ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1681 SJ SB 102 - SB 117

(d) When the birth occurred 12 years or more before the application for registration, the certificate of birth shall be prepared on a form entitled "delayed certificate of birth." The information provided on this form shall be subscribed and sworn to by the person whose birth is to be registered before an official authorized to administer oaths. When a person is not competent to swear to this information it shall be subscribed and sworn to by a parent, legal guardian, or his representative. The form shall provide for the name and sex of the person whose birth is to be registered; the place and date of birth; and other information required by the bureau. When the certificate is submitted, the state registrar shall add a description and an abstract of each document submitted in support of the delayed registration. The original delayed certificate of birth shall be filed with the bureau.

(e) The state registrar shall accept the registration if the applicant was born in the state and if the applicant's sworn statements are established to the satisfaction of the state registrar by the necessary evidence established by regulation. The items necessary to be substantiated, the type of documents acceptable as evidence, the number of necessary documents, and the form and content of the description and abstract of each document to be added to the certificate shall be prescribed by regulation. In general they shall follow the national standards recommended by the agencies responsible for national vital statistics and for the use of records in the interest of national security. The state registrar may make exceptions when necessary by reducing the number of documents required for delayed filings by Indians, Eskimos and Aleuts, natives of the state, if he is otherwise satisfied with the validity of the application.

(f) When the applicant does not submit documentation required in support of his statements or when the state registrar finds reason to question the validity or adequacy of the certificate or the supporting evidence, the state registrar shall not accept the delayed certificate of birth and shall advise the applicant of the reasons for this action, and of his right of appeal to the superior court. The bureau may provide for the

dismissal of an application which is not actively prosecuted.

Under this section the department is required to prescribe by regulation the evidence needed to support an application for a delayed birth certificate. The statute has been implemented by regulation, as to persons over 12 years of age by 7AAC 05.815 through 7AAC 05.830. A copy of these regulations is enclosed.

If you desire to have the issuance made simply on the basis of the statement by the applicant, AS 18.50.180 should be amended by setting out that in AS 18.50.180(d) and repealing (e) and (f). The regulations could be annulled in the same bill. A draft of a bill to accomplish this is enclosed.

BGB:jdn

Enclosures

either with the proper local registrar or directly with the bureau, and shall be marked "Delayed." To be acceptable the form must be completed in accordance with the instructions of the State Registrar, and signed the same as a belated certificate. When so required by the State Registrar, the date and place of birth must be supported by an affidavit of a competent person acquainted with the facts, or by an acceptable piece of documentary evidence. When filed with the local registrar, such certificate shall be forwarded to the bureau in accordance with instructions of the State Registrar. If acceptable, the certificate shall be registered in the bureau upon the payment of any prescribed fee therefor. After registration it may be recorded by the proper recording magistrate. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.815. FORM AND PROCEDURE. A delayed birth certificate for a person 12 years of age or more at the time of application for registration, as defined herein, shall be a form entitled, "Delayed Certificate of Birth," prescribed and furnished by the bureau; and shall be filed directly with the bureau. To be acceptable the form must be completed in accordance with the instructions of the State Registrar; and signed by the person whose birth is to be registered, except in cases where the State Registrar finds that such signature is impossible to obtain. It must be subscribed and sworn to before a person authorized to administer oaths, by the person whose birth is to be registered; provided that when such person is not competent to swear to this information, it shall be subscribed and sworn to by a parent, legal guardian, or other prepresentative of the person. In addition to any other items prescribed by the State Registrar, the form shall provide for the name, sex, birthdate, and birthplace of the person whose birth is to be registered. Along with the properly completed form, the applicant shall submit to the bureau the documentary evidence required to support the facts stated in the delayed certificate, as well as any related information requested by the State Registrar. For each such delayed certificate, the date of birth must be supported by at least three pieces of documentary evidence; the place of birth by at least three; the parentage, if appearing on the certificate, by at least one; provided that the State Registrar may make exceptions when necessary by reducing the number of documents required for delayed birth certificates for natives of Alaska—Indians, Eskimos, and Aleuts—if he is otherwise satisfied with the validity of the application. Such application for registration shall be considered pending until it is found acceptable by the State Registrar, and completed and registered with the bureau after the payment of any prescribed fees and service charges by the applicant. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.15.180

7 AAC 05.820. ACCEPTABLE EVIDENCE. Acceptable documentary evidence shall be prescribed by the State Registrar, following generally the national standards recommended by the agencies responsible for national vital statistics, and for the use of records in the interest of national security. In general such documents must be records established in the past, preferably near the time of birth, but at least five years before such application; they must contain specific reference to at least one of the facts to be proved: date of birth, place of birth, parentage; they must be identified as pertaining to the person in question. Such documents usually are records made by various agencies, institutions, or persons for some other purpose but showing incidentally as identifying items one or more of the facts to be proved; or they may be an actual recording of the facts of birth. One affidavit of personal knowledge by a competent person with adequate knowledge of the facts, if found acceptable by the State Registrar, may be used in lieu of one of the three required documents; such affidavit need not be five years old. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.825. REQUIREMENT OF INDEPENDENCE. The acceptability of any document submitted as supporting evidence to the filing of a delayed birth certificate shall be determined by the State Registrar. The original of such documents may be submitted, or a copy or abstract may be submitted properly certified, in such manner and containing such information as required by the State Registrar. Age of the document, the conditions under which it was made and preserved, and any evidence of alteration shall be considered. When more than

one piece of documentary evidence is required to support a particular fact, each must be of independent origin; however, each piece of documentary evidence may be used to support more than one of the required facts, if it does so satisfactorily. Such evidence submitted shall be abstracted on the certificate, including the title or description of the document; the name and address of the affiant if the piece of evidence is an affidavit of personal knowledge, or of the custodian if a record or copy thereof; the date of the original document; and the date of the certified copy. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.830. FILING. When the delayed certificate and supporting evidence are satisfactory, the State Registrar or his designated representative shall enter the filing date and sign the certificate, certifying that no prior birth certificate can be found on file for such person, that he has reviewed the evidence submitted, and that the abstract thereof appearing on the certificate accurately reflects the condition and contents of such evidence. When all requirements have been met, such certificate shall be registered with the bureau, and thereafter shall be the established certificate of birth for such individual; provided that should the State Registrar at any time in the future find sufficient evidence of fraud in the certificate or in the supporting evidence submitted, he shall suspend the issuance of copies from such record and from recorded copies thereof, and give due notice to the individual concerned, addressed to his last known address. Such individual shall be given 30 days within which to explain such discrepancies or answer such charges. Lacking a satisfactory explanation, the State Registrar shall then remove such certificate from the regular files of the bureau, and take such further action as may be appropriate. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.835. NOTIFICATION OF APPLICANT. When a request or application for delayed registration of any birth is not being actively prosecuted by the applicant, the State Registrar may remove the case from the active pending file and so notify the applicant. When sufficient documentary evidence cannot be submitted, or when the State Registrar finds reason to question the validity or adequacy of the certificate or the supporting evidence, he shall not accept the delayed certificate for registration. In such case the State Registrar shall so notify the applicant, giving his reason for such action, and advise him of his right of appeal to a superior court. He shall also return to the applicant all documentary evidence submitted by him, but shall keep in the files of the bureau an adequate record of such evidence and other transactions supporting his action in refusing to register the certificate. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.840. DELAYED DEATH CERTIFICATE. When a death, fetal death, or marriage occurring in Alaska has not been registered, a certificate thereof may be filed with the bureau; and if found acceptable by the State Registrar shall be registered. The State Registrar shall determine what documents or other evidence shall be necessary to substantiate the facts of such death, fetal death, or marriage, which requirements shall follow any national standards, and in general be similar to those herein established for delayed birth registration. He shall notify the proper authorities in any case where such a death might require investigation. In any case where such event occurred one or more years prior to such registration, the certificate thereof shall be marked "Delayed." This procedure shall not apply in a case of presumption of death where no body has been established. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.845. FURNISHING OF COPY. In any case where a delayed certificate for any vital event has been established by the bureau, the State Registrar may furnish a copy thereof for recording to the recording magistrate of the recording district wherein such event occurred. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.850. EFFECT OF COURT ORDER. When a record of birth of a person born in Alaska has been established by court order in accordance with the provisions of the Vital Statistics Act, the original of such order, a form prescribed and furnished by the bureau, shall be filed with and registered by the bureau. Such

SENATE JUDICIARY COMMITTEE

Bill Number SB 102 Original Sponser(s) FERGUSON

Title RELATING TO DELAYED REGISTRATION OF BIRTH AND ANNULLING REGULATIONS RELATING TO DELAYED BIRTH CERTIFICATE; AND PROVIDING EFFECTIVE DATE

Originally Recieved From KENTUCKY

Contact FERGUSON Date 1-20-81

Committee Recommendation (MAJORITY) _____

Report Attached ___yes___no) Supporters _____

MINORITY _____

Report Attached ___yes___no) Supporters _____

Object of Bill _____

Committee Amendments _____

Fiscal Impact

LAA Legal/Research Contact

Research/Information
CONTACT (HESS) BEHR FOR BACKUP

Concerned Parties: Supporting	Opposing
FERGUSON	Dept. HEALTH + SOCIAL SERVICES JOHN BROOKS - VITAL RECORDS

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

DATE: February 10, 1981

TO: Senator Bennett
Senator Hohman
Senator Parr
Senator Ray
Senate Secretary

FROM: Senator Rodey

RE: Judiciary Committee Meetings

Wednesday, February 11, 1981

SB 102 "An Act relating to delayed registration of birth and annulling regulations relating to delayed birth certificate; and providing for an effective date."

SB 29 "An Act relating to nuclear materials."

THE LEGISLATURE OF THE STATE OF ALASKA
~~ELEVENTH~~ LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 102
Title "An Act relating to delayed registration of birth".
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Health and Social Sevices
Program Category Affected Administrative Services
BRU, Program, or Subprogram(s) Affected Bureau of Vital Statistics
(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			(25.1)			
200	TRAVEL			-0-			
300	CONTRACTUAL			(.5)			
400	COMMODITIES			(.5)			
500	EQUIPMENT			-0-			
600	LAND & STRUCTURES			-0-			
700	GRANTS, CLAIMS, ETC.			-0-			
	TOTAL			(26.1)			

FUNDING (Thousands of Dollars)

GENERAL FUND				(26.1)			
FEDERAL FUNDS							
OTHER (Specify Fund Source)							

POSITIONS

FULL TIME			(1)			
PART TIME						
TEMPORARY						

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

Decrease in staff support of one position in the Delayed Registration Unit:

Document Processing Clerk III, Range 10

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

Prepared by: [signature] Date: 1/28/81
Division/Office: _____ PH: _____
Department of Health & Social Services

Approval DHSS Mgt. & Bdgt: [signature] Date: 1/30/81

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

POSITION PAPER/Department of Health & Social Services

A delayed birth certificate is subject to the acceptance by the agency requiring it. AS 18.50.180(e) calls for following national standards recommended by the agencies responsible for national statistics and for the use of records in the interest of national security. Alaska is now in complete compliance with those standards by requiring three documents, one of which may be an affidavit.

Most of the clients we have now were born around 1915. Registration in those days was very poor. The attitude for a long time was "who needs a birth certificate?" Those citizens are now eligible to collect benefits such as Social Security and Longevity Bonus. They also may want tax deferments or a passport. From this bureau they want the document that will help them get those benefits or services. Any delayed birth certificate prepared as a result of passage of Senate Bill 102 almost assuredly would be rejected by another agency because it would not meet the long-standing requirements of sufficient proof. No state produces a delayed birth certificate under the provisions called for in Senate Bill 102.

In 1976 the Report of the Federal Advisory Committee on False Identification by the United States Justice Department clearly identified the serious problem of the criminal use of false identification which is a multibillion dollar national problem. A growing army of criminals and fugitives is using a screen of false credentials in welfare fraud, illegal immigration, drug trafficing, passing bad checks and phony credit cards, and in hundreds of other crimes. These crimes have one thing in common: the taxpayer picks up the tab. The report was intended to unmask false identification crimes and to provide a comprehensive, common-sense plan which federal, state and local agencies, the commercial sector and the public could use to prevent such crimes. Standards must be preserved to eliminate the potential of fraud which would be encouraged in those citizens who want to beat the system.

The citizens of Alaska can be best served by continuing those established standards in preparing a delayed birth certificate so that they will not meet with delay, rejection and additional expense in seeking services and benefits. The taxpayers will best be served by preserving existing standards so that only valid case research will produce documented and acceptable delayed birth certificates.

The Department of Health and Social Services recommends that Senate Bill 102 not pass.

Recommended by: Joan P. Brooks

Joan P. Brooks, State Registrar
Bureau of Vital Statistics

Date: Jan. 28, 1981

Approved by: Helen D. Beirne

Helen D. Beirne
Commissioner

Date: 2/2/81

POSITION PAPER

SENATE BILL NO. 102

"An Act relating to delayed registration of birth."

AS 18.50.180(a) provides for the filing of a certificate for a person born in this state whose birth had not been registered. The certificate shall be registered subject to the evidentiary requirements the department prescribes by regulation to substantiate the alleged facts of birth.

Senate Bill 102 amends AS 18.50.180(d), and repeals AS 18.50.180(e) and (f), 7 AAC 05.815, 7 AAC 05.820 and 7 AAC 05.825. Therefore, the evidentiary requirements prescribed by regulation would be eliminated even though authority for the requirement remains under AS 18.50.180(a).

By eliminating the three pieces of documentary evidence, a delayed birth certificate for a person over 12 years of age would be prepared based only upon the sworn statement of the registrant, a parent, legal guardian or his representative. The bill adds a provision that no other evidence of birth may be required.

While passage of this bill would eliminate the need of the services of one support position doing the document research, it could encourage many new applications for illegitimate reasons.

World War II made it apparent that many people in the United States could not prove citizenship because their birth had never been registered. In 1941 procedures were established and accepted by all the states and territories to promote uniform practices for delayed registration. Since that time the procedures have been periodically reviewed and readopted with only minor revisions. There are 32 states which, like Alaska, require three supporting documents, one of which may be an affidavit. Ten states require at least two documents. The remaining states require sufficient documentation or a court order.

