1611 HJ HB 225 - HB 338

CARPENTRY'S NOT YET COMPLETED. IF AT TIMES I'VE TRIED TO ELBOW ASIDE SOME ALREADY FEEDING SUMPTIOUSLY TO MAKE ROOM FOR THOSE OTHERWISE CONFINED TO SCRAPS WHICH FALL UPON THE FLOOR, I MAKE NO APOLOGY WHATSOEVER. I APOLOGIZE ONLY IF I HAVE FAILED OR DISAPPOINTED YOU AND TO THOSE I MAY HAVE INJURED BY UNTHOUGHTFUL WORD OR DEED. MY REGRETS FOR HAVING DONE SO ARE EXCEEDED ONLY BY MY APPRECIATION OF THE CHANCE YOU GRANTED ME TO COME TO BETTER KNOW AND PERHAPS SERVE THIS STATE AND ALL ITS PEOPLE. FOR THAT I AM IN YOUR DEBT FOREVER.

## What is Crime Stoppers?

- The Crime Stoppers program provides a means of communication, encouraging concerned citizens to volunteer vital information that may be helpful to law enforcement agencies.

- In order to overcome fear of involvement and apathy, Crime Stoppers offers anonymity and cash rewards to persons who furnish information leading to the arrest and indictment of felony crime offenders and to the capture of fugitives.

- Over 90 U.S. cities have discovered and implemented such a program — Crime Stoppers, is a successful method which involves the public, the media and the police force in fighting and preventing crime in the community.

CRIMINAL DESCRIPTION DATA

WEIGHT/BODY BUILD
RACE/NATIONALITY
HAIR: COLOR/CUT
COMPLEXION
BEARD, MOUSTACHE, SIDEBURNS
VISIBLE SCARS, TATOOS
WEAPON, IN RIGHT OR LEFT HAND
AGE
SPEECH CHARACTERISTICS
MASK, GLASSES, COLOR EYES
HEIGHT
COAT, JACKET, SHIRT
GLOVES OR ANY JEWELRY
TROUSERS
SHOES

**REVOLVER** **AUTOMATIC**

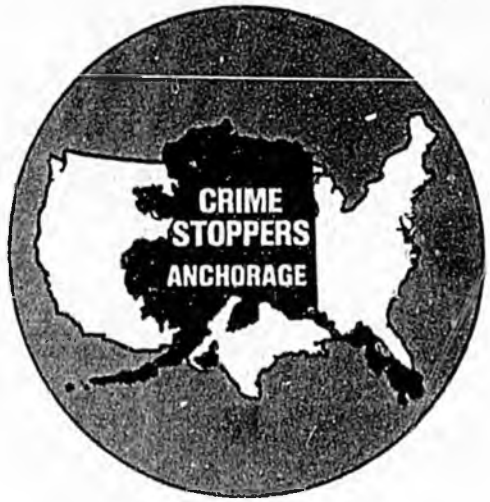
**OTHER WEAPONS-KNIFE, RIFLE, CLUB**

**VEHICLE:**
YEAR
MAKE
COLOR
BODY TYPE—2 Door/4 Door/Van/Truck
LICENSE NUMBER

# CRIME STOPPERS

## of

## ANCHORAGE




415 F Street
ANCHORAGE

PHONE 274-STOP

## Does Crime Stoppers Help Stop Crime?

- Since its inception in Albuquerque in September of 1976, Crime Stoppers programs have spread throughout the United States and have assisted in solving tough crimes of rape, murder, burglary, drug trafficking and other major offenses.

# STATISTICS

- **SOLVED**

9715 - FELONY CRIMES

- **RECOVERED**

OVER $27,770,138 IN STOLEN PROPERTY AND NARCOTICS

- **TRIED**

2990 - DEFENDENTS

- **CONVICTED**

2955 - DEFENDENTS

## How Does the Program Work?

- The Crime Stoppers program is funded by private donations from concerned citizens, businesses, and social organizations. No tax dollars are involved.

- A board of directors, composed entirely of involved citizens establishes policy, the amount and method of the reward system and the raising of funds. Tax exempt status has been granted by the IRS.

- The Anchorage Police Department is responsible for the daily operations of the Crime Stoppers program. It receives and processes incoming information through a special Crime Stoppers telephone.

**274-7867**

- Each caller is given a code number and rewards are paid in cash to insure anonymity.

## HOW CRIME STOPPERS IS PUBLICIZED

# CRIME OF THE WEEK

- In order to publicize those cases deemed appropriate for the Crime Stoppers program, video re-enactments and news stories are prepared for the use of local television stations, radio stations, and newspapers.

- Every Monday a television re-enactment strives to recreate the crime as close to the actual event as possible. In this way, the authenticity is hoped to jog someone's memory in the audience and to encourage them to relay their information to Crime Stoppers.

- When a caller's information leads to an indictment, the caller is contacted by publicizing his code number in the local media. To claim his reward, the caller simply contacts Crime Stoppers' in order to arrange for the payment.

- The average reward is approximately $75.00 per crime solved.

## CRIME STOPPERS OF ANCHORAGE

Incorporated under the provisions of IRC
Sec. 501 (c) (3). Contributions are tax deductible.

Please accept my ch... _____ pledge _____ for:

_____$1,000 _____$500 _____$250 _____$100

_____$50 _____$25 _____Other

(Make check out to: Crime Stoppers of Anchorage)

NAME _____

ADDRESS _____

CITY _____ STATE _____

ORGANIZATION NAME _____

ADDRESS _____ _____

# CRIME STOPPERS of ANCHORAGE


415 F STREET — PHONE 274-STOP

Rep. Barnes

# Alaska State Legislature

## House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Ramona, I have reviewed this and flagged those suggestions that seemed most workable to me. If you concur I will inform Rep. Beirne. Thanks, DAVE

January 18, 1982

Dear Legislators:

The House HESS Committee is currently drafting a bill addressing the student loan program. Many of us have heard of misuse of these funds and feel compelled to address the negative aspects of the current program. The Alaska Postsecondary Education Commission has drafted several alternatives to the existing student loan program.

I am asking your assistance in evaluating the proposed alternatives. I have enclosed a copy of the Commission's report, "Alternatives for Amending the Student Loan Program".

Please send your comments to Representative Mike Beirne, Chairman of the House HESS Committee, Room 106-Capital Building.

Sincerely,

Terry

Representative Terry Martin

/ld

## Alternatives for Amending the Student Loan Program

The following alternatives for amending the current Alaska Student Loan Program are not meant to be exclusive, nor are they being suggested for adoption. Rather, they are simply those alternatives which have arisen from initial staff and Commission study and discussion. A number will surely be discarded as being impractical or unsatisfactory, but for the present, all must at least receive consideration.

Prior to presentation to the Legislature, the Commission will be establishing positions on each of these alternatives and will be assigning priorities for those being recommended for possible adoption if and when circumstances so warrant.

The order of presentation will be: those alternatives requiring administrative action, usually through regulations; those alternatives requiring legislative actions; and those miscellaneous alternatives dealing with the general administration of the program.

### Alternatives Accommodated Through Regulations

1. Enforce a loan application deadline. The current deadline for applying for a student loan is May 15 of each year (20 AAC 15.020 [a]). For most purposes this deadline date is ignored. Persons may apply for a loan at any time throughout the year, with the only restriction being that of 20 AAC 15.020 [d]. Under that section of the regulations, a person may not apply for a school term which is one-half or more over.

An alternative is to set new realistic deadlines and then strongly adhere to those dates. Suggested deadlines are:

| For attendance | Application deadline |
|---|---|
| Beginning July 1 - October 31 | July 15 |
| Beginning November 1 - February 29 | November 15 |
| Beginning March 1 - June 30 | March 15 |

2. Restrict continuing loans to students maintaining certain grade-point averages. In order to receive a student loan, the student must be attending school full-time and be in "good standing". Good standing is defined by the Commission (through regulations) as having a 2.0 cumulative grade point average (g.p.a.) for undergraduate students and a 3.0 cumulative grade point average for graduate students (20 AAC15.040[j]).

An alternative could be to raise the requirement for maintenance of "good standing". Undergraduate good standing could be defined as a g.p.a. of 2.5 or 3.0, and graduate could be 3.5. This could greatly reduce the number of eligible borrowers.

It is estimated that raising the requirement to 3.0 and 3.5 would eliminate as many as 50% of the current borrowers. This would mean a savings of as much as $31 million in 1982-83.

3. Require residency verification. Student loans are available to eligible borrowers who are at least two-year Alaska residents. There has been a good deal of hypothesizing as to the extent of persons willing to perjure themselves by falsely claiming Alaskan residency in order to obtain a student loan.

The Commission could, by regulation, require that a student obtain four references willing and able to attest to the student's residency claim. This verification would also be under personal oath.

The process could slow down processing somewhat, but it should not require increased staff, and it should eliminate some of the potential for abuse.

Alternatives requiring Legislative Changes

4. Employ a needs test. The imposition of a needs test is based upon the logic that if funds cannot be provided to fund all Alaskans wishing student loans, then those who are "most needy" are the ones who should receive support. A needs test can be handled in at least two ways. First, a level of available funds could be determined. Then, all applicants could be ranked, based upon need, and awards could be made until funds were exhausted. Second, a minimum level of "need" could be set. All persons meeting the need criteria would be funded, all others denied.

A nationally-known needs test would be employed. The students would be required to fill out the needs analysis form, pay a fee for processing, and send the form to a processing center (probably in California). The center would report results to the student and the Commission.

This would not require increased staffing at the state level, but would slow processing considerably.

A needs test would require a parental contribution based upon family income levels and would penalize the dependent student, as opposed to the independent student.

A substantial amount could be saved annually, depending upon how restrictive either the funding level or the income levels were.

5. Deny loans for foreign study. Loans can currently be used for study at any approved institution. A small number of students, 20-25 in 1981-82, use these loans for study in foreign countries. These loans could be denied. The savings would amount to $120,000 - $165,000 annually.

6. Deny loans to freshmen borrowers. Since freshmen tend to be the largest credit risk (after vocational students), the entire group of freshmen borrowers could be denied loans This currently accounts for 31.8% of the student loans, so the savings for 1981-82 would be $11.3 million, and for 1982-83, as much as $21.3 million.

7. Restrict loan use to only tuition, fees, and books, or tuition, fees, books, room, and board. The current practice is to loan for tuition, fees, books, room, board, and other educational expenses. These "other expenses" include personal expenses, child care, travel, etc. At the University of Alaska, these expenses account for 22 to 35% of the standard student budget. If room and board were also eliminated, the savings would be another 40 to 65%. Hence, the savings of eliminating all expenses other than tuition, fees, and books would be from 60 to 90% of the current loan levels.

In 1982-83, eliminating "other expenses" could save from $15 to $24 million. Eliminating all expenses but tuition, fees, and books, could save as much as $40 to $60 million. It should also be noted that such restrictions in borrowing eligibility would also result in forcing some students not to attend school. In fact, those that need the funds the most would be those most likely to be forced out of school.

8. Roll back the borrowing maximums. The 1981 Legislature increased the undergraduate borrowing maximum from $3,000 per year to $6,000 per year, and the graduate maximum from $5,000 to $7,000 per year. The program then experienced a 70% increase in borrowers, and a 288% increase in funds requested. While other factors undoubtedly contribute to this increase, the principal element is the new borrowing limit.

Reducing the loan maximum could profoundly affect the cost of the program. Rolling back to $3,000 and $5,000 would save as much as $30 million in 1982-83, but it would also mean some students could not attend school. If the large increase in borrowing is in part attributable to the increased maximums, a reduction would mean forcing some students back out of the educational system.

9. Raise the interest rate charged on loans. The current interest rate on Alaska student loans is 5%. Federal student loans are now at 9%. The interest rate charged to students could be raised to 7%, 8%, 9%, or even 10%. Raising the rate could make the loans less attractive and thereby discourage some borrowers, but probably very few. The effect would be negligible for the first few years, but raising the interest from 5% to 9%, for example, could result in as much as $1.3 million in 1986-87.

In order to prevent the necessity of legislative action every few years, the interest could also be based upon current interest rates for federal student loans. Therefore, when federal student loan interest rates change, the state's rates would also change.

10. Increase residency requirements for loans. To qualify for a student loan, a borrower must be at least a two-year Alaska resident. This could be increased to three, five, or ten years. All would save considerably over the present system; for example, raising to a five-year requirement would eliminate approximately 32% of the borrowers. In 1982-83, this could mean as much as $20 million. However, it should be noted that the Attorney General has previously advised against such residency restrictions.

11. Eliminate forgiveness. If a borrower resides in Alaska after completion of study, up to 50% of the loan, including interest, may be forgiven (cancelled). This partial cancellation is earned at a rate of 10% per year of residence after completion of study, for up to five such cancellations.

If this provision were eliminated, a great deal of money would be saved eventually. It could not and would not affect the $97 million already loaned under the program. Although the effect would be negligible for the next few years, there would be an increasing savings realized that would be at an annual level of $2 to $5 million by 1986-87.

There may be an impact which would not be desirable if this action were taken. The forgiveness, currently at 50%, is believed to be a significant inducement for persons to live in Alaska after completing study. Removal of that inducement would lessen the number of educated Alaskans remaining or returning to work in Alaska after schooling.

A second point should be made, and that is that the 1981 Legislature just took action raising the forgiveness from 40% to 50%.

12. Restrict loans to in-state students. Student loans could be made available only to those persons attending in-state educational institutions. This would save a considerable amount, since about 60% of all student loans are for study out-of-state. Some of those students would be forced to attend in-state if the loan program were not available, others would go out anyway, and still others would not go to school at all. The savings could easily be 40% over current levels. For 1980-81, that would be $18.8 million, and for 1981-82, as much as $26.8 million.

Previous legislative attempts at adopting this type of restriction were not very well received. Arguments against such a restriction included the absence of certain programs in Alaska, the issue of freedom of choice - particularly with a loan that had to be repaid, the issue of educational quality, the issue of educational diversity, and simply the issue of being able to leave home and experience life in another part of the country.

13. Eliminate interest waivers during in-school and other deferment periods. Interest and payments are currently deferred while the borrower is a full-time student, in the military, in the peace corps, serving an internship, on medical hardship and disability, and during a one-time unemployment period. Interest could accumulate during these periods. This would greatly increase the amount of interest to be paid and would increase monthly payments when the borrower enters the repayment cycle. The burden of repayment would be increased since the accumulated interest would be disbursed over the normal ten-year repayment period.

