97 HJ: RELEVANT INFORMATION ON BILLS

its 25 per cent of a conventional residential mortgage from the life of the mortgage to two years. Consequently, after two years, the commission could, but is not required to, purchase the remaining 25 per cent of the mortgage. The Judiciary committee substitute also adds an immediate effective date.

RB:sw

HB 248

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R. B. BAKER
H. T. THOMAS

March 9, 1973

Mr. Clem Tillion
Chairman
House Judiciary Committee
Juneau, Alaska 99801

Re: House Bill 248

Dear Mr. Tillion:

On behalf of American Insurance Association, which is a trade association of some 110 stock companies, which include, according to my information, all companies writing surety bonds, I wish to oppose the enactment of the subject bill.

Primarily the objection is that enactment of surety funds of a variety limited only by the imagination of the authors would weaken the corporate bond system of protection that is long established as the best and least expensive system of providing financial protection to those who need it.

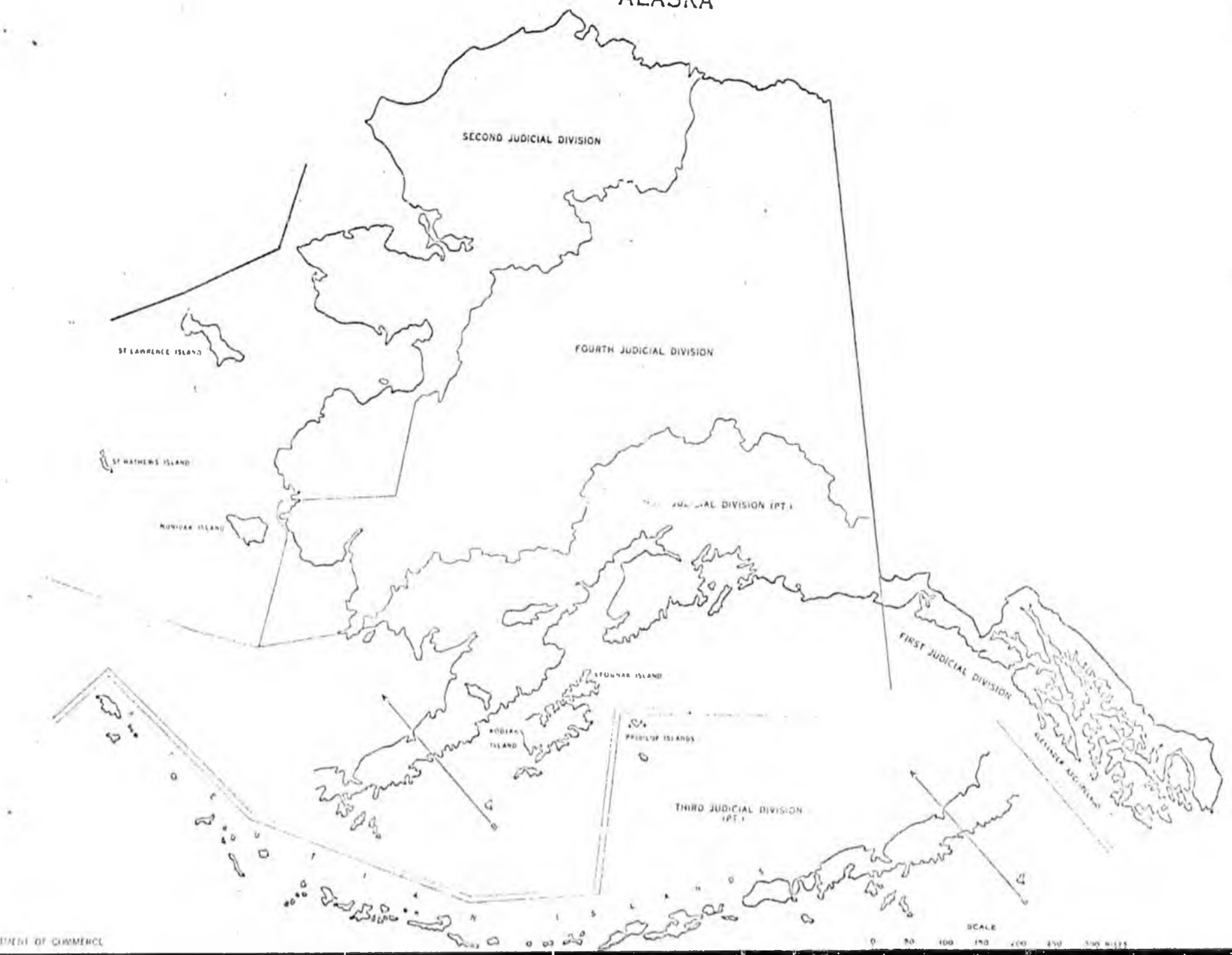
Surety bonds for real estate brokers and salesmen in Alaska cost $76.00 and $20.00 respectively for two years, or $38.00 and $10.00 annually. This bill would increase the cost to $75.00 and $20.00 annually. There is no assurance that the fund so created would provide the protection needed, or that it could be maintained at the $100,000.00 or $150,000.00 level.

Furthermore, the bill would impose hardships on the claimant who I suggest is the real party in interest from the public interest standpoint.

Under the present system, one action joining the surety results in the determination of the issue

HB-232
Judicial Districts

ALASKA



DEPARTMENT OF COMMERCE

HB-212

TO: Mr. Dick Randolph, Chairman, House Commerce Committee
Members of the Committee

FROM: Ralph Sanders, Managing Director
Alaska Carriers Association

DATE: March 2, 1973

During the first State Legislature when AS 42.10 was enacted, everyone overlooked the necessity to put in language ~~that~~ which would permit the very legitimate function of oil company "Wholesale Distributors" to continue. The same oversight had already occurred throughout the western states. They have already discovered their omission and have amended their laws in the same manner that House Bill 212 would amend Alaska's.

A full explanation of how this type or method of marketing and distributing petroleum products, together with an explanation of the "bailee" concept is given below for your information.

The wholesale marketing of bulk petroleum products in Alaska has, for over 30 years, been handled by oil companies through a system of wholesale distributors. These are independent businessmen who are under contract with their suppliers to promote the sale of the suppliers' product by receiving, storing, handling, collecting money and transporting petroleum products to the consumer. These wholesale distributors do not own the suppliers' product as the terms of sale are between the supplier and consumer. Distribution of the product, including transportation has traditionally been recognized under the private carrier section of the transportation statute. The distributor acts only as a bailee with reference to the product sold - a bailee being a person who takes custody of someone elses property for a specific purpose - in this case, to promote the sale of the suppliers' product.

Under the present Alaska statute, the private carrier definition only clearly provides for private carrier status when property being transported is owned, being bought, or sold by the carrier. The "bailee concept" for private carriage, while it has been recognized in interpretation of the statute, is nevertheless not clearly spelled out.

At the time of statehood the private carrier definition was taken from the statute then in effect in Washington State. Shortly thereafter the Washington statute was modified to clearly include the bailee concept. House Bill 212 is patterned after the current Washington statute and also

follows the private carrier statutes in effect in other western states and the U. S. transportation code.

The additional wording requested in Alaska statutes 42.10.-050 and 42.10.270 is to eliminate conflict in regard to compensation and private carriage.

Very sincerely,

Ralph

Edward R. Sanders
Managing Director

HB-187

Appendix I

Comparison of State No-Fault Laws

State	*Benefits*	*Applicability*	*Tort Limitation*	*Prompt Payments*	*Insurance Requirements*
Connecticut	$5,000 of medical and disability benefits.	Private passenger motor vehicle (other than motorcycle) or vehicle with load capacity of 1,500 lbs. or less not used for commercial purposes other than farming.	No limitation of tort liability if party sustained death, permanent injury, fracture of any bone, permanent significant disfigurement, permanent loss of body function or loss of body member, and cost in excess of $400 for medical expenses.	Benefits are overdue if not paid within 15 work days of proof of loss. Overdue payments bear 12 percent interest.	Mandatory.
Delaware	$10,000/$20,000 medical expense, earnings, personal services — funeral limited to $2,000 per person. Deductibles available.	All motor vehicles: any person injured in a motor vehicle accident.	No actions permitted for damages otherwise indemnified under compulsory insurance.	No specific provision.	Compulsory for all motor vehicles (self-insurer exception).
Florida	$5,000 per person medical, disability and funeral. Deductibles available.	All motor vehicles: owner, relative resident in same household, other occupants of insured vehicle, pedestrians.	$1,000 threshold. No recovery for certain general damages when medical expense under threshold.	Benefits payable as losses accrue. Payments are overdue 30 days after filed proof of loss.	Compulsory for all motor vehicles.
Illinois*	Basic: $2,000 medical and funeral, lost wages and loss of services for one year. Optional excess: excess medical, $2,000 funeral, lost wages and loss of services, and survivor's benefit for 5 additional years — aggregate limit of $50,000/$100,000.	All private passenger vehicles insured. Coverage may be made available for any other motor vehicle: named insured, relatives residing in same household, guest passengers, permissive operators, pedestrians.	Formula applied to certain general damages recovery limited to 50 percent of medical expense under $500 and 100 percent of medical expense over $500.	Benefits payable as losses accrue. Payments overdue after 30 days. Willful delay subjects insurer to treble damages.	Voluntary purchase of insurance.
Maryland	$2,500 economic loss benefits which cover medical bills and wage loss.	All motor vehicles.	No limitations.	Benefits payable as claims arise or within 30 days of proof.	Compulsory for all motor vehicles.
Massachusetts	All medical expenses, loss of wages and loss of services for 2 years.	All motor vehicles: named insured, relatives of same household, authorized operators and passengers, pedestrians.	$500 threshold. No recovery for certain general damages when medical expense under threshold.	Benefits payable as losses accrue. Payments overdue after 30 days.	Compulsory for all motor vehicles.
Michigan	Unlimited medical and rehabilitation; work loss, $1,000 maximum per month for 3 years; property damage other than auto, $1 million.	All motor vehicles which are operated on public highways and have more than 2 wheels.	No action permitted unless death, serious impairment of body function, serious permanent disfigurement.	Benefits payable within 30 days. Overdue interest at rate of 12 percent.	Compulsory for all motor vehicles.
New Jersey	Unlimited medical expenses, $5,200 loss of wage benefits, $4,380 loss of services, and $1,000 funeral and survivor's benefits.	Private passenger automobile, including pick-up or panel body vehicle.	No limitation of tort liability if party sustained death, permanent disability, permanent significant disfigurement, permanent loss of body function or loss of a body member in whole or part, and soft tissue injuries exceeding $200 of medical expense.	Payment of benefits are overdue if not paid within 30 days and will collect interest at a rate of 10 percent per annum.	Compulsory.
Oregon	$3,000 medical, $6,000 disability. Loss of services. One-year limitation.	All insured private passenger vehicles: named insured, relatives of same household, guests, pedestrians.	No limitation.	Benefits payable as losses accrue.	Voluntary purchase of insurance.

*Statute declared invalid by the Illinois Supreme Court.

HB 187

Appendix II

Statement by the National Conference of Commissioners on Uniform State Laws Concerning the Uniform Motor Vehicle Accident Reparations Act

The fault system as an efficient means of determining who shall be compensated for injury has long been questioned. The original purpose for the fault system probably was to provide a kind of immunity against liability for the new industrial developments of the early and mid-nineteenth century. Railroads appear to have been the particular beneficiary. If the railroads had been liable for all the injuries they caused in their early history, they likely would not have made the economic gains that they did. The fault system replaced predecessor strict liability concepts. Its natural effect was to leave some people uncompensated, though injured. The gain to the national weal was an economic gain, and one open to challenge in human terms.

No judge, of course, foresaw the automobile and its impact during that early development of the fault system. Nobody knew that the automobile would be the dominant technological influence upon life in the United States, or that it would cause so much difficulty in the personal injury area. When the automobile appeared, the fault system was almost fully entrenched. Without estimating what they were doing, the courts simply applied the tort theories in automobile accident cases, and ultimately these cases became the overwhelming majority of tort cases. Little or no account was made in the law for the tremendous destructive capacity of the automobile, in terms of human lives and physical injury.

The toll in lives and injury, by the way, is overwhelming. There is no need to go over statistics. The National Safety Council readily provides them, and we are generally aware of their magnitude. It suffices to say that the automobile takes a toll unequaled by any war or series of wars entered into by this country. The problem is very rightly considered to be a national one.

Although the toll mounts, no answer to the compensation of the injured has been proposed until now, save through the fault system and the liability insurance system which has been grafted on to it. Liability insurance, as it presently is conceived, guarantees only that the injured party in an automobile accident has a possibility of some compensation. Even if there is compensation, nothing can be guaranteed about its adequacy. So, the prognosis after some years of experience indicates that the fault system, buttressed by the current liability insurance system, simply has not done a very good job of providing compensation to the multitude of the injured. The result is a large social cost measured in terms of loss of produ and unnecessary transferral of economic burdens for those who are in

The specific criticisms have been distilled to the following:

1. A great many victims of automobile accidents are denied pensation entirely.
2. Compensation, when granted, is usually delayed.
3. Benefits are distributed capriciously, without regard for losses.
4. Benefits are malapportioned, with the lesser injured rec overcompensation most often, and those injured more severely rec undercompensation.
5. Benefits are allocated in a lump sum, the method least conduc rehabilitation.
6. Benefits received are not coordinated to eliminate duplication
7. There is inefficiency in the expenditure of the premium dolla the greater portion of it going to administration and litigation.
8. The system, with its fee arrangements, encourages overre for benefits and downright dishonesty.

To provide a remedy for the defects in the current system and to value for the dollar of insurance premium paid, mere palliatives a enough. A thoroughgoing reform is essential.

The Uniform Motor Vehicle Accident Reparations Act, as pr gated by the National Conference of Commissioners on Uniform Laws, is the most thorough proposal for reform of the system yet available. It provides a basis for administering comprehensive, first insurance coverage for insured victims of automobile accidents. Th does not exclude the possibility of tort recovery entirely, but it limit possibility to those parties with legitimate interest in recovery beyon system of basic first-party benefits.

The insurance system established in the Uniform Motor Vehicle dent Reparations Act is a compulsory one. Every motorist must security for basic reparations benefits plus a minimum of $25,000 li coverage per person per accident for bodily injury and $10,000 per dent for property damage. Insurers may also make available a ran optional coverages for added reparations benefits and for harm to ve and their contents. An insurer must offer collision coverage subject $100 deductible. An assigned claims plan is created for an injured for whom no responsible source of benefits may be found. There is al assigned risk program for those who have difficulty obtaining insur Other provisions relate to prompt payment of benefits, to reallocatio loss costs, and to cancellations or nonrenewals of insurance.

The Uniform Motor Vehicle Accident Reparations Act is a complete motor vehicle insurance Act. Any State adopting its provisions will be assured of having a system eliminating the defects of the fault system while simultaneously establishing a comprehensive insurance system. The National Conference of Commissioners on Uniform State Laws hopes that all States will give it serious consideration. Copies of the Uniform Motor Vehicle Accident Reparations Act are available from the Conference, 1155 East 60th Street, Chicago, Illinois 60637.

* * *

The following basic description of the key provisions of the Uniform Act is taken from the Prefatory Note which accompanies the official print.

Basic Reparation Benefits

Basic reparation benefits are the minimum benefits which, with few exceptions, are provided without regard to fault for all persons injured and the dependent survivors of persons killed in motor vehicle accidents. They are:

1. Payment of all reasonable medical and rehabilitative expenses without limit.

2. Reimbursement up to an aggregate of $200 per week:

a. For lost earnings from work the injured person would have performed but for the injury. In computing the amount of work loss benefits payable, earnings received from substitute employment and benefits received from social security, workmen's compensation, and state required non-occupational disability insurance would be subtracted as would an amount not to exceed 15 percent for actual income tax savings, and

b. Reimbursement for the reasonable expense of replacement services which the injured person would have performed for himself or his family but for the injury. For the first week after injury, such expenses are excluded from benefits.

3. In the case of death, payment up to $200 per week to those survivors who would be entitled to recovery under the State's wrongful death laws for the economic support and value of necessary replacement services which they would have received from the decedent but for the injury causing death, subject to subtractions and exclusions similar to those mentioned above.

4. In the case of death, payment of funeral or burial expenses not to exceed $500.

Losses to be reimbursed by basic reparation benefits are not limited either as to aggregate amount or as to time period over which incurred.

Optional Deductions and Exclusions from Basic Reparations Benefits

Insurers are required to offer, with appropriate premium reductions, certain specified optional deductions and exclusions from basic reparation benefits applicable only against benefits otherwise payable to the named insured and members of his family unit. These include:

1. Flat deductibles of $100, $300, and $500 from the total of all benefits payable on account of any one accident.

2. A flat deductible of $1,000 per accident from all benefits payable on account of injury to an operator or passenger on a motorcycle.

