

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 3114

1
2 Select Benefits and retiree health plan documents to reflect the new eligibility
3 provisions of the regulations.

4 The state plans to provide early notice of the regulation process, and of the
5 opportunity for affected teachers, employees, and retirees to participate in the process,
6 by publication in the Teachers' Retirement System (TRS) and Public Employees'
7 Retirement System (PERS) *Newsbreaks* and by a special mailing to Judicial Retirement
8 System (JRS) members, Elected Public Officers Retirement (EPORS) members, and
9 state employees who are members of the Marine Engineers Beneficial Association. The
10 *Newsbreaks* are mailed to all TRS and PERS members, including active employees and
11 teachers, employees and teachers who have terminated employment but who have left
12 contributions in the systems, and retirees under the systems.

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14 The steps set out below are based on the understanding that the
15 commissioner has authority to implement the benefits under the commissioner's
16 existing regulatory authority and under the Alaska Supreme Court's October 28, 2005,
17 Opinion that invalidates statutes insofar as they deny employment-related benefits to
18 same-sex partners of state employees and of retirees under the state's retirement
19 systems. If the court determines that statutory changes are needed instead, the timeline
20 will have to be revised, and additional time may be requested of this court and, if
21 necessary, the Alaska Supreme Court.

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24 The times set out relating to benefits provided by the union health trusts
25 under collective bargaining agreements with the state are based on the belief that
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2 agreement pertaining to the benefits will be achieved expeditiously, without the need for
3 intervention by the court.

4 The specific steps the state plans to take, including steps in the adoption of
5 regulations and descriptions of administrative activities that will be begun or underway
6 during the stages of the regulation adoption process, are set out below.

7
8 1. June 23, 2006 – Unions representing state employees in collective bargaining
9 notified (see Exhibit 1).

10 2. July 1-31, 2006 – Regulations drafted for inclusion in 2 AAC.

11 ▪ Develop specific criteria for same-sex partner eligibility for health
12 and survivor benefits, including affidavit declarations and
13 documentation requirements.

14 ▪ Health premium cost increases verified by actuary/benefits
15 consultant.

16 ▪ Notify Union Health Trusts of verified cost increases to state's
17 Select Benefits economy plan.

18
19 3. August 1-31, 2006 – Regulations reviewed and prepared for public notice.

20 ▪ *Newsbreak* notice mailed to TRS and PERS membership regarding
21 regulations and opportunity to participate in regulation process; special
22 mailing of notice to JRS, EPORS, and Marine Engineers Beneficial
23 Association members.

24 ▪ Develop and/or revise draft forms: affidavit (affirming and
25 terminating relationship), application, transmittal letter.
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- Develop process for identifying value of health benefits for imputation of taxable income and method of taxing or reporting (report on annual W2, or add to paycheck and deduct taxes).
 - Draft addenda to health insurance plan booklets (Select Benefits and Retiree Health).
 - Begin computer systems analysis: health benefit systems, AKPAY, CRS.
4. September 1, 2006 – Public comment period opens.
5. September 30, 2006 – Close public comment period.
6. October 1-14, 2006 – Incorporate public comments.
- Computer systems reconfiguration: new dependent indicator(s); taxable income.
7. October 15, 2006 – Commissioner adopts regulations.
- Amend Health Plan Document: form of addenda to existing Health Plan Document for Select Benefits, for PERS, TRS, JRS and EPORS defined benefit plans and PERS and TRS defined contribution retirement plan summaries.
 - Forms/materials/addenda finalized and sent to printer.
 - Verification documentation matrix developed (use existing process for dependent eligibility verification).
 - Staff training.

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE 465-3600

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2 8. November 6, 2006 – Enrollment packets (health coverage and survivor
3 beneficiary designation) and health booklet addenda mailed (coordinate with regular
4 retiree open enrollment).

5 9. November 15, 2006 – Regulations effective.

- 6 ▪ Unions health trust negotiations completed.
- 7
- 8 ▪ Supplemental budget request identified for FY 2007.

9 10. November 20, 2006 – Special online open enrollment for active employees'
10 same-sex partners and dependents in health plans begins.

11 11. December 8, 2006 – End open enrollment for health plan coverage.

12 12. December 31, 2006 – All same-sex partner and dependent eligibility
13 verified; health plan enrollment data reported to Third Party Administrator.

14 13. January 1, 2007 – Health benefits effective for eligible same-sex partners of
15 state employees and retirees under the state's retirement systems; designations of same-
16 sex partners as beneficiaries for survivor benefits effective.

17 Dated this 3rd day of July, 2006.

18
19 DAVID MÁRQUEZ
20 ATTORNEY GENERAL

21 By: *Virginia B. Ragle*
22 Virginia B. Ragle
23 Assistant Attorney General
24 Alaska Bar No. 8311169

Section 6
State of Alaska Adopted
Regulations
Emergency Regulations
(delay implementation)

Title 2 of the AAC is amended by adding a new chapter 38 to read:

Chapter 38. Employment-Related Benefits for Same-Sex Partners of State Employees and Retirees Under the State's Retirement Systems.

2 AAC 38.010. Same-sex partner insurance coverage. (a) A state employee or member of a state retirement system who is covered by group insurance under AS 39.30.090 or 39.30.091, such as the state's retiree medical, Select Benefits, or Supplemental Benefits plans, or by an alternative insurance program, such as a union health trust, under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), may enroll the employee's or retirement system member's same-sex partner in the group insurance or alternative insurance program if the employee and same-sex partner, or retirement system member and same-sex partner, meet the requirements of this section.

(b) In order to enroll a same-sex partner in group insurance coverage provided under AS 39.30.090 or 39.30.091 or an alternative insurance program under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), the covered employee or covered member of a state retirement system shall file with the administrator of the health plan or retirement system an affidavit executed by the employee and same-sex partner or the retirement system member and same-sex partner declaring under penalty of perjury that they

(1) are at least 18 years old and are each competent to enter into a contract;

(2) have been in an exclusive, committed, and intimate relationship with each other for the last consecutive 12 months and intend to continue that relationship indefinitely;

(3) have resided together at a common primary residence for the last 12 consecutive months and intend to reside together indefinitely;

(4) consider themselves to be members of each other's immediate family;

(5) are not related to each other to a degree of closeness that would preclude them from marrying each other in this state if they were of the opposite sex from each other;

(6) are neither one of them legally married to anyone else;

(7) have not executed an affidavit affirming same-sex partner status with anyone else within the last 12 months;

(8) are each other's sole domestic partner and are each responsible for the common welfare of the other;

(9) share financial obligations, including joint responsibility for basic living expenses and health care costs;

(10) understand that, under applicable federal income tax law, payments for medical coverage of a same-sex partner or child of a same-sex partner may not be eligible for pre-tax treatment, and coverage of a same-sex partner may result in additional imputed taxable income to the covered employee, retirement system member, or survivor and related withholding for payroll, income, or pension and annuity taxes; and

(11) understand that, in addition to requirements of this section, there are terms and conditions of coverage set out in each group policy, state plan of self-insurance, or alternative insurance program to which they are bound.

(c) In order to enroll a same-sex partner in group insurance coverage provided under AS 39.30.090 or 39.30.091 or an alternative insurance program under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), and upon request of the health plan or retirement system administrator after enrollment, the covered state employee or member of a state retirement system shall provide documentation establishing that the employee and same-sex partner, or retirement system member and same-sex partner, meet at least five of the following criteria:

(1) joint interest in real property, as evidenced by title or mortgage, lease, or rental agreement, by the employee or retirement system member and the same-sex partner;

(2) joint ownership or purchase of a motor vehicle by the employee or retirement system member and the same-sex partner;

(3) joint ownership of a checking, savings, or investment account or joint liability for a loan or credit account by the employee or retirement system member and the same-sex partner;

(4) the same-sex partner is named as primary beneficiary for a life insurance policy of the employee or retirement system member;

(5) the same-sex partner is named as primary beneficiary for the employee's or retirement system member's pension or annuity plan benefits, deferred compensation plan, Individual Retirement Arrangement or Account, 401(k) plan, Keogh plan, or other tax-deferred or taxable plan;

(6) the same-sex partner is named as primary beneficiary in the employee's or retirement system member's will;

(7) the same-sex partner has authority to deal with property owned by the employee or retirement system member under a valid written power of attorney;

(8) the employee or retirement system member has given the same-sex partner written authority to make decisions concerning the employee's or retirement system member's health and well being if the employee or retirement system member is unable to do so.