14. Establish a two-tier or dual, loan program. The state could continue to emphasize loans as its principal means of providing student assistance, but it could have two programs available. One, called somthing like, the Alaska Basic Student Loan program, could be available only to those students able to demonstrate substantial "need". The loans could be varying amounts, dependent upon the level of need verified by a standard needs analysis, and should carry a low interest rate, such as 5%.

The second loan program, called something like the State Standard Student Loan Program, the State Supplemental Student Loan Program, or simply the State Student Loan Program, could be available to all those unable or unwilling to demonstrate the need required to qualify for a "basic" loan. This program could carry high interest rates, such as 10% or 11%.

Costs to the state would be decreased under such a plan, because of the higher income generated from the second program and also because a number of persons currently borrowing might choose not to borrow if the terms are less attractive. Forgiveness features would be at the discretion of the Legislature, but if these were eliminated, even greater savings would be realized.

General Administration Alternatives

A. The Commission has been quite concerned about the timely handling and processing of loan awards. Some suggestions and alternatives have been identified which could improve this processing time.

15. Fully staff the awards division. The current awards staff consists of 7.0 full-time people. These include a division officer, an awards specialist, three awards clerks II, and two awards clerks I. Using the adopted staffing formula of 1.0 staff member per 1,000 loan awards, the division is understaffed by 36.4%, or 4.0 people. With the additional personnel, loan processing could continue and be kept current. The division was operating 30 days behind in loan processing as of November 1, 1981. Even working evenings and weekends, the current staff cannot service the loan applicants in an adequate and timely manner.

16. Maintain a revolving base for loan processing. The 1981 Legislature created a $10 million revolving base for the program. This was to enable the processing of loans during February, March, April, and May. Unfortunately this benefit of the base was negated by the delay in program start-up this past year, but the concept of a revolving base is sound and would greatly improve loan processing by leveling the work load. The base, with the increased borrowing limits and volume of applicants, would need to be about $25 million to be effective.

17. Eliminate the institutional sign-off on educational cost of attendance. The current procedure requires the applicant to have the school of attendance review the application and certify that the costs listed by the loan applicant are reasonable and appropriate for that particular institution. This step can cause great delays in the loan process. At times applications are lost or simply held by the schools until such time that the student does not receive funds in time for the beginning of school. If this step is eliminated, the process would be greatly accelerated.

The trade-off here is that the loan division would then have no check on the appropriateness of what the applicant says it will cost to attend a particular school. Budgets could be exaggerated to assure the qualification for a maximum loan.

B. The Commission has also expressed concern over administrative costs and growth of staff. Hence, a few alternatives to current practices have been explored.

18. Contract for loan collection with an outside agency. The current program only contracts out the basic receipt of payments. Coupon booklets are ordered and sent to loan recipients entering the repayment cycle. The monthly payments are then mailed to a "lock-box" contracted through a commercial bank. The bank receives the funds and transfers them to the state. The rest of the administration is handled in-house.

The increased loan volumes and the maturation of the program are creating large demands for increased staff. Using the adopted staffing formula, the current staff of 24.0 full-time persons will increase to 56.0 in 1982-83, 82.0 in 1983-84, and 106 in 1984-85. If state government is not to expand, alternatives need to be examined.

Loan collections actually consist of loan repayments and loan collections. Loan repayment is the routine repayment of loans, and loan collection is the collection of delinquent and default accounts. In exploring the use of an outside contractor, three approaches were explored: a nationwide loan management service, a commercial banking service, and a private collections agency.

(a) Loan management service. Three nationwide loan management services were contacted on behalf of the loan program. All three specialize in the collection of student loans and handle accounts for a number of institutions and states - usually federally guaranteed student loans. Since the Alaska program is so different from the federal program, one company would not submit a bid for servicing the Alaska loans, one did submit a bid, and a third has not responded definitively. The sound bid is from Wachovia Student Loan Management Services of Winston-Salem, North Carolina. Wachovia indicated a willingness to alter existing data processing software to handle Alaska's program. The costs, submitted October 27, 1981, are:

$1.15 per borrower per month while in school
$2.00 per borrower per month during deferments
$2.85 per borrower per month during repayment

Wachovia will not be responsible for collection of delinquent or defaulted loans.

Based upon current figures and estimates, the following cost comparison is made:

| Year | Wachovia | State | Difference |
|---|---|---|---|
| 1981-82 | $ 895,453 | $ 497,502 | $ (397,951) |
| 1982-83 | $1,461,150 | $ 938,222 | $ (522,928) |
| 1983-84 | $2,036,263 | $1,498,480 | $ (537,783) |
| 1984-85 | $2,552,537 | $2,117,724 | $ (434,813) |

Therefore, the cost of contracting these services would be considerably higher than "in-house" processing.

(b) Commercial banking services. Attempts to obtain sound bids from in-state banks have not been very successful. A few banks would be willing to administer all or parts of the loan program, but initial programming costs and staffing costs would be extremely high. Either the state or the borrower would have to absorb those costs and the result would again be increased cost to the state, when compared to maintaining the "in-house" servicing.

(c) Private collection agency. A number of private collection agencies will attempt to collect our "bad debts", i.e., the delinquent and defaulted loans; however, the charges all are around 50% to 65% of the amount recovered. This charge far exceeds that currently being paid the five persons handling these collections "in-house". The collection rate for the current staff for "bad debts" is averaging over $200,000 per staff member per year.

19. Combine this loan program with other state loan programs. This alternative has been explored before and has been found to be not a workable alternative. The Legislature made this determination when all loan programs were being re-examined and re-vamped two sessions ago. They found that student loans should not be included in any type of large loan package portfolio, particularly if the bond market is to be involved.

Additionally, the transfer of the program to another state agency would not reduce administrative costs, rather it would simply transfer existing costs to another agency and would, in fact, result in increased costs to the state due to inefficiencies which would necessarily occur. The ability now exists to "package" a student's aid. The Commission administers three other programs (besides the loans) which affect a student's need for financial assistance. Currently all four programs are coordinated at the time of award and the problems of over-awarding are avoided. This would not be as easily accomplished with a second agency involved. A certain amount of staff over-lap would be necessary with another agency involved.

## Additional Financial Assistance Concerns

Alaska currently has a large loan program, a small, nearly non-existent federally-matched grant program, and no state scholarship or state work-study program. Each of these programs, other than loans, will be briefly described or discussed below.

Grants. The state currently participates in the federal/state cooperative State Educational Incentive Grant Program (SEIG). This is a "need-based" grant which requires a needs analysis of all applicants. Grants of up to $1,500 per year are awarded for undergraduate attendance. In 1981-82 over 2,000 Alaskans applied for these grants, but funds were available to award grants to only [illegible]. This program requires a federal match and is being drastically reduced in the curre[illegible]ederal budget cuts.

There is a bill, SB 254, currently in the Legislature which would establish this program as an Alaskan program and would provide grants of up to $3,000 per year.

Scholarships. Alaska currently has no state-level scholarships for outstanding high school seniors. Two bills currently exist which would establish scholarship programs. SB 310 would establish the Alaska State Scholarhip Program and would provide competitive scholarships for in-state attendance. The scholarhips would provide $4,000 per year, and the student would need to maintain a grade-point-average of 3.25 to keep the scholarship.

SB 301 would establish the Alaska Cooperative Scholarship Program which would provide matching funds for private sources of scholarships. The scholarships would be for up to $5,000 ($2,500 state) per year, and the student would need to maintain a 3.0 grade average to keep the scholarship. The scholarships would be available for undergraduates attending in-state.

State Work Study. College Work Study, a federally-funded program, exists in Alaska, but only on a very limited basis. Some states, most notably Washington, have created state work-study programs directly designed to provide assistance for their in-state students. Alaska has no such program, but it is a possibility for the future. Under such a program, a student would be eligible to work for up to an average of 20 hours per week with a cooperating employer. The state would pay 65% of the student's wage and the employer would pay the remaining 35% for up to a pre-determined "need" level.

HB

252

LA11 3646 19.49 03/16/81 JA01 0001 07.55 03/17/81

TO JUNEAU INFO FROM MARCIE, ANCHORAGE INFO URGENT

THE FOLLOWING IS AN URGENT MESSAGE THAT NEEDS TO BE DELIVERED FIRST THING IN THE MORNING FOR A BEFORE SESSION HEARING:



TO: REPRESENTATIVE FRED BROWN, HOUSE JUDICIARY COMMITTEE

FROM: WILSON CORDON, ATTORNEY GENERAL

BY: ROBERT A. EVANS 279-0428
ASSISTANT ATTORNEY GENERAL
CONSUMER PROTECTION SECTION, ANCHORAGE, ALASKA

IT IS IN THE BEST INTEREST OF BOTH LANDLORD AND TENANT TO RESOLVE THE AMOUNT OF THE SECURITY DEPOSIT TO BE RETURNED OR WITHHELD AS SOON AFTER TERMINATION OF THE TENANCY AS POSSIBLE. THE LANDLORD INTEREST IS SERVED BY A PROMPT INVENTORY OF THE RESIDENCE, DETERMINATION OF DAMAGES AND THE ABILITY TO RE-RENT THE PREMISES.

THE INTEREST OF THE TENANT IS SERVED BY QUICK RESOLUTION OF ANY PROBLEMS AND TIMELY RETURN OF THEIR SECURITY DEPOSIT. THIS IS ESPECIALLY IMPORTANT TO LOWER INCOME TENANTS. ALLOWING MORE TIME FOR RETURN OF WILL IN EFFECT CREATE A "DUAL DEPOSIT" REQUIREMENT FOR ALL TENANTS.

[redacted]E

Introduced: 3/4/81
Referred: Judiciary

IN THE HOUSE BY ANDERSON BY REQUEST

HOUSE BILL NO. 252

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the obligations of landlords."

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

* Section 1. AS 34.03.070(b) is amended to read:

(b) Upon termination of the tenancy, property or money held by the landlord as prepaid rent or as a security deposit may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with AS 34.03.120. The accrued rent and damages must be itemized by the landlord in a written notice delivered to the tenant together with the amount due no later than 30 [14] days after all of the following have occurred: termination of the tenancy, [AND] delivery of possession by the tenant, and notice to the landlord of an address to which notices to the tenant may be sent. "Damages" do not include wear resulting from ordinary use of the premises.

1. Am. → Dual inspection — both by landlord & tenants.

(d) Within 14 days after the written offer has been delivered to the landlord, the landlord may refuse consent to a sublease or assignment by a written rejection signed and delivered by him to the tenant, containing one or more of the following reasonable grounds for rejecting the prospective occupant:

(1) insufficient credit standing or financial responsibility;

(2) number of persons in the household;

(3) number of persons under 18 years of age in the household;

(4) unwillingness of the prospective occupant to assume the same terms as are included in the existing rental agreement;

(5) proposed maintenance of pets;

(6) proposed commercial activity; or

(7) written information signed by a previous landlord, which shall accompany the rejection, setting out abuses of other premises occupied by the prospective occupant.

(e) In the event the written rejection fails to contain one or more grounds permitted by (d) of this section for rejecting the prospective occupant, the tenant may consider the landlord's consent given, or at his option may terminate the rental agreement by a written notice given without unnecessary delay to the landlord at least 30 days before the termination date specified in the notice.

(f) If the landlord does not deliver a written rejection signed by him to the tenant within 14 days after a written offer has been delivered to him by the tenant, the landlord's consent to the sublease or assignment shall be conclusively presumed. (§ 1 ch 10 SLA 1974)

## Article 3. Landlord Obligations.



**Sec. 34.03.070. Security deposits; prepaid rent.** (a) A landlord may not demand or receive prepaid rent or a security deposit, however denominated, in an amount or value in excess of two months' periodic rent.

(b) Upon termination of the tenancy, property or money held by the landlord as prepaid rent or as a security deposit may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with § 120 of this chapter. The accrued rent and damages must be itemized by the landlord in a written notice delivered to the tenant together with the amount due no later than 14 days after termination of the tenancy and delivery of possession by the tenant. "Damages" do not include wear resulting from ordinary use of the premises.

(c) All money paid to the landlord by the tenant as prepaid rent or as a security deposit in a lease or rental agreement shall be promptly deposited by the landlord, wherever practicable, in a trust account in a

bank, savings and loan association, or licensed escrow agent, and the landlord shall provide to the tenant the terms and conditions under which the prepaid rent or security deposit or portions of them may be withheld by the landlord; nothing in this chapter prohibits the landlord from commingling prepaid rents and security deposits in a single financial account.

(d) If the landlord wilfully fails to comply with (b) of this section, the tenant may recover an amount not to exceed twice the actual amount withheld.

(e) This section does not preclude a landlord or tenant from recovering other damages to which he may be entitled under this chapter.

(f) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section. (§ 1 ch 10 SLA 1974)

**Sec. 34.03.080. Disclosure.** (a) The landlord or person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of

(1) the person authorized to manage the premises; and

(2) an owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

(b) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner or manager.

(c) A person who fails to comply with (a) of this section becomes an agent of each person who is a landlord for the purpose of

(1) service of process and receiving and receipting for notices and demands; and

(2) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for the purpose all rent collected from the premises. (§ 1 ch 10 SLA 1974)

**Sec. 34.03.090. Landlord to supply possession of the dwelling unit.** At the commencement of the term the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and § 100 of this chapter. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in § 290 of this chapter. (§ 1 ch 10 SLA 1974)

**Sec. 34.03.100. Landlord to maintain fit premises.** (a) The landlord shall

(1) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(2) keep all common areas of the premises in a clean and safe condition;

destruction, or disposition of property, or sale. If, however, the landlord deliberately or negligently violates the provisions of this section, he is liable for actual damages and penal damages of an amount not to exceed actual damages.

(e) A public sale authorized under the provisions of this section shall be conducted under the provisions of AS 09.35.140. The landlord may dispose of any property upon which no bid is made at the public sale. (§ 1 ch 10 SLA 1974)

**Sec. 34.03.270. Remedy after termination.** If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement. (§ 1 ch 10 SLA 1974)

**Sec. 34.03.280. Recovery of possession limited.** A landlord may not recover or take possession of the dwelling unit by action or otherwise, including wilful diminution of services to the tenant by interrupting or causing the interruption of electricity, gas, water, sanitary or other essential services to the tenant, except in case of abandonment, surrender, circumstances beyond his control due to energy conditions, or as permitted in this chapter. (§ 1 ch 10 SLA 1974)

### Article 7. Periodic Tenancy, Holdover, and Abuse of Access.

Section
290. Periodic tenancy and holdover
300. Landlord and tenant remedies for abuse of access

**Sec. 34.03.290. Periodic tenancy and holdover.** (a) While rent is current, the landlord or the tenant may terminate a week to week tenancy by a written notice given to the other at least 14 days before the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month to month tenancy by a written notice given to the other at least 30 days before the rental due date specified in the notice.

