

**ALASKA LEGISLATURE**

**2733**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**

If a defendant cannot afford to post an appeal bond in the amount set by the court, a plaintiff could potentially seize the defendant's bank accounts, or its manufacturing facilities, or any property located anywhere that the plaintiff can find, even though the defendant may be in the middle of an appeal. In order to stop the plaintiff from taking its assets during the appeal, the defendant may have no alternative other than to file for bankruptcy, which carries with it an automatic stay of the debtor's obligation to pay its creditors.

However, a stay in bankruptcy is indiscriminate: while it would allow tobacco companies subject to huge judgments to appeal while the stay is in place without fear that plaintiffs could seize their assets, it would also prevent the companies from making their payments to Alaska and the other states under the MSA. This potential problem has been most vividly demonstrated by the ongoing Price case in Illinois. In March 2003, the judge in that case set the appeal bond at \$12 billion -- an amount that the company could not possibly have posted.<sup>3</sup> If the company had been forced to post such a large bond, it most likely would not have been able to continue to make the billions of dollars in payments that it owes under the MSA. Because of concern about this disastrous result, 37 state attorneys general (including Alaska's) and the National Conference of State Legislatures petitioned the Price court to allow a lower bond to be posted so that MSA payments would not be jeopardized. The bond was eventually lowered to \$6.8 billion, but even this reduced amount would bankrupt many companies.

As the Price case demonstrates, the state has a vital interest in ensuring tobacco companies can appeal massive judgments in Alaska by posting a bond under state law, rather than being forced into bankruptcy.

**B. Other States Have Recognized The Risks That Litigation Against MSA Signatories Pose To Their Continued Receipt Of Tobacco Settlement Funds, And They Have Enacted Appeal Bond Caps**

Increasingly, states have become aware of the potential consequences of high appeal bonds and have imposed reasonable limits on the size of these bonds. In 2000, legislators in Florida became concerned because the Engle class action against the tobacco companies was proceeding in that state. It was estimated that the punitive damages awarded in the case could be so large that these companies could not afford to post a bond, thereby forcing the companies to seek a stay from the bankruptcy court. While legislators had no particular sympathy for tobacco companies, they recognized that these companies, like every defendant, are at least entitled to a full and fair appeal, and they also recognized that Florida and every other state might lose an important income stream from the MSA payments if the companies were driven out of business. Thus, the legislature enacted a cap on the size of the appeal bond that would have to be posted with regard to the punitive damages aspect of any judgment. The cap limited appeal bonds to the

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lower of the punitive damages judgment plus twice the statutory rate of interest, ten percent of a defendant's net worth, or \$100 million.<sup>4</sup>

As noted above, the jury in Engle eventually awarded the plaintiffs \$145 billion in punitive damages. Under Florida's previous appeal bond rules, the defendants would have had to post an \$181 billion bond to appeal this judgment, which would have bankrupted any company or group of companies. But because the legislature had passed the appeal bond cap, the tobacco companies were able to post a much lower bond and appeal the verdict. Their appeal was ultimately successful: on May 21, 2003, a Florida appeals court decertified the Engle class and set aside the jury's decision in the case. In an emphatic opinion, the court ruled that the class action approach for Engle was completely improper. But if the legislature had not acted to limit the appeal bond prior to the trial court's judgment in Engle, the previous bonding requirement would have bankrupted the entire industry, thrown thousands of people out of work, and deprived each state of its tobacco settlement revenues.

Florida did not act alone. Twenty-nine other states have also passed limits on the size of appeal bonds, two of them by court rule and the rest through legislation. Five other states (Connecticut, Maine, Massachusetts, New Hampshire and Vermont) automatically stay a judgment upon the filing of a notice of appeal. As a result, over half of the states currently limit the appeal bond requirement. The approaches taken by the states have differed somewhat, as summarized below.

In the year 2000, along with Florida, four other states enacted limits on the size of appeal bonds.<sup>5</sup> These states were Kentucky (\$100 million limit) and Georgia, North Carolina and Virginia (\$25 million limits). In each of these states, the limit applied only to the bond for the punitive damages portion of a judgment. Each of these states was concerned that if the Florida legislature did not act, the Florida plaintiffs might seek to seize tobacco company assets in these other states. Thus, these states limited the size of bonds for judgments entered by courts within their states, and further provided that if a plaintiff with an out-of-state judgment came to their state to collect on that judgment, the defendant could stop the plaintiff until the appeal was completed by posting the bond required in that state. These states were worried that the tobacco settlement proceeds might be threatened before an appeal could ever be completed, and they were also worried about the jobs that could be lost in their states if the tobacco companies were put out of business before they could appeal.

In 2001 Louisiana, Nevada, Oklahoma and West Virginia passed legislation that limited the size of the appeal bond that signatories of the Master Settlement Agreement would have to post to appeal a damages verdict of any kind, be it compensatory or punitive damages.<sup>6</sup> Again,

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<sup>4</sup> Fla. Stat. § 768.733 (2002).

<sup>5</sup> Florida (Fla. Stat. § 768.733), Georgia (Ga. Code Ann. § 5-6-46), Kentucky (Ky. Rev. Stat. Ann. § 205.1), North Carolina (N.C. Gen. Stat. § 1-289), and Virginia (Va. Code Ann. § 8.01-676.1 J.) each passed legislation in 2000.

<sup>6</sup> Louisiana (La. Rev. Stat. Ann. § 98.6), Nevada (Nev. Rev. Stat. § 20.035.1); Oklahoma (Okla. Stat. Ann. tit. 12 § 990.4 B.5); and West Virginia (W. Va. Code § 4-11A-4).

a primary motivating factor for these states was their financial interest in ensuring that settlement proceeds under the state tobacco settlement were not threatened because of an inability of the tobacco companies to appeal a judgment. The Oklahoma appeal bond cap was \$25 million; the caps in Nevada and Louisiana were \$50 million; and West Virginia's cap was \$100 million for punitive damages and \$100 million for compensatory damages.

As these states were doing their work, the Mississippi Supreme Court amended its court rules, which govern appeal bonds in that state, to limit the bond that a defendant of any kind would have to post to stay a punitive damages judgment while it appeals.<sup>7</sup> The amount of the limit in Mississippi was the lower of \$100 million, 125 percent of the punitive damages award, or 10 percent of the defendant's net worth.

In 2002 three states enacted limits on the size of appeal bonds. Ohio adopted a \$50 million limit,<sup>8</sup> while Indiana and Michigan<sup>9</sup> adopted a \$25 million limit. These bond limitations were not tied in any way to tobacco companies or to the MSA. Rather, in each state, the limit that was adopted applies to damages of all kinds, including the costs a defendant might incur to pay for equitable relief, and it applies to any kind of defendant.

In 2003 Arkansas, California, Colorado, Idaho, Kansas, Missouri, New Jersey, Oregon, Pennsylvania, South Dakota, Tennessee, Texas and Wisconsin adopted appeal bond caps.<sup>10</sup> The Arkansas, Colorado, Tennessee, Texas and Wisconsin statutes apply to all litigants in civil litigation regardless of legal theory. The other states' laws are more limited in scope. Idaho's \$1 million cap, for example, applies to all litigants in civil litigation but covers only the punitive damages portion of the appeal. The Kansas cap applies to appellants who are signatories or successors of signatories to the tobacco Master Settlement Agreement; California, Missouri, New Jersey, Oregon and Pennsylvania extend this application to also include affiliates of signatories to the tobacco Master Settlement Agreement. The amounts of the caps enacted in these states range from \$25 million to \$100 million.<sup>11</sup> In addition, the South Dakota Supreme Court amended its court rules to limit the bond required to stay the execution of a judgment during an appeal to \$25 million.<sup>12</sup> Lastly, North Carolina and Florida broadened their existing

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<sup>7</sup> Mississippi Rule of Appellate Procedure 8.

<sup>8</sup> Ohio Rev. Code Ann. § 2505.09 (2002).

<sup>9</sup> Ind. Code Ann. § 34-49-5-3 (2002); Mich. Comp. Laws. Ann. § 600.2607(1) (2002).

<sup>10</sup> Ark. Code § 16-55-214 (2003); Cal. Health & Safety Code § 104558 (2003); Colo. Rev. Stat. 13-16-125 (2003); Idaho Comp. Stat. Ann. § 13-202 (2003); Kan. Stat. Ann. § 50-6a05 (2003); Mo. Rev. Stat. § 512.085 (2003); N.J. Stat. Ann. § 52:4D-13 (2003); 2003 Or. Laws 804 (not yet codified); Pa. Stat. Ann. tit. 35, § 5701.309 (2003); Tenn. Code § 27-1-124 (2003); Tex. Civ. Proc. & Rem. Code § 52.006(b) (2003); Wis. Stat. § 808.07 (2003).

<sup>11</sup> Arkansas, Colorado, Kansas and Texas agreed to cap their appeal bonds at \$25 million, while Missouri and New Jersey set their caps at \$50 million. Tennessee set its cap at \$75 million. The Pennsylvania and Wisconsin bills capped bonds at \$100 million, and California and Oregon each set a cap of \$150 million.

<sup>12</sup> S.D.C.L. 15-26A-26.

statutes in 2003 to limit the appeal bond for money judgments under any legal theory, not just punitive damages.

Thus far in 2004, four states have acted to solve the appeal bond problem. The legislatures in Utah, Nebraska, and Iowa have all adopted general bond cap legislation that applies to all litigants in all civil actions. The cap adopted in Nebraska is the lesser of the fifty percent of the appellant's net worth or \$50 million; the cap in Utah is \$25 million; and the cap in Iowa is \$100 million.<sup>13</sup> In addition, the South Carolina legislature passed a bill eliminating the bond requirement entirely for MSA signatories, successors, and affiliates.<sup>14</sup>

Like these other states, the Alaska legislature should act to solve the problems caused by high appeal bonds immediately. While some states have passed broader measures that apply to any defendant in any kind of litigation, a bill limiting the appeal bond in cases involving signatories, successors of signatories, or affiliates of signatories to the MSA would be sufficient to solve the most problematic aspects of Alaska's current law. The legislature, in its role as the protector of the state's finances, has the authority to adopt such a measure,<sup>15</sup> which is important not only for Alaska, but also for all other states who are relying on the continued stream of tobacco revenues for vital public projects.

**C. The Appeal Bond Limitation Laws Provide No Substantive Legal Protections To A Tobacco Company In Litigation, But They Do Protect Plaintiffs**

A key point for each of the states discussed above is that, in limiting the bond, none of them changed their substantive law in any way. Bond limitation laws only ensure that defendants can fully exercise their right to an appeal without going into bankruptcy or being forced to settle with the plaintiffs. So, for example, had the tobacco companies lost their appeal in the Engle case in Florida, they would have had to pay the full amount of the judgment. Nothing in the bond limitation statute passed in Florida would have prevented that. In addition, virtually all of the laws passed in each state allow a judge to require a much larger bond if it is

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<sup>13</sup> Utah H.J.R. 16 (2004); Iowa S.B. 2306 (2005); Neb. L.B. 1207 (2004). The Iowa bill is pending the governor's signature.

<sup>14</sup> S.C. H.B. 4823 (2004). The South Carolina bill is pending the governor's signature.

<sup>15</sup> Although Article IV, section 15 of the Alaska constitution gives the Supreme Court primary authority over rules that affect court procedure, the Court upholds legislative enactments if the main subject of the statute is substantive with only an incidental effect on procedure. See, e.g., Ware v. City of Anchorage, 439 P.2d 793, 794 (Alaska 1968)(upholding statute requiring a non-resident plaintiff to provide security for the costs of litigation). An important part of the inquiry into whether the statute is substantive or procedural is "whether the rule or statute under scrutiny is more closely related to the concerns that led to the establishment of judicial rule making power, or to matters of public policy properly within the sphere of elected representatives." Nolan v. Sea Airmotive, 627 P.2d 1035, 1042-43 (Alaska 1987). Since the purpose of the appeal bond cap is to "secure and protect the monies to be received as a result of the Master Settlement Agreement," which is a substantive goal clearly within the purview of elected representatives, the legislature has the power to enact this statute.

shown that a defendant is dissipating its assets to avoid a judgment. Thus, plaintiffs are protected under these bills in two ways: because the amount of the appeal bond even as limited is large in and of itself, and because in a case where the defendant is misbehaving, the court may require a larger bond.

Alaska should adopt legislation limiting the size of appeal bonds that MSA signatories, successors and affiliates must post to \$100 million, regardless of the value of the judgment. Plaintiffs would be protected by the large but limited bond that is required and by the provision in the bill allowing a judge to require a higher bond if a defendant is improperly dissipating assets. A defendant's right to appeal would also be fully protected, by mandating a large but not impossibly high appeal bond. And Alaska and the other states would be protected, by ensuring that the MSA signatories can fully appeal an adverse judgment, thereby avoiding the necessity of seeking a stay in the bankruptcy court. This, in turn, will benefit Alaska and its citizens by preserving the uninterrupted flow of tobacco settlement revenues.

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**Alaska Should Join Other States  
To Limit The Size Of Appeal Bonds and Protect Its  
Tobacco Settlement Revenues**

The Tobacco Master Settlement Agreement ("MSA") is vitally important to Alaska and to the 45 other states who are parties to the settlement. It delivers millions of dollars in revenues to Alaska annually, and it will continue to do so for years to come. It also delivers real benefits to the state through its non-monetary provisions, which restrict advertising by participating (but not by non-participating) manufacturers and are designed to help reduce youth smoking.

Yet the continued receipt of these funds is threatened by litigation against the tobacco companies that are funding the settlement. The ability of the tobacco companies to meet their obligations under the MSA ultimately depends upon their financial viability. It may seem far-fetched to worry about the financial viability of tobacco companies, but the litigation onslaught they are currently facing presents a real risk to their ability to make MSA payments.

This memorandum explains what Alaska can do to minimize that risk and protect the state's ongoing receipt of MSA money.

**A. The Enormous Litigation Risks Confronting The MSA Signatories Threaten Alaska's Master Settlement Agreement Revenues**

Within the last several years, the tobacco companies have faced gargantuan judgments. In 2000, the Engle class action in Florida resulted in a verdict of \$145 billion, which was reversed on appeal in May 2003. In California, two individual suits resulted in verdicts of \$28 billion and \$3 billion respectively, although both of these verdicts were reduced by the trial judge. In March 2003, a judge in the case of Price v. Philip Morris in Illinois ordered one tobacco company to pay compensatory damages of \$7.1 billion and punitive damages of \$3 billion in a class action. This decision is currently being appealed.

As the Engle case demonstrates, many extraordinarily large verdicts are reduced or overturned on appeal. In order for a verdict to be overturned, however, a defendant must be able to appeal and do so while remaining in business. The problem is that in most states, a defendant must post an appeal bond at least equal to the size of the judgment in order to stay the execution of the judgment during the appeal. In Alaska, the bond required to stay the execution of a money judgment is ordinarily the amount of the judgment remaining unsatisfied, plus appeal costs and interest.<sup>1</sup> But Alaska courts are permitted to set the bond in a different amount or to order alternate security for good cause shown -- meaning that judges may theoretically set the bond at any amount they deem appropriate, even if that amount exceeds the total judgment.<sup>2</sup>

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<sup>1</sup> Alaska R. App. P. 204(d).

<sup>2</sup> Id.

