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050 110 200 300 400 500 600 700 800 900

Reg. 30, Oct. 1969

13 AAC 51.010 -
14 AAC 51.020

PUBLIC SAFETY

CHAPTER 51. FIREWORKS

Section

- 10. Use of Dangerous Fireworks
- 20. Permits for the Sale of Saleable Fireworks
- 30. Storage of Dangerous and Saleable Fireworks by a Wholesaler
- 40. Discharge of Fireworks
- 50. Revocation of Licenses and Permits
- 60. Seizure

13 AAC 51.010. USE OF DANGEROUS FIREWORKS. (a) A permit is required for the use of dangerous fireworks under AS 13.72.010 (b) and may be granted upon verified application to the state fire marshal on forms provided by him.

(b) There shall be attached to the application for a permit under this section a policy or certified true copy of a policy of public liability insurance and products liability insurance coverage, including both accident and occurrence in the amount of at least \$500,000 for bodily injury and death and at least \$300,000 for property damage, provided by the applicant or his employer.

(c) The use of dangerous fireworks shall be handled by a competent operator certified as to competency by the state fire marshal.

(d) A permit granted under this section for the use of dangerous fireworks shall be lawful for that purpose only.

(e) No permit granted under this section for the use of dangerous fireworks is transferrable. (Eff. 6/25/69; reg. 30).

Authority: AS 13.70.000

13 AAC 51.020. PERMITS FOR THE SALE OF SALEABLE FIREWORKS. (a) A permit is required for the sale of saleable fireworks under AS 13.72.020(a) and may be granted upon verified application to the state fire marshal on forms provided by him.

(b) No permit shall be granted to a person who desires to sell fireworks at retail within 250 feet of any place of habitation or place of public assembly.

PUBLIC SAFETY

(c) A permit granted under this section for the sale of saleable fireworks shall be lawful for that purpose only.

(d) No permit granted under this section is transferable. (Eff. 6/25/69; reg. 30).

Authority: AS 13.70.030

13 AAC 51.030. STORAGE OF DANGEROUS AND SALEABLE FIREWORKS BY A WHOLESALE. (a) NFPA 405 (1968-69 edition) and NIA, Article 12.6(q), Construction of Storage Facilities, is adopted.

(b) A wholesaler of dangerous and saleable fireworks who fails to comply with this section may have his license revoked pursuant to 13 AAC 51.050. (Eff. 6/25/69; reg. 30).

Authority: AS 13.70.030

13 AAC 51.040. DISCHARGE OF FIREWORKS. (a) No fireworks of any kind may be discharged within the state within 250 feet of any establishment that sells fireworks at retail or wholesale.

(b) The discharge of dangerous fireworks within the state, except for those purposes for which a permit is required under AS 13.72.010, and this chapter, is prohibited. (Eff. 6/25/69; reg. 30).

Authority: AS 13.70.030

13 AAC 51.050. REVOCATION OF LICENSES AND PERMITS. The state fire marshal shall revoke a permit or license where the permittee or licensee fails to comply with the requirements of this chapter or with the provisions of AS 13.72, or where the permittee or licensee conducts his business in a manner so as to constitute a hazard to life and property. (Eff. 6/25/69; reg. 30).

Authority: AS 13.70.030

13 AAC 51.060. SEIZURE. The state fire marshal shall seize, take, remove, or cause to be removed at the owner's expense, all stocks of dangerous or saleable fireworks from persons who do not have a valid permit or license under AS 13.72, or this chapter. (Eff. 6/25/69; reg. 30).

Authority: AS 13.70.030

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 389
Title An Act relating to state regulation of fireworks
Requested by _____ Date 4-14-80

II. FISCAL DETAIL

Agency Affected Public Safety
Program Category Affected Public Protection
BRU, Program, or Subprogram(s) Affected Fire Safety
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND		(2.0)	(2.0)	(2.0)		
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No significant impact as far as our program. The average yearly license fees (wholesalers) collected would be reduced from \$2500. to \$500.

IV. DATE 4-14-80

PREPARED BY *Gary R. Grouse*
AGENCY Division of Fire Prevention, Department of Public Safety
PHONE 465-4331

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Phillips Says Legislature Goofed

By BOB MILLER
Times Staff Writer

Senate President Wald Phillips has sworn in an affidavit that the final hours of the last legislature were marked by a frenzied effort to dispose of unfinished business and on some occasions resulted unavoidably in hasty and unperformed actions on important legislative matters . . .

The Anchorage Republican made the statement in an affidavit that is being used in a court attempt to set aside a

law that was passed by the legislature to regulate fireworks in the state.

Phillips said, "It is my intention to press for the repeal or appropriate amendment of this law at the next session of the legislature and I do not believe it is in the public interest that it be enforced or allowed to be enforced in its present form."

At issue is Senate Bill 362 which became Chapter 116 of the Alaska Statutes after it was signed by Gov. Keith H. Miller last May 22. James E. Norans of

Western State Fireworks and Joseph Bagwell of Alaska Fireworks are seeking to have the law set aside because it allegedly created a monopoly for an "Outside" firm, Ace Fireworks Co.

Defendants in the case are Ace, State of Alaska, Empire Fire and Marine Insurance and Kenneth J. Tobey Inc. an insurance firm. Edgar Paul Beyko, who represents Norans and Bagwell is using Phillips' affidavit in the case.

Superior Court Judge C. J.

Occhipinti has issued a preliminary injunction to prevent the state from enforcing the insurance provision of the law.

In the preliminary injunction order, Judge Occhipinti indicated Ace has a monopoly on the fireworks business in the state because it is the only one that can get insurance as prescribed by the law.

In his affidavit, Phillips said, "To my knowledge, this particular piece of legislation did not receive the proper attention or investigation and it was passed

Due To Haste In 'Final Hours'

and approved by the legislature in this manner only because of representations made to officials and others by persons believed to be reliable that such legislation was non-controversial . . ."

Henry Frait of Anchorage was the lobbyist for Ace Fireworks during the last session and worked for passage of the bill. Phillips said he has subsequently come to the conclusion that the law created "an unlawful monopoly."

The affidavit strongly hints that the bill passed in the final

days of the legislature which adjourned May 1. The record shows that the bill was approved by the Senate on April 15 and finally by the House on May 1. It was considered first April 11 in the senate after the Local Affairs Committee reported it out with a "do pass" recommendation.

The only senators who voted against it were:

- Robert Blodgett, D-Teller; P. B. Hoggland, R-Fairbanks; Jay Hammond, R-Naknek; C. R. Lewis, R-Anchorage; Lowell

Thomas Jr., R-Anchorage, Sen. W. I. Palmer, R-Nimilchuk, was absent.

Phillips continued, "Being personally in the insurance business and in order to test the claims of the Alaskan business interests affected, I made an effort to obtain either in the domestic and foreign markets coverage as required by this law, for the legitimate members of the Alaska industry supplying fireworks to the Alaska retailers, and discovered that the kinds of insurance coverage which is written into

this law cannot be obtained either on the domestic or foreign markets, or only at prohibitive rates; if at all, because it entails risks which are virtually impossible of proper ascertainment or evaluation."

He indicated the bill passed because just before adjournment legislators found it necessary "to rely on the representations of persons believed to be trustworthy, who urged such last minute legislative actions upon members of the legislature."

HB

392

COMMITTEE REPORT
SENATE

FURTHER: FINANCE
MMMX

2/23/80

Date: 5/24/80

Mr. President:

The Committee on JUDICIARY has had CSHB 392 am
relating to domestic violence; and changing Rules 3, 65, and 76, Rules of
Civil Procedure

under consideration and a majority of the committee) (the committee)
reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with SCS for CSHB 392 am same title
- new title
- and recommends SCS CSHB ~~392 am~~ and
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811

May 20, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

I have enclosed a short section analysis of the domestic violence bill that may be of some assistance to you should the bill be discussed on the floor. I will be in Anchorage this Wednesday and Thursday, but will be back Friday afternoon should you need to contact me on this, or any other matter.

Hopefully this is the last time we will hear the phrase "domestic violence" (well, at least to next session anyway).

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: 

Barry J. Stern

Assistant Attorney General

BJS:gm

Enclosure

SECTION ANALYSIS OF

SENATE COMMITTEE SUBSTITUTE FOR CSHB 392 am

Section 1

Sec. 09.55.600. Injunctive Relief in Cases Involving Domestic Violence

This section allows a victim of domestic violence to obtain injunctive relief in superior court restraining the infliction of further domestic violence. The court may grant any order necessary to protect the health, safety or welfare of the victim, including restraining the respondent from contacting the victim and requiring the respondent to pay temporary support. Relief may only be granted after at least 10 days notice to the respondent and after a hearing before the court. The restraining order may last for a maximum of 45 days, but certain provisions may be extended for an additional 45 day period after the required notice and hearing.

Sec. 09.55.610 Emergency Injunctive Relief in Cases Involving Domestic Violence

This section is similar to Sec. 09.55.600 but provides for the issuance of a temporary order providing for emergency injunctive relief without notice to the respondent if the victim is in immediate danger of further harm. To obtain an emergency order without notice, the victim or the victim's attorney must inform the court of the efforts, if any, which

have been undertaken to provide notice to the respondent, and the reasons why the order should be issued without requiring notice. Notice should not be required if requiring this procedure would further endanger the applicant.

It should be noted that while the emergency order can be issued by a district court judge and magistrate as well as by a superior court judge, the applicant is required to apply to a superior court judge if one is located within the specified distance from the applicant's residence.

Sec. 09.55.620. Forms For Injunctive Relief and Emergency Injunctive Relief.

This section requires the court system to prepare forms for applicants seeking relief under Secs. 09.55.600 and 09.-55.610. Allowing petitions for injunctive relief to be handwritten recognizes that in some instances the victim may choose to proceed without the assistance of an attorney. False statements made in the form that the petitioner has been subjected to domestic violence constitutes the crime of unsworn falsification.

Sec. 09.55.630. Notification to Law Enforcement Authorities

This section requires a court that issues injunctive relief to notify the appropriate law enforcement agency of the terms of the order. Police officers are required to use reasonable means to enforce the order.

Sec. 09.55.640. Definitions

This section defines the term "domestic violence." The definition is derived from the section of the new criminal code allowing peace officers to make probable cause misdemeanor arrests for assaults committed against members of the same household. AS 12.25.030(b),(c).

Section 2

Sec. 12.55.135. Sentences of Imprisonment for Misdemeanors

This section amends the new criminal code to require a court to impose a mandatory minimum sentence of 10 days when a defendant commits assault in the third degree in violation of an order issued under secs. 09.55.600 or 09.55.610 restraining further domestic violence. The fact that the crime occurred in violation of a specific court order restraining such conduct warrants imposition of at least this mandatory term of imprisonment.

In cases covered by this section the committee expects that a defendant will simply be charged with the crime of assault in the third degree. At sentencing the prosecution will be required to establish by clear and convincing evidence that the assault was committed in violation of a court order. This approach to pleading and proof requirements is identical to the manner in which aggravating and mitigating factors are established for purposes of presumptive sentencing under the new criminal code. AS 12.55.155(f).

Section 3.

Sec. 18.65.510. Domestic Violence Training

This section requires police training programs to provide training on the subject of domestic violence, including applicable crimes, the techniques for handling incidents of domestic violence and the various programs that offer assistance to victims of domestic violence. In devising the program, police training programs are required to consult with organizations providing assistance to victims of domestic violence.

Sec. 18.65.520. Notification to Victims of Domestic Violence

This section specifies a notification that should be provided in substantially similar form, orally or in writing, by police officers to victims of domestic violence. The intent of this section is to inform victims of the various options that are available to them at the point of their first contact with the criminal justice system.

Section 4

Sec. 22.15.100 Functions and Powers of District Judge and Magistrate.

This section adds to the list of functions of district judges and magistrates the ability to issue an order for injunctive or emergency relief under secs. 09.55.600 and 09.55.610.

Section 5

This section amends various court rules to allow for an alternative procedure in obtaining injunctive relief in cases involving domestic violence.

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
419 SIXTH STREET, SUITE 322
JUNEAU, ALASKA 99801
TELEPHONE 586 6425

MEMORANDUM

TO: Senate Judiciary Committee
FROM: Don Clocksin ^{DC} and Bruce Horowitz ^{BTH}
SUBJECT: CSHB 392 am H - Domestic Violence
DATE: April 1, 1980

I. The Problem

Victims of physical attacks by household members or spouses are in an unique position. Police often refuse to view these attacks as criminal conduct. The victim is often unaware of what options he or she has and continues to accept beatings as unavoidable. The economic and psychological dependence of battered wives and the fear of injury create a loss of self-respect. The social acceptance of wife-beating and the irrationality of most attacks make the woman feel she is to blame. It is this syndrome which makes spousal abuse an unique and particularly serious problem.

According to the preliminary stud. on The Status of Women In Alaska, Anchorage had an estimated 3.3 reported wife beatings each day. Alaska Legal Services Corporation reports that 70 to 75 percent of women seeking legal assistance have been beaten by their husbands. Another study indicates inter-spousal murders accounted for 12 percent of all murders in the United States in 1975.

Testimony in the House last session, during the interim is session established that domestic violence is a substantial problem in Alaska and that criminal solutions are not adequate.

II. The Solution

There is no immediate solution to the problem until people learn to solve their problems without the use of violence. Particularly, society must recognize spousal attacks as unacceptable conduct, and courts and prosecutors must treat them just like other crimes.

This bill seeks to inform the victim of the available options and to protect the victim from attack. It is an "intervention" bill which does not try to solve the social problem but only to protect the victim from serious injury. It establishes a new easy-to-get injunction and provides for police training on

domestic violence.

III. Section By Section Analysis

1. Section 1:

- a. Sec. 09.55.650: A police officer called to the scene of a domestic attack is to advise the victim of his or her rights and provide assistance as the circumstances require.
- b. Sec. 09.55.660: Allows the victim to obtain an emergency Order for Relief from a judge or magistrate for up to ten days. After a hearing, such an Order may be issued for 45 days. The Order is to protect the victim from future attacks.
- c. Sec. 09.55.665: Requires the court system to prepare forms and instructions so the victim may file for this Order for Relief without the need for a lawyer.
- d. Sec. 09.55.670: The Order for Relief must be provided to the police, and procedures must be established to assure all peace officers know of the Order.
- e. Sec. 09.55.680: Law enforcement agencies must include in their training programs information on how to handle violence.
- f. Sec. 09.55.690: Intentional violation of the Order for Relief is a class B misdemeanor. A second violation (i.e. the third attack) means 72 hours in jail.
- g. Sec. 09.55.700: "Domestic violence" is defined. It includes assault or battery on the victim or the victim's child, and includes sexual abuse. The term is limited to such acts against relatives, household members and present or former spouses. Programs providing alternative, temporary shelter to victims of domestic violence are defined.

2. Section 2:

Amends the Criminal Code to allow arrest without a warrant for a violation of an Order for Relief committed outside the presence of a peace officer.

3. Section 3:

Provides alternative housing for victims of domestic violence

Senate Judiciary Committee
April 1, 1980
Page 3

by granting a preference for ASHA housing, if otherwise eligible.

4. Section 4:

Allows magistrates and district judges to issue emergency ten-day Orders for Relief.

5. Section 5:

Amends certain Court Rules relating to filing of legal papers and issuance of injunctions.

DC/mlm

April 3, 1980

The Honorable Mike Gravel,
United States Senator
3121 Dirksen Senate Office Building
Washington, D. C. 20510

Good Senator:

Domestic violence is a problem. The concept behind HB 392 and HB 532 is excellent. However, the bills are in atrocious form and I am not sure that we have the time and the talent within which to do a proper job this year.

I'll give it a go, but no promises.

Best regards,

Robert H. Ziegler, Sr.

RHZ:lk

MIKE GRAVEL
ALASKA

United States Senate

WASHINGTON, D.C. 20510

March 26, 1980

The Honorable Robert H. Ziegler, Sr.
Pouch V
Juneau, Alaska 99811

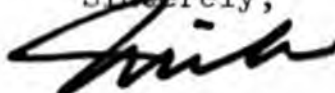
Dear Bob:

Recently I met with representatives of Alaskan programs designed to aid victims of domestic abuse; they were in Washington attending the First National Conference on Domestic Violence. We talked at some length about the incidence of domestic abuse in Alaska and I indicated my strong support for Federal legislation to assist state and local groups combating domestic violence.

During the course of our conversation, Caren Robinson, Staff Director of A.W.A.R.E., mentioned that two pertinent House bills, HB 392 and HB 532, were pending in your committee. I have read both bills and am encouraged that Alaska is moving in the right direction. Knowing the demands on your committee, I want to respectfully urge you to give expeditious consideration to these bills; I know you are concerned about this problem and will give every consideration to means of reducing and hopefully eliminating domestic violence in Alaska.

With warm personal regards.

Sincerely,



Mike Gravel

MG:njm

Best to Paula.



Abused Women's Aid in Crisis, Inc.

March 19, 1980

Senator Robert H. Zeigler
Pouch V
Juneau, Alaska 99811

Dear Senator Zeigler:

I am writing regarding two bills that I understand are now in your committee, House Bill 392 and House Bill 532. I would like to urge your support for both of these bills. While they seem different in nature, I feel they speak to very similar issues. There have always been certain classes of persons who have found it difficult or intimidatingly painful to use the criminal justice system when they are victims of crimes. I feel strongly that it is time for the system to assist them, rather than increasing their sense of shock and powerlessness.

House Bill 392 adequately addresses serious barriers for victims of violence in their own homes. I find it specifically important the sections that: 1) provide victims specific information on action they may take to procure a temporary restraining order (TRO) and information on other steps they may take to insure the physical safety of themselves and their children; 2) establish that the violation of a TRO is a misdemeanor not just a civil contempt of court; provide for a mandatory sentence for repeated violations of TRO's.

House Bill 532 speaks directly to some attempt to alleviate further traumatizing of the child victim of sexual assault. As a mother, I have long been terrified of the damage that could be done to one of my children by such an assault and have struggled with how I could ever ask my child to face prosecuting in such a crime. Yet I have always been deeply aware that families who do not carry out such prosecution bear some responsibility for the violation of the next child victim. Anything that our legislature can do to make conviction of those who violate our children swifter, surer, and somehow less painful for the victim must be viewed as a top priority. Please give both these bills your attention and support. I would appreciate hearing from you regarding them.

Sincerely,

Kit Evans

Kit Evans

Community Office
417 W. 8th Avenue
Anchorage, AK 99501
(907) 279-9581

Women's Shelter
POB 4-819
Anchorage, AK 99509
(907) 274-4561

Male Awareness
417 W. 8th Avenue
Anchorage, AK 99501
(907) 279-9581

HR 411

April 21, 1980

Senator Robert Ziegler
Pouch V
Juneau, Alaska

Dear Senator Ziegler,

The Alaska Women's Resource Center wishes to be recorded in favor of HR 411. In our position paper we state, "Although the Alaska Women's Resource Center was founded to meet the needs of women in a changing society, we see men's needs to be intricately interwoven with those of women; therefore, we extend to men the opportunity to become change agents with us." With this in mind, we would ask you to vote for the passage of HR 411.

The Center did a needs assessment in October of 1979 and found the highest number of requests for service were in the employment program with many of these as displaced homemakers.

Since the beginning of the 1979 Fall reporting period the number of women deserted by their husbands has increased with about five or ten cases being logged per week. In many cases the husband has also taken the family assets with him leaving the woman with pressing financial problems as well as the obvious psychological ones. These women are forced into an economically independent role and for many of them it is instant poverty.

Homemakers are an unrecognized and unpaid part of the national work force who make an invaluable contribution to the welfare and economic stability of the nation but receive no health, retirement, or unemployment benefits in their own name as a result of their labor.

The traditional role of wife, mother or homemaker does not provide women with recognized job market skills. She often does not know how to translate her home-making skills into marketable ones, to job hunt, or to fill out an application or to write a resume. The displaced homemaker is often subject to discrimination because of age, fear, health problems, and lack of recent work experience outside the home. The emotional trauma is increased by lack of confidence and self-esteem.

A partial solution to the displaced homemaker's problems would be to encourage in the schools, at the earliest age possible, the necessity of everyone, boys and girls, to learn those skills that will enable them to become responsible for their own lives, their own health, their own marketable skills, and the wise use of leisure time. This would enable a woman to have a fair chance rather than being someone who becomes more helpless to survive as the years pass.

We hope that you will consider these things as you decide the bill.

Thank you.

Sincerely,

Helen Fisher
Executive Director

881 X09 P.O. BOX 188
8250-922 (206)

ANCHORAGE, ALASKA 99510

ALASKA WOMEN'S RESOURCE CENTER

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

March 14, 1980

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811

The Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: CSHB 392 am H

Dear Senator Ziegler:

Mr. Van Doren requested on behalf of your committee that we review CSHB 392 am H, "an Act relating to domestic violence". Representative Hugh Malone, an original sponsor of the bill, also requested sometime ago that I review the bill and reduce to writing the substantive concerns we have with it as well as outline some general ideas for legislation that would address the problem of domestic violence.

Rather than simply repeat our concerns and suggestions in a separate letter to you, I thought that it would be satisfactory to also send you a copy of my letter to Representative Malone. Some of the suggestions we have made involve possible amendments to provisions contained in the revised criminal code particularly in the area of sentencing. SB 511 which proposes a series of amendments to the code and which is presently under consideration by your committee would be an appropriate vehicle for addressing the need for an increased emphasis on crimes involving domestic violence.

If you have any questions concerning the enclosed letter or if we can be of further assistance to your committee on this matter, please let us know.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 

Daniel W. Hickey
Chief Prosecutor

DWH:gm

Enclosure

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811

March 14, 1980

The Honorable Hugh Malone
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: CSHB 392 am H

Dear Representative Malone:

Please excuse the delay in sending you a letter outlining the concerns we have with respect to the referenced bill and some of the general ideas I briefly mentioned previously on the subject of domestic violence.

I share the concern which has been expressed throughout consideration of this bill that domestic violence is one of the most serious criminal justice problems in Alaska. It affects literally every community in the state and represents a significant percentage of criminal cases. The problem is one which also accounts for many divorce cases and touches literally every segment of the state's population.

As I indicated, however, in the brief discussion which we previously had, I don't think that the bill as presently drafted will substantially address the problem or result in meaningful improvement. In some instances certain provisions of the bill may be counterproductive and others will make a law enforcement officer's job more difficult and cumbersome to the detriment of other citizens in need of assistance in both domestic violence cases and others.

Proposed AS 09.55.650(a) largely restates current law enforcement practices in cases involving domestic violence. To the extent these practices are not being followed, there is no question that they should be. However, I don't believe that it would be good public policy to attempt to specify through statute the precise manner in which police officers should proceed when responding to a particular crime. Each incident requires the careful exercise of judgment by an individual officer based on his training and experience.

Additionally, specification of procedures in a statute could conceivably give rise to unanticipated instances of civil liability for both the state and municipalities.

The procedures which are set out in proposed section 650(a) should be formulated by those agencies responsible for police training and individual officers should receive training consistent with those procedures. It would be entirely appropriate for the legislature to enact specific provisions that require police officers to receive training in the techniques of properly handling domestic disputes. This training could include, for example, requirements that officers become familiarized with the various organizations and resources available for providing assistance to victims of domestic violence. This legislation could be developed as amendments to AS 18.65.130 - 18.65.290 which establishes the Alaska Police Standards Council and provides for basic standards for certification as a police officer. I don't think, however, that it is a good idea for the legislature to attempt to specify with considerable particularity the procedure for handling a specific crime or category of crime.

Proposed AS 09.55.560(b) requires an officer to recite a one page notice of rights to a victim of domestic violence or in the alternative to deliver a written copy to the victim. There is, of course, nothing wrong with this approach on its face. However, it is likely to result in a mechanistic and formal "reading of rights" similar to Miranda warnings given to suspects in criminal cases. I am somewhat afraid that the mechanistic recitation of rights required by the bill may create an impression with individual victims that the officer is not sympathetic to her situation as an individual with a problem unique to her. Properly trained police officers do not do this now and there is a potential for a procedure like this to interfere with the genuine cooperation between a victim and an officer that is very important in cases involving domestic violence.

This criticism is not intended to imply that the officer should not be encouraged to inform a victim of the various criminal and civil remedies she has and of the various alternative programs that may offer her assistance. It just seems that human nature being what it is, that once something like this becomes reduced to a mandatory and precise formula it is likely to be applied in a very non-personal manner. Again, I think that this issue is one which involves the adequacy of law enforcement training. In order to do his job properly, an officer should receive necessary training in the area of domestic violence so that he will be sensitive

to the individual needs of victims and will be prepared to inform a victim of information relevant to her specific situation.

While the above comments relate to specific concerns with provisions set out in proposed AS 09.55.650, there is a more general observation to be made about this section in terms of whether this approach will result in any meaningful improvement in the handling of domestic violence cases. The difficulty in the approach taken by the bill is that it assumes that these situations occur in a reasonably rational setting once the police arrive and sort everything out. It assumes, for example, that things are happening much the way they do in taking a confession from a cooperative suspect back at the police station. Unfortunately, that is not the case. More often than not, police officers responding to a domestic violence scene are confronted with a highly emotional situation where a great deal of discretion and good judgment is required. It is generally not the sort of situation that is going to be helped by a neatly packaged and legislatively required set of procedures.

The concept embodied in proposed AS 09.55.660 of an expedited and streamlined process for obtaining appropriate civil orders in cases involving domestic violence is an excellent idea. There are, however, a few technical problems with individual provisions in this section which should be addressed. For example, subsection (d) doesn't specify whether the time period specified applies to a regular order issued by a superior court under subsection (a) or to a temporary order issued under subsection (c) if issued by a superior court or to both. If the time period contained in subsection (d) does apply to temporary orders then the bill fails to indicate how long such an order may remain in effect if issued by a district judge or magistrate as opposed to a superior court. If, on the other hand, subsection (d) does not apply to temporary orders then the bill fails to indicate how long temporary orders may remain in effect. Additionally, the expedited hearing provided for under subsection (c) for temporary orders raises potential constitutional problems because it would appear that a temporary order could be as broad as a subsection (a) order and thus would effect fundamental rights such as custody of children and access to one's home without notice and other procedural due process guarantees. Lastly, proposed AS 09.55.660(4) dealing with an order by a court that an assailant pay support for a petitioner and/or minor children appears to be unrelated to the objectives of an expedited hearing process in these cases.

Proposed AS 09.55.690(a) creates a separate criminal offense for intentional violations of orders issued under section 660(a)(1), (2) and (3). The difficulty with this approach is that it attempts in its language to make some very narrow distinctions between conduct encompassed by a section 660 order that will be a crime and conduct encompassed by an order that will not. Additionally, what this section does is to create a crime out of what would otherwise be civil contempt for conduct that is not defined in the statute and may fluctuate from case to case. In other words, what could be a crime in one case may not be in another case that may involve identical underlying circumstances other than the fact that different orders have been issued by different courts. The elements of a crime will vary in each instance without a precise definition of the crime set out in the statute. Consequently, it would be my suggestion that violations of section 660 orders be treated under the contempt statutes.

Correspondingly, AS 09.55.690(b) and AS 12.25.030(b), authorizing peace officers to make probable cause misdemeanor arrests for the offense of "failure to comply with a court order involving domestic violence" should be deleted. In most cases a probable cause determination will not involve physical evidence but rather, the competing claims of two parties and a legal interpretation of a court order. A police officer called to sort out the conflicting claims of two parties is frequently not going to be in a very good position to make a determination whether probable cause exists to believe that a possibly nebulous court order has been violated. Instead, the case should be taken before a district judge or magistrate if an arrest is necessary and appropriate.

Lastly, the definition of "domestic violence" set out in proposed AS 09.55.700(1) is very broad. The use of the term blood relative would include a fifth cousin who a defendant has never seen in his entire life while at the same time, the definition would not include a mother-in-law who is not a household member who the defendant may see every day. In any event, it would be our suggestion that if the statutory scheme embodied in the bill is retained, the definition of "domestic violence" be limited to included acts between household members and that the term "household member" be defined.

The real difficulty with cases involving domestic violence is that they involve highly emotional, interpersonal situations to which the criminal law does not easily apply. At the time of an incident, a victim is frequently more than willing to cooperate with law enforcement authorities

and to proceed with the arrest, prosecution and imprisonment of the other party. All too frequently, however, and sometimes as quickly as the next day, the victim has had a complete change of heart. If we insist on going forward, the victim at times is not only uncooperative but actually hostile and fully supportive of the defendant even though he or she may have been seriously injured on a number of occasions.

The problem we are confronted with is one of priorities and this is the real issue which needs to be addressed in these cases. Given our present system, it is very difficult if not impossible to proceed with an uncooperative victim. Courts and juries react negatively and wonder why time is being taken up with such cases when there are other cases which need to be addressed. The one thing in particular which law enforcement officers and prosecutors have in common is that they are "result oriente^d". It is very difficult to proceed with cases when the chances for success are minimal or non-existent and once a victim has become uncooperative in one case there is a tendency to assume that the same thing will happen in future cases.

Some specific suggestions that I can offer which address this problem are as follows:

First, it would be helpful for there to be a clear expression of legislative intent on the subject of domestic violence and enforcement policies. If the legislature believes that cases should be vigorously prosecuted however uncooperative a victim is, it would be helpful for this intent to be set out in the form of a mandatory jury instruction that must be given in cases involving domestic violence with uncooperative victims. The instruction in essence should state that the legislature is of the view that those cases should be prosecuted and that the unwillingness of a victim to cooperate should not be held against the state.

Second, the bail statute should be amended to require the imposition of specific conditions of release in any case involving domestic violence. These conditions should include items now included under proposed AS 09.55.660(a) of the referenced bill.

Third, "domestic violence" should be adopted as a factor that will require the imposition of a presumptive sentence for both felonies and misdemeanors. Presumptive sentencing now only applies in felony cases where there has been a previous felony conviction or in the case of a class A felony where a firearm has been used or serious physical

injury has resulted. This proposal could be accomplished through the addition of "domestic violence" to the use of a firearm and serious physical injury for class A felonies and through establishing presumptive sentences for all felony and misdemeanor assaults involving domestic violence. An alternative and somewhat less effective approach would be to add "domestic violence" to the list of aggravating factors set out in AS 12.55.155(c).

Fourth, with respect to the problem posed by the uncooperative victim, in addition to the mandatory jury instruction previously mentioned, it would be helpful to: (1) authorize the issuance of a court order for a mandatory medical examination of the victim the results of which would be admissible at trial; (2) eliminate the physician-patient and psychotherapist-patient privilege in cases involving domestic violence in order that evidence of both the present offense and any past unreported acts of domestic violence can be obtained; and (3) provide specifically that an uncooperative victim can be declared a hostile witness and may be impeached with prior inconsistent statements.

Fifth, specific provisions should be considered which would provide that a defendant in a domestic violence case can be impeached with prior convictions for offenses involving domestic violence and prior unprosecuted acts of domestic violence directed against the same victim.

Sixth, crimes involving domestic violence should be added to the crimes included in AS 12.30.040(b) for which bail may not be granted after conviction.

Lastly, consideration should also be given to an amendment to the sentencing statutes requiring that any suspended sentence in a case involving domestic violence must include as a condition of the suspended portion a requirement that the defendant have no contact with the victim for a legislatively prescribed minimum period. Such a provision should also mandate the imposition of the full suspended portion upon a violation of the condition.

These provisions would put some real teeth into the law as applied to domestic violence cases. They should serve to provide for a meaningful deterrent effect in future cases and will provide us with effective enforcement tools to deal with the problem.

The Senate Judiciary Committee has recently requested that we also provide them with comments on this bill and

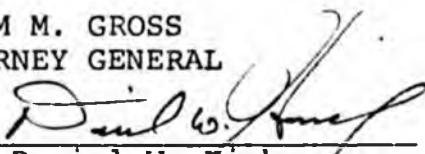
The Honorable Hugh Malone
Page 7

I've enclosed for your information a copy of the letter we are sending to Senator Ziegler. If you feel that any of the ideas I've set out are worth pursuing, I would be happy to work with you or someone you designate in an effort to develop necessary legislative language.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:



Daniel W. Hickey
Chief Prosecutor

DWH:gm

Enclosure

From: Bruce Horowitz *BH*
To: Hugh Malone
Date: May 20, 1980
Re: HB 392/Proposed amendment by Sen. Ray

Sen. Ray has proposed an amendment to HB 392 requiring that a notice be included in the form of petition that a false statement made therein that the respondent has subjected the petitioner to domestic violence constitutes the crime of unsworn falsification, (a class A misdemeanor) punishable by a maximum sentence of one year and a fine of \$5000. See Appendix A for copy of the amendment. Appendix B, copy of AS 11.56.210.

The following comments may be made about the proposed amendment:

1. It has always been understood that the form of petition would contain an affidavit under oath that the contents were true and correct to the best of petitioner's knowledge. Therefore, the amendment would not apply to such a form of petition.
2. From our reading of AS 11.56.210, the unsworn falsification statute, the statute concerns public officers other than judges, because the judges are there for the specific purpose of deciding whether people are telling the truth. This is a less important criticism of the amendment.
3. This amendment would criminally punish a person who was mistaken as to the law. For instance, since it was decided to broaden the definition of "domestic violence" to include all offences under AS 11.41, a person could incorrectly claim that someone had coerced them or had committed the offence of "custodial interference", or had committed extortion. In each case, whether or not the act was extortion, or custodial interference or coercion is a legal issue to be decided by a judge, and yet if the judge decides that the crime was not committed, the petitioner's claim is false, and therefore punishable.
4. This amendment will obviously discourage some good faith petitioner's who are the victims of assault from filing the petition.

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
419 SIXTH STREET, SUITE 322
JUNEAU, ALASKA 99801
TELEPHONE 586-6425

PROPOSED AMENDMENTS TO CSHB 392 am H

April 1, 1980

1. On p. 4, line 12, delete the last sentence down through line 18 and insert:

Every temporary order issued under this subsection shall be endorsed with the date and hour of issuance, shall forthwith be filed and entered of record, and shall state why the temporary order is being issued. If the temporary order is issued by a superior court, it shall include a notice of hearing on the order for relief and shall be served on the defendant. If a temporary order is issued by a district court or a magistrate, the superior court shall forthwith schedule a hearing on the order for relief and notify the respondent of the temporary order and of the hearing on the order for relief. A temporary order shall expire by its terms in ten days unless extended by the court or magistrate for good cause shown.

2. On p. 4, line 19, delete "by a superior court under this section" and insert "under (b) of this section"
3. On p. 6, line 14, delete ", or blood relative of the person" and insert "or" before the words "former spouse"
4. On p. 1, line 11, insert a new section to read:

Sec. 09.55.600. STATEMENT OF PURPOSE. The legislature finds that assaults and harassment by household members or ex-spouses are a growing problem in Alaska and that special solutions to the problem are needed. The criminal justice system is often unable to provide an adequate remedy because of the economic and psychological dependence of victims of domestic violence on their attackers. The purpose of this legislation is to assure that victims of domestic violence will be advised of all available alternatives, that they will

have immediate access to the judicial system to obtain an injunction without excessive costs or the requirement of legal representation, that people who commit domestic violence will be dealt with fairly and firmly, and that peace officers will be trained to respond properly to domestic violence situations.

5. On p. 7, line 5, insert a new section and renumber accordingly:

Sec. 3. AS 12.25.020 (c) is amended by adding a new subsection to read:

(11) whether the offense charged is domestic violence as defined in AS 09.55.700.

6. On p.6, line 10, delete "AS 09.55.650" and insert "AS 09.55.600"
7. On p. 7, line 27, delete "AS 09.55.650" and insert "AS 09.55.600"

Original sponsors: Malone, Anderson,
Cotten, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 392

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to domestic violence; and changing
7 Rules 3, 65, and 76, Rules of Civil Procedure."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 09.55 is amended by adding new sections to read:

10 ARTICLE 9. DOMESTIC VIOLENCE.

11 Sec. 09.55.600. INJUNCTIVE RELIEF IN CASES INVOLVING DOMESTIC
12 VIOLENCE. (a) A person who is subjected to domestic violence may
13 petition a superior court for injunctive relief restraining the infliction
14 of further domestic violence against the petitioner by the respondent.
15

16 (b) Upon receiving a petition under (a) of this section, the
17 superior court shall schedule a hearing and shall provide at least 10
18 days notice to the respondent of the hearing and of the respondent's
19 right to appear and to be heard either in person or by attorney. If, at
20 the hearing, the superior court finds that the petitioner has been
21 subjected to domestic violence by the respondent. ^{NEW LANGUAGE} the superior court may
22 issue any order it determines to be necessary for the protection of the
23 health, safety ^{changed from "and"} or welfare of the petitioner or of a minor child in the
24 care of the petitioner. An order under this subsection may include
25 provisions which

26 (1) restrain the respondent from subjecting the petitioner to
27 domestic violence;

28 (2) direct the respondent to vacate the home of the peti-
29 tioner;

1 (3) restrain the respondent from communicating directly or
2 indirectly with the petitioner;

3 (4) direct the respondent to pay support for the petitioner
4 or for a minor child in the care of the petitioner if there is an inde-
5 pendent legal obligation of the respondent to support the petitioner or
6 the child;

7 (5) award temporary custody of a minor child to the peti-
8 tioner;

9 (6) direct the respondent to pay for medical expenses incurred
10 by the petitioner as a result of the domestic violence.

11 (c) An order issued under this section shall remain in effect for
12 a period of time not to exceed 45 days. However, the petitioner may
13 petition the superior court for extensions of a provision of the order
14 if the provision is described in (b)(1), (b)(2) or (b)(3) of this sec-
15 tion. If the superior court, after notice to the respondent of and a
16 hearing on the petition for the extension in accordance with the proce-
17 dures described in (b) of this section, finds that an extension of the
18 provision of the order is necessary to protect the petitioner from
19 domestic violence, the superior court may extend those provisions of the
20 order for a period of time not to exceed 45 days.

21 (d) Proceedings under this section do not preclude any other
22 available civil or criminal remedies.

23 Sec. 09.55.610. EMERGENCY INJUNCTIVE RELIEF IN CASES INVOLVING
24 DOMESTIC VIOLENCE. (a) A person who has been subjected to domestic
25 violence may petition the superior court for a temporary order providing
26 for emergency injunctive relief restraining the infliction of further
27 domestic violence against the petitioner by the respondent. If there is
28 no superior court within 50 road miles of the residence of the person
29 subjected to domestic violence, the person may petition the nearest

1 district court for a temporary emergency injunctive relief order. If
2 there is no district court within 50 road miles of the residence of the
3 person subjected to domestic violence, the person may petition the
4 nearest magistrate for a temporary emergency injunctive relief order.
5 The district court or magistrate shall notify the superior court imme-
6 diately upon issuance of an order granting emergency injunctive relief
7 under this section.

8 (b) An order under this section may be granted without written or
9 oral notice to the respondent if the court finds that the petitioner has
10 been subjected to domestic violence and

11 (1) it clearly appears that there is a substantial likelihood
12 of immediate danger from the respondent to the health, safety, or welfare
13 of the petitioner or of a minor child in the care of the petitioner; and

14 (2) the petitioner or the petitioner's attorney certifies to
15 the court in writing the efforts, if any, which have been made to provide
16 notice to the respondent and the reasons supporting the claim that
17 notice should not be required.

18 (c) An order issued under this section may include a provision
19 described in AS 09.55.000(b). The order shall be endorsed with the date
20 and hour of issuance, shall be filed in the clerk's office and entered
21 in the records of the court, and shall state the reason that it was
22 granted without notice. The order shall remain in effect for a period
23 not to exceed 10 days, unless extended by the court for good cause. The
24 reasons for the extension shall be entered in the records of the court.

25 (d) If an order under this section is granted without notice, a
26 hearing before the superior court for injunctive relief under AS 09.55.-
27 000 shall be scheduled by the superior court at the earliest possible
28 time consistent with the notice provisions of AS 09.55.000. If at the
29 hearing the petitioner does not proceed with the petition for injunctive

1 relief, the superior court shall dissolve the emergency injunctive
2 relief order.

3 (c) On two days notice to the petitioner, or on shorter notice as
4 the superior court may prescribe, the respondent may make a motion to
5 the superior court for the dissolution or modification of an order for
6 emergency injunctive relief under this section. The superior court
7 shall hear and rule on the motion in an expeditious manner.

8 (f) Proceedings under this section do not preclude other available
9 civil or criminal remedies.

10 Sec. 09.55.620. FORMS FOR FILING PETITION. (a) The Alaska court
11 system, in cooperation with interested persons and organizations, shall
12 prepare forms and instructions for the use of persons seeking an order
13 for relief under AS 09.55.600 or 09.55.610, including forms for waiving
14 filing fees on the basis of indigency. The forms shall conform to the
15 requirements of AS 09.55.600 and 09.55.610 and the Alaska Rules of Civil
16 Procedure, except that information on the forms may be filled in by
17 legible handwriting. The office of the clerk of each superior and
18 district court shall make the forms and instructions available to the
19 public.

20 (b) The form for a petition prepared under (a) of this section
21 shall include a notice that a false statement made in it stating that
22 the respondent has subjected the petitioner to domestic violence consti-
23 tutes the crime of unsworn falsification under AS 11.56.210, which is
24 punishable by a maximum term of imprisonment of one year and a \$5,000
25 fine.

26 Sec. 09.55.630. NOTIFICATION TO LAW ENFORCEMENT AGENCIES. If a
27 superior court, district court, or magistrate issues an order under
28 AS 09.55.600 or 09.55.610 restraining a respondent from subjecting a
29 petitioner to domestic violence, the superior court, district court, or

1 magistrate shall transmit a copy of the order to the appropriate local
2 law enforcement agency. Each law enforcement agency shall establish
3 procedures to inform their peace officers of copies of the orders re-
4 ceived by the law enforcement agency under this section. Peace officers
5 shall use every reasonable means to enforce an order issued under AS 09.-
6 55.600 or 09.55.610.

7 Sec. 09.55.640. DEFINITIONS. For the purposes of AS 09.55.600 -
8 09.55.640, "domestic violence" means a crime under AS 11.41 committed
9 against a spouse, a former spouse, or a member of the social unit com-
10 prised of those living together in the same dwelling as the respondent.

11 * Sec. 2. AS 12.55.135 is amended by adding a new subsection to read:

12 (c) A defendant convicted of assault in the third degree committed
13 in violation of the provisions of an order issued under AS 09.55.600 or
14 09.55.610 shall be sentenced to a minimum term of imprisonment of 10
15 days. The execution of sentence may not be suspended and probation or
16 parole may not be granted until the minimum term of imprisonment has
17 been served. Imposition of sentence may not be suspended, except upon
18 condition that the defendant be imprisoned for no less than the minimum
19 term of imprisonment provided in this section, and the minimum sentence
20 provided for in this section may not be otherwise reduced.

21 * Sec. 3. AS 12.65 is amended by adding new sections to read:

22 ARTICLE 6. DOMESTIC VIOLENCE.

23 Sec. 12.65.510. DOMESTIC VIOLENCE TRAINING. (a) Each established
24 police training program in the state shall provide training that ac-
25 quaints police officers with

26 (1) laws relating to substantive crimes and rules of criminal
27 procedure applicable in cases involving domestic violence;

28 (2) techniques for handling incidents of domestic violence
29 which promote the safety of the victim and the officer and which reduce

1 the likelihood of recurrence;

2 (3) organizations in the state that offer aid or shelter to
3 victims of domestic violence;

4 (4) procedures applicable in the prosecution of cases involv-
5 ing domestic violence;

6 (5) orders that may be issued by a court under AS 09.55.000
7 and 09.55.610; and

8 (6) the notification that shall be given to victims of domes-
9 tic violence under AS 18.65.520.

10 (b) In providing a training program under this section, each
11 agency or institution offering an established police training program
12 shall consult with interested individuals and organizations providing
13 assistance to victims of domestic violence.

14 Sec. 18.65.520. NOTIFICATION TO VICTIMS OF DOMESTIC VIOLENCE. (a)
15 During the course of responding to an offense involving domestic vio-
16 lence, a police officer shall orally or in writing inform the victim of
17 services available to the victim and the rights of the victim, substan-
18 tially as follows:

19 As a victim of domestic violence you should
20 be aware of the following:

21 (1) In some places in Alaska there are
22 organizations that provide aid and shelter to
23 victims of domestic violence. The nearest
24 such organization is located at _____.

25 (2) If you feel that there is a continuing
26 danger to your safety, please let me know and
27 I will make all possible efforts to insure your
28 safety.

29 (3) Alaska law provides that you may file an

1 application with the nearest court for a court
2 order protecting you and your children from
3 further harm. The forms to obtain the order are
4 available at the court. It is not necessary to
5 have an attorney to obtain a court order but one
6 may be of help to you if you cannot afford to
7 hire an attorney, you should contact the nearest
8 Alaska Legal Services office which is located at

9 _____.
10 (4) Additionally, the victim/witness assist-
11 ance program of the Department of Law may be able
12 to help you. The nearest district attorney's
13 office is located at _____.

14 (b) If the victim of domestic violence does not understand English,
15 the police officer shall make reasonable efforts to inform the victim of
16 the services and rights specified in (a) of this section in a language
17 the victim understands.

18 (c) As used in this section "domestic violence" means a crime
19 under AS 11.41 committed against a spouse, a former spouse, or a member
20 of the social unit comprised of those living together in the same
21 dwelling as the person who committed the crime.

22 * Sec. 4. AS 22.15.100 is amended by adding a new paragraph to read:

23 (9) to issue a temporary order for emergency injunctive
24 relief in cases involving domestic violence as provided in AS 09.55.610.

25 * Sec. 5. Section 1 of this Act has the effect of changing Rule 3, Rules
26 of Civil Procedure, by enacting a provision that allows a court to proceed
27 upon the filing of a petition rather than a complaint, and Rule 70, Rules of
28 Civil Procedure, by enacting a provision that allows a court to accept for
29 filing petitions which are handwritten in part. Section 1 of this Act also

1 has the effect of changing Rule 65, Rules of Civil Procedure, by enacting a
2 provision that establishes an alternate procedure for obtaining orders for
3 relief from domestic violence.
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HB

546

with mobile again
+ fee

HOUSE BILL 546: PRE. AND POST JUDGEMENT INTEREST RATES

PROS AND CONS

Effective 1/1/2000

PRO

- ✓ 1. Eliminate Court congestion
- ✓ 2. Current law does not encourage settlement (8% v 18%)
- 3. Remedy the backlog of cases.
- 4. Reduction in number of cases pending
- ✓ 5. Expeditious resolution of claims
- 6. Inducement to settle
- 7. O.K. if around 10 %
- 8. No incentive to settle now..Expedite claims and clear court calendars.
- ✓ 9. Protect the rights of economically damaged persons in the state.

CON

- ✓ 1. Time for interest should begin a reasonable period after the claim has been filed rather than time of injury.
- 2. Plaintiff should pay expenses of defendant if there is zero award.
- 3. Defendant should pay interest only on Offer of Judgment, even if the jury awards a higher amount.
- ✓ 4. High settlement cost equal higher insurance rates.
- ✓ 5. Allows build-up of plaintiffs claim.
- 6. Increase in insurance premiums for liability insurance.
- ✓ 7. Plaintiff's attorneys will delay to maximize return and attorney will be rewarded by increased contingency fees.
- ✓ 8. Malpractice insurance carriers have expressed the possibility of leaving the state if this bill passes.
- 9. Rate increase of up to 30 % if original CS passes, for malpractice insurance.
- 10. Disincentive for plaintiff to settle.
- 11. Ignores fair judicial procedure and due process for those being sued.
- ✓ 12. Settling cases should result from ^{good} faith ^{by} the people who are being sued. This bill is coercion.

PROPOSED RULES COMMITTEE SUBSTITUTE FOR HB 546

*Section 1. AS 09.30.070 is amended to read:

Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on judgments and decrees for the payment of money is 10.5 [EIGHT] percent a year except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree [, BUT IN NO EVENT MAY IT BE MORE THAN 10 PERCFNT A YEAR].

*Sec. 2. AS 45.45.010(a) is amended to read:

(a) The rate of interest in the state is 10.5 [EIGHT] percent a year and no more on money after it is due except as provided in (b) of this section. [THE RATE OF INTERLST IN THE STATE IS SIX PERCENT A YEAR AND NO MORE ON (1) MONEY RECEIVED TO THE USE OF ANOTHER AND RETAINED BEYOND A REASONABLE TIME WITHOUT THE OWNER'S EXPRESS OR IMPLIED CONSENT; (2) MONEY DUE UPON THE SETTLEMENT OF MATURED ACCOUNTS FROM THE DAY THE BALANCE IS ASCERTAINED; OR (3) MONEY DUE OR TO BECOME DUE WHEN THERE IS A CONTRACT TO PAY INTEREST AND NO RATE IS SPECIFIED.]

*Sec. 3. AS 45.45.010 is amended by adding a new subsection to read:

(i) On or before the 60th day following the filing of an answer in a civil action, and on the day discovery closes as ordered by the court, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof, and thereupon the clerk shall enter judgment. An offer not accepted within ten days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is more favorable to the offeree than the offer, the interest awarded under (a) of this section and accrued up to the date judgment is entered shall be adjusted as follows: if the offeree is the party making the claim, the interest rate shall be increased by two percent per annum; if the offeree is the party defending against the claim, the interest rate shall be reduced by two percent per annum.

*Sec. 4. The interest rate provided in Sec. 1 of this Act applies only to judgments entered after the effective date of this Act. The interest rate provided in Sec. 2 of this Act applies only to cases filed after the effective date of this Act.

*Sec. 5. This Act takes effect July 1, 1980.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 13, 1979

SUBJECT: Post-Judgment Interest Rates
(Work Order Number 7547)

TO: Charles H. Parr, Chairman
House Judiciary Committee
Attn: Peggy Berck
Administrative Assistant

FROM: Thomas A. Sofo
Legislative Counsel *TAS*

At present post- and pre-judgment interest rates are both at eight percent. By amending the post-judgment interest rate in a manner which will undoubtedly make it higher than the eight percent pre-judgment rate of AS 45.45.010(a) we are creating a situation in which the big corporate defendant has financial incentive to delay litigation. It is only removed in degree from the earlier situation in which there was apparently post-judgment interest but no recognition of pre-judgment interest until the courts made it clear that such was necessary to counter certain abuses. A review of the case law indicates that we may be recreating a situation subject to the very misuses which the post-judgment and pre-judgment interests statutes and cases were designed to alleviate. Possibly we should consider amending or adding a section to AS 45.45.010 in such a manner as to reflect a calculation of the pre-judgment interest rate by the same manner post-judgment interest rates are calculated. Please let me know of your desires with regard to the above.

TAS:ljb

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 14, 1980

SUBJECT: Post-Judgment Interest Rates
(Work Order Number 7547)

TO: Representative Charles H. Parr, Chairman
House Judiciary Committee
Attn: Peggy Berck
Administrative Assistant

FROM: Thomas A. Sofo
Legislative Counsel

AS 45.45.010, the Alaska statute dealing with the legal rate of interest generally within the state, already requires the Department of Commerce and Economic Development to compile the 12th Federal Reserve District figure on a quarterly basis. If the intent behind the current amendment is to make the post-judgment interest rate more responsive to market conditions, this can be done on a quarterly basis (rather than semiannually as you have requested) without imposing any additional administrative burden on the bureaucracy.

TAS:ljb



Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

TO: Legislative Affairs

FROM: Margaret W. Berck, Staff *MWB*

DATE: Jan. 30, 1980

RE: Request for (H) Judiciary Committee CS for HB 546.

Please furnish a CS by the House Judiciary Committee for HB 546 that would accomplish the following:

1. Quarterly determinations of interest rates for both prejudgment and post-judgment interest (said interest, in both cases shall be two points above the prime interest rate);
2. The interest in the prejudgment situation should begin to run from the date of injury, ie, date cause of action accrues--apparently the Alaska Supreme Court in Guin v. Ha., 591 P. 2d 1281, interpreted the language currently in AS 45.45.010 ("on money after it is due") to require such calculation.
3. Do not change the usury provisions in AS 45.45.010.

For your assistance in this matter I have attached a marked up bill, that I believe would accomplish the desires of the Committee.

Call me at 3718, I do have one question.

*Sec. 3. AS 45.45.010(a) is amended to read:

(a) The rate of interest in the state (IS EIGHT PER CENT A YEAR AND NO MORE) on money after it is due is two percentage points (EIGHT PER CENT A YEAR) above the annual rate charged member banks for advances by the 12th Federal Reserve District that prevailed on the 25th day of the month preceding the commencement of the calendar quarter during which the day the obligation to pay occurs. except as provided in (b) of this section. (DELETE ALL REMAINING LANGUAGE IN THIS SUBSECTION, IE, SUBSECTION (a)).

*Sec. 4. AS 34.34.010 (d) is amended to read:

(d) Notice of the annual rate charged member banks for advances by the 12th Federal Reserve District prevailing on the 25th day of the month preceding the commencement of each calendar quarter required for the (MAXIMUM INTEREST RATE COMPUTATION UNDER (b) OF THIS SECTION SHALL BE PROVIDED BY THE DEPARTMENT OF COMMERCE.) interest rate computation under (a) of this section and for the maximum interest rate computation under (b) of this section shall be provided by the Department of Commerce.

GARRETSON & JARVI

Attorneys at Law

750 WEST SECOND AVENUE

SUITE 201

ANCHORAGE, ALASKA 99501

WALTER H. GARRETSON
KENNETH O. JARVI
JACOB H. ALLMARAS
T. W. PATCH

TELEPHONE
(907) 278-5131

October 22, 1979

Honorable Joe L. Hayes
District 12
625 West 5th Avenue, Suite 1
Anchorage, AK 99501

Dear Joe:

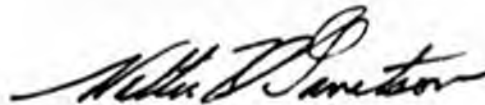
I would be greatly honored by your sponsorship of a bill in the legislature which would address the concern expressed in my letter of September 17, 1979. There was a minor error in the transcription of the wording suggested in my letter. I will restate the proposed addition to AS 45.45.010(a).

In the event an action is filed in any court in this state, including any federal court, on a claim for money due on an express or implied contract for the payment of money, prejudgment interest shall accrue from the date the action is filed on any principal amount unpaid as of the date the action is filed at the highest rate allowed from time to time under (b) of this section until judgment, notwithstanding any agreement of the parties.

If I can be of any assistance, please do not hesitate to call upon me.

Very truly yours,

GARRETSON & JARVI



Walter H. Garretson

WHG/lw

From Tom Bins



MAIN OFFICE POUCH 7012, ANCHORAGE, ALASKA 99510

April 29, 1980

Kelly & Luce Attorneys at Law
Mr. Greg Grebe
1015 West 7th Ave.
Anchorage, Alaska 99501

Re: Request for information on correlation of the Prime rate to the Federal discount rate.

Dear Greg:

At your request, we have compiled from sources available and to the best of our knowledge, the attached discount/prime rate comparison and comparative graph. The graph and numeric comparison shows the 'spread' from 1942 to the present. As you will note, without sophisticated statistical analysis, there isn't a general statement that can readily be made as to the average 'spread' between the two rates.

Since we compiled these figures from several sources, including some of our officers own personal records, we are unable to certify 100% accuracy of the figures, however, we do believe them to be the most accurate and complete set obtainable without investing substantial time and funds in research.

I hope this information will assist you in your presentation. If we may be of further assistance, please let us know.

Sincerely,

Richard J. Veale
Commercial Loan Officer

RJV/sl
Enc.

COMPARISON DISCOUNT/PRIME RATES

April 17, 1980

e

(Prime 10/30/42 - 11/11/71/NY)

(Prime 12/31/71 -

S-FNB)

<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %	<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %
05/18/59	3.00	4.50	1.50	11/20/67	4.50	5.50	1.00
05/29/59	3.50	4.50	1.00	11/21/67	4.50	6.00	1.50
09/01/59	3.50	5.00	1.50	03/22/68	5.00	6.00	1.00
09/11/59	4.00	5.00	1.00	04/19/68	5.50	6.50	1.00
01/10/60	3.50	5.00	1.50	08/30/68	5.25	6.50	1.25
08/12/60	3.00	5.00	2.00	09/25/68	5.25	6.00 - 6.25	.75 - 1.00
08/23/60	3.00	4.50	1.50	11/13/68	5.25	6.25	1.00
07/17/63	3.50	4.50	1.00	12/02/68	5.25	6.50	1.25
11/24/64	4.00	4.50	.50	12/17/68	5.50	6.50	1.00
12/06/65	4.50	4.50	-	12/18/68	5.50	6.75	1.25
12/07/65	4.50	5.00	.50	01/07/69	5.50	7.00	1.50
03/10/66	4.50	5.50	1.00	04/04/69	6.00	7.00	1.00
06/29/66	4.50	5.75	1.25	06/09/69	6.00	8.50	2.50
08/16/66	4.50	6.00	1.50	03/25/70	6.00	8.00	2.00
01/27/67	4.50	5.75	1.25	09/21/70	6.00	7.50	1.50
03/23/67	4.50	5.50 - 5.75	1.00 - 1.25	11/10/70	5.75	7.50	1.75
03/27/67	4.50	5.50	1.00	11/12/70	5.75	7.25	1.50
04/07/67	4.00	5.50	1.50	11/20/70	5.75	7.00	1.25

COMPARISON DISCOUNT/PRIME RATES

April 17, 1980

(Prime 10/30/42 - 11/11/71/NY)

(Prime 12/31/71 -

S-FNB)

<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %	<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %
10/30/42	.50	1.50	1.00	08/05/55	2.00	3.25	1.25
04/25/46	1.00	1.50	.50	09/09/55	2.25	3.25	1.00
12/07/47	1.00	1.75	.75	10/14/55	2.25	3.50	1.25
01/12/48	1.25	1.75	.50	11/18/55	2.50	3.50	1.00
08/12/48	1.25	2.00	.75	04/13/56	2.75	3.75	1.00
08/13/48	1.50	2.00	.50	08/22/56	2.75	4.00	1.25
08/21/50	1.75	2.00	.25	08/24/56	3.00	4.00	1.00
09/22/50	1.75	2.25	.50	08/07/57	3.00	4.50	1.50
01/08/51	1.75	2.50	.75	08/23/57	3.50	4.50	1.00
10/16/51	1.75	2.75	1.00	11/15/57	3.00	4.50	1.50
12/19/51	1.75	3.00	1.25	01/22/58	3.00	4.00	1.00
01/16/53	2.00	3.00	1.00	01/24/58	2.75	4.00	1.25
04/27/73	2.00	3.25	1.25	03/07/58	2.25	4.00	1.75
02/05/54	1.75	3.25	1.50	04/18/58	1.75	4.00	2.25
03/17/54	1.75	3.00	1.75	04/22/58	1.75	3.50	1.75
04/16/54	1.50	3.00	1.50	09/12/58	2.00	4.00	2.00
04/15/55	1.75	3.00	1.25	11/07/58	2.50	4.00	1.50
08/04/55	1.75	3.25	1.50	03/06/59	3.00	4.00	1.00

COMPARISON DISCOUNT/PRIME RATES

April 17, 1980

(Prime 10/30/42 - 11/11/71/NY)

(Prime 12/31/71 -

S-FNB)

<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %	<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %
11/30/70	5.50	7.00	1.50	12/31/71	4.75	5.25	.50
12/03/70	5.50	6.75	1.25	01/10/72	5.00	5.00	-
01/07/71	5.50	6.50	1.00	01/26/72	5.00	4.75	.25
01/08/71	5.25	6.50	1.25	04/05/72	5.00	5.00	-
01/10/71	5.25	6.25	1.00	06/27/72	5.00	5.25	.25
01/18/71	5.00	6.00	1.00	08/29/72	5.00	5.50	.50
02/17/71	4.75	5.75	1.00	10/03/72	5.00	5.75	.75
02/18/71	4.75	5.75	1.00	12/28/72	5.00	6.00	1.00
03/11/71	4.75	5.25	.50	02/26/73	5.25	6.25	1.00
04/26/71	4.75	5.50	.75	03/26/73	5.25	6.50	1.25
06/14/71	4.75	5.75	1.00	04/19/73	5.25	6.75	1.50
07/07/71	5.00	6.00	1.00	05/07/73	5.25	7.00	1.75
07/16/71	5.00	6.00	1.00	05/25/73	5.25	7.25	2.00
08/04/71	5.00	6.50	1.50	06/07/73	5.25	7.50	2.25
10/20/71	5.00	5.75	.75	06/22/73	5.25	7.75	2.50
11/05/71	5.00	5.50	.50	07/02/73	5.25	8.00	2.75
11/11/71	4.75	5.50	.75	07/06/73	5.25	8.25	3.00

COMPARISON DISCOUNT/PRIME RATES

April 17, 1980

(Prime 10/30/42 - 11/11/71/NY)

(Prime 12/31/71 -

S-FNB)

<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %	<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %
07/19/73	5.25	8.50	3.25	04/24/74	5.50	10.50	5.00
07/30/73	5.25	8.75	3.50	04/29/74	5.50	10.75	5.25
08/06/73	5.25	9.00	3.75	05/03/74	5.50	11.00	5.50
08/13/73	5.25	9.25	4.00	05/10/74	5.50	11.25	5.75
08/21/73	5.25	9.50	4.25	05/17/74	5.50	11.50	6.00
08/27/73	5.25	9.75	4.50	06/25/74	5.50	11.75	6.25
09/14/73	5.25	10.00	4.75	07/03/74	5.50	12.00	6.50
10/23/73	5.25	9.75	4.50	10/08/74	5.50	11.75	6.75
01/25/74	5.50	9.50	4.00	10/22/74	5.50	11.50	6.00
02/11/74	5.50	9.25	3.75	10/30/74	5.50	11.25	5.75
02/19/74	5.50	9.00	3.50	11/08/74	5.50	11.00	5.50
02/25/74	5.50	8.75	3.25	11/15/74	5.50	10.75	5.25
03/22/74	5.50	9.00	3.50	11/25/74	5.50	10.50	5.00
03/29/74	5.50	9.25	3.75	01/13/75	6.00	10.25	4.25
04/03/74	5.50	9.50	4.00	01/20/75	6.00	10.00	4.00
04/05/74	5.50	9.75	4.25	01/27/75	6.00	9.75	3.75
04/11/74	5.50	10.00	4.50	01/30/75	6.00	9.50	3.50
04/19/74	5.50	10.25	4.75	02/04/75	6.00	9.25	3.25

COMPARISON DISCOUNT/PRIME RATES

April 17, 1980

(Prime 10/30/42 - 11/11/71/NY)

(Prime 12/31/71 -

S-FNB)

<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %	<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %
02/11/75	6.00	9.00	3.00	05/28/76	6.25	7.00	.75
02/18/75	6.00	8.75	2.75	06/07/76	6.25	7.25	1.00
02/26/75	6.00	8.50	2.50	08/02/76	6.25	7.00	.75
03/10/75	6.00	8.25	2.25	10/04/76	6.25	6.75	.50
03/12/75	6.00	8.00	2.00	11/02/76	6.25	6.50	.25
03/19/75	6.00	7.75	1.75	12/13/76	6.25	6.25	-
04/01/75	6.00	7.50	1.50	05/13/77	6.50	6.50	-
05/20/75	6.00	7.25	1.25	05/31/77	6.50	6.75	.25
06/09/75	6.00	7.00	1.00	08/22/77	6.50	7.00	.50
07/18/75	6.00	7.25	1.25	09/16/77	6.50	7.25	.75
07/25/75	6.00	7.50	1.50	10/07/77	6.50	7.50	1.00
08/11/75	6.00	7.75	1.75	10/24/77	6.50	7.75	1.25
09/15/75	6.00	8.00	2.00	01/10/78	6.75	8.00	1.25
10/27/75	6.00	7.75	1.75	05/03/78	6.75	8.25	1.50
11/05/75	6.00	7.50	1.50	05/26/78	6.75	8.50	1.75
12/01/75	6.00	7.25	1.25	06/16/78	7.00	8.75	1.75
01/12/76	6.25	7.00	.75	06/30/78	7.00	9.00	2.00
01/22/76	6.50	6.75	.50	08/31/78	7.00	9.25	2.25

April 17, 1980

COMPARISON DISCOUNT/PRIME RATES

(Prime 10/30/42 - 11/11/71/NY)

(Prime 12/31/71 -

S-FNB)

<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %	<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %
09/15/78	7.50	9.50	2.00	10/23/79	12.00	15.00	3.00
09/28/78	7.50	9.75	2.25	10/31/79	12.00	15.25	3.25
10/13/78	7.50	10.00	2.50	11/09/79	12.00	15.50	3.50
10/27/78	7.50	10.25	2.75	11/16/79	12.00	15.75	3.75
11/01/78	7.50	10.50	3.00	12/03/79	12.00	15.50	3.50
11/03/78	7.50	10.75	3.25	12/07/79	12.00	15.25	3.25
11/17/78	7.50	11.00	3.50	02/19/80	13.00	15.75	2.75
11/24/78	7.50	11.50	4.00	02/22/80	13.00	16.50	3.50
12/26/78	7.50	11.75	4.25	02/29/80	13.00	16.75	3.75
06/19/79	7.50	11.50	4.00	03/04/80	13.00	17.25	4.25
07/27/79	7.50	11.75	4.25	03/07/80	13.00	17.75	4.75
08/16/79	10.25	12.00	1.75	03/14/80	13.00	18.50	5.50
08/28/79	10.25	12.25	2.00	03/19/80	13.00	19.00	6.00
09/07/79	10.25	12.75	2.50	03/28/80	13.00	19.50	6.50
09/14/79	10.25	13.00	2.75	04/02/80	13.00	20.00	7.00
09/21/79	10.25	13.25	3.00	04/16/80	13.00	19.75	6.75
09/28/79	11.00	13.50	2.50	04/18/80	13.00	19.50	6.50
10/09/79	12.00	14.50	2.50	4/23/80	13.00	19.00	6.00

April 17, 1980

COMPARISON DISCOUNT/PRIME RATES

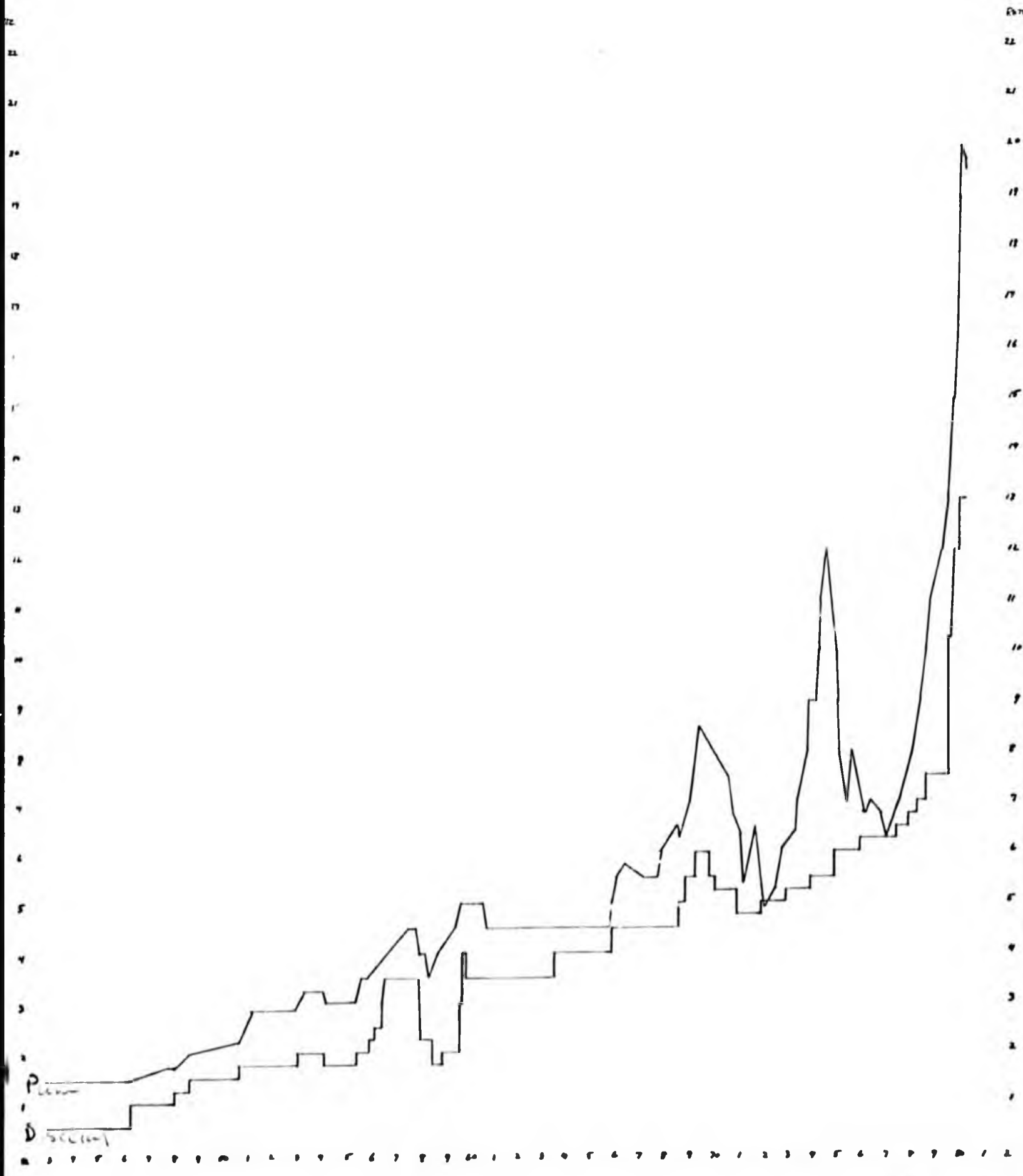
(Prime 10/30/42 - 11/1/71/NY)

(Prime 12/31/71 -

S-FNB)

<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %
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<u>DATE</u>	<u>DISCOUNT</u> %	<u>PRIME</u> %	<u>SPREAD</u> %
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May 1, 1980

Mr. Roger F. Holmes,
Attorney at Law
Biss and Holmes
618 Christensen Drive
Anchorage, Alaska 99501

Dear Mr. Holmes:

Thanks for your letter of April 21.

Comments noted and your proposals made sense.

I have no idea as to in what form the bill will be in final passage, but I'm sure that it will entail a compromise.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

BISS AND HOLMES

ATTORNEYS AT LAW

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS
ROGER F. HOLMES

818 CHRISTENSEN DRIVE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 277-8564

WASILLA OFFICE
SR BOX 5111
WASILLA, ALASKA 99687
TELEPHONE (907) 376-5318

April 21, 1980

Senator Robert Ziegler
State Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill 546

Dear Senator Ziegler:

I enclose a re-draft of your committee substitute bill including a new sub-paragraph (h) under AS 45.45.010(2) which is Section 2 of your Bill. Basically section (h) states that in a tort or negligence situation interest does not become due until the defendant is notified that a claim is being made against him.

This section eliminates the burdensome interest rate during those years in which a medical malpractice claim or products liability claim goes undetected by both the claimant and the manufacturer, doctor or hospital. As you are aware, some of these cases are in excess of twenty years old when finally brought to the attention of the defendant.

This change would allow the claimants to obtain interest from the date the defendant is on notice of the claim. Thus, it would seem to retain the desired affect of prompting defendants to settle claims as soon as they receive notice that the claim was pending.

I doubt that this change would prejudice any claimants. In the simple negligence case the plaintiff is aware of the injury at the outset and the identity of the defendant. Automobile insurance companies traditionally have investigators contact the plaintiff within a matter of days of the accident. In the ordinary negligence situation a claimant would probably not be deprived under this Bill of more than a month's interest. The interest rate in the Bill appears high enough such that the loss of interest over a short period of time should not work a hardship on plaintiffs generally.

Senator Robert Ziegler
Page Two
April 21, 1980

In the situation where the claim is not discovered for years
the verdict or settlement will reflect present day economics
Thus, the claimant will not be deprived of a just result.

Thanks much for your consideration.

Very truly yours,

BISS & HOLMES



Roger F. Holmes

RFH/gd
Enclosures

cc: Charles Rigden
Ove Arvidson
William G. Brock
Michael Thomas, Esq.
Douglas Smith, M.D.
Gerhart Haas
Jeff Landry

Original sponsor: Judiciary Committee

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 546
IN THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act increasing prejudgment and post-judgment interest rates; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 09.30.070 is amended to read:

Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on judgments and decrees for the payment of money is 12 [EIGHT] percent a year [, EXCEPT THAT A JUDGMENT OR DECREE FOUNDED ON A CONTRACT IN WRITING, PROVIDING FOR THE PAYMENT OF INTEREST UNTIL PAID AT A SPECIFIED RATE NOT EXCEEDING THE LEGAL RATE OF INTEREST FOR THAT TYPE OF CONTRACT, BEARS INTEREST AT THE RATE SPECIFIED IN THE CONTRACT IF THE INTEREST RATE IS SET OUT IN THE JUDGMENT OR DECREE, BUT IN NO EVENT MAY IT BE MORE THAN 10 PERCENT A YEAR].

* Sec. 2. AS 45.45.010(a) is amended to read:

(a) The rate of interest in the state is 12 [EIGHT] percent a year and no more on money after it is due except as provided in (b) and (h) of this section. [THE RATE OF INTEREST IN THE STATE IS SIX PERCENT A YEAR AND NO MORE

SOUTH WESTERN U.S.A.
15% COTTON FIBER

ON (1) MONEY RECEIVED TO THE USE OF ANOTHER AND RETAINED BEYOND A REASONABLE TIME WITHOUT THE OWNER'S EXPRESS OR IMPLIED CONSENT; (2) MONEY DUE UPON THE SETTLEMENT OR MATURED ACCOUNTS FROM THE DAY THE BALANCE IS ASCERTAINED; OR (3) MONEY DUE OR TO BECOME DUE WHEN THERE IS A CONTRACT TO PAY INTEREST AND NO RATE IS SPECIFIED.]

(h) Money does not become due as defined in Sec. (a) of this section in a tort or negligence case until written demand is made upon the person or entity from whom the money is claimed. Written demand may be made by any means permissible for service of process. Interest commences running only from at the time written demand is made.

* Sec. 3. The interest rate provided in Sec. 1 of this Act applies only to those judgments rendered after the effective date of this Act. The interest rate provided in Sec. 2 of this Act applies only to those causes of action which accrue after the effective date of this Act.

* Sec. 4. This Act takes effect July 1, 1980.

May 9, 1980

Mr. William H. Fuld,
Attorney at Law
Kay, Christie, Fuld,
Saville and Coffey
2600 Denali, Suite 503
Anchorage, Alaska 99503

Dear Mr. Fuld:

CSHB 546 is now in the Senate Rules Committee. It is chaired by Senator Mike Colletta. It is he to whom you should offer your suggestions.

However, because time is rapidly running out, I have delivered a copy of your May 1st letter, together with a copy of this letter, to the Good Senator.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

cc: Senator Colletta w/enc.

Law Offices of

KAY, CHRISTIE, FULD, SAVILLE & COFFEY

WENDELL P. KAY
REGINALD J. CHRISTIE, JR.
WILLIAM H. FULD
SANDRA K. SAVILLE
DAN R. COFFEY
M. GREGORY OCHSIS

2600 DENALI, SUITE 503

ANCHORAGE, ALASKA 99503

TELEPHONE
AREA CODE 907
276-4333

May 1, 1980

Hon. Robert H. Ziegler
Pouch V
Juneau, Ak. 99811

Dear Sen. Ziegler:

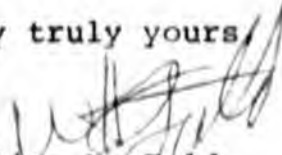
Re: CS HB 546

This bill relates to pre-judgment and post-judgment rates. It is my understanding that prime opposition to the bill has come from insurance companies. The present situation is somewhat of a disgrace since just by stalling litigation, insurance companies and other defendants who owe money to injured parties, as well as businessmen and contractors, can make money by stalling. The reason for this is court congestion. There is a windfall by delaying litigation. The small loan companies have contractual agreements whereby they can get 15-18% interest, at least pre-judgment pursuant to terms of contracts. The person who is hit by a drunk driver and loses a leg is presently limited to 8% pre-judgment interest, as well as post-judgment, while attempts at collection or appeals are exhausted.

Meanwhile, the person who owes the money can easily make 15-20% on the other person's money. This is outrageous and that is why, as an attorney and citizen aware of the problem, I urge that this legislation relating to pre-judgment and post-judgment interest be passed by the legislature.

As a result of higher interest rates, there is bound to be greater interest in settlements, and court congestion should be eliminated. To the extent people who owe money are going to have to pay more, it's only fair since they're not really losing anything, they're just getting a windfall from present high interest rates and are legally required to pay low interest rates. If interest rates fall, the bill has a sliding scale so that the legal interest rates would fall also. This is certainly constructive legislation.

Very truly yours,


William H. Fuld

WHF:flf

April 25, 1980

Mr. Robert E. Collins,
Branch Manager
The Continental Insurance Companies
P. O. Box 1850
Seattle, Washington 98111

Dear Mr. Collins:

I essentially agree with the comments you made in your well-written, well-reasoned letter of April 16.

As the Chairman of the Senate Judiciary Committee, I am used to having been placed between two warring factions of the same profession. CSHB 546 is an excellent example.

Believe me, I know the pros and cons of the argument and I have endeavored to find a compromise position as you can see by the enclosure.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

Enclosure



The Continental Insurance Companies

THE CONTINENTAL INSURANCE COMPANY • FIREMEN'S INSURANCE COMPANY • PACIFIC INSURANCE COMPANY
THE FIDELITY AND CASUALTY COMPANY • COMMERCIAL INSURANCE COMPANY • BUCKEYE UNION INSURANCE COMPANY
NIAGARA FIRE INSURANCE COMPANY • THE GLENS FALLS INSURANCE COMPANY • NATIONAL-BEN FRANKLIN COMPANIES
KANSAS CITY FIRE & MARINE INSURANCE COMPANY • BOSTON OLD COLONY INSURANCE COMPANY

Fourth and Battery Building, P.O. Box 1850, Seattle, Washington 98111

April 16, 1980

Mr. Robert H. Ziegler, Sr., Esquire
Chairman, State Senate Judiciary Committee
510 Kennedy Street
Juneau, Alaska

Pre and Post Judgment Interest Legislation

Dear Senator Ziegler:

In simple terms, the above legislation represents a deceptively popular effort that promises to be a major thrust towards killing the goose that laid the golden egg. The welfare of the people of Alaska is threatened by irresponsible efforts that will undermine either reasonable insurance rates or the survival of responsible companies within the State of Alaska.

Defeat of efforts to raise pre and post judgment interest beyond reasonable rates is in the best interest of the people of the State of Alaska, and of course, to you for numerous reasons:

1. Inflationary trends

This statutory built-in guarantee of excessive inflation will render Alaska underwriting beyond any reasonable figures. Responsible underwriting companies will be forced to leave the State of Alaska. Alaska judgments already greatly exceed the national average. To permanently inscribe as a matter of law the current or any post prime rate factor in a pre and post judgment interest would require, under any sound actuarial computation, insurance rates that not only would become prohibitive, and thus create a real problem for the public welfare, but exceedingly inflationary themselves.

2. Interference with the right to litigate

While we realize that you are faced with the frenzied demands of the plaintiff's bar, the very right to litigate and the very future of the Alaskan bar is threatened by such a measure. As responsible underwriters are driven out of the State of Alaska, the essential compensatory nature of litigation as a substitute for the club and stick become threatened. The Judiciary Committee, in our opinion, should take an overview of the entire judicial process; any threat of pre and post judgment interest impedes the very fundamentals of procedural due process of law and a party's right to litigate, in fact, whether or not the court so holds.

Any legislation must apply both to insured claims and uninsured claims, and the citizens of Alaska must necessarily be short-changed in the judicial process if they are faced with excessive additional cost affecting their right to litigate. We respectfully suggest that any study by your committee will show that Alaska already has the highest percentage cost of litigation cost in the country.

3. Bread and circuses

At this time when governmental officials the nation over are being faced with a difficult decision of apparently popular action vs. the exercise of leadership and restraint, we emphathize with your difficult position. However, as a matter of national interest, this measure will only lead in the short or long run to socialization of the insurance industry and a deprivation to the citizens of Alaska of the benefits of perhaps one of the more efficient industries in our country. We have seen such governmental interference affecting the railroad industry, the coal industry, the fuel industry, the steel industry, the airline industry, and most recently the automobile industry. This legislation would not aid the people in Alaska by crippling the available insurance funds to the litigants of Alaska.

Insurance in Alaska is funded by Alaskan citizens. The expense and risks of this fund are decidedly controlled by your committee, and by each action you take you determine the availability of responsible insurers to your citizens. Recent Alaskan judgments indicate that there is no evil or harm that need be served by the proposed legislation, save a desire for even greater funds that have been awarded. You are really determining for the citizens of Alaska whether or not they will have financially solvent and responsible insurance available to them, and at what cost.

Examples:

Just as the dinosaur encountered nonsurvival problems, industries in our country have been weakened and destroyed, at tremendous expense to the citizens, and at tremendous loss of efficiency on the part of our country to foreign nations, through harsh regulatory legislation. Time and again voters indicate, when true leadership emerges to point out such harshness, that we, as a people, are still in favor of the free enterprise system.

May we point to the states of New York, New Jersey, and North Carolina where there has been a great withdrawal of insurance funds from citizens, and exceedingly high rates resulting. This, as you know, not only increases the overall cost of litigation to all parties, but enhances the risk of uninsured exposure, problems with less responsible companies, and outright business failures.

We wish to point, as recent examples, to the leadership in the countries of Japan and West Germany, where the leaders have taken it upon themselves

Mr. Robert H. Ziegler, Sr.