About 400 delayed cases are initiated each year by the Bureau of Vital Statistics. The large majority of these are for clients who are reaching eligibility for Longevity Bonus and Social Security. Other states require the applicant to provide the documentation within a specified time frame. The Bureau provides all of this service because most of our clients live in very remote areas, have difficulty in communicating and understanding the requirements. During a recent training session with the magistrates in the Bethel service area an elderly couple came to the court building for assistance. The couple spoke no English but with the help of an interpreter we were able to get enough information to begin our research on two new cases. As our research and documentation continues we will contact the couple through the interpreter.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. S.B. 102
Title An act relating to delayed registration of birth
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Administration
Program Category Affected Social Services
BRU, Program, or Subprogram(s) Affected Longevity Bonus
(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.		72.0	24.0	24.0	24.0	24.0
TOTAL		72.0	24.0	24.0	24.0	24.0

FUNDING (Thousands of Dollars)

GENERAL FUND		72.0	24.0	24.0	24.0	24.0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

This bill would cause delayed certificates of birth to be issued based upon sworn affidavits, without further corroborating evidence.

The Bureau of Vital Statistics, Department of Health and Social Services, processes approximately 400 delayed birth certificates per year. Because people have problems in corroborating their birth statistics on a delayed basis, the Bureau has on file approximately 1,000 applications for which delayed birth certificates cannot be issued under the present laws.

S.B. 102 would result in essentially all of these applications being processed and delayed certificates of birth issued.

IV. DATE 2/10/81 PREPARED BY George T. Michael, Administrative Officer
AGENCY Administration
PHONE 465-4401

Original: Legislative Finance

The Longevity Bonus Program has approximately 30 applications which cannot be approved because the applicants have not been able to prove their age. Issuance of a delayed certificate of birth would substantiate their age and they would be placed on the Longevity Bonus Program.

Therefore, FY 82 Longevity Bonus grants cost would be increased by 30 applicants x 12 months x $200 per month, or $72,000.

Approximately 10 applicants for the Longevity Bonus each year have problems proving their age. Therefore, S.B. 102 would allow these persons to be added to the program each future year which would not otherwise be possible. For FY's 83-86 the additional cost would be 10 persons x 12 months x $200 per month, or $24,000 each year, assuming that the Longevity Bonus will remain at $200 per month.

There is some discussion of increasing the amount of the Longevity Bonus again. The program began in 1973 at $100 per month; was increased in 1976 to $125 per month; increased in 1978 to $150 per month; and in 1980 was increased to $200 per month. Therefore, it seems likely that increases will occur in future years, raising the cost of S.B. 102 even further.

8/C2/0

SB

108

COMMITTEE REPORT

SENATE

FURTHER: Finance

1/26/81

Date: Jan. 25, 1982

Mr. President:

The Committee on JUDICIARY has had SB 108

raising the limits of compensation which may be awarded by the Violent Crimes Compensation Board

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

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

Introduced: 1/26/81
Referred: Judiciary and Finance

IN THE SENATE BY BRADLEY

SENATE BILL NO. 108

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act raising the limits of compensation which may be awarded by the Violent Crimes Compensation Board."

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

* Section 1. AS 18.67.130(c) is amended to read:

(c) No compensation may be awarded under this chapter in an amount in excess of $40,000 [$25,000] per victim per incident. However, in the case of the death of a victim who has more than one dependent eligible for compensation, the total compensation which may be awarded as a result of that death may not exceed $80,000 [$40,000]. The board may prorate the total awarded among those dependents according to relative need. All payments shall be made in a lump sum.

Introduced: 1/11/82
Referred: Judiciary and Finance

IN THE SENATE BY BRADLEY

SENATE BILL NO. 620

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act repealing the limitations on awarding compensation to victims of violent crime if the victim is a relative or member of the household of the offender."

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

* Section 1. AS 18.67.130(b)(1) and (2) are repealed.

PAGE 166
AS 18.67.130

Introduced: 1/11/82
Referred: Judiciary and Finance

IN THE SENATE BY BRADLEY

SENATE BILL NO. 620

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act ~~repealing the limitations on awarding compensation to victims of violent crime if the victim is a relative or member of the household of the offender.~~" RELATING TO THE VIOLENT CRIMES COMPENSATION BOARD.

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

* Section 1. AS 18.67.130(b)(1) and (2) are repealed.

* Section 2. AS 18.67.130(c) is amended to read:

(c) No compensation may be awarded under this chapter in an amount in excess of $40,000 [$25,000] per victim per incident. However, in the case of the death of a victim who has more than one dependent eligible for compensation, the total compensation which may be awarded as a result of that death may not exceed $80,000 [$40,000]. The board may prorate the total awarded among those dependents according to relative need. All payments shall be made in a lump sum.

[redacted]

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

JANUARY 25, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SJR 54 - Proposing amendments to the Constitution of the State of Alaska relating to the confirmation of appointments by the Governor.

SB 108 - "An Act raising the limits of compensation which may be awarded by the Violent Crimes Compensation Board."

SB 620 - "An Act repealing the limitations on awarding compensation to victims of violent crime if the victim is a relative or member of the household of the offender."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:45 P.M. Committee members present were: Senators Rodey, Bennett, and Parr. Senator Hohman and Ray were absent.

The first legislation brought before the committee was SJR 54. Senator Bennett moved that the resolution, as amended be moved from committee with individual recommendations. There was no objection and the resolution was passed. Senators Rodey, Bennett, and Parr signed do pass.

Senator Ray entered the room and his presence was noted for the record.

SB 108 was brought before the committee by Chairman Rodey. Senator Bradley testified in favor of the bill and reported to the committee that there were new fiscal notes being prepared for this bill, but were unavailable to the committee at this time.

Nola Capp, Department of Public Safety, Violent Crimes Compensation Board, testified in favor of SB 108. She stated that the board does not feel the fiscal impact would be dramatic as they will still decide each award on a case by case basis, and in very few instances would the new maximum be applied.

Nola Capp, was again called to witness before the committee. She testified in favor of SB 620.

The next witness called was Victor Krumm, Department of Law, who testified in favor of SB 108, but expressed some concern with the present bill. There were three specific concerns which he addressed:

1.) There may be impeachment problems if the witness, at the time of the trial, is asked if she has received an award resulting from the offense.

2.) The perpetrator could benefit from this legislation by receiving the compensation award.

3.) A possibility of fraudulant claims and a problem with checking on them.

Mr. Krumm added that possibly the funding could be provided through a shelter system and/or some compensation payments could go to service providers to avoid problem 2.

Caren Robinson, Alaska Network on Domestic Violence and Sexual Assault, also testified in favor of SB 620. She stated that domestic violence is a crime and that victims of these offenses should be treated the same as other victims.

After discussion, the committee held the bill over pending staff work on the proposal. The committee adjourned at 2:45 P.M.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill 108
Title Raising Limits of Compensation Awarded by Violent Crimes Compensation Board
Requested by Bradley Date 1/21/82

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Violent Crimes Compensation Board
(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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.		50.0	54.5	59.4	64.7	70.5
TOTAL		50.0	54.5	59.4	64.7	70.5

FUNDING (Thousands of Dollars)

GENERAL FUND		50.0	54.5	59.4	64.7	70.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

SB108 proposes an increase which would double the maximum amount awarded by Violent Crimes Compensation Board for compensation to innocent victims of violent Crimes.
The Board does not feel the fiscal impact would be dramatic as they will still decide each award on a case by case basis, and in very few instances would the new maximum be applied.

IV. DATE January 21, 82 PREPARED BY Nola K. Cann
AGENCY Department of Public Safety
PHONE 465-3840

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
[illegible] Rev. 11 81

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

VIOLENT CRIMES COMPENSATION BOARD

POUCH N
JUNEAU, ALASKA 99811

(907)465-3040

October 16, 1981

Mr. Kevin K. Bruce
Senate Committee on Judiciary
601 West Fifth, Suite 315
Anchorage, AK 99501

Dear Mr. Bruce:

This is to acknowledge receipt of your letter of September 22, 1981, requesting information on the Violent Crimes Compensation Board.

The information is listed below in the order you requested it.

1. The number of claims initiated in FY80 was 98; in FY 81, 111.

2. In FY80, the Board reviewed 93 claims and awarded 61 claims. In FY81, the Board reviewed 93 claims and awarded 59. We always have claims pending from one year to the next, so if you look only at claims initiated and claims heard, it does not present a true picture. For example, in FY80, of the 93 claims heard, 21 were from prior years. In FY81, 20 were pending from prior years.

3. The average dollar amount awarded to each victim is approximately $4,000 per claim. We do not have this broken down by type of offense, but assaults and homicides make up the larger portion of our claims.

4. We do not keep statistics on the amount of money requested in each claim versus the amount of money awarded. Many claimants do not fill in a specific amount, but just request "maximum allowable."

5. Our monetary limit was raised by the legislature in 1975. As everyone is aware, inflation has increased dramatically, causing medical and funeral expenses, loss of earnings and other expenses to rise. In those few cases where

medical expenses are astronomical, and there are no collateral sources to cover them, this bill would enable the Board to fully compensate the victim.

We appreciate your interest in our program, and if we can be of further assistance, please let us know.

Sincerely,

Nola Capp

(Mrs.) Nola K. Capp
Administrator

NKC:scj

Notwithstanding their financial problems, most states continue to support programs to assist innocent victims of crime.

New Roads to Justice:

☐ Living alone and only on Social Security, an elderly Kansas woman was robbed and beaten badly one night in her own apartment. Medicare covered all but $2,800 of her medical expenses. The Kansas Crime Victim Reparation Board awarded her $2,800 to cover the additional expenses. Were it not for this award, she would have had to give up her small apartment to pay for her medical treatment.

☐ A Virginia man in his thirties with a wife and three children was stabbed severely at a family gathering one Christmas Day. As a result, he lost the use of his right hand for an extended period of time and was unable to work. Ineligible for welfare or Social Security, the man also did not receive sick leave from his employer nor was he covered by disability insurance. Consequently, he went without income for four months until he learned of the Virginia Crime Victims Compensation program which awarded him $10,000 to cover lost earnings.

Compensating the Victim

Mindy Gaynes

Compensating the Victim

☐ A Maryland man, divorced with an eight-year-old son, was killed when two armed assailants tried to rob the store where he was shopping. The son had relied on his father for partial financial support. The Maryland Criminal Injuries Compensation Board awarded the son $17,500 for lost support.

While no monetary award can erase the physical and emotional suffering and painful memories these people and others like them experience, monetary compensation can help ease financial burdens thrust upon them and their families as a result of the crime committed against them. Even minor medical expenses can cause enormous hardships to victims unable to afford medical insurance. One day of work missed may mean the difference for some families between heating their homes and feeding their children. The death of a family's main or partial supporter can leave many families helpless. And, of course, the astronomical cost of extensive medical treatment required by severely injured victims can strap the wealthiest of people.

Victims of crime have long been forgotten and ignored by the criminal justice system. While the judicial system goes to great expense to protect the rights of defendents by providing legal counsel, personal protection, housing and food, up until recently little had been done to insure—or even recognize—the rights of victims. Fortunately, this is changing as more states begin to consider their special needs. One important state response has been to establish victim compensation programs to assist victims with out-of-pocket expenses and lost earnings resulting from crimes committed against them. A chart, on page 14 summarizes the major provisions of the states' victim compensation programs.

Ironically, as states strive to trim budgets and eliminate programs, more states are setting up programs to compensate innocent victims of violent crime and their families. To date, 33 states have enacted legislation to establish victim compensation programs (one program, in Rhode Island, will not become operational unless federal funds are made available). A more limited program exists in Georgia which compensates only "Good Samaritans," defined as innocent persons who sustain injury or property damage "in attempting to prevent the commission of crime against the person of another or in aiding or attempting to aid officers of the law upon their request."

Arguments justifying victim compensation generally fall into two categories. The first argument is that the state has failed to protect its citizens from criminal activity and is thus liable for injuries resulting from crimes committed against the public. The other argument supports victim compensation for humanitarian reasons, like other social welfare programs, but views it as state aid and not a legal right of its citizens.

Funding for these programs comes from several different sources. In 14 states, the legislature appropriates money annually to cover the costs of the program. In another 14, the programs rely entirely on penalty assessments levied on persons convicted of certain crimes, with the money earmarked for a victim compensation fund. The remaining four programs derive their funds from a combination of general tax revenue and penalty assessments.

These states provide for reimbursement of compensation payments from the offender through "subrogation." The process of subrogation compels convicted offenders to repay the state for all or part of any award it makes. Since most offenders cannot pay and because of the trouble and time it takes to make the few who can pay, subrogation is rarely used.

Restitution, where the offender makes direct payments to the victim, provides another source, though small, of money to victim compensation funds. Any restitution ordered reduces the award the state grants to a victim. If restitution is ordered subsequent to any award, the offender pays directly to the compensation fund.

One of the most recent funding mechanisms developed is established through a "Son of Sam" provision, first enacted in New York in 1977. The enactment of this provision was prompted by the prospect that David Berkowitz, convicted killer in the well-known "Son of Sam" murders, would make over $1 million in royalties for rights to his story. New York amended its legislation to provide that any money earned by offenders from writing books and articles or otherwise profiting from their crimes, will be put in an

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Thirty-three states have enacted legislation to establish victim compensation programs.

escrow account, from which compensation to victims will be made. Since then, 11 states have enacted similar provisions.

While the states' programs vary greatly in detail, several generalizations can be made. In most cases, losses for which a victim may be compensated include only medical expenses in excess of any medical insurance coverage, and a portion, if not all, of a victim's lost earnings due to missed work. If the victim dies, his family becomes eligible for any out-of-pocket expenses they incur, loss of support if dependency is shown, and funeral expenses. Property loss or damage is not compensable, nor is pain and suffering, except in Hawaii and Tennessee (Tennessee awards up to $2,500 for pain and suffering for rape victims only). All set maximum awards, ranging from $1,500 in Colorado to $50,000 in Ohio and Texas.

Administration of the programs is usually handled through a separate agency created by the enacting legislation, though in a few states either the workmen's compensation program or the Court of Claims administers the victim compensation program. Boards are created to review claims, determine their validity and grant and deny awards. A victim's assailant need not be convicted in order for the victim to be eligible for an award. Evidence that a violent crime did occur, however, must be shown with the burden of proof falling on the victim.

There are several eligibility requirements that most programs share. The states deny awards if the victim provoked the crime, or was involved in an illegal activity at the time of the incident. For example, the Maryland Board denied several awards because claimants were involved in the sale and distribution of narcotics at the time they were victimized. The board pointed out that it did not compensate "individuals who are injured as a result of their own illicit activities."

All but two states, California and Delaware, refuse to grant awards if the victim is related to the offender. Many states also stipulate that an award will be denied if the offender and the victim share the same household. This exclusionary clause is intended to prevent an award that could benefit the offender. This provision has been criticized because it denies aid to innocent victims of domestic violence. Defending the absence of a family exclusion clause, Gerald Jones, assistant to the executive secretary of the State Board of Control which administers California's program, said: "A victim is a victim. The legislature here never felt it was relevant whether the assailant was directly related to the victim or not. They're still a victim and if they're an innocent victim they should have just as much right to compensation as if [the offender] was a complete stranger, a friend or an acquaintance." Legislation in several states, however, permits the board to waive the family exclusion in the "interest of justice," allowing them flexibility to decide certain claims involving family members.

Some states require that the claimant prove financial hardship before considering the claim. This involves detailed investigation of the claimant's finances, a lengthy and time-consuming procedure. John Lamb, director of the Kansas program, said: "I don't feel a financial need test is necessary. If a person has a lot of assets, they have insurance or collateral assets. We've only had two cases where the people did not meet the minimum financial requirement. We spend more time trying to verify financial resources than we do anything else. We need to check [claims], but I don't think we need to go into the great depths of investigation that we do."

Diane McGrath, a commissioner on the New York Crime Victims Compensation Board, also opposes the financial need requirement because "it tends to punish those who have worked hard all of their lives and accumulated assets. If you never saved a dime and you spent every nickel you had ever made, then we will come in and compensate you."

In some states, the legislature appropriates money for victim compensation; others rely entirely on penalty assessments levied on persons convicted of certain crimes.

State Victim Compensation Programs

State	Year Effective	Source of Revenue: General Tax Revenue—GTR Penalty Assessments—PA	Maximum Award[1]	Minimum Award	Financial Need	Report to Police	File with Commission	Son of Sam Provision	Out-of-State Residents Covered[3]
Alaska	1972	GTR	$25,000[2]			5 days	2 yrs	X	YES
California	1965	PA	$23,000	$100	X	YES	1 yr		NO
Colorado	1982	PA	$ 1,500	$ 25		72 hrs	6 mos		NO
Connecticut	1979	PA	$10,000	$100		5 days	2 yrs		YES[3]
Delaware	1975	PA	$10,000	$ 25		YES	1 yr		YES
Florida	1978	GTR, PA	$10,000		X	72 hrs	1 yr		NO
Hawaii	1967	GTR	$10,000			YES	18 mos		YES
Illinois	1973	GTR	$15,000	$200		72 hrs	1 yr	X	YES
Indiana	1978	GTR, PA	$10,000	$100		48 hrs	90 days		NO
Kansas	1978	GTR	$10,000	$100	X	72 hrs	1 yr		YES
Kentucky	1976	GTR	$15,000	$100	X	48 hrs	1 yr	X	YES[3]
Maryland	1968	GTR, PA	$45,000	$100	X	48 hrs	180 days		YES
Massachusetts	1969	GTR	$10,000	$100		48 hrs	1 yr	X	NO
Michigan	1977	GTR	$15,000	$100	X	48 hrs	30 days		NO
Minnesota	1974	GTR	$25,000	$100		5 days	1 yr	X	YES
Missouri	1982	PA	$10,000	$200		48 hrs	1 yr		Law is silent
Montana	1978	PA	$25,000			72 hrs	1 yr	X	YES
Nebraska	1979	GTR	$10,000			3 days	2 yrs	X	YES
Nevada	1981	PA	$ 5,000	$100	X	5 days	1 yr	X	NO
New Jersey	1971	GTR, PA	$10,000	$100		3 mos	1 yr		YES
New Mexico	1981	GTR	$12,500			30 days	1 yr		NO
New York	1966	GTR	$20,000 plus unltd. medical expenses		X	1 wk	1 yr	X	YES
North Dakota	1975	GTR	$25,000	$100		72 hrs	1 yr		YES
Ohio	1976	PA	$5[illegible],000			72 hrs	1 yr		YES
Oklahoma	1981	PA	$10,000			72 hrs	1 yr	X	YES
Oregon	1978	GTR	$23,000	$250		72 hrs	6 mos		YES
Pennsylvania	1977	PA	$25,000	$100		72 hrs	1 yr		YES[3]
Tennessee	1976	PA	$10,000	$100		48 hrs	1 yr		YES
Texas	1980	PA	$50,000		X	72 hrs	180 days	X	NO
Virginia	1976	PA	$10,000	$100	X	48 hrs	6 mos		YES[3]
West Virginia	1981	PA	$20,000			72 hrs	2 yrs		YES
Wisconsin	1977	GTR	$12,000			5 days	2 yrs		YES

1. Includes medical expenses, lost earnings, and funeral expenses.
2. $25,000 per victim; $40,000 if there are two or more surviving dependents.
3. If victim is a resident of a state that compensates out-of-state residents.

I feel that's a real inequity in the law."

Others argue that with limited funds available those who are truly burdened by their injuries deserve compensation before those who are more financially secure. Herbert Parker, director of the Florida Crime Compensation Commission, believes the financial needs test is necessary because without it "we would run out of money so fast that we wouldn't have funds to support the program. If people have the capacity to pay for their injuries, then I think they should because there are a tremendous number of persons out there who are victimized and have no way at all to pay the cost of their victimization. On the other hand, a person does not have to be destitute to get assistance. They just must really show that it will create a burden for them to have to pay the cost."

Twenty states require that the victim suffer a minimum financial loss, ranging from $25 to $250, for their claim to be considered. Those supporting minimum loss requirements point out the high cost of processing claims offsets the benefits of a small claim. Opponents argue that a $25 loss to some people is as devastating as $1,000 loss is to someone more financially secure.

The states, moreover, require that the victim report the crime to the police to be eligible for compensation. Depending on the state, victims have between 24 hours and three months to report, with the average about 72 hours. This requirement is intended to encourage victims to cooperate with law enforcement and, in fact, victims must cooperate in order to receive compensation. By limiting compensation to those who cooperate with the police, it is hoped that more thorough investigations and more convictions will result. Additionally, the states set a time limit after which claims filed with the compensation board will no longer be considered.

In all states except California, the state compensates only those people victimized within its borders. California residents are eligible for compensation from California if they are victims of violent crime, regardless of where the crime occurred. Nine states restrict their program to residents while the remaining programs compensate residents and non-residents alike if the crime occurred within the state.

Opposition to victim compensation rarely concerns the merits of the program but focuses on the money involved. These programs are expensive to operate and grow more costly every year. First, as is well known, the cost of medical services continues to soar. Second, the rate of violent crime is on the rise, creating more eligible claimants. Third, states discover that as their programs becomes more well-known, applications for compensation increase and, accordingly, so must their awards.

That the cost and number of awards are increasing dramatically each year is well documented in annual reports that most compensation boards are required to prepare. Payments to victims in New York have risen from $1,500 in 1966-67, the first year of operation, to $5.6 million in 1979-80. In its second biennium of operation, awards from North Dakota—small in comparison to most other programs—more than doubled over the first biennium, from $50,600 in 1975-77 to $105,100 in 1977-79. In FY 1981, Illinois awarded 664 claims totalling $2 million compared with FY 1975 in which 182 claims were granted for the sum of $363,000.

Some state programs are able to absorb these increased costs with little difficulty. Rising costs and efforts by most states to restrain their budgets, however, are creating serious financial problems for many victim compensation programs. In its move to balance the state budget this year, Washington eliminated its victim compensation program which had been operating since 1976. According to Brian Huseby, claims adjudicator for the now defunct Washington program, "There weren't any particular objections to the program. As far as we can determine, it was simply a budget-cutting measure." There was also some sentiment this year in North Dakota to cut its program, but for now the program is safe from the budget axe.

All but two states, California and Delaware, refuse to grant awards if the victim is related to the offender.

Other programs not in immediate danger of abolition are nevertheless experiencing financial troubles. Duane Woodworth, director of the Minnesota Crime Victims Reparation Board, notes that, even with the legislature appropriating more money each year to the program, "We run out of money every year. Last year we ran out of money the first of March and we just sat until the first of July. I anticipate we'll run out of money even with the $600,000 this year [a $100,000 increase over last year] by the first of March again."

Massachusetts' and Kentucky's programs are even more financially strapped, having received less money this year from their legislatures than the year before. To offset its loss of general funds, the Kentucky Crime Victims Compensation Board hopes to have legislation passed next year levying fines on convicted offenders to help support the program.

This year, to remove the state's burden for the victim compensation program, California shifted to a penalty assessment fund. Awards in California topped $6 million in 1979-80, making its program one of the most expensive in the country. By shifting its funding source, the state relieves itself of the fiscal responsibility for the program yet maintains control over its administration. For 1981-82, the California legislature has authorized a budget of $14.6 million and the victim compensation board expects to spend as much as it receives from penalty assessments.

In many states where victim compensation programs are funded through penalty assessments on convicted persons, experience shows that adequate funds can be raised to support these programs at no cost to the general taxpayer.

Pennsylvania raises an average $1.8 million a year from penalty assessments, and with program costs of about $1.3 million, more than meets financial demands. In Montana, 18 percent of highway patrol fines and bail forfeitures are earmarked for the victim compensation fund. Officials project that this will amount to $350,000 for the coming year which should be adequate to meet their awards.

Connecticut raises the funds through $10 fines on persons convicted of misdemeanors and $15 on those convicted of felonies. This funding mechanism collects enough money to meet awards and has even generated a surplus. With the additional money collected, the Connecticut Criminal Injuries Compensation Board grants financial assistance to several victim service programs which assist victims by informing them of the status and progress of their case from initial investigation to final disposition and by informing victims of available medical and counseling services. Lack of funds constantly threatens the existence of these programs.

Of the six states that passed legislation in 1981 to establish compensation to victims of violent crime, only New Mexico appropriated general tax revenues to fund the program. The other five—Colorado, Missouri, Nevada, Oklahoma and West Virginia—chose to support their programs through fines levied on persons convicted of crimes. Oklahoma State Representative Jim Barker who, along with Representative Frank Harbin and Senator John D. Luton, sponsored a package of "victim's rights" legislation, said "the really good part about our's [the victim compensation program] is the fact that there is absolutely no tax dollars involved in it from the average citizen."

State Senator Paul Powers, sponsor of similar legislation in Colorado, agrees: "Rather than having the general taxpayer bear the burden, I thought it was much more equitable to have the offender fund the program." In addition to not placing the burden of support on the taxpayers' shoulders, this funding source is attractive to legislators who must in a time of severe fiscal restraint discover alternative funding sources to establish and maintain social programs.

This is not to suggest that all is fiscally sound in states that rely solely on penalty assessments to support their

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Since 1965, almost every session of Congress has considered—and rejected—proposals to provide federal assistance to these programs.

programs. As of August 31, 1981, Texas, which collected $1.13 million in penalty assessments in 1980, had 236 cases pending, amounting to a $720,000 deficit. Jerry Belcher, director of the Texas Crime Victim Division explains: "We don't have the money to pay the claims. We pay out about $80,000 in benefits per month; however, about three times that much is being approved." In Ohio, where a $3 court cost surcharge supplied the victim compensation fund with close to $5 million last year, a huge deficit is expected unless some changes take place. Hearings were held to consider raising the surcharge to $10 on certain, and possibly all, crimes. Lowering the maximum award from $50,000 to $25,000 is also being considered.

In 1965, legislation was introduced in the U.S. Congress to provide federal funding to state victim compensation programs. Since then, almost every session of Congress has considered—and rejected—proposals to provide federal assistance to these programs. Legislation came close to passage in the 1977-78 session of Congress when both chambers passed bills to pay 25 percent of state costs, but the House later rejected the version agreed to by conference committee.

Currently, there are similar bills in both the House and the Senate. Typically, they propose reimbursement to the states of 50 percent of program costs, though one bill in the House would authorize 75 percent reimbursement. In the case where a state compensates a victim of a violent federal crime, the reimbursement would be 100 percent. A Congressional Budget Office report prepared during the 1979-80 session of Congress estimated that at a 25 percent reimbursement level the cost of this program to the federal government would be $8 million for the first year, $13 million the second, and $16 million for the third year.

Even without the help of federal assistance, the states have forged ahead to provide victim compensation. Yet, the push for federal funding continues. According to Dick Gross, president of the National Association of Crime Victims Compensation Boards and director of the North Dakota program, this effort appears to be "sort of at odds with itself because as they [congressmen] continue to talk about federal legislation, more and more states continue to adopt programs without it. And so it looks at first glance like federal legislation isn't needed. But you have to realize that the states with existing programs are having problems with funding and with general cutting attitudes in the legislatures. These programs are in danger of being cut."

In a speech delivered before the International Association of Chiefs of Police on September 29, President Reagan announced that he will soon appoint a Task Force on the Victims of Crime "to evaluate the numerous proposals now springing up regarding victims and witnesses." His speech excluded any mention of new federal funding for victim assistance of which victim compensation is an important, but not the only, service provided by victim assistance programs.

This exclusion emphasizes a point already suspected: Given the general mood of fiscal restraint at the federal level, federal assistance to state victim compensation programs appears unlikely in the near future. In the meantime, the responsibility for victim compensation rests squarely on the states. Notwithstanding the fiscal problems that most victim compensation programs share, the states continue to provide victim compensation, indicating the importance legislators and the public attach to this form of victim assistance.

Yet, even with all its obvious benefits, victim compensation provides only part of the assistance victims need to cope with the events following their assault. Victim and witness assistance programs, generally established within district attorneys' offices, assist victims during all subsequent legal proceedings, informing them of upcoming events relevant to their case. They also act as a referral service for victims in need of counseling and medical attention. In many ways, these programs help to ease the anxiety victims often experience throughout the investigation and trial procedures.

For victims of violent crime, the memories—and often the physical damage—never entirely disappear. But through state and local programs assisting innocent victims, the events following the crime can be made less burdensome and ridden with anxiety. With increasing state support for victim compensation and assistance programs, the picture becomes clearer: The states recognize the special needs of victims and are working hard to provide the attention they deserve.

***Mindy Gaynes** is a senior research analyst with NCSL's Legislative Information Services.*

CATEGORY: ADMINISTRATION OF JUSTICE **AGENCY:** DEPARTMENT OF PUBLIC SAFETY

PROGRAM: CRIME IDENTIFICATION AND APPREHENSION **BRU (s):** VIOLENT CRIMES COMPENSATION BOARD

The Violent Crimes Compensation Board provides compensation to innocent persons injured, and to dependents of persons killed, as a result of certain serious crimes. Eligibility includes considerations of provocation, personal relationships involved, and financial need.

Specific objectives are to maintain a prompt, efficient, and compassionate program which ensures financial aid to eligible innocent victims of violent crimes, to maintain understanding and cooperation with law enforcement agencies so that information can be obtained to determine eligibility, and to increase public awareness of the Violent Crimes Compensation program. Public awareness is accomplished through the use of the news media as well as by distributing posters and brochures and placing applications with law enforcement agencies, hospitals, medical offices and other concerned outlets.

The Board must objectively evaluate each individual claim. They must determine that:

1. The victim did not initiate the incident.
2. There was no relationship between the victim and the offender.
3. A crime as designated in AS 18.67.100 was committed.
4. The claimant is eligible for an award under the criteria established in AS 18.67.
5. The expenses listed by the claimant were reasonable and actually incurred.
6. The pecuniary loss to dependents of deceased victims is justifiable.

Phone Contact for more information: Nola Capp, Administrator 465-3040

SERVICE MEASURES	FY 81		FY 82	FY 83	
	Plan	Actual	Plan	Continuation	Total
Percentage of reported cases investigated and adjudicated within three months	60%	45%	50%	55%	55%
Percentage of reported cases investigated and adjudicated between three and six months	22%	27%	24%	20%	20%

AGENCY: DEPARTMENT OF PUBLIC SAFETY PROGRAM: VIOLENT CRIMES COMP BOARD
CATEGORY: ADMINISTRATION OF JUSTICE

COMPONENT DESCRIPTION	FY82 ATH	FY82 SUP	CONT	REQUEST	GOV AMD	GOVERNOR	HOUSE	SENATE	F.C.C.	BILLS	LEG.REC.
	351.8		382.3	382.3		382.3					
** TOTAL	351.8		382.3	382.3		382.3					
** CHANGE VERSUS FY82 ATH				8.6%	-100.0%	8.6%	-100.0%	-100.0%	-100.0%		
OBJECT DESCRIPTION											
PERS. SERV.	78.9		85.0	85.0		85.0					
TRAVEL	13.7		15.1	15.1		15.1					
CONTRACTUAL	14.5		15.5	15.5		15.5					
COMMODITIES	1.4		1.5	1.5		1.5					
GRANTS, CLMS	243.3		265.2	265.2		265.2					
FUNDING SOURCE											
GENERAL FUND	351.8		382.3	382.3		382.3					
** GENERAL FUND CHANGE VS. FY82 ATH				8.6%	-100.0%	8.6%	-100.0%	-100.0%	-100.0%		
POSITIONS											
FULL-TIME	2.0		2.0	2.0		2.0					
STAFF-MONTHS	24.0		24.0	24.0		24.0					

AGENCY: DEPARTMENT OF PUBLIC SAFETY
CATEGORY: ADMINISTRATION OF JUSTICE

PROGRAM: VIOLENT CRIMES COMP BOARD
SUB-PROGRAM:

* * * * GOVERNOR ANALYSIS * * * *

FY82 ATHS REC $351.8

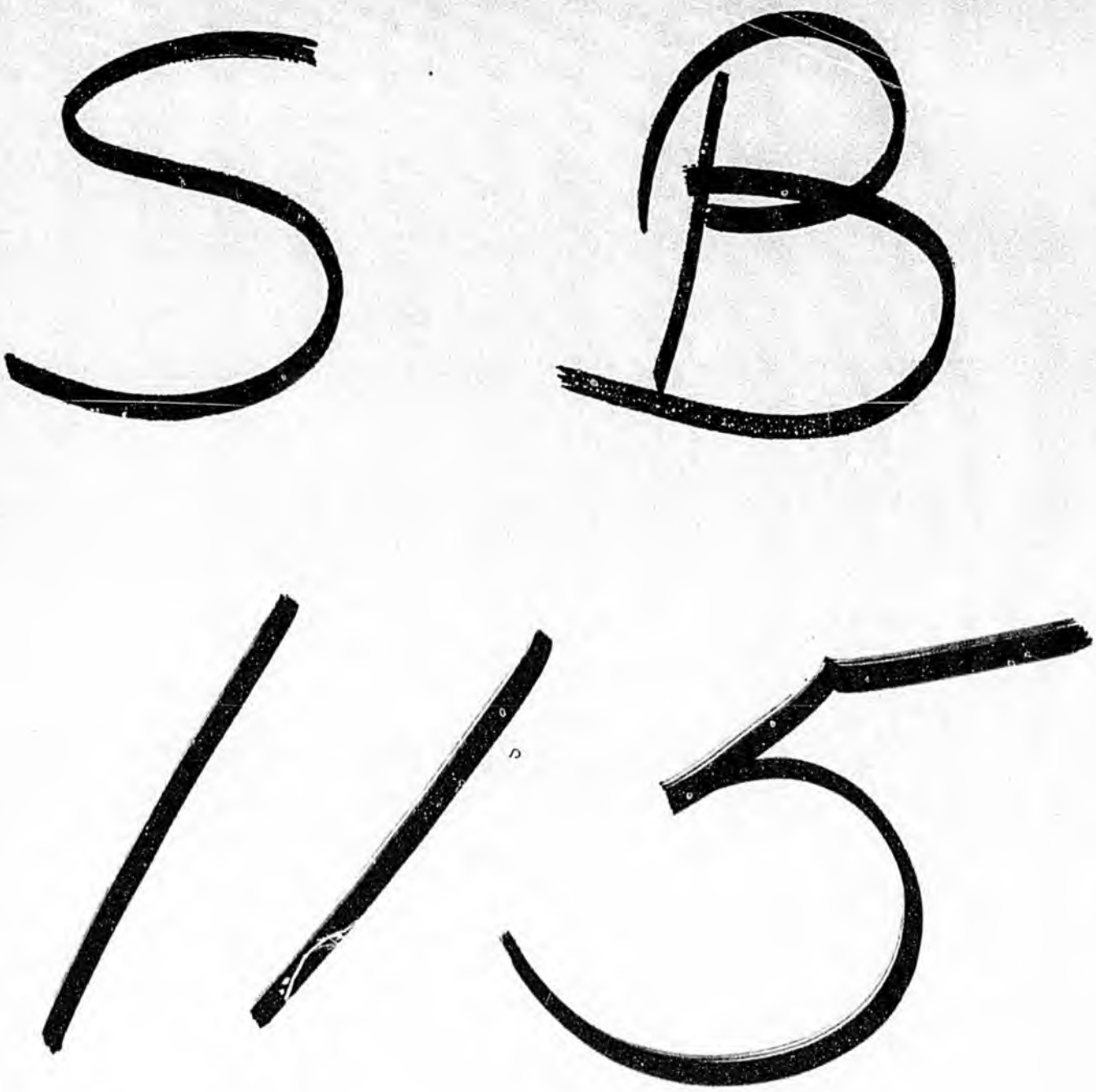
OBJECT GROUP	VARIATION		DESCRIPTION: GOVERNOR VERSUS FY82 ATH
01 PERS. SERV.	6.1	7.7%	PERSONAL SERVICES ADJUSTMENT .8, SALARY INCREASE ADJUSTMENT GEN. GOV'T. 5.3.
02 TRAVEL	1.4	10.2%	INFLATION 1.4.
03 CONTRACTUAL	1.0	6.9%	INFLATION 1.3, TRANSFER RISK MANAGEMENT COSTS TO ADMIN. SUPPORT <.3>.
04 COMMODITIES	0.1	7.1%	INFLATION .1.
07 GRANTS, CLMS	21.9	9.0%	INFLATION 21.9.
** TOTAL	30.5	8.7%	

GOVERNOR FIGURE $382.3

AGENCY: DEPARTMENT OF PUBLIC SAFETY
CATEGORY: ADMINISTRATION OF JUSTICE

PROGRAM: VIOLENT CRIMES COMP BOARD
SUB-PROGRAM:

EXPENDITURES & FUNDING	(01) FY81 ACT	(02) FY82 ATH	(03) FY82 RP	(04) FY82 SUP	FISCAL YEAR 1983 (05) CONT	(06) REQUEST	(07) GOV AMD	(08) GOVERNOR	(09) HOUSE	(10) SENATE	(11) F.C.C.	(12) BILLS	(13) LEG.REC.
01 PERS. SERV.	77.8	78.9			85.0	85.0		85.0					
02 TRAVEL	13.2	13.7			15.1	15.1		15.1					
03 CONTRACTUAL	11.2	14.5			15.5	15.5		15.5					
04 COMMODITIES	.5	1.4			1.5	1.5		1.5					
05 EQUIPMENT													
06 LANDS/BLDGS													
07 GRANTS, CLMS	237.1	243.3			265.2	265.2		265.2					
08 MISC.													
** TOTAL EXPEND	339.8	351.8			382.3	382.3		382.3					
09 I-A TRANSFER	.5	.8			.5	.5		.5					
10 FED. RECEIPT													
11 G. F. MATCH													
12 GENERAL FUND	339.8	351.8			382.3	382.3		382.3					
13 PGM RECEIPTS													
14 OTHER FUNDS													
15 FULL-TIME	2.0	2.0			2.0	2.0		2.0					
16 PART TIME													
17 TEMPORARY													
18 STAFF-MONTHS	24.0	24.0			24.0	24.0		24.0					


SB
115

COMMITTEE REPORT

SENATE

FURTHER: None

1/29/81

Date: 3-11-81

Mr. President:

The Committee on JUDICIARY has had SB 115

Agreement on Detainers

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

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

SENATE AMENDMENT

BY Judiciary Committee

To: _____ SENATE BILL No. 115

To: _____ HOUSE BILL No. _____

PAGE: 2 LINE: 4

Line 4 is amended to read:

(1) "party state" means a state of the United States, the United

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Senate Judiciary Committee

FROM: Kevin K. Bruce
Committee Aide

DATE: March 11, 1981

SUBJECT: SB 115 "AN ACT RELATING TO THE AGREEMENT ON DETAINERS; AND ESTABLISHING AN EFFECTIVE DATE."

I have contacted the Attorney General's office and the Public Defender's office concerning this legislation, and their responses are as follows:

Arthur Peterson, Assistant Attorney General: The Department supports the legislation and has no specific comments beyond the Governor's transmittal letter (see attached).

Dana Fabe, Acting Public Defender: The Public Defender Agency has no specific comments on the legislation; however, they support the concept and believe it makes sense for Alaska to join the interstate compact.

KKB/ods

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill to make Alaska a party to the Agreement on Detainers.

At the present time, there is no means by which a prisoner may initiate proceedings to clear a detainer placed against him from another jurisdiction, either state or federal. Such detainers prevent prison officials from developing meaningful rehabilitative plans since the prisoner's future is so uncertain. A detainer is a formal notice by which a prosecutor who has filed charges against someone imprisoned in another state can request that prison authorities in that state hold the prisoner beyond his release date so that he may stand trial. In addition, the present process by which a prosecuting official secures for trial a person already incarcerated in another jurisdiction is quite cumbersome. Enactment of this agreement would alleviate these problems and bring Alaska into step with the large number of other states and the federal government which have enacted the agreement.

The Agreement on Detainers makes the clearing of detainers possible at the instance of a prisoner. It affords him no opportunity to escape just convictions, but it does provide a way for him to test the substantiality of charges pending against him and to secure final judgment on any indictments, informations, or complaints filed in other jurisdictions. The result is to permit the prisoner to secure a greater knowledge of his own future and to make it possible for the correctional authorities to provide better plans and programs for his treatment. The agreement also provides a method by which prosecuting authorities may secure prisoners incarcerated in other jurisdictions for trial before the expiration of their sentences. At the same time a governor's right to refuse to make the prisoner available, on public policy grounds, is retained.

As the federal government is already a party to the agreement, the procedures provided in the agreement will be available on a federal-state as well as on an interstate level.

Sincerely,

Jay S. Hammond
Governor

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY OF SENATE JUDICIARY COMMITTEE HEARING
OF
MARCH 9, 1981

Butrovich Committee Room, State Capitol - Juneau Alaska

Legislation Before Committee:

SB 115 "An Act Relating to the Agreement on Detainers; and providing for an effective date."

SB 41 "An Act relating to premarital blood tests; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 p.m. Committee members present were Senators Hohman, Parr, Ray, and Rodey. Senator Bennett was absent.

An overview of SB 115 was provided by Walter Jones, Assistant Director, Division of Corrections. Mr. Jones stated that this legislation would permit the state to joint 46 other states, the District of Columbia, and the Federal Government to form a compact which allows prisoners to have charges filed by another state jurisdiction handled expeditiously. Mr. Jones stated his support of SB 115 for the following reasons:

1) Enables prisoners to obtain a speedy trial on pending charges;

2) Enables a prisoner to make long-range plans for himself following his trial and pending charges;

3) Encourages participation in rehabilitation programs;

4) Affords a positive psychological benefit by removing the apprehension; and

5) Upon conviction, an opportunity exists for the prisoner to serve his new sentence concurrently with the one he is already serving in another jurisdiction.

Mr. Jones stated the following benefits to the State as a result of this legislation:

1) Permits the Division of Corrections to make concrete, knowledgeable, and flexible planning for the prisoner;

2) Provides the possibility of improvement in the prisoner's motivation and involvement in programs; and

3) Offers the possible reduction in cost of inmate housing.

Senator Ray suggested the following amendment to page 2, Article II, item (1) to read:

(1) "party state" means a state of the United States, the United. . .

The Committee members then heard comments from Representative Terry Martin in opposition of SB 41 as written. Representative Martin stated his opinion that he views the current premarital testing requirement as a preventative measure and would recommend Rh typing of a woman at the time of marriage.

Joan Brooks, State Registrar of Vital Statistics, testified that the only impact on her department would be the elimination of one question required on the application for marriage certificate.

Dr. Dean Tirador, Deputy Commission for Programs, Health and Social Services, testified in support of the legislation because, in his view, statistics have not produced significant number of syphilis cases.

The Committee heard testimony from Harry Colvin, Chief, Section of Laboratores, Divion of Public Health, with respect to the cost per person of such testing. Mr. Colvin stated the following costs: $5.65 for rubella testing, and approximately $11.00 for Rh screening.

Dr. Steven Rose, family practioner, testified to his support of prenatal blood screening as a preventative measure in guarding against rubella and Rh negative complications.

Bill Moffitt, testifying for himself, stated his support of prenatal testing to determine Rh factor.

Hearing no objections, Chairman Rodey adjourned the meeting of the Judiciary Committee at 2:45 p.m.

Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY OF SENATE JUDICIARY COMMITTEE HEARING
OF
MARCH 11, 1981

Butrovich Committee Room, State Capitol - Juneau, Alaska

Legislation Before Committee:

SJR 20 Proposing an amendment to the Constitution of the State of Alaska relating to appropriations.

SB 115 "An Act relating to the Agreement on Detainers; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 p.m. All members were present (Senators Bennett, Hohman, Parr, Ray, and Rodey).

Senator Tim Kelly provided an overview of SJR 20 and stated that it attempts to remove free conference powers from the budget and appropriations bills. Consequently, no appropriations bills passed by either body could be included in the conference committee version. He stated that only four to five states currently have the wide-open free conference committee. He stated, in his opinion, that the free conference committee should be eliminated, if not entirely, at least in the area of appropriation bills.

Senator Hohman stated that he opposes any act in which the Legislature limits itself in its ability to respond to state needs. Senator Bennett commented that he feels there are times in a free conference committee when changes are necessary. Senator Ray suggested a change in language such as, "all appropriations bills, exclusive of the general budget document, shall. . ." to permit the free conference committee latitude in dealing with administrative or legislative errors and omissions.

Following discussion, Chairman Rodey deferred committee action on SJR 20.

Walter Jones, Assistant Director, Division of Corrections, spoke briefly of the fiscal note for SB 115 and stated that

the fiscal note had been improperly prepared and additional budget would not be required for the Division of Corrections. Chairman Rodey stated that he had contacted the offices of the Attorney General and the Public Defender and neither had requested changes in the bill.

Senator Hohman moved that SB 115 be passed from the committee. The motion carried with the following votes:

Do Pass - Senators Bennett, Parr, and Rodey
No Rec - Senator Hohman
Do Not Pass - Senator Ray

Senator Ray requested that the word, "party" be added to page 2, line 4, to read "party state". Chairman Rodey directed the committee staff to prepare an amendment for adoption on the floor.

Chairman Rodey introduced four pieces of legislation for consideration as committee bills:

- "An Act repealing provisions of law relating to the selection of textbooks and the State Schools Textbook Committee."

- "An Act relating to offers of judgment."

- "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."

- "An Act relating to audio, visual, and dental insurance coverage for persons receiving benefits under the judicial retirement system; and providing for an effective date."

Senator Ray formally requested that Chairman Rodey schedule SB 7 ("An Act relating to accretion, reliction, and erosion; and providing for an effective date.") for hearing before the committee.

Hearing no objections, Chairman Rodey adjourned the meeting of the Senate Judiciary Committee at 2:00 p.m.

Rule 43. Dismissal.

(a) **By Prosecuting Attorney.** The prosecuting attorney may file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal shall not be filed during the trial without the consent of the defendant.

(b) **By Court.** If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the superior court, or if there is unnecessary delay in bringing a defendant to trial pursuant to Criminal Rule 45, the court shall dismiss the indictment, information or complaint.

(c) **In Furtherance of Justice.** The court may, either on its own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action, after indictment or waiver of indictment, to be dismissed. The reasons for the dismissal shall be set forth in the order.

(d) **Discharge From Custody—Exoneration of Bail.** When dismissal is ordered pursuant to this rule the defendant shall be discharged from custody, or if admitted to bail, his bail exonerated, or money deposited in lieu thereof refunded to the depositors. (Amended by Supreme Court Order 157 effective February 15, 1973)

(a) CROSS REFERENCES: AS 12.20.020; AS 12.20.050; Crim. Form 73
(b) CROSS REFERENCE: Crim. Form 74

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

February 23, 1981

Dr. John E. Angell
Justice Center
University of Alaska, Anchorage
3211 Providence Drive
Anchorage, Alaska 99504

Dear John:

I thought I would forward a copy of the enclosed bill, S.B. 115, to your department for comments. The Department of Health and Social Services strongly supports the bill, and my initial reaction is favorable. However, I do have a rather limited background in corrections, and I thought you could be of help.

Any assistance you can provide will be greatly appreciated.

Sincerely,

Kevin K. Bruce
Committee Aide

KKB/ods
Enclosure

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Office of the Attorney General

FROM: Kevin K. Bruce
Committee Aide

DATE: March 9, 1981

SUBJECT: S.B. 115: "An Act relating to the Agreement on Detainers; and providing for an effective date."

I would appreciate any comments your office has on this proposed legislation.

KKB/ods
Attachment

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 115

"An Act relating to the Agreement on Detainers; and providing for an effective date."

This law would benefit both the state and the rights of prisoners. This legislation would require that prison officials inform prisoners of detainers filed against them. A prisoner may then file a formal request for trial on the outstanding charges. The confining jurisdiction would then agree to grant temporary custody to the prosecuter for the trial. If the filing jurisdiction fails to bring the defendant to trial within 180 days after the request, the charges are dismissed with prejudice in the filing state and the detainer is no longer valid. Provision is made for extension of this period upon a showing of good cause in court with the defendant or his counsel present.

The first and most obvious benefit of this agreement to any prisoner who has an outstanding detainer filed against him would be his ability to obtain a speedy trial on the pending charge, rather than waiting until his release from the present sentence.

A second benefit to the prisoner would be his ability to make long-range plans for himself following his trial on the pending charges on his dismissal, rather than existing in a state of uncertainty while serving his present sentence.

A third benefit to the prisoner would be his eligibility for classification to medium or minimum security custody and participation in the rehabilitative programs available to such prisoners. Currently, the existence of a detainer for a prisoner tends to preclude the classification of that prisoner to minimum security custody even though he might otherwise be eligible for such classification. Classification would be based upon fact, rather than pending charges which have not been adjudicated in court.

When a detainer has been lodged, the prisoner is not considered for parole to any plan other than to face the pending charges, regardless of the positive nature of his institutional adjustment or the availability of other rehabilitative parole opportunities; and when parole is granted, it is solely conditioned upon the filing agency's exercise of its detainer.

Another benefit of the Agreement to individual prisoners, which should not be minimized, is the psychological effect of the removal of apprehension and anxiety resulting from the knowledge that pending charges must be faced upon completion of the present sentence.

A final benefit of the Agreement to prisoners is the possibility that, should pending charges be tried and the prisoner convicted, the opportunity exists that the prisoner may be sentenced to serve his new sentence concurrently with that which he is already serving.

IS STATE OBLIGATED TO PAY TRANSPORTATION COSTS ?
ABSOLUTE RIGHT TO TRANSPORT ON PRISONERS REQUEST ?

POSITION PAPER/Department of Health & Social Services

A primary benefit of the Agreement to the Division of Adult Corrections would be the ability of the Division to make more concrete, knowledgeable and flexible rehabilitative planning for prisoners who have been able to dispose of outstanding detainers.

A second benefit of the Agreement to the Division of Adult Corrections and to the State of Alaska, although in many ways intangible is nevertheless quite real, would be the improvement in motivation and involvement in rehabilitative programs of prisoners who are able to dispose of pending charges. There is little incentive for good behavior since, in many instances, the prisoner's classification is the most stringent it will be, and there is no prospect that good behavior will result in an early return to society. Such prisoners are poorly motivated and unwilling to make an investment of time, effort and emotion in available rehabilitative programs as they see little benefit from such involvement.

A third benefit to the State of Alaska, which could result from adoption of the Agreement, is the possible reduction in the cost of inmate housing. This could result from Alaska inmates serving concurrent sentences in non-Alaska institutions following their sentencing on charges which would otherwise remain pending during their period of incarceration in Alaska facilities. Additional savings would result from Alaska inmates being housed in non-Alaskan facilities during trials on charges in other states. This could possibly be offset by the reverse situation - out-of-state prisoners being housed in Alaskan facilities during trials in Alaska.

The Department of Health and Social Services supports this legislation and recommends its enactment.

Recommended by: C Flan Campbell

Charles F. Campbell, Director
Division of Adult Corrections

Date: 2-17-81

Approved by: Helen D Beirne

Helen D. Beirne, Commissioner

Date: 2-17-81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill #115
Title "An Act relating to the Agreement on Detainers; and providing for an effective date."
Requested by Rules Committee by request of the Governor Date 01/29/81

II. FISCAL DETAIL
Agency Affected Department of Health & Social Services - Division of Adult Corrections
Program Category Affected Offender Confinement, Reformation & Supervision
BRU, Program, or Subprogram(s) Affected Adult Confinement
(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			6.7	7.3	8.0	8.7
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			6.7	7.3	8.0	8.7

FUNDING (Thousands of Dollars)

GENERAL FUND			6.7	7.3	8.0	8.7
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

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

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

Estimated expenditures are based on four (4) trips to other states annually for an inmate and escort.

It is assumed that inflation will be 9% per annum for each of the fiscal years following FY 1982.

IV. DATE _____ PREPARED BY Roger C. Lange
AGENCY Adult Corrections, Dept. of Health & Social Servs.
PHONE 465-3376

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) M&B Approval _____ Date 2/7/81

33-001 (Rev. 12/80

SB

116

MEMORANDUM State of Alaska

TO: Kevin K. Bruce
Committee Aide

DATE: February 23, 1982

FILE NO:

TELEPHONE NO: 465-2577

FROM: Don Koch
Chief of Market Surveillance
Division of Insurance

SUBJECT: CSSB 116(Jud) Work Draft

We have reviewed the proposed committee substitute and find that it is a much better draft than the original. It is structured in a more logical way. All the sections and intent of the original have been retained. We like it.

There are a few minor changes that we would suggest. They are:

On page 7, line 28, change "$150" to "$250".

On page 18, line 17, change "1982" to "1983".

On page 20, line 5, change "1982" to "1983".

Thank you.

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

601 West Fifth, Suite 315
Anchorage, Alaska 99501
274-1042

Pouch V
State Capitol
Juneau, Alaska 99811

September 22, 1981

Mr. Don Koch
Division of Insurance
Pouch D
Juneau, Alaska 99811

Dear Mr. Koch:

As you may remember, you testified before the Senate Judiciary Committee on May 6, 1981 regarding SB116. At that time the Committee tabled action on the bill until language could be drafted which satisfied the Committee.

My files indicate that I forwarded the attached draft substitute to your office for comment on May 26, 1981. Frankly, I can't remember if you responded or not, the final weeks being what they are. At any rate, I would like you to examine and comment on the draft at this time.

On another subject, I sat in on the testimony you recently provided the House Labor and Commerce Committee regarding mandatory auto liability insurance. I would appreciate receiving the same information on the subject that you provided the House committee. Senator Rodey is interested in the area although we recognize some of the problems with this approach.

I appreciate your assistance in these matters.

Sincerely,

Kevin K. Bruce
Committee Aid

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Senator Bennett
Senator Hohman
Senator Parr
Senator Ray

FROM: Senator Rodey

DATE: May 26, 1981

SUBJECT: CSSB 116 "An Act relating to the creation of the Alaska Life and Disability Insurance Guaranty Association; changing Rule 62(a), Rules of Civil Procedure, by providing for an automatic stay of 60 days in a liquidation, rehabilitation, or conservation proceeding; and providing for an effective date."

Please find attached a proposed substitute for SB 116 and a memo from Legislative Affairs discussing the committee substitute.

I would appreciate your comments on this draft.

PMR/ods
Attachment

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Don Koch
Division of Insurance

FROM: Kevin Bruce
Committee Aide

DATE: May 26, 1981

SUBJECT: CSSB 116 "An Act relating to the creation of the Alaska Life and Disability Insurance Guaranty Association; changing Rule 62(a), Rules of Civil Procedure, by providing for an automatic stay of 60 days in a liquidation, rehabilitation, or conservation proceeding; and providing for an effective date."

Please find attached a proposed substitute for SB 116 and a memo discussing same. I would appreciate your comments on this.

KKB/ods
Attachment

Judiciary Hearing of 5/6/81

SB 116

Ray: Page 4, line 20, they guarantee to give back the money with the approval of the director, all of this is with the approval of the director. Why?

Koch: The director would approve the method by which the money goes back, whether it would be via a guarantee, an assumption...

Ray: That isn't what you're saying. You're just saying with the approval of the director. In other words, he makes the determination whether you are going to pay it back or not. He can say that "Well, I approve that or I don't approve that." What I'm saying is that if you can be a little more concise and say, "in a manner approved by the director", or something like that.

Kock: I would have no problem with that.

Ray: That's what you should do because, otherwise, you are just giving the director the right, with the approval of the director, to make the determination, that's fine; you either pay it or you don't. You should change that to "in a manner approved by the director." Do you agree, Charlie?

Parr: It makes no difference.

Koch: It may be clearer; I don't think a problem would occur with this, but I can see your point and I think the language could be a little clearer, as you suggest.