3. An exclusion of 10 percent of the benefits which would otherwise be payable for work loss and survivor's loss.

4. An exclusion of all replacement services loss.

In addition, insurers may, but need not, offer an optional contingent exclusion of benefits actually received from other specified sources of benefits.

Denial or Restriction of Benefits to Certain Persons

These persons who would otherwise be entitled to basic reparation benefits are excluded from or restricted in the recovery of benefits:

1. A person who intentionally causes or attempts to cause injury or death to himself or another is disqualified from all benefits for injury or death arising from his acts. In the event of death of a person who intentionally injures himself, his survivors are disqualified.

2. An intentional converter of a motor vehicle and, in the event of his death, his survivors, are excluded from all benefits for losses arising from use of the converted vehicle except under an insurance policy under which he is a basic reparation insured. However, a converter who is under the age of 15 may recover benefits through the assigned claims plan.

3. A person who has the legal responsibility (usually an owner) to maintain required security for payment of tort judgments and basic reparation benefits either by having insurance or by being an approved self-insurer and fails to do so is denied benefits from the assigned claims plan to the extent of $500 for each year of continuous noncompliance, and is subject to all optional exclusions and deductibles.

Tort Exemptions and Retained Tort Liabilities

Tort liability arising from ownership, maintenance or use of a motor vehicle is abolished, except as to:

1. Owners, including a government, who have not provided security for payment of basic reparation benefits and tort judgments as provided by the Act;

2. Intentionally caused harm to person or property;

3. Damages for work loss, replacement services loss and survivor's loss of support and services uncompensated by basic reparation benefits by reason of the standard weekly limit of $200 on such losses, but only if the injured person dies or is disabled for more than six months;

4. Damages in excess of $5,000, for noneconomic detriment (i.e., pain and suffering, etc., but not punitive damages) if there is permanent significant loss of body function or death or permanent serious disfigurement or more than six months of total disability;

5. Damage to property other than motor vehicles and their contents; and damage to motor vehicles caused by operators of parking lots and storage garages.

As the modification of the tort law is only in the form of an exemption from tort liability arising from ownership, maintenance or use of a motor vehicle and there is no tort liability created by the Act, tort liability is retained only to whatever extent it now exists. Auto manufacturers, repair shops, and railroads all remain potentially liable in tort under present law when they are causally involved in motor vehicle accidents.

As damage to motor vehicles or their contents is not covered by basic reparations benefits, the only source of recovery for damage to a vehicle and its contents resulting from an accident causally involving only motor vehicles would be optionally purchased first-party collision insurance on the vehicle. Insurers are required to offer various alternative forms of first-party collision coverage, including a limited form of collision coverage based upon fault.

Insurers providing basic or added reparations benefits have a right of subrogation to tort recoveries to the extent the damages recovered are of a type compensated for by the insurance. An insurer having paid medical expenses and wage loss under basic reparations benefits coverage is not entitled to subrogation to proceeds of a claim for pain and suffering damages.

Security for Basic Reparation Benefits and Tort Liability, Priority of Source, Assigned Claims Plan, Added Coverages, Assigned Risks

Every owner (including the State and its political subdivisions) of a motor vehicle registered *or* permissively operated in the State is required to provide and maintain security for the payment of basic reparation benefits and for the payment of tort liability judgments, the minimum required limit for the latter being $25,000 per person per accident for bodily injury and $10,000 per accident for property damage. Other governmental owners, including the federal government, may come under the Act by voluntarily providing security. As to private owners, security may be provided by qualifying insurance or approved self-insurance. A governmental owner may provide security by lawfully obligating itself to pay benefits as well as by insurance or approved self-insurance.

In general, the source of basic reparation benefits for a person incurring injury or loss in a motor vehicle accident would be as follows, in order:

1. for any occupant of a vehicle used in the business of transporting persons or property, including the driver, and for any employee or member of his family driving or occupying a vehicle furnished by his employer, the insurance on the vehicle;

2. for any person insured under a policy of basic reparations insurance, either as named insured or as resident member of his family unit, that policy of insurance, even if he is a pedestrian or occupant of a vehicle owned by another at the time of injury;

3. for any person not insured under a policy of basic reparation insurance but injured while occupying a vehicle, the insurance covering that vehicle;

4. for any person not insured under a policy of basic reparation insurance and not injured while an occupant of a vehicle (e.g., a pedestrian) the insurance covering any vehicle involved in the accident;

5. for any person for whom a responsible source of benefits does not exist or cannot be identified (e.g., uninsured occupant of uninsured vehicle; uninsured pedestrian injured by hit and run; insolvent insurer), the assigned claims plan which insurers are required to establish and operate under supervision of the insurance commissioner.

There are various provisions in the Act designed to achieve maximum compliance with the requirement that security be provided by insurance or self-insurance. Provision is also made for the administrative regulation of the terms of the insurance policies.

Insurers may offer a range of optional coverages and provisions referred to as "added reparations benefits" (e.g., additional work loss and survivor's loss protection, additional funeral expense coverage, pain and suffering coverage, etc.), subject to approval of the insurance commissioner who may require that certain optional coverages and provisions be offered.

To assure that the necessary insurance coverages will be conveniently afforded to all persons at reasonable rates, the Act provides for an assigned risk plan or comparable facility under the supervision of the insurance commissioner.

Territorial Reach of the Act

The Act applies to any motor vehicle accident occurring within the State without regard to where any involved vehicle is registered or how long it has been in the State. It converts any motor vehicle liability insurance policy, including one issued elsewhere, into a basic reparation policy while the insured vehicle is operated in the State. Also, the benefits provided by a policy of basic reparation insurance are applicable to injuries or losses occurring outside of the State to the insured and members of his family and to any occupant of the insured vehicle.

Payment of Benefits

Ordinarily, benefits are payable as economic loss accrues, rather than in a lump sum. Commutation of benefits, other than medical and rehabilitation expenses, by lump sum or installment award may be ordered by a court if the value of future benefits is not more than $1,000 or if the court finds that it will contribute to the health or rehabilitation of the injured person or if it is otherwise in the best interest of the injured person and the parties consent. Claims for benefits may be settled by agreement, but only with judicial approval if the amount of the claimed loss exceeds $2,500.

Benefits must be paid within 30 days after accrued and claimed. Overdue benefits bear interest at 18 percent.

Except for very limited purposes, rights to future benefits are not assignable. Benefits for work loss, survivor's loss and replacement service loss are exempt from execution or garnishment to the extent provided by applicable state or federal law dealing with wage exemptions. Benefits for allowable expense are, with one limited exception, exempt.

The Act prescribes necessary discovery procedures. Specific provision is made for the adjudication of disputes over costs of rehabilitative procedures. Also, the refusal of the injured person of reasonable rehabilitative treatment is a ground for limitation of benefits.

The Act provides a special statute of limitations, applicable to claims for basic and added reparation benefits.

Attorney's Fees

Reasonable attorney's fees are accorded for successful representation in the collection of overdue or disputed benefits, the fee to be paid by the insurer unless the claim was in some respect fraudulent or unreasonable or excessive in which case part or all of the fee may be charged against benefits otherwise due the claimant. If the claim was fraudulent or so excessive as to have no reasonable foundation, the defending insurer may be awarded attorney's fees and offset them against benefits otherwise due.

Reallocation of Costs

The Act provides for reallocation of loss costs among insurers on the basis of the injury-causing potential of different kinds of vehicles according to rules formulated by the insurance commissioner or by agreement among insurers with the approval of the commissioner. If no other method is adopted, the Act requires the implementation of a reallocation system based on vehicle weight. Rates will then reflect the probability and magnitude of loss causation assuring, for example, that operators of heavy trucks will pay their fair share of accident costs.

Cancellation and Nonrenewal of Insurance

Except during an initial underwriting period, insurers are prohibited from cancelling or nonrenewing basic reparations and liability insurance contracts at less than annual intervals for any reason other than nonpayment of premium. At the request of the policyholder, the reason for any cancellation or nonrenewal of insurance at any time must be given.

HB 187

Appendix B

COMPARISON OF AUTO REPARATION LAWS
(Enacted to November 1, 1972)

STATE	Compulsion To Buy Insurance[a]				Approximate First Party Benefits			Tort Exemption For 1st Party Benefits Pd.		General Damage Limitation			Vehicular Property Damage	
	Compulsory		Mandatory	None	Medical	Wage	Total	Yes	None	Threshold	Formula	None	Exemption	Under Tort
CONNECTICUT Pub Act 2731 (1972)	L	(a) 1st					$5,000	(b) Partial		(b) $400				X
DELAWARE Code Ch 21 Tit 21 §2118	L	1st					$10,000		X			X		X
FLORIDA Laws Ch 71 252 (1971)	L	(a) 1st					$5,000	(c) Partial		(c) $1000			(d) Partial	(d) Partial
ILLINOIS Ins Code Art 35 (1971)†			(a) 1st	L	$2,000	$7,800	$9,800		X		(e) X			X
MARYLAND House Bill 444 (1972)	L	1st					$2,500		X			X		X
MASS Laws Chs 670 (1970) & 978 (1971)	L	1st					$2,000	(f) Partial		(g) $500			X	
MICHIGAN Sen. Bill No. 782 (1972)	L	1st			ALL	$36,000	(h)	X		(i) X			X	
MINNESOTA Stats 72A.1492-72A.1495				L. 1st	$2,000	$3,120	(j) $5,120		X			X		X
NEW JERSEY Assm. Bill 667 (1972)	L	(a) 1st			ALL.	$5,200	(k) $5,200	(l) Partial		(l) $200				X
OREGON Laws Ch 523 (1971)			(a) 1st	L.	$3,000	$6,000	$9,000		X			X		X
PUERTO RICO Act No 138 (1968)		1st		L	ALL	$5,800	(m)	X		(n) $1000				X
SOUTH DAKOTA Laws Ch 270 (1971)				L. 1st	$2,000	$3,120	(j) $5,120		X			X		X
VIRGINIA Laws Ch 859 (1972)				L. 1st	$2,000	$5,200	$7,200		X			X		X
Arkansas Act 138-1973	1st				3000	7,280	9280		X			X		X

HB-187

Appendix III

Summary of Report and Recommendations of the American Bar Association Special Committee on Automobile Insurance Legislation

Created in May 1971, the Special Committee on Automobile Insurance Legislation of the American Bar Association has reviewed existing and proposed legislation in the field of automobile insurance, both state and national. The Special Committee has also taken cognizance of and reviewed the 1971 report of the Department of Transportation on automobile accident reparations, the work done in 1971 and 1972 by the National Conference of Commissioners on Uniform State Laws in relation to the drafting of its *Uniform Motor Vehicle Accident Reparations Act*, and the 1969 report of the American Bar Association Special Committee on Automobile Accident Reparations (the "Powers' Report").

The Special Committee on Automobile Insurance Legislation submitted its report to the Annual Meeting of the American Bar Association at San Francisco, California, in August 1972. Excerpts from that report follow.

> We are unalterably opposed to legislation now pending in the United States Congress which would preempt state motor vehicle accident reparation reform by the establishment of a federal law governing the subject. We are similarly opposed to legislation developed by the Senate Commerce Committee which would coerce the States to meet or exceed certain motor vehicle insurance and reparation standards or face the imposition of a more stringent federal law. Rather, we are in accord with the view expressed by the Department of Transportation that state experimentation with diverse motor vehicle reparation plans offers the best solution to the development of meaningful reform in the public interest.
>
> The legislation which has been enacted in 10 States and Puerto Rico, in addition to studies under way and legislation being considered in other States, demonstrates that the States can and will act to meet the problems that are found to exist. We are unimpressed with arguments that legislation enacted to date is inadequate, or that the failure of certain States to enact "meaningful no-fault legislation" evidences disinterest with the problems facing their citizens. Those advancing these arguments support particular points of view or particular plans. Their dissatisfaction may be traced to the fact that the States have not adopted the type of plans which they are committed to support. We are convinced that a State Legislature is in a much better position to judge the problems which exist within its borders, and the best means to correct them.
>
> As lawyers we are subject to criticism if we caution against rapid change and seek evaluation and experimentation before a course of action becomes irreversible. We must face this criticism in the interest of the public unless we are convinced that change will promote the public welfare. On the other hand, where improvement and change are called for in the public interest, we support it fully. Some will say our recommendations have not gone far enough, others will say that we have gone too far. The Committee believes it has recommended change where needed and provided a vehicle which can unify the Bar in its support of meaningful but responsible reform.

Major Recommendations of the Special Committee

1. That States which have not done so adopt laws which provide for required motor vehicle bodily injury and property damage liability with coverage limits of $15,000 for bodily injury to one person, $30,000 for all bodily injury associated with one accident and $5,000 for all property damage from one accident, and that these laws be of a self-certification type.[1]

2. That the laws which provide for required motor vehicle liability coverage also provide for required uninsured motorist coverage with limits of $15,000 for bodily injury to one person and $30,000 for all bodily injury from one accident.[2]

3. That all States which have not done so adopt laws which require that minimum first-party coverage of at least $2,000 be included in all motor vehicle liability insurance policies offering protection for economic loss to the named insured, members of his family residing in the same household as the named insured, guest passengers in the insured's vehicle and pedestrians struck by that vehicle. Those laws should give the innocent accident victim the option to seek indemnity for economic loss from his own insurer, or in an action in tort, but should avoid duplicate reimbursement for the same loss and should shift the ultimate burden for the loss to the tortfeasor or his insurer.[3]

4. That in personal injury claims or actions arising out of motor vehicle accidents, general damages recoverable for pain, suffering, mental anguish, inconvenience and other similar loss should be limited to a multiple of one times the medical expenses unless they exceed $500 or unless the injury results in death, dismemberment, permanent total or permanent partial disability, temporary partial disability be-

1. Approved by the House of Delegates of the American Bar Association, August 15, 1972.

2. Approved by the House of Delegates of the American Bar Association, August 15, 1972.

3. Approved by the House of Delegates of the American Bar Association, August 15, 1972.

yond four weeks duration, serious disfigurement, or loss or impairment of a bodily function.[4]

Commentary by the Special Committee

With regard to its Recommendations 1 and 2, the Special Committee submitted a "Sample Statute" covering liability insurance and uninsured motorists insurance, modeled after legislation enacted by the State of Delaware. The Special Committee also offered background comments on these two recommendations, some of which are excerpted below.

> If the tort system is to operate effectively as a reparation mechanism for innocent accident victims, as opposed to being merely a mechanism to fix legal responsibility for injury or damage, tortfeasors who cause accidents must be financially responsible.
>
> Available information indicates that upwards to 90 percent of the motorists in compulsory insurance States comply with the laws. The remaining States operate under so-called "Financial Responsibility" laws which compel the purchase of insurance only after accident involvement or a serious traffic law violation. The percentage of insured motorists in those States is reported to vary from a high of over 80 to a low of near 55 percent. Based upon these realities, a person driving in a compulsory insurance State is faced with a probability of one in 10 that he will be involved in an accident with an uninsured driver. Whereas, in States not having compulsory insurance the probabilities are much higher.
>
> The widespread use of uninsured motorist coverage has taken some of the sting out of those probabilities. Certainly, even in compulsory insurance States, some motorists will attempt to avoid the law and drive without being insured. Uninsured motorists from other States will also cause accidents. However, if the choice of who is to pay for damages resulting from automobile accidents has to be made, as well it must, we conclude that it is preferable to assess the cost of accidents against those who are responsible for them through liability insurance premiums rather than to shift that cost to innocent accident victims through uninsured motorist coverage premiums.
>
> Critics of required insurance assert that claim frequency will rise under such a system. While this is a factor, probably no small part of the claims frequency increase will be due to the fact that more

4. This provision was rejected by the House of Delegates of the American Bar Association, August 15, 1972, and the following was substituted: "The American Bar Association is opposed to any federal 'no-fault' insurance legislation and believes that any changes which may be made in the so-called automobile accident reparations system should be by state action."

> persons will be insured and thus there will be more financially responsible persons against whom claims may be brought. Except for the question of limits, those persons who already insure their vehicles will be unaffected by the enactment of a required insurance law.
>
> We are recommending a compulsory law only in the sense that automobile insurance would be required for all motorists. However, the law is based on the principle of self-certification and does not require that a motorist file a certificate from his insurer for his vehicle to be registered. This type of "required" insurance should not prove to be as costly to enforce as the "compulsory" type in effect in New York, Massachusetts and North Carolina. It should not add substantially to the cost of motor vehicle law enforcement in a State and is modeled after the Delaware Act.

With regard to its Recommendation 3, the Special Committee submitted a "Sample Statute" covering required minimum first-party coverage in all motor vehicle liability insurance policies offering protection for economic loss. Excerpts from the Special Committee's commentary on this subject are shown below.

> A stage has been reached in the so-called "automobile accident reparation controversy" at which there appears to be little serious controversy over the question of whether all persons injured in auto accidents should have some form of first-party insurance. The controversy now centers on the questions which concern the amount of loss which should be recoverable under the first-party system and the extent to which tort liability should be abrogated, if at all, to finance the first-party system.
>
> Laws which have been enacted in Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, New Jersey and Oregon all follow along lines similar to this Committee's proposal. Motorists in those States who buy liability insurance are required to purchase first-party coverage in specified amounts to protect themselves, their passengers and pedestrians. Our proposal would require the purchase of first-party coverage. It would not abrogate tort liability. This recommendation was approved unanimously, but two members of the Committee would have preferred that a reasonable tort exemption be provided. The tortfeasor, or his insurer, will have ultimate responsibility for the damages caused. The innocent accident victim is given an option. He may seek full compensation under the tort system, or he may recover a portion of his damages from his own insurer and the balance from the tortfeasor. In the latter case, the insurer paying first-party benefits will be able to seek reimbursement, to the extent of payment, from the tortfeasor or his insurer. The

sample statute which follows this discussion illustrates the type of minimum first-party coverage law favored by this Committee.[5]

It would not cover the total economic losses of all, but it must be remembered that the vast majority of Americans are protected by medical, hospital and wage loss benefit plans collateral to auto insurance. In addition, coverage for all economic loss under a first-party auto insurance system would require a severe limitation of the tort right of recovery for general damages so that the first-party benefits can be financed. The Sample Statute provides for coverage for the named insured and resident relatives in all auto accidents. Thus, they would be covered while they are guests in another's vehicle or while they are pedestrians. However, duplicate payment is to be avoided since it increases the cost of the system. The coverage provided is primary and payment thereunder is not dependent upon the injured person's collateral sources of compensation.

With regard to its Recommendation 4, the Special Committee submitted a "Sample Statute" covering regulation of awards for pain and suffering. This recommendation was not unanimous, and a minority report was filed "to record disagreement only with the Committee's fourth recommendation that general damages be limited to an equivalent of the medicals unless a monetary medical expense threshold or other condition is met." It should also be noted that the American Bar Association House of Delegates voted down this recommendation when acting on the report. Excerpts from the commentary in the majority report are shown below.

To completely deny recovery for general damages or to allow recovery to some persons and deny it to others based on some arbitrarily selected special damage threshold is inequitable. In fact, a reading of all of the 23 preliminary reports and the final report of the Department of Transportation fails to reveal any sound reason for elimination of this element of damages. The arguments for its elimination stress pragmatic reasons — it is too hard to evaluate these damages and their payment costs too much money.

The main problem cited by critics of the present system with relation to general damages centers around overpayment in the so-called "small case." The "nuisance settlement" has become a fact of life for those insurers who believe it is less expensive in the long run

5. It should be noted that the first-party insurance requirements in Connecticut, Florida, Illinois, New Jersey and Oregon apply only to "private passenger vehicles" as defined in those States' acts. In *Grace* v. *Howlett* (Ill. 1972) the Illinois Supreme Court held that limiting the mandated coverage requirement to one class of vehicles to the exclusion of other classes amounted to "special" legislation contrary to the provisions of that State's constitution. The Sample Statute is therefore drawn broadly to apply to all motor vehicles. Those wishing to restrict this broad requirement should consider *Grace* in light of the provisions of their own State's constitution.

to settle such cases for a little more than they are worth than to pay defense costs. One DOT report showed that claims payments for accident victims with special damages of $500 or less averaged about four and one-half times the specials, whereas, those with specials of between $5,000 and $10,000 were paid an average of one and one-tenth times their specials.

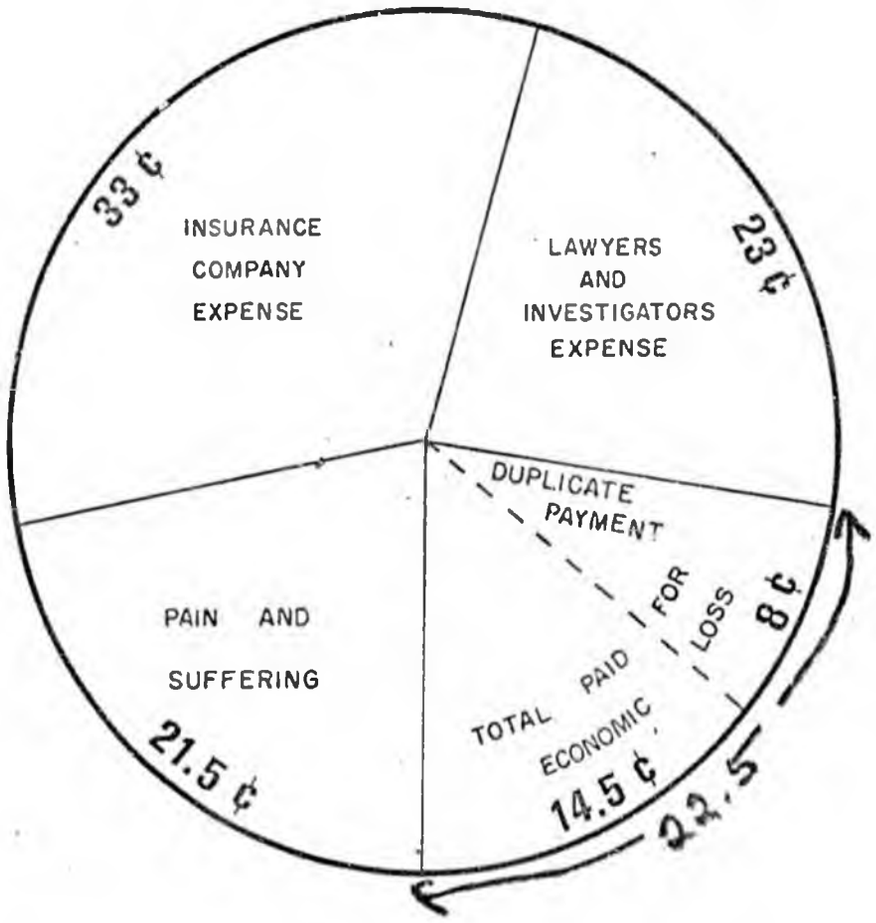
Our recommendation seeks to control, not eliminate compensation for general damages in the small case. When medical specials are $500 or less, the claimant would not be able to recover more than a sum equal to this medical treatment cost as general damages. Above that amount, the present system would be unchanged. In addition, even if the amount of expenses were below $500, the limitation would not apply if the injury resulted in death, dismemberment, permanent total or permanent partial disability, temporary partial disability beyond four weeks duration, serious disfigurement, or loss or impairment of a bodily function.

It has been estimated that close to 80 percent of auto accident victims sustain economic loss (excluding property damage) of $500 or less. This does not mean that all of those persons would be taken out of the tort system by our proposal. As to general damages all would remain under the tort system. However, for those whose medical specials do not exceed $500 or who do not meet the other "serious" injury exceptions, if fault can be established, their recovery for general damages would be limited.

There are those who will raise a constitutional question as to the propriety of limiting general damages. It should be noted that the limitation found in the Sample Statute differs from the type employed in Illinois which was found unconstitutional by a state trial court. First, the Sample Statute formula applies only to the so-called "small case" in which medical treatment expenses are $500 or less. The Illinois formula applied across the board to all cases except those involving death or very serious injury. Second, under the Illinois formula, as interpreted by the trial court, two accident victims with the same type of injuries could receive disproportionate amounts of general damages simply because one sought and was able to afford more expensive medical and hospital care. We believe that the Sample Statute we have prepared to illustrate our proposal with respect to limitation of general damages for the "small case" will not be subject to the same constitutional problems found by the Illinois trial court. That court did not find fault with the concept of a general damage limitation, but only with the unequal application of the limitation, under the Illinois law.

[NOTE: The full report of the Committee contained sample statutory language as well as additional commentary on many aspects of the Committee's recommendations.]

HB 187



DISTRIBUTION OF PREMIUM DOLLAR UNDER TODAY'S LIABILITY SYSTEM

SOURCE- ROBERT KEETON, "COMPENSATION SYSTEMS: THE SEARCH FOR A VIABLE ALTERNATIVE TO NEGLIGENCE LAW".

HB 187

February 20, 1973

The principal provisions of the new no fault plan which I envision for Alaska are:

1. A basic no fault hospital, medical, loss of income (including survivor's benefits) and loss of services package totaling $15,000. The only internal limits are 85 percent of actual income loss (to allow for income tax savings) up to $250 per week, $1,500 funeral and burial expenses but no time limits as such.

   The $15,000 package will reimburse 99.6 percent of all those injured, fully for their economic loss.

   In addition, the plan is designed to permit the offer of additional no fault benefits up to $50,000 on a voluntary basis.

2. The plan eliminates pain and suffering claims where death, disability, dismemberment or disfigurement has not occurred or medical expenses do not exceed $2,000.

3. Loss costs are transferred to the fault insurer anytime a claim for pain and suffering exists or when paid first party injury benefits exceed $3,000, or in any case where one vehicle involved in the crash exceeds 5,000 pounds unloaded weight.

4. First party benefits follow the car and not the person -- but if a person is injured in or by a car not owned by him and he is not promptly paid by the insurer of such car, he has the right to collect from his own insurer. These losses are then transferred to the insurer of the car.

5. Property damage is excluded. This leaves it to be handled by collision insurance (a no fault coverage) or by the property damage liability insurance -- same as the present system.

6. Automobile insurance is primary except for Workmen's Compensation Insurance and compulsory state disability insurance programs.

7. Benefits are payable as accrued, overdue if not paid within 30 days after reasonable proof with 10 percent penalty if overdue.

8. Bodily injury and property damage liability insurance must be provided at least equal to financial responsibility limits of the State of Alaska of 15/30/10.

"The threshold approach prevents overpayment of smaller claims, eliminates nuisance suits and reduces litigation. These savings are designed to balance the costs of additional first party benefits."

"In most instances, costs are transferred between insurers (without litigation) back to the fault insurer, thus permitting lower

rates for drivers who do not cause crashes and putting the higher cost on those who do.

"The plan permits recovery for vehicle damage from a person at fault even if the owner of the damaged car chose not to carry collision insurance and permits recovery of the deductible amount if he did carry collision insurance.

"This plan provides a whole new series of benefits based on no fault and eliminates most of the evils of the old fault liability system while preserving most of the aspects of that system. What is proposed is a marriage of the old with the new system producing an offspring with the best traits of both parents. With the dual foundation of both fault and no fault, growth and experience will produce the wisdom to move forward to broader benefits and more no fault coverage or backward to greater reliance upon fault if experience so requires.

By Daniel Hickey, Assistant Attorney General for the State of Alaska

T stimony Before House Commerce Committee

HB-187

February 17, 1973

House Bill 187, introduced by the Rules Committee by request of the Governor, represents the best efforts of various departments and agencies of the State over a period of two years to create an efficient and equitable system of compensation for injury arising out of automobile accidents. To this end, it constitutes a refinement of the better elements contained within a number of proposals that received attention in prior sessions of the Legislature, most particularly Committee Substitute for House Bill 464 which was passed in the House during the last session.

The Administration is persuaded that there is a clear and present need for reform in the present system of compensation. Experience has shown that the present liability system has all too often been inefficient, inequitable, wasteful and a significant contributing factor in congested court dockets. Liability insurance, as it is presently conceived and administered, guarantees only that an injured party in a motor vehicle accident has a possibility of some compensation. Even when there is compensation, however, nothing can be guaranteed as to its adequacy.

The following major categories of criticism of the present system of compensation have been identified by the Institute for the Future in a report entitled "The Automobile Insurance System: Current Status and Some Proposed Revisions":

* There is excessive delay in payment of claims.

* Many victims are not compensated.

* Claim settlements are inequitable with respect to economic loss.

* Net benefits paid to claimants (per premium $) are low in comparison with other reparation systems.

* The present automobile insurance system contributes significantly to court congestion.

* Adequate insurance is not available for many.

* Fault is difficult to determine.

* Insurance costs are excessive.

* It encourages exaggeration of claims.

* It encourages fraud.

* The insured is highly uncertain as to the amount of benefits to be received and the delay time involved.

* The rate classification system is unfair.

* It is difficult to project claims.

We concur in these conclusions and observations.

House Bill 187 addresses itself to these criticisms and provides a basis for enacting and administering a comprehensive system of compensation for victims of automobile accidents. To a large extent, economic loss which accrues as the result of a motor vehicle accident will be compensated without regard to fault through first-party insurance coverage. Tort liability for such loss is abolished. House Bill 187 does not exclude the possibility of tort recovery entirely. On the contrary, it attempts to limit that possibility to those parties with a legitimate interest in recovery beyond the system of basic first-party benefits.

The insurance system established in the bill is a compulsory system. Every owner of a motor vehicle registered in this State or permissively operated in this State, including the State, its public agencies and political subdivisions, will be required to maintain security for the payment of basic loss, or no fault, benefits and tort liabilities. The minimum required security for tort liability is $15,000 per person per accident with a $30,000 total aggregate limit per accident and $10,000 per accident for property damage.

Basic loss benefits are payable without regard to fault for net economic loss suffered through injury arising out of the maintenance or use of a motor vehicle, subject to certain limits, deductibles, exclusions, disqualifications and other conditions provided for in the bill. Essentially, basic loss benefits will compensate for:

1) allowable medical expenses up to $50,000;
2) work loss, replacement services loss, survivor's economic loss and survivor's replacement services loss up to an aggregate total of $36,000 at a maximum rate of $250 per calendar week; and
3) funeral, cremation and burial expenses up to $1,500.

Basic loss insurers will also be required to offer, with appropriate premium reductions, certain specified optional deductions and exclusions from basic loss benefits, among which is a deductible of $1,000 per accident from all basic loss

benefits otherwise payable for injury to a person which occurs while he is operating or is a passenger on a two-wheeled motor vehicle.

Insurers may also make available a range of optional coverages for added loss benefits and for harm to vehicles and their contents.

Damage to motor vehicles or their contents arising out of motor vehicle accidents will no longer be compensable through the fault system. However, basic loss insurers are required under the bill to offer a number of alternative forms of first-party collision coverage, both in full and subject to a deductible of $100.

The modification of tort law present in this bill is in the form of an exemption from certain types of tort liability. Liability remains, for example, for noneconomic detriment in excess of $5,000 where the injury is of a specified type; for allowable medical expenses in excess of that compensated for through basic loss benefits; and for work loss, replacement services loss, survivor's economic loss and survivor's replacement services loss which are not recoverable through basic loss benefits after the injured person has been disabled for more than six months or after his death. Automobile manufacturers, repair shops, parking garages and railroads all remain potentially liable in tort when they are involved in motor vehicle accidents.

There are various provisions in the bill designed to achieve maximum compliance with the requirement that security be provided through insurance or self-insurance.

Provision is also made for the administrative regulation of the terms and conditions of insurance policies.

Uninsured claims are provided for through an assigned claims plan. All insurers and self-insurers in the State would be required to participate in the plan and pay claims assigned to them on an equitable basis.

The bill applies to any motor vehicle accident occurring within this State without regard to where any involved vehicle is registered. Any motor vehicle liability insurance policy, including one issued elsewhere, is converted by law into a basic loss insurance policy while the insured vehicle is in this State. Benefits provided through basic loss insurance are applicable to injuries occurring outside the State to an insured and members of his family and to any occupant of an insured vehicle.

With respect to collateral benefits, basic loss insurance is primary as to all other benefits with the exception of social security and workmen's compensation. Subject to the approval of the director of insurance, however, basic loss insurers may offer an optional exclusion of any additional benefits.

The bill also provides for reallocation of loss incurred among insurers on the basis of the injury-causing potential of different kinds of vehicles.

Other provisions relate to an insurer's rights of reimbursement and subrogation, prompt payment of benefits, availability of insurance through an assigned risk plan, and terminations, cancellations or nonrenewals of insurance.

HB 187

Gentleman:

I am William Baker, Director for the Alaska Association of Independent Insurance Agents, Inc., and my testimony is on behalf of that organization.

The AAIIA has studied the No-Fault Automobile Insurance question for over three years and we have gone on record many times before various legislative hearings such as this one. Our most recent testimony was on January 5, 1973, in Ketchikan and the statement was made by our State National Director, Carl H. Porter. In that report Carl Pointed out that "we have adjusted our position somewhat to accommodate what we see as minimum ACCEPTABLE criteria. His statement continued,"I will not recigte all the factors and facets that led to our present position, but I will tell you that we moved from a position of total opposition to No-Fault (because of the "pure" No-Fault plans of the American Insurance Association and the New York Insurance Commissioner), to a firm considered position IN FAVOR OF A MODIFIED NO-FAULT PLAN FOR ALASKA. This plan should pay substantial benefits for medical expenses, wage loss and loss of services on a mandatory, no-fault basis: AND THESE AMOUNTS SHOULD REPLACE COURT ACTION (in cases where court action is taken for greater amounts or for specific exclusions, such as dismemberment or disfigurement, these no-fault recoveries would be subtracted from the judgement)."

Since the January 5th report, the Board of State National Directors of the National Association of Insurance Agents has acted affirmatively upon guide lines suggested by the National No-Fault Committee. These guide lines are compatable with the position of the Alaska Agents Association and we therefore set them forth now as recommended guide lines for consideration by the Alaska Legislature.

1. The National Association recognizes that if effective First Party/No-Fault Auto Accident Reparations legislation is not passed at the State level, some form of Federal Legislation, Federal Guidelines and/or Federal Control of the automobile insurance system will result.

2. The NAIA is convinced that in order for the automobile insurance system to be most responsive to the public needs, it must be regulated at the state level, should remain under state jurisdiction only and be subject to state legislation exclusively.

3. The NAIA commends those companies who are in accord on The Basis of an All-Industry Agreement on a State No-Fault Insurance Program in pursuit of the broad, general principle set forth in #2 above.

4. The NAIA recommends to its member state associations that they support the Program in their individual states during the 1973 legislative sessions, insofar as it does not conflict with their presnet commitments.

The particulars of the proposal are as follows:

a. Automobile insurance will be primary as against collateral sources except as to statutory benefit systems in existence.

(1) An effort will be made to get future statutory benefit systems to exclude or "carve out" auto accidents up to the basic limits.

(2) Oppose all deductibles from the basic program and accept deductibles only as necessary.

(3) In particular, oppose as unacceptable Section 14.b.2 (the Section which makes collateral lines primary) of the Uniform Motor Vehicle Accident Reparations Act (UMVARA).

b. First-party benefits:

(1) Propose initially a $5,000. limit for combined medical expense and wage loss, including any rehabilitation program.

(2) Be prepared to go up to higher combined limits as necessary. Oppose unlimited benefits. Suggested range of $5,000. to $25,000.

(3) No deductibles or waiting periods.

(4) Internal limits of semi-private room for medical expense and 85% of wage loss if income replacement benefits are not subject to federal income taxes.

c. Tort limitation (no-fault) feature):

(1) Tort actions for general damages (pain and suffering) should be retained for all described serious injuries or wherever medical expenses exceed $1,000.

(2) The dollar limit on medical expenses is preferable to a statutory description seems advisable, an effort will be made to convert $1,000. of medical expense into a given number of days of disability.

(3) The legislative effort is to begin at the $1,000. medical limit or its equivalent. It was necessary for the purpose of having an agreement between the companies that there be a sincere commitment to, and a pledge of

strenuous effort for, the $1,000. medical threshold or its equivalent.

(4) Anticipating that there would be pressures for a lower medical threshold, it was the understanding that it might be advisable under certain conditions to go to a lower medical threshold if it was necessary to get a bill passed.

d. Insurance for no-fault benefits, and for bodily injury and property damage liability will be compulsory.

(1) The compulsory bill will provide for an assigned claim plan.

(2) A self-certification plan as to coverage will be used if possible with criminal sanctions supporting it. An effort will be made to avoid highly restrictive certification programs.

e. Both private passenger and commercial vehicles shall be included in the bill.

f. Property damage will not be included in the no-fault system. Physical damage coverages will be optional as now.

g. Subrogation will be eliminated where there is no tort claim under the provisions of the bill. There will be subrogation where there is a tort claim under the provisions of the bill (for example: 1. where the threshold has been exceeded, 2. where there is a claim for benefits in excess of first-party coverages, and 3. where there is a claim for property damage).

This concludes my testimony on behalf of the Alaska Association of Independent Insurance Agents, Inc.. We sincerely hope that our efforts and testimony to this date have assisted the Alaska State Legislature in its search for a meaningful Modified No-Fault solution.

SB 219

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU 99801

March 28, 1974

The Honorable Clem V. Tillion
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99801

Dear Mr. Tillion:

It has recently come to our attention that Senate Bill No. 219, "An Act relating to the execution exemption for income; and providing for an effective date," will be coming up for consideration by your committee.

This bill deals with an important area of consumer protection, that of creditors' remedies. The Department believes that to the extent the bill brings the state law into closer conformity with the present federal law regarding wage garnishment, Title III of the Consumer Credit Protection Act, 15 U.S.C. §§1671-1677, it is a desirable piece of clean-up legislation.

The state and federal statutes presently conflict in their provisions, and such conflict creates confusion among creditors and consumers alike as to which law can and should be used.

It is clear that the federal statute is the controlling law in this area. The provisions of S.B. 219 providing for basic conformity with that law would eliminate the existing confusion regarding this subject.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By James E. Douglas
James E. Douglas
Assistant Attorney General

JED:jdg

HB-372

WAKELAND AND NORENE, INC.
REAL ESTATE APPRAISERS AND COUNSELING

WILLIAM WAKELAND, MAI, SREA
LARRY NORENE
ROGER N. BONNETT, MAI

507 W. NORTHERN LIGHTS BLVD.
ANCHORAGE, ALASKA 99503
(907) 279-0733

April 8, 1974

The Honorable Clem Tillion
House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Clem:

It is my understanding that your Judiciary Committee may now have before it the committee substitute for H. B. 372. This is the proposed bill to license real estate appraisers. In the event the bill is still in Commerce Committee, or is being considered in the Senate, would you kindly pass this letter along to the appropriate committee chairman?

As you may be aware, the Alaska Chapter of the Society of Real Estate Appraisers has approved of a bill to replace one put into the hopper last year. I served on that committee. The bill was subsequently sent to Juneau, introduced in the House, and Mr. Errol Simmons testified before the Commerce Committee, I believe, and the bill was amended further by that committee.

My purpose in writing is to express the will of the Alaska Sub-Chapter of the Washington-British Columbia Chapter No. 8 of the American Institute of Real Estate Appraisers, an affiliation of the National Association of Real Estate Boards. The Institute offers a professional designation "M.A.I.", that most of you are familiar with, and which is the most widely known and respected of the several professional designations offered by various organizations. Perhaps what most sets the Institute apart from The Society of Real Estate Appraisers - regarding this proposed licensing bill - is the requirement that in the Institute only designated members can vote on Chapter or national affairs. Alaska presently has only five M.A.I.'s and two R.M.'s, the latter being a residential designation. There are about twelve candidates, and a number of applicants.

On April 5, 1974, the Alaska Sub-Chapter of the Institute met and discusse the licensing issue and the bill now before the legislature. Both the vote of those present, and the vote of the designated members (all seven were present) was to request that the legislature <u>do not pass</u> the bill before it, but rather give our organization - only recently organized within Alaska - a chance to study licensing as a concept and to draft changes to the bill propcsed. The

principal objections to the present bill discussed at this meeting were:

1. Licensing will not accomplish anything beneficial to the public, nor to any appraiser but those least qualified and most inexperienced.

2. The Grandfather Rights Clause should be eliminated.

3. The standards of conduct, education, training and ability worked out over some forty years experience by one of the two principal professional appraisal organizations mentioned above - preferably the Institute - should furnish the basis for licensing requirements.

Incidentally, both of the appraisal organizations mentioned above, as a national policy, oppose licensing, but have advanced a model licensing bill to recommend should licensing become inevitable in any state. The bill before the legislature incorporates most of the provisions in the model bill, which is essentially a weak bill.

Thank you for your consideration and kindest personal regards.

Respectfully submitted,

Wm Wakeland

William Wakeland
President
Alaska Sub-Chapter No. 8
American Institute of Real
Estate Appraisers

cc/Audie Moore

WW/bb

KENAI PENINSULA BAR ASSOCIATION
P. O. BOX 397
KENAI, ALASKA 99611
TELEPHONE 283-7564

HB-411

8 February 1974

Representative Clem Tillion
Chairman, Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska

Re: House Bill 411 -- establishing a Fifth Judicial District

Dear Chairman Tillion:

It is my understanding that the House of Representatives is considering Legislation proposing the establishment of a Fifth Judicial District which would generally include the Kuskokwim-Yukon Valley to Barrow including all of the Seward Peninsula and Bristol Bay.

This Association is sensitive to the need for judicial services for all of Alaska's people. It is our observation that designation of a judicial district implements the philosophy of bringing judicial services to the people where they live. This makes the system serve the people more closely rather than the reverse situation.

From my general experience, I would urge the passage of House Bill 411 in its present form, or as it might be changed to best meet the needs and desires of those anxious to secure passage of this legislation.

Yours truly,

James E. Fisher

JAMES E. FISHER
President

cc: Representative Phillip Guy
cc: Kenai Peninsula Legislative Delegation:
Representative Hugh Malone
Representative Keith W. Specking
Senator Jalmar M. Kerttula
Senator W.I. "Bob" Palmer

IN THE ALASKA STATE LEGISLATURE

HB 411

PRIME SPONSOR:

Phillip Guy — District 17

CO-SPONSORS:

Richard L. Mcveigh 10
Willard L. Bowman 10
Edward G. Barber 7
Helen Beirne 10
Mike Bradner 17
Genie Chance 7
Chuck Degnan 20
Milo H. Fritz 9
Terry Gardiner 1
W. Glenn Hackney 17
John Hubner 17
Jacob Laktonen Jr. 13
Joseph E. McGill 14
J. Hugh Malone 11
Russ Meekins 7
Jo Ann Miller 7
Mike Miller 4
Edward F. Naughton 12
William K. Parker 7
Lawrence D. Peterson 16
A. M. Saylors 8
Kieth Speckling 5
I. Lavell Wilson 18

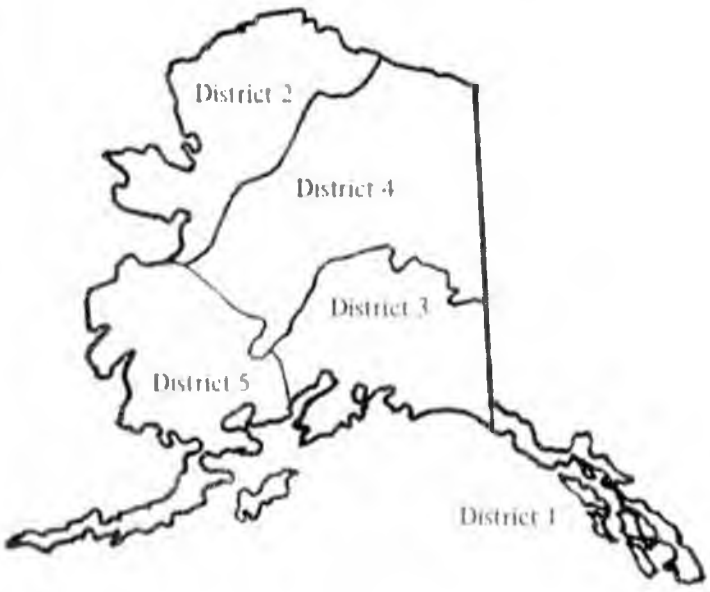
• • • • • ESTABLISHING • • • • •

THE FIFTH JUDICIAL DISTRICT
FOR THE STATE OF ALASKA

The prime sponsor expresses appreciation for support of HB 411.

The Bethel and Kuskokwim area needs to become the State of Alaska's Fifth Judicial District. This Fifth Judicial District would include election districts 14, 15, 16, and 17, creating a boundry unifying more agencies and services of the government. This area contains the greatest concentration of Native population in the State of Alaska, with approximately 13,500 Native Alaskans and 3,000 white residents living in more than 50 villages surrounding Bethel.

Map showing Alaska's new judicial district.



Presently, the Kuskokwim area is served by a Superior Court Judge stationed in Anchorage, who "circuit rides" to Bethel once a month. This judge is elected from a district which includes Fairbanks, physically located 500 miles away, representative of a completely different way of life. We need justice administered by a resident whose family lives among us and is responsive to the local needs of the people. We need a more equal distribution of public protection, and administration of justice to end the breakdown of services and facilities to the rural areas, that have resulted in the term "bush justice". In the first eight months of 1973, 594 state criminal cases alone were filed in Bethel, and this only begins the list of services administered by the court. Presently, the only legal representative of eligible low-income people is Alaska Legal Services, which handles only civil cases, not criminal cases.

The establishment of a Fifth Judicial District will also promote the development of additional court system personnel in the recording and administrative section, plus promote establishment of related services which are badly needed in this area. With the passage and implementation of the Alaska Native Claims Settlement Act, and continued development of the village and municipal corporations, litigation will sharply increase. Under the Act, the Bethel area has 13,500 new property owners and corporate stock holders.

TESTIMONY ON HB 411

AN ACT ESTABLISHING

THE FIFTH JUDICIAL DISTRICT

OF THE

SUPERIOR COURT

BY

PHILLIP GUY

2nd Vice-
PRESIDENT
A.V.C.P., INC.
KUSKOKWIM - YUKON

AKIACHAK
AKIAK
ALAKANUK
ANDREAFSKY
ANIAK
ATMAUTLUAK
BETHEL
CHEFORNAK
CHEVAK
CROOKED CREEK
EEK
EMMONAK
GEORGETOWN (K)
GOODNEWS BAY
HAMILTON
HOLITNA
HOOPER BAY
KASIGLOOK
KIPNUK
KONGIGANAK
KOYLIK
KWETHLUK
KWIGILLINGOK
LIME VILLAGE
LOWER KALSKAG
FORTUNA LEDGE
(MARSHALL)
MEKORYUK
MOUNTAIN VILLAGE
NAPAKIAK
NAPASKIAK
NEWTOK
NIGHTMUTE
NUNAPITCHUK
OHOGAMIUT
OSCARVILLE
PILOT STATION
PITKAS POINT
PLATINUM
RUSSIAN MISSION (K)
RUSSIAN MISSION (Y)
RED DEVIL
SCAMMON BAY
SHELDON'S POINT
SLEETMUTE
ST. MARY'S
STONY RIVER
TOKSOOK BAY
TULUKSAK
TULUTULIAK
TUNUNAK
UPPER KALSKAG

REPRESENTATIVE PHILLIP GUY

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99801

COMMITTEES:
LOCAL GOVERNMENT
RESOURCES

DISTRICT 15
AKIACHAK
AKIAK
ATMAUTLUAK
BETHEL
CHEFORNAK
EEK
KIPNUK
KONGIGANAK
KWETHLUK
KWILLINGOK
MEKORYUK
NAPAKIAK
NAPASKIAK
NEWTOK
NIGHTMUTE
OSCARVILLE
TOKSOOK BAY
TULUKSAK
TULUTULIAK
TUNUNAK
CAPE ROMANZOF
HOOPER BAY

HB 411

The aim of HB 411 is to bring justice closer to home, to stop transporting defendants and stop the confusion of record keeping between the Bethel area, Nome, Fairbanks, and Anchorage. The Yukon Kuskokwim does not want to remain a service district to Anchorage, but wants to create and maintain its own unified court system. With all of Alaska's history and tradition, the state, being equal in size to many other states combined, any wonder, in the process of development, new districts with greater powers of self-determination emerge. The effort by the Alaska Court System to alleviate the Yukon Kuskokwim judicial problems by making Bethel a service district to the Third Judicial District, centered in Anchorage, must be considered a temporary move toward establishing Bethel's own unified court system within its own district.

The area south of St. Michaels, which is presently located in the Second Judicial District, already looks to Bethel for judicial services, rather than Nome, because of geographic proximity. From a cultural and linguistic standpoint, these villages are part of Bethel, rather than related to Nome and the land of the Inupiak. Why retain Yukon Kuskokwim as an administrative exten-

sion of Fairbanks, or Anchorage when the de-facto recognition makes Bethel the center. The Fifth Judicial District will formalize a system that is already accepted.

The importance of confirmation election of a judge must not be underestimated. An elected judge must consider local cultural needs, as the local people, through an election, approve or disapprove the appointment of this judicial officer. This process stops law from becoming "de-humanized." Presently, a judge in Bethel is confirmed by local officials included in the Fairbanks election district. Judges do not campaign to be elected. A judicial council consisting of three lay members, three attorneys, and one judge, that represents the court system, receives applications, and recommends nomination of two or more applicants to the Governor. The sole function of this council is to evaluate applications. From the nominated applicants, the Governor appoints a judge. This appointment lasts for three years. The appointed judge then faces a confirmation election. The public does not choose a judge in a contested election, but the public does have the opportunity to confirm or reject the appointment.

Studies have been and are being made on the problems of "bush justice." These studies aimed towards dispute and conflict resolution should have been made ten years ago. We are moving forward, not backward. With the passage of Alaska Native Land Claims Settlement Act, changes are occuring too fast to set up arbitration boards to interpret law, case by case, between the traditional village councils and the system of the court. The Native villages must

accept the western concept by virtue and nature of the Alaska Native Land Claims Settlement Act; the land recording activity will be a major process of the court. Land becoming a commodity, a viable marketable item, will create a need for dispute resolution of traditional rights versus those granted by the Alaska Native Land Claims Settlement Act, into the realm of Anglo-Saxon law. Developing economic and commercial activity will require instrument recording for secured loans, conditional sales contracts, chattel mortgages, and corporate charters recorded as businesses are established. Individual lease activity, oil, and industry-related mineral leases will greatly increase court and legal activity in the Fifth Judicial District. These records must be available for use to the people concerned.

The Federal State Land Use Planning Commission, in its projections, predicts a four-fold increase in land record filing alone.

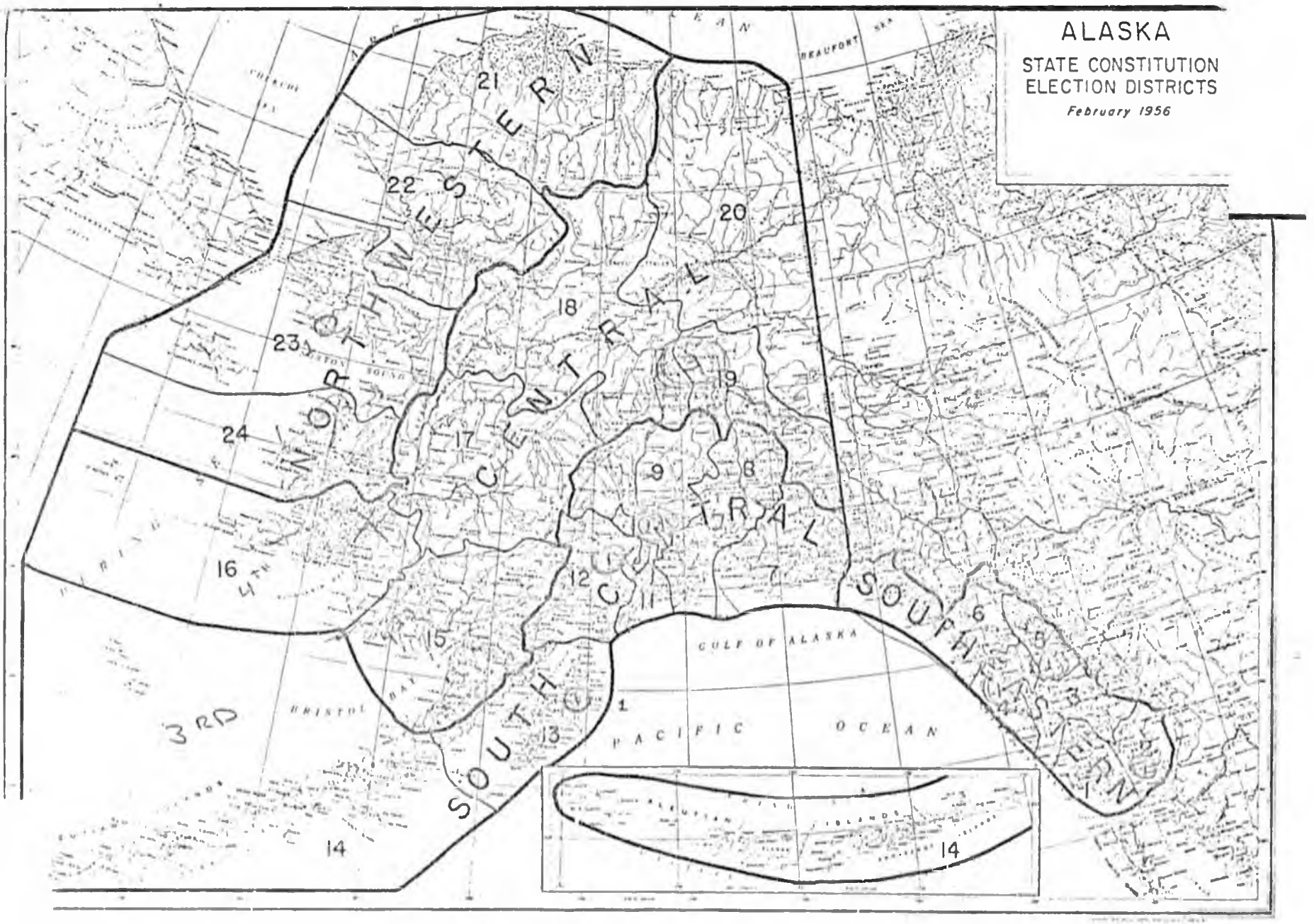
The enrollment has formalized family relationships, which means inheritance estates, birth, death, and adoption will become court-related activity of the district. No more will a son, father or grandson be able to assume property ownership of a deceased relative or friend. This will all become legal activity within the decedent's estate. For judicial purposes in managing economic and social affairs, establishing a Fifth Judicial District will enable the 50 villages in the Bethel area to better serve and respond to the needs and purposes of its inhabitants.

The district also needs the development of just and enforceable municipal ordinances which are compatible and understood throughout the region, which will continue to promote unification, on the road to self-determination. Functioning on an established judicial district, a comprehensive

program can be developed for criminal and civil justice. Law enforcement for the region and villages in developing procedures and facilities to qualify and secure funds from the U.S. Department of Justice, is imperative to the development of the region. Detoxification centers, community based counsiling, and probation services, medical evacuation facilities, a search and rescue group, are only a few related activities of a new judicial district. Organizing a regional police force is imperative to replace the scattered, isolated, and presently non-existant police force. This can become a reality in planning for law enforcement activity. Presently, law enforcement in many villages, is on a voluntary basis. Consideration can be made to re-define the role of the Alaskan State Troopers within the region to begin development of district enforcement capability. Federal and State funds can be sought to train Native people to become more capable agents and administrators of law enforcement and related services. A future borough status should be considered for development of regional land-use plans to establish zoning strategies in determining and representing land related issues.

The Fifth Judicial District would help create area-wide power, instrumental in receiving a better break in the Federal Revenue Sharing Program. The Yukon Kuskokwim areas absolutely need to become the State of Alaska's Fifth Judicial District.

AB-411


ALASKA
STATE CONSTITUTION
ELECTION DISTRICTS
February 1956
BEAUFORT SEA
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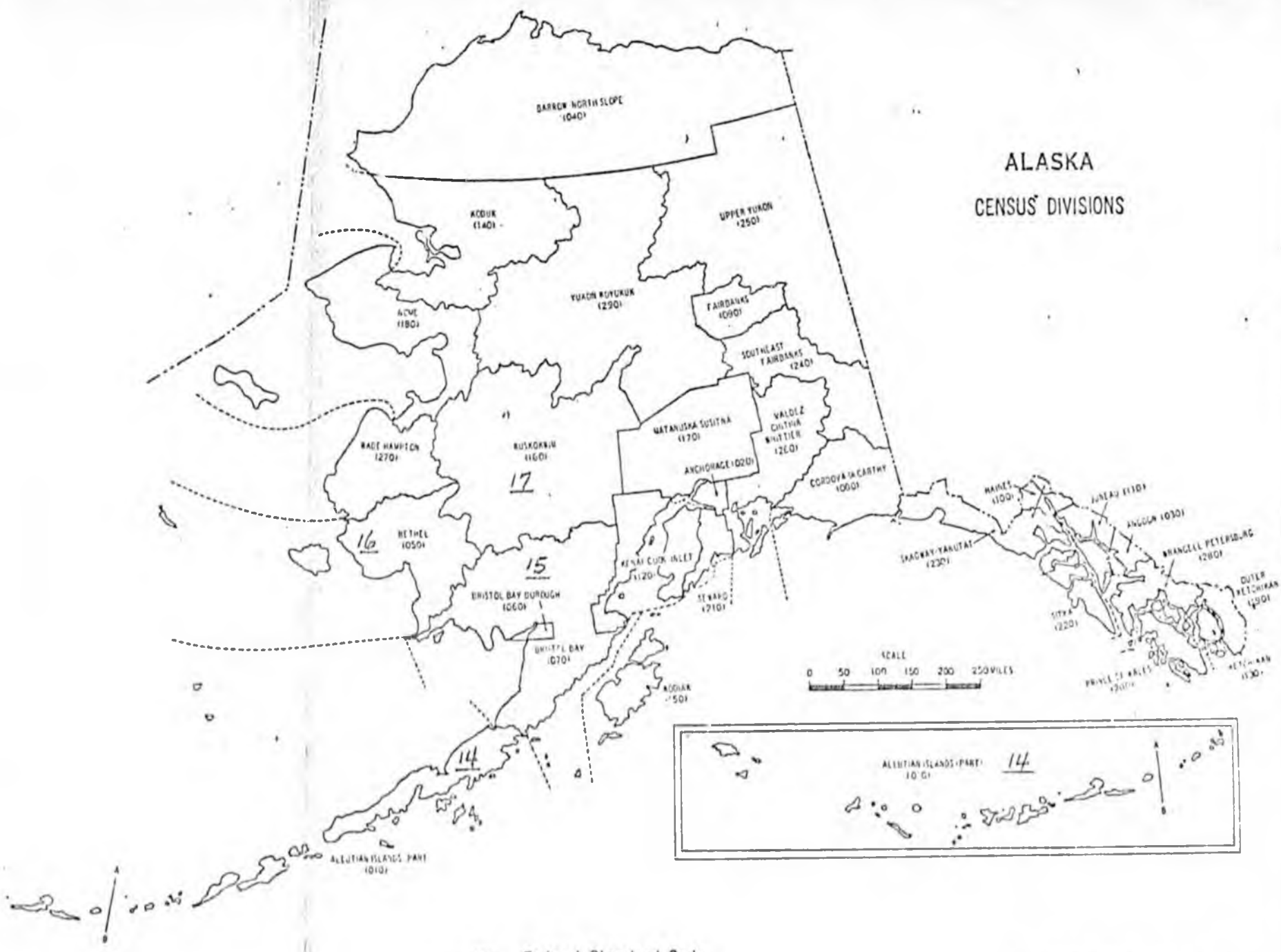
NORTHERN
SOUTHWESTERN
NORTH CENTRAL
CENTRAL
SOUTHEAST
SOUTH
3RD
GULF OF ALASKA
PACIFIC OCEAN
BRISTOL BAY

HB 411

ESTIMATES OF TOTAL RESIDENT POPULATION OF ALASKA BY CENSUS DIVISION AS OF JULY 1, 1973 AND COMPONENTS OF POPULATION CHANGE SINCE APRIL 1, 1970

Census Division	April, 1970 (Census)	July 1 1973	NET CHANGE 1970 to 1973 Number	Percent	COMPONENTS OF CHANGE Births	Deaths	Net Natural Increase	Net Total Migration
Aleutian Islands	8,057	6,914	-1,143	-14.2	408	63	345	-1,488
Anchorage	126,333	149,440	23,107	18.3	10,288	1,561	8,727	14,380
Angoon	503	402	-101	-20.0	28	18	10	-111
Barrow	2,663	2,583	-80	-3.0	215	54	161	-241
Bethel	7,767	7,906	139	1.8	717	137	580	-441
Bristol Bay Borough	1,147	1,199	52	4.5	42	18	24	28
Bristol Bay	3,485	3,659	174	5.0	252	77	175	-1
Cordova-McCarthy	1,857	1,982	125	6.7	108	71	37	88
Fairbanks	45,864	45,571	-293	-0.6	4,017	557	3,460	-3,753
Haines	1,504	1,902	398	26.5	98	50	48	350
Juneau	13,556	16,593	3,037	22.4	815	279	536	2,501
Kenai-Cook Inlet	14,250	13,808	-442	-3.1	904	182	722	-1,164
Ketchikan	10,041	10,587	546	5.4	730	261	469	77
Kobuk	4,434	4,352	-82	-1.8	372	92	280	-362
Kodiak	9,409	8,868	-541	-5.7	806	153	653	-1,194
Kuskokwim	2,306	2,484	178	7.7	126	50	76	102
Matanuska-Susitna	6,509	8,586	2,077	31.9	422	135	287	1,790
Nome	5,749	5,682	-67	-1.2	463	161	302	-369
Outer Ketchikan	1,676	1,641	-35	-2.1	119	48	71	-106
Prince of Wales	2,106	1,992	-114	-5.4	98	43	55	-169
Seward	2,336	2,446	110	4.7	147	75	72	38
Sitka	6,109	6,010	-99	-1.6	360	119	241	-340
Skagway-Yakutat	2,157	2,205	48	2.2	143	53	90	-42
Southeast Fairbanks	4,179	4,285	106	2.5	367	49	318	-212
Upper Yukon	1,684	1,655	-29	-1.7	91	38	53	-82
Valdez-Chitina-Whittier	3,098	3,568	470	15.2	204	49	155	315
Wade Hampton	3,917	3,878	-39	-1.0	349	62	287	-326
Wrangell-Petersburg	4,913	5,085	172	3.5	370	164	206	-34
Yukon-Koyukuk	4,752	5,082	330	6.9	275	91	184	146
TOTAL	302,361	330,365	28,004	9.3	23,334	4,710	18,624	9,380

HB 411



(1090) Federal Standard Code

FAIRBANKS 1973 Census Division

U.S. DEPARTMENT OF COMMERCE
SOCIAL AND ECONOMIC STATISTICS ADMINISTRATION
BUREAU OF THE CENSUS

Eddie Hoffman, Sr.
Bethel, Alaska 99621

February 6, 1974

President
A. VC.P., INC.
Kuskokwim - Yukon

HB-411

Akiachak
Akiak
Alakanuk
Andreafsky
Aniak
Atmauluak
Bethel
Chefornak
Chevak
Crooked Creek
Eek
Emmonak
Georgetown (K)
Goodnews Bay
Hamilton
Holitna
Hooper Bay
Kasiglook
Kipnuk
Kongiganak
Kotlik
Kwethluk
Kwigillingok
Lime Village
Lower Kalskag
Fortuna Ledge
(Marshall)
Mekoryuk
Mountain Village
Napakiak
Napaimute
Napaiskiak
Newtok
Nightmute
Nunapitchuk
Ohogamiut
Oscarville
Pilot Station
Pitkas Point
Platinum
Russion Mission (K)
Russian Mission (Y)
Red Devil
Scammon Bay
Sheldon's Point
Sleetmute
St. Mary's
Stony River
Toksook Bay
Tuluksak
Tultutuliak
Tununak
Upper Kalskag

Representative Tom Fink
Speaker
State House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Representative Fink:

I have been informed that House Bill 411, a bill relating to the establishing of the fifth district of the Superior Court is going to be under discussion on February 15, 1974, there in Juneau.

The need for a fifth judicial district is increasing faster and faster witn all the rising crimes in the State due to population increases, unemployment, alcohol and drugs, and it is not going to be confined only to the above - the need is going to be in the further implementation of the Alaska Native Claims Settlement Act where real estate transactions are going to become more common. I cannot over emphasize the most urgent nature of this need. The concept of the "great grandfather in Washington, D.C. or Juneau, or Anchorage, or Fairbanks" has failed us much too much already in an era when we are accepting and adopting the white man's concept of government without truly understanding it.

I respectfully call upon your participation to influence to make House Bill 411 a reality this session. HB 411 will bring the white man's concept of government closer to our home for our better understanding and participation.

I thank you in advance for your help.

Sincerely,

Edward Hoffman Sr

Eddie Hoffman, Sr.

HB-427

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

April 12, 1973

Representative Keith Specking
Hope
Alaska 99605

Dear Keith:

In preparing the session laws for publication in the Alaska Statutes, I find that your guide-licensing Act, ch. 17, SLA 1973 (copy enclosed), raises some questions which should be taken care of by legislative action next session.

(1) Joel tells me that it was the intent in the final versions of the bill (HB 1) to have the occupational licensing division of the Department of Commerce handle administrative matters for the Guide Licensing and Control Board, under AS 08.01 (the chapter on centralized licensing). However, the bill (and now, Act) makes no provision for this, and in the absence of this board from the list in AS 08.01.010 the Department of Commerce has no authority and no obligation with regard to this board. If that was in fact the intent, the following amendment should be offered:

> "AS 08.01.010 is amended by adding a new paragraph to read:
>
> (20) ~~(20)~~ Guide Licensing and Control Board."

(2) In AS 08.54.210(b) ("Unlawful Acts"), in this Act, there are three inaccurate citations of "sec. 200(e) of this chapter". As you know, your bill this session (HB 1) was based on last legislature's FCCS SCS CSHB 185. The language containing the erroneous citations was added as a Senate floor amendment to SCS CSHB 185 (see 1972 Senate Journal, pages 741 -- 742, 4/24/72), in which version of the bill sec. 200(e) was a provision quite different from the final version. The free conference committee on that 185 changed sec. 200(e) but did not the citations in sec. 210(b). That error was then perpetuated in your bill this year. (I don't think those citations were altogether accurate at the time that amendment

was adopted either, but when the FCC made its change in sec. 200(e) the citations became completely inaccurate. [In SCS CSHB 185, that subsec. (e) read: "No person who is disciplined under this section may engage in outfitting or guiding activity during the period of disciplinary action."])

Therefore I am requesting the publisher to put the following note under AS 08.43.210:

"Revisor's note (1973). AS 08.54 was enacted by ch. 17 SLA 1973, which was derived from the Eighth Alaska State Legislature's CSHB 1 am S which in turn was based on a portion of the Seventh Legislature's FCCS SCS CSHB 185. AS 08.54.210(b)'s inaccurate references to sec. 200(e) can be traced back to a 1972 Senate amendment to the Seventh Legislature's SCS CSHB 185, in which bill sec. 200(e) was a different provision. In FCCS SCS CSHB 185, sec. 200(e) was changed but these references to it were not."

AS 08.54.210(b) should be amended next year and then this revisor's note deleted. Taking something of a wild guess, I believe the following amendment would be appropriate (but be sure to let Joel or me know if you would prefer some other amendment):

"AS 08.54.210(b) is amended to read:

(b) A person who violates this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or by both, and may have his license revoked for a period up to five years. However, a person who engages in [OUTFITTING OR] guiding activity during the period his license is suspended or revoked under [OF DISCIPLINARY ACTION UNDER SEC. 200(e) OF] this chapter is guilty of a felony punishable, upon conviction, by a fine of not more than $5,000 or [AND] by imprisonment for not less than one year nor more than three years, or by both fine and imprisonment. In addition to punishment for a felony [UNDER SEC. 200(e) OF THIS CHAPTER], all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding activity engaged in during the period of suspension or revocation [A VIOLATION OF SEC. 200(e) OF THIS CHAPTER] shall be confiscated by persons authorized to enforce this chapter."

I am not sure exactly what that Senate amendment (adding the second sentence of what is now AS 08.54.210(b)) intended. Since the first sentence of sec. 210(b) makes violation of "this section" a misdemeanor, and sec. 210(a)(3) lists guiding without a guide

license as an unlawful act, it would appear that the only conduct to be regarded as felonious under this chapter (AS 08.54) is guiding during the period of suspension or revocation, and the amendment proposed here makes that interpretation clear. (Perhaps it would be suggested that the reference to "period of disciplinary action" in the present language of the second sentence of sec. 210(b) was intended to include sec. 200(b)'s denial of renewal. But what would the period of "denial of renewal" be? If the intent is to treat as a felony guiding without a license any time after renewal of the license was denied, then language to that effect should be inserted. But if such language were interpreted as applying a long time after the date of denial you might run in to constitutional problems of equal protection, due process, and cruel and unusual punishment; and setting a time period for such cases might be impractical.)

also see § 200(d)

Note that the amendment proposed here also deletes the now inappropriate reference to outfitting, and puts the basic felony penalty statement in Alaska's standard form. It also makes clear that guiding during a period of revocation is felonious whether the license is revoked by the board, under sec. 200(b) or (c), or by the court, under the first sentence of sec. 210(b).

(3) AS 08.54.220 (Injunction Against Unlawful Action), in this Act, contains a questionable reference to "secs. 100 -- 200 of this chapter" and a clearly inaccurate reference to "sec. 210 of this chapter". With regard to the latter, I plan to change (under AS 01.05.031(b)(8)) the reference to read "sec. 50 of this chapter" and request the publisher to put the following note under AS 08.54.220:

> "Revisor's note (1973). In ch. 17 SLA 1973, AS 08.54.-220 referred to 'regulations promulgated under sec. 210'. Since sec. 210 does not provide for promulgating regulations, and sec. 50 does, the citation has been corrected here. (This correction makes this provision comparable in this respect to the former AS 16.50.225, upon which it is based.)"

However, I cannot handle the other citation similarly; there is no clear error to point to. But the following should be considered by those persons interested in the operation of this Act and in determining exactly what action may be enjoined under AS 08.54.220: (a) By citing secs. 100 -- 200,

the section listing conduct which is grounds for discipline (sec. 200) is included but the section listing unlawful acts (sec. 210) is not. In the old AS 16.50, upon which this new AS 08.54 is more-or-less based, just the opposite obtains -- the section on unlawful acts is included and the one on grounds for discipline is not. (See the former AS 16.50.225.) (b) By citing sec. 100 -- 200, we are not merely citing a complete article (in conformity with Alaska drafting style), because that article continues on through sec. 220, but we are including the sections (170 -- 190) which merely set out fees and specify renewal periods.

The present citation of secs. 100 -- 200 may accurately reflect the intent, but I wonder if the matter has been considered.

If you have any question on this, don't hesitate to write. If you would like to pre-file a bill making these corrections or other changes, let us know.

Yours truly,

Art

Arthur H. Peterson
Revisor of Statutes

AHP:lmk
cc: Joel F. Bennett
Legislative Counsel

HB-427

Mr. Clem Sillion
Chairman, House Judiciary Committee

Dear Sir:

The original bill submitted contained provisions that would have changed the agency charged with administering the Guide board from Commerce to Fish & Game. These provisions have been removed.

The additional language in the bill provides ~~to~~ that language currently in the Revisors footnotes (1973) title 08:54:210 and 08:54.220 be placed in the statutory language. This was requested by Mr. Art Peterson (letter attached) and that the

Y obt Svt

Keith Sparling

HB-427

Superior Court

State of Alaska

January 29, 1974

BOX 3691
KENAI, ALASKA
99611

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

CHAMBERS OF
JAMES A. HANSON, JUDGE

Colonel James J. Goodfellow
Director
Division of Fish and Wildlife
Protection
Department of Public Safety
Box 6188 Annex
Anchorage, Alaska 99501

Dear Col. Goodfellow:

I have noted with growing interest the recent pronouncements made by members of your department to the press. Apparently your subordinates have decided to adopt the currently popular practice of blaming all of the problems encountered by the agency on someone else. To an extent I've never before experienced, the courts are the "someone else". By way of example, please refer to the attached article appearing in the January 24, 1974, issue of the Anchorage Daily Times. I will attempt minimal discussion of some of the items appearing therein, but do ask that you look into each case and determine for yourself the falsity of the impression conveyed even when there is some basis in fact for what is written.

In the King case, it is my understanding that a fine of only $1,000.00 was imposed, but that the conditions of probation take him totally out of the bear guiding business for two years. I haven't seen the file--I hope you will, but I'm reasonably certain that eight days court time were not required. Eight appearances maybe--the difference is significant. I probably would not agree with the result of this case if I knew all of the facts. But I am reasonably certain that the fact situation varies considerably from that conveyed in the article. I am also reasonably certain that the article pretty much sets out the facts as given by your sergeant.

Let's go to a case I do know about (circled in red), the Seldovia crab case. (First note how it is related back to the paragraph preceding the circled portion, but let's blame that on the reporter.) The facts are mostly true, the result of the story is a skillful lie, the art of which I am beginning to believe is taught in Sitka. The fine was exactly that asked by the State. Mr. Wardell stated, and I believe him, that the recommendation had been discussed with you personally. The case against the captain was dismissed on the motion of the State. I had no information regarding a prior record, nor in the face of a dismissal motion by the prosecution would it have made a difference. Clearly your people intended to convey, and did convey, the impression that after a hard-fought battle the Court turned a repeat offender loose on society.

Next we go to the statement that the illegal crab was sold for $29,000. No information that any of the catch was legal was presented. I haven't reviewed the record, but my recollection was that about ten percent of the crabs may have been undersized. My arithmatic tells me that that would be $2,900 worth of illegal crab--not $29,000. Most of the facts are accurate. The story, however, is not.

I know nothing about the rest of the story, but suspect it is as deliberately deceiving as is the portion just discussed.

Colonel, I really don't know you too well, but regard you as totally honest--which I am beginning to believe makes you an exception in the Department of Public Safety. You can control the accuracy of the information released by the members of your agency. I hope you will do so.

In closing, I suggest that you review the results of Fish and Game cases generally brought before Magistrate Nicholas in Kenai, or the few cases I have been allowed to handle. I believe in strong enforcement. Then ask Investigator Fleek how his 1970 Anchorage example can be said to sum up the general attitude of the court system towards Fish and Game cases.

Very truly yours,

JAMES A. HANSON, Judge

bcc: Thomas M. Wardell
Sen. W. I. Palmer
Rep. Clem Tillion
Rep. Hugh Malone
Rep. Keith Specking
Judge Jess Nicholas

Courts Lenient On Game Laws

By GORDON FOWLER
Times Sports Writer

Laws are no better than the enforcement they receive.

There are two basic levels of enforcement: the investigators who prepare the cases in the field and subsequently make the arrests; and the courts where the cases are tried and penalties levied upon convictions.

Both levels depend upon one another and neither can properly function without competence in the application of their responsibilities.

Occasionally cases reach the courts improperly prepared or presented and defendants escape punishment through mere technicalities rather than their innocence. However on the other hand, many times investigators and the district attorney's office present "air-tight" cases which result in guilty or "nolo contendre" (no contest) pleas and the court issues punishment which resembles little more than a slap on the hands.

In either case, the ability to provide society with a deterrent to prevent reoccurence of the specific violation escapes. Unless there are scientific investigators to prepare the cases and support of the courts in handing out punishment which provides a deterrent instead of making crime profitable, laws will remain just laws and nothing more.

An Analysis

The Department of Public Safety's fish and wildlife division is charged with the responsibility of enforcing regulations pertaining to Alaska's wildlife resources. Armed with a small staff and equipment limitations, its job has come increasingly difficult as the demand upon the resources has grown along with the state's population.

With the advent of the trans-Alaska pipeline, the pressure upon the resources will be even greater and violation of laws is also expected to rise.

"In order to stop the illegal actions of a few dishonest guides and other individuals who are destroying our resources for the sake of the dollar we need some stiff jail sentences and confiscation of their equipment when we get a good case as good cases are hard to come by," states Sgt. Steve Reynolds, commander of the protection division's Anchorage detachment.

"We have to take the profit out of crime by having penalties that will honestly serve as a deterrent," he adds.

Reynolds, as well as other officers in the fish and wildlife division, and much of the general public became aroused last week when Superior Court Judge Edmond Burke accepted a "nolo contendre" (no contest) plea from Edward King, a Naknek hunting guide, and fined him $1,000.

King also was given a suspended 90-day jail sentence and prohibited from guiding for bears for two-years. However property confiscated from him including his airplane was ordered returned. The sentence did not prohibit other guides working for King from guiding for bear during the period, nor did it halt King from guiding for other animals such as moose, caribou and wolf.

"We had an air tight case, our men and the district attorney's office did a good job and the court has dropped the ball on us again," says Reynolds. "A $1,000 fine is simply no deterrent to a guide who can earn as much as $50,000 during the hunting season. A bear hunt usually will earn a guide $2,000 to $3,000 from each hunter."

According to Reynolds, King got off light and it was the taxpayers who paid the penalty — at a very minimum, $8,600 worth.

Reynolds, along with special investigators Wayne Fleek and Jim Nutgrass, who were responsible for most of the investigation leading to the arrest of King, gave this reporter the following breakdown on the cost of the King case to the taxpayer.

A total of 68 man days or 544 man hours were spent on the case. In dollars and cents this represented $4,352. To this add $1,480 for aircraft usage based on a minimal $40 per hour figure.

Tickets for flying suspects and officers back to Anchorage cost $320, and $1,124 was paid for witness man hours, $560 per diem to witnesses and $590 in airplane travel cost for witnesses. There was a minimum of $240 required for hours spent by the district attorney's office.

Numerous other expenditures were involved in work done by the Seattle Police Department laboratory, film processing, secretarial costs, booking costs at the state jail, and the eight days in the courtroom tieing up a Superior Court judge and a recorder.

Everything figured, the case easily cost over $9,000 from start to finish. At this price tag, society netted a $1,000 fine from King, despite his handsome profit over the many seasons he has been guiding in Alaska.

The King case isn't the first of its kind in which the courts have been lenient for varying

(Continued On Page 32)

(Continued From Page 29)

reasons on disposition of fish and game cases. The record books at the Department of Public Safety are full of them.

No two court cases are exactly alike, and certainly there are extenuating circumstances which are taken into consideration many times when a judge renders penalties following a guilty verdict or "nolo contendre" pleas.

Justice however is certainly questioned when a man goes to jail for stealing a loaf of bread and receives a small fine and probation for violation of game laws which not only is stealing from society but often nets the violator thousands of dollars in profit.

Such was the case in the fall of 1973 when four men (a captain of a commercial fishing vessel and his three crewmen) were arrested in the Seldovia area for possession of undersized crab. The three crewmen were fined $5,000 each with half suspended, so between them they paid a $7,500 fine. The captain of the ship, Silas Naig pleaded innocent, stating he didn't know the crab were aboard his boat. The case against him was dismissed. He had a prior violation on his record.

The strangest part of the disposition of the case was that the state, after confiscating the illegal crab, sold it to the cannery for over $29,000, then after withholding the amount of the fine to the crewmen, the state returned the remainder to the fishermen, netting them a profit of $22,000 for the illegal actions.

The maximum fine they could have received was one year in jail, seizure of their vessel and gear as well as the crab and a $5,000 fine each. In addition, their fishing licenses could have been revoked. Instead, the venture proved grossly profitable.

In Fairbanks in 1971, guide Joe Want was arrested for taking moose illegally. It is a matter of record that he tried to plead guilty. However, the judge advised him a guilty plea would result in him losing his guides license since he had a prior conviction. Want changed his plea to not guilty and he was found not guilty by the court.

The late John Ehmann, a guide from Palmer, and a partner were arrested in 1973 for shooting two wolverines from an aircraft. They entered "nolo contendre" pleas and were fined $100. In addition, the court gave them one hide back, although laws stipulate that fish and game taken in violation of the law will be confiscated if the defendants are found guilty.

In 1971, Stu Ramstad was fined $6,000 in a case involving eight counts of illegally taking brown bear and transportation of the hides to Juneau. Although his airplane was filed on the court allowed him to keep it.

As in the King case, although his guide license was revoked, his lodge remains open and people working under him can still guide. Ramstad, like King and others hold air taxi licenses, so can still fly and guide for other species.

The many complications of the court system are evident in cases such as the one that involves guide Ray Loesch. Loesche had his guide's license revoked by the Alaska Board 1972, for a May 1971 incident which involved a client and an assistant guide working for Loesche.

The pair was convicted of a total of nine violations between them basically for taking brown bear the same day as airborne. However, Loesche appealed to the court after losing his license stating he felt the board had no right to take it.

He was given his license back by the court pending the outcome of his appeal. However two years later he continues to guide and the appeal still hasn't been heard.

In the meantime he was arrested last October on a similar charge involving taking brown bear the same day as airborne in Katmai National Park. This case also is pending.

He has two previous convictions for game violations in 1968 and is still guiding, pending court disposition on his cases. In general, Wayne Fleek, special investigator for the Department of Public Safety's protection division, states there is very poor court reaction towards commercial fishing violations rather than offenses involving guides.

"Fishermen make a bundle on their illegal catches and seldom is the penalty more than a mere hand slap. They are allowed to keep their illegal catches and actually profit by their violations," says Fleek.

However, a case in Anchorage during 1970 seems to sum up the general attitude of the court system towards fish and game cases.

An out-of-stater was arrested for making a false statement in trying to get a resident license. The defendant pleaded guilty and the judge fined him one cent, with one cent suspended!

"Our cases often don't seem to warrant a red cent's worth of consideration," says Fleek.

HB 499

April 9, 1974

William T. Waugaman
Usibelli Coal Mine Inc.
270 Illinois Street
Fairbanks, Alaska 99701

Dear Bill,

Keith Specking has turned over your letter on HB 499. The time is getting awfully short to face up to this division but will see what I can do. I really have no objection to the division as long as all fish are left under the control of one board, and all game left under the control of another. I've always had a fear of the sports biologist up stream disagreeing with the commercial biologist down in the salt water--to the loss of the resource. Seems we've accomplished this without a division; so the fear of same seems to be groundless.

I'll have Keith down to work on the bill.

Sincerely,

Clem Tillion

Dear Ruth:
I sent this testimony to Joe
Card sure it is your file but
you should have a copy.
Bill

My name is William Waugaman. I have been a resident of Alaska for the past thirty-four years and a big game guide since 1947. I have guided in practically every guide district of Alaska and have hunted on guided hunts in many foreign countries.

I am in favor of House Bill 499 for many reasons of which I will mention several of the most important:

1. I have attended several of the Fish & Game board meetings throughout the years and have observed: that the board has much too much work than any non-paid board should be expected to accomplish. In other words the work load of the board should be considerably lessened.
2. The present board consists of eleven commercial fish members and one game member.
3. I don't think commercial fish people should be making the game regulations nor do I think that game people should be making Fish regulations.
4. We have had very serious game problems in the interior for the past five years and todate the board nor the Fish & Game Dept. has done anything to change the trend. The problem being: serious reductions in game population, no control of predators, great increases in hunting pressure.

I think the hunters and guides of this state should be given the opportunity to guide the destiny of their resource and I hope you legislators see fit to give them a voice instead of a whisper.

William I. Waugaman

Judiciary Committee Report

on

HOUSE BILL NO. 801

In considering the practical effect of House Bill No. 801, the committee investigated the current law on the collection of gambling debts. A case in point is the landmark decision in McGinley & Cleary, written August 8, 1904, by Judge Wickersham.

Due to the clarity and force of logic expressed in this ruling, it is cited here for your review:

(INSERT DECISION HERE)

Thus, the current law states "Equity will not become a gambler's insurance company..."

House Bill No. 801 would also prevent others from acting in this capacity.

Clem Tillion, Chairman
House Judiciary Committee

McGINLEY v. CLEARY.

(Third Division. Fairbanks. August 8, 1904.)

No. 125.

1. CANCELLATION OF INSTRUMENTS—FRAUD—GAMING CONSIDERATION—INTOXICATION.

Equity will grant relief where the transfer of a valuable property has been fraudulently extorted, for a grossly inadequate consideration, from a person in such a state of intoxication as not to be in his right mind or capable of transacting any business or entering into any contract.

[Ed. Note.—For cases in point, see vol. 8, Cent. Dig. Cancellation of Instruments, §§ 1, 6; vol. 10, Cent. Dig. Contracts, §§ 412, 414.]

2. GAMING—EQUITY—FRAUD.

Plaintiff was the proprietor of a saloon. He gambled with defendant therein with dice, and lost $1,800. To pay his loss he conveyed the premises in dispute. Upon a suit in equity to recover, *held*, that equity will not assist a gambler to recover losses at his own game.

[Ed. Note.—For cases in point, see vol. 24, Cent. Dig. Gaming, §§ 26, 84.]

On the 29th of last November the plaintiff was, and for some time previous thereto had been, one of the proprietors of that

certain two-story log cabin described in the pleadings as the "Fairbanks Hotel," situate upon lot 1, Front street, in the town of Fairbanks, Alaska. The opening scene discovers him drunk, but engaged on his regular night shift as barkeeper in dispensing whisky by leave of this court on a territorial license to those of his customers who had not been able, through undesire or the benumbing influence of the liquor, to retire to their cabins. The defendant was his present customer. After a social evening session, the evidence is that at about 3 o'clock in the morning of the 30th they were mutually enjoying the hardships of Alaska by pouring into their respective interiors unnumbered four-bit drinks, recklessly expending undug pokes, and blowing in the next spring cleanup. While thus employed, between sticking tabs on the nail and catching their breath for the next glass, they began to tempt the fickle goddess of fortune by shaking plaintiff's dicebox. The defendant testifies that he had a $5 bill, that he laid it on the bar, and that it constituted the visible means of support to the game and transfer of property which followed. That defendant had a $5 bill so late in the evening may excite remark among his acquaintances.

Whether plaintiff and defendant then formed a mental design to gamble around the storm center of this bill is one of the matters in dispute in this case about which they do not agree. The proprietor is plaintively positive on his part that at that moment his brains were so benumbed by the fumes or the force of his own whisky that he was actually non compos mentis; that his mental faculties were so far paralyzed thereby that they utterly failed to register or record impressions. His customer, on the other hand, stoutly swears that the vigor and strength of his constitution enabled him to retain his memory, and he informed the court from the witness stand that while both were gazing at the bill, the proprietor produced his near-by dicebox, and they began to shake

for its temporary ownership. Neither the memory which failed nor that which labored in spite of its load enabled either the proprietor or the customer to recall that any other money or its equivalent came upon the board. The usual custom of $500 millionaires grown from wild cat bonanzas was followed, and as aces and sixes alternated or blurringly trooped athwart their vision, the silent upthrust of the index finger served to mark the balance of trade.

They were not alone. Tupper Thompson slept bibulously behind the oil tank stove. Whether his mental receiver was likewise so hardened by inebriation as to be incapable of catching impressions will never be certainly known to the court. He testified to a lingering remembrance of drinks which he enjoyed at this time upon the invitation of some one, and is authority for the statement that when he came to the proprietor was so drunk that he hung limply and vine-like to the bar, though he played dice with the defendant, and later signed a bill of sale of the premises in dispute, which Tupper witnessed. Tupper also testified that the defendant was drunk, but according to his standard of intoxication he was not so entirely paralyzed as the proprietor, since he could stand without holding to the bar. Not to be outdone either in memory or expert testimony, the defendant admitted that Tupper was present, that his resting place was behind the oil tank stove, where, defendant testifies, he remained on the puncheon floor in slumberous repose during the gaming festivities with the dicebox, and until called to drink and sign a bill of sale, both of which he did according to his own testimony. One O'Neil also saw the parties plaintiff and defendant about this hour in the saloon, with defendant's arm around plaintiff's neck in maudlin embrace.

After the dice-shaking had ceased, and the finger-tip bookkeeping had been reduced to round numbers, the defendant testifies that the plaintiff was found to be indebted to him in

the sum of $1,800. Whether these dice, which belonged to the bar and seem to have been in frequent use by the proprietor, were in the habit of playing such pranks on the house may well be doubted; nor is it shown that they, too, were loaded. It is just possible that mistakes may have occurred pending lapses of memory by which, in the absence of a lookout, the usual numbers thrown for the house were counted for the defendant, and this without any fault of the dice. However this may be, the defendant swears that he won the score, and passed up the tabs for payment.

According to the defendant's testimony, the proprietor was also playing a confidence game, whereupon, in the absence of money, the defendant suggested that he make him a bill of sale of the premises. Two were written out by defendant. The second was signed by plaintiff and witnessed by Tupper, and for a short time the defendant became a tenant in common with an unnamed person and an equitable owner of an interest in the saloon. The plaintiff testifies that during all this time, and until the final act of signing the deed in controversy, he was drunk, and suffering from a total loss of memory and intelligence. The evidence in support of intelligence is vague and unsatisfactory, and the court is unable to base any satisfactory conclusion upon it.

Above the mists of inebriety which befogged the mental landscape of the principals in this case at that time rise a few jagged peaks of fact which must guide the court notwithstanding their temporary intellectual eclipse. After the dice-throwing had ceased, the score calculated, and the bills of sale written, and the last one conveying a half interest in the premises signed by the plaintiff, he accompanied the defendant to the cabin of Commissioner Cowles, about a block away, on the banks of the frozen Chena, and requested that official to affix his official acknowledgment to the document. Owing to their hilarious condition and the early hour at which they so rudely

broke the judicial slumbers, the commissioner refused to do business with them, and thrust them from his chamber. He does not testify as to the status of their respective memories at that time, but he does say that their bodies were excessively drunk; that of the defendant being, according to the judicial eye, the most wobbly. He testifies that the plaintiff was able to and did assist the defendant away from his office without any official acknowledgment being made to the bill of sale. The evidence then discloses that, in the light of the early morning, both principals retired to their bunks to rest; witness Sullivan going so far as to swear that the plaintiff's boots were removed before he got in bed.

The question of consideration is deemed to be an important one in this case. Defendant asserts that it consisted of the $1,800 won at the proprietor's own game of dice, but Tupper Thompson relapses into sobriety long enough to declare that the real consideration promised on the part of the defendant was to give a half interest in his Cleary creek placer mines for the half interest in the saloon; that defendant said the plaintiff could go out and run the mines while he remained in the saloon and sold hootch to the sour-doughs, or words to that effect. Tupper's evidence lacks some of the earmarks; it is quite evident that he had a rock in his sluice box. The plaintiff, on the other hand, would not deny the gambling consideration; he forgot; it is much safer to forget, and it stands a better cross-examination.

The evidence discloses that about 3 or 4 o'clock p. m. on the evening of the 30th the defendant went to the apartment of the proprietor, and renewed his demand for payment or a transfer of the property in consideration of the gambling debt. After a meal and a shave they again appeared, about 5 o'clock, before the commissioner; this time at his public office in the justice's court. Here there was much halting and whispering. The bill of sale written by Cleary was presented to the pro-

prietor, who refused to acknowledge it before the commissioner. The commissioner was then requested by Cleary to draw another document to carry out the purpose of their visit there. The reason given for refusing to acknowledge the document then before the commissioner was that it conveyed a half interest, whereas the plaintiff refused then to convey more than a quarter interest. The commissioner wrote the document now contained in the record, the plaintiff signed it; it was witnessed, acknowledged, filed for record, and recorded in the book of deeds, according to law.

The deed signed by McGinley purports to convey "an undivided one-fourth (¼) interest in the Fairbanks Hotel, situate on lot No. one (1) Front street, in the town of Fairbanks." The consideration mentioned is one dollar, but, in accordance with the finger-tip custom, it was not paid; the real consideration was the $1,800 so miraculously won by the defendant the previous night by shaking the box. Plaintiff soon after brought this suit to set aside the conveyance upon the ground of fraud (1) because he was so drunk at the time he signed the deed as to be unable to comprehend the nature of the contract, and (2) for want of consideration.

It is currently believed that the Lord cares for and protects idiots and drunken men. A court of equity is supposed to have equal and concurrent jurisdiction, and this case seems to be brought under both branches. Before touching upon the law of the case, however, it is proper to decide the questions of fact upon which these principles must rest, and they will be considered in the order in which counsel for plaintiff has presented them.

Was McGinley so drunk when he signed the deed in controversy that he was not in his right mind, or capable of transacting any business, or entering into any contract? He was engaged, under the ægis of the law and the seal of this court, in selling whisky to the miners of the Tanana for four bits

a drink, and more regularly in taking his own medicine and playing dice with customers for a consideration. Who shall guide the court in determining how drunk he was at 3 o'clock in the morning, when the transaction opened? Tupper or the defendant? How much credence must the court give to the testimony of one drunken man who testifies that another was also drunk? Is the court bound by the admission of the plaintiff that he was so paralized by his own whisky that he cannot remember the events of nearly 24 hours in which he seems to have generally followed his usual calling? Upon what fact in this evidence can the court plant the scales of justice that they may not stagger?

Probably the most satisfactory determination of the matter may be made by coming at once to that point of time where the deed in question was prepared, signed, and acknowledged. Did the plaintiff exhibit intelligence at that time? He refused to acknowledge a deed which conveyed a half interest, and caused his creditor to procure one to be made by the officer which conveyed only a quarter interest; he protected his property to that extent. Upon a presentation of the deed prepared by the officer, he refused to sign it until the words "and other valuable consideration" were striken out; thus leaving the deed to rest on a stated consideration of "one dollar." Upon procuring the paper to read as he desired, he signed it in a public office, before several persons, and acknowledged it to be his act and deed.

Defendant says that the deed was given to pay a gambling debt lost by the plaintiff at his own game, and his counsel argues that for this reason equity will not examine into the consideration and grant relief, but will leave both parties to the rules of their game, and not intermingle these with the rules of law. He argues that they stand in pari delicto, and that, being engaged in a violation of the law, equity ought not to assist the proprietor of the game to recover his bank roll.

It may be incidently mentioned here, as it has been suggested to the court, that the phrase pari delicto does not mean a "delectable pair," and its use is not intended to reflect upon or characterize plaintiff and defendant.

Bion A. Dodge, for plaintiff.
Claypool & Cowles, for defendant.

WICKERSHAM, District Judge. The plaintiff prays judgment that the transfer made to the defendant, Cleary, be vacated as fraudulent and void (1) because he was intoxicated at the time it was made, signed, and delivered, and (2) because no consideration was paid therefor. Equity will grant relief where the transfer of a valuable property has been fraudulently extorted, for a grossly inadequate consideration, from a person in such a state of intoxication as not to be in his right mind, or capable of transacting any business or entering into any contract. Thackrah v. Haas, 119 U. S. 499, 7 Sup. Ct. 311, 30 L. Ed. 486.

The evidence in this case raises the single question, will a court of equity set aside a deed made by the keeper of a saloon in payment of a gambling debt contracted by him to one of his customers when no other fraud is shown? By the common law no right of action exists to recover back money which has been paid upon a gambling debt. 8 Am. & Eng. Ency. of Law (1st Ed.) 1021. In Brown v. Thompson, 14 Bush (Ky.) 538, 29 Am. Rep. 416, the court held that the keeper of a faro bank, who sued to recover losses against one who had won by betting against the bank, was not within the spirit of the Kentucky statute, although his claim was within the letter, and accordingly refused to maintain his action. The general policy of the courts in suits to recover gambling losses is clearly stated by Judge Ross in Gridley v. Dorn, 57 Cal. 78, 40 Am. Rep. 110, where he says:

"The impropriety of the court's entertaining such actions as this is well illustrated by the circumstances of the present case, for it appears from the record to have been conceded in the court below that the right of the plaintiff to recover depended upon the question whether the wager made was a 'by bet' or a 'time bet.' To determine this question several witnesses were introduced, who gave their opinion in the matter, and we have been cited by counsel to the 'Spirit of the Times' and the 'Rules of the National Trotting Association' as authorities upon the proposition. These are, we believe, standard authorities in turf matters, but cases which depend upon them have no place in the courts. If, notwithstanding the evil tendency of betting on races, parties will engage in it, they must rely upon the honor and good faith of their adversaries, and not look to the courts for relief in the event of its breach."

There are cases where courts will assist in the recovery of money or property lost at gambling, but this is not one of them. The plaintiff was the proprietor of the saloon and the operator of the dice game in which he lost his property. He now asks a court of equity to assist him in recovering it, and this raises the question, may a gambler who runs a game and loses the bank roll come into a court of equity and recover it? He conducted the game in violation of law, conveyed his premises to pay the winner's score, and now demands that the court assist him to regain it. Equity will not become a gambler's insurance company, to stand by while the gamester secures the winnings of the drunken, unsuspecting, or weak-minded in violation of the law, ready to stretch forth its arm to recapture his losses when another as unscrupulous or more lucky than he wins his money or property. Nor will the court in this case aid the defendant.

The cause will be dismissed; each party to pay the costs incurred by him, and judgment accordingly.

HB-816

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S–JUNEAU 99801

March 29, 1974

Honorable Dick Randolph, Chairman
House Commerce Committee
Alaska State Legislature
Juneau, Alaska

Dear Mr. Randolph:

This is in response to the Committee's request for problem definition in support of the Vehicle Dismantler's legislation, HB 816.

The Department of Revenue has three major concerns relating to the wrecking of vehicles: (1) protection of the legal owner's interest prior to vehicle destruction, (2) the purging of our records, and (3) control of the Titles of destroyed vehicles to prevent their illegal use.

Associated with the first concern is the knowledge that thousands of vehicles are destroyed, or at least held, in vehicle wrecking yards without the assurance that the vehicle owner has been notified or that the owner has authorized the destruction.

Associated with the second concern is the overflowing status of our title files. We have almost two million title folios and an active vehicle population under 300,000. A substantial number of these folios represent vehicles which have been destroyed or vendered inoperable (perhaps as many as 250,000 over the years). We are paying $1.00 per square foot monthly for our title folio file. Approximately $5,000.00 annually would be saved if the file was currently purged. The purging function will get more significant as our vehicle population grows.

The third concern is related to the effective control of stolen vehicles. Title Certificates from wrecked vehicles are negotiable and are being used, particularly in the Anchorage area, in the sales of stolen vehicles. Functions authorized by this legislation concert with the Abondoned

Vehicle Act of 1973, and some basic vehicle inspection which will begin in the near future is expected to provide an effective control.

There are 34 licensed wrecking yards that are authorized to do impounding in the state (ref. Al Davis Alaska Transportation Commission). It is estimated that there is in excess of 100 other establishments that do some type of dismantling.

There are four major wrecking yards in the Greater Anchorage Area and two in Fairbanks. Personnel from the Greater Anchorage Area Borough Environmental Control section estimate that each of the large wrecking yards in Anchorage have in excess of 1,000 dismantled vehicles on their property. Fairbanks Alaska State Troopers estimates each of their wrecking firms have in excess of 500 dismantled vehicles.

In 1973, the division received less than 500 titles from all wrecking yards indicating vehicles were dismantled.