(d) An employee or member of a state retirement system who enrolls a same-sex partner in coverage under this section may also enroll the child of the same-sex partner if the child is unmarried, is dependent on the employee or retirement system member for support, and meets other requirements set out in the group policy, state plan of self-insurance, or alternative insurance program, and applicable statute governing the retirement system, including age and applicable school enrollment requirements.

(e) An employee or member of a state retirement system who has enrolled a same-sex partner, or a same-sex partner and child, in coverage under this section shall provide written confirmation of eligibility of the enrolled person, supplementing

documentation provided under (c) of this section if that information has changed, upon request of and in the manner requested by the plan administrator. Failure to provide written confirmation requested by the plan administrator may result in suspension of coverage of the enrolled person.

(f) An employee or retirement system member who enrolls a same-sex partner in coverage under this section must agree that, if the employee or retirement system member and same-sex partner no longer meet the requirements of this section, the employee or retirement system member will file with the administrator of each plan in which the same-sex partner is enrolled a written statement of termination of eligibility within 30 days of the date that eligibility ends. Eligibility of the same-sex partner for benefits of a plan terminates on midnight of the date that eligibility ends as declared in writing by the employee or retirement system member. Failure to notify the plan administrator of termination of eligibility results in liability of the employee or retirement system member for any resulting repayment of benefits under the plan. Continuation of coverage will be offered to the former same-sex partner of the employee or retirement system member as if a divorce had occurred.

(g) An employee or retirement system member who enrolls a same-sex partner, or same-sex partner and eligible child under (d) of this section, in coverage under this section shall pay any premium established by the plan that an employee or retirement system member is required to pay for comparable coverage for a spouse or spouse and dependent child.

(h) In this section, "resided together at a common primary residence" requires the employee or member of a state retirement system and the employee's or member's same-sex partner to share the same domicile. The common primary residence can change during the 12-month period set out in (b) of this section. Once an employee or member of a state retirement system and same-sex partner have begun to reside together at a common primary residence, absence by the employee or retirement system member or the same-sex partner required for employment that requires periodic absence from the common primary residence, education, medical reasons, military service, or other reasons determined by the plan administrator will not result in a break in eligibility, as long as the absent employee, retirement system member, or same-sex partner intends to return to common primary residence. (Eff. 11/12/2006, Register _____; am _____/_____/_____, Register _____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
 AS 22.25.027 AS 39.35.005

2 AAC 38.030. Enrollment of same-sex partner and same-sex partner's eligible child. (a) After November 12, 2006, a special enrollment will be conducted to allow enrollment of eligible same-sex partners and eligible children of same-sex partners in group insurance plans described in 2 AAC 38.010(a). If the terms of a group insurance plan described in 2 AAC 38.010(a) allow enrollment of a spouse or family at only a specific time, such as the date of retirement of a member of the retirement system, in

order to enroll a same-sex partner or child of a same-sex partner in the plan during the special enrollment, the employee or member of a state retirement system must establish that the requirements of 2 AAC 38.010(b) and (c) were met at the time specified by the terms of the plan.

(b) Following the special enrollment, enrollment of a same-sex partner or child of a same-sex partner may occur only at a subsequent open enrollment or upon the occurrence of a qualifying status change and in accordance with the terms of the plan. For purposes of a plan described in 2 AAC 38.010(a) that allows an employee or member of a state retirement system to enroll a spouse or dependent child within a period of time after a qualifying status change occurs, such as a change in family structure, ineligibility for other coverage or change in insurance coverage, a qualifying status change for enrollment of the employee's or retirement system member's same-sex partner or eligible children of a same-sex partner occurs on the date upon which

(1) the employee or retirement system member is first able to meet the requirements of 2 AAC 38.010(b) and (c), if the plan allows enrollment of a spouse and eligible dependent children when a plan member marries;

(2) a status change occurs related to the same-sex partner that would constitute a qualifying status change event under the terms of the plan if the status change related to the spouse of the employee or retirement system member.

(c) The employee or retirement system member should provide the documentation required by 2 AAC 38.010(c) within 90 days of filing an enrollment form with the

administrator of a plan under AS 39.30.090 or 39.30.091, or if the enrollment is filed with the administrator of an alternative insurance program under AS 39.30.090(a)(2), within the time provided by the alternative insurance program plan. Once the documentation required under 2 AAC 38.010(c) is received by the administrator of a plan under AS 39.30.090 or 39.30.091, coverage of the eligible same-sex partner is effective on the latest of the first day of the month after the enrollment form is received by the plan administrator, the date of the employee's appointment to receive retirement or disability benefits if the enrollment is for a retiree insurance plan, the date coverage is allowed under the terms of an open enrollment if the enrollment is filed under the open enrollment, or January 1, 2007. Payment will not be made on covered claims until eligibility is established under 2 AAC 38.010. Payment will not be made on claims arising more than 12 months before eligibility is established under 2 AAC 38.010.

(d) This section does not authorize or require a change in type or level of coverage if such a change is not allowed by federal regulations governing mid-year changes in coverage or under the provisions of the plan, nor does this section prohibit mid-year changes in the type or level of coverage if such change is required by federal regulations or permitted under the provisions of the plan. Changes in the type or level of coverage may be made during any regular open enrollment period of the plan, if allowed by federal regulations governing the plan.

(e) To the extent permitted by federal regulations, a same-sex partner and an eligible child of a same-sex partner will be considered dependents under the plan for

purposes of eligibility, including continuation of coverage and 29 U.S.C. 1182 (Health Care Portability and Accountability Act of 1996) (HIPAA) portability rights, even if the individual does not qualify as a dependent for federal tax purposes. (Eff. 11/12/2006, Register _____; am ____/____/____, Register _____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
AS 22.25.027 AS 39.35.005

2 AAC 38.050. Imputation of income and effect on pre-tax premiums. (a)

Income will be imputed for federal tax purposes to

(1) an employee or member of a state retirement system who enrolls a same-sex partner or child of a same-sex partner who is not an eligible dependent under 26 U.S.C. 152, without regard to 26 U.S.C. 152(b)(1), (b)(2) and (d)(1)(B), in group insurance coverage under 2 AAC 38.010;

(2) a same-sex partner of a member of a state retirement system if the same-sex partner was not an eligible dependent of the member under 26 U.S.C. 152, without regard to 26 U.S.C. 152(b)(1), (b)(2), and (d)(1)(B), at the time of the member's death and if the same-sex partner is enrolled in group insurance coverage as a survivor of the member under 2 AAC 38.010.

(b) The amount of income imputed to an employee, retirement system member, or survivor under this section will be based on the fair market value of the coverage provided to the non-dependent same-sex partner as established by the administrator of the

state's employee and retiree health plans. The fair market value of coverage provided by a union health trust under an alternative insurance program under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2) will be established in consultation with the applicable trust.

(c) If an employee's premium payment for group insurance coverage of a same-sex partner or child of a same-sex partner is not eligible for pre-tax treatment, the premium payment will be deducted on a post-tax basis in the amount established by the administrator of the applicable plan.

(d) Income imputed under this section does not constitute compensation for purposes of determining employer or employee contributions or computation of benefits under the state's retirement systems or Alaska Supplemental Annuity Plan.

(Eff. 11/12/2006, Register ____; am ____/____/____, Register ____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
 AS 22.25.027 AS 39.35.005

2 AAC 38.070. Same-sex partner survivor benefits. (a) A state employee or member of a state retirement system may designate the employee's or retirement system member's same-sex partner as the beneficiary to receive survivor benefits that are available to an employee's or retirement system member's surviving spouse in accordance with this section. Survivor benefits are payable to a same-sex partner

designated under this section to the extent the benefits are not payable to a former spouse under the terms of a qualified domestic relations order.

(b) A designation of a same-sex partner to receive survivor benefits that may be paid to a person other than a spouse under applicable statute is valid to the same extent the designation of any other non-spouse beneficiary is valid under the statute.

(c) A designation by a member of a state retirement system of a same-sex partner as beneficiary to receive survivor benefits that are available to a surviving spouse under AS 14.25.155, 14.25.157, 14.25.160, 14.25.162, 14.25.164, 14.25.167, 14.25.420, 14.25.485, 14.25.487; AS 22.25.030; AS 39.35.420, 39.35.430, 39.35.440, 39.35.450, 39.35.890, 39.35.892; or former AS 39.37.060 is not valid unless the member files with the administrator

(1) with the designation of beneficiary an affidavit executed by the member and the same-sex partner making the declarations, under penalty of perjury, set out in 2 AAC 38.010(b); and

(2) documentation establishing that the member and same-sex partner meet at least five of the criteria set out in 2 AAC 38.010(c).

(d) A deceased employee's or retirement system member's same-sex partner whom the administrator determines is validly designated as the employee's or member's beneficiary to receive survivor benefits has the same rights to survivor benefits, including group insurance and alternative insurance benefits available under the applicable plan.

that a surviving spouse would have, and is subject to the same requirements that a surviving spouse would be subject to relating to those benefits.

(e) An employee or member of a state retirement system may revoke a designation of beneficiary under this section at any time. After the date of retirement, a member's revocation of the designation of the member's same-sex partner as the beneficiary to receive survivor benefits does not change the form or amount of a joint and survivor benefit payable to the member or allow designation of a different beneficiary to receive the joint and survivor benefit.

(f) An employee or member of a state retirement system who has designated a same-sex partner as beneficiary under this section shall provide written confirmation of the designation, supplementing documentation provided under (c) of this section if that information has changed, upon request of and in the manner requested by the plan administrator. Failure to provide written confirmation requested by the plan administrator may result in ineligibility of the designated same-sex partner for survivor benefits. (Eff. 11/12/2006, Register ____; am ____/____/____, Register ____)

Authority: AS 14.25.005 AS 39.35.005 Former AS 39.37.090
AS 22.25.027

2 AAC 38.100. Responsibilities and rights of a state employee or member of a state retirement system and same-sex partner. (a) It is the responsibility of a state

employee or member of a state retirement system to comply with all requirements of an insurance, retirement, or benefit plan or program, including all application, designation, affidavit, and documentation requirements, in order to provide or allow provision of benefits to the employee's or retirement system member's same-sex partner. Except when specifically provided by this chapter or the terms of an insurance, retirement, or benefit plan or program, an employee's or retirement system member's compliance with the application, affidavit, and documentation requirements of a plan or program does not entitle the employee's or retirement system member's same-sex partner to rights or benefits under a different plan or program.

(b) Nothing in this chapter supersedes the requirements of a court order regarding rights or benefits of a former spouse or dependents of an employee or retirement system member.

(c) Nothing in this chapter provides, or allows the provision of, any right or benefit to the same-sex partner of an employee or retirement system member that would not be available to the spouse of the employee or retirement system member. (Eff. 11/12/2006, Register ____; am ____/____/____, Register ____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
 AS 22.25.027 AS 39.35.005

FINDING OF EMERGENCY

The Department of Administration finds that an emergency exists and that the attached regulation is necessary for the immediate preservation of the orderly operation of the Public Employees' Retirement System, Teachers' Retirement System, Judicial Retirement System, and Elected Public Officers Retirement System. The facts constituting the emergency include the following:

The commissioner finds that, with a special session of the legislature scheduled to convene on November 13, 2006, during which the legislature will have the opportunity to pass legislation to address the court's decision in *Alaska Civil Liberties Union v. State*, 122 P.3d 781 (Alaska 2005) ordering provision of employment-related insurance and survivor benefits to same-sex partners of state employees and retirees, there is a substantial possibility that eligibility and documentation criteria ultimately enacted may be different from the eligibility and documentation criteria set out in the regulations adopted by the commissioner of administration on October 13, 2006. This creates a substantial risk of creation of different tiers of employees regarding eligibility and documentation criteria for medical and survivor benefits for same-sex partners under the Public Employees' Retirement System, Teachers' Retirement System, Judicial Retirement System, and Elected Public Officers Retirement System under art. XII, sec. 7 of the Alaska Constitution. In order to ensure the immediate preservation of the orderly operation of these retirement systems, it is necessary to adopt an emergency regulation that establishes an applicability date for the eligibility and documentation criteria of 2 AAC 38.010 that will prevent creation of separate tiers under those retirement systems.

ADOPTION ORDER

Under the authority of AS 14.25.003, 14.25.005; AS 22.25.027; AS 39.35.003, 39.35.005, and AS 39.37.090, the attached one page of regulation changes is therefore adopted as emergency regulations to take effect immediately.

This action is not expected to require an increased appropriation.

DATE: _____
Anchorage, Alaska

Scott J. Nordstrand, Commissioner
Department of Administration

FILING CERTIFICATION

I, Loren Lemman, Lieutenant Governor for the State of Alaska, certify that on _____, 2006, at _____ m., I filed the attached regulations to be published in the Alaska Administrative Register and Code for informational purposes in accordance with AS 14.25.005(b), AS 22.25.027(b), and AS 39.35.005(b).

Loren Lemman, Lieutenant Governor

Effective: _____

Register: _____

EMERGENCY REGULATION

Register ____, _____ 2007

ADMINISTRATION

2 AAC 38 is amended by adding a new section to read:

2 AAC 38.005. Applicability of eligibility criteria. For purposes of enrolling same-sex partners and eligible children of same-sex partners in retiree medical coverage, and designating same-sex partners as beneficiaries for survivor benefits identified in 2 AAC 38.070(c), the eligibility and documentation criteria of 2 AAC 38.010 are applicable to members of the state's retirement systems on November 22, 2006, to the extent the eligibility and documentation criteria of 2 AAC 38.010 are not inconsistent with eligibility and documentation criteria set out in a bill passed by the legislature in the Fourth Special Session of the Twenty-Fourth Alaska State Legislature to address the decision of the Alaska Supreme Court in the case of *Alaska Civil Liberties Union v. State*, 122 P.3d 781 (Alaska 2005). (Eff. __/__/__, Register __)

Authority: AS 14.25.003 AS 39.30.090 AS 39.35.005
AS 14.25.005 AS 39.35.003 Former AS 39.37.090
AS 22.25.027

Section 7
Letter of Support from
ASEA & LTC

LAW OFFICES OF
MARY L. STOLL

2033 Sixth Avenue – Suite 815
Seattle, WA 98121-2573

Telephone 206-623-2855 – Fax 206-667-9805 – Email info@mlstoll-law.com

September 29, 2006

*Via Email anna_kirsanova@admin.state.ak.us
and U.S. Mail*

Ms. Anna Kirsanova
State of Alaska, Department of Administration
Division of Retirement and Benefits
PO Box 110203
Juneau, AK 99811-0203

Re: Proposed Regulation in Regard to Employment-Related Benefits for Same-Sex
Partners of State Employees and Retirees under the State's Retirement System

Dear Ms. Kirsanova:

I am writing on behalf of ASE/AFSCME Local 52 Health Benefits Trust and Public
Employees Local 71 Trust Fund, which are both unilateral trust funds that provide health
benefits to employees of the State of Alaska.

Both Trusts will be impacted by the proposed regulation, and would like to make the
following comments:

1. The Trusts do not object to the eligibility or documentation requirements described
2AAC 38.010 (b) and (c). We believe they are reasonable and appropriate.
2. 2AAC 38.030 (b) specifies that a change in coverage is allowed when the employee
or retirement system member is first able to meet the requirements of 2AAC
38.010(b) and (c), as well as when an event occurs related to the same-sex partner
that would constitute a qualifying event under the terms of the plan if the event
related to the spouse of the employee or retirement system member. Both Trusts
provide cafeteria plan options on a tax-qualified basis under Section 125 of the
Internal Revenue Code. The Code limits the circumstances under which a
participant may make a mid-year election change. Although a change in the
employee's legal marital status (marriage, divorce, annulment, legal separation, or
spouse's death) constitutes a permissible change-in-status event, the employee first
meeting the dependent partner criteria, or subsequently failing to meet that criteria,
does not constitute a qualifying change-in-status event. Therefore, although the
Trust Plans may permit a participant to enroll the domestic partner or terminate the

Ms. Anna Kirsanova
State of Alaska, Department of Administration
Division of Retirement and Benefits
September 29, 2006
Page 2

domestic partner's coverage, the participant will not be allowed to change from an employee-only plan to a family plan or vice versa.

3. 2AAC 38.050 (b) describes the calculation of the imputed income, and specifies it will be established by the administrator of the state's employee and retiree health plans. We believe the imputed income for each Trust's benefit plan should be established in consultation with the applicable Trust.
4. We suggest that the proposed regulation clarify that same-sex domestic partners and the children of same-sex partners shall not be granted "dependent" status, except as specifically determined by the benefit plans and described in the benefit plan documents.
5. 2AAC 38.010 (e) requires that the employee or member notify the administrator of the plan upon termination of eligibility within 30 days of the date eligibility ends. We suggest adding a statement which would clarify that if the employee or member fails to provide this notification within the time frame specified, each plan in which the participant is enrolled is authorized to recover any overpayments made as a result of eligibility granted in error.
6. The Notice of Proposed Regulations requested comments on the potential costs of complying with the proposed changes. Like the State, the Trusts anticipate increased medical costs as a result of offering coverage to same-sex domestic partners and the children of same-sex domestic partners.

If you have any questions regarding these comments, please feel free to contact me.

Sincerely,

LAW OFFICES OF MARY L. STOLL



Mary L. Stoll

MLS:let

cc: Ms. Traci Carpenter, Department of Administration, State of Alaska (via email)
Ms. Colleen Savoie, Willis
ASENAFSCME Local 52 Health Benefits Trust
Public Employees Local 71 Trust Fund

Section 8
University of AK, NEA,
CBJ & MOA Eligibility
Criteria



University of Alaska

Explanation of Availability of Benefits Based on Financially Interdependent Relationship

Benefit Coverage

Upon request, qualified financially interdependent partners and their dependent children will be provided the same benefits as those provided to married spouses and their dependent children, except where expressly prohibited by law. All University of Alaska Policies and Regulations and benefit plan documents that affect employees, spouses and their families also apply to employees and their financially interdependent partner and dependent children.

Taxability

In many cases, the value of benefits such as health care, tuition waiver, life insurance etc., provided to the non-married financially interdependent partner and/or the partner's children are considered taxable income to the employee by the Internal Revenue Service and will be reported as income on the employee's W2 form. Generally, the determination of whether a particular coverage or reimbursement is taxable will be based on whether the individual being covered qualifies as a "dependent" under Section 152 of the Internal Revenue Code.

If a financially interdependent partner and/or child(ren) of such partner does not meet the Section 152 "dependent" definition, employees will be taxed on the value of coverage provided to such individual(s). Each pay period, employees will be taxed on the value of coverage; as a result, employees who elect coverage for non-Section 152 "dependents" will see increased taxes withheld.

Qualified Dependent Children of a Financially Interdependent Partnership

The children of a financially interdependent partner are qualified to receive benefits if one of the following are true:

- either or both partners are the biological parent(s) of the child;
- either or both partners are adoptive parent(s) of the child; or,
- the child has been placed in the partners' household as part of an adoptive placement or foster child placement.

In addition, in order to receive benefits, the child(ren) must meet all applicable benefit plan eligibility criteria.

Loss of Benefits

Eligibility for benefits based on financial interdependency ends when any applicable criterion ceases to be met, (e.g. the relationship ends; one partner dies; one of the partners marries; the employee and partner no longer reside together at the same primary residence).

Otherwise, coverage may be changed only if the employee and/or partner suffers a "life event". For this purpose, dissolution of the financial interdependency partnership will be considered a "life event" in the same way that a divorce would qualify. Financially interdependent partners and/or their child(ren) may only be added at open enrollment or following an appropriate "life event". Once a financial interdependency partnership has dissolved, a new partnership will not be eligible for recognition (and, therefore, partners and/or child(ren) cannot be covered) for at least twelve months following dissolution of the prior partnership.

The employee and/or the partner are obligated to notify the local University personnel office in writing within thirty days of a change in their status which would make them no longer eligible for benefit coverage based on being financially interdependent.

(continued on back)

Qualifying Criteria

To be recognized as a financially interdependent partner of a University of Alaska employee and qualified to receive benefit coverage by the University, both individuals must meet all of the following criteria:

- They have been in an exclusive personal relationship with each other for at least the last twelve consecutive months and intend to continue the relationship indefinitely; and,
- They have resided together at the same primary residence for at least the last twelve consecutive months and intend to reside together indefinitely; and,
- They consider themselves to be members of each other's immediate family; and,
- They are not related to a degree of closeness such that Alaska law would preclude them from being married to each other; and,
- Neither of them is married or a member of another University qualified financially interdependent relationship; and,
- They are each at least 18 years old and are each competent to enter into a contract; and,
- They are each responsible for the common welfare of the other; and,
- They share financial obligations including responsibility for each other's health care costs.

In addition, they meet at least five of the following criteria:

- joint purchase or lease of real property;
- joint ownership of a motor vehicle;
- joint bank account or joint credit account;
- the partner is named as beneficiary for life insurance provided through the University of Alaska;
- the partner is named as primary beneficiary for the TRS, PERS, or ORP and the University's Pension Plan in the event of the employee's death;
- the partner is named as primary beneficiary in the employee's will and/or the employee is named as the primary beneficiary in the partner's will;
- pursuant to a valid written power of attorney, the partner has authority to deal with property owned by the employee;
- the employee has given written authority to the partner to make decisions concerning the employee's health and well being in the event of the employee's inability to do so.

The employee and/or partner may be required to provide evidence of financial interdependency. This could include copies of contracts, bank account statements, joint property agreements or other documents as determined by the University



University of Alaska

Statement of Financial Interdependence

| | | | | |
|--|-----|-------|------------|------------|
| MAU/Major Administrative Unit (circle one) | | | | Department |
| UAA | UAF | UAS | SW | |
| Last Name | | First | M. | |
| Employee ID | | | Work Phone | |

Before completing this Statement, the employee and the partner should consult an attorney and tax advisor with regard to the possible legal and tax consequences of signing this statement. To enroll FIPs and/or dependents on the health care plan and family AD&D, you must also complete the dependent enrollment form and Employee Selected Deduction form.

I. Request for Benefits and Declaration of Eligibility

We, _____ and _____
(Please print or type names)

request University of Alaska benefit coverage based on financial interdependency and declare that we meet all the following criteria:

- We have been in an exclusive personal relationship with each other for at least the last twelve consecutive months and intend to continue the relationship indefinitely; and,
- We have resided together at the same primary residence for at least the last twelve consecutive months and intend to reside together indefinitely; and,
- We consider ourselves to be members of each other's immediate family; and,
- We are not related to a degree of closeness such that Alaska law would preclude us from being married to each other, and,
- Neither of us are married or a member of another University qualified financially interdependent relationship; and,
- We are each at least 18 years old and are competent to enter into a contract; and,
- We are each responsible for the common welfare of the other; and,
- We share financial obligations including responsibility for each other's health care costs.

In addition, we meet at least five of the following criteria:

- joint purchase or lease of real property;
- joint ownership of a motor vehicle;
- joint bank account or joint credit account;
- the partner is named as beneficiary for life insurance provided through the University of Alaska;
- the partner is named as primary beneficiary for the TRS, PERS, or ORP and the University's Pension Plan in the event of the employee's death;
- the partner is named as primary beneficiary in the employee's will and/or the employee is named as the primary beneficiary in the partner's will;
- pursuant to a valid written power of attorney, the partner has authority to deal with property owned by the employee;
- the employee has given written authority to the partner to make decisions concerning the employee's health and well being in the event of the employee's inability to do so.

Note: You may be required to provide evidence of financial interdependency. This could include copies of contracts, bank account statements, joint property agreements or other documents as determined by the University

II. Change in Financially Interdependent Relationship

We agree to notify the local University personnel office in writing within 30 days of any change in our status which would make us no longer eligible for benefit coverage based on being financially interdependent (for example, if we no longer share the same principle residence).