There are two minor problems, or errors, on page 7. Line 19 refers to health insurance. The term of art in the insurance code is "disability", so that should be changed from "health" to "disability". One line 26, the subsection (a) identifier has been left out, the small letter (a) has been left out.

Rodey: We will correct both of those. Are there other questions from members of the committee? Senator Parr.

Parr: Tax offset....I understood you to say, Mr. Koch, that this is optional in the model law. Mr. Thomas, in his letter to the chairman, said that the National Association of Insurance Companies ...led the National Association of Insurance Commissioners to conclude that a tax offset was justified. Is there a difference of opinion here?

Koch: As a matter of fact, on that sheet I gave you the very last paragraph states the NAIC's position.

Parr: Mr. Thomas apparently misunderstood that because he says that they concluded it was justified.

Koch: The NAIC's position was that they say they neither endorse nor reject the tax credit concept.

Parr: Essentially what happens, if I understand it correctly, is that the tax offset is given to people of the state through their tax monies or insuring.....if we don't do a tax offset, then the people who own the shares in the insurance companies . . . . .Is that correct?

Koch: Yes.

Ray: Page 19, prohibiting advertising of insurance sales. Are you saying that they can't, if they put in an advertising member, Joe Blow's Insurance, as a member of the Alaska Life and Diability Insurance Guaranty Association. Is that prohibitive?

Yes.

(Explanation from Kenneth Moore)

Ray: The last line, "This does not apply to the Alaska Life and Disability Insurance Guaranty Association." That doesn't make sense since you refer to it all the way through.

Rodey: The chair will take a look at the language and see if we can arrive at something that Senator Ray finds a little more readable.

Ray: I'm going to vote against the bill anyway.

Parr: We do have this, you said, for casualty companies already. What's the deal with them on the premium tax offset?

Koch: There is no premium tax offset for the casualty companies. The distinction that is made is that typically any casualty company writes its policies on a one-year basis, so they have a way they can recover their losses just by loading their premiums.

Parr: That's subject, of course, through the director's approval, I guess.

Koch: Yes, that's correct. The thing is, with a life and disability company, they generally write policies for a much longer term and can't change the rates that way, particularly in a life policy. . .so they would not be in any position to cover their expenses.

Rodey: What I want to do is lay SB 116 on the desk for a meeting, have a chance to make some language changes. It is a complex bill and have other members take a look at it. I know we haven't had a great deal of time.

Parr: I would like to amend it to include this offset. It doesn't seem to be just to require the shareholders of companies A, B, and C to spend their money unless company D goes in it, too. They are still going to have some administrative costs to bear, but they would then be able to recover that. If we want to decide as a matter of state policy that we want to guarantee people against that kind of loss, then we ought to pay for it out of state funds.

Rodey: Is there any objection to that language which the department has included in every member's packet? If not, then we will include that with the draft.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

May 25, 1981

SUBJECT: CSSB 116 (Judiciary)

TO: Senate Judiciary Committee
Attn: Kevin Bruce

FROM: Thomas A. Sofo TAS
Legislative Counsel

After our discussion last week, I reviewed the CS for SB 116 (Judiciary) with the goal of attempting to improve its organization and the consistency of its language. After the revisor and I actually got into the bill beyond your requested amendments, we found much more to do than we had originally thought. We do not believe that our efforts have resulted in any substantive change to this legislation but would recommend that the Division of Insurance have an opportunity to review this in order to confirm our belief. Much of our time was spent trying to group the powers and duties of the association, the board, and the director in a more logical order with contiguous placement of related powers and duties. Since this bill did not originate with this office we were completely unfamiliar with its content which resulted in more time being spent on this than is typically the case.

TAS:ljb

Enclosure

SB116

IN THE MODEL, THIS SECTION APPEARS BETWEEN SECTIONS 100 AND 110.

Section 13. Credits for Assessments Paid (Tax Offsets)- OPTIONAL. 070(2)(2)-(3)

(1) A member insurer may offset against its (premium, franchise or income) tax liability (or liabilities) to this state an assessment described in Section 9(8) to the extent of 20% of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its (premium, franchise, or income) tax liability (or liabilities) for the year it ceases doing business.

070(2)

(2) Any sums acquired by refund, pursuant to Section 9(6), from the Association which have theretofore been written off by contributing insurers and offset against (premium, franchise or income) taxes as provided in subsection (1) above, and are not then needed for purposes of this Act, shall be paid by the Association to the Commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

Comment: Subsection (1) provides an offset against future premium, franchise or income taxes of assessments, over a five year period. The role of the certificate of contribution in the application of the credit, proposed in earlier drafts, has been removed with the view to minimizing the industry's federal tax, a result that may obtain if the possibility of such credit is not viewed as an admitted asset. The timing of the credit is dependent on the year the assessment is paid. It also allows the member insurer to select the applicable tax (premium, franchise or income) against which the credit may be applied and it permits member insurers going out of business to make use of the credit in their final year of operations.

The NAIC model insolvency guaranty bill for property and casualty insurance provides, in section 6, that rates "shall include amounts sufficient to recoup a sum equal to the amounts paid to the Associa . . . ." It is obvious that life insurance premiums, and premiums for certain forms of health insurance, cannot be changed on existing policyholders. Thus, recoupment is virtually unattainable through existing policy premium rates and building such assessments into rates for future policyholders is not only impractical but unfair to all policyholders. The only suitable and practical method of recoupment available to companies writing life and health insurance lies in offsets against premium or other taxes on such companies. The method suggested in this section is not only equitable to the companies involved but also reduces the impact on state revenue by the partial offset over a period of years. To the extent the recovery from the insolvent company exceeds the tax credit received, the state would be the ultimate beneficiary. Such equitable treatment of assessment for tax purposes would have additional positive effects: (1) the state legislature would have an additional incentive for providing adequate funds for insurance department personnel and administration, and (2) participation in the economic loss would be shared, to some degree, by the general public rather than solely by insureds, thus minimizing what might otherwise be a penalty on thrift and savings. It may be advisable in some jurisdictions to provide a cross-reference to the premium or other tax statutes to avoid questions of conflicting statutory provisions.

Some states allow this credit and others do not. Accordingly, this section is optional, and the NAIC neither endorses nor rejects the tax credit concept. Each state will wish to consider this provision in the light of its own regulatory experience.

IN THE MODEL, THIS SECTION APPEARS BETWEEN SECTIONS 100 AND 110.

Section 13. Credits for Assessments Paid (Tax Offsets)– OPTIONAL. 070(b)(2)-(3)

(1) A member insurer may offset against its (premium, franchise or income) tax liability (or liabilities) to this state an assessment described in Section 9(8) to the extent of 20% of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its (premium, franchise, or income) tax liability (or liabilities) for the year it ceases doing business.

(2) Any sums acquired by refund, pursuant to Section 9(6) 070(c), from the Association which have theretofore been written off by contributing insurers and offset against (premium, franchise or income) taxes as provided in subsection (1) above, and are not then needed for purposes of this Act, shall be paid by the Association to the Commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

Comment: Subsection (1) provides an offset against future premium, franchise or income taxes of assessments, over a five year period. The role of the certificate of contribution in the application of the credit, proposed in earlier drafts, has been removed with the view to minimizing the industry's federal tax, a result that may obtain if the possibility of such credit is not viewed as an admitted asset. The timing of the credit is dependent on the year the assessment is paid. It also allows the member insurer to select the applicable tax (premium, franchise or income) against which the credit may be applied and it permits member insurers going out of business to make use of the credit in their final year of operations.

The NAIC model insolvency guaranty bill for property and casualty insurance provides, in section 16, that rates "shall include amounts sufficient to recoup a sum equal to the amounts paid to the Association. . . ." It is obvious that life insurance premiums, and premiums for certain forms of health insurance, cannot be changed on existing policyholders. Thus, recoupment is virtually unattainable through existing policy premium rates and building such assessments into rates for future policyholders is not only impractical but unfair to all policyholders. The only suitable and practical method of recoupment available to companies writing life and health insurance lies in offsets against premium or other taxes on such companies. The method suggested in this section is not only equitable to the companies involved but also reduces the impact on state revenue by the partial offset over a period of years. To the extent the recovery from the insolvent company exceeds the tax credit received, the state would be the ultimate beneficiary. Such equitable treatment of assessment for tax purposes would have additional positive effects: (1) the state legislature would have an additional incentive for providing adequate funds for insurance department personnel and administration, and (2) participation in the economic loss would be shared, to some degree, by the general public rather than solely by insureds, thus minimizing what might otherwise be a penalty on thrift and savings. It may be advisable in some jurisdictions to provide a cross-reference to the premium or other tax statutes to avoid questions of conflicting statutory provisions.

Some states allow this credit and others do not. Accordingly, this section is optional, and the NAIC neither endorses nor rejects the tax credit concept. Each state will wish to consider this provision in the light of its own regulatory experience.

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Section 13. Credits for Assessments Paid (Tax Offsets)- OPTIONAL. 070(b)(2)-(3)

(1) A member insurer may offset against its (premium, franchise or income) tax liability (or liabilities) to this state an assessment described in Section 9(8) to the extent of 20% of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its (premium, franchise, or income) tax liability (or liabilities) for the year it ceases doing business.

070(c)

(2) Any sums acquired by refund, pursuant to Section 9(6), from the ...ciation which have theretofore been written off by contributing insurers and offset against (premium, franchise or income) taxes as provided in subsection (1) above, and are not then needed for purposes of this Act, shall be paid by the Association to the Commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

Comment: Subsection (1) provides an offset against future premium, franchise or income taxes of assessments, over a five year period. The role of the certificate of contribution in the application of the credit, proposed in earlier drafts, has been removed with the view to minimizing the industry's federal tax, a result that may obtain if the possibility of such credit is not viewed as an admitted asset. The timing of the credit is dependent on the year the assessment is paid. It also allows the member insurer to select the applicable tax (premium, franchise or income) against which the credit may be applied and it permits member insurers going out of business to make use of the credit in their final year of operations.

The NAIC model insolvency guaranty bill for property and casualty insurance provides, in section 16, that rates "shall include amounts sufficient to recoup a sum equal to the amounts paid to the Association. . . ." It is obvious that life insurance premiums, and premiums for certain forms of health insurance, cannot be changed on existing policyholders. Thus, recoupment is virtually unattainable through existing policy premium rates and building such assessments into rates for future policyholders is not only impractical but unfair to all policyholders. The only suitable and practical method of recoupment available to companies writing life and health insurance lies in offsets against premium or other taxes on such companies. The method suggested in this section is not only equitable to the companies involved but also reduces the impact on state revenue by the partial offset over a period of years. To the extent the recovery from the insolvent company exceeds the tax credit received, the state would be the ultimate beneficiary. Such equitable treatment of assessment for tax purposes would have additional positive effects: (1) the state legislature would have an additional incentive for providing adequate funds for insurance department personnel and administration, and (2) participation in the economic loss would be shared, to some degree, by the general public rather than solely by insureds, thus minimizing what might otherwise be a penalty on thrift and savings. It may be advisable in some jurisdictions to provide a cross-reference to the premium or other tax statutes to avoid questions of conflicting statutory provisions.

Some states allow this credit and others do not. Accordingly, this section is optional, and the NAIC neither endorses nor rejects the tax credit concept. Each state will wish to consider this provision in the light of its own regulatory experience.

IN THE MODEL, THIS SECTION APPEARS BETWEEN SECTIONS 10C AND 11O.

Section 13. Credits for Assessments Paid (Tax Offsets)– OPTIONAL. 070(b)(2)-(3)

(1) A member insurer may offset against its (premium, franchise or income) tax liability (or liabilities) to this state an assessment described in Section 9(8) to the extent of 20% of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its (premium, franchise, or income) tax liability (or liabilities) for the year it ceases doing business.

070(c)

(2) Any sums acquired by refund, pursuant to Section 9(6), from the Association which have theretofore been written off by contributing insurers and offset against (premium, franchise or income) taxes as provided in subsection (1) above, and are not then needed for purposes of this Act, shall be paid by the Association to the Commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

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(2) Any sums acquired by refund, pursuant to Section 9(6) 070(i), from the Association which have theretofore been written off by contributing insurers and offset against (premium, franchise or income) taxes as provided in subsection (1) above, and are not then needed for purposes of this Act, shall be paid by the Association to the Commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

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April 30, 1981

HAND DELIVERED

The Honorable Patrick Rodey
Chairman, Judiciary Committee
Alaska State Senate
Pouch V, State Capitol Bldg.
Juneau, Alaska 99811

Re: SB 116

Dear Senator Rodey:

This letter is written concerning Senate Bill 116, on behalf of the American Council of Life Insurance, a trade association of major life insurance companies. I am very sorry that I will not be able to attend the scheduled hearing on this bill on Friday the 1st of May, since I will be out of State. Ironically, I was able to attend the Committee's hearing on two previous occasions when the bill was scheduled and the Committee was unable to get to it.

The idea of a guaranty association made up of admitted insurers writing the same kinds of insurance is generally a sound one. The concept has been carefully worked out by the National Association of Insurance Commissioners, and the legislation that you have before you is largely modelled upon their model act. The Director of Insurance or his representative will undoubtedly provide the Committee a section by section analysis of the legislation and an explanation of the way the guaranty association will work, so I will not repeat that information. However, there is one important point in which the administration's draft legislation diverges from the model legislation of the NAIC. The NAIC draft has, in its Section 13, a provision whereby amounts which the life insurance companies are assessed in order to pay, through the guaranty association, the benefits contracted for in policies with an insolvent company can be

recouped by the insurance companies by offsetting such amounts against taxes otherwise due the state. We believe that the tax offset provision is essential, and that its deletion from this draft legislation is unfair.

The guaranty association is basically a device to provide a public service by protecting certain Alaskans from losses that they would suffer because they or persons who have named them as beneficiaries have contracted with a company that then fails. Because the insurance companies have the expertise to adjust, settle, and administer benefits for the kinds of insurance that they sell, it is not unjust to ask them to help by providing those services. However, the Committee should be careful to analyze who should, and can, pay for the cost of providing the benefits. With the tax offset provided in the NAIC model, the cost is spread to the people of the state as a whole. With no offset, the cost is spread to future purchasers of insurance from the remaining solvent, and presumably better managed, insurance companies, or, and more likely, to those companies' shareholders.

