid did so of their own volition, forgetting the golden rule, nothing in life is free.

Their egos are hurting and their wallets are a bit lighter, but they have lost nothing that cannot be replaced. The paperboy and his family have lost far greater things: His teeth and their sense of safety in the neighborhood.

The laws say to defraud people of money is a felony. The same legal system says physical assault on a child by three adult men is a misdemeanor. Where is the justice in our legal system for our children?

— Mike Zarr

■ MORE LETTERS: Readers write, B-8

11-30-94

To Editor-Daily News,

SHAME ON THE ANCHORAGE DAILY NEWS! The lack of coverage by your paper on the story of the assault on your own carrier and the inaction on the authorities to arrest or even charge these men is outrageous!!

How dare they not take this case seriously and you not keeping the story active until action is taken is an insult to this young boy. This 14 yr. old is walking around without front teeth, a lack of trust in the people sworn to protect him and the knowlage that these men are running free.

In the original story on November 12 it stated these 3 men "could" face assault charges!! We must question why after 3 weeks there are no arrests. These men have been identified yet they are free, does this sound right to you? What is this inaction saying to our young people, where is the justice for Shaun.

The story also quoted Mr Mazock as saying that his son Billy did not Knock the boy's teeth out but " that all 3 had pushed the boy around"! Get real Mr. Mazoch ASSAULT is ASSAULT!! Would he be so quick to think that the case had it been his child, I think not. As a parent he should be outraged that his child could commit this act instead of looking for a justification. SHAME ON YOU SIR!

As citizens of Anchorage lets make our outrage known.

**Testimony for State Affairs Committee  
by Julie Jensen Zarr**

My name is Julie Jensen Zarr and I am here today to ask for your support in passing House Bill 74. The current assault law needs to be updated.

On November 11, 1994 at 5:30 am while delivering the Anchorage Daily News my 14 year old nephew, Shaun Jensen was viciously assaulted by 3 adult men in South Anchorage. Shaun lost 2 permanent teeth, suffered neck trauma and was run over by his own snow machine. The law as it reads now only made misdemeanor charges against these men possible, not a message we want to send to thugs that prey on our young.

In 1971 my family moved to Alaska and settled in South Anchorage, it was a great place to grow up. We felt safe and secure out walking or horseback riding anywhere. My parents raised three children in Alaska we are now running our businesses and raising our children here. The Anchorage of the 50's, 60's, 70's and 80's did not have drive by shootings, assaults or random senseless acts of violence, the law at that point in time fit, but in 1995 it does not. AS crimes change so must the laws change must fit the crimes of 1995 and beyond.

This event brought to light for me the need to make a difference and try to turn a negative into a positive, teaching my nephew and 2 children empowerment instead of victimization. A change in this law will show that through hard work and believing in an idea one person can make positive impact on society. The outpouring of support from the people of Anchorage has also had a healing effect on Shaun.

Again, I ask for your support in passing House Bill 74. I want to thank the committee for their attention and support. This bill must be passed as soon as possible, before another young man or woman is victimized as Shaun was in November. Thank you for taking the time to listen to me today.

**HB**

**74**

**SFIN**

**FILE**

No. 1

Bill Version HB 74

(H) Publish Date: 2/1/95

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act relating to the assault of children by adults BRU: all  
 Component: all  
 Sponsor: Rep. Bunde  
 Requester: Rep. Bunde COMPONENT SERIAL NO. \_\_\_\_\_

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

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

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<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 (FY95) cost: \$ \_\_\_\_\_

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

This bill amends AS 11.41.220 (a) by extending it's application to the assault of someone 10 through 15 years old by another, 18 years of age or older. { sub section (3) added} It further provides for an affirmative defense in AS 11.41.220 (d)

The number of individuals sentenced to prison under the changes that would result from this bill is expected to extremely small.

Prepared by: Jerry Shriner  
 Division: Comm. Office  
 Approved by Commissioner: Margaret M. Paul  
 Agency: Department of Corrections

Phone: 465-5582  
 Date: 1/20/95  
 Date: 1-21-95

COMMITTEE PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE.  
 For further distribution information, call the Governor's Legislative Office

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An Act relating to the assault  
of children by adults." Component: Alaska State Troopers  
 Sponsor: Representative Bunde Component: Detachments  
 Requestor: (H) State Affairs COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)  
 No significant impact on the Alaska State Troopers is anticipated

Prepared By: Francis C. Allan Phone: 269-5691  
 Division: Alaska State Troopers Date: 01/26/95  
 Approved by Commissioner: *Ronald L. Orte* Date: 1/30/95  
 Agency: Ronald L. Orte, Dept. of Public Safety

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# FISCAL NOTE

No. 3

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Bill Version: HB 74  
(H) Publish Date: 2/10/95

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: \*An Act relating to the assault of children by BRU: Prosecution  
adults.\* Component: All  
 Sponsor: Representative Bunde  
 Requester: Representative Bunde COMPONENT SERIAL NO. 0085-0090

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

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

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**POSITIONS**

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

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

This bill amends AS 11.41.220(a) to provide that a person commits the crime of assault in the third degree if the person, while being 18 years of age or older, causes physical injury to a child under 16 years of age but at least 10 years of age and the injury reasonably requires medical treatment. Assault in the third degree is a class C felony. It would be an affirmative defense that, at the time of the alleged offense, the defendant reasonably believed the victim to be 16 years of age or older, unless the victim was under 13 years of age at the time of the alleged offense. Currently, such behavior would be chargeable as assault in the fourth degree, a class A misdemeanor. Although there will be some impact, it should not be significant because prosecutors would use their discretion sparingly by bringing felony charges in those egregious cases that warrant tougher punishment.

*Richard I. Peques*

Prepared by: Richard I. Peques, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 1/23/95  
*Richard I. Peques FOR*  
 Approved by Commissioner: Bruce M. Botelho/Attorney General Date: 1/23/95  
 Agency: Department of Law

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**COMMITTEE COPY**

# SENATE COMMITTEE REPORT

DATE: 3/30/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 4-29-95

Judiciary Committee considered CS FOR HOUSE BILL NO. 74(FIN)

"An Act relating to the assault of children by adults."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical change
- new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
Mike Miller	✓				
Ryan Green	✓				
CHAIR <u>Adrian I. Taylor</u>					

**NEW FISCAL NOTE(S):**

Department                      Date    Zero    Fiscal

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date    Zero    Fiscal

Department	Date	Zero	Fiscal
Law (H)	1/23/95	✓	
Public Safety (H)	1/30/95	✓	
Corrections (H)	1/21/95	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# SENATE COMMITTEE REPORT

DATE: 3/7/95

FURTHER: Judiciary  
Finance

DATE TURNED INTO OFFICE: 3/29/95

State Affairs Committee considered CSHB 74(FIN)

"~~An Act~~ relating to the assault of children by adults."

PH & FIN'S

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

Senate Bill:

- same title
- new title
- House Bill:
- same title
- technical change
- new: SCR# \_\_\_\_\_

SIGNING/DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Handwritten note]</i>	✓		
<i>[Signature]</i>	✓				
CHAIR: <i>[Signature]</i>	✓				

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal


**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal

LAW (H)	1/23	✓	
PUBLIC SAFETY (H)	1/30	✓	
CORRECTIONS (H)	1/21	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill