that person acting as the authorized third party representative could be an IPA, a lawyer, a physician, a specialty medical society, a local medical association, a state medical association, etc. It is presumed a contractual relationship will exist between the represented physicians and the authorized third party that memorializes the obligations and requirements of the parties. This subsection states that the physicians who have joined for the purpose of negotiation may communicate with their authorized third party about terms and conditions, which are to be negotiated. The authorized third party is the sole person who is to negotiate on behalf of the doctors. Subsection (5) of this section may provide some confusion in that it would appear to defeat the purpose of the joint negotiations. The intent of subsection (5) is to provide, for example, for different rates of reimbursement to be included for different specialties. (For example, anesthesiologists are typically reimbursed in a different manner than a surgeon and both may be in the same group of physicians engaged in joint negotiations.) Generally, an authorized third party may not represent more than 30% of the physicians in a particular geographic area. However, if an insurer or health plan has 5% or more market penetration in a geographic area, then an authorized third party may represent more than 30% of the physicians. Obviously, the concern would be that physicians represented in great numbers would dictate the terms of a contract to an insurer or health plan. By the same token, for example, it would be unfair for a specialist, who is the only one in a particular area, not be able to join with other physicians to jointly negotiate. This is an area that active state oversight would be necessary so that a fair result for the general public would be the outcome.

AS21.050.020 (e) sets out what a person desiring to act as an authorized third party needs to do in order to act in that capacity. In short, the authorized third party needs to register with the Commissioner of Labor and Workforce Development. That registration requires an identification of the authorized third party and how that person intends to operate. It is presumed that this would include a detailed plan of operation along with the contract that it has entered into with the group of physicians to be represented. This must be done for each physician service contract that the authorized third party wishes to jointly negotiate on behalf of the physicians represented. The efficiencies or benefits that are expected to be achieved must be identified. The authorized third party is required to report to the Commissioner of Labor if a health care insurer or health plan declines to negotiate or terminates a negotiation within 14 days of receiving that decision. Also, if an insurer or health plan fails to respond within 14 days of a request for negotiation, that fast also needs to be reported to the Commissioner.

AS21.050.020 (f) requires the Commissioner, with the advice of the Attorney General, to either approve or disapprove a negotiated contract within 30 days of when it is presented. If it is disapproved, the Commissioner must give a written explanation of the deficiencies and how they could be corrected.

AS21.050.020 (g) prohibits the physicians represented from acting together in response to a report from their authorized third party regarding its discussion or negotiation with a health care insurer or health plan. The authorized third party has a duty to warn the physicians represented of the potential of legal action under state and federal anti-trust laws for exceeding the authority granted by this measure.

AS21.050.020 (h) limits the terms of any contract negotiated to 5 years. It is expected that terms of actual contracts will be for less than 5 years.

AS21.050.020 (i) keeps all documents relating to joint negotiations, that would come from both the physicians and insurers or health plans, confidential and not subject to public inspection.

AS23.50.030

AS23.50.030 creates a fee mechanism to cover the State's cost of providing its active oversight of the joint negotiation authorized by this bill. The fee is to be reflective of the actual costs that the State incurs. The Commissioner sets the fees by regulation and must report on the fees each year to the Office of Management and Budget. At least one other state in dealing with a "State Action Doctrine" exception (California) charges the regulatory costs to the health care insurers and health plans on a pro-rata share based on their market share. Theoretically, the cost should be the same without regard to who pays it. If the physicians pay it via their authorized third party, then they will negotiate sufficient payment levels to cover that cost. Conversely, if the insurers and health plans pay it, then they will negotiate a sufficiently lower payment level to cover that cost. The issue is what is the most efficient and fair method to cover the cost. Obviously, the physician community will not be supportive of a fee mechanism that requires a payment upfront only to have an insurer decline to negotiate and not receive any refund.

AS23.50.040

AS23.50.040 allows the Commissioner of Labor and Workforce Development to adopt regulations to implement this law.

AS23.50.099

AS23.50.099 is the definition section and contains the definition of the terms "authorized third party", "commissioner", and "health care insurer". These definitions are straightforward and unambiguous. This section will be expanded if the SB 256 is amended to also include self-insured health plans. For example, the term "health benefit plan" would need to be defined as it is in AS 21.54.500 (15).

Section 3

This section is needed to provide for joint negotiation by physicians under the "State Action Doctrine" exemption under Alaska's laws pertaining to competitive practices and regulation of competition.

JJJ/kms

Antitrust Relief

Egregious Contract Clauses

The Campbell bill would allow physicians to jointly negotiate against such clauses

The "Cheapest" Care

This clause allows the plan to restrict care to the cheapest treatments, not the best or most appropriate for the patient.

> "*Medical necessity* means the SHORTEST, LEAST EXPENSIVE, OR LEAST INTENSE LEVEL of treatment, care or service rendered, or supply provided, as determined by us [health plan], to the extent required to diagnose or treat an injury or sickness. [Emphasis added] (American Medical Security, Inc., plan supervisor and administrator for self-funded employee benefit plan)

The "Fall Guy"

Health plans shift liability to physicians for patient harm caused by the plan's own actions. Taken together these three clauses effectively require physicians to comply with the plan's decisions and policies - that directly affect the quality of patient care - while the plan avoids legal liability for them.

> "Provider agrees to participate in, cooperate with and comply with all decisions rendered in connection with [health plan's] Utilization Management Program..."
>
> "Provider agrees to render Covered Services to Beneficiaries...in accordance with... the clinical quality of care and performance standards that are professionally recognized andor accepted by [health plan]." - not necessarily the physician
>
> "PROVIDER SHALL BE SOLELY RESPONSIBLE for the quality of Covered Services rendered to beneficiaries." [Emphasis added]
>
> (Independence Blue Cross p. 2, Clause 1.13, p.4, Clause 2.2(a), and p.5, Clause 2.7 and 2.10)

Pass The Buck

Health plans shift responsibility to physicians for their own breaches of confidentiality.

> "Provider agrees to defend, hold harmless and indemnify Company and its officers, shareholders, employees, agents and subagents from any and all claims, causes of action, lawsuits, liabilities, damages and expenses ...arising from or relating to any release or disclosure MADE BY COMPANY..." [emphasis added] (Wellmark Blue Cross/Blue Shield of Iowa p. 10, clause 10.4)

The Great "Unknown"

Physicians are forced to agree to terms without knowing what they will be. In this example, the health plan would force a physician to participate in a plan without knowing the type of plan, the rules and procedures, the number of patients, the payment, etc.

> "Company reserves the right to introduce new Plans during the course of this agreement. Provider agrees that Provider will provide covered services to Members of such Plans under applicable compensation arrangements determined by company." (Aetna Specialist Physician Agreement, clause 8.2)

Our Way or the Highway!
Health Plans can unilaterally change the contract terms at any time without physician consent:

> "BLUE CROSS has established a Utilization Review (UR) program which shall seek to assure that Hospital Services or Medical Services provided to Members are Medically Necessary. The Utilization Review shall follow the procedures described on Exhibit C, attached to and made part of this Agreement. BLUE CROSS may change UR procedures by delivering amendments to, or a replacement for, Exhibit C at least thirty (30) days prior to implementation." (Blue Cross of California Prudent Buyer Plan, clause 7.1)

Surprise!
Changes can be made at any time *without notice:*

> "Provider agrees: a) To participate, as requested, and to abide by Company's utilization review, patient management, quality improvement programs, and all other related programs (AS MODIFIED FROM TIME TO TIME) and decisions with respect to all members." (Aetna Specialist Physician Agreement, clause 4.2)

No competition
Health Plans prevent physicians from accepting any new patients from competing health plans.

> "To prevent discrimination against Company or its members, for such time as provider declines to accept new members as patients, provider shall not accept as patients additional members from any other health maintenance organization." (Aetna proposed Primary Care Physician Agreement, paragraph 1.2)

"Lemon Laws"
Health Plans insist upon contracts that do not disclose essential terms- one way is to refuse to disclose reimbursement rates and better yet, retain the right to change them at any time:

> "Company shall ... pay Provider for [services] rendered to Members in accordance with: (a) the THEN-CURRENT Company Reasonable, Equitable Fee Schedule (REF); or (b) the compensation arrangement THEN iN EFFECT as applicable to such Member's Plans; either of which may be modified from time to time by company." [Emphasis added] (Aetna Specialist Physician Agreement, clause 3.1)

Patients - Don't Bother Asking!
Gag practices prevent physicians from discussing treatment options with their patients if there is a chance that the health plan won't pay:

> "Provider shall not provide or threaten to provide inferior care or imply to members that their care or access to care will be inferior due to the source of payment." (Aetna Specialist Physician Agreement p. 2, clause 1.2)

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American Medical Association

Physicians dedicated to the health of America

Memo to: Executive Directors
State Government Affairs Contacts
State Medical Societies
National Medical Specialty Societies

From: Ross N. Rubin, Vice President
Legislative Affairs

Rebecca A. Cerny, Director
Division of State Legislation

Date: February 17, 1999

Subject: AMA Model State Legislation on State Action Doctrine

As you know, one of the main focuses of the Association has been to identify strategies to help physicians achieve greater bargaining leverage against health plans. This is particularly important in the current health care market, where health plans have amassed enough market leverage to virtually dictate the terms of the contracts they offer physicians. To many physicians, the "strength in numbers" derived from coming together to negotiate fees and other contractual terms is the most obvious way to achieve favorable contracts with health plans. The antitrust laws, however, present a major roadblock to physicians, in that they prohibit physicians from coming together to bargain collectively with health plans and other payers.

At the June 1998 meeting, the House of Delegates adopted Resolution 258. Resolution 258 called upon the Association to develop a negotiating unit, within organized medicine and with no affiliation with national trade unions, free of antitrust constraints for all of its members in order to help level the playing field with health care payors. At the December, 1998 meeting, the House adopted Board of Trustees Report 14, which in part calls upon the Association continue to identify ways in which collaboration by physicians can benefit the public and to inform antitrust enforcement agencies of these findings. In addition, Board of Trustees Report 14 asked the Association to examine the feasibility of drafting model state legislation and, if appropriate, draft such legislation for dissemination. *The AMA Council on Legislation considered and approved model state legislation on the state action doctrine at its January 1999 meeting. The AMA Board of Trustees adopted the model state legislation during its February 1999 meeting.*

Enclosed you will find 1) a summary of the state action doctrine as it pertains to collective negotiation among physicians, including a discussion of the Washington state law on this issue, and 2) model state legislation relating to state action doctrine recently approved by the AMA's Board of Trustees. Please feel free to contact Ross Rubin at (312) 464 – 4040 or Rebecca Cerny at (312) 464 – 4503 with any questions you may have.

STATE ACTION DOCTRINE

The American Medical Association has been working to develop a collective bargaining unit, recognized under the National Labor Relations Act (NLRA), to provide a professionally grounded entity for physicians eligible to organize under that Act. The Association is also continuing to support federal legislation to amend the antitrust laws to allow physicians not eligible under the NLRA. It is expected that Representative Campbell will reintroduce his bill soon.

There is, however, an interim step that in some cases can permit independent physicians to negotiate with plans. This step is based on a line of cases that creates a "state-action doctrine" under the antitrust laws. (Parker v. Brown).

Summary of the State Action Doctrine

The state action doctrine was first set forth in a 1943 Supreme Court decision in *Parker v. Brown*. In general, it states that the **antitrust laws do not apply to action by a state operating in its sovereign capacity, or to private conduct compelled or approved by the state. In other words, where the requirements of the state action doctrine are met, behavior that would otherwise violate the antitrust laws will be exempt from antitrust scrutiny.**

The test for qualifying for the exemption varies, depending on the identity of the party performing the action in question:

1. Where the party is a state legislature or a state court, the exemption is complete, and no further inquiry is required;

2. Where the party is a state agency or local government official, further inquiry is required with respect to whether the action in question followed "clearly articulated and affirmatively expressed state policy;" and

3. Where the party is a private party, the test for qualifying for the state action exemption is the strictest. In addition to having to comport with the "clearly articulated and affirmatively expressed state policy" spelled out above; the action must be subject to "active state supervision." In other words, the state must, *in practice*, exercise some degree of independent judgment or control over the activity. Passive or theoretical power of a state to review private action will be insufficient to meet this standard.

Collective Negotiation Among Physicians Under the State Action Doctrine

Independent physicians fall into the category of private party. Therefore, actions taken by physicians that would ordinarily be illegal under the antitrust laws – in this instance, collective negotiation with health plans – will be exempt from antitrust scrutiny ***only to the***

extent that the activity comports with the requirements laid out above in item 3. Specifically, the antitrust laws will not prohibit independent physicians in a particular state from negotiating collectively with health plans where:

- **The relevant state has a "clearly articulated and affirmatively expressed state policy" that permits independent physicians to negotiate collectively with health plans.**

  The most obvious way for a state to lay out this policy is through legislation. If a state has on its books legislation specifically stating that physicians may negotiate collectively with health plans, then the first requirement for the state action exemption will be satisfied. *[It should be noted that the introduction of a bill that permits independent physicians to negotiate collectively with health plans is bound to generate a certain degree of controversy. This is because such legislation will be perceived as opening the door to activity that will have anti-competitive effects that will ultimately harm the consumer. For example, critics of such legislation might argue that allowing independent physicians to negotiate collectively with health plans will benefit physicians by helping them to keep their fees up, but will harm consumers in that higher fees will translate into higher premiums. Critics might also point to the risk of physicians engaging in boycott activity, where the health plans do not respond favorably to the terms and conditions the physicians demand in the course of the collective negotiations. This, too, could have a negative impact on consumers, who might not be able to secure medical services when needed. Consequently, to increase its chance of passage, such legislation must be carefully drafted, pointing out the possible pro-competitive reasons for allowing physicians to negotiate collectively with health plans. It should also contain provisions that provide reassurance to legislators that boycott activity, or other activity that causes direct harm to the consumer, will not qualify for antitrust exemption."*

- **The collective negotiations between physicians and health plans must be subject to "active" state supervision.**

  Although legislation should include a provision that gives a state body the authority to oversee physicians' collective negotiation activity, the mere inclusion of such language in a state statute will not be enough to constitute "active" state supervision. The state body must, in practice, review the negotiations, which might include following certain procedures that give the state body input into the negotiations themselves. A sound way to ensure that a state body has active oversight over the negotiations is to incorporate within the legislation certain duties of the state body in the course of physician negotiations. This way, negotiations can not go forward and be in compliance with the law unless the state body performs certain functions and, hence, is actively involved.

The Washington Example

Before moving directly into possible model legislation, it is helpful first to look at legislation that was passed in Washington state in 1995. This legislation was designed to provide independent physicians with increased negotiating power with health plans. The legislation serves as a good starting point with respect to drafting language that, when implemented, yields a paradigm in which physicians can collectively negotiate with health plans on certain issues without being subject to the antitrust laws. **However, the Washington law has one major shortcoming for our purposes, and that is that it specifically excludes collective negotiation over fees from state action exemption.** Consequently, while model legislation will borrow many of the provisions of the Washington statute, it will reach further to encompass collective negotiations over fees in identified circumstances.

In summary, the provisions of the statute are organized to address the following issues, in order:

1. The policy reasons for permitting collective negotiations in certain circumstances, and for disallowing collective negotiations in others.

2. The terms and conditions over which physicians may collectively negotiate with health plans

3. The terms and conditions over which physicians may not collectively negotiate with health plans

The first three provisions of the statute set forth Washington's "clearly articulated and affirmatively expressed state policy" in favor of collective negotiations between physicians and health plans on specified issues. Therefore, where physicians engage in the practices enumerated by the statutory provisions, they will be exempted from antitrust prosecution, provided the state actively supervises these activities. The remaining statutory provisions institute a formal process involving the state, thereby ensuring that the state is, in practice, actively involved in reviewing collective negotiations conducted by physicians. The provisions address the following issues:

1. The process competing physicians must follow when negotiating with health plans (e.g., physicians must negotiate through a third party they so authorize);

2. The information third parties must supply to the state prior to engaging in collective negotiations on behalf of physicians;

3. The requirement of state approval of the proposed activity as described within the information supplied by the third part representative; and

4. Loss of antitrust exemption as a result of physicians' acting outside of the parameters laid out by the statutory provisions.

Provided Washington physicians act in accordance with the statutory provisions, they will avoid scrutiny under the antitrust laws. However, the statute is actually quite limited with respect to what it allows physicians to do. Most notably, it forbids collective negotiations over fees or price information, and even backs up this prohibition with a policy statement that points to the anti-competitive effects of such practices.

WSMA's Negotiation Service

Following the passage of legislation allowing independent physicians to negotiate collectively with health plans, the Washington State Medical Association (WSMA) developed a negotiation service to assist Washington physicians in conducting such negotiations. The service was set up so that WSMA staff, in conjunction with outside legal counsel, would actually conduct the physicians' negotiations with health plans.

According to John Arveson at WSMA, thus far, the negotiation service has not been used to conduct any negotiations with health plans. When WSMA first announced the availability of the service to Washington physicians, the response was fairly good, with approximately 2400 physicians signing up. However, in light of increasing consolidation among health plans in Washington, the number of physicians signing up to take part in the service did not amount to a critical mass, for the purposes of "making a difference" against area health plans. By way of example, last summer, when one of Washington's largest HMOs offered a contract containing egregious terms and the negotiation service requested to negotiate with the HMO, the HMO declined to negotiate with the physicians.

The events that transpired following the HMO's refusal to negotiate with the physicians suggest that there might be increased demand for the negotiation service in the future. Considering the HMO's contract to be sufficiently egregious, the WSMA presented the contract to the state's insurance commissioner and put together a media campaign against the HMO's contractual practices. The insurance commissioner, who has a reputation for being very pro-consumer, found the contract to be in need of modification. As a result, the HMO is now in negotiations with the insurance commissioner over the terms of the contract. Because the commissioner is "not known to be particularly friendly" to insurance companies, Arveson notes that the next time the HMO is approached by the physicians to negotiate, it will be more open to private negotiations with physicians. Moreover, the media campaign has generated increased physician interest in participating in the negotiation service. Since this summer, WSMA has received an additional 200 to 300 physician applications.

When asked what impact allowing physicians to negotiate on fee-related issues in certain circumstances would likely have on interest in the negotiation service, Arveson said many more physicians would be interested. Therefore, the possibility of including a provision within proposed legislation that permits collective negotiation over fee-related issues in limited circumstances should not be overlooked.

Conclusion

While not a complete solution for independent physicians not eligible to negotiate under the NLRA, pursuit of state legislation to authorize negotiations provides an approach that can be utilized. Such a strategy is not without risk. By operating under the state action doctrine, a certain amount of autonomy will be lost, in that the state will now be involved in the negotiating process. State medical societies will have to weigh the benefits of the antitrust exemption under the state action doctrine against the risks of active state involvement.

MYTHS ABOUT PHYSICIAN NEGOTIATION
(SB1468/HB3039)

MYTH: *Doctors can form groups to negotiate now.*

FACTS:

1) Currently, physician organization is expensive, complex, and often not logistically possible.
2) Organization makes the physician sacrifice his professional option and **deprives patients of choice** of delivery setting.
3) If physicians organize there is no legitimate means to determine if the group is organized in a manner which meets FTC requirements for negotiation. Moreover, the costs of obtaining a legal opinion that can't provide any guarantees can easily run into six figures even before the group is functional.
4) Even if the group does meet FTC standards it doesn't prevent the plan from threatening the group with an antitrust action, resulting in six figure legal fees and the achievement of the plan's ultimate goal—ceasing physician negotiations.

MYTH: *The Federal Trade Commission and the Department of Justice are "easing up" on enforcement and investigation of physician networking and other initiatives.*

FACT:

At their recent joint report to the American Health Lawyers Association, the FTC and DOJ made it clear that physician mergers and other activities continue to be high on their enforcement agenda this year. For example, to show how nearly impossible it is to understand and/or comply with the law, their staff noted that if a physician merger includes the best physicians in the community (the "must haves"), it might be anti-competitive for this fact alone, even if physician organization doesn't have what the enforcement agencies traditionally consider "market power."

MYTH: *This is the first step in a plan by the AMA to unionize physicians.*

FACTS:

1) The AMA has plans to represent those physicians who are eligible to unionize today without the passage of SB 1468 under the National Labor Relations Act (NLRA). These physicians must be employed physicians, and the negotiations must be with their employer. **Texas has a prohibition of the corporate practice of medicine.** Therefore, Texas would not serve as a model for the AMA's ability to represent physicians in NLRA recognized negotiations with employers.
2) This has to do with the ability of physicians to engage in meaningful contract negotiations with very powerful, monopsonistic forces. This is about **a balance of power in the marketplace** and has nothing to do with unionizing.
3) This bill amends the insurance code and deals only with negotiations between physicians and managed care plans. Furthermore, the bill **specifically prohibits strikes and boycotts or any other tactic that would result in denial of patient care.** The AMA and TMA both believe that it is unethical to strike or otherwise use patients as a bargaining chip.

MYTH: *This bill is anti-competitive and such negotiations should be left to the two equally matched, sophisticated parties.*

FACTS:

1) These plans offer a "take it or leave it" approach. **Contracts are non-negotiable.** Furthermore, some plans control as much as 60% of the market. With this kind of market power, physicians have no ability to negotiate.

2) When physician networks do fully integrate and evolve into an entity that can wield some power in the market, the health plan refuses to negotiate with the network and begins to break it apart into individual physicians who can again be bullied into accepting one-sided contracts. A recent memo from Aetna U.S. Healthcare in California contained the following language: ***"In order to participate directly in All Aetna U.S. Healthcare products you will need to withdraw your affiliation with any/all Aetna U.S. Healthcare contracted IPAs and Medicaid Groups."***

MYTH: *These matters should be left to the "free market."*

FACT:
Sure, managed care companies say "free market" when they virtually own the market and have vast anti-trust protections which no other industry enjoys.

MYTH: *This bill will allow physicians to "price fix" and will increase health care costs.*

FACT:
This bill **does not allow physicians to discuss fees unless given specific permission by the Attorney General** to do so. In order for fees to be part of negotiations, the plan must have substantial market power. The AG must also consider the number of physicians involved in fee negotiations relative to the total number of physicians available in the geographic area. **There is no evidence that this bill will increase costs.** The thrust of this bill – and its clear language – is obviously directed to non-fee related, patient care issues.

MYTH: *This bill will increase the number of uninsured at a time when Texas has the dubious distinction of having the largest percentage of uninsured in the country.*

FACTS:

1) Health plans have used this argument over and over again to try to defeat every significant reform measure at the state and federal level. This is transparently self-serving and especially ironic because as managed care has grown, so has the number of uninsured.

2) Once again, the argument is smokescreen. As noted, the issue is irrelevant because any discussion on fees is limited to circumstances where the plan has substantial market power (as determined by the state).

3) Health plans have never been able to demonstrate cost increases specifically related to any managed care reforms.

4) In addition, health plans have not been able to substantiate their claims that small increases in cost result in loss of insurance coverage.

Managed Care Freedom of Choice Act
HB 3039/SB 1468

Question: Why should the Legislature pass this bill?
Answer: Managed care plans are merging at an alarming rate. These mergers are creating huge, powerful health plans that refuse to negotiate with physicians regarding onerous contract provisions. These "take it or leave it" contracts have requirements that can have direct impact on patient care. When physicians attempt to form networks that are large enough to oppose unreasonable contract provisions, the health plans threaten them with bringing an antitrust action. This is becoming a common ploy, not only in Texas, but in other states as well. This bill will give physicians limited protection from such threats when they attempt to negotiate for the removal of contract provisions that can interfere with patients' access to care.

Question: How can a state bill offer any protection from federal anti-trust laws?
Answer: Under a 1943 Supreme Court ruling, *Parker v. Brown*, states can supercede federal antitrust law if there is "a clearly articulated state policy," and "active state supervision." In general, the ruling states that the antitrust laws do not apply to action by the state operating in its sovereign capacity, or to private conduct compelled or approved by the state. In other words, where the requirements of the state action doctrine are met, behavior that would otherwise violate the antitrust laws will be exempt from antirust scrutiny.

Question: Will this bill allow physicians to strike or boycott?
Answer: No! In fact, such activities are specifically prohibited.

Question: Will the passage of this bill drive up health care costs by giving physicians the ability to set fees and other reimbursement rates?
Answer: No! This bill does not allow physicians to "price fix." Physicians may meet and discuss contract provisions only in most situations. These provisions include items like referral requirements, drugs to be included in formularies, access to certain kinds of specialty care for the plan's enrollees, utilization review criteria, etc. Fees can be discussed only in situations where the health plan has substantial market power in a specified geographic area. Substantial market power will be determined by the Attorney General.

Question: Will the physicians be able to act together and agree to accept or reject a health plans offer?
Answer: Yes. However, the plan is free to make offers to physicians individually as well. Physicians may not act in concert with the intent to fix prices, boycott, or otherwise have an unfair advantage over the health plan. Such actions would not be protected from antitrust actions.

Question: If physicians can't negotiate price in most cases, what advantage does this bill give them over what they are currently able to do?
Answer: In today's market, physicians are not allowed to even meet and discuss contracts without threat of an anti-trust action. This means that multi-billion dollar corporations with full time legal staffs present 80 page contracts to solo and small group practitioners. These doctors must retain legal advice just to understand what is included in the contracts. This advice often does not include the impact on patient care that some provisions can have. The doctors have no idea what should be eliminated or amended, and even if they did, the health plan will not make changes at the request of one or two physicians. When a health plan controls 30% or more of a market, it doesn't have to deal with individual doctors. This bill will allow physicians to join together to be represented by a knowledgeable individual who can facilitate discussions about the impact of various contract provisions. It will allow doctors to talk to one another, to educate one another, and to express concerns to the health plan as a group. When acting in accordance with the provisions of this act, the physicians cannot be threatened with an antitrust action.

Question: How does the state "supervise" these activities in order to meet the requirements under *Parker v. Brown*?
Answer: The physicians' representative will file a plan of operation with the Attorney General. The plan will include information on the representative, the physicians to be represented, the health plan with which negotiations will occur and the items for discussion. When the plan makes an offer to the physicians' representative, it will be filed with the Attorney General. The offer must be approved by the Attorney General before it is presented to the physicians.

Question: How will this bill improve patient care?
Answer: Contract provisions that impede the ability of physicians to advocate for their patients must be challenged. Unless there is a balance of power between huge, powerful managed care plans and physicians who care for patients, abusive managed care organizations will continue to place profits above patients. Physicians who refuse to cooperate will be driven from the market and patients will lose access to physicians. Diminished access delays care and decreases choice for every patient.

Testimony of James J. Jordan
Executive Director, Alaska State Medical Association
March 2, 2000
Senate Finance Committee
CS SB 256

Thank you for this opportunity to testify on SB 256. Today I'm going to keep my comments extremely brief.

SB 256, simply put, would let a group of independent, competing physicians jointly negotiate with a health benefit plan. It would allow joint negotiations on both non-fee related items as well as fee related items. However, for fee related items, the health benefit plan must have more than 15% of the market share in a certain geographic area before joint negotiations could be authorized by the Commissioner of Labor and Workforce Development. It is important to note that this is voluntary on all parties behalf and is also not "binding". You have been provided with a single page that diagrams how SB 256 would operate. Please note all the "decision points" at which either the Commissioner can exercise oversight and at which the health benefit plan can elect not to participate.

It is also important that SB 256 does not allow any strike or boycott by any group of physicians.

You will, no doubt, receive testimony that this bill will increase the cost of health care. First, no data currently exists to indicate what cost impacts may come about following the enactment of such a measure. Therefore, any cost estimates must be based on assumptions made. For example, HIAA has indicated that a possible cost impact will be in a range of a 6% to 11% increase in the private sector health care premiums. This estimate is based on the assumption that physicians will... "increasingly gain the upper hand in negotiations...". A significant portion of this increase is attributed by the HIAA to an assumed reduced ability to perform utilization review and management activities due to the assumed physicians' upper hand. It would seem that such an assumption may not be appropriate when you look at what Minneapolis based United Health Group has recently done. I have a copy for you of an American Medical News article of 12/6/99 that details United's decision. But, in short, United scrapped its utilization review of doctors' decisions because it was agreeing with 99% of those decisions. United was spending $100 million a year on this process nationwide. You might wish to consider a "sunset provision" for this bill so that a meaningful discussion can take place based on actual experience and data developed in Alaska as well as elsewhere around the country.

You will also, no doubt, receive testimony that would indicate that this bill is not necessary as physicians can currently form groups that can then negotiate with health benefit plans. This is an option that, in all practicality, is not available to Alaska's physician's. First, this option at best would only be available to physicians practicing in the largest urban areas of Alaska. Generally, such groups must fully clinically and financially integrate all physicians' practices into one. Such integration brings about

many and varied problems associated with reduced physician autonomy, integration of separate staff, developing a new group "culture", finding compatible partners, and defining who the leaders will be. Additionally, a Case Study Analysis of Physician Practice Mergers sponsored by the American Medical Association, American Academy of Dermatology, American Academy of Pediatrics, American College of Radiology, American Society of Plastic and Reconstructive Surgeons, Michigan Medical Society, and South Carolina Medical Association indicated that practice mergers typically increase rather than decrease physician overhead. This was attributed to merged practices incurring significant organizational expenses (consultant, attorney, and accountants), more extensive administration infrastruction, upgraded information systems, and did not produce significant economies in buying of supplies, insurance, equipment, etc. to offset other cost increases associated with the merger of practices. So, ironically, such organizations portrayed to be available seem to bring with them increased costs and less competition.

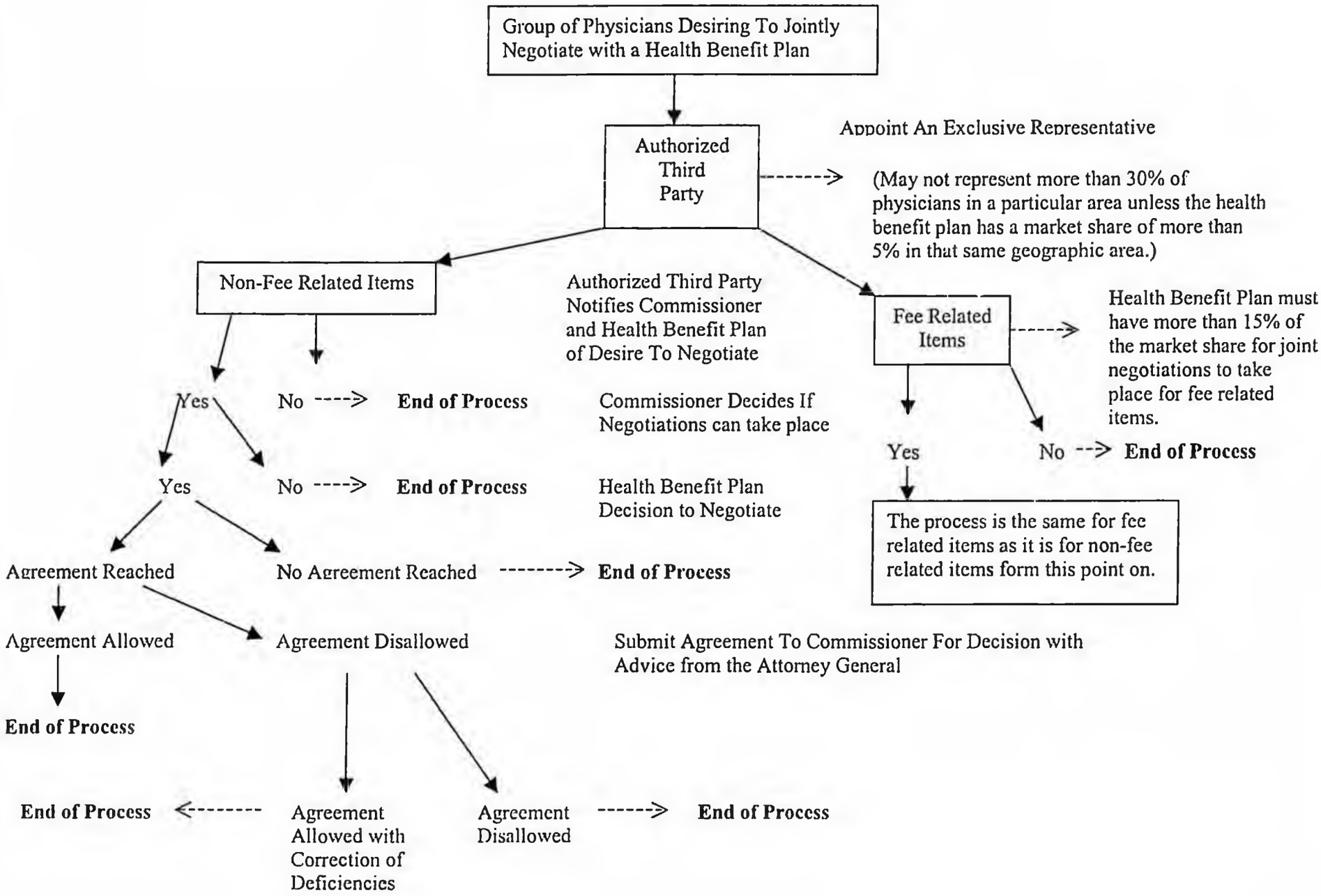
Finally, you may wonder why this bill should be passed when it is purely voluntary. First, this measure may provide a mechanism for new health benefit plans to enter Alaska on a more cost effective basis. For example, a new health insurer desiring to build a network of physicians may find it more cost effective to negotiate with groups of physicians rather than by one doctor at a time. Also, depending on who does or does not utilize this process and the experience of going through the process may suggest other approaches that would work better for Alaska's patients. Currently, the option of joint negotiation is not available and SB 256 would provide that option.

The Alaska State Medical Association urges your support of SB 256.

Thank-you and I'd be happy to answer any questions that you might have.

/kms

CS SB 256—"Fairness in Health Care Contracting"
Diagram of its Operation



American Medical NEWS

MEDICAL MARKETS

Authorization notice greeted with wary hope

Doctors welcome the news that they don't have to call United for approval anymore but add that their managed care hassles aren't over yet.

By Julie A. Jacob, *AMNews* staff. Dec. 6, 1999.

Beneath the flurry of enthusiastic media attention over UnitedHealth Group's decision to let doctors order medical tests or procedures without prior authorization, doctors are reacting with cautious optimism.

They say they welcome the return of medical decision-making into their hands. But they add that they are waiting to see the details of United's new policy and still are frustrated by things like authorization policies for prescription drugs.

United, which has been testing the no-authorization policy in selected cities since last year, announced Nov. 9 that it was dropping the requirement nationwide. The company decided to scrap authorization because the company was spending $100 million a year to review doctors' decisions and approving 99% of procedures anyway, said United's chief medical officer, Archelle Georgiou, MD. Most procedures that were denied were noncovered benefits such as cosmetic surgery, she added.

"We will assume the physicians have made the right clinical decision," Dr. Georgiou said.

But doctors still will be asked to notify United for hospital admissions, home health care and orders for some medical equipment, Dr. Georgiou said, so the insurer can coordinate the patient's care.

For example, instead of grilling a doctor about whether it is necessary for a patient to undergo a hysterectomy, she said, United will focus on making sure that the patient has a ride home from the hospital and understands postsurgical care.

The company also will beef up its use of physician profiling to give doctors feedback on how their practice patterns compare with their peers, she said.

Results from a pilot program in Tennessee, started last year, were promising, Dr. Georgiou said. After phasing out authorization requirements and introducing care coordination, medical costs dropped about 8% and utilization did not significantly increase, she said.

Minneapolis-based United has 14.5 million enrollees in 35 markets across the country. It has contracts with about 340,000 physicians, about 90% of whom are paid by fee-for-service reimbursement and 10% by capitation.

Paradigm shift or PR?

Reaction from physicians runs the spectrum from enthusiasm to skepticism.

A cardiologist in Austin, Texas, where United introduced the policy earlier this fall, called United's decision "a paradigm shift" in the way that managed care companies work with physicians.

"Instead of managed care organizations creating barriers that get in the way of the patient-physician relationship," said George Rodgers, MD, "they are now using resources to help coordinate and facilitate care. I think it is a great idea."

Dr. Rodgers added that he enjoys not having to call for approval before ordering a procedure.

Said Edward Homan, MD, an orthopedic surgeon in Tampa, Fla. "It's a win-win situation." But he added that he was "amazed that it has taken insurers so long to figure it out."

Added Michael Wasylik, MD, also an orthopedic surgeon in Tampa, "it's a major change for managed care ... but saying doctors can make decisions and take care of patients is a no-brainer."

But other doctors said they are skeptical that United really will stand behind its promise of paying for procedures that are not authorized in advance.

"I will continue to check everything, because insurance companies are pretty irresponsible in paying their bills, and patients don't know what their coverage is," said Ron Stark, MD, a hand surgeon in Milwaukee. "This thing is a big show. It is a public relations thing."

Carl Zimmerman, MD, an ob-gyn in Nashville, is taking a wait-and-see attitude. "It's too soon to tell and to assess what their motives will be," he said, adding that he wonders if United wants to protect itself from liability lawsuits, which claim the company is responsible for medical decisions.

Clay Newsome, MD, also an ob-gyn in Nashville, said he thought that United was sending physicians mixed signals.

At the same time that United has dropped authorization requirements, Dr. Newsome said, he's noticed that the insurer has tightened authorization procedures for prescription drugs and is bundling formerly separate procedures under one code. In addition, United notified doctors in Tennessee last summer that the insurer would fine doctors if customer service staff or patients complained that they were rude, Dr. Newsome said.

Doctors also noted that practitioners still would have to receive approval from United for mental health services. They said they also wanted to know more about how United intended to use its physician profiling data – whether it will be used just to help doctors improve their practices or if it will be used to drop doctors from the panel if they order too many procedures.

Dr. Georgiou responded that the company was planning to phase out authorization for mental health services within 18 months. It is also reviewing its pharmacy benefits policies, she said.

As for physician profiling, she said it was intended to help physicians improve their performance for things such as ordering beta-blockers for heart attack patients and ACE inhibitors for patients with congestive heart failure.

"We can't transition the whole company in a day," Dr. Georgiou said. "[Care coordination] is philosophy, and philosophies have to be consistent companywide."

Managed care evolution

But although doctors have mixed reactions to United's announcement, response from consumer advocates, organizations and analysts has been overwhelmingly positive.

"It's a step in the right direction," said Judy Waxman, director of government affairs for the consumers group Families USA. But she cautioned that "it is not the answer to every problem. ... There will still be pressure on doctors to carefully screen the kind of treatments that they recommend."

AMA President Thomas Reardon, MD, said United's action "is historic and represents a long-overdue victory for America's patients." He urged other insurers to follow United's example.

Analysts noted that it may be United following other insurers' example. United's move is part of a trend that has been quietly going on in managed care for several years to move away from procedure-by-procedure scrutiny and toward analysis of overall care patterns.

Authorization has "run its course," said Karen Miller, a partner with the Pace Group. Insurers are now turning their focus to long-term cost analysis, she said.

Insurers, meanwhile, scrambled to publicize that they also have been scaling back on authorization or have similar policies in place, at least for some of their plans. A spokeswoman for Humana said the company requires authorization for only a limited list of procedures, such as hysterectomies and spinal surgeries.

Kaiser Foundation Health Plans, which contract exclusively with Permanente Medical Groups, give the medical groups a set amount of money, which the medical groups then spend as they see fit for patient care, said a Kaiser spokeswoman.

Anthem's local plans set policies for procedure authorization, said an Anthem spokeswoman. But she noted that the general trend in Anthem plans has been toward reduced authorization requirements.

Mercer Inc. analyst John Ryan predicted that the industry would be watching closely to see if any of the other big players -- especially Aetna U.S. Healthcare -- discontinued authorization requirements completely for doctors in their HMO and point-of-service plans.

"Other insurers are being cagey -- Aetna particularly," Ryan said. "Aetna is the big one. Everyone wants to see what [it] will do."

Aetna is moving toward more of an emphasis on retrospective review of physicians' performance, but it has no plans to drop authorization requirements, spokeswoman Joyce Oberdorf said. It may be up to Aetna's purchasers to decide if they want those requirements dropped.

In an article that appeared in the Nov. 22 *Wall Street Journal*, Aetna chairman Richard Huber said that if employers wanted health plans with no authorization requirements, Aetna would offer them "in a heartbeat."

Ryan added that even though insurers appear to be pulling back from procedure authorization, they are not tossing cost controls out the window by any means. "I am sure they will continue to do review on the back end. They all have software to look for instances of unbundling and upcoding," Ryan said. "United will also look closely at utilization volumes and patterns and will devote more resources to physician profiling."

Back to top.

TESTIMONY ON SENATE BILL 256
ALASKA SENATE HESS COMMITTEE

February 21, 2000

My name is Gordon Evans and I represent the Health Insurance Association of America ("HIAA"), which is a trade association of the nation's leading commercial health insurance companies which provide health insurance for approximately 55 million Americans.

Thank you, Mr. Chairman, for providing an opportunity to present HIAA's position on Senate Bill 256. HIAA opposes SB 256 for two simple reasons -- first, giving physicians an antitrust waiver would deny consumers choice, quality, and affordability; and second, health care costs would increase significantly for both the public and private sectors.

In the past year, there has been significant debate at both the federal and state level about physician collective bargaining or physician antitrust waivers. Despite differences among the various proposals, there are four incontrovertible facts:

* Quality is not the driving force behind the physician collective bargaining movement -- it's economics. Legitimate mechanisms already exist within the boundaries of current antitrust law under which health care providers can and do collaborate and negotiate with health plans, patients, and others on clinical or quality of care issues or other concerns they may have regarding the impact of managed care on the quality of care.

* Second -- Consolidation among health plans has been and continues to be subject to rigorous antitrust scrutiny, at both the state and federal levels.

* Third -- Antitrust waiver legislation is anti-competitive and would raise costs for health care programs financed by both the public and private sectors -- through Medicare, Medicaid, and other government programs, as well as employer- and union-sponsored plans.

* Fourth -- Legislation at either the state or federal levels will be costly. For example, if legislation such as that proposed at the federal level (H.R. 1304 by Congressman Campbell) were to become law, health care premiums in the private sector would increase by 6 to 11 percent. Total annual personal health care spending would rise up to $80 billion annually. These added costs would be paid for by consumers, employers, and taxpayers, without any improvement in the quality of patient care. Or, at least 1.2 to 2.4 million more Americans would be uninsured.

Physicians, who are already among the nation's highest paid professionals, are among the least likely Americans to need the benefits of unionization. Over the last decade, as managed care has grown, physician incomes have increased more than 77 percent, with a median net income in 1997 of $199,600. Antitrust waivers or some other form of the special treatment that they are seeking through Senate Bill 256, would effectively allow physicians to further increase their salaries.

Moreover, the reality is that physicians are not seeking to form real unions. Rather, they seek to form unrestricted collective bargaining units without the regulatory oversight that all unions are subject to.

Physicians are asking state and federal governments for unique legal rights to engage in conduct that would otherwise be *per se* illegal under the antitrust laws. Granting physicians, whether as physician employees or as independent contractors, special waivers to collectively bargain and set prices, without regulatory oversight fundamental to the very concept of unionization, is unwarranted, not to mention detrimental to consumers.

Physician collective bargaining legislation is opposed by the chairman of the Federal Trade Commission, Robert Pitofsky, who says that conferring a labor exemption on physicians "would merely grant them broad immunity to present a 'unified front' when negotiating price and other terms of dealing with health plans, without any efficiency benefits for consumers or any regulatory oversight to safeguard the public interest."

Much has been made of the growth and consolidation of managed care organizations. In fact, physicians cite this as one of the reasons why they need antitrust waivers. Under current law, consolidation among health plans and insurers is subject to rigorous antitrust scrutiny at both the state and federal levels.

The health insurance industry continues to remain very competitive, making it improbable -- if not impossible -- for any one plan to be able to exercise significant market power in its negotiations with health care providers.

In conclusion, Mr. Chairman, collective bargaining for physicians truly would serve to benefit the few at the expense of consumers and taxpayers. It would level a devastating blow to the health care system and the success that market competition has achieved in limiting health-care inflation.

##

SENATE FINANCE COMMITTEE

S I G N - I N

SB 256-PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

NAME: Jim JORDAN Subject/Bill No: SB 256

Co./Dept./Title: Exec Director ASMA Phone: 562-0304

Address: Anchorage Zip: _____

Do you wish to testify? X Yes ___ No X Respond To Questions

NAME: Mike HANSEN Subject/Bill No: SB256

Co./Dept./Title: Exec Director Alaska Physicians & Surgeons Phone: 561-7705

Address: Anchorage Zip: _____

Do you wish to testify? X Yes ___ No X Respond To Questions

NAME: Dr George Rhynelr Subject/Bill No: SB256

Co./Dept./Title: _____ Phone: 561-7705

Address: Anchorage Zip: _____

Do you wish to testify? X Yes ___ No X Respond To Questions

NAME: Jeff Davis Subject/Bill No: _____

Co./Dept./Title: Exec Director, BC BSA Phone: 677-2404

Address: Anchorage Zip: _____

Do you wish to testify? X Yes ___ No X Respond To Questions

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Rev. 6/98

SENATE FINANCE COMMITTEE

S I G N - I N

SB 256-PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

NAME: Jim JORDAN Subject/Bill No: SB 256

Co./Dept./Title: Exec Director AK-MA Phone: 562-0304 X

Address: Anchorage Zip: _____

Do you wish to testify? X Yes ___ No X Respond To Questions

NAME: MIKE HANSEN Subject/Bill No: SB256

Co./Dept./Title: Exec Director Physician & Surgeons Phone: 561-7705 X

Address: Anchorage Zip: _____

Do you wish to testify? X Yes ___ No X Respond To Questions

NAME: Dr. George Rhyneer Subject/Bill No: SB256

Co./Dept./Title: _____ Phone: 561-7705 X

Address: Anchorage Zip: _____

Do you wish to testify? X Yes ___ No X Respond To Questions

NAME: Jeff Davis Subject/Bill No: _____

Co./Dept./Title: Exec Director, BC BSA Phone: 279-2404 X

Address: Anchorage Zip: _____

Do you wish to testify? X Yes ___ No X Respond To Questions

SENATE FINANCE COMMITTEE

S I G N - I N

SB 256-PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

NAME: Jack McRae / Ken Sorrin Subject/Bill No: SB256

Co./Dept./Title: Blue Cross Phone:

Address: Zip:

Do you wish to testify? X Yes ___ No X Respond To Questions

NAME: Guy Bell Subject/Bill No: SB 256

Co./Dept./Title: Retirement + Benefits Phone: 465-2292

Address: Zip:

Do you wish to testify? X Yes ___ No X Respond To Questions

NAME: Jim Jordan Subject/Bill No: SB 256

Co./Dept./Title: Exec Dir Phone: 562-0304

Address: AK St Medical Assn Zip:

Do you wish to testify? ___ Yes ___ No ___ Respond To Questions

NAME: Mike Hawsen Subject/Bill No: SB 256

Co./Dept./Title: Exec Dir Phone: 561-7705

Address: ~~AMA~~ AK Physicians & Surgeons Zip:

Do you wish to testify? ___ Yes ___ No X Respond To Questions

NAME: DR. Jerome List Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: Anchor Agl _____ Zip: _____

Do you wish to testify? ___Yes ___No X Respond To Questions

NAME: John Cyr Subject/Bill No: 256

Co./Dept./Title: NEA-AK Phone: 586-3096

Address: Juneau Zip: _____

Do you wish to testify? X Yes ___No ___Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___Yes ___No ___Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___Yes ___No ___Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___Yes ___No ___Respond To Questions

NAME: Lon Sorrin Subject/Bill No: SB 256

Co./Dept./Title: Asst. General Counsel BCBSA Phone: (425) 670-5786

Address: Mountlake Terrace WA Zip: 98043 X

Do you wish to testify? X Yes ___ No X Respond To Questions

NAME: Mike Ford Subject/Bill No: SB256

Co./Dept./Title: Leg. Legal Phone: X66657 X

Address: ___ Zip: ___

Do you wish to testify? ___ Yes ___ No X Respond To Questions

NAME: DWIGHT PERKINS Subject/Bill No: SB256

Co./Dept./Title: Dep. Comm. Dept of Labor Phone: 465-2700 X

Address: ___ Zip: ___

Do you wish to testify? X Yes ___ No ___ Respond To Questions

NAME: Nancy Weller Subject/Bill No: SB 256 X

Co./Dept./Title: DHSS - Div. Medical Assistance Phone: 465-5825

Address: PO Box 110640 Zip: ___

Do you wish to testify? ✓ Yes ___ No ___ Respond To Questions

NAME: GORDON EVANS Subject/Bill No: SB 252 X

Co./Dept./Title: HIAA Phone: 586-3210

Address: 211 4th St Suite 305, JUNEAU Zip: 99801

Do you wish to testify? X Yes ___ No ___ Respond To Questions

Teleconference Participants

TCN: 10647

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Participants

Unidentified Testifiers: 0 Unidentified Observers: 0

ANCHORAGE (ANC)

1 Name:Bob Lohr Phone:
Address: Affiliation: Div Insura
City /St /Zip: Type: Testifier
Bill: SB 256: PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

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2 Name:Julia Coster Ans ?s Phone:
Address: Affiliation: Dept Law
City /St /Zip: Type: Testifier
Bill: SB 256: PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

Teleconference Participants

TCN: 10470

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Address: Affiliation: Div Insur
City /St /Zip: Type: Testifier
Bill: SB 256: PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

2 Name:Mr. Gary Ward Ans ?s Phone:
Address: Affiliation: DSS
City /St /Zip: Type: Testifier
Bill: SB 73: ASSISTED LIVING FACILITIES

3 Name:Mr. Jerome Selby Ans ?s Phone:
Address: Affiliation: Prov HS
City /St /Zip: Type: Testifier
Bill: SB 256: PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

4 Name:Mr. Dwight Becker Phone:
Address: Affiliation: DSS
City /St /Zip: Type: Testifier
Bill: SB 73: ASSISTED LIVING FACILITIES

5 Name:Ms. Kay Burrows Ans ?s Phone:
Address: Affiliation:
City /St /Zip: Type: Testifier
Bill: SB 73: ASSISTED LIVING FACILITIES

6 Name:Ms. Julia Coster Ans ?s Phone:
Address: Affiliation: A.G. offic
City /St /Zip: Type: Testifier
Bill: SB 256: PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

7 Name:Ms. Signe Andersen Ans ?s Phone:
Address: Affiliation:
City /St /Zip: Type: Testifier
Bill: SB 256: PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

also: UAF dropped offline
Helen Jamison, AMA, Chicago, is online for SB256

Teleconference Participants

TCN: 10470

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City /St /Zip: Type: Testifier
Bill: SB 73: ASSISTED LIVING FACILITIES

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2 Name:Mr. Gary Schwartz Phone:
Address: Affiliation:
City /St /Zip: Type: Testifier
Bill: SB 256: PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

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also: Ann Ringstad - UAF
R. Feinstein - Washington DC - SB256

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TCN: 10470

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Bill: SB 256: PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

3 Name:Mr. Michael Carroll Phone:
Address: Affiliation:
City /St /Zip: Type: Testifier
Bill: SB 256: PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

also: Paul Smith from AK Health Care is online

Teleconference Participants

TCN: 10470

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Name:Mr. Bob Lohr
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2
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Affiliation: Prov HS
Type: Testifier
Bill: SB 256: PHYSICIAN NEGOTIATIONS WITH HEALTH INSURE

4
Name:Mr. Dwight Becker
Address:
City /St /Zip:
Phone:
Affiliation: DSS
Type: Testifier
Bill: SB 73: ASSISTED LIVING FACILITIES

SB

257

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 15, 2000 FURTHER REFERRALS:

Date of Committee Action: 4/17/00

The FINANCE Committee considered: SB 257

SENATE BILL NO. 257 DEPT NAT RES ADMIN APPEALS/ OIL & GAS

"An Act relating to notice requirements for certain final findings concerning the disposal of an interest in state land or resources for oil and gas; relating to administrative appeals and petitions for reconsideration of decisions of the Department of Natural Resources; and providing for an effective date."

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

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____ [ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____ [ ] zero fiscal note(s) Senate DNR 2-9-00

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Gene Therriault			X	
Glen Mulder			X	
Con Bunde			—	
Alan Austerman			X	
Jack R Davies	X		HSO Q;W	
Bert Sampson			X	
Holly L. Dam			X	
W.K. Williams	X			
Gail Phillips	✓			
			X	

CHAIR'S SIGNATURE Gene Therriault Glen Mulder

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 1
Bill Version: SB 257
(S) Publish Date: 2-9-00

Revision Date/Time:
Dept Affected: Natural Resources
Title: Notice Requirements for Oil and Gas Final
BRU: Minerals, Land & Water Development
Findings: Administrative Appeals
Component: Director's Office
Sponsor: Rules Committee
Requestor: Governor
Component No 2440

Expenditures/Revenues (Thousands of Dollars)
Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: $ N/A

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 can be implemented without cost. Secs. 1-3 apply to appeals of decisions by all divisions in DNR, including the Division of Mining, Land and Water. They allow an aggrieved person to ask for the commissioner's review, but only one time (either by appealing to the commissioner, or by requesting the commissioner's reconsideration). Previously some aggrieved parties have appealed to the commissioner, received an adverse decision from the commissioner, then immediately asked him to reconsider that decision. In the meantime, the decision was put on hold. Eliminating the duplicative review might not save appreciable staff time, as the reconsideration decision was usually very similar to the appeal decision, but will shave 30 days off the permit process in controversial cases.

Prepared by: Robert M. Loeffler
Phone : 269-8600
Division: Mining, Land and Water
Date : 31-Jan-00
Approved by Commissioner: John Shively
Date:
Agency: Natural Resources

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Briefing Paper
SB 257: DNR Appeals & Certain Oil & Gas Notices

Prepared by
Alaska Department of Natural Resources
April 13, 2000

The bill creates a uniform appeals process for DNR and solves a technical problem that requires a meaningless notice for Oil and Gas Lease Sales.

Uniform Appeals Process for DNR: ***The Problem.*** As a result of laws passed at different times, DNR has different appeals schedules and procedures for different types of decisions. For example, some DNR decisions must be appealed within 30 days, some within 20 days, and others within only 15 days. In addition, some DNR decisions may be appealed only once. Others, two or three times. Specifically, certain decisions may be appealed only to the Commissioner. Others may be appealed to a Division Director, then to the Commissioner, and then the Commissioner *again*. The situation frustrates applicants, the public, and DNR staff.

The Solution: A Uniform Appeals Process. The bill creates a uniform process to appeal DNR decisions: one process with one deadline and without redundant appeals. It requires all appeals to use the appeal process that now exists for DNR Disposal Decisions: The department's final decision may be appealed within 20 days to the Commissioner. However, it may be appealed only once. If the appellant does not like Commissioner's decision on the appeal, he or she may go directly to court.

An Extra (Meaningless) Oil and Gas Lease Sale Notice. DNR is currently required to publish three notices for an oil and gas lease sale:

1. a notice of the preliminary best interest finding;
2. a notice that the next notice (of the final finding) will be published no sooner than 30 days; and
3. a notice of the final best interest finding

It is the middle notice – a notice of a notice – which has no meaning. The preliminary best interest finding provides for public comment. The final best interest finding starts the appeal period. The final best interest finding is sent directly to everyone who commented (who are the only people with standing to appeal). It is also published in newspapers statewide. The notice of a notice does not create any new rights nor start the time for any rights to begin. The extra notice confuses the public and costs money to publish.

Sectional Analysis

Sections 1 and 2 cross-reference the uniform appeals process within Administrative Procedure Act.
Section 3 provides the uniform appeal process for DNR.
Section 4 eliminates the extra oil and gas notice.
Section 5 provides a starting date for the uniform appeals process.
Section 6 provides an effective date for the bill.

TONY KNOWLES
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 8, 2000

AK 257

The Honorable Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Pearce:

The Department of Natural Resources appeal process is overly complex, confusing, and even frustrating to the public and department staff. Seemingly similar decisions have different appeal tracks with different requirements and timelines. Appellants are sometimes required to make multiple appeals on the same issue. This bill I transmit today simplifies and makes consistent the department's appeal process to better serve the public.

The bill eliminates the redundant process for non-disposal decisions in which a person now must appeal to the director, then the commissioner, then, through reconsideration, to the commissioner again. Instead, appellants would be allowed only one opportunity to make their case to the commissioner. The next step is to go to court. This process was implemented in 1994 disposal legislation and should be extended to all department decisions.

The bill corrects another confusing result of the 1994 law, which set different appeal deadlines based on whether the case was a disposal or non-disposal decision, or a reconsideration request (as opposed to an appeal). The public cannot figure out in which category an action belongs and, therefore, by which deadline to abide. This bill eliminates the confusion by setting a 20-day deadline on all appeals and reconsideration requests. Decisions rendered under the Alaska Right-of-Way Leasing Act and the Alaska Stranded Gas Development Act are specifically exempt from this new provision.

Finally, the bill makes it clear that department decisions may be challenged in court, despite the fact most department decisions are exempt from portions of the Administrative Procedure Act.

This bill will correct many aspects of the Department of Natural Resources appeal process that are confusing and cumbersome for the public. I urge your support.