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after its termination, the landlord may bring an action for possession and if the tenant's holdover is wilful and not in good faith the landlord, in addition, may recover an amount not to exceed one and one-half times the actual damages. If the landlord consents to the tenant's continued occupancy, § 20 of this chapter applies. (§ 1 ch 10 SLA 1974)

**Sec. 34.03.300. Landlord and tenant remedies for abuse of access.** (a) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover an amount not to exceed the actual damages or one month's periodic rent, whichever is greater. If the landlord terminates the rental agreement, he shall give

HB

253

254

255

Original sponsor: Judiciary Committee

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 253 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to jury service."

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

* Section 1. AS 09.20.030 is amended to read:

Sec. 09.20.030. EXEMPTIONS. A person may claim exemption and may be excused from service as a juror if it is shown that ~~[JURY SERVICE WILL CAUSE HIM TO SUFFER MATERIAL INJURY OR DESTRUCTION TO HIS PROPERTY OR TO THE PROPERTY ENTRUSTED TO HIM, OR IF]~~ his health, the health or proper care of his family, ~~or~~ a permanent physical or mental disability, ~~[THE SICKNESS OR DEATH OF A MEMBER OF HIS FAMILY]~~ makes it necessary for him to be excused ~~[, OR IF HE IS~~

~~(1) A JUDICIAL OFFICER;~~

~~(2) ANY OTHER CIVIL OFFICER OF THE STATE OR UNITED STATES WHOSE DUTIES ARE AT THE TIME INCONSISTENT WITH HIS ATTENDANCE OR SERVICE AS A JUROR;~~

~~(3) AN ATTORNEY;~~

~~(4) A MINISTER OF THE GOSPEL OR PRIEST OF ANY DENOMINATION;~~

~~(5) A TEACHER IN A UNIVERSITY, COLLEGE, ACADEMY, OR SCHOOL;~~

~~(6) A PRACTICING PHYSICIAN;~~

~~(7) A PRACTICING DENTIST~~].

* Sec. 2. AS 09.20 is amended by adding a new section to read:

Sec. 09.20.035. DEFERRAL OF JURY SERVICE. A person may have his jury service deferred if he shows that jury service at the time for which he is summoned will cause hardship to himself or others, or that transportation problems make it temporarily impossible for him to

serve. Jury service may be deferred under this section only if a deferred date for jury service is agreed to in writing by the person seeking the deferment, unless ordered by the court for good cause shown. Jury service may not be deferred for more than 10 months from the date the initial jury service was to begin.

TWELFTH LEGISLATURE - FIRST SESSION

House Bill 255

Proposed amendment by the Alaska Court System offered March 19, 1981 to the House Judiciary Committee:

(c) Any person, business, corporation, ~~municipality or other political subdivision of the state~~, approved by a court to administer or supervise a community work plan or program, shall be immune from liability for any damages to other persons caused by an intentional or negligent act of a person while he is performing such community work by order of a court under this section. Damages to other persons caused by an intentional or negligent act of a person while performing community work work by order of a court under this section shall be indemnified by the state.

Introduced: 3/4/81
Referred: Judiciary

IN THE HOUSE

BY THE JUDICIARY COMMITTEE
BY REQUEST

HOUSE BILL NO. 255

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the liability of the state for damages caused by persons who are performing community work while under court order; and providing for an effective date."

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

* Section 1. AS 12.55.055 is amended by adding a new subsection to read:

(c) The state is liable for damages to other persons caused by an intentional or negligent act of a person while he is performing community work by order of a court under this section.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

# FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 254

Title Relating to Jurors and Jury Panels

Requested by House Judiciary Committee Date 3-10-81

II. FISCAL DETAIL

Agency Affected Revenue

Program Category Affected General Government

BRU, Program, or Subprogram(s) Affected Administrative Support, Management Services

(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 | | Ø | Ø | Ø | Ø | Ø |

FUNDING (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |
| | | | | | | |
| | | | | | | |

POSITIONS

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL TIME | | | | | | |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

A small cost is involved to process the Permanent Fund Dividend file and produce the list of persons who filed for a distribution of Alaska permanent fund income under AS 43.23.

This cost can be met from existing resources.

IV. DATE 3-10-81 PREPARED BY Philip A. Wall

AGENCY Revenue

PHONE 465-2313

Original: Legislative Finance

cc: Budget and Management,
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

# Chapter 20. Trial.



## Article 1. Jurors.



**Sec. 09.20.010. Qualification of jurors.** A person is qualified to act as a juror if he is

(1) a citizen of the United States;

(2) a resident of the state;

(3) at least 19 years of age;

(4) of sound mind;

(5) in possession of his natural faculties; and

(6) able to read or speak the English language. (§ 2.01 ch 101 SLA 1962; am § 3 ch 245 SLA 1970)

Cross reference. — See Civ. R. 47(c).

Legislative committee report. — Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

To define the qualification of jurors and prescribe the mode of their selection is a rightful subject of legislation. Tynan v. United States, 297 F. 177 (9th Cir.), cert. denied, 266 U.S. 604, 45 S. Ct. 91, 69 L. Ed. 463 (1924).

Quoted in City of Kotzebue v. Ipalook, Sup. Ct. Op. No. 588 (File No. 1033), 462 P.2d 75 (1969).

Am. Jur., ALR and C.J.S. references.—31 Am. Jur., Jury, §§ 67 to 101, 121 to 145.

Unfamiliarity with English as affecting competency of juror, 34 ALR 194.

Effect of exclusion of women from jury list, 52 ALR 922.

Intelligence or character test of qualifications of juror, 126 ALR 507.

Religious test of qualifications of juror, 126 ALR 526.

Loyalty test of qualifications of juror, 126 ALR 529.

Women as jurors, 157 ALR 561.

Deafness of juror as ground for impeaching verdict; waiver of objection thereto, 15 ALR2d 534, 537.

50 C.J.S. Juries §§ 134 to 152.

**Sec. 09.20.020. Disqualification of jurors.** A person is disqualified to act as a juror if he

(1) has served as a juror in the state within one year of his time of examination for service;

(2) has been convicted of a felony and his civil rights have not been restored. (§ 2.02 ch 101 SLA 1962)

Cross reference. — See Civ. R. 47(c).

ALR and C.J.S. references.—Criminal charge or conviction as disqualifying juror, 126 ALR 518.

Removal by executive of disqualification resulting from conviction of crime as applicable in case of conviction in federal court or court of another state, 135 ALR 1493.

Governing laws as to existence or character of offense for which one

has been convicted in a federal court or court of another state, as bearing upon disqualification to sit on jury, 175 ALR 805.

50 C.J.S. Juries §§ 153, 154.

**Sec. 09.20.025. Limitation on jury service.** No person may be required to serve more than three months as a juror during any consecutive two-year period. However, if a person is serving as a juror at the conclusion of the three months period, he shall complete the trial then in progress. (§ 1 ch 147 SLA 1968)

**Legislative committee report.**—For report on ch. 147, SLA 1968 (CSHB 548 am S), see 1968 House Journal, p. 497.

**Sec. 09.20.030. Exemptions.** A person may claim exemption and may be excused from service as a juror if it is shown that jury service will cause him to suffer material injury or destruction to his property or to the property entrusted to him, or if his health, the health or proper care of his family, or the sickness or death of a member of his family makes it necessary for him to be excused, or if he is

(1) a judicial officer;

(2) any other civil officer of the state or United States whose duties are at the time inconsistent with his attendance or service as a juror;

(3) an attorney;

(4) a minister of the gospel or priest of any denomination;

(5) a teacher in a university, college, academy, or school;

(6) a practicing physician;

(7) a practicing dentist. (§ 2.03 ch 101 SLA 1962; am § 1 ch 8 SLA 1964)

**Cross reference.**—See Civ. R. 47.

ALR and C.J.S. references. — Police officers or other law enforcement officers as jurors in criminal cases, 140 ALR 1183.

50 C.J.S. Juries § 153.

**Sec. 09.20.040. Compliance with statute.** The selection of jurors shall be made in substantial compliance with the following provisions. A failure in substantial compliance which prejudices the rights of a party is reversible error. (§ 2.04 ch 101 SLA 1962)

**Cross reference.**—See Civ. R. 47.

**Sec. 09.20.050. Jury list.** (a) At such times as need may require, but not later than March 15 of each year, the administrative director of courts shall prepare for each judicial district a list of the names of the residents of the district who are qualified by law for jury service. If the superior court is located in different cities in the same judicial district, the administrative director shall prepare for each location of the court a list of the names of the qualified residents of that portion of the district considered by him to be appropriate.

(b) The jury list shall be based on a list of all persons who pur-

chased a resident trapping, hunting or fishing license during the preceding calendar year which showed an Alaskan address (to be prepared by the Department of Fish and Game), a list of all persons who filed a state income tax return during the preceding calendar year which showed an Alaskan address (to be prepared by the Department of Revenue), and a list of all persons who have registered to vote in this state (to be prepared by the lieutenant governor). The departments and the lieutenant governor shall submit their respective files to the Department of Administration not later than January 15 of each year. To the extent that it is available, the files submitted by the departments and the lieutenant governor shall contain the following information for each person on the list for the preceding calendar year: his first name, middle initial, and last name; his residence address as well as his mailing address, including the zip code for each; his social security number; his birth date; and the number of years and months he has been a resident of the state. The files submitted by the departments and the lieutenant governor shall be recorded on magnetic tape compatible with Department of Administration data processing equipment.

(c) A copy of the appropriate portion of the jury list shall be transmitted only to each district judge and each superior court judge, and shall only be used to summon jurors and for other state governmental purposes. A questionnaire for prospective jurors may be adopted and submitted to them by the administrative director of courts. (§ 2.05 ch 101 SLA 1962; am § 3 ch 24 SLA 1966; am § 1 ch 67 SLA 1969; am § 1 ch 10 SLA 1971)

Cross references.—See Ct. R. 47. See AS 22.10.030 and note thereto.

Legislative committee report.—For report on ch. 10, SLA 1971 (SCS CSHB 48 am S), see 1971 House Journal, p. 78.

Constitutionality.—There is nothing to indicate that under the voting list method of selection a fair cross section of the community is not represented, and that there is a systematic and intentional exclusion of a particular, cognizable group of persons. Green v. State Sup. Ct. Op. No. 592 (File No. 1177), 462 P.2d 994 (1969).

Meeting constitutional standard in jury selection. — The constitutional standard for jury selection will be met if prospective jurors are drawn from a fair cross section of the community. Green v. State, Sup. Ct. Op. No. 592 (File No. 1177), 462 P.2d 994 (1969); Alvarado v. State, Sup. Ct. Op. No. 704 (File No. 1230), 486 P.2d 891 (1971).

Legislative intent.—If the legislature had intended that a new list be prepared under the 1969 amendment on or immediately after the effective date of that amendment, it could easily have indicated its intent in this regard. Green v. State, Sup. Ct. Op. No. 592 (File No. 1177), 462 P.2d 994 (1969).

A determination of the method for selecting juries is a matter within the legislative prerogative. Green v. State, Sup. Ct. Op. No. 592 (File No. 1177), 462 P.2d 994 (1969).

Jury selection in Alaska is regulated by statute and rules of procedure. Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

This section provides for expansion of sources from which jury lists are compiled. Alvarado v. State, Sup. Ct. Op. No. 704 (File No. 1230), 486 P.2d 891 (1971).

The jury is an essential institution

of the community. Alvarado v. State, Sup. Ct. Op. No. 704 (File No. 1230), 486 P.2d 891 (1971).

**Selection of grand and petit jurors.**—The provisions of this section and §§ 60 and 70 of this chapter permit each district to determine for itself questions pertaining to the selection of grand and petit jurors. Crawford v. State, Sup. Ct. Op. No. 312 (File No. 637), 408 P.2d 1002 (1965).

**Jury selection procedures designed to insulate process from biases of officials.**—Alaska's random and public jury selection procedures are designed to insulate the selection process from the personal interests and biases of governmental officials. Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

**Mere claim of benefit did not suggest officials biased.**—The mere claim that officials conducting proceedings for selecting jurors which composed a condemnation trial panel stood to benefit from the construction of a new courthouse in no way suggested that those officials harbored any personal interest or bias against owners whose lots were to be condemned for the construction. Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

**Presumption that official duty has been regularly performed.**—See Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

**Stated in Irwin v. Radio Corp. of America, Sup. Ct. Op. No. 421 (File No. 744), 430 P.2d 159 (1967).**

**C.J.S. reference.**—50 C.J.S. Juries § 157.

**Sec. 09.20.060. Use of jury box.** The clerk of the court shall write the names included in the list on separate pieces of paper or prepare metal, plastic, or other types of pieces to correspond to numbers on the jury list. As directed by the court, he shall deposit the named or numbered pieces in the jury box in a number and manner to assure a fair and impartial drawing of the jury panel. The jury box and the named or numbered pieces may be examined by the parties or by an attorney authorized to practice law in the state within limitations and under conditions prescribed by the court. (§ 2.06 ch 101 SLA 1962)

**Cross reference.**—See Civ. R. 47.

**Jury selection procedures designed to insulate process from biases of officials.**—Alaska's random and public jury selection procedures are designed to insulate the selection process from the personal interests and biases of governmental officials. Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

**Mere claim of benefit did not suggest officials biased.**—The mere claim that officials conducting proceedings for selecting jurors which composed a condemnation trial panel stood to benefit from the construction of a new courthouse in no way suggested that those officials harbored any personal interest or bias against owners whose lots were to be condemned for the construction. Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

**Presumption that official duty has been regularly performed.**—See Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

**Stated in Irwin v. Radio Corp. of America, Sup. Ct. Op. No. 421 (File No. 744), 430 P.2d 159 (1967).**

**Cited in Green v. State, Sup. Ct. Op. No. 592 (File No. 1177), 462 P.2d 994 (1969).**

**Sec. 09.20.070. Public drawing for jurors for panel.** Under the direction of the court the clerk shall conduct the public drawing of jurors for the panel by shaking the box to mix the named or numbered pieces. The clerk shall then draw as many names or numbers as are ordered by the court to fill the jury panel. If the name or number of a person is drawn from the box and the person is deceased, unqualified, disqualified, or the person's atten-

dance cannot be obtained within a reasonable time or may involve a large and unnecessary expense, and the fact appears to the satisfaction of the court through the use of questionnaires or otherwise, the court may reject the name of that person and direct that the name or number of another be drawn in his place. (§ 2.07 ch 101 SLA 1962)

Cross reference.—See Civ. R. 47.

Constitutionality. — This section is not violative of Alaska Const., art. I, § 11. West v. State, Sup. Ct. Op. No. 319 (File No. 572), 409 P.2d 847 (1966).

Names of persons for the jury panel are randomly selected from the jury list by the court clerk at a public drawing. Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

Summoning jurors from less than entire judicial district is discretionary.—The question of how the superior court is to make the decision as to whether jurors should be summoned from less than the entire judicial district is for the court to determine in its discretion. Crawford v. State, Sup. Ct. Op. No. 312 (File No. 637), 408 P.2d 1002 (1965).

The legislature has given to the superior court the power to determine whether jurors should be summoned from less than the entire judicial district. Crawford v. State, Sup. Ct. Op. No. 312 (File No. 637) 408 P.2d 1002 (1965).

And expense is standard which guides court.—The standard which guides the court in making a determination as to whether jurors should be summoned from less than the entire judicial district is whether a large and unnecessary expense is involved in obtaining jurors from all parts of the district. Crawford v. State, Sup. Ct. Op. No. 312 (File No. 637), 408 P.2d 1002 (1965).

Selecting only jurors residing within 30 miles of trial site held proper. —See West v. State, Sup. Ct. Op. No. 319 (File No. 572), 409 P.2d 847 (1966).

A grand jury selected from the city of Anchorage and an area within a 15-mile radius of the city is a jury which satisfies proper standards of jury selection. Crawford v. State, Sup. Ct. Op. No. 312 (File No. 637), 408 P.2d 1002 (1965).

The policy of calling jurors only from an area within a 15-mile radius of the city of Anchorage does not result in the exclusion from jury service of any particular and defined stratum of society so as to detract from the broad base that the jury system is designed to have. Crawford v. State, Sup. Ct. Op. No. 312 (File No. 637), 408 P.2d 1002 (1965).

It is not required that there be equal representation on juries of every economic, social, religious, racial, political and geographical group of the entire judicial district in order to maintain the broad base that the jury system is designed to have. Crawford v. State, Sup. Ct. Op. No. 312 (File No. 637), 408 P.2d 1002 (1965).

Jury selection procedures designed to insulate process from biases of officials.—Alaska's random and public jury selection procedures are designed to insulate the selection process from the personal interests and biases of governmental officials. Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

Mere claim of benefit did not suggest officials biased.—The mere claim that officials conducting proceedings for selecting jurors which composed a condemnation trial panel stood to benefit from the construction of a new courthouse in no way suggested that those officials harbored any personal interest or bias against owners whose lots were to be condemned for the construction. Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

Presumption that official duty has been regularly performed.—See Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

Quoted in Irwin v. Radio Corp. of America, Sup. Ct. Op. No. 421 (File No. 744), 430 P.2d 159 (1967).

Cited in Green v. State, Sup. Ct. Op. No. 592 (File No. 1177), 462 P.2d 994 (1969).

Sec. 09.20.080. Jury panel. The jury panel for the trial of civil

cases consists of at least 24 jurors or more as determined by the court. If at any time the number of jurors on the panel falls below 24 or the regular panel is exhausted, the court shall order the clerk to complete the panel or secure additional jurors by drawing sufficient names from the jury box. (§ 2.08 ch 101 SLA 1962)

Cross reference.—See Civ. R. 47.

The law does not require the drawing of 24 names of those on the jury panel in impaneling a trial jury, but only, as provided by AS 09.20.090, a number "sufficient to name a jury of 12 unless the court directs otherwise." Irwin v. Radio Corp. of America, Sup. Ct. Op. No. 421 (File No. 744), 430 P.2d 159 (1967).

Waiver of right to challenge sufficiency of jury panel.—Where party participated in the selection of the jury and said nothing as to the panel being insufficient until after the jury had been selected and sworn, this constituted a waiver of whatever right such party may have had to challenge the sufficiency of the jury panel. Irwin v. Radio Corp. of America, Sup. Ct. Op. No. 421 (File No. 744), 430 P.2d 159 (1967).

Jury selection procedures designed to insulate process from biases of officials.—Alaska's random and public jury selection procedures are designed to insulate the selection process from the personal interests and biases of governmental officials. Tallman v. State, Sup. Ct Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

Mere claim of benefit did not suggest officials biased.—The mere claim that officials conducting proceedings for selecting jurors which composed a condemnation trial panel stood to benefit from the construction of a new courthouse in no way suggested that those officials harbored any personal interest or bias against owners whose lots were to be condemned for the construction. Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

Presumption that official duty has been regularly performed.—See Tallman v. State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

**Sec. 09.20.090. Impaneling the trial jury.** When a civil case which is to be tried by a jury is called for trial, the clerk shall draw from the trial jury box containing the names of those on the jury panel a number of names or numbers sufficient to name a jury of 12 unless the court directs otherwise. The prospective jurors shall be examined, challenged, and sworn as provided by rules of the supreme court. (§ 2.09 ch 101 SLA 1962)

Cross references.—See Civ. R. 47. See note to AS 09.20.080.

C.J.S. reference.—50 C.J.S. Juries § 1 2.

**Sec. 09.20.100. Verdicts.** In a civil case tried by a jury in any court, whether of record or not, not less than five-sixths of the jury may render a verdict, which is entitled to the legal effect of a unanimous verdict at common law. Special verdicts need not be concurred in by the same jurors. (§ 2.10 ch 101 SLA 1962)

Cross reference.—See Civ. R. 47.

Legislative committee report. — For legislative committee report on original bill, see 1959 House Journal, pp. 644, 905.

Stated in Khalili v. Pan American Petroleum Corp., 49 F.R.D. 22 (D. Alas. 1969).

ALR and C.J.S. references.—State statute permitting verdicts by less than twelve jurymen as applicable to action under Federal Employer's Liability Act, 12 ALR 713; 36 ALR 919.

Quotient verdict, 52 ALR 41.

Verdict as affected by agreement in advance among jurors to abide by less than unanimous vote, 73 ALR 93.

89 C.J.S. Trial §§ 486, 487.

**For cases construing former statute directing imprisonment on judgment for payment of fine,** see Williams v. Illinois, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970); Hood v. Smedley Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972).

**Sec. 12.55.055. Community work.** (a) The court may order a defendant convicted of an offense to perform community work as a condition of a suspended sentence or suspended imposition of sentence, or in addition to any fine or restitution ordered. If the defendant is also sentenced to imprisonment, the court may recommend to the Department of Health and Social Services that the defendant perform community work.

(b) Community work includes work on projects designed to reduce or eliminate environmental damage, protect the public health, or improve public lands, forests, parks, roads, highways, facilities, or education. Community work may not confer a private benefit on a person except as may be incidental to the public benefit. (§ 12 ch 166 SLA 1978)

**Secs. 12.55.060 — 12.55.075.**

Repealed by § 21 ch 166 SLA 1978.

**Cross references.** — For provisions as to sentencing reports, see AS 12.55.025. As to sentences of imprisonment for felonies, see AS 12.55.125. As to sentences of imprisonment for misdemeanors, see AS 12.55.135.

**Editor's note.** — The repealed sections derived from §§ 8.06, 8.07, ch. 34, SLA 1962; § 1, ch. 6, SLA 1966; § 1, ch. 60, SLA 1974.

**Sec. 12.55.080. Suspension of sentence and probation.** Upon entering a judgment of conviction of a crime, or at any time within 60 days from the date of entry of that judgment of conviction, a court, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution or balance of the sentence or a portion thereof, and place the defendant on probation for a period and upon the terms and conditions as the court considers best. (§ 8.08 ch 34 SLA 1962; am § 24 ch 43 SLA 1964; am § 8 ch 68 SLA 1965)

**Cross references.** — See Cr. R. 35 (k). For additional circumstances where a defendant's sentence may be modified, see AS 12.55.088.

**The power to suspend sentence is not inherent in the judicial branch of government.** Pete v State, Sup. Ct. Op. No. 137 (File No. 290), 379 P.2d 625 (1963).

**Such power must be conferred by the legislature.** — The power to suspend sentences exists only when conferred upon the judiciary by the legislature. Pete v. State, Sup. Ct. Op. No. 137 (File No. 290), 379 P.2d 625 (1963).

**Parallels 18 U.S.C. § 3651.** — Alaska's probation statutes, this section, AS 12.55.090 and AS 12.55.100 closely parallel the federal statute, 18 U.S.C. § 3651, which empowers federal district courts to grant probation. Brown v. State, Sup. Ct. Op. No. 1367 (File No. 2890), 559 P.2d 107 (1977).

This section and AS 12.55.090 appear to have been modeled after the federal statute, 18 U.S.C. § 3651. Tiedeman v. State, Sup. Ct. Op. No. 1592 (File No. 3394), 576 P.2d 114 (1978).

The Alaska probation statutes, this section, AS 12.55.090 and 12.55.100, use

HB
261
(SEE HB223)

HB
287

POSITION PAPER/Department of Health & Social Services

POSITION PAPER
ON
HOUSE BILL NO. 287

"An Act relating to domestic violence."

The Department of Health and Social Services supports the amendments to House Bill No. 287. During the 1980 legislative session, the Department supported House Bill No. 392 which eventually became the present statute. Since that time, the local programs of Domestic Violence and Sexual Assault have coordinated closely with the public safety and police officers of each major community. The Alaska Network on Domestic Violence and Sexual Assault has assisted in preparing training for police officers at the Academy; and victims of domestic violence are beginning to use the right for restraining orders. Each of the domestic violence programs has had an increase in number of clients during the year; perhaps some of this has been due to the obligation now placed on a police/public safety officer to inform a victim of the availability of a protected environment.

It has become evident with the use of the current statute that complex living situations do exist in Alaska and that violence frequently occurs within those interrelated "families" - no matter what the definition of family. According to the publication "Crime in Alaska," published by CJPA, in 1980, of 39 murders in the state, 12 victim/offenders were family members.

The Department is also aware that for many women a period of 45 days to "solve her problems" and make decisions about life decisions is frequently too short a time; if the perpetrator chooses to seek help, in order to help solve the relationship problem, a period of 45 days is by no means long enough to help him learn new methods and techniques of handling stress. Therefore, the Department supports the extension of the restraining order.

Recommended by: Elizabeth Muktarian
Elizabeth Muktarian
Director
Div. of Adult and
Aging Services

Date: 3/24/81

Approved by: Helen D. Beirne
Helen D. Beirne
Commissioner
Dept. of Health and
Social Services

Date: 3/26/81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

# FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 287
Title "An Act Relating to domestic violence."
Requested by _____ Date March 17, 1981

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected Social & Economic Assistance for the General Population
BRU, Program, or Subprogram(s) Affected Division of Adult & Aging Services - Adult Services
(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 81 | FY 82 | FY 83 | FY 84 | FY 85 | FY 86 |
|---|---|---|---|---|---|---|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | | -0- | | | | |

FUNDING (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | -0- | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Fund Source) | | | | | | |
| | | | | | | |
| | | | | | | |

POSITIONS

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL TIME | | | | | | |
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

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

Zero Impact

IV. DATE 3-17-81 PREPARED BY Dorothy Walt
AGENCY Division of Adult and Aging Services
PHONE 465-3250

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) M&B Approval _____ Date 3/20/81

33-001 (Rev. 12/80)

(e) The court may appoint an attorney or a guardian ad litem to represent the interests of the petitioner at the hearing.

(f) The court may remove the disabilities of minority as requested in the petition if found to be in the best interest of the petitioner, after a hearing. The removal may be for general purposes or the limited purposes specified in the decree.

(g) Except for specific constitutional and statutory age requirements for voting and use of alcoholic beverages, a minor whose disabilities are removed for general purposes has the power and capacity of an adult, including but not limited to the right to control himself or herself, the right to be domiciled where he or she desires, the right to receive and control his or her earnings, to sue or to be sued, and the capacity to contract. (§ 2 ch 233 SLA 1976)

## Article 9. Domestic Violence.



---

**Cross reference.** — As to domestic violence police training, see AS 18.65, art. 6.

**Editor's note.** — Section 5, ch. 139, SLA 1980, provides: "Section 1 of this Act has the effect of changing Rule 3, Rules of Civil Procedure, by enacting a provision that allows a court to proceed upon the filing of a petition rather than a complaint, and Rule 76, Rules of Civil Procedure, by enacting a provision that allows a court to accept for filing petitions which are handwritten in part. Section 1 of this Act also has the effect of changing Rule 65, Rules of Civil Procedure, by enacting a provision that establishes an alternate procedure for obtaining orders for relief from domestic violence."

---

**Sec. 09.55.600. Injunctive relief in cases involving domestic violence.** (a) A person who is subjected to domestic violence may petition a superior court for injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent.

(b) Upon receiving a petition under (a) of this section, the superior court shall schedule a hearing and shall provide at least 10 days notice to the respondent of the hearing and of the respondent's right to appear and to be heard either in person or by attorney. If, at the hearing, the superior court finds that the petitioner has been subjected to domestic violence by the respondent, the superior court may issue any order it determines to be necessary for the protection of the health, safety or welfare of the petitioner or of a minor child in the care of the petitioner. An order under this subsection may include provisions which



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

(2) direct the respondent to vacate the home of the petitioner;

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

(4) direct the respondent to pay support for the petitioner or for a minor child in the care of the petitioner if there is an independent legal obligation of the respondent to support the petitioner or the child;

(5) award temporary custody of a minor child to the petitioner;

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

(c) An order issued under this section remains in effect for a period of time not to exceed 45 days. However, the petitioner may petition the superior court for extensions of a provision of the order if the provision is described in (b)(1), (b)(2) or (b)(3) of this section. If the superior court, after notice to the respondent of and a hearing on the petition for the extension in accordance with the procedures described in (b) of this section, finds that an extension of the provision of the order is necessary to protect the petitioner from domestic violence, the superior court may extend the provision of the order for a period of time not to exceed 45 days.