In the case of casualty insurance, a guaranty association assessment can be recouped rather quickly by building the assessment into the rate base. The reason that it can be done quickly is that most casualty and property insurance policies are for one year, and rate increases can therefore be passed along without much delay. Life insurance policies, on the other hand, are not subject to rate increases during their term, except as the contract may originally have provided. Thus, in order to pass the cost of the assessments along, rate increases would have to be built into new policies only and recouped over some fairly extensive future time. Because life insurance companies generally write at the same premium rate nationwide, because the policies have such an extensive life, and because life insurance insolvencies are relatively unusual and are one time occurrences, building such items into a rate base is impracticable. Therefore, unlike the property casualty companies, who will normally recoup their assessments promptly, the life insurance companies generally, again as a practical matter, will have to swallow the loss, which of course is then a loss only to the companies' shareholders.

I believe it was consideration such as this that led the National Association of Insurance Commissioners to conclude that a tax offset was justified.

The premium tax paid by insurance companies in Alaska is "in lieu" of corporate income and other similar taxes. Of course, in recent years, many taxes have been repealed. The insurance companies have not asked that the premium tax be repealed. I am not aware of the aggregate amount of money raised by the premium tax, but relative to the state budget, it is certainly not significant. Conversation with Director Moore has led me to believe that his concern is not with loss of revenue or burden of these fairly rare insolvencies upon the people of the state, but is rather that the presence of a tax offset would take away a cost incentive for the companies to attempt to identify and report to the director in an impending or threatened insolvencies. Put another way, the assessments would be used as threatened punishments for failing to anticipate or somehow assist in preventing the failure of a business competitor. While the companies are certainly willing to cooperate fully in protecting Alaska citizens from the individual impacts of a company insolvency, once that insolvency has been recognized by the director and declared by a court of competent jurisdiction, they feel very strongly that it is inappropriate for them to be called upon to "blow the whistle" on a competitor company which they suspect may be financially weak, although it has not yet been adjudged insolvent. If the company reported turned out not to be insolvent, the companies attempting to cooperate with the director would be concerned about allegations they had slandered the credit of the subject company. Further, if the solvent companies worked together to call attention to weak companies, there are various scenarios that can be imagined whereby their activity could be considered anti-competitive. While there is presently in place federal legislation which exempts the business of insurance from the anti-trust statutes, the insurance industry is very much aware that this exemption is under constant scrutiny. While I certainly cannot represent to have taken a poll among life insurance companies on the question, one has to wonder whether the companies would consider it in their best interest to try to anticipate, report on, or work in concert with regard to financially weak companies, even if they knew they would have to share the cost of the failure. Again, we would submit that such considerations support a concept of a guaranty association limited in its function to protecting Alaskan citizens from insolvencies once they have been clearly identified by appropriate authority. Thus, a tax offset is both justified and equitable to all concerned.

Because of the Council's very grave concern about the absence of a tax offset provision, it is opposed to the passage of SB 116 unless amended to add that provision.

Again, I am very sorry that I am not going to be in town at the time this bill is heard. I fear that my concerns, which are being dictated the evening before I leave town, and which will not even be read by me before being signed by one of my partners on my behalf, will seem strident or unreasonable. I would much prefer to have the opportunity to discuss the bill and our concerns with it, with the director present, in front of the full Committee. If it is possible to do so, consistent with any commitments that have been made concerning moving the bill out of Senate Judiciary, I would greatly appreciate the bill being held until that opportunity exists.

I want to thank you and the members of the Committee for considering these comments.

Sincerely,

M. T. Thomas, for the
American Council of Life Insurance

MTT:sd

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

A G E N D A

Senate Judiciary Committee Hearing
Monday, April 13, 1981
Butrovich Committee Room - 1:30 p.m.

CALL TO ORDER

LEGISLATION BEFORE COMMITTEE:

SB 287 "An Act requiring that evidence of motor vehicle liability insurance be furnished to the Department of Public Safety when vehicle registration is made or renewed; and providing for an effective date."

Scheduled Testimony:

Senator Mike Colletta

Mike Thomas
American Insurance Association

Don Koch
State of Alaska
Division of Insurance

Bill Brown
Department of Public Safety
Division of Motor Vehicles

LEGISLATION BEFORE COMMITTEE:

SB 116 "An Act relating to the creation of the Alaska Life and Disability Insurance Guaranty Association; changing Rule 62(a), Rules of Civil Procedure by providing for an automatic stay of 60 days in a liquidation, rehabilitation, or conservation proceeding; and providing for an effective date."

Not heard - rescheduled 5-1-81

Scheduled Testimony:

Don Koch, Division of Insurance

ADJOURN

Rule 62. Stay of Proceedings to Enforce a Judgment.

(a) **Automatic Stay—Exceptions.** Except as to judgments entered on default or by consent or on confession, and except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal or proceedings for review.

(b) **Stay on Motion for New Trial or for Judgment.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) **Injunction Pending Appeal or Review.** When an appeal is taken or review sought from an interlocutory or final judgment or order or [illegible]ision granting, dissolving or denying an injunction, the court in its discretion may suspend, modify, restore or grant an injunction during the pendency of the appeal or the proceedings for review upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) **Stay Upon Appeal or Proceedings for Review.** When an appeal is taken or review sought the appellant or petitioner by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond

Senate Bill 116
Section by Section Commentary

Section 1. AS 21.21.050(7)

AS 21.21 is the chapter in the insurance code dealing with investments of insurance companies. .050 deals with limitations by kinds of investment to provide for diversity in the investment portfolio of an insurer. This change adds notes and other evidence of indebtedness of the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) to the miscellaneous category of investments which are limited to 10% of assets.

Section 2. AS 21.21.250(c)

AS 21.21.250 defines miscellaneous investments and is changed by adding notes and other evidence of indebtedness of the ALDIGA.

Section 3.

Section 21.79.010. PURPOSE.

The basic purpose of this model act is to protect policyholders, insureds, beneficiaries, annuitants, payees and assignees against losses, both in terms of paying claims and continuing coverage, which might otherwise occur due to an impairment or insolvency of an insurer. Unlike the property and liability situations, life and annuity contracts in particular are long-term arrangements for security. An insured may be of impaired health or an advanced age so as to be unable to obtain new and equivalent coverage from other insurers. The payment of cash values alone does not adequately meet such needs. Thus, it is essential that coverage be continued. In like manner, an insured may be unable to obtain new health insurance or at least he may lose protection for prior illnesses.

Section 21.79.020. SCOPE.

This section outlines what the bill does and does not cover. Basically, it covers those policies of life, disability, and annuities written by insurers which have submitted to regulation in this State. Policies of nonadmitted insurers are not covered. The term "disability" also includes "accident and health," "sickness and accident" and more.

Subsection (b)(1) is directed toward variable policies and contracts. That portion of the contract where the risk is borne by the policyholder is excluded. However, the obligations of the insurer for mortality and expense guarantees are covered.

Subsection (b)(2) excludes deductibles from coverage.

Subsection (b)(3) exempts the reinsurance business of the impaired or insolvent insurer other than reinsurance for which assumption certificates are used.

Subsection (b)(4) excludes Blue Cross. The logic to this is that Blue Cross is a nonprofit health care provider. It markets prepaid health care through participant providers who in effect guarantee the delivery of the contracted service. The financial structure of Blue Cross is such that they cannot be expected to participate in insolvencies of profit making corporations.

Some additional limitations on the scope are found elsewhere in the act. For example, ALDIGA assumes no liability concerning policies of nonresidents issued by a foreign or alien insurer or for policies of residents issued by a foreign or alien insurer, if such insurer is domiciled in a state having a comparable act (See Section .060). These limitations are not found in the scope section, since it provides exclusion from the entire act and not just portions of it.

Section 21.79.030. CONSTRUCTION.

This section calls for liberal construction.

Section 21.79.040. CREATION OF THE ASSOCIATION.

Subsection (a) creates three accounts, for both administration and assessment purposes, the disability insurance account, the life insurance account, and the annuity account. These three categories of coverage are significantly different, so that persons protected by virtue of one account should not be required to pay for the protection afforded persons protected by the other accounts.

Supplementary contracts are covered under the account in which the basic policy is covered for purposes of assessment. For example, settlement options under a life insurance contract would be covered under the life insurance account.

Section 21.79.050. BOARD OF GOVERNORS.

Subsection (a) provides that the number and term of the members of the Board of Governors shall be determined in the plan of operation. To avoid problems in initially selecting the board, this section includes a provision for a start-up meeting, which shall be called by the Director of Insurance. To determine voting rights at the organizational meeting, each member insurer would have one vote. Thereafter the plan of operation will establish the voting procedures, bylaws, etc., governing the conduct of ALDIGA.

Section 21.79.060. POWERS AND DUTIES OF THE ASSOCIATION.

Subsections (a)-(f) constitute the heart of this model act. These subsections detail the duties of the association by distinguishing: (1) between those insurers whose "impaired" status is attributable to a finding by the Director prior to an order of liquidation, and those whose "insolvent" is attributable to such orders; and, (2) between insolvent domestic insurers and insolvent foreign or alien insurers.

Prior to an order of liquidation, rehabilitation or conservation, ALDIGA has no liability. However, upon a finding by the Director that the insurer is impaired under (a), ALDIGA is authorized to guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of the impaired insurer to assess member insurers the amounts necessary to effectuate this activity. ALDIGA would presumably do so in those situations where early assessments would prevent a more costly insolvency later, such as liquidation. ALDIGA, as a condition of its assistance, may negotiate any requirements or safeguards it deems necessary so long as they are approved by the Director and are accepted by the impaired insurer and do not impair the contractual obligations to the policyholders, insureds, and beneficiaries. In the absence of any court order, before any negotiations become final the impaired insurer's acceptance of the terms of ALDIGA is necessary. Through this approach, a mechanism is provided for early action by ALDIGA before the situation further deteriorates. The policyholder, insured, and beneficiaries are protected, claims are paid and coverages continued, for example, through rehabilitating the impaired insurers, or reinsuring the policies elsewhere. Furthermore, the statutory language is highly flexible as to what techniques the association may employ so as to be able to meet a variety of situations.

Under (b) and (c), if the insurer acquires its insolvency status as a result of a final order of liquidation, rehabilitation or conservation, the association shall, rather than may, guarantee, assume, reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of the insolvent insurer and to assure payment of contractual obligations.

It should be noted that the duties of ALDIGA vary with the kind of insurer. If it is a domestic insurer then all the covered policies must be continued and the contractual obligations met (See (b)). However, if the insolvent insurer is a foreign or alien insurer, contractual obligations which apply to residents of the State must be paid or continued if they are not covered by a similar law in such insurer's domiciliary jurisdiction. (See (c) and (d))

Subsection (d) avoids duplication of coverage by providing that the association shall have no liability for any covered policy of a foreign or alien insurer domiciled in the State having similar protection by statute or regulation. If every state adopts the model act, each state association would protect only covered policies of domestic insurers.

Subsections (e) and (f) relate to the imposition of policy and contract liens, moratoriums, etc. These are devices which have been used in the past in connection with the continuation of the insolvent insurers' coverage. Since, by definition, the assets of the insolvent insurer were not adequate to support its contractual obligations, liens were used to reduce his obligations to a level where the assets would be adequate. However, in the past there was no means to infuse additional funds where needed to make whole policyowners, insurers and beneficiaries. The purpose of the model act is to provide against losses due to insolvent insurers by prompt fulfillment of the insolvent insurer's contractual obligations. To the extent that liens and moratoriums are sanctioned, the model act retreats from this principle. Of course, in situations prior to a court order there may be some question whether a lien or moratorium could be legally imposed so as to impair the contractual obligations of the insurer even in the absence of the specific provisions of this act.

On the one hand, it can be argued that if liens or moratoriums cannot be used there will be a run on the assets of the impaired company. In the past this seems to have been true. However, unlike the past, the performance of the insurer's contractual obligations would be guaranteed under this act.

Also, the standard nonforfeiture laws provide that an insurer in its policies shall reserve the right to defer the payment of cash values for a period of six months after demand thereof with surrender of the policy. Similarly, it is common to require an insurer to reserve for a period of six months the right to defer the granting of any policy loan (other than to pay premiums). For these various reasons, the model act does not encourage use of these liens and moratoriums in ordinary situations.

On the other hand, in periods of severe liquidity problems and economic stress, perhaps of even catastrophic proportions, such devices may become essential. While the model bill concentrates on the protection of those to whom the impaired insurer has a contractual obligation, the impact of assessments on the policyholders of assessed companies is also an important consideration, such as the significant sales of depressed value assets in a tight money market. Consequently, Subsection (e) authorizes ALDIGA to cause to be imposed liens and moratoriums or other similar means.

1. If the court finds that the amounts assessable are less than what is needed, or that the economic or financial conditions as they affect member insureds are sufficiently adverse to render the use of such tools in the public interest; and,

2. The court approves the use of a specific lien, moratorium, etc.

This provides a highly flexible mechanism while, at the same time, it avoids impairing the contractual obligations of the impaired insurer as a routine manner under ordinary economic and financial conditions. The provision also recognizes that while contractual rights of policyowners may not constitutionally be impaired, when the insolvent insures obligation under the contract as assumed by another insurer, the policyowner has two options. The policyowner may accept the new contract with such liens or moratoriums as permitted by the court, or accepts such pro rata payment as is available from the State of the insolvent insurer.

Furthermore, to provide added flexibility in a temporary situation, such as a run on assets, Subsection (f) provides for temporary moratoriums or liens on payment of cash values and policy loans, but not on the payment of other benefits, with the court's approval.

Subsection (g) permits the Director to assume the duties of ALDIGA if they fail to exercise their authority under the act within a reasonable period of time.

Subsection (h) permits the Director to request ALDIGA member assistance with impaired or insolvent insurer issues.

Subsection (i), to enable ALDIGA to protect its interest and the best interests of the policyholders in the handling of an impairment or insolvency, provides that ALDIGA shall have standing to appear in a court with jurisdiction over an insolvent insurer and such standing will extend to any matters concerning the duties of ALDIGA.

