

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2520 SJ SB 346 - SB 360

SECTIONAL ANALYSIS - DRAFT "AN ACT RELATING TO THE TREATMENT OF MENTALLY ILL PERSONS." by Senators Josephson and Halford

NOTE: Throughout the bill draft, the age of majority has been changed from 14 to 18, commitment time periods for computation purposes have been changed from 21, 90 and 120 days to 30, 90, and 180 days, and neutral words have been substituted for gender pronouns.

Section 1 Provides a word change to limit the endless paperwork from patients transferring in and out of voluntary status in order to leave against medical advice.

Section 2-5 Changes the age of majority under the title from 14 to 18, changes the commitment period for minors from 21 to 30 days, and eliminates sex gender pronouns. Section 4 also changes the term "immediate" to "timely" in order to avoid inoperable situations (eg. if a patient wants to leave in the middle of the night, the facility must call in a psychiatrist). Pg. 3, line 8 changes "notice of intent" to "request".

Section 5 (3) adds language to admission procedures to allow treatment of those minors whose condition would worsen without treatment.

Section 6 Provides options for the release of a minor, and options for the facility to keep a minor who is in danger of causing serious harm to self and others.

Section 7 Adds "mental health professional" to current law allowing a peace officer to take someone into custody for emergency detention. Also limits the use of correctional facilities for the mentally ill to situations requiring protective custody while awaiting transportation to a treatment facility.

Section 8 Changes the commitment time period from 21 to 30 days.

Section 9 The purpose of this section was to move the term "gravely disabled" after "mentally ill" (pg. 6, line 21). Other changes relate only to neutral pronouns and changing commitment time periods.

Section 10 Changes the 21 day commitment period to 30 days, and substitutes neutral pronouns in the section.

Section 11 Changes the commitment time period from 21 to 30 days. Subsection (4) relaxes the rules of evidence and allows for informal court proceedings. Subsection (9) allows respondent to call experts and witnesses to testify.

*Section 5 - subsection (c) allows
an additional 30 day voluntary
admission of a minor.*

- Section 12 Changes 21 day commitment to 30 day, and substitutes sex neutral pronouns.
- Section 13-14 Changes commitment time periods from 21 to 30 days; and from 120 days to 180 days. Pg. 12, line 9 corrects typo.
- Section 15 Adds a new section to the statute allowing a designated facility to administer medication or treatment that is consistent with Article 9 - Patients Rights.
- Section 16 Adds new language to the section relating to unauthorized absences to provide that the facility must notify the parent or guardian or a person threatened by the patient immediately upon discovery.
- Section 17 Adds a new section relating to the change of admission status from involuntary to voluntary if the responsible physician agrees that it is appropriate and that the change is made in good faith.
- Section 18 Adds to provisions for computation of time, specific references to AS 47.30.715 (Acceptance of order), and AS 47.30.685. Current interpretation of the law requires that a judge must be brought to the facility at these times, and many are unwilling to do so on a holiday or weekend. Also changes commitment time periods to be consistent with other sections.
- Section 19 Amends section relating to liability to include a mental health professional and transportation, to be consistent with Section 7.
- Section 20 Amends the section of law relating to informed consent for unusual procedures, to include informed consent of the parent or guardian in case the patient is unable to give informed consent.
- Section 21 New language specifies that the discharge plan shall be shared with the parent or guardian.
- Section 22 Adds a new section to patients' rights to include the right to a proper diet.
- Section 23 Limits the rights of the patient in areas of visitors, mail and access to a phone if the professional person in charge determines that it is not in the best interest of the patient or will cause harm to the patient or others.
- Section 24 Allows access to records to a law enforcement agency under special circumstances.
- Section 25 Adds federal facilities to the definition of "evaluation facility."

- Section 26 Expands the definition of "gravely disabled" to include persons who are not in imminent danger but whose lack of treatment would cause deterioration of their condition.
- Section 27 Expands definition of "likely to cause bodily harm" beyond recent attempts, to include threats and likelihood of injury in the near future.
- Section 28 Changes the requirements for a nurse to be classified as a mental health professional, as there are only two in the state with a Master's Degree in Psychiatric nursing. Changes the language for the qualifications of a Psychologist and Psychological Associate to conform with their licensing statutes.

Senate Health, Education & Social Services Committee
October 14, 1983
Anchorage

TOPIC: Mental Health Commitment Bill (Work draft of "An Act relating to the treatment of mentally ill persons.")

ATTENDANCE: Senators J. Josephson (Chairman), R. Halford
Excused - P. Fischer; Absent - V. Fischer, H. Moss

The hearing was commenced at 9:15 by Chairman Josephson.