(d) Proceedings under this section do not preclude any other available civil or criminal remedies. (§ 1 ch 139 SLA 1980)

**Cross reference.** — As to release before trial in cases involving domestic violence, see AS 12.30.025.

**Sec. 09.55.610. Emergency injunctive relief in cases involving domestic violence.** (a) A person who has been subjected to domestic violence may petition the superior court for a temporary order providing for emergency injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent. If there is no superior court within 50 road miles of the residence of the person subjected to domestic violence, the person may petition the nearest district court for a temporary emergency injunctive relief order. If there is no district court within 50 road miles of the residence of the person subjected to domestic violence, the person may petition the nearest magistrate for a temporary emergency injunctive relief order. The district court or magistrate shall notify the superior court immediately upon issuance of an order granting emergency injunctive relief under this section.

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

(1) it clearly appears that there is a substantial likelihood of immediate danger from the respondent to the health, safety, or welfare

of the petitioner or of a minor child in the care of the petitioner; and

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

(c) An order issued under this section may include a provision described in AS 09.55.600(b). The order shall be endorsed with the date and hour of issuance, shall be filed in the clerk's office and entered in the records of the court, and shall state the reason that it was granted without notice. The order shall remain in effect for a period not to exceed 10 days, unless extended by the court for good cause. The reasons for the extension shall be entered in the records of the court.

(d) If an order under this section is granted without notice, a hearing before the superior court for injunctive relief under AS 09.55.600 shall be scheduled by the superior court at the earliest possible time consistent with the notice provisions of AS 09.55.600. If at the hearing the petitioner does not proceed with the petition for injunctive relief, the superior court shall dissolve the emergency injunctive relief order.

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

(f) Proceedings under this section do not preclude other available civil or criminal remedies. (§ 1 ch 139 SLA 1980)

**Cross reference.** — As to release before trial in cases involving domestic violence, see AS 12.30.025.

**Sec. 09.55.620. Forms for filing petition.** (a) The Alaska court system, in cooperation with interested persons and organizations, shall prepare forms and instructions for the use of persons seeking an order for relief under AS 09.55.600 or 09.55.610, including forms for waiving filing fees on the basis of indigency. The forms shall conform to the requirements of AS 09.55.600 and 09.55.610 and the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. The office of the clerk of each superior and district court shall make the forms and instructions available to the public.

(b) The form for a petition prepared under (a) of this section shall include a notice that a false statement made in it stating that the respondent has subjected the petitioner to domestic violence constitutes the crime of unsworn falsification under AS 11.56.210, which is punishable by a maximum term of imprisonment of one year



**Sec. 09.55.630. Notification to law enforcement agencies.** If a superior court, district court, or magistrate issues an order under AS 09.55.600 or 09.55.610 restraining a respondent from subjecting a petitioner to domestic violence, the superior court, district court, or magistrate shall transmit a copy of the order to the appropriate local law enforcement agency. Each law enforcement agency shall establish procedures to inform their peace officers of copies of the orders received by the law enforcement agency under this section. Peace officers shall use every reasonable means to enforce an order issued under AS 09.55.600 or 09.55.610. (§ 1 ch 139 SLA 1980)

**Sec. 09.55.640. Definitions.** For the purposes of AS 09.55.600 — 09.55.640, "domestic violence" means a crime under AS 11.41 committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the respondent. (§ 1 ch 139 SLA 1980)

## Chapter 60. Costs.

### Sec. 09.60.010. Costs allowed prevailing party.

**The authority to make awards of attorney fees is derived from this section,** which is of relatively ancient origin, dating from an Act of Congress of June 6, 1900, 31 Stat. 415-16, which was amended in 1923 by the Territorial Legislature of Alaska to expressly permit the courts to impose reasonable attorney's fees. Steponov v. Gavrilovich, Sup. Ct. Op. No. 1823 (File No. 3236), 594 P.2d 30 (1979).

Rule 82(a), which allows for the recovery of reasonable attorney's fees, is supported by legislation which specifies that the supreme court shall determine when attorney's fees are to be awarded. Thus, the award of attorney's fees is authorized, though not mandated, by statute. Klopfenstein v. Pargeter, 597 F.2d 150 (9th Cir. 1979).

**Civil R. 82 established pursuant to delegation of authority in section.** — Civil R. 82, authorizing awards of attorney's fees to the prevailing party in civil litigation, apart from eminent domain proceedings, was established by the supreme court pursuant to a legislative delegation of authority found in this section. Crisp v. Kenai Peninsula Borough School Dist., Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

**"Prevailing party".**

In accord with original. See Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No.

A party does not have to prevail on all of the issues in the case to be a "prevailing party." Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

A litigant who is successful in defeating a claim of great potential liability may be the prevailing party even though the other side is successful in receiving an affirmative recovery. Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

Where a party prevailed on every liability issue, and was unsuccessful only in his argument that he was entitled to nominal damages on his counterclaim, he was the prevailing party. Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

As a general rule, the "prevailing party" is considered to be the party who has successfully prosecuted or defended against the action, the one who is successful on the "main issue" of the action and in whose favor the decision or verdict is rendered and the judgment entered. In re Adoption of V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

**The determination of which party prevails, etc.**

Like the award itself, the actual determination of who the "prevailing" party is within the discretion of the trial

(2) held to answer to the grand jury and the court dismisses the charge because the indictment is not found against him at the next session of the grand jury; or

(3) indicted for a crime and the indictment is dismissed because the trial is not held within a reasonable period of time, and there is not good cause shown for the delay, and the delay was not upon the application of the defendant or with his consent.

(b) Unless the court directs a judgment of acquittal to be entered, it is not a bar to another action for the same crime if the court orders an indictment to be discharged because the prosecuting attorney is not prepared to go to trial when the indictment is called for trial and does not show sufficient cause for postponing the trial. (§ 1.15 ch 34 SLA 1962)

**Cross reference.** — See Cr. R. 43.

**Sec. 12.20.060. Discharge of codefendant as bar.** It is an acquittal of the defendant discharged and a bar to another prosecution for the same crime when two or more persons are charged in the same indictment, and the court dismisses the indictment against any defendant either

(1) before the defendant has gone into his defense and on the application of the prosecuting attorney so that he may be a witness for the state; or

(2) before the evidence is closed and on the application of another defendant on trial so that he may be witness for a codefendant, and when, in the opinion of the court, there is not sufficient evidence to put that defendant on his defense. (§ 1.16 ch 34 SLA 1962)

## Chapter 25. Arrest.





**Sec. 12.25.010. Persons authorized to arrest.** An arrest may be made by a peace officer or by a private person. (§ 2.02 ch 34 SLA 1962)

**Am. Jur. 2d, ALR and C.J.S. references.** — 5 Am. Jur. 2d, Arrest, §§ 3-51, 69-94; 21 Am. Jur. 2d, Criminal Law, §§ 442-460; 68 Am. Jur. 2d, Searches and Seizures, § 1 et seq.

6A C.J.S. Arrest §§ 10-42; 22 C.J.S. Criminal Law §§ 144-146, 300-366.

**Sec. 12.25.020. Judge or magistrate may order arrest.** When a crime is committed in the presence of a judge or magistrate, he may, by an oral or written order, command any person to arrest the offender, and may immediately proceed as though the offender had been brought before him on a warrant of arrest. (§ 2.03 ch 34 SLA 1962; am § 7 ch 8 SLA 1971)

**Legislative history report.** — For report on ch. 8, SLA 1971 (HB 15), see 1971 House Journal, p. 52.

**Sec. 12.25.030. Grounds for arrest by private person or peace officer without warrant.** (a) A private person or a peace officer without a warrant may arrest a person

(1) for a crime committed or attempted in his presence;

(2) when the person has committed a felony, although not in his presence;

(3) when a felony has in fact been committed, and he has reasonable cause for believing the person to have committed it.

(b) In addition to the authority granted under (a) of this section, a peace officer without a warrant may arrest a person when he has reasonable cause for believing that the person has committed assault in the fourth degree under AS 11.41.230(a)(1) against a member of the person's household.

(c) As used in this section "household" means the social unit comprised of those living together in the same dwelling. (§ 2.04 ch 34 SLA 1962; am § 11 ch 166 SLA 1978; am § 33 ch 102 SLA 1980)

**Effect of amendments.** — The 1978 amendment added subsections (b) and (c). The 1980 amendment substituted "fourth" for "third" in subsection (b).

**Legislative history report.** — For report on ch. 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980 or 1980 [illegible] Supplement No. 79, May

**Common law breach-of-the-peace requirement discarded.** — Although at common law a police officer was authorized to arrest without a warrant anyone who had committed a misdemeanor in his presence amounting to a breach of the peace, over the years most states, including Alaska, have dropped the breach-of-the-peace requirement, retaining the in-the-presence. Howes v. State, Sup. Ct. Op. No. 846 (File

DOMESTIC VIOLENCE

WIC-CA CENTER

APR 13 1981

302 Charles Street
Fairbanks, Alaska 99701
452-2293

April 8, 1981

Carla Slaughter Timpone
c/o Sally Smith
Pouch V.
Juneau, Alaska 99811

Dear Carla:

I just wanted to put on record some of my observations concerning proposed HB 287 which were not reflected in Carla Huntington's testimony before House HESS on March 27th. I'm also sending a copy of this letter to Fred Brown if there's anything you particularly want to follow through on.

Section 5 which delineates the relationships that must exist in order for an individual to be eligible for relief clearly neglects the woman separated from a non-married family unit. The way the non-revised section reads there is room for interpretation. Some judges in Fairbanks have chosen to interpret the section defining eligibility very strictly, denying assistance to women who have been a member of such a family unit but are now separated. Quite often the separation is a result of the violence that had existed throughout the partners' relationship. Recently two (2) cases came before the Fairbanks courts calling the relationship of unmarried partners into question. In the first, a woman separated for six days from her partner of 1 year requested emergency relief from the courts. The police had been called two (2) times in the course of six days. Her request was denied based on her non-eligibility though the Judge did note that the liklihood of continued violence did exist. In the second case, a woman separated for six (6) days requested emergency relief from the court. A violent episode had precipitated the separation. A law clerk informed her of her non-eligibility status but we went ahead and filed. The judge hearing the case granted the relief.

As it stands now the section is open to variances as in the above two (2) cases. With the revision it appears that both of the cases would have been denied. Neither alternative serves our purposes. If the decision is to specify all those eligible in section 5 than an additional sentence should be added regarding women with this status.

As the old section stands there needs to be some way of clarifying this relationship so that the decision is not left up to the judge's descretion.

The other problem which has occured twice within the last month is using the court's procedure in following through on violations of the relief order. In one case a woman had filed a petition in Anchorage where it was granted. The order stated that the couple were not to have contact in her apartment nor could he at any time threaten or physically abuse her. Traveling up to Fairbanks there was another violent episode. In Fairbanks she filed an Order to Show Cause, an affadavit testifying to his violation. The Fairbanks court decision was that she file a new petition, even though the old petition was still in effect. Due to jurisdictional problems there needs to be some provision for not only recognizing the petition state-wide but for amending and dealing with its violations from jurisdictional area to jurisdictional area. If not, individuals are required to pay an additional $50.00 filing fee and then repeat the court process a second time.

In a second case, a woman had requested an emergency and an extended order from the courts. Both of which were granted. Aside from ordering no further violence, the petitioner was granted $200/month child support, $100/month spousal support and 100% payment of medical expenses resutling from injuries received during the violent episode. Her husband, the respondent, had no objections to the order but in the intervening 45 days has refused to comply with the payment. His wife filed an Order to Show Cause, notifying the court of his non-compliance. The court refused to sign the order. It appears that judges are unwilling to sign the orders for violation of ~~any~~ payment portion of the petition because a vioaltion of any portion of the petition is criminal contempt requiring 10 day jail sentences. Since there are no other jail sentences for non-payment, the judges choose not to sign the order. While I'm not suggesting we go back to having debtor's prisons, we need to come up with some way of putting some teeth into the orders regarding child support and payment of medical expenses. Going to Child Support Enforcement Agency (CSEA) doesn't seem to be the answer. So this time I'm pointing out the problem; unfortunately no solution comes to mind.

Well I hope ther's some sense somewhere in all of this. Thanks for digging through it.

Take care,

Adie

Adie
Legal Advocate for WIC-CA
AG/mw

cc: Fred Brown
Carla Huntington

Original sponsors: Clocksin and Malone

Offered: 4/9/81
Referred: Judiciary

IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 287 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to domestic violence."

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

* Section 1. AS 09.50.020 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, disobedience of an order issued under AS 09.55.600 or 09.55.610 is a class B misdemeanor.

* Sec. 2. AS 09.55.600(b) is amended by adding new paragraphs to read:

(7) direct the respondent to engage in personal or family counseling;

(8) restrain the respondent from entering a propelled vehicle in possession of the petitioner.

* Sec. 3. AS 09.55.600(c) is amended to read:

(c) An order issued under this section remains in effect for a period of time not to exceed 90 [45] days. However, the petitioner may petition the superior court for an extension [EXTENSIONS] of a provision of the order if the provision is described in (b)(1), (b)(2) or (b)(3) of this section. If the superior court, after notice to the respondent of and a hearing on the petition for the extension in accordance with the procedures described in (b) of this section, finds that an extension of the provision of the order is necessary for the protection of the health, safety or welfare of the petitioner or of a minor child in the care of the petitioner [TO PROTECT THE PETITIONER FROM DOMESTIC VIOLENCE], the superior court may extend the provision of the order for a period of time not to exceed 45 days. The court may not grant more than one extension under this subsection.

* Sec. 4. AS 09.55.610(c) is amended to read:

(c) An order issued under this section may include a provision described in AS 09.55.600(b). The order shall be endorsed with the date and hour of issuance, shall be filed in the clerk's office and entered in the records of the court, and shall state the reason that it was granted without notice. The order shall remain in effect for a period not to exceed 20 [10] days, unless extended by the court for good cause. The reasons for the extension shall be entered in the records of the court.

* Sec. 5. AS 09.55.610(e) is amended to read:

(e) On three [TWO] days notice to the petitioner, or on shorter notice as the superior court may prescribe, the respondent may make a motion to the superior court for the dissolution or modification of an order for emergency injunctive relief under this section. The superior court shall hear and rule on the motion in an expeditious manner.

* Sec. 6. AS 09.55.640 is amended to read:

Sec. 09.55.640. DEFINITIONS. For the purposes of AS 09.55.600 - 09.55.640, "domestic violence" means a crime under AS 11.41 committed against a spouse or [,] a former spouse of the respondent, [OR] a member of the social unit comprised of those living together in the same dwelling as the respondent, or a person related within the second degree by blood or marriage to the respondent.