If a defendant cannot afford to post an appeal bond in the amount set by the court, a plaintiff could potentially seize the defendant's bank accounts, or its manufacturing facilities, or any property located anywhere that the plaintiff can find, even though the defendant may be in the middle of an appeal. In order to stop the plaintiff from taking its assets during the appeal, the defendant may have no alternative other than to file for bankruptcy, which carries with it an automatic stay of the debtor's obligation to pay its creditors.

However, a stay in bankruptcy is indiscriminate: while it would allow tobacco companies subject to huge judgments to appeal while the stay is in place without fear that plaintiffs could seize their assets, it would also prevent the companies from making their payments to Alaska and the other states under the MSA. This potential problem has been most vividly demonstrated by the ongoing Price case in Illinois. In March 2003, the judge in that case set the appeal bond at \$12 billion -- an amount that the company could not possibly have posted.<sup>3</sup> If the company had been forced to post such a large bond, it most likely would not have been able to continue to make the billions of dollars in payments that it owes under the MSA. Because of concern about this disastrous result, 37 state attorneys general (including Alaska's) and the National Conference of State Legislatures petitioned the Price court to allow a lower bond to be posted so that MSA payments would not be jeopardized. The bond was eventually lowered to \$6.8 billion, but even this reduced amount would bankrupt many companies.

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that the MSA signatories can fully appeal an adverse judgment, thereby avoiding the necessity of seeking a stay in the bankruptcy court. This, in turn, will benefit Alaska and its citizens by preserving the uninterrupted flow of tobacco settlement revenues.

**ENACTED APPEAL BOND LEGISLATION**

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Arkansas	HB 1038	3/27/2003	All litigants	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
California	A 1752	8/9/2003	Master Settlement Agreement signatories, successors, and affiliates	The lesser of 100% of the judgment or \$150,000,000	Applies to all judgments in civil litigation regardless of legal theory
Colorado	HB 1366	5/20/2003	All litigants	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Florida	HB 1721	5/9/2000	All litigants in class actions	\$100,000,000	As passed in 2000, applied to judgments for non-compensatory damages. Broadened in 2003 to apply to all money judgments under any legal theory
	SB 2826	6/10/2003	Master Settlement Agreement signatories, successors, and affiliates	\$100,000,000	
Georgia	HB 1346	3/30/2000	All litigants	\$25,000,000	Applies to punitive damages only
	SB 411	<i>Pending Governor's signature</i>	All litigants	\$25,000,000	Expands current law to apply to all forms of judgments in civil litigation
Idaho	HB 92	3/26/2003	All litigants	\$1,000,000	Applies to punitive damages only
Indiana	HB 1204	3/14/2002	All litigants	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory

Notes

\* Created by court rule rather than legislation.

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Iowa	SB 2306	<i>Pending Governor's signature</i>	All litigants	Gives court discretion to exceed 110% of the judgment, but caps bond at \$100 million	Applies to appeals from money judgments
Kansas	SB 64	4/21/2003	Master Settlement Agreement signatories and their successors	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Kentucky	SB 316	3/29/2000	All litigants	\$100,000,000	Applies to punitive damages portion of a judgment
Louisiana	HB 1807 HB 1819	6/25/2001 7/2/2003	As passed in 2001, covered Master Settlement Agreement signatories only; broadened in 2003 to include "affiliates"	\$50,000,000	Applies to all money judgments
Michigan	HB 5151	5/8/2002	All litigants	\$25,000,000 plus COLA every 5th year	Applies to all judgments in civil litigation
Mississippi	Rule 8	4/26/2001	All litigants	\$100,000,000	Applies to all litigation subject to court rule
Missouri	SB 242	7/10/2003	Master Settlement Agreement signatories, successors, and affiliates	\$50,000,000	Applies to all forms of judgments in civil litigation
Nebraska	LB 1207	4/15/2004	All litigants	The lesser of the following: 1. Amount of the money judgment. 2. 50% of appellant's net worth. 3. \$50 million.	Applies to all forms of judgments in civil litigation
Nevada	AB 576	5/29/2001	Master Settlement Agreement signatories	\$50,000,000	Applies to all forms of judgments in civil litigation

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
New Jersey	SB 2738	11/21/2003	Master Settlement Agreement signatories, successors, and affiliates	\$50,000,000	Applies to all forms of judgments in civil litigation
North Carolina	SB 2	4/5/2000	All litigants	\$25,000,000	As passed in 2002, applied to judgments for non-compensatory damages. Broadened in 2003 to apply to all money judgments under any legal theory
	SB 784	4/23/2003	All litigants		
Ohio	SB 161	3/28/2002	All litigants	\$50,000,000	Applies to all forms of judgments in civil litigation
Oklahoma	SB 372	4/10/2001	Master Settlement Agreement signatories	\$25,000,000	As passed in 2001, applied to all forms of judgments in civil litigation involving MSA signatories
Oregon	HB 2368	9/24/2003	Master Settlement Agreement signatories, successors, and affiliates	\$150,000,000	Applies to all judgments in civil litigation regardless of legal theory
Pennsylvania	HB 1718	12/30/2003	Master Settlement Agreement signatories, successors, and affiliates	\$100,000,000	Applies to all judgments in civil litigation regardless of legal theory
South Carolina	HB 4823	<i>Pending Governor's signature</i>	MSA signatories, successors, and affiliates	Appeal automatically stays execution of judgment - no bond required	Applies to all forms of judgments in civil litigation
South Dakota	Sup. Ct. R. 03-13	9/29/2003	All litigants	\$25,000,000	Applies to money judgments
Tennessee	SB 1687	6/5/2003	All litigants	\$75,000,000	Applies to all forms of judgments in civil litigation

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Texas	HB 4	6/11/2003	All litigants	The lesser of 50% of the judgment debtor's net worth or \$25,000,000	Applies to money judgments
Utah	HJR 16	Passed House on 2/17/04; Passed Senate on 3/2/04	All litigants	\$25 million collectively (lesser of (1) \$5 million + 10% of the judgment award, or (2) \$25 million for any single appellant)	Applies to all forms of judgments in civil litigation
Virginia	HB 1547	3/10/2000	All litigants	\$25,000,000	As passed in 2000, applied only to punitive damages portion of a judgment; as passed in 2004, expanded to apply to all forms of judgments in civil litigation
	HB 430/ SB 172	4/8/2004	All litigants	\$25,000,000	
West Virginia	SB 661	5/2/2001	As passed in 2001, applied only to Master Settlement Agreement signatories; amended in 2004 to clarify that the appeal bond limitations extend to appellants who control or are under common control with signatories to the master settlement agreement	\$100,000,000 for all portions of a judgment other than punitive damages; \$100,000,000 for the punitive damages portion of a judgment	Applies to all civil litigation and provides that consolidated or aggregated cases shall be treated as a single judgment for purposes of the appeal bond limits
	S 671	4/6/2004			
Wisconsin	AB 548	12/12/2003	All litigants	\$100,000,000	Applies to all judgments in civil litigation regardless of legal theory

**JURISDICTIONS THAT DO NOT REQUIRE BONDS**

<b>Jurisdiction</b>	<b>Governing Rule</b>
<b>Connecticut</b>	Proceedings to stay noncriminal judgments shall be stayed automatically until the final determination of the cause. Conn. R. App. P. § 61-11.
<b>Maine</b>	The taking of an appeal operates as a stay of execution upon the judgment, and no supersedeas bond or other security shall be required. Me. R. Civ. P. 62.
<b>Massachusetts</b>	The taking of an appeal from a judgment shall stay execution upon the judgment during the pendency of the appeal. Mass. R. Civ. P. 62(d).
<b>New Hampshire</b>	No execution of a judgment shall issue until the expiration of the appeal period. N.H. Rev. Stat. Ann. § 527:1.
<b>Vermont</b>	The taking of an appeal operates to stay execution of the judgment during the pendency of the appeal; no supersedeas bond or other security is required. Vt. R. Civ. P. 62(d)(1).
<b>Puerto Rico</b>	Once a bill of appeal is filed, all further proceedings in lower courts regarding a judgment or any part thereof which is appealed, or the issues contained therein, shall be stayed, except for an order to the contrary, issued on its own initiative or by petition of a party thereto by the court of appeals. P.R. R. Civ. P. 53.9.

**ENACTED APPEAL BOND LEGISLATION**

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
California	A 1752	8/9/2003	Master Settlement Agreement signatories, successors, and affiliates	The lesser of 100% of the judgment or \$150,000,000	Applies to all judgments in civil litigation regardless of legal theory
Colorado	HB 1366	5/20/2003	All litigants	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Florida	HB 1721	5/9/2000	All litigants in class actions	\$100,000,000	As passed in 2000, applied to judgments for non-compensatory damages. Broadened in 2003 to apply to all money judgments under any legal theory
	SB 2826	6/10/2003	Master Settlement Agreement signatories, successors, and affiliates	\$100,000,000	
Georgia	HB 1346	3/30/2000	All litigants	\$25,000,000	Applies to punitive damages only
Idaho	HB 92	3/26/2003	All litigants	\$1,000,000	Applies to punitive damages only
Indiana	HB 1204	3/14/2002	All litigants	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Kansas	SB 64	4/21/2003	Master Settlement Agreement signatories and their successors	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Kentucky	SB 316	3/29/2000	All litigants	\$100,000,000	Applies to punitive damages portion of a judgment

Notes

- Created by court rule rather than legislation.

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Louisiana	HB 1807	6/25/2001	As passed in 2001, covered Master Settlement Agreement signatories only; broadened in 2003 to include "affiliates"	\$50,000,000	Applies to all money judgments
	HB 1819	7/2/2003			
Michigan	HB 5151	5/8/2002	All litigants	\$25,000,000 plus COLA every 5th year	Applies to all judgments in civil litigation
Mississippi	Rule 8	4/26/2001	All litigants	\$100,000,000	Applies to all litigation subject to court rule
Missouri	SB 242	7/10/03	Master Settlement Agreement signatories, successors, and affiliates	\$50,000,000	Applies to all forms of judgments in civil litigation
Nevada	AB 576	5/29/2001	Master Settlement Agreement signatories	\$50,000,000	Applies to all forms of judgments in civil litigation
New Jersey	SB 2738	11/21/2003	Master Settlement Agreement signatories, successors, and affiliates	\$50,000,000	Applies to all forms of judgments in civil litigation
North Carolina	SB 2	4/5/2000	All litigants	\$25,000,000	As passed in 2002, applied to judgments for non-compensatory damages. Broadened in 2003 to apply to all money judgments under any legal theory
	SB 784	4/23/2003	All litigants		
Ohio	SB 161	3/28/2002	All litigants	\$50,000,000	Applies to all forms of judgments in civil litigation
Oklahoma	SB 372	4/10/2001	Master Settlement Agreement signatories	\$25,000,000	As passed in 2001, applied to all forms of judgments in civil litigation involving MSA signatories

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Oregon	HB 2368	9/24/2003	Master Settlement Agreement signatories, successors, and affiliates	\$150,000,000	Applies to all judgments in civil litigation regardless of legal theory
Pennsylvania	HB 1718	12/30/2004	Master Settlement Agreement signatories, successors, and affiliates	\$100,000,000	Applies to all judgments in civil litigation regardless of legal theory
South Dakota	Amend. to Sup. Ct. R. 15-26A-26	9/29/2003	All litigants	\$25,000,000	Applies to money judgments
Tennessee	SB 1687	6/5/2003	All litigants	\$75,000,000	Applies to all forms of judgments in civil litigation
Texas	HB 4	6/11/2003	All litigants	The lesser of 50% of the judgment debtor's net worth or \$25,000,000	Applies to money judgments
Virginia	HB 1547	3/10/2000	All litigants	\$25,000,000	Applies to punitive damages portion of a judgment
West Virginia	SB 661	5/2/2001	All Master Settlement Agreement signatories	\$100,000,000 for all portions of a judgment other punitive damages; \$100,000,000 for the punitive damages portion of a judgment	Applies to all civil litigation and provides that consolidated or aggregated cases shall be treated as a single judgment for purposes of the appeal bond limits
Wisconsin	AB 548	12/12/2003	All litigants	\$100,000,000	Applies to all judgments in civil litigation regardless of legal theory

**STATES THAT DO NOT REQUIRE BONDS**

State	Governing Rule
<b>Connecticut</b>	Proceedings to stay noncriminal judgments shall be stayed automatically until the final determination of the cause. Conn. R. App. P. § 61-11.
<b>Maine</b>	The taking of an appeal operates as a stay of execution upon the judgment, and no supersedeas bond or other security shall be required. Me. R. Civ. P. 62.
<b>Massachusetts</b>	The taking of an appeal from a judgment shall stay execution upon the judgment during the pendency of the appeal. Mass. R. Civ. P. 62(d).
<b>New Hampshire</b>	No execution of a judgment shall issue until the expiration of the appeal period. N.H. Rev. Stat. Ann. § 527:1.
<b>Vermont</b>	The taking of an appeal operates to stay execution of the judgment during the pendency of the appeal; no supersedeas bond or other security is required. Vt. R. Civ. P. 62(d)(1).

**Public Health Groups' Opposition to Appeal  
Bond Limits Is Misplaced**

Several public health groups, such as the American Cancer Society and the American Heart Association, have recently spoken out in opposition to appeal bond caps. Representatives from these groups have testified in front of state legislative committees considering bond cap bills, and at least one group has posted a statement on its website criticizing bond caps.<sup>1</sup> It is unclear why these groups are spending their members' resources to vigorously oppose appeal bond cap bills. Bond caps do not involve any public health issue whatsoever, and they have nothing to do with preventing cancer or reducing smoking rates. Instead, bond caps merely ensure that defendants facing large judgments are able to appeal without being forced to declare bankruptcy, thereby enabling the tobacco companies to continue to make the payments they owe to every state under the Master Settlement Agreement ("MSA") and other settlements while the tobacco companies appeal large judgments against them. The health groups' lobbying efforts should be directed at legislative measures that directly relate to the core purposes of these organizations, instead of what is fundamentally a fiscal issue.

Whatever the reasons behind the health groups' opposition to bond caps, the arguments that they have advanced against appeal bond caps are misguided and unpersuasive, as demonstrated below.

1. Argument: Bond caps would limit the tobacco industry's liability.<sup>2</sup>

This is simply wrong.

- Appeal bond bills do not change the substantive law in any way, meaning that they do not affect who ultimately wins or loses the lawsuit or the rule by which the trial is conducted. As a result, the bills would not take away any plaintiff's right to sue a tobacco company, nor do they limit the amount of compensatory or punitive damages that a plaintiff can collect from a tobacco company.
2. Argument: By seeking to appeal a jury verdict, instead of simply paying a multi-million dollar judgment in full, an MSA participant is perpetrating a "ruse" that "drags out the process," just to delay paying the money it owes to the plaintiffs.

All defendants have a right to appeal verdicts against them, and bond caps merely ensure that they will be able to exercise that right.

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<sup>1</sup> American Cancer Society, Changing the Rules: Philip Morris Blackmails States, available at [http://www.cancer.org/docroot/GI/content/GI\\_3\\_11x\\_Changing\\_the\\_Rules.asp?sitcare\\_a\\_GI](http://www.cancer.org/docroot/GI/content/GI_3_11x_Changing_the_Rules.asp?sitcare_a_GI) (last visited March 18, 2004).

<sup>2</sup> See id. ("The Society has consistently opposed state legislation that would cap tobacco industry liability.")

- Bond caps guarantee that large damage awards will be reviewed by the appellate courts to determine whether they were legally justified, which is what these courts were created to do in the first place. Even the *New York Times* has recognized the importance of “making sure that cigarette makers, like other unpopular parties, are given the full protection of constitutional due process . . . . [I]n making an appeal so prohibitively costly . . . the right to an appeal [is rendered] nearly meaningless, thus violating the defendant’s due process rights. The plaintiffs may hope that the situation forces [an MSA signatory] to settle now, but such pressure would be akin to extortion.”<sup>3</sup>
3. Argument: Bond caps that apply only to MSA signatories, successors, and affiliates offer “special protection” to the tobacco industry.

While MSA-specific bond caps do treat tobacco companies differently than other defendants, the ultimate goal of this differential treatment is to protect the State’s fiscal integrity.

- The purpose of appeal bond legislation is to ensure that tobacco companies can remain solvent during the appeals process, so they can continue to make their MSA payments to the states until a final determination is reached on their liability. Since many large judgments are reduced or overturned on appeal, there is no reason to prematurely force the defendants into bankruptcy and interrupt their MSA payments before all appeals are complete. By protecting the uninterrupted flow of the MSA payments that have become so important to states’ annual budgets, appeal bond bills ensure that states can continue to meet all of their fiscal obligations and serve their citizens.
4. Argument: The health groups have asserted that the appeal bond issue should be a “wake up call to the states,” and that state legislators should use this occasion to “break their dependence on settlement funds, by devoting more of their settlement payments to tobacco prevention and cessation programs.”<sup>4</sup>

This argument misses the point; if anything, it helps to demonstrate why the health groups should support bond caps.

- Appeal bond legislation does not have any effect on how a state elects to spend its tobacco settlement revenue. However, most states do devote a significant amount of their MSA payments to health-related programs and expenses: for example, New York spends more than half of its \$800 million annual revenue stream from the MSA on public health matters. If a state’s MSA funds are reduced because one of the signatories cannot afford to post an exorbitant appeal bond, then the state will have even fewer funds to devote to public health

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<sup>3</sup> “Too Costly an Appeal,” *N.Y. Times*, at A20 (Apr. 4, 2003).

<sup>4</sup> *Id.* See also Coalition for a Tobacco Free Hawaii Testimony, Hawaii House Finance Committee (Feb. 26, 2004) (“In settling [the MSA], “the 46 states involved, including Hawai’i, indicated the funds would be used to reduce the impact of tobacco use. The Coalition urges the Legislature to honor their original intent to provide funding for the state’s number one preventable cause of death – tobacco use.”)

concerns. Thus, by opposing bond caps, the health groups are actually working against the interests of public health.

5. Argument: If forced to post a high bond, the companies should "curtail marketing, suspend dividends and stock buybacks, and cut political contributions to accept the responsibility for the damage their products have caused."<sup>5</sup>

This argument does not reflect the realities of the tobacco industry.

- First of all, the vast majority of tobacco companies' marketing costs are not directed at consumers. According to the most recent FTC report, the top six cigarette manufacturers spent a total of \$11.22 billion on advertising and promotional expenditures, but traditional advertising aimed at consumers (*i.e.*, newspapers, magazines, billboards, and direct mail) accounted for only about 3 percent of this total in 2001. By contrast, merchandising and promotional expenditures -- promotional allowances paid to retailers, coupons and retail-value-added (*e.g.*, "buy one get one free") costs -- accounted for approximately 88% of the companies' expenditures.<sup>6</sup>
  - If MSA signatories stopped competing for market share among adult smokers, total cigarette sales would not decrease. Instead, sales volume would shift from MSA signatories to those manufacturers who have refused to join the MSA and are able to market their products at a substantial discount. This would impact MSA payments, because the settlement payments are tied to the sales volume of participating manufacturers. As a result, there would be no public health benefit if MSA signatories decreased their marketing revenues, but the states would suffer from the lower MSA payments.
6. Argument: Bond caps are unnecessary because the tobacco companies and their parent organizations are extremely wealthy and can afford to post appeal bonds, no matter how high they are set.

No matter how large a company is, raising money to post an exorbitant appeal bond is not as easy as the health groups make it out to be, and in some cases, it may be impossible to raise these funds.

- Any reliance by the health groups' on the financial figures of the tobacco companies' parent organizations to demonstrate the companies' financial solvency and bond-posting ability are basically irrelevant. The financial conditions of the parent companies of corporate defendants have nothing to do with this issue as a matter of law and by specific agreement in the MSA. As was recognized during the MSA payment crisis precipitated by the Price case in Illinois, parent companies of MSA signatories have no obligation whatsoever either to post bonds for, or make MSA payments on behalf of, their subsidiaries.

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<sup>5</sup> See id.

<sup>6</sup> Federal Trade Commission, Cigarette Report for 2001 (issued 2003), available at <http://www.ftc.gov/os/2003/06/2001cigreport.pdf>.

- Furthermore, the fact that a company may be profitable does not mean it has the cash resources to post an exorbitant appeal bond. In one class action against the MSA signatories, a Florida jury returned a verdict in 2000 of \$145 billion. Although the Florida legislature acted just before the verdict to set a maximum appeal bond of \$100 million, had it not done so, the defendants would have been required under previously existing Florida law to post a bond of 125 percent of the judgment, or \$181 billion. No company on earth could do that. In fact, the entire world bonding market -- which is estimated to have total bonding capacity of approximately \$10 billion -- would not be large enough to support such a bond.
  - While it is true that Philip Morris USA was able to post a \$6.8 billion bond in the Price case in Illinois, the court accepted as the bulk of the bond a \$6.8 billion note, rather than \$6.8 billion in cash. To be clear, this is the only \$6.8 billion note that Philip Morris USA has, and it has now been pledged and cannot be used for that purpose again. Nothing like it is available for another judgment in another state. To the contrary, precisely because the bond in that one case was so outrageously high -- and some MSA signatories clearly would not have been able to post such a bond even one time -- that bond caps are so essential now.
7. Argument: In many states, appeal bond caps are not necessary because judges have the discretion to set the bond in an amount lower than the amount of the judgment.

This is simply incorrect.

- A purely discretionary approach does not prevent a court from setting the bond in an amount that would potentially bankrupt a defendant: although a court has discretion to set a lower bond if the defendant demonstrates that it cannot afford to post a bond in the full amount of the judgment, nothing in the current rules require the court to do so. A clear example of the problems with a discretionary approach is the Price case, in which the judge used his discretion under the Illinois court rules to first set a clearly bankrupting bond (\$12 billion) and then, only after a brief was filed on behalf of 37 Attorneys General around the country, a \$6.8 billion bond. Discretion permits judges who do not adequately appreciate the facts, or simply do not care, to bankrupt defendants before they can appeal; the only way to prevent these abuses of discretion is to have a defined cap.
- A discretionary approach also leaves uncertainty for litigants and adds to the burdens a court will face. A discretionary approach may require protracted post-trial proceedings to determine the appropriate bond. Such proceedings waste judicial resources. And the uncertainty of a purely discretionary approach destabilizes the investment community, and can result in significant losses, at least in the short term, for retirement and other funds that invest in the stocks of the large publicly-traded companies that usually are defendants in the largest cases.
- Twelve out of the 27 states that have adopted appeal bond caps give courts discretion in setting the amount of the bond cap. These states have recognized that a purely discretionary approach does not adequately protect defendants from the negative consequences of exorbitant appeal bonds. In these states, such discretion continues to exist after the passage of bond cap legislation unless a judgment reaches the level of the appeal bond limit, which would occur only very rarely.

The public health community deserves the respect it has earned over the years for its work on genuine public health initiatives. They and their stakeholders have a genuine interest in working together with all those -- including MSA signatories -- who support spending as much of the settlement money as possible on tobacco control initiatives. But no one -- neither the health groups, nor the State, nor the companies who joined the settlement -- should object to the idea that the settlement payments should continue until a potentially bankrupting verdict can be heard on appeal. The fact is that appeal bond caps are a fiscal and a fairness, rather than a health, issue.

## Appeal Bonds Bill

The American Heart Association is concerned about proposed SB 307/HB 468, legislation that would limit the amount of appeal bonds to \$100 million in any civil lawsuit that involves a tobacco company, or any affiliate of a tobacco company, that participated in the 1998 Master Settlement Agreement, regardless of the amount of the legal judgment or the subject matter of the lawsuit. This legislation fails to protect the public health of all Alaskans, and it is not needed to protect the MSA payments that Alaska receives each year.

**This bill is not needed.** It is the American Heart Association's position that the safeguard built into Alaska Appellate Rule 204(d) already adequately protects all defendants, including any "signatory, a successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement". The rule says that "when the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, and interest, unless the superior court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond."

The superior court may set the bond for the amount of judgment, or the court may, "after notice and hearing and for good cause shown," fix a "different amount" or order "security other than the bond." Appellate Rule 204(d). There is, therefore, inherent flexibility in the existing court rules to allow for smaller bonds in cases where the defendant shows good cause (like the threat of bankruptcy or the inability to make MSA payments). This flexibility is further evidenced by the fact that, as far as the Heart Association has been able to ascertain, there has never been an instance where an Alaska business went bankrupt in attempting to meet an appeal bond. The American Heart Association continues to believe that there is simply no need for proposed HB 468.

**Appeal bond limits help only the big tobacco companies.** Appeal bond limits are special interest, special protection bills to benefit the tobacco companies – and the tobacco companies certainly do not deserve special treatment or special protections.

The only reason the Alaska Legislature is being asked to consider this proposed legislation is because tobacco companies are trying to avoid being brought to justice for years of misinformation and deceit about so-called "light" cigarettes that killed and harmed millions of people. Because the judicial systems in other states have forced the tobacco companies to pay for the harm they have caused, the tobacco companies are now trying to legislate options away from judges, juries and the injured parties who file lawsuits in many states throughout the country, including Alaska.

**Appeal bond limits hurt deserving plaintiffs who have won lawsuits.** Appeal bond limits reduce the security and protections that are currently in place to protect worthy plaintiffs who win lawsuits. Appeal bond provisions require losing defendants to post bonds prior to appealing lawsuits that they have lost – and the winning plaintiffs have recourse to those posted bond

amounts if the defendants lose on appeal and, for whatever reason, are no longer able to pay the damages they owe to the plaintiffs.

Through this mechanism, appeal bond requirements are meant to ensure that losing defendants do not use repeated frivolous appeals to avoid paying the damages owed to winning plaintiffs. They are also meant to ensure that losing defendants do not waste their assets or hide them during the appeal process, and appeal bonds protect plaintiffs against the possibility that the defendants lose their ability to pay during the appeal process. Low appeal bond limits fail to provide any of these protections in lawsuits where plaintiffs have been awarded damages that significantly exceed the amount of the appeal bond maximum.

**The judicial system and existing laws already have sufficient protections in place to stop appeal bond requirements from bankrupting defendants.** Tobacco companies who lose big lawsuits and have large damages judgments against them have numerous protections available:

- 1) They can file a motion with the court seeking to have the appeal bond amount reduced.
- 2) If the lower court refuses, they can file an appeal to a higher court to have the bond reduced.
- 3) They can work out a deal with the winning plaintiffs to post a smaller bond amount.

In April 2003, for example, Phillip Morris used existing avenues of appeal to get a court in Illinois to reduce an appeal bond in a large class action lawsuit from \$12 billion to \$ 6 billion. In fact, courts have already ruled that appeal bond requirements that force a losing defendant that wants to appeal into bankruptcy violate the constitutional right to due process. Other rulings on punitive damages indicate that forcing losing defendants into bankruptcy may also not be permissible.

**Tobacco companies have access to enormous financial resources that can be used to satisfy even the largest appeal bond requirements.** The tobacco companies (and their parent companies) have enormous assets, revenue streams, and profits – and have a vast capacity to borrow money or to raise needed revenue through price increases. In 2002, Altria (Philip Morris' parent company) had total assets of \$87.5 billion, net revenues of \$80.4 billion, and US tobacco revenues of \$18.9 billion.

**Tobacco companies can easily raise even very large appeal bond amounts by reducing their current non-essential spending.** The tobacco companies (and their parent companies) currently spend enormous amounts of money on expenditures that are not necessary to protect their market share. Most notably, the companies could save a lot of money by reducing or eliminating their shareholder dividends and stock buybacks. The big tobacco companies spend \$25 million every year on marketing their deadly products in Alaska alone.

**Tobacco companies' risk of being financially overwhelmed by multiple appeal bond requirements and lawsuit losses is very low.** For example, tobacco companies are promoting this legislation in Alaska despite the fact that there is no indication that there will be a significant tobacco-related lawsuit in Alaska, and despite the fact that Alaska judges and juries have proven to be moderate in their damage awards.

**There are other options that would protect payments while also protecting Alaska citizens.** The above facts show that no appeal bond limits should be instituted at all. But if some appeal bond limit is destined to pass in Alaska, these arguments support a much higher appeal bond limit than those currently being pushed by Philip Morris and other tobacco companies. To date, they have proposed appeal bond limits of \$25 million (and this was amount was raised in previous committees to \$100 million), but in order to protect legitimately harmed Alaskans who have prevailed in superior court, there is absolutely no justification for any appeal bond limit that is not in the billions of dollars.

Another alternative would be to set appeal bond limits to be no greater than the total value of a losing defendant's assets or no greater than a losing defendant's total revenues in the prior fiscal year. An even better alternative (if some appeal bond limit must be passed) would be to set guidelines for the courts. For example, a proposed bill could read: "Appeal bond limits shall not be set in an amount that would force a losing defendant into bankruptcy or otherwise cause severe financial strains that jeopardize the losing defendant's ability to stay in business or meet its preexisting financial obligations."

*April 19, 2004*

*superoneratio*

*superoneratio* (s[y]oo-pär-on-ä-ray-shee-oh). [Law Latin] *Hist.* 1. The act or practice of surcharging a common. 2. The placement of more cattle on a common than is allowed; overstocking.

*superoneratione pasturae.* See DE SUPERONERATIONE PASTURAE.

*superplusagium* (s[y]oo-pär-plä-say-jee-äm), *n.* [Law Latin] *Hist.* A surplus; a remainder.

*super praerogativa regis* (s[y]oo-pär pri-rog-ä-ti-vä ree-jis), *n.* [Law Latin] *Hist.* A writ against the king's tenant's widow for marrying without royal permission.

*superpriority. Bankruptcy.* The special priority status granted by the court to a creditor for extending credit to a debtor or trustee that cannot obtain unsecured credit from a willing lender. • This priority may be either an administrative claim outranking other administrative claims or, if certain statutory requirements are met, a security interest in property. 11 USCA § 364(c)(1).

*supersede, vb.* 1. To annul, make void, or repeal by taking the place of <the 1996 statute supersedes the 1989 act>. 2. To invoke or make applicable the right of supersedeas against (an award of damages) <what is the amount of the bond necessary to supersede the judgment against her?>. — *supersession* (for sense 1), *n.*

*supersedeas* (soo-pär-seed-ee-äs), *n.* [Latin "you shall desist"] A writ or bond that suspends a judgment creditor's power to levy execution, usu. pending appeal. — Also termed *writ of supersedeas*. Pl. *supersedeases* (soo-pär-see-dee-äs-iz).

*supersedeas bond.* See BOND (2).

*superseding cause.* See CAUSE (1).

*super statuto* (s[y]oo-pär stä-t[y]oo-toh), *n.* [Law Latin] *Hist.* A writ against tenants-in-chief who transferred their land without the king's permission in violation of the Statute of Westminster II, chs. 12 & 13.

*super statuto de articulis cleri* (s[y]oo-pär stä-t[y]oo-toh dee ähr-tik-yä-lis klee-r-i), *n.* [Law Latin] *Hist.* A writ against a sheriff who unlawfully distrains goods.

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COVINGTON & BURLING

**To:** Senator Ralph Seekins, Chair  
Senate Judiciary Committee

**From:** Keith A. Teel, Partner, Covington & Burling, Washington, D.C.,  
representing Philip Morris USA, Lorillard Tobacco Company, Brown &  
Williamson Tobacco Corporation and R.J. Reynolds Tobacco Company

**Date:** Friday, February 20, 2004

**Subject:** Support of S.B. 307, relating to supersedeas bonds

First, I'd like to thank you, Chairman Seekins, for the opportunity to speak with your committee today in support of Senate Bill 307, which provides a \$25 million limitation on bond requirements during appeal in litigation involving signatories to the tobacco master settlement agreement or their successors or affiliates. My name is Keith A. Teel, and I am here today representing Philip Morris USA, Lorillard Tobacco Company, Brown & Williamson Tobacco Corporation and R.J. Reynolds Tobacco Company, who are the four original participating manufacturers of the Tobacco Master Settlement Agreement ("MSA").

The MSA is very important to Alaska and to the 45 other states who are parties to the settlement. It delivers millions of dollars in revenues to the state annually, and it will continue to do so for years to come. Yet the continued receipt of these funds is threatened by the huge judgments that have been awarded against the tobacco companies that are funding the settlement. Defendants facing such large judgments almost always have a right to appeal them, and in many cases their appeals are successful in obtaining a reduced judgment or in overturning the judgment entirely. But in order to stay the execution of a judgment on appeal, a defendant must post a supersedeas (or appeal) bond which, in the diminishing number of states which do not have limits on appeal bonds, usually equals the amount of the judgment. In Alaska, the bond required is ordinarily the amount of the judgment remaining unsatisfied, plus appeal costs and interest.<sup>1</sup> But Alaska courts are permitted to set the bond in a different amount for good cause shown -- meaning that judges may set the bond at an amount that exceeds the total judgment.<sup>2</sup>

If a company cannot afford to post a bond in the amount set by the court, the company may be forced to file for bankruptcy in order to stop the plaintiff from taking its assets during the appeal. Such a stay could disrupt payments by the company, including payments to Hawaii and the other states under the MSA. This problem has been most vividly demonstrated by the ongoing Engle case in Florida, in which a class of smokers was awarded \$145 billion in punitive damages. Had there not been an appeal bond cap in place at that time, the defendant

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<sup>1</sup> Alaska R. App. P. 204(d).

<sup>2</sup> Id.

tobacco companies would clearly have gone bankrupt, resulting in the termination of all MSA settlement payments nationwide, and precluding the ability to pursue a fair and orderly appeal. However, because Florida had previously enacted bond cap legislation, the settlement payments continued during the appeal, and the appellate court ultimately rejected and reversed the verdict in its entirety.

To date, 26 states have recognized the possibility that an enormous appeal bond may cause signatory companies to be unable to meet their obligations to the states under the MSA, and these states have passed legislation or amended court rules to limit the size of the required bond in cases involving large judgments. In addition, five other states do not require a defendant to post a bond at all during an appeal. Some states have passed legislation that applies broadly to all litigants, while other states have passed more limited legislation that applies only to MSA signatories, successors, and affiliates. The bond limits range from \$1 million to \$150 million. Nearly all of the statutes include a provision that allows for a higher bond amount up to the full value of the judgment if the court determines that the appellant is dissipating assets to avoid paying a judgment.

S.B. 307 would impose a \$25 million limit on the appeal bond that MSA signatories, successors, and affiliates must post to stay the execution of a judgment in Alaska. This bond limit would not change the any other aspect of the law -- meaning it does not change the rules by which the trial is conducted, or affect who ultimately wins or loses the lawsuit -- or affect the rights of plaintiffs to recover fully the damages to which they are entitled if the judgment is upheld on appeal. Plaintiffs are also protected by the provision in the bill allowing the court to require a bond amount up to the value of the judgment if the appellant is dissipating its assets to avoid paying a judgment. S.B. 307 thus would not injure plaintiffs in any way, and it would protect the state by ensuring that it will continue to receive its MSA payments while the tobacco companies fully appeal an adverse judgment.

For the foregoing reasons, we urge the committee to pass S.B. 307. Thank you.

MSA Signed NOVEMBER 1998

Annual Payments to Each State

Year	1998	1999	2000	2001	2002	2003	2004 to 2007	2008 to 2017	2018 to 2025	Total
Amount	\$2,400,000,000.00	\$0.00	\$6,411,750,000.00	\$6,923,660,000.00	\$8,313,294,800.00	\$8,391,971,144.00	\$7,004,000,000.00	\$7,143,000,000.00	\$8,003,999,997.00	\$195,918,675,920.00
Alabama	\$38,787,139.87	\$0.00	\$103,622,268.35	\$111,895,403.67	\$134,353,720.06	\$135,625,232.71	\$113,193,803.17	\$115,440,225.02	\$129,355,111.40	\$3,166,302,118.81
Alaska	\$8,194,049.54	\$0.00	\$21,890,915.46	\$23,638,672.09	\$28,383,145.58	\$28,651,761.36	\$23,912,967.90	\$24,387,539.93	\$27,327,155.19	\$668,903,056.50
Arizona	\$35,373,226.92	\$0.00	\$94,501,786.55	\$102,046,748.46	\$122,528,359.76	\$123,687,958.17	\$103,230,867.24	\$105,279,566.63	\$117,969,711.74	\$2,887,614,909.02
Arkansas	\$19,873,586.24	\$0.00	\$53,093,527.74	\$57,332,480.87	\$68,839,575.47	\$69,491,067.60	\$57,997,749.17	\$59,148,761.04	\$66,278,410.08	\$1,622,336,125.69
California	\$306,334,930.78	\$0.00	\$818,392,913.50	\$883,732,877.84	\$1,061,105,244.62	\$1,071,147,458.11	\$893,987,439.65	\$911,729,337.72	\$1,021,626,993.76	\$25,006,972,510.74
Colorado	\$32,900,674.16	\$0.00	\$87,896,207.30	\$94,913,784.01	\$113,963,751.40	\$115,042,295.05	\$96,015,134.08	\$97,920,631.45	\$109,723,748.27	\$2,685,773,548.89
Connecticut	\$44,556,896.25	\$0.00	\$119,036,533.13	\$128,540,333.44	\$154,339,422.45	\$155,800,078.15	\$130,031,875.55	\$132,612,462.45	\$148,597,248.93	\$3,637,303,381.55
Delaware	\$9,491,268.84	\$0.00	\$25,356,517.92	\$27,380,966.02	\$32,876,548.30	\$33,187,689.27	\$27,698,686.24	\$28,248,388.89	\$31,653,381.58	\$774,798,676.89
D.C.	\$14,570,838.84	\$0.00	\$38,926,906.65	\$42,034,805.86	\$50,471,532.83	\$50,949,191.30	\$42,522,564.69	\$43,366,459.11	\$48,593,747.53	\$1,189,458,105.56
Florida	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Georgia	\$58,906,980.41	\$0.00	\$157,373,679.86	\$169,938,293.33	\$204,046,289.14	\$205,977,366.58	\$171,910,204.50	\$175,321,900.45	\$196,454,779.60	\$4,808,740,668.60
Hawaii	\$14,444,759.81	\$0.00	\$38,590,078.62	\$41,671,085.70	\$50,034,811.08	\$50,508,336.45	\$42,154,624.04	\$42,991,216.38	\$48,173,273.94	\$1,179,165,923.07
Idaho	\$8,718,317.14	\$0.00	\$23,291,529.13	\$25,151,109.85	\$30,199,141.89	\$30,484,944.11	\$25,442,955.52	\$25,947,891.39	\$29,075,587.65	\$711,700,479.23
Illinois	\$111,701,933.67	\$0.00	\$298,418,697.16	\$322,244,254.19	\$386,921,293.46	\$390,583,085.03	\$325,983,176.42	\$332,452,880.08	\$372,525,948.64	\$9,118,539,559.10
Indiana	\$48,955,278.39	\$0.00	\$130,787,085.94	\$141,229,042.84	\$169,574,858.88	\$171,179,701.52	\$142,867,820.78	\$145,703,147.32	\$163,265,853.39	\$3,996,355,551.01
Iowa	\$20,872,006.95	\$0.00	\$55,760,871.07	\$60,212,783.18	\$72,297,977.85	\$72,982,200.02	\$60,911,473.61	\$62,120,310.68	\$69,608,143.15	\$1,703,839,985.56
Kansas	\$20,008,109.65	\$0.00	\$53,452,915.44	\$57,720,561.87	\$69,305,547.47	\$69,961,449.52	\$58,390,333.34	\$59,549,136.35	\$66,727,045.67	\$1,633,317,646.19
Kentucky	\$42,267,806.11	\$0.00	\$112,921,085.75	\$121,936,632.68	\$146,410,305.30	\$147,795,920.49	\$123,351,547.49	\$125,799,557.93	\$140,963,133.32	\$3,450,438,586.10
Louisiana	\$54,128,474.21	\$0.00	\$144,607,601.88	\$156,152,979.89	\$187,494,151.32	\$189,268,580.68	\$157,964,930.57	\$161,099,871.36	\$180,518,461.42	\$4,418,657,915.22
Maine	\$18,464,411.55	\$0.00	\$49,328,829.47	\$53,267,211.52	\$63,958,373.54	\$64,563,670.37	\$53,885,307.70	\$54,954,704.87	\$61,578,812.49	\$1,507,301,275.81
Maryland	\$54,250,967.50	\$0.00	\$144,934,850.37	\$156,506,355.69	\$187,918,452.52	\$189,696,897.43	\$158,322,406.83	\$161,464,442.03	\$180,926,976.56	\$4,428,657,383.58
Mass.	\$96,935,496.43	\$0.00	\$258,969,237.19	\$279,645,174.68	\$335,772,232.68	\$338,949,953.70	\$282,890,090.42	\$288,504,271.26	\$323,279,880.48	\$7,913,114,212.77
Michigan	\$104,446,741.41	\$0.00	\$279,035,997.59	\$301,314,052.34	\$361,790,230.09	\$365,214,183.32	\$304,810,407.01	\$310,859,614.11	\$348,329,882.46	\$8,526,278,033.60
Minnesota	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Mississippi	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Missouri	\$54,590,425.53	\$0.00	\$145,841,733.70	\$157,485,644.00	\$189,094,291.94	\$190,883,864.90	\$159,313,058.50	\$162,474,753.97	\$182,059,069.06	\$4,456,368,286.30
Montana	\$10,194,218.72	\$0.00	\$27,234,492.45	\$29,408,876.82	\$35,311,477.28	\$35,645,662.22	\$29,750,128.30	\$30,340,543.46	\$33,997,719.42	\$832,182,430.63
Nebraska	\$14,279,599.86	\$0.00	\$38,148,843.51	\$41,194,622.66	\$49,462,718.04	\$49,930,829.17	\$41,672,632.27	\$42,499,659.09	\$47,622,465.53	\$1,165,683,457.48
Nevada	\$14,638,443.42	\$0.00	\$39,107,516.49	\$42,229,835.47	\$50,705,706.47	\$51,185,581.14	\$42,719,857.37	\$43,567,667.21	\$48,819,208.77	\$1,194,976,854.76
New Hampshire	\$15,982,416.92	\$0.00	\$42,698,025.70	\$46,107,008.63	\$55,361,059.77	\$55,884,992.33	\$46,642,020.04	\$47,567,668.35	\$53,301,360.40	\$1,304,689,150.27
New Jersey	\$92,807,910.83	\$0.00	\$247,942,134.27	\$267,737,674.95	\$321,474,801.04	\$324,517,212.33	\$270,844,419.77	\$276,219,544.60	\$309,514,382.50	\$7,576,167,918.47
New Mexico	\$14,313,352.87	\$0.00	\$38,239,016.77	\$41,291,995.30	\$49,579,634.15	\$50,048,851.76	\$41,771,134.78	\$42,600,116.47	\$47,735,031.79	\$1,168,438,809.05
New York	\$306,288,745.07	\$0.00	\$818,269,525.50	\$883,599,638.62	\$1,060,945,263.21	\$1,070,985,962.65	\$893,852,654.37	\$911,591,877.52	\$1,021,472,964.43	\$25,003,202,243.12
North Carolina	\$55,974,840.09	\$0.00	\$149,540,283.73	\$161,479,483.90	\$193,889,727.95	\$195,724,684.52	\$163,353,241.67	\$166,595,117.83	\$186,676,091.64	\$4,569,381,898.24
North Dakota	\$8,784,330.94	\$0.00	\$23,467,889.12	\$25,341,550.30	\$30,427,805.29	\$30,715,771.56	\$25,635,605.78	\$26,144,364.95	\$29,295,743.66	\$717,089,369.09
Ohio	\$120,900,234.58	\$0.00	\$322,992,532.93	\$348,780,039.22	\$418,783,038.09	\$422,746,366.61	\$352,827,184.57	\$359,829,323.15	\$403,202,282.16	\$9,869,422,448.51
Oklahoma	\$24,867,287.65	\$0.00	\$66,434,513.15	\$71,738,602.00	\$86,137,122.12	\$86,952,316.82	\$72,571,034.45	\$74,011,264.86	\$82,932,404.27	\$2,029,985,862.29
Oregon	\$27,543,797.82	\$0.00	\$73,584,977.37	\$79,459,954.68	\$95,408,213.01	\$96,311,148.56	\$80,381,983.32	\$81,977,228.27	\$91,858,565.71	\$2,248,476,833.11
Penn.	\$137,924,610.41	\$0.00	\$368,474,217.00	\$397,892,961.71	\$477,753,311.05	\$482,274,729.42	\$402,509,988.05	\$410,498,121.73	\$459,978,575.54	\$11,259,169,603.46
Rhode Island	\$17,253,727.23	\$0.00	\$46,094,410.65	\$49,774,558.78	\$59,764,717.02	\$60,330,325.43	\$50,352,127.30	\$51,351,405.67	\$57,541,180.29	\$1,408,469,747.28
South Carolina	\$28,232,446.25	\$0.00	\$75,424,744.69	\$81,446,607.84	\$97,793,603.59	\$98,719,114.28	\$82,391,688.98	\$84,026,818.16	\$94,155,208.21	\$2,304,693,119.82
South Dakota	\$8,374,699.41	\$0.00	\$22,373,532.90	\$24,159,821.39	\$29,008,893.79	\$29,283,431.59	\$24,440,164.46	\$24,925,199.13	\$27,929,622.54	\$683,650,008.54
Tennessee	\$58,581,467.29	\$0.00	\$156,504,051.21	\$168,999,234.09	\$202,918,753.08	\$204,839,159.61	\$170,960,248.71	\$174,353,092.02	\$195,369,193.34	\$4,782,168,127.09
Texas	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Utah	\$10,677,285.47	\$0.00	\$28,525,035.47	\$30,802,455.97	\$36,984,759.08	\$37,334,779.83	\$31,159,878.10	\$31,778,270.89	\$35,608,747.04	\$871,616,513.42
Vermont	\$9,868,441.49	\$0.00	\$26,364,158.22	\$28,469,055.67	\$34,183,026.39	\$34,506,531.76	\$28,799,401.75	\$29,370,948.99	\$32,911,252.36	\$805,588,329.25
Virginia	\$49,073,882.70	\$0.00	\$131,103,944.75	\$141,571,199.45	\$169,985,689.11	\$171,594,419.81	\$143,213,947.68	\$146,056,143.38	\$163,661,398.74	\$4,006,037,550.26
Washington	\$49,278,196.65	\$0.00	\$131,649,782.25	\$142,160,616.27	\$170,693,406.67	\$172,308,835.15	\$143,810,203.90	\$146,664,232.79	\$164,342,785.78	\$4,022,716,266.79
West Virginia	\$21,275,048.98	\$0.00	\$56,837,623.03	\$61,375,502.33	\$73,694,064.18	\$74,391,498.79	\$62,087,684.60	\$63,319,864.52	\$70,952,288.31	\$1,736,741,427.33
Wisconsin	\$49,728,936.59	\$0.00	\$132,853,962.15	\$143,460,937.12	\$172,254,712.48	\$173,884,917.03	\$145,125,613.28	\$148,005,747.52	\$165,846,003.46	\$4,059,511,421.32

Wyoming \$5,960,276.82	\$0.00	\$15,923,252.04	\$17,194,554.25	\$20,645,640.96	\$20,841,029.62	\$17,394,074.52	\$17,739,273.88	\$19,877,523.19	\$486,553,976.10
American Samoa \$365,208.62	\$0.00	\$975,677.65	\$1,053,575.12	\$1,265,036.21	\$1,277,008.41	\$1,065,800.48	\$1,086,952.15	\$1,217,970.74	\$29,812,995.31
N. Marianas \$202,503.22	\$0.00	\$541,000.00	\$584,193.09	\$701,445.39	\$708,083.81	\$590,971.89	\$602,700.20	\$675,348.22	\$16,530,900.80
Guam \$526,489.51	\$0.00	\$1,406,549.63	\$1,518,847.65	\$1,823,692.71	\$1,840,951.99	\$1,536,471.89	\$1,566,964.41	\$1,755,842.52	\$42,978,803.27
US Virgin Island \$416,623.09	\$0.00	\$1,113,034.64	\$1,201,898.61	\$1,443,129.42	\$1,456,787.08	\$1,215,845.06	\$1,239,974.49	\$1,389,438.02	\$34,010,102.11
Puerto Rico \$26,910,657.33	\$0.00	\$71,893,502.96	\$77,633,434.04	\$93,215,094.84	\$94,097,274.89	\$78,534,268.30	\$80,092,843.87	\$89,747,042.15	\$2,196,791,813.07
\$2,400,000,000.00	\$0.00	\$6,411,750,000.00	\$6,923,660,000.00	\$8,313,294,800.00	\$8,391,971,144.00	\$7,004,000,000.00	\$7,143,000,000.00	\$8,003,999,997.00	\$195,918,675,920.00

SENATE FINANCE COMMITTEE

SIGN-IN

SB 307-APPEAL BONDS: TOBACCO SETTLEMENT PARTIES

✓ NAME: KEITH TEEL Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: Covington & Burling Phone: 202-662-5501  
Address: WASHINGTON, D.C. ~~30004~~ Zip: 20004  
Do you wish to testify?  Yes  No  Respond To Questions

NAME: Brida Hovr Subject/Bill No: SB 307  
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

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 2/9/04

FURTHER: Finance

Date of 5-Day Notice: 2/12/04  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 3/1/04

Judiciary Committee considered      SENATE BILL NO. 307

**SB 307 APPEAL BONDS: TOBACCO SETTLEMENT PARTIES**

"An Act relating to the amount of the bond required to stay execution of a judgment in civil litigation involving a signatory, a successor of a signatory, or an affiliate of a signatory to the tobacco product Master Settlement Agreement during an appeal; amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 307 ( JUD )
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( \_\_\_\_\_ )
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>Senate Bill:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
CRT	2/17			✓	1

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Gene Theriault</i>			X	
<i>Scott Ogan</i>			X	
<i>Greg Ellis</i>		X		
CHAIR: <i>Joseph De...</i>	✓			

Theriault  
Ogan  
Ellis

Seelens

**SB**

**308**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

MAY 08 2004

SENATE FINANCE  
COMMITTEE

DATE: 04/7/04

FURTHER:

DATE TURNED  
IN TO OFFICE:

8 May 2004

Finance Committee considered

SENATE BILL NO. 308

## SB 308 DOMESTIC VIOLENCE PROTECTIVE ORDERS

"An Act increasing the duration of certain provisions of domestic violence protective orders from six months to one year."

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous 5 CS SB 308 (JUD)

attached amendment(s)

adopt Letter of Intent by Sen. Judiciary Committee

further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- Same Title
- New Title

**House Bill:**

- Same Title
- Technical Title Change
- New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero.	FN#
Admin	4/9/04	54.3			

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
Admin	3/17/04	12516			#1
Court	3/8/04			✓	#2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
Frank Ryan	✓			
Tom Hill	✓			
D. [unclear]	✓			
B. [unclear]	✓			
Ben [unclear]	✓			
COCHAIR: <u>Lyn Green</u>	—			
COCHAIR: <u>Gary [unclear]</u>	✓			

# ALASKA STATE SENATE



Session:  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2327  
(907) 465-5241 Fax

REPORTED OUT

MAY 08 2004

SENATE FINANCE  
COMMITTEE

Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

## SENATE JUDICIARY COMMITTEE

Senator Ralph Seekins, Chairman

April 7, 2004

### Letter of Intent for SB 308

By Senate Judiciary Committee

The purpose of Sections 1 and 3 of this Act is to require the Alaska Court System to include conspicuous warning language about penalty of perjury on forms for petitions and protective orders, as well as instructions for their use by a person seeking a protective order under AS 18.65.850 – 18.65.860.

"It is the intent of the Senate Judiciary Committee that this requirement applies only to new material printed after the effective date of this Act. The Alaska Court System may continue to supply written material printed before the effective date of this Act until those materials are exhausted."

COMMITTEE COPY

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSSB 308(JUD)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title An Act increasing the duration of BRU Legal and Advocacy Services  
DV protective orders Component Public Defender Agency  
Sponsor Senator French  
Requester (S) Finance Component No. 1631

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	36.1	36.1	36.1	36.1	36.1	36.1
Travel	1.8	1.8	1.8	1.8	1.8	1.8
Contractual	8.7	8.7	8.7	8.7	8.7	8.7
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>54.3</b>	<b>48.3</b>	<b>48.3</b>	<b>48.3</b>	<b>48.3</b>	<b>48.3</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	54.3	48.3	48.3	48.3	48.3	48.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>54.3</b>	<b>48.3</b>	<b>48.3</b>	<b>48.3</b>	<b>48.3</b>	<b>48.3</b>

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

**POSITIONS**

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

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

This bill will have some fiscal impact on the operations of the Public Defender Agency. Allowing the judge to expand the duration of a standard domestic violation protective order from 6 months up to 1 year will increase the caseload of the Agency. More cases involving violations of protective orders will be assigned to the Agency. There were approximately 350 cases of violations of DV restraining orders in FY03 handled by the Agency. Doubling the potential length of the standard restraining order will likely increase the number of cases charging violations of DV restraining orders during this extended period. While most violations of restraining orders occur in the first 20 days, approximately 20% occur during the current standard 6-month period. Since most of these offenses occur in the Anchorage area, the Agency will need one part-time attorney to handle this increased caseload.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416  
Division Public Defender Agency Date/Time 4/9/04 12:00 AM  
Approved by: Kevin Jardell, Assistant Commissioner Date 4/9/2004  
Agency Administration

MAY 08 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 308  
(S) Publish Date: 3/12/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Domestic Violence Protective Orders BRU Alaska Court System  
Component Trial Courts  
Sponsor Senator French  
Requester \_\_\_\_\_ Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
The court system does not anticipate any fiscal impact from the passage of SB 308.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750  
Division Alaska Court System Date/Time 3/8/04 11:12 AM  
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 3/8/2004  
Agency Alaska Court System

# ALASKA STATE SENATE



Session:  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2327  
(907) 465-5241 Fax

Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

## SENATE JUDICIARY COMMITTEE

Senator Ralph Seekins, Chairman

April 7, 2004

Letter  
of  
Intent

### Letter of Intent for SB 308

By Senate Judiciary Committee

The purpose of Sections 1 and 3 of this Act is to require the Alaska Court System to include conspicuous warning language about penalty of perjury on forms for petitions and protective orders, as well as instructions for their use by a person seeking a protective order under AS 18.65.850 – 18.65.860.

"It is the intent of the Senate Judiciary Committee that this requirement applies only to new material printed after the effective date of this Act. The Alaska Court System may continue to supply written material printed before the effective date of this Act until those materials are exhausted."

COMMITTEE COPY

Re: (no subject)

**Subject:** Re: (no subject)

**Date:** Tue, 16 Mar 2004 10:22:50 -0900

**From:** "Bob Linton" <Bob\_Linton@law.state.ak.us>

**To:** <senator\_hollis\_french@legis.state.ak.us>

**CC:** "John Novak" <John\_Novak@law.state.ak.us>,  
"Susan Parkes" <Susan\_Parkes@law.state.ak.us>

We ran CRIMES for all the DVRO cases that came in between January 1 and March 1. There were 23 cases. Of the 23 cases, 19 charge violations of a 20-day order. Three charge violations of a 6-month order.

One is in trial right now, so we do not have the file to check that one, but I can get you the info on that one when the lawyer gets back from court around 1:30 today.

But, yes, your instinct was correct.

>>> Senator French <senator\_hollis\_french@legis.state.ak.us> 3/12/2004  
3:50:26 PM >>>  
Anytime next week would be great.

Bob Linton wrote:

> Sorry it took a while to get back to you; I was in a meeting. I  
will  
> start looking into getting you an answer.  
>  
> How soon do you need it? Monday okay?  
>  
> >>> Senator French <senator\_hollis\_french@legis.state.ak.us>  
3/12/2004  
> 12:21:06 PM >>>  
> Bob,  
> Greetings from sunny Juneau. I have a request for information. I  
have  
> filed a bill that would double the length of long term protective  
> orders, from six months' duration to one year. The public  
defender's  
> office has estimated that this would double the number of cases they  
> have to defend, from 350 per year to 700, and would thus require  
them  
> to  
> add another full time attorney. A fiscal note of this size means  
the  
> bill will never pass the Finance committee.  
> My opposition to their fiscal note comes in two phases: (1) many  
> violations are of 20 day orders. This bill does not affect 20 day  
> orders, and therefore the number of cases which are based on 20 day  
> orders will not go up. (2) I do not believe that orders are  
violated  
> at  
> a constant rate throughout the life of the order. It is my  
anecdotal  
> belief that orders are violated more often when they are new.  
> I hesitate to ask you to put any work at all on the misdemeanor  
unit.  
> However, if someone could look at just a month's worth of cases and  
> tell  
> me how many DV writ violation cases are based on violations of 20  
day  
> orders, and, in cases involving 6 month orders, where in the life of

Provided by Sen. French  
5/8/04  
3/16/2004 10:44 AM

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSSB 308(JUD)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title An Act increasing the duration of BRU Legal and Advocacy Services  
DV protective orders Component Public Defender Agency  
Sponsor Senator French  
Requester (S) Finance Component No. 1631

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	36.1	36.1	36.1	36.1	36.1	36.1
Travel	1.8	1.8	1.8	1.8	1.8	1.8
Contractual	8.7	8.7	8.7	8.7	8.7	8.7
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>54.3</b>	<b>48.3</b>	<b>48.3</b>	<b>48.3</b>	<b>48.3</b>	<b>48.3</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	54.3	48.3	48.3	48.3	48.3	48.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
<b>TOTAL</b>	<b>54.3</b>	<b>48.3</b>	<b>48.3</b>	<b>48.3</b>	<b>48.3</b>	<b>48.3</b>

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

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

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

This bill will have some fiscal impact on the operations of the Public Defender Agency. Allowing the judge to expand the duration of a standard domestic violation protective order from 6 months up to 1 year will increase the caseload of the Agency. More cases involving violations of protective orders will be assigned to the Agency. There were approximately 350 cases of violations of DV restraining orders in FY03 handled by the Agency. Doubling the potential length of the standard restraining order will likely increase the number of cases charging violations of DV restraining orders during this extended period. While most violations of restraining orders occur in the first 20 days, approximately 20% occur during the current standard 6-month period. Since most of these offenses occur in the Anchorage area, the Agency will need one part-time attorney to handle this increased caseload.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416  
Division: Public Defender Agency Date/Time 4/9/04 12:00 AM  
Approved by: Kevin Jardell, Assistant Commissioner Date 4/9/2004  
Agency: Administration

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 308  
(S) Publish Date: 3/12/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Domestic Violence Protective Orders BRU Alaska Court System  
Component Trial Courts  
Sponsor Senator French  
Requester \_\_\_\_\_ Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The court system does not anticipate any fiscal impact from the passage of SB 308.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750  
Division Alaska Court System Date/Time 3/8/04 11:12 AM  
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 3/8/2004  
Agency Alaska Court System

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: SB 308  
 (S) Publish Date: 3/12/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title: An Act increasing the duration of BRU: Legal and Advocacy Services  
DV protective orders Component: Public Defender Agency  
 Sponsor: Senator French  
 Requester: (S) State Affairs Component No. 1631

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	88.3	88.3	88.3	88.3	88.3	88.3
Travel	4.8	4.8	4.8	4.8	4.8	4.8
Contractual	23.1	23.1	23.1	23.1	23.1	23.1
Supplies	2.7	2.7	2.7	2.7	2.7	2.7
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>125.6</b>	<b>119.6</b>	<b>119.6</b>	<b>119.6</b>	<b>119.6</b>	<b>119.6</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	125.6	119.6	119.6	119.6	119.6	119.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>125.6</b>	<b>119.6</b>	<b>119.6</b>	<b>119.6</b>	<b>119.6</b>	<b>119.6</b>

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

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

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

This bill will have a fiscal impact on the operations of the Public Defender Agency. Expanding the duration of a standard domestic violation protective order from 6 months to 1 year will increase the caseload and workload of the Agency. More cases involving violations of protective orders will be assigned to the Agency. There were approximately 350 cases of violations of DV restraining orders in FY03 handled by the Agency. Doubling the length of the restraining order will likely double the number of cases charging violations of DV restraining orders. As a result it is anticipated that there will be over 350 more cases a year assigned to the Agency for these offenses. Since most of these offenses occur in the Anchorage area, the Agency will need one full time attorney to handle this increased caseload.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416  
 Division: Public Defender Agency Date/Time 3/10/04 12:00 AM  
 Approved by: Mike Miller, Commissioner Date 3/11/2004  
 Agency: Administration

# ALASKA STATE LEGISLATURE

Senate  
Judiciary  
Committee  
•  
Senate  
Labor & Commerce  
Committee  
•  
Senate  
Administrative  
Regulation Review  
Committee



While in Session  
State Capitol  
Juneau, Alaska 99801  
(907) 465-3892  
1 (866) 465-3892  
Fax: (907) 465-6595

While in Anchorage  
716 West 4th Avenue  
Anchorage, Alaska 99501  
(907) 269-0234  
Fax: (907) 269-0238

## SENATOR HOLLIS FRENCH

Senator\_Hollis\_French@legis.state.ak.us  
www.akdemocrats.org

### SPONSOR STATEMENT

#### **CS SB 308 (JUD) – Relating to warnings on domestic violence and stalking forms; increasing the duration of certain provisions of domestic violence protective orders from six months to up to one year**

CS SB 308 (JUD) addresses the duration of long-term domestic violence protective orders. Currently, six months is the practical limit on a long-term domestic violence protective order – otherwise known as a DVPO. CS SB 308 (JUD) doubles the maximum length of DVPOs to one year. Under the provisions of the Judiciary Committee substitute, the judge issuing a protective order could issue the order for a period of not less than six months nor more than one year. Short-term, or *ex parte*, protective orders are not affected by this bill, and they would continue to be granted for a maximum of twenty days under current law.

The two parties to a DVPO are the petitioner, who is the person asking for the court's protection, and the respondent. Long-term DVPOs are only granted by a judge after formal notice to both parties and a hearing. In order to grant a DVPO, the judge must make a finding that the respondent has committed an act of domestic violence against the petitioner.

There are several benefits to this proposal. Of primary importance is that extending the time frame of a DVPO allows the petitioner a longer period of protection without having to go back to court to confront the respondent. A second benefit of extending the term of the protective order is that court system resources will be conserved. In many instances, petitioners are forced to return to court for a second order because the respondent's behavior has not changed. Granting the DVPOs for as long as one year will decrease the need for repeat court proceedings.

CS SB 308 (JUD) also requires that forms for petitions to apply for or modify protective orders and petitions for domestic violence or stalking protective orders

include a conspicuous warning that the petitions and requests are submitted under oath under penalty of perjury and that a person making a false statement may be prosecuted for perjury, which is a felony.

Alaska continues to struggle with high rates of domestic violence. Extending the length of the domestic violence protective order is one way to address that problem. Currently, only five states have shorter terms for DVPOs than Alaska's. The vast majority of states, however, give judges the authority to impose DVPOs of up to a year, or even longer, which has been shown to have a positive effect on the numbers of repeat offenses and requests for additional protective orders.

To look at some comparative statistics -- currently in Anchorage there are some 3,000 annual court filings for DVPOs. By comparison, Miami-Dade County, Florida, with a population of over two million, has only 7,000 filings per year. The lower ratio in Miami-Dade can be explained in part by the fact that in Florida there is no upper time limit on DVPOs.

Please join me in taking another step in our progress toward eliminating the scourge of domestic violence from our community and support SB 308.

*April 14, 2004*

# SENATE COMMITTEE REPORT

DATE: 3/12/04

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: 4/7/04

Judiciary Committee considered      SENATE BILL NO. 308

## SB 308 DOMESTIC VIOLENCE PROTECTIVE ORDERS

"An Act increasing the duration of certain provisions of domestic violence protective orders from six months to one year."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 308 ( JUD )
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( \_\_\_\_\_ )
- attached amendment(s)
- adopt Letter of Intent by Judiciary Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- Same Title
- New Title

**House Bill:**

- Same Title
- Technical Title Change
- New Title w/ SCR # \_\_\_\_\_

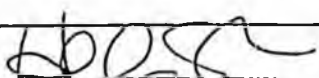
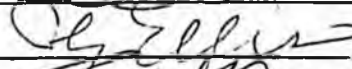
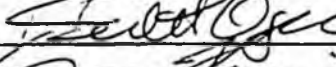
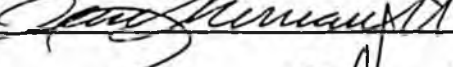
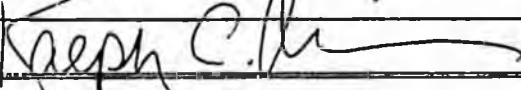
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	Indet.	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	Indet.	FN#
Adm	3/10	✓			1
CRT	3/8		✓		2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>French</i> 	X			
<i>Ellis</i> 	X			
<i>Ogawa</i> 	✓			
<i>Thompson</i> 			✓	
<b>CHAIR:</b> <i>Seckman</i> 	✓			

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 2/9/04

FURTHER: Judiciary

Date of 5-Day Notice: 3/4/04  
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 3/12/04

State Affairs Committee considered SENATE BILL NO. 308

**SB 308 DOMESTIC VIOLENCE PROTECTIVE ORDERS**

"An Act increasing the duration of certain provisions of domestic violence protective orders from six months to one year."

and recommends:

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

<b>Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DOA	3/1/04	✓			1
ACS	3/8/04			✓	2

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
Stedman		✓			
Guess		✓			
Gary Stevens	CHAIR:	✓			



SENATE FINANCE COMMITTEE

SIGN-IN

**SB 308-DOMESTIC VIOLENCE PROTECTIVE ORDERS**

NAME: Lauree Hugonin Subject/Bill No: SB 308  
Co./Dept./Title: Alaska Network on Domestic Violence & Sexual Assault Phone: 586-3650  
Address: 130 Second, rm 209 Juneau Zip: 99801  
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: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_  
Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
Do you wish to testify?  Yes  No  Respond To Questions

**SB**

**311**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

APR 26 2004

SENATE FINANCE  
COMMITTEE

DATE: 04/15/04

FURTHER:

DATE TURNED  
IN TO OFFICE: 26 April 2004

Finance Committee considered SENATE BILL NO. 311

## SB 311 INSURANCE & WORKERS' COMPENSATION SYSTEM

"An Act providing for a special deposit for workers' compensation insurers; relating to the board of governors of the Alaska Insurance Guaranty Association; relating to covered workers' compensation claims paid by the Alaska Insurance Guaranty Association; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to restructuring the Alaska workers' compensation system; eliminating the Alaska Workers' Compensation Board; establishing a division of workers' compensation within the Department of Labor and Workforce Development and assigning certain Alaska Workers' Compensation Board functions to the division and the Department of Labor and Workforce Development; establishing a Workers' Compensation Appeals Commission; assigning certain functions of the Alaska Workers' Compensation Board to the Workers' Compensation Appeals Commission; relating to agreements that discharge workers' compensation liability; providing for hearing officers in workers' compensation proceedings; relating to workers' compensation awards; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to assigned risk pools and insurers; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS SB 311 (JUD)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**  
 Same Title  
 New Title

**House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero.	FN#
Labor	4/20/04	1627.0			

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
Crt	7/1/04	198.8			#5
Admin	7/1/04		*		#4
Law	1/20/04			✓	#2
DCED	4/2/04			✓	#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>		✓		
<i>[Signature]</i>		✓		
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

APR 26 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 311  
(S) Publish Date: 2/09/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
Title Workers' Compensation Amendments RDU Insurance (116)  
Component Insurance  
Sponsor Rules  
Requester By Request of the Governor Component No. 354

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation revises AS 21 regarding state regulation of the insurance code by strengthening protections for consumers and restructuring the Board of the Alaska Insurance Guaranty Association. It also eliminates the cap on the assigned risk pool surcharge.

This legislation has no fiscal impact on the operations of the division.

Prepared by: Linda S. Hall, Director Phone (907) 269-7900  
Division: Insurance Date/Time 2/5/04 3:36 PM  
Approved by: Edgar Blatchford, Commissioner Date 2/5/2004  
Agency: Department of Community & Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SB 311  
(S) Publish Date: 2/09/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title An Act relating to improvements in the RDU Administration and Support  
workers' compensation system Component Legislation and Regulations  
Sponsor Rules  
Requester Governor Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

Full-time	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
This bill makes systemic improvements in the delivery of workers' compensation benefits and enforcement of workers' compensation insurance requirements. The bill improves the system adjudication of dispute.  
  
Passage of this legislation would have no foreseeable fiscal impact on the Department of Law. In fact, the Department of Law believes that the systemic changes to the workers' compensation system will result in reduced claim administration costs over time.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673  
Division Administrative Services Date/Time 1/29/04 2:07 PM  
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/29/2004  
Agency Department of Law

# FISCAL NOTE

REPORTED OUT

APR 26 2004

SENATE FINANCE  
COMMITTEE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4  
 Bill Version: SB 311  
 (S) Publish Date: 3/5/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An act reforming Workers' Compensation Board functions RDU Risk Management  
 Component Risk Management  
 Sponsor Rules  
 Requester By request of the Governor Component No. 71

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	.	.	.	.	.	.

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	.	.	.	.	.	.

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

**POSITIONS**

POSITIONS	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 Significant reform to the adjudication process for workers' compensation claims is proposed in this comprehensive legislation.  
 In time, these streamlining measures are projected to save allocated loss adjustment expenses presently incurred in resolving disputes in claim and benefit obligations.  
 As an authorized self-insured employer, the state will experience these savings in its self-insurance program administered by Risk Management.  
 In future years, Risk Management's workers' compensation premium assessments to state agencies will reflect the reductions actually realized as premium charges are developed from actual claims expense incurred.

Prepared by: J. Brad Thompson, Director Phone 465-5723  
 Division Director Date/Time 2/9/04 9:15 AM  
 Approved by: Mike Miller, Commissioner Date 2/9/2004  
 Agency Department of Administration

# FISCAL NOTE

REPORTED OUT  
APR 26 2004  
SENATE FINANCE  
COMMITTEE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5  
Bill Version: SB 311  
(S) Publish Date: 3/5/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Workers' Compensation BRU Alaska Court System  
Component Appellate Courts  
Sponsor Senate Rules Component No. \_\_\_\_\_  
Requester Governor

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	186.1	186.1	186.1	186.1	186.1	186.1
Travel						
Contractual	2.4	2.4	2.4	2.4	2.4	2.4
Supplies						
Equipment	10.3					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>198.8</b>	<b>188.5</b>	<b>188.5</b>	<b>188.5</b>	<b>188.5</b>	<b>188.5</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	198.8	188.5	188.5	188.5	188.5	188.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>198.8</b>	<b>188.5</b>	<b>188.5</b>	<b>188.5</b>	<b>188.5</b>	<b>188.5</b>

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

**POSITIONS**

Full-time	3					
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
See attached analysis.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750  
Division: Alaska Court System Date/Time 2/9/04 11:37 AM  
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/9/2004  
Agency: Alaska Court System

SB 311 FN #5  
Alaska Court System Fiscal Analysis

Senate Bill 311 makes several changes to the way the Department of Labor and Workforce Development (the agency) and the Alaska Court System resolve workers' compensation disputes and appeals. Most important for purposes of the court's fiscal note is that appeals from the newly-created Workers' Compensation Appeals Commission (commission) will bypass the superior court and go directly to the supreme court.

The court system does not believe that the creation of the new commission will result in a decrease in the number of workers' compensation cases that are appealed to the court system each year. However, bypassing the superior court will lead to a significant increase in the number of these appeals that go to the supreme court. This is because the superior court resolves about 75% of the workers' compensation cases appealed to the court system. Of the yearly average of 36 appeals filed with the superior court, only 9 (25%) are further appealed to the supreme court. Because the bill bypasses the superior court the supreme court anticipates that it will see all 36 cases.

Although the removal of these cases from the superior court will ease the workload of that court, the reduction is only slightly more than an average of one case a year per judge.<sup>1</sup> Although this will allow judges some additional time to focus on other cases, it is not a significant enough reduction to produce a cost savings. However, an additional 27 cases a year for the supreme court would represent a greater than 10% increase in its civil caseload.

In order to mitigate the impact of these additional cases the court will hire a central staff attorney with expertise in workers' compensation law to research the record and the legal issues associated with each of the workers' compensation cases. This assistance should reduce the time required to resolve these cases and lessen the impact they will have on other matters before the court.

Additionally, this note reflects the costs of an administrative assistant to assist the attorney and an additional clerical position to handle the increased paper work and to interact with the agency in the preparation of the records on appeal.

This note conservatively assumes that the number of cases appealed to the court system will not grow above the current average of 36 cases a year. Should that average increase the court system may be back before the legislature with a request for additional funding.

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<sup>1</sup> By way of comparison, the statewide average of cases per superior court judge is 500 to 600 cases a year.

APR 26 2004

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB311CS-DOLWD-WCAC-04-20-04  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: Insurance & Workers' Compensation System RDU: Workers' Compensation  
Sponsor: Senate Rules Component: Workers' Compensation  
Requester: Senate JUD Component Number: new#

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

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	380.1	380.1	380.1	380.1	380.1	380.1
Travel	39.8	39.8	39.8	39.8	39.8	39.8
Contractual	168.4	119.6	119.6	119.6	119.6	119.6
Supplies	27.1	14.4	14.4	14.4	14.4	14.4
Equipment	11.6					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>627.0</b>	<b>553.9</b>	<b>553.9</b>	<b>553.9</b>	<b>553.9</b>	<b>553.9</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( 1157 )</b>	<b>18.0</b>	<b>18.0</b>	<b>18.0</b>	<b>18.0</b>	<b>18.0</b>	<b>18.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1157 Workers Safety Account	627.0	553.9	553.9	553.9	553.9	553.9
<b>TOTAL</b>	<b>627.0</b>	<b>553.9</b>	<b>553.9</b>	<b>553.9</b>	<b>553.9</b>	<b>553.9</b>

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

**POSITIONS**

Full-time	4	4	4	4	4	4
Part-time						
Temporary						

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

See attached.

Prepared by: Paul Lisankie, Director Phone 465-2790  
Division: Workers' Compensation Division Date/Time 4/20/04 3:38 PM  
Approved by: Greg O'Claray, Commissioner Date 4/20/2004  
Agency: Department of Labor and Workforce Development

**FISCAL NOTE**

**STATE OF ALASKA  
2004 LEGISLATIVE SESSION**

**BILL VERSION: SB311CS-DOLWD-WCAC-04-20-04**

**ANALYSIS: (continued)**

This legislation establishes a Workers' Compensation Appeals Commission and replaces the Alaska Workers' Compensation Board with a Workers' Compensation Hearings Board. It also transfers a number of functions from the Division of Workers' Compensation and the former Workers' Compensation Board to the new Commission and Hearings Board. The fiscal note displays the net change in costs associated with these changes. Changes include:

	Existing WC Component	New WC Appeals	New WC Hearings Board	Net Change
Personal Services	(803.8)	1,183.9	0.0	380.1
Travel	(36.8)	16.2	60.4	39.8
Contractual	(88.9)	257.3	0.0	168.4
Supplies	(8.6)	35.7	0.0	27.1
Equipment		11.6	0.0	11.6
<b>Total</b>	<b>(938.1)</b>	<b>1,504.7</b>	<b>60.4</b>	<b>627.0</b>

**New Workers' Compensation Appeals Commission budget component:**

**Operating Expenditures:**

Personal Services: The Appeals Commission is comprised of 13 new positions:

	<u>Range</u>
Commission, Chair	30 F
Commission, Member	29 C
Commission, Member	29 C
Comm. Hearing Officer	24 D
Comm. Hearing Officer	24 D
Comm. Hearing Officer	24 D
Comm. Hearing Officer	24 C
Comm. Hearing Officer	24 C
Comm. Hearing Officer	24 C
Admin. Services Mgr./ Commission Clerk	23 A
Admin. Assistant	13 A/B
Admin. Clerk III	10 A/B
Admin. Clerk II	8 A/B

The personal services costs of \$1,183.9 are associated with the above positions. Steps for Appeals Commission Hearing Examiners are assumed to cover the range of experience of the potential incumbents mandated by the bill.

A reduction in the total numbers of hearing officers (currently eight authorized Workers' Compensation Hearing Officers versus planned six Appeals Commission Hearing Examiners) is based upon a reasonably expected increase in productivity. That increase would result from 1) the increased experience and qualifications justifying Range 24 pay and 2) a lessening of turnover associated with upgrading the positions. Also, a reduction is supported by one substantive change in the bill that removes the need for a hearing examiner to review Compromise & Release agreements involving injured workers represented by an attorney licensed to practice in the State of Alaska.