Sincerely,

Tony Knowles
Governor

ALASKA STATE LEGISLATURE
SENATE BILL NO. 257

HISTORY IN THE SENATE

2000

1/9 Read first time and referred to: RES. FIN

3/28 RES RPT( ) CS 5 DP 1 NR __ DNP __ AM
__ New Title __ Same Title Ø Previous FN
__ FN __ 0FN To FIN

4/13 FIN RPT( ) CS 5 DP 3 NR __ DNP __ AM
__ New Title __ Same Title Ø Previous FN
__ FN __ 0FN To Rules

__ RPT( ) CS __ DP __ NR __ DNP __ AM
__ New Title __ Same Title __ Previous FN
__ FN __ 0FN To

4/15 ✓ Rules Calendar( ) CS __ AM __ Other
__ New Title __ Same Title __ Previous FN
__ FN __ 0FN

4/15 Read second time

__ CS Adopted ( ) __ New Title
__ Amended ✓ Advanced

4/15 Read third time

__ Letter of Intent adopted
__ Return to second for specific amendment

4/15

PASSED	EFD Same ✓ or
Yeas 20	Yeas
Nays Ø	Nays
Excused Ø	Excused
Absent Ø	Absent

Reconsideration
Reconsideration not taken up

PASSED	EFD Same __ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

4/15 Reported correctly engrossed
Signed by President, to House

Secretary of the Senate

HISTORY IN THE HOUSE

2000

4/15 Read first time and referred to: FIN

__ RPT CS( ) __ New Title
__ DP __ DNP __ NR __ AM
__ FN __ 0FN __ Previous FN

__ RPT CS( ) __ New Title
__ DP __ DNP __ NR __ AM
__ FN __ 0FN __ Previous FN

__ RPT CS( ) __ New Title
__ DP __ DNP __ NR __ AM
__ FN __ 0FN __ Previous FN

Read second time
CS( ) Adopted

Amended

Advanced

Read third time

Return to second for specific amendment

PASSED	EFD Same __ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

__ Intent adopted

Reconsideration
Reconsideration not taken up

PASSED ON RECON.	EFD Same __ or
Yeas	Yeas
Nays	Nays
Excused	Excused
Absent	Absent

__ Intent adopted

Reported correctly engrossed, signed by the Speaker and returned to the Senate

Chief Clerk of the House

SI

SB

257

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/28/00 REPORTED OUT OF SFC 4/12/00 FURTHER:

DATE TURNED IN TO OFFICE: 13 April 00

Finance Committee considered SENATE BILL NO. 257

DEPT NATURAL RESOURCES ADMIN APPEALS/OIL & GAS

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 title
[ ] new: SCR#_____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
	X				
Co-Chair:		*Co-Chair:*			
Co-Chair:		*Co-Chair:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
DNR	1/31/00	✓	

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

REPORTED OUT OF SFC 4/12/00

No. 1
Bill Version: SB 257
(S) Publish Date: 2-9-00

Revision Date/Time:
Dept Affected: Natural Resources

Title: Notice Requirements for Oil and Gas Final Findings; Administrative Appeals
BRU: Minerals, Land & Water Development
Component: Director's Office

Sponsor: Rules Committee
Requestor: Governor
Component No 2440

Expenditures/Revenues (Thousands of Dollars)
Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: $ N/A

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 can be implemented without cost. Secs. 1-3 apply to appeals of decisions by all divisions in DNR, including the Division of Mining, Land and Water. They allow an aggrieved person to ask for the commissioner's review, but only one time (either by appealing to the commissioner, or by requesting the commissioner's reconsideration). Previously some aggrieved parties have appealed to the commissioner, received an adverse decision from the commissioner, then immediately asked him to reconsider that decision. In the meantime, the decision was put on hold. Eliminating the duplicative review might not save appreciable staff time, as the reconsideration decision was usually very similar to the appeal decision, but will shave 30 days off the permit process in controversial cases.

Prepared by: Robert M. Loeffler
Phone: 269-8600
Division: Mining, Land and Water
Date: 31-Jan-00
Approved by Commissioner: John Shively
Date:
Agency: Natural Resources

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TONY KNOWLES
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 8, 2000

AK 257

The Honorable Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Pearce:

The Department of Natural Resources appeal process is overly complex, confusing, and even frustrating to the public and department staff. Seemingly similar decisions have different appeal tracks with different requirements and timelines. Appellants are sometimes required to make multiple appeals on the same issue. This bill I transmit today simplifies and makes consistent the department's appeal process to better serve the public.

The bill eliminates the redundant process for non-disposal decisions in which a person now must appeal to the director, then the commissioner, then, through reconsideration, to the commissioner again. Instead, appellants would be allowed only one opportunity to make their case to the commissioner. The next step is to go to court. This process was implemented in 1994 disposal legislation and should be extended to all department decisions.

The bill corrects another confusing result of the 1994 law, which set different appeal deadlines based on whether the case was a disposal or non-disposal decision, or a reconsideration request (as opposed to an appeal). The public cannot figure out in which category an action belongs and, therefore, by which deadline to abide. This bill eliminates the confusion by setting a 20-day deadline on all appeals and reconsideration requests. Decisions rendered under the Alaska Right-of-Way Leasing Act and the Alaska Stranded Gas Development Act are specifically exempt from this new provision.

Finally, the bill makes it clear that department decisions may be challenged in court, despite the fact most department decisions are exempt from portions of the Administrative Procedure Act.

This bill will correct many aspects of the Department of Natural Resources appeal process that are confusing and cumbersome for the public. I urge your support.

Sincerely.

Tony Knowles
Governor

Department of Natural Resources
SB 257 Notice and Administrative Appeals

Sb 257 is "An Act relating to notice requirements for certain final findings concerning the disposal of an interest in state land or resources for oil and gas; relating to administrative appeals and petitions for reconsideration of decisions of the Department of Natural Resources; and providing for an effective date."

SB 257 will create a uniform procedure for appeals of decisions made by the Department of Natural Resources. These changes will simplify the appeal process for applicants, departmental employees, and the public, reducing the risk of errors. The uniform appeal process will also confirm that people have the right to challenge DNR's appeal decision in court.

The bill's uniform appeal process is modeled on legislation already in place for DNR "disposal" decisions. (These are the written findings DNR must issue for public comment before it can make a final decision to sell state land or interests in land, such as oil and gas leases or timber contracts.) It provides for disputes over DNR decisions to be taken straight to the DNR commissioner. However, it allows only one administrative review by the commissioner: a person who disagrees with DNR's action will file either an appeal or a reconsideration request, but not both. The filing period for a reconsideration request will be 20 days, the same period allowed to request reconsideration of a disposal decision under AS 38.05.035, instead of the 15-day deadline generally applicable under AS 44.62.540. A person who is still aggrieved by the commissioner's final decision on the appeal or reconsideration request can then challenge it in Superior Court.

Under existing law for DNR actions other than disposal decisions, there can be as many as three layers of administrative review: first an appeal to a division director, then an appeal to the commissioner, and finally a reconsideration request, which must be filed within 15 days instead of 20. SB 257 will replace this duplicative, complex process with one that has been successfully used for major DNR disposal actions since 1994.

SB 257 will also correct a flaw in DNR's public notice law, AS 38.05.945, by removing a special requirement for final decisions on oil and gas lease sales. The change will leave intact two other public notice provisions relating to oil and gas lease sales:

- When DNR issues a proposed oil and gas lease sale decision, AS 38.05.945 directs DNR to give public notice at the beginning of the comment period, notifying the public of its right to comment. This requirement will not change.
- After the final lease sale decision has been made (including the resolution of any administrative appeals), AS 38.05.945 directs DNR to give notice of the lease sale itself, so that prospective bidders may prepare for the sale. This requirement will not change.

However, between these two stages, AS 38.05.945 literally requires DNR to give notice of the issuance of the final decision "at least 30 days before the action." Advance notice that DNR plans to issue a final decision a month later does not serve any apparent purpose. More importantly, if the comment period is still underway when this "notice of final decision" appears in the newspaper, the public may be confused into thinking that the decision has already been made, and that there is no point in commenting or testifying on the proposed lease sale. SB 257 will correct this problem by removing the separate requirement for

notice of the final decision. (Under other applicable law, AS 38.05.035(e)(5), DNR must make the final disposal decision available to the public at least 90 days before the lease sale. As part of this duty, DNR gives notice to everyone who timely commented or testified on the proposal. Only those who timely commented or testified have the right to appeal the final decision under AS 38.05.035(i).)

SENATE FINANCE COMMITTEE

S I G N - I N

SB 257-DEPT NAT RES ADMIN APPEALS/ OIL & GAS

NAME: Bob Loeffler Subject/Bill No: SB 257

Co./Dept./Title: DNR, Div of Mining Land & Water Phone: 269-8600

Address: 550 W 7th Anchorage Zip: 99501

Do you wish to testify? X Yes ___No ___Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___Yes ___No ___Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___Yes ___No ___Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___Yes ___No ___Respond To Questions

SB

259

HOUSE COMMITTEE REPORT

(11)
Date Referred to Committee: April 19, 2000

FURTHER REFERRALS:

Date of Committee Action: 4/20/00

The FINANCE Committee considered:

CSSB 259(JUD)

CS FOR SENATE BILL NO. 259(JUD)

CRIMES: REPRESENTATIONS/I.D./COMPUTERS

"An Act relating to crimes and offenses relating to aural representations, recordings, access devices, identification documents, impersonation, false reports, and computers; and providing for an effective date."

recommends it be replaced with the following committee substitute HCS CS SB 259 (JUD)

[✓] the same title
[ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

APPROVES PREVIOUS: (Dept/Date)

[✓] fiscal note(s) SFC 4/13/00
DOA 4/19/00 Law 4/19/00

[ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	Thernault	X			
	Mulder	X			
	Bunde				
	Austerman	X			
	J. Davies			X	
	Gruessendorf	X			
	J. Davis	X			
	Williams	X			
	Foster	X			

CO CHAIR'S SIGNATURE _____

Thernault Mulder

FISCAL NOTE

STATE OF ALASKA
2000 Legislative Session

Bill Version: CSSB 259 (JUD)
(S) Publish Date:

Revision Date: 04/05/00
Title: An Act relating to crimes involving computers, access devices, other technology and identification documents
Sponsor: Senator Robin Taylor
Requester: Senate Finance Committee

Dept. Affected: Public Safety
BRU: AK State Troopers
Component: Criminal Investigations Bureau
Component Serial No.: 830

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY01	FY02	FY03	FY04	FY05	FY06
Personal Services	0.0					
Travel	0.0					
Contractual	7.8	7.8	7.8	7.8	7.8	7.8
Supplies	0.0					
Equipment	15.0					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
TOTAL OPERATING	22.8	7.8	7.8	7.8	7.8	7.8
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	22.8	7.8	7.8	7.8	7.8	7.8
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
1091 Designated Program Receipts	0.0					
TOTAL	22.8	7.8	7.8	7.8	7.8	7.8

Estimate of any current year (FY00) costs: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

CSSB 259 (JUD) amends and expands the substantive criminal law to address the use of computers and other technology in the widespread perpetration of crimes.

This fiscal note funds an equipment request in FY01 to provide computer equipment adequate to meet new and expanded responsibilities provided for in this legislation. In addition, the request by the Department of Public Safety to provide training in this new field is included in the fiscal note at $7.8 per year.