* Sec. 7. AS 11.46.350(a) is amended by adding a new paragraph to read:

(3) enter or remain upon premises or in a propelled vehicle in violation of a provision in an order issued under AS 09.55.600(b) or 09.55.610.

* Sec. 8. AS 11.61.120(a) is amended by adding a new paragraph to read:

(6) violates a provision of an order issued under AS 09.55.-600(b) or 09.55.610 restraining the respondent from communicating

directly or indirectly with the petitioner.

* Sec. 9. AS 12.25.030(b) is amended to read:

(b) In addition to the authority granted under (a) of this section, a peace officer without a warrant may arrest a person when he has reasonable cause for believing that the person has committed a crime under AS 11.41, AS 11.46.330, or AS 11. 61.120 and the victim is a spouse or former spouse of the person, a member of the social unit comprised of those living together in the same dwelling as the person, or another person related within the second degree by blood or marriage to the person [ASSAULT IN THE FOURTH DEGREE UNDER AS 11.41.230(a)(1) AGAINST A MEMBER OF THE PERSON'S HOUSEHOLD].

* Sec. 10. AS 12.30.025(b) is amended to read:

(b) As used in this section, "domestic violence" means a crime specified in AS 11.41 when the victim is [COMMITTED AGAINST] a spouse or [,] a former spouse of the defendant, [OR] a member of the social unit comprised of those living together in the same dwelling as the defendant, or a person related within the second degree by blood or marriage to the defendant.

* Sec. 11. AS 12.55.135(c) is amended to read:

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

* Sec. 12. AS 18.65.520(a) is amended to read:

(a) During the course of responding to an offense involving domestic violence, a peace [POLICE] officer shall orally and [OR] in writing inform the victim of services available to the victim and the rights of the victim, substantially as follows:

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

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

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

(3) Alaska law provides that you may file an application with the nearest court for a court order protecting you and your children from further harm. The forms to obtain the order are available at the court. It is not necessary to have an attorney to obtain a court order but one may be of help to you. If you cannot afford to hire an attorney, you should contact the nearest Alaska Legal Services office which is located at _____.

(4) Additionally, the victim/witness assistance program of the Department of Law may be able to help you. The nearest district attorney's office is located at _____.

* Sec. 13. AS 18.65.520(c) is amended to read:

(c) As used in this section

(1) "domestic violence" means a crime under AS 11.41 committed when the victim is [AGAINST] a spouse or [,] a former spouse of the person who committed the crime, [OR] a member of the social unit comprised of those living together in the same dwelling as the person

who committed the crime, or another person related within the second degree by blood or marriage to the person who committed the crime;

(2) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders.

* Sec. 14. AS 22.20.130 is amended by adding a new subsection to read:

(c) Process issued under AS 09.55.600 or 09.55.610 shall be promptly served and executed. The commissioner may designate a peace officer to serve and execute process issued under AS 09.55.600 or ~~09.55.610.~~ A person designated to serve process under this section has the same authority and duty granted to the commissioner in the service of the process and is subject to orders of the courts of the state in the same manner as the commissioner. The commissioner is responsible on his official bond for the acts of a person designated by him under this section which are committed in the course of his designated duty.

* Sec. 15. AS 22.20.140 is amended by adding a new paragraph to read:

(4) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders.

* Sec. 16. AS 09.55.620(b) and AS 12.25.030(c) are repealed.

HB
293
(SEE HB225)

HB
294

Introduced: 3/13/81
Referred: Judiciary

IN THE HOUSE BY ADAMS AND HAUGEN BY REQUEST

HOUSE BILL NO. 332

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act limiting the civil liability of aviation fuel refiners; and providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that

(1) aviation is essential to the life of every Alaskan, in communications, commerce, and in emergencies;

(2) refiners distributing aviation fuel in Alaska perform an important service by supplying high quality products throughout the state;

(3) once aviation fuel has been transferred by a refiner to the storage tanks of a third party, a refiner has no control over the continued quality and integrity of the fuel;

(4) in the event of a civil action arising from an aircraft accident, it is unfair to hold a refiner liable for the quality and integrity of fuel which was placed in aircraft fuel tanks after transfer from the refiner to a third party;

(5) without protection from unreasonable liability, refiners may be forced to withdraw from the Alaska aviation fuel market.

* Sec. 2. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.140. CIVIL LIABILITY OF AN AVIATION FUEL REFINER. (a) An aviation fuel refiner is not liable in a civil action for injuries resulting from the use of contaminated or impure fuel in an aircreft.

(b) This section does not apply to an aviation fuel refiner who (1) intentionally causes an injury or whose gross negligence causes or contributes to an injury; or

(2) transfers aviation fuel directly into the fuel tanks of an aircraft.

(c) In this section

(1) "aviation fuel refiner" means a company, corporation, or individual who owns or controls, or controls through a substantially owned subsidiary, partnership, or joint venture, a refinery used for the production of aviation fuel;

(2) "injury" includes death, personal injury, and property damage whether tangible or intangible.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-070(c).

① Pilots CAN and ARE "EXPECTED ~~TO~~ TO" HANDLE WATER & DIRT

② Pilots CAN NOT HANDLE THE ~~MISMANufacture~~ MISMANUFACTURE OR Refining of The Fuel

③ This Bill lets The Refiners out of liability ON Number 2

④ How DID we get ALONG all This TIME (65 years plus) without This Bill?

# MEMORANDUM State of Alaska

TO Ron Lehr, Director
Division of Budget and
Management
Office of the Governor

DATE: February 17, 1981

FILE NO:

TELEPHONE NO:

FROM: WILSON L. CONDON
ATTORNEY GENERAL
Richard I. Pegues
By: Richard I. Pegues, Director
Administrative Services Division

SUBJECT: FY 81 Supplemental
Appropriation-Judgments

As you know, the Department of Law each year receives an appropriation of $15,000 to pay miscellaneous judgments which covers costs and fees awarded in court settlements against the state. This initial appropriation was fully expended in September, 1980. Since that time, nine additional judgments have been made against the state totalling $955,930.84, including interest. Of this amount, a single judgment of $881,367 was awarded as a result of a contract claim against the Department of Transportation of Public Facilities arising from the construction of a state owned salmon hatchery at Hidden Falls, on Baranof Island. The major portion of this claim represents contractor construction costs rather than court costs and attorney fees. The state's counsel, in this matter, has concluded that the contractor's claim of $2.5 million would have resulted in a liability to the state somewhat in excess of $1.0 million, if the case had gone to full trial. Counsel therefore nogotiated this settlement which all parties agreed was equitable.

The remaining eight judgments, in total amount, are similar to past years' experience where, in FY 80, we paid $62,800 for judgments and, in FY 79, when we paid $75,300 for judgments.

Interest paid varies by actual judgment. Some claims receive 8.0 percent, others receive 10.5 percent and some do not receive interest depending upon the specific conditions of the judgment award. The maximum interest allowed is now 10.5 percent and this limit was increased from 8.0 percent in mid-year. Interest, where it applies, has been computed from date of award through May 31, 1981.

Attached for your review and transmittal to the legislature are: a summary of the judgments, showing the amount of the award and interest; copies of the judgments, together with relevant correspondence, and; the supplemental budget request forms.

RIP:cjs

Attachments

## KNOWN OUTSTANDING JUDGMENTS AS OF 2/17/81

| CASE | AMOUNT | INTEREST | TOTAL DUE |
|---|---|---|---|
| 1978 Gov's Electi— Thomas v. Croft | 19,797.15 | 3,401.20 | 23,198.35 |
| Kimura v. ABC Board | 1,140.00 | 74.75 | 1,214.75 |
| Gardner v. State | 997.60 | | 997.60 |
| Subsistence Tyonek v. State | 10,000.00 | 673.92 | 10,673.92 |
| Copeland v. CFEC | 1,250.00 | 86.40 | 1,336.40 |
| Gjosund v. F & G | 9,022.51 | 504.41 | 9,526.92 |
| Christenson, Raber, Kief & Assc. v. State | 835,000.00 | 46,367.00 | 881,367.00 |
| Bailey v. Thomas & Beirne | 12,817.50 | 535.05 | 13,352.55 |
| Zobel v. Williams | 13,707.35 | 556.00 | 14,263.35 |
| TOTAL | $903,732.11 | $52,198.73 | $955,930.84 |

$100301

# MEMORANDUM State of Alaska

TO Ron Lehr, Director
Division of Budget and
Management
Office of the Governor

DATE: January 7, 1981

FILE NO:

TELEPHONE NO: 465-3695

FROM: WILSON L. CONDON
ATTORNEY GENERAL
By: Richard I. Pegues
Administrative Officer

SUBJECT: Supplemental Appropriation--
FY 81 Judgments

The Department of Law anticipates submitting a supplemental judgment request of approximately $940,595 to settle judgments against the state for FY 81. Unpaid settlements, to date, are as follows:

| Case | Amount | | |
|---|---|---|---|
| Thomas v. Croft | $23,200 ✓ | 23,199 | 23.2 |
| Kimura v. ABC Board | 1,215 ✓ | 1,215 | 1.2 |
| Gardiner v. CFEC | 1,000 ✓ | 998 | 1.0 |
| Tyonek v. State | 10,675 ✓ | 10,674 | 10.7 |
| Hutcherson v. Labor | 265 | | |
| Copeland v. CFEC | 1,340 ✓ | 1.337 | 1.3 |
| Gjosund v. F&G | 9,530 ✓ | 9.527 | 9.5 |
| Zobel v. Williams | 12,000 | 14.264 | 14.3 |
| Christiansen & Assn. v. State | 881,370 | 881.367 | 881.4 |
| BAILEY vs. Thomas & BORNE | | 13.353 | 13.4 |
| | | | 955.934 |

Additional judgment claims may occur before the legislature limits their consideration of supplemental requests. Please let us know when the request cutoff will take place, once this information becomes available to you.

RIP:cjs

To Typist
1/7/81

RECEIVED
JAN 8 1981
BUDGET MANAGEMENT

HB
332

Introduced: 3/13/81
Referred: Judiciary

IN THE HOUSE BY ADAMS AND HAUGEN BY REQUEST

HOUSE BILL NO. 332

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act limiting the civil liability of aviation fuel refiners; and providing for an effective date."

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

* Section 1. FINDINGS. The legislature finds that

(1) aviation is essential to the life of every Alaskan, in communications, commerce, and in emergencies;

(2) refiners distributing aviation fuel in Alaska perform an important service by supplying high quality products throughout the state;

(3) once aviation fuel has been transferred by a refiner to the storage tanks of a third party, a refiner has no control over the continued quality and integrity of the fuel;

(4) in the event of a civil action arising from an aircraft accident, it is unfair to hold a refiner liable for the quality and integrity of fuel which was placed in aircraft fuel tanks after transfer from the refiner to a third party;

(5) without protection from unreasonable liability, refiners may be forced to withdraw from the Alaska aviation fuel market.

* Sec. 2. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.140. CIVIL LIABILITY OF AN AVIATION FUEL REFINER. (a) An aviation fuel refiner is not liable in a civil action for injuries resulting from the use of contaminated or impure fuel in an aircraft, unless

(b) This section does not apply to an aviation fuel refiner who

(1) intentionally causes an injury or whose gross negligence causes or contributes to an injury; or

(2) transfers aviation fuel directly into the fuel tanks of an aircraft.

(c) In this section

(1) "aviation fuel refiner" means a company, corporation, or individual who owns or controls, or controls through a substantially owned subsidiary, partnership, or joint venture, a refinery used for the production of aviation fuel;

(2) "injury" includes death, personal injury, and property damage whether tangible or intangible.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Chevron what about others?
Why the problem?
What about individuals?

What about other states?
Do they have it?

Indemnification of private individuals. Mellow → Dept. of Law

ISSUES REGARDING HB 332

1. Assuming this bill was to become law, would it actually prevent aircraft fuel refiners from being involved in lawsuits or would it simply force plaintiffs to allege "gross negligence" rather than simple negligence against the fuel refiner. A related question would be, assuming that the fuel was a contributing factor to an aircraft accident, would that constitute "gross negligence".

2. Assuming the bill is to become law, what would protect the public from fuel refiners entering the market in the future, who do not have adequate quality control systems.

3. The cost of defending against lawsuits [illegible]uel refiners, is currently passed on to the customer in [illegible] form of an increase in prices. Assuming that the bill is to become law, would this mean that a corresponding reduction in the cost of fuel would be passed along to the consumer.

4. This type of legislation raises a serious question concerning the general concept of limiting the civil liability of a specific area of Alaska's industry. The court system is presently designed to allow defendants who cannot reasonably be found liable, to be protected from lawsuits at a fairly early stage of the litigation. This legislation would deny a plaintiff, the right to determine if in fact an aviation fuel refiner was negligent in the manufacture or delivery of its product.

5. Alternatives to the present approach of this legislation include, having the FAA adopt regulations to specify minimum design criteria for the installation, maintenance, and inspection of aviation fuel storage and dispension systems. Also, the State could give the State Division of Weights and Measures jurisdiction over fuel tank maintenance, which should prevent fuel storage problems.

DH X

E.D. F
T.D. Hu
W.D. K
W.M. C

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 9, 1981

Mr. James Howard
Chevron International
P.O. Box 1580
Anchorage, AK 99510

Dear Mr. Howard:

As you know, due to a revised product procurement policy and its attendant transportation changes, one supplier of aviation gasoline has significantly cut back its sales of this product in Alaska. I have been made aware that this action has caused problems for some aircraft operators in various parts of the state. As you also know, avgas plays a large, more vital role in the life and commerce of Alaska than in any of the smaller states, or perhaps the world. Therefore, supply disruption here has an impact on more people than just the directly concerned parties.

I am aware that you have already provided assistance to some aircraft operators experiencing supply problems. Your efforts to date are appreciated. I can only ask that you continue to do whatever else you can to assist those other operators who are still without an avgas supplier.

Please contact the Division of Energy and Power Development if you have questions or if the State of Alaska can assist you in this matter.