In order to insure that there is someone available to assist the chair in diverse "court clerk," budget/fiscal, and organizational administration functions (while still keeping total staffing requirements low) a higher level administrative manager position is included. In the state personnel system an Administrative Services Manager is identified as a "principal assistant to a division director" for managing administrative functions while insuring financial integrity and mission accomplishment.

## FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL VERSION: SB311CS-DOLWD-WCAC-04-20-04

### ANALYSIS: (continued)

**Travel:** Appeals Commission travel costs of \$16.2 have been minimized by basing the Commission and holding all its appeals hearings in Anchorage. Commission administrative staff are also located in Anchorage. Five Appeals Commission Hearing Examiners are based in Anchorage and one in Fairbanks. Planned travel includes 3 trips to Juneau for the Commission chair and Commission Clerk/Administrative Services Manager as well as Hearing Examiner travel once per month to Juneau for hearings, and Hearing Examiner travel once every two months to Fairbanks to back up/fill in for resident.

Hearings Board travel includes both actual travel costs (\$30.4) associated with the 14 Board members attending hearings and a total of (\$30.0) based upon a \$50/day stipend payable for each day or part of a day spent on Board business. This component now reflects the requirement that two Board members must be present or a scheduled hearing may not proceed.

**Contractual:** The bill requires that Appeals Commission offices and staff be "physically separate" from the Workers' Compensation Division offices and staff. The contractual budget of \$257.3 includes on-going contractual costs (telephones, leases, equipment maintenance, etc.) of \$184.2 and one-time costs of achieving the mandated physical separation of \$52.5 in Anchorage and \$20.6 in Fairbanks for a total of \$73.1. Those costs include remodeling of office space, staff relocation, and voice and data line wiring.

**Supplies and Equipment:** A budget of \$35.7 for general office supplies and \$11.6 for equipment is necessary to establish and operate the Appeals Commission in FY 2005 due to the one time costs associated with items such as printers, fax machines and photocopiers and additional computers. Beginning in FY 2006 the supply and equipment line items are adjusted to reflect estimated operational costs for the Appeals Commission.

### **New Fees/Fines:**

The bill authorizes the Appeals Commission to charge a \$100.00 fee for the filing of an appeal. This is expected to amount to a yearly total of approximately \$6,000.00 payable to the Workers' Safety and Compensation Administration Account.

The bill also allows the Appeals Commission to order the parties to an appeal to pay for its costs of preparing the appeal file. At \$200.00 per appeal that could be expected to total \$12,000.00 per year payable to the Workers' Safety Account.

The bill also authorizes the Division of Workers' Compensation to seek the imposition of civil penalties against employers that violate the statutory requirement to insure or properly self-insure for their employees' workers' compensation benefits. Appeals Commission hearing examiners would be authorized to award penalties up to a maximum of \$100.00 per day per employee. Based upon FY 2003 statistics penalties totaling \$217,900.00 could have been assessed for each day the 189 identified, uninsured employers failed to insure the workers' compensation benefits of their 2,179 employees. It is unclear whether these penalties under AS 23.30.080 were intended to be considered as penalties under "this section" (AS 23.05.067). Due to the speculative nature of these penalties, and the uncertainty of their collectability and qualification for inclusion, no adjustment to the Workers' Safety and Compensation Administration Account is currently included.

Existing Workers' Compensation budget component:

### Operating Expenditures:

**Personal Services:** The Workers' Compensation Division and the Workers' Compensation Board would delete the following positions:

FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL VERSION: SB311CS-DOLWD-WCAC-04-20-04

ANALYSIS: (continued)

	Range
Chief of Adjudication (PCN 07-3005)	23 B
Workers' Compensation Hearing Officer (PCN 07-3013)	21 M
Workers' Compensation Hearing Officer (PCN 07-3020)	21 K
Workers' Compensation Hearing Officer (PCN 07-3042)	21 F
Workers' Compensation Hearing Officer (PCN 07-3043)	21 B/C
Workers' Compensation Hearing Officer (PCN 07-3044)	21 B/C
Workers' Compensation Hearing Officer (PCN 07-3060)	21 B/C
Workers' Compensation Hearing Officer (PCN 07-3061)	21 A
Workers' Compensation Officer II (PCN 07-3027)	18 K
14 Workers' Compensation Board Members ----	

The personal services cost reductions of (\$803.8) are associated with the 9 full-time positions above. Savings from Board members are reflected below under travel and stipends.

Many responsibilities previously lodged in the AWCB have been reassigned to the Division Director. While some will be absorbed by the remaining Workers' Compensation Officers, others require more advanced legal and administrative hearing skills. Reflecting the increased responsibilities the bill places upon the Division Director, and the loss of the Chief of Adjudication, the Division will retain one Workers' Compensation Hearing Officer or equivalent (Range 21) position. This position will allow the Director to delegate some of the duties for making investigations and determinations to the incumbent.

The bill shifts to the Appeals Commission Hearing Examiners the requirement to hold prehearing conferences needed to plan hearings and to resolve discovery disputes. In Anchorage, where there are currently three WCO II's and two technicians, this reduction and shifting other work will require one less Workers' Compensation Officer II.

Travel: Travel costs are reduced by (\$36.8) to reflect transfer of hearing officer travel, as well as Board member stipends (\$50.00 per day) and travel, to the Appeals Commission. (The latter due to replacement of the Alaska Workers Compensation Board by the Commission's Workers' Compensation Hearing Board.)

Contractual and Supplies: Reflects reductions in fixed costs, space lease in Anchorage and Fairbanks, and other contractual costs totaling (\$88.9). And also reflects transferring (\$8.6) for supplies to the Appeals Commission.

Funding

Funding for the net cost increase resulting from this legislation will be from the Workers' Safety and Compensation Administration Account and reserves. This assumes passage of legislation to reverse the sweep of the reserve balance. Failure to reverse the sweep may force a reliance on General Funds for some of these costs as most recurring WSCA Account revenue is accounted for in the Governor's FY 2005 budget.

SENATE FINANCE  
COMMITTEE  
Amendment Number: #1  
Bill Number: SB 311  
Sponsor: Hoffman Date: 4/21/04  
Logged In By: Robin

23-GS2023VL6  
Craver  
4/20/04

AMENDMENT

OFFERED IN THE SENATE  
TO: CSSB 311(JUD)

BY SENATOR HOFFMAN

- 1 Page 1, lines 9 - 10:
- 2 Delete "**Workers' Compensation Appeals Commission**"
- 3 Insert "**workers' compensation hearings office**"
- 4
- 5 Page 1, line 11:
- 6 Delete "**Workers' Compensation Appeals Commission**"
- 7 Insert "**workers' compensation hearings office**"
- 8
- 9 Page 2, lines 4 - 6:
- 10 Delete "**providing for supreme court jurisdiction of appeals from the Workers'**
- 11 **Compensation Appeals Commission;**"
- 12
- 13 Page 4, line 27:
- 14 Delete "**Workers' Compensation Appeals Commission**"
- 15 Insert "**workers' compensation hearings office**"
- 16
- 17 Page 4, lines 29 - 30:
- 18 Delete "**Workers' Compensation Appeals Commission**"
- 19 Insert "**workers' compensation hearings office**"
- 20
- 21 Page 5, line 6:
- 22 Delete "**Workers' Compensation Appeals Commission**"
- 23 Insert "**workers' compensation hearings office**"

1

2 Page 6, lines 20 - 21:

3 Delete "Workers' Compensation Appeals Commission"

4 Insert "workers' compensation hearings office"

5

6 Page 7, line 14:

7 Delete "chair of the commission"

8 Insert "chief hearing officer"

9

10 Page 8, line 16, through page 11, line 30:

11 Delete all material and insert:

12 **"Sec. 23.30.007. Workers' compensation hearings office.** (a) There is  
13 established in the Department of Labor and Workforce Development a workers'  
14 compensation hearings office. The hearing examiners and hearing panels hear original  
15 petitions when a claim is filed under this chapter and have jurisdiction to hear appeals  
16 from decisions and orders of the director.

17 (b) The commissioner shall appoint a chief hearing officer and hearing  
18 examiners.

19 (c) The chief hearing officer may

20 (1) employ and supervise hearing office staff, hearing examiners, and  
21 hearing panels and appoint a hearings office clerk;

22 (2) establish and implement a time management system for the  
23 hearings office, staff, and hearing examiners;

24 (3) assign the work of the hearing examiners, hearing panels, and staff  
25 so that hearings and appeals are resolved as expeditiously and competently as possible,  
26 including designating hearing examiners to hear preliminary matters; and

27 (4) prepare an annual budget of the hearings office and hearing panels.

28 (d) The hearings office, in its administrative capacity, shall maintain, index,  
29 and make available for public inspection the final administrative decisions and orders  
30 of the hearing examiners and hearing panels. To promote consistency among legal  
31 determinations, the chief hearing officer may review and circulate among the other

1 hearing examiners the drafts of formal decisions, decisions upon reconsideration, and  
 2 other legal opinions of the other hearing examiners of the hearings office. The drafts  
 3 are confidential documents and are not subject to disclosure.

4 (e) The hearings office, in its administrative capacity, may adopt regulations  
 5 implementing its authority and duties under this chapter, including rules of procedure  
 6 and evidence for proceedings before hearing examiners and hearing panels in workers'  
 7 compensation proceedings under AS 23.30.090 and 23.30.110 and for the adjudication  
 8 of all claims and petitions under this chapter. The provisions of AS 44.62  
 9 (Administrative Procedure Act) apply to the adoption of regulations by the hearings  
 10 office.

11 (f) The hearings office, in its administrative capacity, may adopt and alter an  
 12 official seal and do all things necessary, convenient, or desirable to carry out the  
 13 powers expressly granted or necessarily implied in this chapter."  
 14

15 Page 14, line 6:

16 Delete "with the office of the commission [BY"

17 Insert "by a hearing examiner or hearing panel ["

19 Page 15, line 6:

20 Delete "commission"

21 Insert "hearings office"

23 Page 30, line 23:

24 Delete "commission"

25 Insert "hearings office"

27 Page 30, lines 25 - 26:

28 Delete "office of the commission"

29 Insert "hearings office"

31 Page 31, line 1:

1 Delete "hearing panel, or commission"

2 Insert "or hearing panel"

3

4 Page 31, line 13:

5 Delete "commission, and the commission clerk "

6 Insert "hearings office, and the hearings office"

7

8 Page 32, line 3, following "defense.", through line 16:

9 Delete all material.

10 Insert "[IF A DISCOVERY DISPUTE COMES BEFORE THE BOARD FOR  
11 REVIEW OF A DETERMINATION BY THE BOARD'S DESIGNEE, THE BOARD MAY  
12 NOT CONSIDER ANY EVIDENCE OR ARGUMENT THAT WAS NOT PRESENTED TO  
13 THE BOARD'S DESIGNEE, BUT SHALL DETERMINE THE ISSUE SOLELY ON THE  
14 BASIS OF THE WRITTEN RECORD. THE DECISION BY THE BOARD ON A  
15 DISCOVERY DISPUTE SHALL BE MADE WITHIN 30 DAYS. THE BOARD SHALL  
16 UPHOLD THE DESIGNEE'S DECISION EXCEPT WHEN THE BOARD'S DESIGNEE'S  
17 DETERMINATION IS AN ABUSE OF DISCRETION.]"

18

19 Page 32, line 31:

20 Delete "office of the commission"

21 Insert "hearings office"

22

23 Page 33, line 9:

24 Delete "commission clerk"

25 Insert "chief hearing officer"

26

27 Page 34, line 1:

28 Delete "commission"

29 Insert "director"

30

31 Page 35, line 11:

- 1 Delete "commission"
- 2 Insert "hearings office"
- 3
- 4 Page 35, line 16:
- 5 Delete ", but is not a public employee for purposes of AS 23.40"
- 6
- 7 Page 36, line 3:
- 8 Delete "commission"
- 9 Insert "hearings office"
- 10
- 11 Page 36, line 10:
- 12 Delete "commission"
- 13 Insert "hearings office"
- 14
- 15 Page 37, lines 8 - 9:
- 16 Delete "the commission, a hearing panel, or a hearing examiner ["
- 17 Insert "a hearing panel or hearing examiner [THE"
- 18
- 19 Page 37, lines 14 - 15:
- 20 Delete "the commission, a hearing panel, or a hearing examiners ["
- 21 Insert "a hearing panel or hearing examiner [THE"
- 22
- 23 Page 37, line 17:
- 24 Delete "commission clerk"
- 25 Insert "chief hearing officer"
- 26
- 27 Page 37, line 19:
- 28 Delete "commission"
- 29 Insert "chief hearing officer"
- 30
- 31 Page 38, line 3:

1 Delete "office of the commission"

2 Insert "hearings office"

3

4 Page 38, line 6:

5 Delete "office of the commission"

6 Insert "hearings office"

7

8 Page 38, line 12:

9 Delete "commission"

10 Insert "hearings office"

11

12 Page 38, line 14, through page 43, line 1:

13 Delete all material and insert:

14 **\*\* Sec. 63.** AS 23.30.125(a) is amended to read:

15 (a) A compensation order becomes effective when filed with the director [IN  
16 THE OFFICE OF THE BOARD] as provided in AS 23.30.110, and, unless  
17 proceedings to suspend it or set it aside are instituted as provided in (c) of this section,  
18 it becomes final on the 31st day after it is filed.

19 **\* Sec. 64.** AS 23.30.125(c) is amended to read:

20 (c) If not in accordance with law, a compensation order filed by a hearing  
21 examiner or hearing panel as provided in (a) of this section may be suspended or  
22 set aside, in whole or in part, through injunction proceedings in the superior court  
23 brought by a party in interest against the division [BOARD] and all other parties to the  
24 proceedings [BEFORE THE BOARD]. The payment of the amounts required by an  
25 award may not be stayed pending final decision in the proceeding unless upon  
26 application for an interlocutory injunction the court on hearing, after not less than  
27 three days' notice to the parties in interest and the director [BOARD], allows the stay  
28 of payment, in whole or in part, where irreparable damage would otherwise ensue to  
29 the employer. The order of the court allowing a stay must [SHALL] contain a  
30 specific finding, based upon evidence submitted to the court and identified by  
31 reference to it, that irreparable damage would result to the employer, and specifying

1 the nature of the damage.

2 \* **Sec. 65.** AS 23.30.125(d) is amended to read:

3 (d) If an employer fails to comply with a compensation order making an  
4 award that has become final, a beneficiary of the award or the **director** [BOARD] may  
5 apply for the enforcement of the order to the superior court. If the court determines  
6 that the order was made and served in accordance with law, and that the employer or  
7 the officers or agents of the employer have failed to comply with it, the court shall  
8 enforce obedience to the order by writ of injunction or by other proper process to  
9 enjoin upon the employer and the officers and agents of the employer compliance with  
10 the order.

11 \* **Sec. 66.** AS 23.30.125(f) is amended to read:

12 (f) Subject to an employer's or employee's burden of proof, a finding of fact  
13 made by the **hearing examiner or hearing panel** [BOARD] as a part of a  
14 compensation order is conclusive unless the court specifically finds that a reasonable  
15 person could not have reached the conclusion made by the **hearing examiner or**  
16 **hearing panel** [BOARD]."

17  
18 Renumber the following bill sections accordingly.

19  
20 Page 47, lines 13 - 20:

21 Delete all material.

22  
23 Renumber the following bill sections accordingly.