Subsection (j) provides for assignment of rights of a beneficiary of benefits under this act. It also establishes subrogation rights for ALDIGA and provides that ALDIGA's right to assets of the insolvent insurer is the same as any other person entitled to benefits under this act.

Subsection (k) places a limit on the liability of ALDIGA as respects a single life.

Subsection (l) allows ALDIGA to contract, sue or be sued, borrow money, employ persons, negotiate, act as a domestic life or disability insurer and take legal action to avoid payment of improper claims.

Section 21.79.07C. ASSESSMENTS.

Subsection (b) outlines different assessment methods for assessments needed to cover foreign or alien insurers and for assessments needed to cover domestic insurers. When a foreign or alien insurer is impaired or insolvent, the member insurers will be assessed on the basis of the premiums they write in the State. This corresponds to the association's liability which is limited to covered policies of residents when the policies are issued by a foreign or alien insurer. When a domestic

insurer is impaired or insolvent, the total amount to be assessed will be allocated to each state in which the impaired or insolvent insurer was authorized at any time to transact insurance in the proportion that the impaired or insolvent insurer premium income in each state for the last calendar year preceding the assessment in which it had premium income bears to its total premium income in such calendar year. The amount allocated to each state will then be assessed to the member insurers in the proportion that the member's premium income from such State for the calendar year preceding the assessment bears to all premium income of member insurers from that State in the calendar year preceding the assessment. Thus, in making the pro ration it is necessary to look to the premium income of the impaired or insolvent insurer in the last year it actually received such income, but in determining each company's assessment, the association would look to the last calendar year preceding the assessment. In any case, assessments would be made separately for each account and the amount assessed from each account will be in the proportion that the total premiums of the impaired or insolvent insurer bear to the premiums of the impaired or insolvent insurer from the kind of insurance in the account.

For example, if a total assessment of $100,000 is needed for the disability insurance account, and the domestic impaired or insolvent insurer received 50% of its premium from state X, then 50% of $100,000 or $50,000 will be allocated to state X. Member insurers receiving premium income from state X will then be assessed in proportion to their share of that state's market, as reflected in premium income. For example, if member insurers receive $30,000,000 in premium from state X and a certain member received $3,000,000 of that amount, then 3/30 of the $50,000 assessment will come from this company, that is, the company will be assessed $5,000 (3/30 = 1/10 and 1/10 of $50,000 is $5,000).

This assessment system should be relatively simple to administer. More importantly, it provides a base broad enough to meet fairly large demands on the association. Equally important, since it reflects the market share of each member in the state considered, it is an equitable method of apportioning the burden of the assessments.

The maximum assessment per year may be varied from State to State depending on the size of the base and the concentration of the business. The two percent maximum should produce an adequate amount, while at the same time, not impose an undue strain in any given year on the assessed companies and their policyholders. In order to prevent further financial difficulties caused by an assessment, Subsection (g) permits abatement of assessments when financial difficulties might result.

Subsection (h) provides some limitation on the amounts which can be assessed in any given year. If these limits are reached, to fulfill its responsibilities, ALDIGA is empowered to borrow funds which later can be repaid out of future assessments.

Subsection (j) provides that a member insurer may consider, in its premium rates and dividends scale, an amount reasonably necessary to meet its assessment obligations. This makes it clear that the cost can be ultimately passed on to the policyowners, that is, to persons who enjoy the protection provided by the act.

Subsection (k) provides that ALDIGA shall issue to assessed insurers certificates of contribution in the amount levied. The certificates may be carried by an insurer in its annual statement as an asset in such form, amount and period as may be approved by the Director. By permitting the company to carry these certificates as an asset, to the extent of their estimated value, the impact on member insurers will be lessened.

Section 21.79.080. PLAN OF OPERATION.

The NAIC has adopted a model plan of operation which is available in our office should you wish to have a copy of same. It is anticipated that ALDIGA, upon passage of this act, would substantially adopt the provisions contained in this model plan of operation.

Section 21.79.090. POWERS AND DUTIES OF THE DIRECTOR.

Subsection (b) requires that the Director give notice of an impairment to the impaired insurer, and hence to its stockholders, and serve a demand that impairment be made good. If the company and stockholders fail to raise the necessary funds, this will be a factor bearing upon the stockholders' ownership rights under Section 110(d).

Subsection (d) provides that the Director shall be appointed liquidator or rehabilitator of a domestic insurer and conservator of a foreign or alien insurer being liquidated or rehabilitated. Requiring the Insurance Director to be the receiver, it is necessary to obtain the benefits of a "reciprocal" state under the Uniform Insurers Liquidation Act, which Alaska adopted in 1966. See AS 21.78.020, .030, .130-.200 and .330(2)-(13).

Proceedings for the liquidation, rehabilitation, or conservation of insurers present several difficulties which the Uniform Insurer's Liquidation Act seeks to solve. Briefly, the difficulties have two sources. First, in some states the liquidator, rehabilitator or ancillary receiver may be a person unfamiliar with insurance regulation. Inefficient administration of the proceedings may result.

Second, the laws of more than one state may be applied to the proceedings particularly regarding ownership of assets and preferences for payment. The result is confusion and inequity in the collection and distribution of the assets. The Uniform Insurers Liquidation Act meets the first source of problems by designating the insurance Director as the receiver of a domestic insurer or the ancillary receiver of a foreign

insurer. To solve the problem of multiple laws and marshalling of assets, the Uniform Act gives the receiver title to the assets. The ancillary receiver is then required to forward all assets to the receiver. The Uniform Act also details laws under which preferences and the distribution of assets will be determined.

In drafting this model guarantee bill, the NAIC made particular effort to the extent possible, to avoid disrupting State liquidation and rehabilitation of laws.

Section 21.79.100. PREVENTION OF INSOLVENCIES.

This section basically establishes a dialogue between the Director and ALDIGA, concerning impairment and insolvency issues. It also enables ALDIGA to cause an examination of a suspect insurer, which is the primary tool in determining financial status.

Section 21.79.110. MISCELLANEOUS PROVISIONS.

Subsection (b) requires that the records be kept of the negotiations and actions by the association. ALDIGA should be held publicly accountable for its actions. On the other hand, effective handling of the rehabilitation or liquidation effort requires minimum publicity. Thus, such records will be made public only after the liquidation, rehabilitation or conservation proceeding is terminated, the impairment or insolvency is terminated or there is a prior order by a court of competent jurisdiction.

Since this act imposes obligation upon the association to continue coverage for policyholders of insolvent insurers, the assets of the insolvent insurer ought to be used, to the extent available, for the purpose of continuing such coverage. Subsection (c) is designed to accomplish this purpose.

Subsection (d), in conjunction with Section .090(b), is intended to prevent the shareholders of an impaired insurer from sitting back and doing nothing and then reaping the benefit of funds put up by the association. These stockholders should not obtain a more advantageous position than they would have occupied in the absence of this act. The court is empowered to modify and distribute the ownership rights of impaired insurers in an order to do equity as between the interested parties.

Subsection (e) is designed to recapture excessive dividend payments to affiliates that exercised control over the insolvent insurer. The NAIC Model Holding Company Regulatory Act which has been adopted in Alaska, in large measure, prevents improper distribution of dividends by an insurer to its holding company, since extraordinary dividends are subject to the prior approval of the Director, and ordinary dividends are required to be reported to the Director. If, however, dividends are

paid under circumstances that the insurer should have recently known that such payment could reasonably be expected to affect its ability to perform its contractual obligation to its policyholders, the holding company and affiliates should be required to repay such dividends subject to certain reasonable limitations.

Section 21.79.120. EXAMINATION OF THE ASSOCIATION, ANNUAL REPORT.

This section enables the Director to examine ALDIGA. ALDIGA must also provide an annual report.

Section 21.79.130. TAX EXEMPTIONS.

ALDIGA is tax exempt except for real property taxes. ALDIGA is not a profit making organization, rather, it is a guarantee mechanism thus its tax exempt status.

Section 21.79.140. IMMUNITY.

ALDIGA will be engaged in some very sensitive issues when performing its duties under this act. The immunity provides protection while performing these duties.

Section 21.79.150. STAY OF PROCEEDINGS.

See Section 5.

Section 21.79.900. DEFINITIONS.

This act covers "insolvent insurers" which are difined to include an insolvent insurer under an order of liquidation issued by a court of competent jurisdiction. An "impaired insurer" is an insurer deemed by the Director to be unable, or potentially unable, to fulfill its contractual obligations.

This model bill enables an association to become involved to the actual court order as noted in Section .060. The finding by the Director that an insurer is impaired, even though not subject to a court proceeding, serves as a triggering mechanism enabling the association to function.

Subsection 10 defines "resident" for the purposes of determining on whose behalf the association may become liable under Section .060, if a foreign or alien insurer becomes insolvent.

Section 4. Section 21.36.035. PROHIBITED ADVERTISEMENT IN INSURANCE SALES.

This section makes it a prohibited unfair trade practice for any person to make use, in any manner, of the protection afforded by this act to aid him in the sale of insurance. This would extend to a person with

an interest in a policy who uses the presence of ALDIGA to support the value of the policy as collateral in a loan transaction, which action would be prohibited. The legitimate function of advertising the existence of the act by the guarantee association and the Director, conduct which would be particularly desirable in notifying policyholders of a company found to be insolvent, or by insurers in public service institutional advertisements, would be permitted. Enforcement and penalties for violation of the section are found in the Unfair Trade Practices Act (AS 21.36).

Section 5. AMENDING CIVIL RULE 62(c).

Section 21.79.150 provides for an automatic stay of 60 days in actions involving the liquidation, rehabilitation or conservation of an insolvent insurer.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB-116
Title An act relating to Alaska Life and Disability Guaranty Association
Requested by Governor Date 2-6-81

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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME	0					
PART TIME	0					
TEMPORARY	0					

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

IV. DATE 2-6-81 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. 12/80

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February 17, 1981

RECEIVED
FEB 18 1981

Hon. Patrick Rodey, Chair
Judiciary
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 116

Please notify the undersigned of any hearings in regard to the above captioned matter.

Sincerely,

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

M. T. Thomas

MTT/dh

Called 4-10 for more hearing 3/13

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 19, 1981

Mr. Michael T. Thomas
Robertson, Monagle, Estaugh
& Bradley
Attorneys at Law
P. O. Box 1211
Juneau, Alaska 99802

Dear Mike:

Thank you for your recent letter concerning SB 116. The Judiciary Committee conducted hearings on this legislation, but no action was taken.

A committee substitute is now being prepared to address some of the issues raised in committee, and I will have my staff contact you when a future hearing date is scheduled.

Sincerely,

Pat

Senator Patrick M. Rodey
Chairman

PMR/ods

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Senator Patrick Rodey
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

I feel I owe an apology to you and to the members of your committee. You and your staff have been unfailingly courteous in notifying me of upcoming hearings on bills relating to the insurance industry, something which I have greatly appreciated. Recently you had a hearing on SB 116, a bill on which I had written a letter on behalf of the American Council of Life Insurance and had requested to be present when it was heard. I got due notice of the hearing, but then on the day of the hearing got myself entangled in another proceeding which went straight through from the morning and which I was unable to walk out of.

I know from discussions I have had since, that Director Moore was, as I would have expected, more than fair in presenting the alternatives with regard to the guaranty association bill, and I appreciate the fact that the committee fully considered the merits of the council's position, even though I mysteriously did not show up.

I regret not having been there. I treat legislative hearings as pre-empting other matters whenever it is at all possible to do so. I did not want you to think that the matter was not important to me, or that I did not appreciate your care in hearing out the affected parties to legislation before your committee.

Sincerely,

Michael T. Thomas

MTT/ke

SB

117

R. Holmes Johnson, M.D., D.A.B.F.P.
Family Practice

HOLMES JOHNSON CLINIC
Box 1727
Kodiak, Alaska 99615
486-3237

March 4, 1981

RECEIVED
MAR 10 1981

Honorable Bill Ray
Senate Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Senator Ray:

Senate Bill 117 relating to the hours of sale of alcoholic beverages is a very definite step in the right direction for reduction of alcohol abuse. This is not intended to say that it will have any influence on alcoholism, per se, but it definitely will cut down the hours of abuse. Most of the accidents, homicides and suicides associated with the use of alcohol occur in the early morning hours and this would, at the least, send people home to do their drinking if they wish to continue. Most of the alcohol abuse occurs, however, in the presence of company.

I have worked in alcoholism for many years, 26 to be exact, in an area where the problem is by no means unknown. I was a charter member of the Kodiak Council on Alcoholism and involved in establishing the initial treatment program in Kodiak. I am now chairman of the governor's review board on alcoholism. All of these identifying features are presented to convince you that I should know something about the subject.

I would appreciate your favorable consideration of this bill.

Sincerely,

R. Holmes Johnson, M.D.

RHJ:jlb

CC: Sen. Pat Rodey
Sen. George H. Rohman
Sen. Charles H. Parr
Sen. Don Bennett
Ron Hammett
Kodiak Mirror
Kodiak Council on Alcoholism

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: File

FROM: Kevin K. Bruce

DATE: March 9, 1981

SUBJECT: S.B. 117

A poll by Senator Stimson on the bill before the Senate had the following results

Should the Legislature limit the hours of sale of intoxicating beverages?

Yes - 29
No - 15

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811

February 6, 1981

The Honorable Patrick Rodey
Chairman
Senate Judiciary Committee
Room 125 - Capitol Building
Juneau, Alaska

Re: Senate Bill No. 117

Dear Senator Rodey:

Senate Bill No. 117, an Act relating to the hours of the day during which patrons may be present or alcohol sold or consumed on licensed premises, was introduced in the Senate on January 29, 1981 and was referred to the Senate Judiciary Committee.

For the consideration of the Senate Judiciary Committee, I am enclosing a copy of a Fiscal Note prepared by Mr. Patrick L. Sharrock, Director, Alcoholic Beverage Control Board, Department of Revenue, Anchorage.

Sincerely,

R. D. Stevenson

R. D. Stevenson
Special Assistant

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Patrick L. Sharrock, Director
Alcoholic Beverage Control Board
Department of Revenue
Anchorage, Alaska

04-D2LH