III. Partner Tax Status

Last First Date of Birth IRS Dependent YES:NO

IV. Dependent Children of Financially Interdependent Relationships

We declare the following to be our dependent children:

| Last | First | Date of Birth | Relationship to Employee and Partner | IRS Dependent Yes/No |
|-------|-------|---------------|--------------------------------------|----------------------|
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |

V. Acknowledgments

We acknowledge receipt of the Explanation of Availability of Benefits Based on Financially Interdependent Relationship and understand the program, including eligibility criteria.

We understand that the value of benefits such as health care, tuition waiver, life insurance etc., provided to the non-married financially interdependent partner and/or the partner's child(ren) will be considered and reported as taxable income to the employee in most circumstances unless the financially interdependent partner and/or child(ren) also qualify as a "dependent" under Internal Revenue Code Section 152.

We acknowledge the University of Alaska advised that we consult an attorney and tax advisor before completing this statement.

VI. Affirmation; Penalties of Misrepresentation

We affirm that the declarations and representations stated in this two-page document are true and correct. We understand that any misrepresentation or failure to report a change in our financially interdependent relationship may result in the loss of benefits and disciplinary action to the employee up to and including termination of employment, and that the employee and partner would be responsible for reimbursement to the University for any costs involved in providing benefit coverage when all applicable criteria have not been met. We understand that any misrepresentation made by us in this two-page document may also subject us to criminal prosecution under AS 11.56.200- 210.

Employee _____ Date _____ Partner _____ Date _____

State of Alaska _____ Judicial District _____

Subscribed to and sworn before me this _____ day of _____, 20 _____

Notary Public, State of Alaska

My Commission expires: _____

For University of Alaska use

Accepted by _____

Name:

Date

Title



**NEA-Alaska Health Plan
Statement of Financial
Interdependence**

4003 Iowa, Anchorage, AK 99517
Phone 907-274-7526 Fax 907-222-2556

| | | |
|------------------------|-------|------------|
| Last Name | First | M |
| Social Security Number | | Work Phone |

Before completing this Statement, the member and the partner should consult an attorney and tax advisor with regard to the possible legal and tax consequences of signing this statement. To enroll FIPs and/or dependents on the health care plan, you must also complete the dependent enrollment form,

I. Request for Benefits and Declaration of Eligibility

We, _____ and _____
(Please print or type names)

request NEA-Alaska Health Plan benefit coverage based on financial interdependency and declare that we meet all the following criteria:

- We have been in an exclusive personal relationship with each other for at least the last twelve consecutive months and intend to continue the relationship indefinitely; and,
- We have resided together at the same primary residence for at least the last twelve consecutive months and intend to reside together indefinitely; and,
- We consider ourselves to be members of each other's immediate family; and,
- We are not related to a degree of closeness such that Alaska law would preclude us from being married to each other; and,
- Neither of us are married or a member of another qualified financially interdependent relationship; and,
- We are each at least 18 years old and are competent to enter into a contracts; and,
- We are each responsible for the common welfare of the other; and,
- We share financial obligations including responsibility for each other's health care costs.

In addition, we meet at least five of the following criteria:

- joint purchase or lease of real property;
- joint ownership of a motor vehicle;
- joint bank account or joint credit account;
- the partner is named as beneficiary for life insurance;
- the partner is named as primary beneficiary for the TRS or PERS in the event of the member's death;
- the partner is named as primary beneficiary in the employee's will and/or the member is named as primary beneficiary in the partner's will;
- pursuant to a valid written power of attorney, the partner has the authority to deal with property owned by the member;
- the member has given written authority to the partner to make decisions concerning the member's health and well being in the event of the member's inability to do so.

Note: The Plan requires documentation of financial interdependency. Attach copies of documents verifying the five criteria met above; one of the documents must establish the relationship has been in existence for at least 12 months. This could include copies of contracts, bank account statements, joint property agreements or other documents providing verification of above statements.

II. Changes in Financially Interdependent Relationship

We agree to notify the Plan in writing within 30 days of any change in our status which would make us no longer eligible for benefit coverage based on being financially interdependent (for example, if we no longer share the same principle residence).

III. Partner Tax Status

Last First Date of Birth

IV. Dependent Children of Financially Interdependent Relationships

We declare the following to be our dependent children:

| | | | |
|---------------|----------------|------------------------|--|
| _____ Last | _____ First | _____ Date of Birth | _____ Relationship to Member and Partner |
| _____ Last | _____ First | _____ Date of Birth | _____ Relationship to Member and Partner |
| _____ Last | _____ First | _____ Date of Birth | _____ Relationship to Member and Partner |
| _____ Last | _____ First | _____ Date of Birth | _____ Relationship to Member and Partner |

V. Acknowledgments

We acknowledge receipt of the Explanation of Availability of Benefits Based on Financially Interdependent Relationships and understand the program, including the eligibility criteria.

We understand that the value of benefits such as health care provided to the non-married financially interdependent partner and/or the partner's child(ren) may be considered and reported as taxable income to the member in most circumstances unless the financially interdependent partner and/or child(ren) also qualify as a "dependent" under Internal Revenue Code Section 152.

We acknowledge the NEA-Alaska Health Plan advised that we consult an attorney and tax advisor before completing this statement.

VI. Affirmation; Penalties of Misrepresentation

We affirm that the declarations and representations stated in this two-page document are true and correct. We understand that any misrepresentation or failure to report a change in our financially interdependent relationship may result in the loss of benefits to the member and that the member and the partner would be responsible for reimbursement to the Plan for any costs involved in providing benefit coverage when all applicable criteria have not been met. We understand that any misrepresentation made by us in this two-page document may also subject us to criminal prosecution under AS 11.56.200-.210.

Member _____ Date _____ Partner _____ Date _____

State of Alaska _____ Judicial District _____

Subscribed to and sworn before me this _____ day of _____, 20 _____.

Notary Public, State of Alaska

My Commission expires: _____

For NEA-Alaska Health Plan use

Accepted by:

Name

Date

Title



NEA-Alaska Health Plan

Explanation of Availability of Benefits Based on Financially Interdependent Relationship

Benefit Coverage

Upon request, qualified financially interdependent partners and their dependent children will be provided the same benefits as those provided to married spouses and their dependent children, except where expressly prohibited by law. All NEA-Alaska Health Plan Policies and Regulations and benefit plan documents that affect members, spouses and their families also apply to employees and their financially interdependent partner and dependent children.

Taxability

The member and the partner should consult with an attorney and tax advisor with regard to the possible legal and tax consequences of entering into a signed Financially Interdependent Relationship Statement. The employing school district should also be informed of this relationship for proper tax treatment and W-2 reporting.

In many cases, the value of benefits such as health provided to the non-married financially interdependent partner and/or the partner's children are considered taxable income to the employee by the Internal Revenue Service. Generally, the determination of whether a particular coverage or reimbursement is taxable will be based on whether the individual being covered qualifies as a "dependent" under Section 152 of the Internal Revenue Code.

If a financially interdependent partner and/or child(ren) of such partner does not meet the Section 152 "dependent" definition, members could be taxed on the value of coverage provided to such individual(s).

Qualified Dependent Children of a Financially Interdependent Partnership

The children of a financially interdependent partner are qualified to receive benefits if one of the following are true:

- either or both partners are the biological parent(s) of the child;
- either or both partners are adoptive parent(s) of the child; or,
- the child has been placed in the partner's household as part of an adoptive placement or legal guardianship arrangement

In addition, in order to receive benefits, the child(ren) must meet all applicable benefit plan eligibility criteria. Please see your plan document for eligibility criteria on dependent children.

Loss of Benefits

Eligibility for benefits based on financial interdependency ends when any applicable criterion ceases to be met, (e.g. the relationship ends; one partner dies; one of the partners marries; the member and partner no longer reside together at the same primary residence)

Otherwise, coverage may be changed only if the member and/or partner suffers a "life event". For this purpose, dissolution of the financial interdependency partnership will be considered a "life event" in the same way that a divorce would qualify. Financially interdependent partners and/or their child(ren) may only be added at open enrollment or following an appropriate "life event". Once a financial interdependency partnership has dissolved, a new partnership will not be eligible for recognition (and, therefore, partner and/or child(ren) cannot be covered) for at least twelve months following notification to the Plan of the dissolution of the prior partnership.

The employee and/or the partner are obligated to notify the Plan's office in writing within thirty days of a change in their status which would make them no longer eligible for benefit coverage based on being financially interdependent.