Sincerely,

Jay S. Hammond
Governor

cc: Jessie Dodson
Clarissa Quinlan

Chevron U.S.A. Inc.
P. O. Box 1580, Anchorage, AK 99510 • Phone (907) 279-9666

J. H. Howard
Marketing Manager
Marketing Department

February 19, 1981

The Honorable Jay S. Hammond
Office of the Governor
Juneau, Alaska 99801

Dear Governor:

Thank you for your February 9 letter concerning aviation gasoline supply. We agree that avgas plays a vital role in the life and commerce of Alaska. In addressing these needs, Chevron already supplies 80% of the avgas sold here.

Ever increasing liability problems associated with aviation fuel supply have diminished considerably our desire to take on new customers. We hope these problems will be eliminated through legislative action. Senate Bill No. 123 introduced by Senator Mike Colletta, if passed, will provide the protection necessary to stimulate the assistance to others suggested in your letter. Future supplies will then be limited only by manufacturing capabilities.

Alaska and Chevron have a long history of growth together. From our point of view, it has been a highly rewarding partnership.

Anything you can do to help us continue our long-term commitment to supplying the energy needs of Alaskans everywhere, will be appreciated.

Sincerely,

J. H. Howard

JHH:sjb

# running out of gas

by Patti Epler
Times Writer

Two Merrill Field businessmen say they will either have to close their doors or raise their prices because Texaco Inc. as decided to cut back its sale of aviation gas in Alaska.

Gene Bender of Piper Sales Alaska and Ken Triplett of Alyeska Air Service say they have nowhere to turn for wholesale gas. The men said neither of the two other suppliers of aviation gas in Alaska, Chevron USA Inc. and Union Oil Co. of California, are accepting new customers.

The other companies are not taking new customers until they see what happens to two bills before the state Legislature that would limit the liability of oil companies in the sale of gas.

Bender and Triplett are the only two cut off by Texaco in Anchorage. The third and largest Texaco retailer, Air Associates at Anchorage International Airport, will still have fuel, a Texaco spokesman said.

The spokesman said Texaco has not done much business in Alaska in the past and has decided to cut back on the aviation gas business here because it's just not worth their trouble.

Piper Sales, Alyeska Air Service and Air Associates are the only Texaco retailers in Anchorage.

In three weeks, said Bender, "I'll have to close my doors. It's either that or get some awful powerful rubber bands and some big apes to wind them up."

Bender said his business consists of aircraft sales and service, rental of planes and student instruction.

Additionally, he said, more than

(See AIRCRAFT, page A-3)

---

(Continued from page A-1)

600 pilots per month gas at his pumps.

Now, he says, he's not selling any fuel to anybody. What he has left in his storage tanks he must keep for his own aircraft.

Triplett, who runs a charter business, said he also has cut off his 15 regular customers in order to protect his own supply.

He will be forced to buy gas from competitors at the going, public rate. That, he said, will force him to raise his charter prices between $5 and $10 per hour, a factor he believes will unfairly price him out of the market.

"It's an unfair advantage," he said. "I've got too much invested here to go out of business. I'll just have to make ends meet."

Triplett said Chevron and Union are not taking new customers because they don't want to add to their liabilities. He is hoping the two bills limiting oil companies' liability will pass this year.

The problem now, he said, is that state law makes the oil companies responsible for their fuel even after they have sold it to someone else.

The bills would stop the liability of the oil companies once they have sold their gas to a retailer and the retailer puts it in his own tanks, Triplett said.

"But," he said, "even if those are passed, there's no guarantee they'll take Alyeska Air Service as a customer."

J.H. HOWARD:
THIS ALSO SENT TO OUR REPRESENTATIVE. — RLU

February 27, 1981

Senator Dick Eliason
Juneau, AK

Dear Dick,

Senator Colleta has or is about to introduce this attached bill. We would appreciate your whole-hearted support of it, since under the present "scheme of things" our suppliers, our dealers and our own liability in this matter extends far and away beyond reasonable normal control.

Please be assured that all of us, including most end users, exercise the utmost caution in assuring product quality and handling—and our company provides safeguards against most all human and/or physical error, but to be required to be responsible past the point where we have no legal right to tell someone what to do—and see that they do it— is unreasonable.

We understand a number of aviation fuel dealers and suppliers have gone out of business in Western Alaska purely because of the present hazard, brought to the fore by a recent court award citing the full gamut of responsibility in the loss of an aircraft up there.

If this persists, many more dealers may be forced into a similar position and we all know what an effect it would have on this area's livlihood and economy which depends so heavily on aircraft travel. My sincere thanks for your assistance.

Sincerely,

R.L. Ulricksen

RLU/pdg

# ALASKA STATE LEGISLATURE - SENATE

CC TOH RCR

SENATOR RICHARD I. ELIASON
P.O. BOX 143
SITKA ALASKA 99835

POUCH V
JUNEAU, ALASKA 99811

COMMITTEES
FINANCE
RESOURCES
STATE AFFAIRS

March 13, 1981

Mr. Ralph L. Ulricksen
P.O. Box 418
Sitka, Alaska 99835

Dear Ralph,

Thank you for taking the time to write expressing your support for an act relating to civil liability of refiners which is going to be introduced by Senator Colleta.

It seems to me that a distributor has fulfilled his responsibility and liability at the time he delivers a high-quality product to a third party. I does not make a great deal of sense to hold a distributor responsible for that product after it leaves his control.

I will discuss this bill with Senator Colleta and I do not see any problem in supporting the bill.

Sincerely yours,

Dick Eliason
State Senator
District B

DE:sp

I sent a copy to Wells Fargo.

TDH

# Alaska State Legislature

## House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

February 12, 1981

Mr. Oscar L. Jones
Box 769
Petersburg, Alaska 99833

Dear Oscar:

I spoke with Mike Colletta today. He has introduced the "civil liabilities refinery bill". I've enclosed a copy of the bill for your information.

You can count on my support of this bill when it is presented to the House.

Sincerely,

E. J. Haugen

Representative E. J. "Ernie" Haugen

Tom
FYI
OLJ

# Alaska State Legislature

## Senate

### Committee on Transportation

Senator Bill Ray
Chairman

Official Business
Pouch V
State Capitol
Juneau, Alaska 99811

April 16, 1981

Jack Krehbiel
449 West Willoughby
Juneau, Alaska 99801

Dear Mr. Krehbiel:

I received your letter of April 3 regarding Alaska Statute 09.65.140 and proposed amendments pertaining to civil liability of refiners.

I appreciate your taking the time to present this information. You can be assured that I will take your views into consideration when this legislation is before me.

Sincerely,

Bill Ray

Bill Ray
Senator
District C

# Alaska Air Carriers Association

March 5, 1981

Mr. J. H. Howard
Marketing Manager
Chevron USA, Inc.
P.O. Box 1580
Anchorage, Alaska 99510

Dear Mr. Howard:

At the Annual Membership Meeting, February 28, 1981, the membership of the Alaska Air Carriers Association passed a resolution endorsing the concept of limiting the civil liability of aviation fuel refiners, pending further study of Senate Bill Number 123, by the Board of Directors of the AACA.

The AACA represents commercial air carriers in the state of Alaska. Members of AACA rely on aviation fuel refiners to supply sufficient fuel to serve the air transportation needs of Alaskans.

The AACA Board of Directors will be meeting in April to review the proposed legislation.

Sincerely,

Tulinda Deegan
President

TD:BC:kdc

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN.
Associate Editor
And General Manager

FRED DICKEY
Executive Editor



# irty fuel linked to air crash

ry Pat Murphy
Writer

xtensive water and rust con-
ation" in the fuel system of
ak Airways at Merrill Field has
linked to the fiery crash that
four people in October 1979.
its final report on the accident,
ational Transportation Safety
said the contaminated fuel
in the the underground fuel
at Spernak. It also said the air-
s fuel supply was contaminated
vater.
pilot for Spernak Airways and
ree passengers were killed in
rash of a Cessna 207 which
ed into a hangar shortly after
ff and ignited a blaze which
d for 12 hours.

tnesses to the crash said the
a took off to the north, then
a sharp right turn and lost alti-
The plane smashed into the
ete fire wall of a hangar near
Fifth Avenue, exploded and
d, setting fire to the hangar.
lled in the crash were pilot Wil-
Morgan of Anchorage and pas-
rs William Standifer Sr.; his
ter, Mary Lou, and her daugh-
athleen, all of Tyonek.

pending, but
Ca..arot, attorney for Stan-

clined to specify the terms.

Bud's Aircraft is no longer a part of the suit, a
been added a
said the

Cessna Aircraft, the suit says, was "grossly negligent," and showed "wanton disregard for proper design, manufacture, warning and instruction for use" of the fuel system on the model 207 aircraft.

The suit also says the plane crashed as "a direct and proximate result" of Cessna's "defective design, manufacture, warning and instructi s for use" of the craft's fuel and related systems.

George Spernak, owner of Spernak Airways, said he hadn't seen the transportation board's report and declined comment on it. When a portion of report was read to him Monday, Spernak said, "We've been here since 1955 and we haven't heard those reports."

Spernak Airways has two underground fuel tanks which are supplied by Union Oil, Spernak said, adding "they are checked for water by Union Oil each time and we watch their procedures."

Spernak said the same fuel tanks

(See FUEL, page A-3)

# Fuel . . .

(Continued from page A-1)

are being used now that were used at the time of the crash.

Each air taxi operator is responsible for maintaining its storage tanks. No local, state or federal regulations currently are in effect to govern fuel storage or tank maintenance.

Merrill Field Manager Joe Fouts said the municipality, which operates the field, leases land to the various air taxi services for their operations. He said about 20 leaseholders have their own underground fuel tanks.

Joe Swanson, head of the state's division of weights and measures, said a bill had been pending in the legislature to give his agency jurisdiction over fuel tank maintenance.

"But the bill didn't go anywhere," Swanson said.

The federal board said it recognized the pilot is responsible for making sure that an airplane has uncontaminated fuel.

Pilots normally check for water or particles during preflight inspection, the report said, and contamination can be detected because water or particles settle to the bottom of the tank.

"However, when fuel contaminated by water is added to an uncontaminated tank, considerable time is needed for the water to completely settle to the bottom of the tank," the report said. "This creates the opportunity for contaminated fuel to go undetected."

The report goes on to list several other instances which may prevent immediate detection of contaminated fuel and concludes while the pilot, "although re ble, is presented with situati which water detection is diffic

The board recommended th Federal Aviation Adminis adopt three specific regu which would:

# 2 aircraft firms run out of gas

by Patti Epler
Times Writer

Two Merrill Field businessmen say they will either have to close their doors or raise their prices because Texaco Inc. has decided to cut back its sale of aviation gas in Alaska.

Gene Bender of Piper Sales Alaska and Ken Triplett of Alyeska Air Service say they have nowhere to turn for wholesale gas. The men said neither of the two other suppliers of aviation gas in Alaska, Chevron USA Inc. and Union Oil Co. of California, are accepting new customers.

The other companies are not taking new customers until they see what happens to two bills before the state Legislature that would limit the liability of oil companies in the sale of gas.

Bender and Triplett are the only two cut off by Texaco in Anchorage. The third and largest Texaco retailer, Air Associates at Anchorage International Airport, will still have fuel, a Texaco spokesman said.

The spokesman said Texaco has not done much business in Alaska in the past and has decided to cut back on the aviation gas business here because it's just not worth their trouble.

Piper Sales, Alyeska Air Service and Air Associates are the only Texaco aviation gas retailers in Anchorage.

In three weeks, said Bender, "I'll have to close my doors. It's either that or get some awful powerful rubber bands and some big apes to wind them up."

Bender said his business consists of aircraft sales and service, rental of planes and student instruction.

Additionally, he said, more than 600 pilots per month gas their airplanes at his pumps.

Now, he says, he's not selling any fuel to anybody. What he has left in his storage tanks he must keep for his own aircraft.

Triplett, who runs a charter business, said he also has cut off his 15 regular customers in order to protect his own supply.

He will be forced to buy gas from competitors at the going, public rate. That, he said, will force him to raise his charter prices between $6 and $10 per hour, a factor he believes will unfairly price him out of the market.

"It's an unfair advantage," he said. "I've got too much invested here to go out of business. I'll just have to make ends meet."

Triplett said Chevron and Union are not taking new customers because they don't want to add to their liabilities. He is hoping the two bills limiting oil companies' liability will pass this year.

The problem now, he said, is that state law makes the oil companies responsible for their fuel even after they have sold it to someone else.

The bills would stop the liability of the oil companies once they have sold their gas to a retailer and the retailer puts it in his own tanks, Triplett said.

"But," he said, "even if those are passed, there's no guarantee they'll take Alyeska Air Service as a customer."

***Pav talks***

# NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

from Linda Deegan

ISSUED: February 6, 1981

Forwarded to:

Mr. Charles E. Weithoner
Acting Administrator
Federal Aviation Administration
Washington, D.C. 20591

SAFETY RECOMMENDATION(S)

A-81-9 through -11

On October 8, 1979, a Cessna 207A, N6424H, crashed into a hangar at Merrill Field, Anchorage, Alaska, moments after lift-off from runway 33. All four occupants were killed, and the postcrash fire destroyed the hangar.

Investigation of the accident revealed that: the fuel system showed evidence of extensive water and rust contamination; the underground fuel tank at Merrill Field where the aircraft was last fueled contained a large quantity of water and rust; the underground fuel tank's filtration system was heavily contaminated; and an incorrect fuel system dispensing filter, intended for use with diesel fuel, had been installed.

In 1978, the National Transportation Safety Board investigated 17 general aviation accidents involving fuel contamination "exclusive" of water as a cause or factor, and 66 general aviation accidents involving water "in" the fuel as a cause or factor. In March 1980, the Safety Board's Anchorage field office mailed a questionnaire to all known commercial/air taxi operators in the State of Alaska. Of the operators who replied, 4 percent did not know what type of filtration assemblies and filters they used, 4 percent performed no inspections to determine when the dispensing filters should be changed, 30 percent inspected the dispensing filter daily, and 20 percent inspected the dispensing filter "at least yearly." The remaining operators inspected at intervals ranging from "once every 3 days" to "once every 3 years."

The Safety Board recognizes that the pilot is responsible for assuring that a general aviation aircraft has uncontaminated fuel. Pilots of general aviation aircraft procedurally drain a small amount of fuel from the tanks and the fuel strainer and check for the presence of water and particulate matter. If a partially filled tank cools, condensation results and settles to the bottom of the tank. This is detectable using normal preflight procedures.