Sincerely,

P.A. Wall, Director
Administrative Services
Department of Revenue

PAW:es

cc: C.L. Pyles
R. Kimlinger

1973-1974

HOUSE RESOURCES COMMITTEE

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REPORT ON THE MEETINGS OF THE HOUSE INTERIM COMMITTEE ON FISHERIES AND THE SENATE SPECIAL COMMITTEE ON FISHERIES

(September - December 1973)

ALASKA LEGISLATIVE COUNCIL

LEGISLATIVE AFFAIRS AGENCY

REPORT ON THE MEETINGS OF

THE HOUSE INTERIM COMMITTEE ON FISHERIES

AND THE SENATE SPECIAL COMMITTEE

ON FISHERIES

(September - December 1973)

JANUARY 1974

REPRESENTATIVE
JOE McGILL
BOX 218
DILLINGHAM, ALASKA 99576

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99801

Alaska State Legislature

House of Representatives

Interim Committee
On Fisheries

Joe McGill, Chairman
Haugen
Eliason
Tillion
Gardiner
Barber
Specking

REPORT ON THE HEARINGS OF THE HOUSE INTERIM COMMITTEE ON FISHERIES AND THE SENATE SPECIAL COMMITTEE ON FISHERIES

September - December 1973

Joe McGill

Joe McGill

Chairman

I. INTRODUCTION

The Joint House-Senate Interim Committee on Fisheries has completed its series of hearings on fisheries and submits herewith a summary of the testimony it received, with attached legislative proposals. The committee traveled widely throughout the state, holding hearings in Anchorage, Nenana, Soldotna, Juneau, Sitka, Wrangell, Petersburg, Ketchikan, Cordova, Kodiak, Naknek, Dillingham and Bethel. Attendance was generally good, providing a cross section of the thinking on the major subjects concerning the particular area.

Generally, attention was directed to local problems, although comments frequently were made in most areas on the following:

1. the limited entry program
2. problems of protection and enforcement
3. rehabilitation of salmon streams
4. the U.S. contiguous fisheries zone limit and its extension
5. the International North Pacific Fisheries Convention
6. sea mammal predation
7. the harvest and sale of herring roe commercially
8. the fuel crisis and its application to fishermen
9. the tagging of salmon in areas of intermingling stocks
10. the conflict between commercial and subsistence fishing
11. the potential pipeline impact on fisheries
12. the effect of logging on fisheries
13. the need for expanded research programs in all areas

The testimony heard in each community will be summarized and then drawn together more concisely in a conclusion, followed by attached proposals for legislation.

II. SUMMARY BY LOCAL AREA

Anchorage (7 persons testifying) - October 11

Mr. Tasher and Mr. M. Taylor commented on limited entry with Tasher in opposition, feeling that it is socialistic, monopolistic, and impractical and will result in expensive litigation, with prohibitively high prices developing for permits. Mr. Taylor was concerned with persons who had bought boats who would not be able to get a permit.

The Cook Inlet fishery was discussed by Sam McDowell, with emphasis on the economic importance of sport fishing. He supported the department's closure of N. District streams this year and stated that the highest and best use for Cook Inlet king salmon was sport fishing.

The prime importance of sport fishing to the tourist industry was stressed by Mike Hershberger. He opposed eradicating char to protect salmon, claiming that if the salmon is managed properly the char will take care of itself. He also felt more research should be done on char before any controls are implemented for fear that other predators could become dominant.

The need for increased enforcement efforts was stressed by Bill Martin, particularly in salmon spawning areas. He cited a case in point of Natives fishing 35 miles up the Togiak River with gill nets. Also the small fines imposed by magistrates was of great concern; he advocated strong minimum fines for violations.

The need for an expanded boundary for the U.S. contiguous fisheries zone was supported by Joe Graham, with the desire for uniform rules for all nationals.

Nenana (14 persons testifying) - October 12

The quota system set up by the Department of Fish and Game for the upper Yukon River was criticized by Senator John Sackett and Mr. Sterling True, fish processor and buyer, with reference to an August closure in the upper waters but not at the mouth. (The conflict appeared to be a discrepancy of quota between the upper and lower regions.) The comment was made that the basis for the quota was wrong as the upper Yukon (central Yukon and Tanana River) fishery has always been in reality a commercial fishery although it has been called subsistence; commercial because dried salmon were bartered and traded and a relatively small percentage went into human consumption. Historically, up to 80 tons were utilized (1 ton = 2000 dried fish).

Others commented on the lack of fish traveling upstream due to lower river fishermen catching them first.

Ron Regnart, Regional Supervisor for Commercial Fisheries, explained the quota system, citing great breakthroughs in marketing and transportation which in the last few years have contributed to an early exceeding of the quota. Increased pressure downriver also has resulted in the early closure upriver for 1973 (from a high of one million fish in the 30's and 40's to a low of 150,000 fish in 1973). There has been a decline in effort (400 fish wheels in the 1930's to 56 in 1973). So most testimony was concerned with the allocation problems between the upriver and downriver take and cited departmental staff proposals before the Nov.-Dec. 1973 board meeting to split the area into three smaller districts in an effort to better manage it.

The Canadian commercial fishing efforts on the Yukon this year were discussed with the extent of their recently developing commercial fishery not known, but sure to increase in the future. It was brought out that the U.S. and Canada are negotiating on the subject presently.

Edmond Gilbert testified that Natives were destroying 800-900 pounds of eggs, polluting the rivers with them. He strongly advocated that "subsistence eggs" be allowed to be sold commercially.

Mr. Robert A. Coghill substantiated commercial selling of dried salmon in the area in the past (3-4 tons just 10 years ago). He cited declines occurring with the lack of need for dog food, less initiative, etc. Welfare has provided an easier substitute now.

Rep. Wilson supported the premise that past fishing efforts, called "subsistence", were really commercial in nature. He called for a new quota system to be devised as fishing divisions are not presently equitable, i.e. a quota is needed for each district.

Rearing salmon will be the answer to the problem ultimately, according to Mike Combs. More thought should be given to the Interior as a viable commercial fishery. Rivers like the Yukon certainly have the capability of producing artificially produced fish, particularly with such close proximity to sources of heat. Development of a sheefish and whitefish commercial fishery was suggested also.

Amena Lord thought each area should have its own regulations, and that the Natives should be permitted to sell commercially to supplement their meagre incomes.

Soldotna (11 persons testifying) - October 13

Testimony concentrated on two areas: the incursion on Alaska fishing grounds by foreign nationals (many examples cited), and the great expansion of gear in the Cook Inlet area. Concern for the setnetters and whether their fishery would be classified as "distressed" under the limited entry regulations was voiced also.

Juneau Public Hearing (9 persons testifying) - December

Mike McNiven urged that funds accruing to the state from U.S. Forest Service timber sales should go to rehabilitation of fisheries.

Several persons testified that additional hatcheries, fish farms and other rehab measures were needed to boost the present declining runs. In addition, money was urged for the purchase of new vessels for enforcement purposes and for research into herring stocks.

Bruce Lewis opposed private fish farming as developing into too restrictive a scheme and urged curtailment of sea mammals and eagles were their numbers were affecting the fisheries.

Comments regarding the raw fish tax were made by Ed Johnson, fish processor, and Ray Mathews, gill netter. Johnson opposed increasing it, as several communities such as Kake and Metlakatla were not now subject to the tax. Mathews recommended an increase if he could be sure it would get back into the fishery.

Herring received some attention, with testimony generally deploring the dwindling stocks. Bill Carr urged that the legislature appropriate funds for herring research vessels and that herring numbers merit commercial harvest. Charles Whitey, troller, opposed the commercial harvest of herring, citing decreased stocks.

Juneau Testimony by Board of Fish and Game Members - December ?

Testimony before the committee by board members centered around internal problems relating to the makeup of the board and its advisory committees (and associated staff problems) on the one hand, and external matters such as the increased protection needs, the revision of the penalty structure in the statutes, and an increase in revenues by moderate license fee increases, on the other.

Oscar Dyson and Jim Reardon stressed the need for expanded enforcement efforts, particularly in the area of vessel and equipment purchase. As a measure to increase funds for this and other concerns the feeling was unanimous that sport and commercial fishing license fees should be increased. This was personally endorsed by the commissioner. It was stated that the general fund appropriation for fish and game amounted to less than two per cent of the state's budget; small in relation to the economic benefit the state derives from it.

Gordon Jensen asked that the legislature explore all possible ways that the high seas fisheries problems could be alleviated, especially the off-shore bottom fishery. Pete Lovseth added that the state might impose economic sanctions on Japan, for example, in other areas.

The problem of the mobile processor was brought forth as a serious one: the fact that shore-based processors, who pay local taxes, are shortchanged and that mobile processors can stand outside the territorial waters and harvest the product without controls.

Penalties in the fisheries statutes needed strengthening, according to most board members. Certain misdemeanors deserve felony status and more sentences should be mandatory.

Testimony was heard on the need for a permanent fish and game attorney attached solely to the department, the need for a full-time board staff or secretary, and the revitalization of advisory committees.

Kodiak (9 people testifying) - December 4

Testimony in Kodiak ran heavily to considerations of foreign nationals fishing in Alaska waters, with numerous violations cited, much foreign monofilament net located, and the consensus being that the U.S. territorial limit be extended to 200 miles. Mr. Lloyd Canon urged support for S. 1988, designed to accomplish this. Harold Jons stressed the psychological value attached to a unilateral move on the part of a state extension of its fishing limits, citing the efforts of Massachusetts and Maine. It was stated that the 12-mile limit is not worth patrolling since so much of the fleet works outside it. Jons also explained that the 200-mile limit was designed mainly to protect stocks other than salmon as they tend to "mill" outside the 200-mile limit. It was recommended that the U.S. pursue a policy of the 200-mile limit extension and maintenance of the 175° W. abstention line of the I.N.P.F.C.

In conjunction with extension limits, beefed-up enforcement efforts were urged. Although the past year's efforts in the Kodiak area were applauded, it was felt that, considering the size of the fishery in the Kodiak area and the amount of money it produces, efforts should be strengthened even more. Others felt the vessel Resolution was the only saving feature for Kodiak and that others like it were needed, particularly in the Adak and Dutch Harbor areas of the Aleutian Chain. Most applauded the prospect of "T-boats" coming in (requested in latest budget request) but felt the larger vessels like the Resolution were required for offshore patrol.

Mr. Mike Revard emphasized that many violations that are presently misdemeanors should be classified as felonies and that perhaps monetary penalties should be geared to the value of the illegal catch (i.e. petty and grand larceny division), and also that license revocation should focus on the boat license not individual commercial fishing license.

Testimony also referred to the need for increased expenditure for stream clearing (Diwitt Fields), the Afognak Island logging contract and the desire to have it cancelled for fear of potential degradation (by tannic acid) of crab and shrimp spat.

Mr. Canon testified on the need for research funds generally, and particularly to establish rehab measures: salt water rearing pens, gravel incubators, etc.

Sitka (13 persons testifying) - November 13

Initially, questions were asked about limited entry; these were answered very generally, with direction to address specific questions to the limited entry commission in Juneau.

Protection was a frequent subject, with several persons citing both the need for more adequate patrolling offshore and problems associated with illegal harvest at the mouths of salmon streams and abuse on the spawning grounds (shooting, snagging and roe stealing). The case of abuse in Stargaven Creek by the ferry landing was given by way of example. John Dapcevich, Mayor, urged the committee to push for a high endurance Coast Guard cutter for the Sitka area.

Herring and herring roe were discussed at length with much concern at the general lack of feed for salmon. Also, opposition to the harvest and local sale of herring roe to the Japanese, with the subsequent waste of the fish carcasses, was expressed. The creation of a state department of salmon hatcheries was suggested to accord proper emphasis to this subject.

Concern for the ebbing halibut fishery was voiced by Ann Hansen; quotas have been dropped each year. The need for extra research to rebuild the halibut fishery was stressed.

Other testimony urged adoption of a 200-mile limit (John Boyles, Mr. Brookman), more coordination of advisory committees (Art Betroboard, Jr.), longer terms for regular board members, a fish hatchery located in Sitka (Brookman, Dapcevich), the emerging fuel crisis, state subsidies for bottom fishery exploration, salt water rearing pens, and an expanded stream rehabilitation program in all of Southeast, with the salmon rearing program under the direction of an independent expert not associated with the Department of Fish and Game.

Wrangell (8 persons testifying) - November 14

The committee heard testimony from members of the ANB-ANS convention. Many persons were concerned with the effect of limited entry on them, particularly whether the canneries would monopolize the permits, and that the maximum 7 per cent buy-back assessment of the gross would work a hardship on the poor people. They suggested that the maximum be 7 per cent of the net, and that children be able to buy permits within their family.

Enforcement was criticized from the standpoint that officers check licenses during fishing periods and while sets are being made, thereby creating loss of fishing time and profits. Also criticized was the lack of vessels to properly cover the Lynn Canal area, particularly in the Sumner Straits and Haines areas (Gill Gunnerson). Mr. Herb Bratley stressed greater high seas protection.

Concern was voiced over the recent influx of Canadian fishermen sport fishing in the Haines area (586 of them).

Several persons urged the committee to stop the harvest of herring eggs for commercial purposes (Diane Nelson).

Andy Hope urged Native-administered fish farms on land owned by the Native corporations. This was cited as an excellent opportunity for both Native and white to coordinate efforts in this area.

Petersburg (10 persons testifying) - November 14

Testimony was strong on the present fuel shortage and whether fishermen would occupy a preferred category as far as allocation was concerned, and also the problem of new entry into the fisheries and whether new boats would qualify for fuel supplies.

Herring was in need of more attention, according to several persons present. Displeasure with the type of equipment the Department of Fish and Game is using to determine magnitude of herring stocks was voiced. It was felt that no one really knows their numbers and that research and management techniques be perfected (Bob Thortenson, Fred Haltiner, Lay Petersen). There was opposition to taking herring roe on kelp and to disposing of herring after removing eggs.

Gordon Jensen advocated the initiation of tagging studies in areas where salmon fishing occurs on intermingled stocks (Icy Straits, west coast of Prince of Wales Island).

Concern was expressed for increased enforcement efforts, with reference to Canada's 62 protection vessels in B.C. compared with our own 3 or 4 (Jensen). Complaints were heard that Public Safety enforcement personnel lack an expertise and working knowledge of the fishery (F. Haltiner). W. Alex mentioned problems with suspended sentences and weak fines, and the need for mandatory punishment for intentional violations. Mr. Don Power reiterated that enforcement officers need more training on the technical aspect of the fisheries: how to check and measure nets, etc. He commented: "most people feel they will never show up."

Mr. Geralt Lynd felt that Alaska should provide a "Dr. Kissinger" on fisheries who would confer on international fisheries problems, as apparently the Governor's Office has been unsuccessful.

Testimony covered extending the U.S. zone of fisheries jurisdiction to 200 miles or the edge of the continental shelf (Chris Christensen), a policy whereby the Board of Fish and Game could review the department budget so that it would have input and influence, the prospect of imposing economic sanctions on the Japanese if they persist in devastating our stocks offshore (Christensen), better guidelines on what procedures advisory boards should follow (Haltiner), the full-scale implementation of a gravel incubation program (Haltiner), an exploratory king crab location program in Southeast (Lay Petersen), and investigation of the economic climate for rockfish and red snapper.

Some concern was also directed to the predator problem, specifically sea lions in September offshore out of Yakutat (John DeBoer) and generally in all of Southeast at certain times of the year.

Ketchikan (6 persons testifying) - November 15

Rehabilitation of salmon streams occupied more time than any

other subject, with recommendations that programs be increased and research be expanded. Mrs. Holman (Deer Mountain hatchery) urged that the legislature appropriate more money for incubators. Support was indicated for a bill authorizing private fish farming.

Mr. D. Hassingan advocated the establishment of rangemarkers in fishing zones and areas to lessen the possibility of violations.

Other areas touched on in testimony were problems relating to the fuel crisis, inadequate protection (Rollo Bray), the proliferation of drag web, drift web, and monofilament showing up on our coastline, the repeated instances of trawling within our coastline, the conflict with Canada over whether Canadian fish are intercepted at Fox Pass, the recommendation for more "biologists without desks" (Jensen), and extension of fisheries jurisdiction to 200 miles.

Cordova (10 persons testifying) - December 2

Among the main topics stressed here was a statutory change to stiffen penalties for fisheries violations, making the more serious intentional ones felonies with stiff fines and mandatory sentences (Mr. P. Isleib). Also mentioned were protection problems in the Copper River Delta area with the lack of manpower for adequate enforcement cited, combined with the lack of aircraft for implementation of enforcement. The statement was made that protection is a "big laugh" here (Pete Blake). The opinion surfaced that protection was much better 10 years ago and that prospects for the future were dim with the pipeline requirements for security personnel (William Smith).

Subsistence fishing problems received comment, particularly the upper Copper River dip net fishery where many persons drive great distances, seeking the recreational value of the fishery more than subsistence use. Much abuse in this area was cited.

Sea mammal predation was of concern in the Cordova area, with seals cited as a major problem. Several thousand are "barred-up" in mid-May and they travel 100 miles up the Copper River after hooligan, taking salmon out of the nets, etc. (Isleib). "In five years the seals will have reproduced to the numbers they were in the early 1940's, approximately 40-50 thousand." (C. Sempler).

Rehabilitation was high on the list of priorities but aquaculture in the private ownership realm was feared, particularly in view of the problems of disease in Oregon and Washington establishments. The feeling was to approach it with caution (Isleib).