(continued on back)

Qualifying Criteria

To be recognized as a financially interdependent partner of a NEA-Alaska Health Plan member and qualified to receive benefit coverage by the Plan, both individuals must meet all of the following criteria:

- They have been in an exclusive personal relationship with each other for at least the last twelve consecutive months and intend to continue the relationship indefinitely; and,
- They have resided together at the same primary residence for at least the last twelve consecutive months and intend to reside together indefinitely; and,
- They consider themselves to be members of each other's immediate family, and,
- They are not related to a degree of closeness such that Alaska law would preclude them from being married to each other; and,
- Neither of them are married or a member of another qualified financially interdependent relationship; and,
- They are each at least 18 years old and are competent to enter into a contracts; and,
- They are each responsible for the common welfare of the other; and,
- They share financial obligations including responsibility for each other's health care costs.

In addition, they meet at least five of the following criteria:

- joint purchase or lease of real property;
- joint ownership of a motor vehicle;
- joint bank account or joint credit account;
- the partner is named as beneficiary for life insurance;
- the partner is named as primary beneficiary for the TRS or PERS in the event of the member's death;
- the partner is named as primary beneficiary in the employee's will and/or the member is named as primary beneficiary in the partner's will;
- pursuant to a valid written power of attorney, the partner has the authority to deal with property owned by the member;
- the member has given written authority to the partner to make decisions concerning the member's health and well being in the event of the member's inability to do so.

The employee and/or partner will be required to provide evidence of financial interdependency; one of the documents must establish the relationship has been in existence for at least 12 months. This could include copies of contracts, bank account statements, joint property agreements or other documents as determined by the Plan.

**CITY AND BOROUGH OF JUNEAU
AFFIDAVIT OF MARRIAGE/DOMESTIC PARTNERSHIP**

SECTION I

I, _____, being duly sworn on oath, certify that:

Complete Either "A" or "B"

A. I, and _____ are legally married. Marriage date: _____

OR

B. I, and _____ are domestic partners, and we.

1. have resided together at the same primary residence for at least the last 12 months and intend to share the same regular and permanent residence; and
2. have a close personal relationship intended to be permanent; and
3. are financially interdependent, as defined below; and
4. are not married to anyone; and
5. are each eighteen (18) years of age or older; and
6. are not related by blood closer than would bar marriage in the State of Alaska; and
7. were mentally competent to consent to contract when our domestic partnership began; and
8. are each other's sole domestic partner, intend to remain so indefinitely, and are responsible for each other's common welfare.

"Financially interdependent" is defined as jointly responsible for "basic living expenses." "Basic living expenses" means the cost of basic food, shelter, transportation, and other household expenses. The individual need not contribute equally or jointly to the cost of these expenses, as long as they agree that both are responsible for the cost. Financial interdependence is further defined as including but not limited to joint ownership of land; joint banking accounts; joint credit card accounts; property powers of attorney; primary beneficiaries of each other's life insurance policies.

The CBJ may require documentation supporting financial interdependence, or the other items in this affidavit, at any time.

For tax reporting purposes, does the non-employee domestic partner receive more than half of his or her financial support from the employee domestic partner? Yes _____ No _____

Note: If the answer to this question is "No," a portion of the value of health care benefits may be reported as income to the employee, based on an IRS formula.

SECTION II

A. I understand that this affidavit shall be terminated upon the death of my spouse or domestic partner or by a change of circumstances attested to in this affidavit.

I agree to notify CBJ Risk Management within thirty days if there is any change in the circumstances attested to in this affidavit, by filing a Statement of Termination of Marriage/Domestic Partnership.

AFFIDAVIT OF MARRIAGE/DOMESTIC PARTNERSHIP

Page 2

SECTION III

We understand that this information will be held confidential and will be subject to disclosure only upon our express written authorization or if otherwise required by law.

We understand that accepting benefits as a domestic partner may have tax consequences: the benefit may be taxable income.

We understand that a civil action may be brought against us for any losses, including reasonable attorney's fees, because of a false statement contained in this Affidavit of Marriage/Domestic Partnership.

We certify under penalty of perjury, a felony offense under the laws of the State of Alaska, or unsworn falsification a misdemeanor offense, that the foregoing is true and correct.

I, the undersigned City and Borough of Juneau employee, understand that falsification of information on this affidavit, or failure to notify Risk Management of a material change in the circumstances attested to on this form, may lead to disciplinary action against me, up to and including discharge from employment.

Signature of Employee (Principal)

Signature of Spouse/Domestic Partner

Address

Address

Department

Date: _____

Date: _____

ACKNOWLEDGMENT

State of Alaska
City and Borough of Juneau

THIS IS TO CERTIFY that on this _____ day of _____, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared _____ (Principal) personally known to me to be the person described in and who executed this Affidavit, and acknowledged to me that he/she subscribed and swore to the contents of this Affidavit, and signed the same freely and voluntarily.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last written above.

(Seal)

Notary Public in and for the State of Alaska

My Commission expires _____

AFFIDAVIT OF MARRIAGE/DOMESTIC PARTNERSHIP

Page 3

ACKNOWLEDGMENT

State of Alaska
City and Borough of Juneau

THIS IS TO CERTIFY that on this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared _____ (Spouse/Domestic Partner of Principal) personally known to me to be the person described in and who executed this Affidavit, and acknowledged to me that he/she subscribed and swore to the contents of this Affidavit, and signed the same freely and voluntarily.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last written above.

(Seal)

Notary Public in and for the State of Alaska

My Commission expires _____

**MUNICIPALITY OF ANCHORAGE
AFFIDAVIT OF SAME SEX DOMESTIC PARTNERSHIP**

Section 1.

I, _____, an employee of the Municipality of Anchorage, certify that

I, and _____ are same sex domestic partners, and we:

1. Reside together in the same primary residence and intend to continue to share the same primary residence; and

2. Have a relationship intended to be permanent; and

3. Are financially interdependent according to the following definition:

(a) we share responsibility for our common household by contributing to household expenses including but not limited to the cost of food, shelter, transportation or other living expenses; OR

(b) we have joint ownership of one or more of the following: a residence; land; banking account; credit card account; leasehold; or other similar property interest;
OR

(c) we are primary beneficiaries of one another's life insurance policies, or executor's of one another's wills; or have power of attorney over one another's property in the event of death or disability; or similar authority over one another's executory affairs.

and;

4. are not married; and

5. are each eighteen (18) years of age or older; and

6. are not related by blood to the degree which would bar marriage in the State of Alaska; and

7. are mentally competent to consent to contract; and

8. are one another's sole domestic partner.

Section II.

The undersigned employee understands that his/her rights to domestic partner benefits for _____ shall be terminated upon the death of the domestic partner or if the domestic partnership no longer qualifies under the definition of Section I.

The undersigned employee agrees to notify the Municipality within thirty (30) days by filing a Statement of Termination of Same Sex Domestic Partnership if the domestic partnership no longer qualifies under the definition in Section I.

Section III.

We understand that this information will be held confidential and will be subject to disclosure only upon our express written authorization unless otherwise required by law.

We understand that accepting benefits as a same sex domestic partner may have federal income tax consequences and that the benefit will be valued and included as taxable income to the employee.

We understand that a civil action may be brought against us for any losses, including reasonable attorney's fees, for any false statement contained in this Affidavit of Same Sex Domestic Partnership.

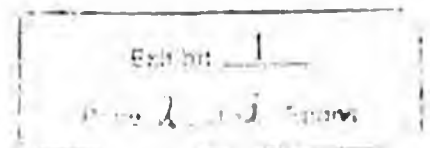
We certify under penalty of perjury that the foregoing is true and correct.

I, the undersigned Anchorage Municipal employee understand that falsification of information on this affidavit, or failure to notify the Municipality of the termination of a domestic partner relationship may lead to disciplinary action against me, including termination of employment.

Signature of Employee

SUBSCRIBED and SWORN TO before me this ____ day of _____, 200__.

Notary Public in and for Alaska
My Commission Expires: _____



Signature of Domestic Partner

SUBSCRIBED and SWORN TO before me this ____ day of _____, 200__.