Prepared By: SENATE FINANCE COMMITTEE

SENATOR SEAN PARNELL, CO-CHAIR
Date: 4/5/00
Phone: 465-2995

SENATOR JOHN TORGERSON, CO-CHAIR
Date: 4/5/00
Phone: 465-2828

No: 5

FISCAL NOTE

Bill Version: HCSCSSB 259(JUD)
(H) Publish Date: 4/19/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) 4-Apr-00
Dept. Affected Administration
Title An Act relating to crimes and offenses relating to aural representations, recordings ...
BRU Legal and Advocacy Services
Component Public Defender Agency
Sponsor Senator Taylor
Requester (S) FIN
Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel	3.3	3.3	3.3	3.3	3.3	3.3
Contractual	11.7	11.7	11.7	11.7	11.7	11.7
Supplies						
Equipment	6.5	5.0	5.0	5.0	5.0	5.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	21.5	20.0	20.0	20.0	20.0	20.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	21.5	20.0	20.0	20.0	20.0	20.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	21.5	20.0	20.0	20.0	20.0	20.0

Estimate of any current year (FY2000) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

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

See attached.

Prepared by: Barbara Brink, Director
Phone 264-4414
Division Public Defender Agency
Date/Time
Approved by Commissioner – Robert Poe, Jr.
Date 4/4/00
Agency Department of Administration

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO: CSSB 259 (JUD)

Analysis (continued)

This bill amends current law and adds new statutes to enable prosecution of a wide variety of computer-related offenses.

Prosecution and defense of these offenses will require sophisticated technical expertise. The Public Defender Agency does not currently have the computer equipment and the staff who have the technical knowledge necessary to defend criminal cases that could be brought under this new legislation.

It is difficult to predict how many additional cases the Public Defender Agency would be appointed to if this bill becomes law. The Department of Law has estimated that there would only be ten additional cases prosecuted in the first year and says it does not anticipate much in the way of increased workload. The Public Defender Agency is concerned about these estimates. This is a very broadly worded bill that would make unlawful a wide range of activity on individual personal computers, computer networks, and on the Internet. Although the Agency has concerns about the impact of this legislation in coming years, we will use the Department of Law's estimates.

The Public Defender Agency does not currently have the sophisticated computer equipment, software, peripherals, and associated communication devices that are necessary for the defense of these cases. We are requesting a one-time equipment purchase for our Anchorage office and plan to use this equipment as a resource for the rest of the state, too. We are paralleling the Department of Law's requests in terms of maintenance of this equipment, contractual services for training and employee travel. We are adding a small additional amount in contractual services anticipating that one case will go to trial in which we will need the services of an expert witness.

No: 6

FISCAL NOTE

Bill Version: HCSCSSB 259 (JUD)
(H) Publish Date: 4/19/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction)
Dept. Affected Law
Title "An Act relating to crimes and offenses relating to aural representations, ... access devices ... computers; ..."
BRU Criminal Division
Component 1st Judicial Dist; 4th Judicial Dist; Criminal Appeals/Special Litigation
Sponsor Senator Taylor
Requester Senate Judiciary Committee
Component No. 2196;2201;2203

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel	3.3	3.3	3.3	3.3	3.3	3.3
Contractual	6.7	6.7	6.7	6.7	6.7	6.7
Supplies						
Equipment	5.0	5.0	5.0	5.0	5.0	5.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	15.0	15.0	15.0	15.0	15.0	15.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	15.0	15.0	15.0	15.0	15.0	15.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	15.0	15.0	15.0	15.0	15.0	15.0

Estimate of any current year (FY2000) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

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

CSSB 259 (JUD) amends and expands the substantive criminal law to address the use of computers and other technology in the widespread perpetration of crimes. Child pornography, theft of personal information with the intent to defraud, theft of personal information resulting in damage to a person's financial reputation, deceptive business practices, "hacking" to get unauthorized information or introduce false information, and introducing damaging viruses, are all offenses where technology has offered new ways for criminals to victimize individuals. The amendments in this bill will update existing law to help law enforcement prosecute those who cause harm to others through the use of computers and other technology.

Prepared by: Joan M. Kasson — Phone 465-5370
Division Attorney General's Office — Date/Time 3/21/00, 11:39 AM
Approved by Commissioner Bruce M. Botelho, Attorney General — Date 3/21/00
Agency Department of Law

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ANALYSIS CONTINUATION

Much of the bill expands on existing crimes already being prosecuted, and is not anticipated to cause increased workload. The new crimes defined in the bill are expected to result in approximately ten new prosecutions in the first year, with the number increasing in future years. These new white-collar cases will be handed by existing staff. Although no new personnel are believed to be necessary, other resources will be needed.

Investigation and prosecution of cybercrimes require that the prosecutor keep up with the constantly changing world of information technology. Those who use computers to commit crimes are very knowledgeable about technology, and usually have state-of-the-art equipment. Prosecutors must have the same or better knowledge and equipment as those who use the equipment for illegal purposes.

The Department of Law intends to have three of its prosecutors specialize in this technology driven area of law: one in Anchorage OSPA, and one each in the Juneau and Fairbanks district attorney's offices. These assistant district attorneys will need on-going training to stay ahead of the inventive ways people come up with to use technology to cause harm to others and to keep up with how law enforcement is responding in other jurisdictions. The department estimates $10.0 per year will be spent on training, divided equally between the three components. $5.0 per year is included to maintain state-of-the-art computer equipment, software, peripherals, and associated communications devices in Anchorage OSPA as a resource for the entire Criminal Division to use in preparing and presenting its cases.

Alaska State Legislature

Chairman,
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee

Senator Robin L. Taylor

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4925
Fax (907) 465-3520

501 Front Street
Suite 2
Ketchikan, Alaska 99901
(907) 225-6581
Fax (907) 225-0713

SB 259
Sponsor Statement
Senate Bill

"An Act relating to crimes and offenses relating to aural representations, recordings, access devices, identification documents, impersonation, false reports and computers; and providing for an effective date"

Alaska has always been the "Last Frontier." For most of us who came to this great state it was the mystique and adventure. For others it was a place to escape too. Unfortunately, some of the latter group are escaping from the law and have stolen someone else's identity to do that.

Acting under an assumed name, with false identification to support the claim, they obtain credit cards and checking accounts often not paying the bills. This leaves honest Alaskans with the problem of dealing with Credit Agencies, or the government with little or no recourse.

But there is more than fraud to deal with. Today criminals can access information by sitting at a computer or giving information over the telephone. These new criminals are not a part of current statute. SB 259 will correct this by updating existing law and establishing that Alaska considers stealing someone's identity a crime with serious consequences.

Once passed these additions will give law enforcement an additional tool to keep Alaskans safer from fraud and deceit by those who not what they seem.

FISCAL NOTE

4

STATE OF ALASKA
2000 Legislative Session

Bill Version: CSSB 259 (JUD)
(S) Publish Date: 4-13-00

Revision Date: 04/05/00
Title: An Act relating to crimes involving computers, access devices, other technology and identification documents
Sponsor: Senator Robin Taylor
Requester: Senate Finance Committee

Dept. Affected: Public Safety
BRU: AK State Troopers
Component: Criminal Investigations Bureau
Component Serial No.: 830

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY01	FY02	FY03	FY04	FY05	FY06
Personal Services	0.0					
Travel	0.0					
Contractual	7.8	7.8	7.8	7.8	7.8	7.8
Supplies	0.0					
Equipment	15.0					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
TOTAL OPERATING	22.8	7.8	7.8	7.8	7.8	7.8
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	22.8	7.8	7.8	7.8	7.8	7.8
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
1091 Designated Program Receipts	0.0					
TOTAL	22.8	7.8	7.8	7.8	7.8	7.8

Estimate of any current year (FY00) costs: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

CSSB 259 (JUD) amends and expands the substantive criminal law to address the use of computers and other technology in the widespread perpetration of crimes.

This fiscal note funds an equipment request in FY01 to provide computer equipment adequate to meet new and expanded responsibilities provided for in this legislation. In addition, the request by the Department of Public Safety to provide training in this new field is included in the fiscal note at $7.8 per year.

Prepared By: SENATE FINANCE COMMITTEE

SENATOR SEAN PARNELL, CO-CHAIR
Date: 4/5/00
Phone: 465-2995

SENATOR JOHN TORGERSON, CO-CHAIR
Date: 4/5/00
Phone: 465-2828

No: 5

FISCAL NOTE

Bill Version: HCSCSSB 259(JUD)
(H) Publish Date: 4/19/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) 4-Apr-00
Dept. Affected Administration
Title An Act relating to crimes and offenses relating to aural representations, recordings ...
BRU Legal and Advocacy Services
Component Public Defender Agency
Sponsor Senator Taylor
Requester (S) FIN
Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel	3.3	3.3	3.3	3.3	3.3	3.3
Contractual	11.7	11.7	11.7	11.7	11.7	11.7
Supplies						
Equipment	6.5	5.0	5.0	5.0	5.0	5.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	21.5	20.0	20.0	20.0	20.0	20.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	21.5	20.0	20.0	20.0	20.0	20.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	21.5	20.0	20.0	20.0	20.0	20.0

Estimate of any current year (FY2000) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

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

See attached.

Prepared by: Barbara Brink, Director
Phone 264-4414
Division Public Defender Agency
Date/Time
Approved by Commissioner -- Robert Poe, Jr.
Date 4/4/00
Agency Department of Administration

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO: CSSB 259 (JUD)

Analysis (continued)

This bill amends current law and adds new statutes to enable prosecution of a wide variety of computer-related offenses.

Prosecution and defense of these offenses will require sophisticated technical expertise. The Public Defender Agency does not currently have the computer equipment and the staff who have the technical knowledge necessary to defend criminal cases that could be brought under this new legislation.

It is difficult to predict how many additional cases the Public Defender Agency would be appointed to if this bill becomes law. The Department of Law has estimated that there would only be ten additional cases prosecuted in the first year and says it does not anticipate much in the way of increased workload. The Public Defender Agency is concerned about these estimates. This is a very broadly worded bill that would make unlawful a wide range of activity on individual personal computers, computer networks, and on the Internet. Although the Agency has concerns about the impact of this legislation in coming years, we will use the Department of Law's estimates.

The Public Defender Agency does not currently have the sophisticated computer equipment, software, peripherals, and associated communication devices that are necessary for the defense of these cases. We are requesting a one-time equipment purchase for our Anchorage office and plan to use this equipment as a resource for the rest of the state, too. We are paralleling the Department of Law's requests in terms of maintenance of this equipment, contractual services for training and employee travel. We are adding a small additional amount in contractual services anticipating that one case will go to trial in which we will need the services of an expert witness.

No: 6

FISCAL NOTE

Bill Version: HCSCSSB 259(JUD)
(H) Publish Date: 4/19/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____
Dept. Affected Law
Title "An Act relating to crimes and offenses relating to aural representations, ... access devices ... computers; ..."
BRU Criminal Division
Component 1st Judicial Dist; 4th Judicial Dist; Criminal Appeals/Special Litigation
Sponsor Senator Taylor
Requester Senate Judiciary Committee
Component No. 2198;2201;2203

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel	3.3	3.3	3.3	3.3	3.3	3.3
Contractual	6.7	6.7	6.7	6.7	6.7	6.7
Supplies						
Equipment	5.0	5.0	5.0	5.0	5.0	5.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	15.0	15.0	15.0	15.0	15.0	15.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	15.0	15.0	15.0	15.0	15.0	15.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	15.0	15.0	15.0	15.0	15.0	15.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

CSSB 259 (JUD) amends and expands the substantive criminal law to address the use of computers and other technology in the widespread perpetration of crimes. Child pornography, theft of personal information with the intent to defraud, theft of personal information resulting in damage to a person's financial reputation, deceptive business practices, "hacking" to get unauthorized information or introduce false information, and introducing damaging viruses, are all offenses where technology has offered new ways for criminals to victimize individuals. The amendments in this bill will update existing law to help law enforcement prosecute those who cause harm to others through the use of computers and other technology.