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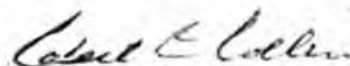
April 16, 1980

to expose to the public the need for restraint and fiscal responsibility. In those countries the current inflation rate is less than half of what it is we are faced with. In those countries, the responsible people have received the support of their electorate.

Lastly, we would like to point out that The Continental Insurance Companies have championed remaining in Alaska, confident of the economic health of that state, despite withdrawals from the state by many large peer group companies. It is our estimate that this legislation would increase gross premiums by 17% to 18%. The very existence of this legislation threatens our continued ability to do business in Alaska.

We call upon you to assist in any way possible to defeat this legislation. We ask, for the continued economic success of the State of Alaska, the citizens of Alaska, and our continued ability to do business in Alaska that such harsh legislation interfering with the right to litigate, be defeated.

Sincerely,



Robert E. Collins
Branch Manager

cc Mr. John W. O'Connor
cc Mr. Patrick C. Leahy



P.O. BOX 1330
FAIRBANKS, ALASKA 99701



April 7, 1980

Honorable Robert H. Ziegler, Sr.
Pouch V
Juneau, Alaska 99811

RF: CSHB 546 - Regarding
Pre and Post Judgment
Interest Rates

Dear Senator Ziegler:

Thank you for requesting medical society input on this bill. The position of the Fairbanks Medical Association is that there already exists a significant imbalance in tort law, such that it is easier and often cheaper to sue than it is to defend. This encourages a settlement of non-meritorious suits in preference to bearing the cost of defense. This bill, if passed, would worsen this imbalance by further increasing the advantage to plaintiff of prolonged litigation, and increasing the motivation of defendants to settle prematurely in non-meritorious cases. Although the "fairness" of an "appropriate" interest rate geared to economic conditions may appear logical on the surface, we believe that this is a bad proposed law - for this reason.

Please write or call if you would like to discuss this matter. Again, thank you for your interest.

Sincerely,

Donald E. Thieman, M.D.
President
Fairbanks Medical Association
1001 Noble Street
Fairbanks, Alaska 99701

DET:mb

cc: Douglas Smith, M.D., President
Alaska State Medical Association

Winthrop Fish, M.D., Chairman
Alaska State Medical Association Legislative Committee

Martha MacDermald, Executive Secretary
Alaska State Medical Association

Alaska State Legislature



SENATOR MIKE COLLETTA

SENATE MAJORITY LEADER

Senate

MEMORANDUM

APRIL 12, 1980

TO: SENATOR BOB ZIEGLER
CHAIRMAN, SENATE JUDICIARY COMMITTEE

FROM: SENATOR MIKE COLLETTA

Mike Colletta

I am forwarding for your review several letters regarding CSHB 546 relating to increasing pre and post-judgement interest rates, which I understand will be heard in Judiciary Committee on Tuesday.

Your consideration of the attached comments is appreciated.
Thanks.



ALASKA STATE MEDICAL ASSOCIATION



1126 W. Eighth Avenue • Suite 6 • Anchorage, Alaska 99501 • (907) 277-6891

4107 Laurel St. #1, Anchorage, AK 99504

March 24, 1980

APR 7 1980

Senator Mike Colletta
Chairman, Senate Rules Committee
Pouch V, M/S 3100
Juneau, AK 99811

Dear Senator Colletta:

CSHB 546, increasing pre and post-judgment, passed the House unanimously. Its apparent purpose is to prevent laggardly judgment payments or timely settlement in times of high interest investment return. The Alaska State Medical Association is opposed to this legislation for the following reasons:

- 1) Our insurance companies have stated that it will cause an immediate increased premium for liability insurance. This will have two (2) effects.
 - a) The insurance companies will have discounted the interest penalties up front and will have created immediate investment funds from the increased premium before the fact of any legal action or judgment against their insured. It thus rewards the insurance companies directly.
 - b) Increased liability insurance premiums will be borne by the entire insured public, contributing to the general inflation.
- 2) High pre-judgment interest will directly encourage plaintiff's attorneys to maximize the return by delaying valid actions. The plaintiff will be penalized by the delay, and the attorney rewarded by increased contingency fees.
- 3) The interest rates effectively and automatically increase the actual eventual award. The successful plaintiff could not hope to invest privately at these rates.
- 4) Malpractice insurance carriers serving Alaska have expressed the possibility of withdrawal from the state, which, of course, would simply reopen the old sore.

Thus, this legislation will penalize the insured public, and, potentially, the plaintiff, while rewarding the plaintiff's attorney and insurance companies. We do not consider this to be in the public interest. It can potentially disrupt or destroy the current well-functioning malpractice coverage in Alaska, achieved with great effort.

Senator Colletta
March 24, 1980
Page 2

We therefore urge the Senate to act unfavorably on this legislation,
and, further, to document the invalidity of its apparent purpose.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Fish".

Winthrop Fish, M.D., Chairman
Legislative Committee

WF/sel

cc: Alaska State Medical Association Council Members
Alaska State Medical Association Legislative Committee Members

JAMES M. MORGAN

ATTORNEY AT LAW

931 CLAY COURT
ANCHORAGE, ALASKA 99503

PHONE
(907) 272-5261

March 26, 1980

The Honorable Mike Colletta
Pouch V
Juneau, Alaska 99811

Re. House Bill 546

Dear Senator Colletta:

I am writing in support of House Bill 546 (an act increasing pre-judgment and post judgment interest rates) which I understand you will be considering very shortly. As an attorney, I have been heavily involved in litigation and have thus been exposed to the effect that the present 8% interest rate has on the litigation process.

My experience has shown that the bargain 8% rate encourages defendants to drag their feet and prolong the litigation process as long as possible even when the defendant has no realistic expectation of winning. Our Supreme Court has said that failure to award pre-judgment interest creates a substantial financial incentive for defendants to litigate even where liability is so dear and the jury award so predictable that they should settle, State v. Phillips, 470 P.2d 266 (Alaska 1970). That same philosophy would seem to apply when defendants are required to pay interest which is substantially below the market rate. The objective of House Bill 546 is to remove this disparity between the pre- and post-judgment interest rate and the prevailing market rate. This proposed floating interest rate would also have the advantage of keeping pace with future market fluctuations and would thus avoid the necessity of repeated legislative reviews.

It should be remembered that an aggrieved party is supposed to be compensated for his loss through the payment of interest until his loss is repaid by the responsible party and as long as the interest rates allowed under AS 09.30.070 and 45.45.010 remain unrealistically low, those Alaska citizens these statutes were meant to protect are being shortchanged.

The Honorable Mike Colletta
March 26, 1980
Page 2

Finally, the present interest situation is a major factor in creating the massive backlog of civil cases in our courts (particularly the superior courts). If House Bill 546 is passed into law, I feel we will see a substantial reduction in the number of pending cases in our court system at all levels which will continue into the future, thus reducing the pressure on the system and in the long run helping to keep down the rapidly expanding costs of the burgeoning court system.

Thank you for your support in this matter. If there is anything I can do to further support this effort, please let me know.

Sincerely,



James M. Morgan

JMM:lge

750 West 2nd Avenue, Suite 110
Anchorage, Alaska 99501

APR 1 1980

Telephone
(907) 276-3037
(907) 276-6200

Dennis Patrick James
Attorney at Law

HIS 456

March 26, 1980

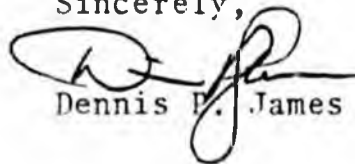
Senator Colletta
Pouch V
Juneau, Alaska 99811

Dear Senator:

I wish to solicit your support for House Bill 456 which deals with pre-judgment and post-judgment interest. The current law does not encourage settlement in that the tort-feasor who is generally insured, has no incentive to settle the case with his innocent victim. The primary reason for this is that money can be invested during the pendency of litigation at a much higher rate than the current interest rate that the court will assess against the Defendant.

Please support this Bill so that innocent victims may get the full protection of our laws.

Sincerely,



Dennis P. James

DPJ/sdw

OHIO

The Lowest Tax State

According to the latest Census Bureau figures (as printed in U.S. Governmental Finances Report 1977-1978) Ohio has the lowest state and local taxes as a share of personal income.

Here's the list of all the states:

	Share of Personal Income	Tax Collections Per Person		Share of Personal Income	Tax Collections Per Person		Share of Personal Income	Tax Collections Per Person
Alaska	17.5%	\$1,870.71	Washington	12.7%	\$929.01	West Virginia	11.3%	\$675.32
New York	17.2%	\$1,308.28	Michigan	12.7%	\$958.84	Kansas	11.3%	\$797.74
Wyoming	15.9%	\$1,155.66	Utah	12.7%	\$727.69	Kentucky	11.3%	\$661.89
California	15.8%	\$1,227.46	Colorado	12.6%	\$881.72	Georgia	11.3%	\$872.40
Massachusetts	15.1%	\$1,098.06	Rhode Island	12.5%	\$848.13	South Carolina	11.1%	\$615.25
Vermont	14.5%	\$ 836.75	New Jersey	12.4%	\$993.05	Virginia	11.0%	\$756.52
Arizona	14.3%	\$ 906.54	Delaware	12.3%	\$943.22	North Carolina	10.9%	\$642.60
Minnesota	14.2%	\$1,001.37	Louisiana	12.3%	\$716.31	Tennessee	10.7%	\$613.26
Wisconsin	14.2%	\$ 969.99	Pennsylvania	12.2%	\$861.25	Oklahoma	10.7%	\$660.00
Hawaii	14.0%	\$1,058.97	Nebraska	12.1%	\$814.31	Florida	10.6%	\$699.48
Montana	13.8%	\$ 816.94	Idaho	12.0%	\$700.91	Texas	10.5%	\$707.37
D.C.	13.6%	\$1,256.08	Illinois	11.8%	\$916.98	New Hampshire	10.5%	\$669.46
Maine	13.3%	\$ 757.74	Mississippi	11.8%	\$588.52	Indiana	10.3%	\$706.66
New Mexico	13.3%	\$ 762.78	Connecticut	11.6%	\$940.88	Alabama	10.2%	\$565.93
Nevada	13.3%	\$1,004.09	North Dakota	11.6%	\$721.31	Arkansas	10.2%	\$552.97
Maryland	13.0%	\$ 984.36	Iowa	11.6%	\$794.30	Missouri	9.9%	\$653.06
Oregon	12.8%	\$ 875.04	South Dakota	11.5%	\$682.75	OHIO	9.9%	\$700.52
						U.S. average	12.8%	\$ 888.00

In addition to low taxes, Ohio is the finest location for manufacturing in America. Nearly two thirds of the population of the U.S. and Canada combined live within 600 miles of Ohio's borders.

Ohio also has:

- The best transportation network in the country.
- The best skilled workers in the world.
- A higher education facility within 25 miles of every boy and girl in the state.
- The nation's most complete vocational and technical program.
- Abundant supplies of electricity, natural gas and coal.
- Virtually unlimited supplies of water.
- An attitude of cooperation and assistance to industry by state and local communities.
- The fewest state employees per capita of any state.

There are even more reasons why you will like Ohio. We'd like to tell you about them.

State of Ohio
James A. Rhodes
Governor

Department of
Economic and
Community
Development

James A. Querk
Director

Write or Call: International Division.

• Columbus, Ohio Office
Box 1001
30 E. Broad Street
Columbus, Ohio 43116
Telephone (614)466-5017
or (614)466-7444
Telex: 24-5312

• Brussels Office
21 Avenue de la Toison
d'Or
B-1060 Brussels, Belgium
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Telex: 846-26698

• Tokyo Office
2-16-15 Kirakawa-Cho
Chiyoda-Ku, Tokyo,
102 Japan
Telephone 262-1312
Telex 281-232-4036



File
MEMO from the desk of...
DAVID H. THORSNESS

Senator Bob Jepsen

Bob
The attached letters
include some very
relevant cost data re
concerns the insurance
consumers (parted) in Alaska
I