Notary Public in and for Alaska
My Commission Expires: _____

Section 9
ACLU Case Timeline

ACLU v. State of Alaska and MOA Same-Sex Domestic Partner Benefits

Case Timeline

- 1999: Alaska Civil Liberties Union (ACLU) and 18 individuals filed suit in Alaska Superior Court against the State of Alaska (SOA) and the Municipality of Anchorage (MOA).
- Complaint: Employee benefit programs offered to spouses of employees and retirees but not to same-sex partners of employees and retirees violated the plaintiffs' right to equal protection under the Alaska Constitution (Art. I, Sec. 1) because of prohibition on same-sex marriage (Art. I, Sec. 25).
- November 2001: Superior Court ruled in State's favor; ACLU appealed to Supreme Court.
- October 2005: Supreme Court ruled in favor of ACLU and held that "the spousal limitations are unconstitutional as applied to public employees with same-sex domestic partners." Supreme Court requested briefs on remedy.
- November 21, 2005: Remedy briefing completed by ACLU; suggested giving the legislature time to act to amend relevant statutes.
- January 5, 2006: Remedy briefing completed by State; suggested giving the legislature time to act to amend relevant statutes.
- May 24, 2006: ACLU filed supplemental brief with Supreme Court.
- June 1, 2006: Supreme Court issued its remedy order, requiring the SOA and the MOA to provide benefits complying with the Court's 2005 opinion by no later than January 1, 2007. Also:
 - Remanded the case to the Superior Court, directing that court to issue whatever orders it deems necessary to ensure that the compliance with deadline.
 - State and MOA to file statements with Superior Court, outlining the steps they plan to take to achieve compliance.
- July 3, 2006: State filed statement with Superior Court proposing regulations and a timeline for implementation, which court subsequently modified and then ordered.
- August 9, 2006: Superior Court ordered State to provide advance copy of proposed regulations to the ACLU and Court by August 22.
- August 22, 2006: State provided advance copy of draft regulations as ordered.
- September 1, 2006: Court ordered State to provide intended final regulations to the Court by October 6.
- September 1-30, 2006: Commissioner Nordstrand published draft regulations for public comment.
- September 27-28, 2006: Commissioner Nordstrand held public hearings on draft regulations in Juneau and Anchorage.
- October 10, 2006: State provided revised regulations to the Court as ordered.
- October 13, 2006: Commissioner Nordstrand adopted final regulations and sent to Department of Law and then Lt. Governor for filing.
- October 19, 2006: ACLU filed motion for emergency relief requesting Court order Commissioner Nordstrand to issue emergency regulations conforming to MOA's proposed eligibility criteria by October 27.
- October 24, 2006: State filed statement of opposition to ACLU's motion for emergency relief.
- October 25, 2006: ACLU filed reply brief.

- October 30, 2006: Superior Court ordered specific changes to State's regulations.
- October 31, 2006: Superior Court ordered State to file amended regulations by November 1.
- November 1, 2006: State filed motion for stay of Court's orders of October 30 and 31.
- November 1, 2006: State filed emergency motion in Supreme Court for stay of Superior Court's orders of October 30 and 31.
- November 1, 2006: Superior Court ordered State to notify the Court when it intends to file with the Supreme Court a petition for review and orders the State to file amended regulations in compliance with its orders of October 30 and 31.
- November 2, 2006: Superior Court granted in part State's motion for stay by not requiring the State to adopt or implement the amended regulations required by the Court.
- November 3, 2006: Supreme Court denied without prejudice State's motion for emergency stay.
- November 6, 2006: State filed with Supreme Court petition for review of Superior Court's orders.
- November 8, 2006: State filed draft regulations in compliance with Superior Court orders.
- November 8, 2006: Superior Court ordered State to file by November 9 alternative draft regulations consistent with the Court's finding of October 30 or additional argument in support of the constitutionality of the adopted regulations.
- November 9, 2006: State filed response to Court's order of November 8, citing insufficient time to propose alternative regulations and referring Court to its Petition for Review filed in Supreme Court on issues of constitutionality.

**Section 10
Supreme Court Order,
June 1, 2006**

**Additional Court Filings
and Materials Available
Upon Request to Legislative
Printshop**

and

**Also Available Online at
www.state.ak.us/drb.**

In the Supreme Court of the State of Alaska

Alaska Civil Liberties Union, et al.,)
)
Appellants,)
v.)
)
State of Alaska & Municipality of)
Anchorage,)
Appellees.)

Supreme Court No. S-10459

Order **RECEIVED**

JUN 05 2006

Attorney General's Office

Date of Order: 06/01/06

Trial Court Case # 3AN-99-11179CI

Before: Bryner, Chief Justice, Matthews, Eastaugh, Fabe, and Carpeneti,
Justices.

Upon consideration of the parties' supplemental briefs on remedy issues,

IT IS ORDERED:

1. Appellees must provide, no later than **January 1, 2007**, benefits complying with this court's opinion issued 10/28/05.
2. Appellants' request for interim benefits is **DENIED**.
3. This case is **REMANDED** to the superior court for further proceedings.

The superior court shall enter such orders as may in the judgment of the superior court be necessary to ensure the appellees' expeditious compliance with this court's opinion by the deadline set in Paragraph 1 of this order. Appellees must file pre-deadline statements outlining the steps they plan to take to achieve such compliance; those statements must be filed in the superior court within thirty days of this order. The superior court may also adopt interim deadlines for the pre-implementation process, including, but not limited to:

- a. Early deadlines for adopting and publicizing criteria for qualifying domestic relationships;

AkCLU v. State and MOA
Remedy Order, Page 2
June 1, 2006

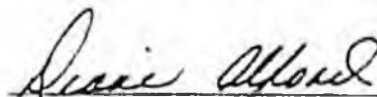
- b. A deadline for distributing forms on which employees may apply for the benefits;
- c. A deadline for completing the initial enrollment of employees in qualifying domestic relationships.

4. This order is the final judgment of this court. This court is not retaining jurisdiction of this case.

5. The disputed benefit program of each appellee remains in effect until that appellee begins providing benefits complying with the 10/28/05 opinion, with Paragraph 1 of this order, and with any order entered by the superior court on remand.

6. The parties are to bear their own costs and attorney's fees with respect to the supplemental briefing on remedy issues.

Clerk of the Appellate Courts



Diane Alford, Deputy Clerk

Distribution:

Tobias Wolff
University of California Law School-Davis
400 Mark Hall Drive
Davis CA 95616

Kenneth Choe
American Civil Liberties Union
125 Broad Street
New York NY 10004

Allison Mendel
Mendel & Associates
431 W 7th Avenue Suite 101
Anchorage AK 99501

AkCLU v. State and MOA
Remedy Order, Page 3
June 1, 2006

Virginia B Ragle
Asst Attorney General
PO Box 110300
Juneau AK 998110300

Neil T O'Donnell
Atkinson Conway & Gagnon
420 L Street Suite 500
Anchorage AK 99501

Kevin G Clarkson
Brena Bell & Clarkson PC
310 K Street Suite 601
Anchorage AK 99501

Rebecca Maxey
Law Offices of Rebecca L. Maxey, LLC
310 K Street Suite 200
Anchorage AK 99501

Thomas Dosik
The Disability Law Center
3300 Arctic Blvd Suite 103
Anchorage AK 99503

Jarvis M. Gorski
Hughes Bauman Piffner, et al.
3900 C Street, Suite 1001
Anchorage AK 99503

Section 11
Superior Court
Ordering changes to
criteria October 30, 2006

either the Supreme Court's ruling or the equal protection guarantee of the Alaska Constitution because (1) the State's qualifying criteria are too burdensome and (2) the State has failed to propose regulations providing state employees and their same-sex partners all the same benefits that state employees and their spouses receive. Plaintiffs urge this court to order the State to promulgate, by emergency regulation, the regulations adopted by the Municipality of Anchorage and to order the State to fully comply with the Alaska Supreme Court's ruling.