Prepared by: Joan M. Kasson — Phone 465-5370
Division Attorney General's Office — Date/Time 3/21/00, 11:39 AM
Approved by Commissioner Bruce M. Botelho, Attorney General — Date 3/21/00
Agency Department of Law

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(Rev 10/99) 2000/norm ss/OMB

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ANALYSIS CONTINUATION

Much of the bill expands on existing crimes already being prosecuted, and is not anticipated to cause increased workload. The new crimes defined in the bill are expected to result in approximately ten new prosecutions in the first year, with the number increasing in future years. These new white-collar cases will be handed by existing staff. Although no new personnel are believed to be necessary, other resources will be needed.

Investigation and prosecution of cybercrimes require that the prosecutor keep up with the constantly changing world of information technology. Those who use computers to commit crimes are very knowledgeable about technology, and usually have state-of-the-art equipment. Prosecutors must have the same or better knowledge and equipment as those who use the equipment for illegal purposes.

The Department of Law intends to have three of its prosecutors specialize in this technology driven area of law: one in Anchorage OSPA, and one each in the Juneau and Fairbanks district attorney's offices. These assistant district attorneys will need on-going training to stay ahead of the inventive ways people come up with to use technology to cause harm to others and to keep up with how law enforcement is responding in other jurisdictions. The department estimates $10.0 per year will be spent on training, divided equally between the three components. $5.0 per year is included to maintain state-of-the-art computer equipment, software, peripherals, and associated communications devices in Anchorage OSPA as a resource for the entire Criminal Division to use in preparing and presenting its cases.

Impostor gains access to couple's savings

By AMANDA B OHMAN
Staff Writer

When Nancy Kuhn received a letter from her credit union asking to verify her change of address to Juneau, she knew there was a mistake.

The Kuhns, who live in Fairbanks, hadn't moved to Juneau and didn't plan to.

Kuhn called Alaska USA Federal Credit Union to tell them the address change was wrong. That's when she learned of the four withdrawals from her account.

Someone posing as her husband not only changed the address of the account but had most of the money—$4,900—wired to Georgia.

"This is a case of stolen identity," Kuhn said. "It's a thing we all read about, but it never happens to us."

The impostor made the first three withdrawals, each for $1,000, the same day as the address change on Jan. 14. The fourth withdrawal, for $1,900, was made a day later.

In Jonesboro, Ga., the impostor showed up at a Western Union office carrying a fake military identification card with Eugene Kuhn's name and Social Security number on it, Nancy Kuhn said credit union officials told her. The person knew Eugene's credit union savings account number and the date the account was opened. The only thing the impostor got wrong, Kuhn said, was her husband's birthdate.

Jack Simmonds, senior vice president of operations at Alaska USA, said the credit union asked Western Union to compare the signature at the wire service with the signature on the account. When they didn't match, the credit union reimbursed the Kuhns.

"I don't think people should be concerned," Simmonds said. "The credit union has made this person whole. The member has not lost any money."

Simmonds said the credit union's insurance company would probably investigate the fraud, along with the FBI.

He said that for security reasons he could not comment on ac-

See THEFT, Page A-8

Fairbanks Daily News-Miner, Saturday, February 19, 2000

THEFT: Impostor steals $4,900

Continued from Page A-1

cess accounts at the credit union. But he said credit union members have the option of having a password. "We take every reasonable step to keep accounts secure."

The credit union was almost too secure for Kuhn at one point. She said she closed one of the couple's accounts in a huff last fall because the credit union demanded both her driver's license number and her Social Security number for a withdrawal receipt. Kuhn said she was willing to show that information but refused to let the bank put it on her receipt, in case it fell out of her purse or something, she said.

Kuhn said the credit union told her it would need the name, types of accounts at the credit union, Social Security number and date of birth from someone to access bank records. The couple is perplexed as to how someone could get that information, which is supposedly private.

Kuhn said her husband is "a little bit sloppy" but that he's never lost anything. "I don't think he ever misplaced one of the statements. I keep track of those."

The couple opened the savings account in 1975, before the credit union was bought by Alaska USA, Kuhn said.

She and her husband don't know anybody in Jonesboro, which is a busy suburb of Atlanta.

Fairbanks police referred Kuhn's complaint to the FBI. Neither the Fairbanks FBI bureau or the Anchorage bureau have begun investigating.

Alaska Association of Chiefs of Police

April 5, 2000

Senator Robin Taylor
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Senator Taylor:

On behalf of the Alaska Association of Chiefs of Police, I am writing in support of Committee Substitute for Senate Bill 259.

Several important issues are addressed by this bill, including the crime of assuming another's identity by use of various access devices. The bill would provide severe penalties for those who obtain devices and documents to use in the further commission of crimes and who destroy the lives, businesses, credit, and credentials of innocent victims in the process.

CS for SB 259 also addresses the need for criminal liability in cases where self defense is used all to frequently to avoid prosecution for a criminal act. Current Alaska law makes it extremely difficult to prosecute defendants who use self defense as an excuse to cover up illegitimate and often times deadly behavior. Limitations must be made to protect the lives of innocent victims as well punish those who harm others intentionally.

Sincerely,

Duane S. Udland, President
Alaska Association of Chiefs of Police

Arch. Daily News 4/19/00 Jim: Could this help with SB259? R.k.

body complains about "special interests." But omes to the Legislature, there is no more potent, minded, persistent special interest than the lawthemselves.

y, Alaskans got another example of this special t work.

Republicans passed a constitutional amendment a runoff if no gubernatorial candidate receives t in the general election. In the event of a runoff, nor would take office in February — after a bonehristmas-to-Super-Bowl campaign.

iendment is a "twofer," changing two sections of I of the Constitution.

III of Article III says simply, "The governor shall by the qualified voters of the state at a general elec candidate receiving the greatest number of votes overnor." This is the approach most states take.

IV says, "The term of office of the governor is s, beginning at noon on the first Monday in Dellowing his election and ending at noon on the lay in December four years later."

louse of Representatives and the voters approve lment, Alaskans will have some governors taking December and some in February. It is also possime governors will take office in December and ecember while others take office in December in February. Or the governor could take office in and leave in December.

Republicans say they are changing the law to emocracy" and "majority rule." But if "democ- "majority rule" are their goals, why didn't they same principle to themselves? Why didn't they senators receive a majority of the vote and esunoff for solons?

peal to "democracy" and "majority rule" is as as Harpo Marx's response to the outraged host t Harpo fooling around with the cocktail-party ir, I was not kissing your wife. I was whispering th."

stitutional amendment is about one thing. The s have had little luck electing a governor in real elections. They figure a runoff would help. of hypocrisy about democracy can change that.

health problems.

You'd think consumers would want worm-free food

A similar panel in Britain, the Nuffield Council on Bioethics, conducted an 18-

farmers to grow rice with less water and less fertilizer on less land.

board. Readers may write to her at jjacobs@sjmercury.com.

Theft of identity can lead to ruined credit

STACY SULLIVAN

I am one of some 30,000 people who discovered last year that their Social Security numbers had been pilfered.

The theft of my identity actually began in 1996, when I was living overseas. Without my knowledge, someone used my Social Security number to order telephone service in Los Angeles County and then disappeared, owing the phone companies thousands of dollars.

I moved back to New York in 1997 and rented an apartment, but in time the phone companies sent the unpaid bills to collection agencies and the agencies, unable to recover the debts, passed the information on to three major national credit bureaus. I was labeled a financial delinquent.

I didn't find out about my status until last year, when I tried to rent another apartment in New York. After weeks of hunting, I found a place I liked. The landlord said I could move in as soon as he ran the routine credit check. The next day he told me that my negative credit rating made me too risky a tenant.

Relegated to a sublet, I was just beginning to make inquiries at three credit bureaus when the telephone company refused to give me a telephone because of an unpaid bill of $1,163.67. Someone I'd never met had used my Social Security number to establish telephone service in Hawaiian Gardens, Calif., a city I have never seen. Despite the fact that the phone service was set up in a man's name, the debt was reported on my credit rating.

Once I proved that I was not that person — by showing the telephone company my photo ID and Social Security card — I was absolved of blame and given a telephone. But two weeks later I received a letter that said I would have to pay a $100 deposit if I wanted to keep my line, because of yet another unpaid bill from a different telephone company.

This time somebody had used not only my Social Security number but also my name to establish phone service in Sun Valley, Calif., another city I have never seen.

When I asked my phone company why I should have to pay a deposit because someone impersonated me at a company I had never done business with, the customer-service manager acknowledged that this was unfair, but politely explained that, unless I paid the deposit, my telephone would be disconnected.

So began a six-month battle of trying to clear my name. I provided the telephone companies, the credit bureaus and two collection agencies with telephone bills, W-2 forms, health-insurance receipts, credit-card statements and bank statements that proved I was not living in California at the time telephone service was ordered there. Despite my efforts, I received four letters holding me responsible for the bill.

Trapped in a Kafkaesque maze, I decided to file a police report. The police officer who heard my story told me he received an average of four complaints of identity theft each day.

Months passed, and still my name had not been cleared. So I called the collection agency investigating my case and threatened to file a lawsuit if it did not resolve my fraud claim. I promptly received a letter stating that I was not being held responsible for the remaining delinquent telephone bill.

But the collection agency said that it takes as long as 90 days for this information to be conveyed to the national credit bureaus, and that even then there may be mistakes or delays for which neither the collection agencies nor the credit bureaus will take responsibility.

Nearly four years since my identity was stolen, the unpaid bills are still reflected on my credit rating and I am still unable to rent an apartment.

The most maddening aspect of all this is that it could have been prevented, had the telephone companies simply checked the identity of the person who established telephone service in my name.

Is it too much to ask companies that issue credit cards, sell merchandise or provide services to take simple precautions to identify their customers?

Stacy Sullivan, a New York-based writer, is writing a book about the Kosovo Liberation Army.

REPORTED OUT OF

FISCAL NOTE No. 3LFC

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Bill Version: ~~CSSB 259(FIN)~~
(S) Publish Date: 3-22-00

Revision Date/Time (Note if correction) 21-Mar-00
Dept. Affected Administration
Title "An Act relating to criminal impersonation"
BRU Legal and Advocacy Services
Component Public Defender Agency
Sponsor Senator Taylor
Requester (S)JUD
Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	46.5	46.5	46.5	46.5	46.5	46.5
Travel	3.5	3.5	3.5	3.5	3.5	3.5
Contractual	26.3	26.3	26.3	26.3	26.3	26.3
Supplies	1.9	1.9	1.9	1.9	1.9	1.9
Equipment	6.5	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**84.7**	**78.2**	**78.2**	**78.2**	**78.2**	**78.2**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	84.7	78.2	78.2	78.2	78.2	78.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	**84.7**	**78.2**	**78.2**	**78.2**	**78.2**	**78.2**

Estimate of any current year (FY2000) cost:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

This bill amends current law and adds new statutes to enable prosecution of a wide variety of computer-related offenses.

Prosecution and defense of these offenses will require sophisticated technical expertise. The Public Defender Agency does not currently have staff who have the technical knowledge necessary to defend criminal cases that could be brought under this new legislation.

The Public Defender Agency will need to hire a Programmer Analyst I in order to consult with and train the attorneys appointed to defend these cases. The Programmer Analyst will be based in Anchorage. In addition to providing technical assistance on individual cases in Anchorage, the Programmer Analyst would also be responsible for training attorneys and investigators in all Public Defender Agency offices on technical issues in these cases. One-time equipment costs for computer equipment is also included in the first year.

Prepared by: Barbara Brink, Director
Phone 264-4414
Division Public Defender Agency
Date/Time
Approved by Commissioner – Robert Poe, Jr. Date 3/21/00
Agency Department of Administration

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