3145

However, when fuel contaminated by water is added to an uncontaminated tank, considerable time is needed for the water to completely settle to the bottom of the tank. This creates the opportunity for contaminated fuel to go undetected. Also, the uncontaminated fuel in the lines and fittings must first be drained to detect the water-contaminated fuel. On some aircraft, more than a quart of fuel must be drained before any water appears. Most tiedown areas where preflights checks are performed belong to flight schools or fixed-base operators, most of whom do not encourage pilots to drain a quart of fuel on the asphalt because aircraft fuel tends to dissolve this particular surface. The pilot then, although responsible, is presented with situations in which water detection is difficult.

While the Board believes that pilots must conduct an adequate preflight check, we are concerned that this is not a total solution to the problem of fuel contamination. In addition to the current pilot responsibility, the Board believes that other measures should be taken to insure against contamination. For example, fuel dispensing systems could be required to be equipped with filter/separator units which respond to the presence of free water by shutting down.

The Board is aware that 14 CFR 139 prescribes rules governing the certification of land airports serving air carriers that hold certificates of public convenience and necessity issued by the Civil Aeronautics Board. Part 139.51 states that ". . . the applicant for an airport certificate must show that it (or its tenant), as the fueling agent, has a sufficient number of trained personnel and procedures for safely storing, dispensing, and otherwise handling fuel, lubricants, and oxygen on the airport (other than articles and materials that are, or are intended to be, aircraft cargo). . . ." This is the only rule that addresses the subject of storing and dispensing aviation fuel, and in addition, applies solely to air carrier airports. In the Board's opinion, 14 CFR 139 is inadequate even for those airports it covers because it does not address fuel contamination. Our accident statistics do not indicate that fuel contamination has been a problem to air carrier aircraft. However, informal communication with the FAA indicates that control of contamination is considered during airport certification via a rather broad interpretation of 14 CFR 139.51. The Board believes that the problem of fuel contamination should be specifically addressed for both air carrier and general aviation airports. In our judgment, fuel contamination should be specifically addressed for all segments of aviation rather than only that segment in which there is an apparent current problem. It has been generally accepted that standards for air carrier operations must be as stringent as they are for general aviation. We believe that the regulations should reflect this consistency.

Therefore, the National Transportation Safety Board recommends that the Federal Aviation Administration:

Expand 14 CFR 139 to include minimum specifications and design criteria for the installation, maintenance, and inspection of aviation fuel storage and dispensing systems at airports certificated under 14 CFR 139. (Class II, Priority Action) (A-81-9)

Take necessary action to establish minimum specifications and design criteria for aviation fuel storage and dispensing systems at public-use airports not certified under 14 CFR 139. In addition to the equipment itself, such criteria should address their installation, operation, maintenance, and inspection. (Class II, Priority Action) (A-81-10)

When specifications and criteria are established for aviation fuel storage and dispensing systems at public-use airports are not certified under 14 CFR 139, establish and implement procedures to verify compliance. (Class II, Priority Action) (A-81-11)

KING, Chairman, DRIVER, Vice Chairman, McADAMS, GOLDMAN and BURSLEY, Members, concurred in these recommendations.

By: James B. King
Chairman

April 21, 1981

Mr. Mike Salazar
Box 6900
Ketchikan, AK 99901

Dear Mike,

I appreciate your comments concerning the ten million dollar excess liability insurance Chevron provides our Branded Airport Dealers. I have checked with our Retail Division in San Francisco and found that this insurance would stay in effect if the Civil Liabilities Bills, SB-123 and HB-332 were to pass.

The only time there would be a change in the insurance would be if there was a Company-wide change.

I hope this answers your questions. I appreciate your and the Alaska Air Carriers Association's support for the proposed legislation.

Sincerely,

J. H. Howard

By T D Hunter
T. D. Hunter
Sr. Technical Representative

cc: Tulinda Deegan, President
Alaska Air Carriers Association

Jessie L. Dodson

bcc: W. W. Cole, Seattle
J. H. Howard
G. D. McIntosh, SF - per our phone conversation April 20, 1981
E. F. Wiles

SUMMARY OF SB 123/HB 332

A. Effect of Bill.

SB 123/HB 332 exempts a refiner of aviation fuel from certain types of civil liability in connection with aviation accidents occurring in Alaska. The bill is designed to exempt a refiner from liability where the refiner no longer has control of the product being supplied. A refiner would continue to be liable for the quality of the fuel supplied where

1) Aviation fuel owned by the refiner was placed directly into an aircraft (for example, all large commercial carriers) or

2) the refiner intentionally or through gross negligence contributed to an accident.

B. Rationale for Bill.

It is well established that Alaska has a disproportionate number of small airplanes. It is equally well established that these same airplanes are involved in a disproportionate number of aviation accidents. Each such accident gives rise to a potential claim of contaminated fuel. Accordingly, companies marketing aviation fuel in Alaska are confronted with an enormous potential liability. The cost of this potential liability may not effectively be passed along to those purchasing aviation fuel in Alaska as the state's total volume is too low. Moreover, it is unfair to saddle

refiners with this liability as the vast majority of aviation fuel is marketed by independent airport dealers over which the refiner has no real control. Without this legislation, refiners may be forced to withdraw from the Alaska market (as one major refiner has recently done) or to adopt a "lower 48" policy of making aviation fuel available only in 10,000 gallon quantities which must be purchased F.O.B. a company facility. That policy would have a substantial effect on all those who benefit from Alaska's present availability of aviation fuel.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 332
Title An act limiting the civil liability of aviation fuel refiners
Requested by Adams Date 3/31/81

II. FISCAL DETAIL
Agency Affected Division of Insurance
Program Category Affected Public Protection
BRU, Program, Or Subprogram(s) Affected Division of Insurance
(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 82 | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 |
|---|---|---|---|---|---|---|
| 100 PERSONAL SERVICES | 0 | | | | | |
| 200 TRAVEL | 0 | | | | | |
| 300 CONTRACTUAL | 0 | | | | | |
| 400 COMMODITIES | 0 | | | | | |
| 500 EQUIPMENT | 0 | | | | | |
| 600 LAND & STRUCTURES | 0 | | | | | |
| 700 GRANTS,CLAIMS,ETC. | 0 | | | | | |
| TOTAL | 0 | | | | | |

FUNDING (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | 0 | | | | | |
| FEDERAL FUNDS | 0 | | | | | |
| OTHER (Specify Source) | 0 | | | | | |
| | | | | | | |
| | | | | | | |

POSITIONS

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL TIME | 0 | | | | | |
| PART TIME | 0 | | | | | |
| TEMPORARY | 0 | | | | | |

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

IV. DATE February 1,1982 PREPARED BY Kenneth C. Moore, Div. of Insurance
AGENCY Commerce & Economic Development
PHONE 2515

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

HB
337

Introduced: 3/13/81
Referred: Judiciary and Finance

IN THE HOUSE BY MALONE AND CARNEY

HOUSE BILL NO. 337

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act authorizing reimbursement for attorney fees incurred by individuals in connection with state administrative actions."

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

* Section 1. AS 44.77 is amended by adding new sections to read:

ARTICLE 2. CLAIMS FOR ATTORNEY FEES.

Sec. 44.77.072. CLAIMS AUTHORIZED. (a) A person may claim reimbursement of the attorney fees he incurrs and pays in order to respond to an administrative action, investigation, or inquiry conducted by the state, if the action, investigation, or inquiry is resolved in his favor.

(b) This chapter does not apply to a claim for attorney fees which is specifically authorized by statute or rule of court.

Sec. 44.77.074. PRESENTATION OF CLAIM. (a) A claim for attorney fees under this chapter must be presented to the department within six months of the date of the last attorney services upon which the claim is based.

(b) Within six months of presentation of a claim under this chapter the department shall allow or disallow the claim.

Sec. 44.77.076. ALLOWANCE OF CLAIMS. The department shall allow a claim under this chapter if

(1) proof is presented that the claimed fees were actually paid by the claimant;

(2) the claimant establishes that the fees for which the

Susan Bucke - What about companies having salaried attorneys?

claim is made were necessarily incurred in the claimant's response to the state administrative action, investigation, or inquiry; and

(3) the state administrative action, investigation, or inquiry was resolved in favor of the claimant.

Sec. 44.77.078. LIMITATION ON CLAIMS. (a) A claim for attorney fees under this chapter may not exceed $75 an hour for services actually performed by the claimant's attorney and may not exceed a total of $5.000.

(b) The claimant may receive reimbursement for attorney fees incurred and paid in order to present his claim under this chapter, if the department allows the claim, but the reimbursement may not exceed $75 an hour for services actually performed, or 15 percent of the allowed claim, whichever is less.

Sec. 44.77.080. REGULATIONS. The department shall adopt regulations providing for the claims review process under AS 44.77.072 - 44.77.090.

Sec. 44.77.082. APPEAL. If the claimant does not accept the decision of the department, he may bring an action in the superior court within 30 days after he receives notice of the decision of the department. A claimant may also bring an action in the superior court at any time more than six months after he has presented his claim under this chapter, if no decision has been made by the department.

Sec. 44.77.090. DEFINITIONS. In AS 44.77.072 - 44.77.090

(1) "administrative action, investigation, or inquiry" means a state examination of the acts of a person which does not result in litigation or a formal administrative hearing;

(2) "department" means the Department of Administration;

(3) "person" includes a natural person, trust or estate, partnership, or corporation.

MAR 24 1981

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811

March 23, 1981

The Honorable Fred E. Brown
Chairman
House Judiciary Committee
Room 124 - Capitol Building
Juneau, Alaska

Dear Mr. Brown:

Re: House Bill No. 337

House Bill No. 337, an Act authorizing reimbursement for attorney fees incurred by individuals in connection with state administrative actions, was introduced in the House on March 13, 1981 and was referred to the House Judiciary and Finance Committees.

For the consideration of the House Judiciary Commitee, I am enclosing a copy of a memorandum prepared by Mr. Gary L. Jenkins, Director, Audit Division, Department of Revenue concerning the proposed legislation.

Sincerely,

R. D. Stevenson

R. D. Stevenson
Special Assistant

RDS/rdh

cc: The Honorable Samuel R. Cotten
Chairman
House Finance Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Gary L. Jenkins, Director
Audit Division
Department of Revenue

04-D2LH

# MEMORANDUM State of Alaska

TO: R. D. Stevenson
Legislative Assistant

DATE: March 23, 1981

FILE NO:

TELEPHONE NO:

SUBJECT: HB 337

FROM: Gary L. Jenkins
Director
Audit Division

This bill would provide for a person to obtain reimbursement for attorney fees incurred in preparing an administrative appeal with any department in state government. My comments will be limited to the application of this law to tax appeals under Title 43.

This bill provides for a taxpayer to recover the attorney fees incurred in preparing and presenting an administrative appeal of any tax assessment issued by the Department of Revenue, if the taxpayer prevails at any level of appeal up through and including the U.S. Supreme Court.

There are several factors which should be evaluated when considering this legislation. First, it should be remembered that a taxpayer can write off under current tax law the total expense incurred to prepare an appeal of any tax issue. Thus, a taxpayer is afforded an opportunity to recoup the expense incurred in presenting his case.

Secondly, there are several problems which arise in attempting to anticipate actual implementation of this law. These issues which it would be most appropriate to have the law address are as follows:

(1) Why are only attorney fees eligible for reimbursement? A person may incur other professional fees in the preparation of an appeal such as for CPA's or engineers.

(2) What is to be done when there are several issues under appeal and the taxpayer prevails on one of the issues but loses on all the other issues? In that case, would the taxpayers be reimbursed based on the direct expenses related to that issue or be allowed to take a percentage of the total expenses related to the appeal or not be allowed any reimbursement since he did not prevail on most or all of the issues?

(3) Will the reimbursement provisions apply to appeals now in process or only to those filed after the effective date of the act?

It is very difficult to ascertain the fiscal impact of this bill because a taxpayer may not prevail until the case has reached the Alaska Supreme Court or the United States Supreme Court. The Department of Revenue currently has approximately 600 informal administrative appeals each year. If the Permanent Fund Dividend program survives the court challenge, we anticipate a minimum of 250 additional appeals for a total of 850. In addition, the Commissioner's office is presently holding 50 formal hearings each year. Based on our prior experience a taxpayer will prevail on a portion of their appeal about 25% of the time. It is estimated that on the average appeal the taxpayer will have incurred $2,500 in attorney fees. As I understand the limitation provided in the proposed AS 44.77.078(b), only 15% of that amount would be actually reimbursed.

Based on the forgoing, the potential amount which would be reimbursed would be $84,375. The language of the proposed bill would imply that the Department of Administration would be totally responsible for the administration of this act to include the actual payment of the fees from their budget. A fiscal note has not been prepared since it is assumed that the funds to cover this cost will be appropriated to the Department of Administration.

HB
338

IN THE TRIAL COURTS FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

DANDY, INC., d/b/ The Hall Closet; ARCTIC RAM CORPORATION, d/b/a The Black Market; and PATRICIA SAHATDJIAN and KENNETH J. BLISS, d/b/a The Eagle's Head,

Plaintiffs,

vs.

MUNICIPALITY OF ANCHORAGE,

Defendant.

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT
MAR 22 1982
CLERK OF THE TRIAL COURTS
BY ..... DEPUTY

Case No. 3AN-82-686 Civil

ORDER

The parties having filed their respective motions for summary judgment on the pleadings, and counsel for the respective parties having presented oral argument before the court on March 19, 1982, and the court having duly considered all pleadings on file, arguments of counsel and reviewed the memoranda's points and legal authorities submitted by the respective parties, herein finds as follows:

1. That plaintiffs' motion for summary judgment on the pleadings be and hereby is denied.

2. That the defendant's motion for summary judgment on the pleadings requesting that the court declare that the Anchorage Ordinance No. 81-219, Title 8.20.010-8.20.040 is constitutional under the laws of the United States and State of Alaska be and hereby is granted, except as to Section 8.20.025.

3. That the court finds that Section 8.20.025 is unconstitutional on the grounds that it is too vague, overbroad, lacks the requirement of scienter and is susceptible of giving undue discretion to the prosecuting authorities in determining whether or not a business has committed a violation of this section. Therefore, Section 8.20.025 is hereby stricken in its entirety with all other sections remaining in full force and effect.

The attorney for the Municipality of Anchorage shall submit an appropriate judgment in conformity with this order within the next ten days.

DATED: March 22, 1982

Daniel A. Moore Jr.
Daniel A. Moore, Jr.
Superior Court Judge

3-23-82 Copies picked up by Attys. Tesche and Settles.
Sophie M. Vekar
Secretary to Judge Moore