When examining whether same-sex domestic partners of state employees are entitled to certain state benefits, the Alaska Supreme Court described the relationships at issue as relationships "between adult couples who reside together in long-term interdependent, intimate associations."² It observed that many same-sex domestic partners are in "committed domestic relationships"³ and are "closely connected as any married couple, in the sense of providing the same level of love, commitment, and mutual economic and emotional support, as between married couples."⁴

Despite the language of the Alaska Supreme Court indicating that same-sex domestic partners with the same "truly close relationship"⁵ as married couples are entitled to the same state benefits, the regulations proposed by the State impose criteria that many married individuals would not satisfy, either by choice or because of factors related to their economic status.⁶ This results in "disparate treatment of similarly situated persons" in

² *Alaska Civil Liberties Union v. State*, 122 P.3d 781, 791 (Alaska 2005).

³ *Id.* at 783.

⁴ *Id.* at 784 n.5.

⁵ *Id.* at 791.

⁶ See this court's discussion of the disparities in its Appendix to Court's Order Mandating a Broad Public Notice at § I.A (September 7, 2006).

violation of the state guarantee of equal protection.⁷ Although the Alaska Supreme Court assumed that the State has a legitimate interest in restricting benefits to individuals in truly close relationships, it mandated that the State's restrictions treat those similarly situated in a similar manner. Requiring same-sex couples to meet criteria that many married couples do not have to meet does not comply with this mandate.

Plaintiff's request for emergency relief is granted in part. The State of Alaska is ordered to modify its October 17, 2006 regulations so that they comply with the Alaska Supreme Court's order and the Equal Protection Clause of the Alaska Constitution. In an effort to preserve, as much as possible, the proposed regulations that do meet the Alaska Supreme Court's mandate, I am ordering only a partial revision of these regulations. At a minimum, this court orders the State to revise the draft regulations as follows:

1. The exclusivity requirement in 2 AAC 38.010(b)(2) shall be deleted. In response to the court's inquiry as to the definition of exclusive, the State was unable to provide a definition or guidance as to the intended use of this term. I recognize that the State has a legitimate interest in not providing benefits to partners who are in other long-term relationships. 2 AAC 38.010(b)(8) and (9) ensure that that concern will be met.⁸
2. The twelve-month provisions in 2 AAC 38.010(b)(2), (3), and (7) shall be amended to reflect a six-month period. I recognize the State's interest in making sure that the same-sex partnership is a long-term relationship. In Alaska, a six-month period is sufficient to meet the requirements of AS 25.23.050 (no parental consent

⁷ *Alaska Civil Liberties Union*, 122 P.3d at 787.

⁸ See Appendix to Court's Order Mandating a Broad Public Notice at § II (September 7, 2006) for additional analysis of the exclusivity provision.

required in adoption cases when parent has abandoned child for at least six months); AS 25.25.101 and AS 25.30.300(a)(2) (Alaska is child's "home state" for the purpose of asserting jurisdiction over a child custody matter when the child has resided in Alaska for at least six months); and AS 43.23.008 (a person must have resided in Alaska for at least six-months before a temporary absence in order to remain eligible for the Permanent Fund Dividend). I find that a six-month period is also sufficient to meet the State's interest in ensuring that only domestic partners in long-term relationships are eligible for state benefits.⁹

3. The deleted subsection (9) of 2 AAC 38.010(c) shall be reinserted to the draft regulations, allowing same-sex domestic partners who are "jointly responsible for a child through adoption or guardianship" to rely on this status as one of the required criteria. In addition, the language set out in 2 AAC 38.010(c) shall be revised to allow for benefits to be available to domestic partners who satisfy 2 AAC 38.010(b) and the reinserted subsection (9), or who satisfy 2 AAC 38.010(b) and three criteria in subsections (2) through (8).¹⁰

In addition, the State is ordered to provide the following benefits, already provided to state employees and their spouses, to state employees and their same-sex domestic partners:

1. The right of a state employee to take personal leave upon the medical disability or death of his or her spouse (per AS 39.20.225(b)(2) and (b)(5) and AS 39.20.305(a)(2)); and

⁹ See *Id.* at § I.A for additional analysis of the durational provision

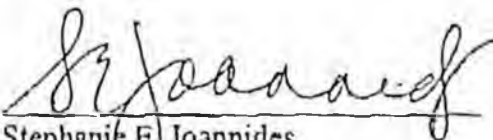
¹⁰ See *Id.* at § II for analysis of the type and number of criteria used to define "domestic partnership." See also this court's discussion in its Order dated September 1, 2006, at 8

2. The right of a state employee's spouse, as the first person on a statutory list of "default" recipients, to receive unpaid compensation of a deceased employee who failed to designate anyone to receive that payment (AS 39.20.360(2)).

These qualify as employment benefits akin to the benefits at issue in *Alaska Civil Liberties Union v. Alaska*.¹¹ Because denying these benefits to state employees and their same-sex domestic partners does not bear a substantial relationship to the stated governmental interests, they must be provided to state employees in domestic partnerships in the same manner they are provided to state employees with spouses. The State's interests in cost control, administrative efficiency, and promotion of marriage are legitimate, but the absolute denial of benefits to public employees with same-sex domestic partners is not substantially related to these governmental interests.¹²

As the Alaska Supreme Court observed, "Article I, section 1 of the Alaska Constitution mandates equal treatment of those similarly situated."¹³ Therefore, the State is ordered to immediately incorporate this court's order into its regulations or otherwise modify its regulations so that they comply with the Alaska Supreme Court's mandate.

DONE this 25 day of October 2006, at Anchorage, Alaska.


Stephanie E. Joannides
Superior Court Judge

¹¹ See *Alaska Civil Liberties Union*, 122 P.3d at 783-1 n.4.

¹² This court also addressed the issue of additional state benefits in its Appendix to Court's Order Mandating a Broad Public Notice at § III (September 7, 2006). See also this court's Order dated September 1, 2006, at 8.

¹³ *Alaska Civil Liberties Union*, 122 P.3d at 787.

FRANK H. MURKOWSKI
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



SB 4001
P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

November 13, 2006

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to employment-related insurance benefits for the same-sex partner of a state employee and relating to survivor and medical benefits for the same-sex partner of a member of the state's teachers' and public employees', judicial, or elected public officers retirement systems.

The bill sets out the purpose of the Legislature to allow a public employee or retiree under the state's retirement systems, to the extent required by the Alaska Supreme Court in the case of *Alaska Civil Liberties Union v. State*, 122 P.3d 781 (Alaska 2005), to have access to employment-related insurance and survivor benefits for the employee's or retiree's same-sex partner that are provided to the spouse of a state employee or retiree under AS 39.30.090 and 39.30.091, and under the statutes that provide for the state's retirement systems.

Section 5 of the bill sets out the affidavit and documentation requirements that a state employee or retiree must meet in order to enroll a same-sex partner in the health plans provided to state employees and retirees. These requirements are incorporated by reference in new sections in the statutes for the retirement systems allowing designation of same-sex partners as beneficiaries for survivor benefits (secs. 2 and 3 (teachers' retirement system), sec. 4 (judicial retirement system), secs. 7 and 8 (public employees' retirement system), and sec. 9 (elected public officers' retirement system)).

In order to provide a same-sex partner with benefits, an employee or retiree must file an affidavit with the appropriate plan administrator that includes 11 specific declarations, under penalty of perjury, by the employee or retiree and same-sex partner to establish a committed relationship, and must

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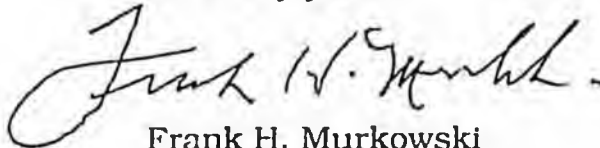
The Honorable Ben Stevens
November 13, 2006
Page 2

also provide documentation specified by sec. 5 of the bill. The employee or retiree must notify the administrator upon termination of the relationship. In addition to potential criminal penalties, willful falsification of information in the affidavit or documentation provided to enroll a same-sex partner in health benefits or to designate the same-sex partner as a beneficiary for survivor benefits may result in termination of enrollment of the same-sex partner and termination of entitlement to survivor benefits.

The bill ratifies the open enrollment conducted under regulations adopted by the commissioner of Administration on October 13, 2006.

While Alaskans may differ on their views on the wisdom of the court's order, the state has a duty to comply with the court's order. Therefore, I urge your support of this legislation.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frank H. Murkowski".

Frank H. Murkowski
Governor

Enclosure