24  
25 Page 57, line 2:

26 Delete "**the commission,**"

27  
28 Page 57, lines 20 - 21:

29 Delete all material.

30  
31 Renumber the following paragraphs accordingly.

1

2 Page 58, lines 8 - 9:

3 Delete "Appeals Commission (AS 23.30.007) and Workers' Compensation"

4

5 Page 58, line 17:

6 Delete "sec. 85"

7 Insert "sec. 86"

8

9 Page 58, line 18:

10 Delete "sec. 85"

11 Insert "sec. 86"

12

13 Page 59, lines 24 - 25:

14 Delete: "WORKERS' COMPENSATION APPEALS COMMISSION AND"

15

16 Page 59, line 26, following "BOARD.", through line 30, following the first occurrence of  
17 "(b)":

18 Delete all material.

19

20 Page 60, line 16:

21 Delete "chair of the commission"

22 Insert "chief hearing officer"

23

24 Delete "commission"

25 Insert "hearings office"

26

27 Page 60, line 17:

28 Delete "commission"

29 Insert "hearings office"

30

31 Page 60, line 18:

- 1 Delete "commission"
- 2 Insert "hearings office"
- 3
- 4 Page 60, lines 26 - 27:
- 5 Delete all material.
- 6
- 7 Renumber the following paragraphs accordingly.
- 8
- 9 Page 61, line 17:
- 10 Delete "sec. 108"
- 11 Insert "sec. 109"
- 12
- 13 Page 61, line 29:
- 14 Delete "Workers' Compensation Appeals Commission"
- 15 Insert "workers' compensation hearings office"
- 16
- 17 Page 61, line 30:
- 18 Delete "under AS 23.30.008, enacted by sec. 10 of this Act"
- 19
- 20 Page 62, line 2:
- 21 Delete "Section 113(a)"
- 22 Insert "Section 114(a)"
- 23
- 24 Page 62, line 3:
- 25 Delete "sec. 114"
- 26 Insert "sec. 115"

SENATE FINANCE COMMITTEE  
4/20/2003 COMMITTEE ACTION

Bill Number	SB 311		
Amendment	#1		
Motion	script		
<u>Motion by</u>	Hoffman		
<u>Objection by</u>	Green & Wilken		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Dyson			✓
Senator Hoffman	✓		
Senator Olson	✓		
Senator Stevens			✓
Senator Bunde			✓
Co-Chair Green			✓
Co-Chair Wilken			✓
<u>Tally</u>			
Yea	2		
Nay	5		
Absent			
<u>MOTION</u>	FAIL		

SENATE FINANCE  
COMMITTEE #2  
Amendment Number: #2  
Bill Number: SB 311  
Sponsor: OLSON Date: 4/21/04  
Logged In By: Robin

23-GS2023\I.5  
Craver  
4/21/04

AMENDMENT

OFFERED IN THE SENATE  
TO: CSSB 311(JUD)

BY SENATOR OLSON

1 Page 40, lines 28 - 31:

2 Delete "The commission may review de novo all discretionary actions, findings of  
3 fact, and conclusions of law by the hearing examiner, hearing panel, or the director in hearing,  
4 determining, or otherwise acting on any compensation claim or petition."

5 Insert "The commission shall review all discretionary actions and findings of fact by a  
6 hearing examiner, hearing panel, or the director under the substantial evidence standard of  
7 review. The commission shall review the conclusions of law by a hearing examiner, hearing  
8 panel, or the director using the commission's independent judgment."

SENATE FINANCE COMMITTEE  
4 FEB / 2003 COMMITTEE ACTION

Bill Number	SB 311		
Amendment	#2		
Motion	adopt		
<u>Motion by</u>	Olson		
<u>Objection by</u>	Green		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Hoffman	✓		
Senator Olson	✓		
Senator Stevens			✓
Senator Bunde			✓
Senator Dyson			✓
Co-Chair Green			✓
Co-Chair Wilken			✓
<u>Tally</u>			
Yea	2		
Nay	15		
Absent	1		
<u>MOTION</u>	FAIL		

SENATE FINANCE  
COMMITTEE  
Amendment Number: #3.  
Bill Number: SB 311  
Sponsor: Olson Date: 4/23/04  
Logged In By: Robin

23-GS2023V.5  
Craver  
4/21/04

AMENDMENT

OFFERED IN THE SENATE  
TO: CSSB 311(JUD)

BY SENATOR OLSON

1 Page 40, lines 28 - 31:

2 Delete "The commission may review de novo all discretionary actions, findings of  
3 fact, and conclusions of law by the hearing examiner, hearing panel, or the director in hearing,  
4 determining, or otherwise acting on any compensation claim or petition."

5 Insert "The commission shall review all discretionary actions and findings of fact by a  
6 hearing examiner, hearing panel, or the director under the substantial evidence standard of  
7 review. The commission shall review the conclusions of law by a hearing examiner, hearing  
8 panel, or the director using the commission's independent judgment."

## Section by Section Analysis of the CS for SB 311<sup>1</sup>

This legislation substantially reforms the workers' compensation system. First, this legislation makes changes to the agency that protects workers' compensation recipients from nonpayment by insolvent insurers, and protects employers who purchased insurance from liability in the event of insurer nonpayment. Second, it replaces the present system of administering the workers' compensation act, AS 23.30, with a new system that divides adjudication of claims and petitions arising under the act from the executive functions of administration, investigation, and enforcement. All these functions are currently the responsibility of the Alaska Workers' Compensation Board, (board) composed of 7 panels of volunteer members and the Commissioner of Labor and Workforce Development. The board's adjudication functions are transferred to a Workers' Compensation Appeals Commission, (commission), and its administrative, investigative, and enforcement functions are assigned to a separate Division of Workers' Compensation (division) and its director. A Workers' Compensation Hearings Board, (hearings board) composed of 7 lay members from labor and 7 from industry will provide members to sit on hearing panels. Third, this legislation changes the process of adjudication to encourage consistency in legal interpretation. Cases are heard first by hearing panels, composed of 2 members of the hearings board and a Hearing Examiner, who will preside over the hearing, issue rulings on procedure and evidence, and instruct the members on the law. The commission, composed of three attorneys with experience in workers' compensation, acts as an appellate body with broad powers of review. The commission is balanced by appointment of one representative of employees and one representative of employers. The commission's decisions are published and binding on the hearing panels. The commission's decisions may be appealed directly to the Supreme Court, without review by the Superior Court. Fourth, the director is given stronger enforcement tools and direct power to administer, investigate, and enforce obligations. These include new civil penalties against uninsured employers, subpoena powers, the power to examine employer books, the power to intervene in disputed cases and the power to file an appeal.

In addition to fundamental structural changes, this legislation contains other systemic improvements. Provisions are made for summary disposition of cases, for example, where there is no jurisdiction or where there are no disputes of material fact. Compensation paid to non-residents is capped at the rate that would be paid if the recipient resided in Alaska. Provisions are included that would allow stop work orders to be issued and civil penalties to be assessed against uninsured employers on short notice where the employment contains hazards that could reasonably be expected to immediately cause an employee death or serious physical harm.

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<sup>1</sup> This document was prepared using the text identified as 23-GS2023VI.

Prepared by the Dept. of Law

Because the workers' compensation act is lengthy and complex, and the board is presently responsible for or involved in almost all aspects of the current workers' compensation system, this legislation contains a large number of what are essentially conforming amendments, replacing the board with the director, a hearing examiner, hearing panel or the commission, as the function requires.

**Section 1** is a declaration of legislative intent to reform the workers' compensation insurance system to ensure payment of benefits when an insurer becomes insolvent, expand representation of workers' compensation on the Alaska Insurance Guaranty Association, and reduce the costs of workers' compensation premiums to employers. This expression of intent applies only to Sections 3 through 6 of the bill.

**Section 2** amends AS 08.18.101(1) to remove a reference to the board and transfers the authority to issue certificates of self-insurance from the board to the director of the division of workers' compensation.

**Section 3** creates a new statutory provision, AS 21.09.090(e) which provides that insurers that transact workers' compensation insurance in this state must maintain in the state a special deposit of cash or securities for the protection of persons in Alaska covered under workers' compensation insurance. The insurer must maintain this special deposit as long as there is any outstanding liability for workers' compensation. If an insurer is unable to pay workers' compensation claims because it is an insolvent insurer, the deposit will be immediately available to the Alaska Insurance Guaranty Association for continuation of claim benefits to eligible workers. This revision provides additional financial protection for Alaskan workers in the event that workers' compensation insurer becomes insolvent and unable to pay claims.

**Section 4** amends AS 21.24.130(d) to make a technical change regarding the special deposit described in Section 3 above.

**Section 5** repeals and reenacts AS 21.80.050 relating to the board of governors of the Alaska Insurance Guaranty Association. The composition of the board of governors of the Alaska Insurance Guaranty Association is modified by this provision to include representatives from management, labor and a licensed insurance provider, agent, broker or manager. This change will expand the expertise of the board of governors to better address workers' compensation issues. Section 108 below provides for the transition of the terms of the members of the current board of governors.

**Section 6** amends AS 23.05.067(a)(1)(B) to remove a reference to the board and to replace the board by the director of the division of workers' compensation as the recipient of reports. This amendment conforms to the amendment to AS 23.30.155(m) at section 80 below.

**Section 7** amends AS 23.05.067(e) to deposit fees received by the commission in the workers' safety and compensation account. It also adds new language to permit the legislature to appropriate funds to the commission and for administration and adjudication of matters arising under AS 23.30.

**Section 8** codifies a statement of legislative intent relating to the workers' compensation system. Subsections 1 through 3 replicate earlier statements of legislative intent that the workers' compensation laws ensure a quick, efficient, fair and predictable delivery of benefits to injured workers, at reasonable cost to employers, that cases be decided on their merits, and that the chapter not be construed to favor either party. In subsection 4 language is added emphasizing the desire for impartial and fair proceedings. In subsection 5, intent is expressed that evidence be carefully and rationally examined, and, except in the application of the presumption of coverage, that doubt as to the substance of evidence may not be interpreted in favor of one party or another.

**Section 9** repeals and reenacts AS 23.30.005. It creates, within the Department of Labor and Workforce Development, (department), a Division of Workers' Compensation and a director of the division, appointed by the commissioner. The director must have three years experience in the field of workers' compensation. The section gives the director general powers and duties regarding administration, regulation, investigation and enforcement of the workers' compensation laws and system. The department has the power to adopt regulations proposed by the director, instead of the board, regarding medical care and rehabilitation providers. This provision transfers certain administrative duties previously assigned to the board to the director, including the obligation to notify the state, or a political subdivision of the state, if it revokes a contractor's self-insurance certificate.

**Section 10** adds four new statutory provisions. The first, AS 23.30.006, establishes a new workers' compensation hearings board, composed of 14 members, equally divided between representatives of labor and industry. The Governor appoints members to staggered three-year terms. Members must be residents of this state for three years prior to appointment. Members will receive the same compensation as members of the current board. The chair of the commission (see AS 23.30.009 in this section) acts as the executive officer of the hearings board. Provision is made for removal of members for cause. Members are barred from hearing cases in which certain listed conflicts of interest may exist, where the member is unable to be fair, impartial, and unbiased, or where participation is a violation of AS 39.52. Two members of the hearings board, one representative of labor and one representative of industry, with a hearing examiner appointed under AS 23.30.112 (see section 58 below), conduct the initial hearing of cases.

The second new provision in this section, AS 23.30.007, establishes a new workers' compensation appeals commission within the Department of Labor and Workforce Development, with jurisdiction to hear all administrative appeals arising under the workers' compensation act. The commission consists of three members, appointed for staggered terms of five years, appointed by the governor and confirmed by a majority of the legislature. One appointee shall be a representative of employees, and another a representative of employers; the third appointee is not designated. The governor may make appointments to fill vacancies in the same manner for the completion of the vacant term. A majority of the members is a quorum. The governor appoints a commission chair from the commission members for a three-year term. Members must be licensed to practice law in Alaska, have five years experience of workers' compensation law, and take the oath of office. Reasons for removal by the Governor of a commission member are set out, as well as an opportunity to respond to the Governor's charges. Reasons for removal include: misconduct in office, ethical violations, conviction of a felony, conviction of a misdemeanor regarding workers' compensation, inability to serve or handle the caseload, incompetence, etc. The salary of members (Range 29) and the chair (Range 30) is stated. The commission is required to be housed separately from the division to mark the separation of the judicial process in the workers' compensation system from the administrative and enforcement process.

The third new provision, AS 23.30.008, sets out the powers and duties of the new workers' compensation appeals commission. The commission replaces the superior court as the body hearing administrative appeals in the workers' compensation system, and its decisions will be binding and have the force of legal precedence. The commission's decisions are final and conclusive, except that the Supreme Court may review the commission's decisions. The commission operates like an appellate court, circulating confidential draft decisions among the members, and indexing and publicizing its formal decisions. The commission has the power to adopt regulations and rules of procedure for hearings and appeals, to adopt an official seal, and generally to carry out the powers and duties expressly granted or necessarily implied by the Act. The commission shall award attorney fees to successful appellants, but, as currently is the rule, attorney fees may not be awarded against an employee unless the appeal was frivolous, unreasonable or taken in bad faith.

The fourth new statutory provision in this section, AS 23.30.009, sets out the powers and duties of the chair of the commission. The chair of the commission exercises general supervision of the office of the commission. The chair has the power to employ and supervise staff and hearing examiners, assign work, establish a time management system, manage the calendar of

hearings and prepare the annual budget of the commission. The chair must prepare and make public an annual report of the commission's performance.

**Section 11** amends AS 23.30.011(c), which relates to extraterritorial coverage of workers injured outside Alaska while working for Alaska employers or while under contract formed in Alaska. It removes references to the board and reassigns powers and duties to the division. Certificates of insurance issued by other states must be filed in the division instead of the board. The director replaces the board as the appointed out of state employer's agent for service of process. The director, instead of the board, shall serve notice of claims. Evidence of self-insurance must satisfy the director, instead of the board; and, the director may require the out of state employer to file satisfactory security to cover the amount of a claim.

**Section 12** amends AS 23.30.012 relating to settlement of claims. It divides the current statute into two subsections. It removes references to the board and transfers from the board to the director the power to approve the form of settlements. It requires that settlements be filed in the division. A new provision requires that in cases where workers are not represented by an attorney licensed to practice in this state, or where a beneficiary is a minor, the settlement must be reviewed by a hearing panel and may be approved when it is in the best interests of the worker or beneficiary. The hearing panel may hold a hearing and require an impartial medical examination. This is a change from current law, which requires all workers, regardless of representation or circumstances, to obtain board approval to settle their claims.

**Section 13** amends AS 23.30.015(b), which relates to assignments of rights to recover damages against third parties. It removes references to the board and changes the place to file compensation orders from the board to the commission, and conforms the statute language to modern use.

**Section 14** amends AS 23.30.015(e). It removes references to the board and transfers the power to determine the attorney fee offset in third party settlements from the board to a hearing panel. It modernizes the statute language and assigns the director the duty to prepare a schedule of present values for determining third-party settlement offsets.

**Section 15** amends AS 23.30.015(j) to remove references to the board, to change the recipient of notice of a third party action for damages from the board to the division, and to require additional notice to the commission if a hearing has been requested in the workers' compensation case.

**Section 16** amends AS 23.30.025(a) to remove references to the board and to change the place where insurance company policy forms are filed from the board to the division.