Introductory remarks by Chairman Josephson:

Previously we've heard testimony in Anchorage and recently in Fairbanks on this issue.

This new draft incorporates ideas from Department of Health and Social Services, family groups and others, particularly those who work with troubled children.

New draft incorporates these changes: involvement of correction system is reduced in terms of dealing with the mentally ill; age change from 14 to 18; time computations changed from 21-90-120 days to 30-90-180 days for commitment periods; commitment period for minors changed from 21 to 30 days; records can be made available to law enforcement agency if substantial concern over any danger to community; qualifier added to right to privacy and personal possessions - if professional in charge determines not in the best interest of patient or will pose a threat to safety, visitors and telephone calls can be denied; approval of psychologist would be added requirement for patient wanting to change from involuntary to voluntary; court proceeding would be as informal as possible; family and guardians would be notified if patient is absent without leave; form consent required of parent or guardian of patient's right relating to alternative treatments; and notification of parent or guardian of discharge plan.

Other areas you may wish to consider today; hearings for minors; equal protection of the law relating to minors; time period commitment for minors; designated facilities; involuntary outpatient commitment; use of correctional system for mentally ill; and transportation costs for voluntary committed people where cost: are paid for as required by statutes.

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Jerry L. Schraider, M.D., Alaska Psychiatric Association

Appreciate the hearing being held, general reaction to working draft is supportive.

Have often been frustrated and confused over commitment law, mental health professionals are not all legalistically minded, don't have available legal counsel when working in these situations (often crisis situation) and must proceed best we can in interest of patient. Because of confusion, believes there's been some people that should've been committed who were not.

Will study draft further and hopes it will be submitted as legislation.

170 Ed Essa, Staff, Rep. Mae Tischer

Submitted letter addressed to Senator Josephson by Rep. Tischer stating that extensive research has suggested that nutritional deficiencies have a correlation with mental illness and that when deficiencies are identified and treated, improvements in the mental health of clients are made. Propose that the draft bill require extensive and mandatory nutritional analysis of each client be made upon admittance. This way the client is treated both mentally and physically.

190 Deborah B. Geeseman, M.D., private psychiatrist (formerly did work with children at API)

Supports most of what's in the bill. Suggested minor changes - 1) Pg 5, ln 19; instead of "21 days" should be 30 days. 2) Pg 4, ln 7; "the person" should be self.

Need a better working relationship with police force and understanding of what goes on with commitment laws.

Admission of minors - child under 14 cannot remain in hospital for evaluation or treatment for no more than 21 days (under current law) without having a commitment hearing. An adult who wants to be voluntary committed may stay in hospital as long as they want or treatment facility deems necessary. Then if they want to leave hospital, it becomes a legal issue.

For children, often a good evaluation cannot be made until after 3-4 weeks. Limited resources are available for treatment of children in Alaska. Only have one facility for extensive psychiatric treatment. Have some facilities for conduct and behavioral management of children (but full and have a waiting list).

260 Supports change in age from 14-18.

Pg 2, lns 23-29; not sure you need any of these three criteria, one just needs to make sure the person is mentally ill or gravely disabled. Or if it remains in #3 (pg 3, ln 1) should be "deteriorate further if" not "treated" (add not to sentence).

290 Sen. Josephson - While at API you noted that severe psychosis does not appear that often below the age of 14, correct?

Yes.

Sen. Josephson - What additional facilities do you feel Alaska needs for young children?

Difficult in state with our small population and distance from other states (where we could jointly share use of facilities). Presently we don't have a sizeable population of psychiatric young children. When we do, they will need a place, the only facility we have now is API. Would like to see other facilities that would address more extensively psychiatric needs of children.

As draft now stands, court has to get involved in 30 days, recommends 30 days be taken out. child could be a voluntary patient.

Many times children need evaluation when they encounter some trauma (ex: divorce of parents). If that evaluation goes beyond the time limit set, they could end up with commitment as legal statement on their record. If it remains on their record, can hamper their future.

Pg 3, Section 47.30.695; support it but has trouble with the wording. #2, lns 18-21, part (a)(b) (lns 22-29) - believes it to imply if child is dangerous, can still discharge them against medical advice. Dosen't feel its consistant. #2, ln 18; should read "treating physician," release of (should be added) "the minor" would be seriously detrimental to child's health that (should be added) "the treating physician may". (b) lns 26-29 the minor is likely to cause serious harm to self or others, or there's reason to believe the release could place the minor in immediate danger (should be added) "refuse to discharge".

60 Joseph Reum, Handicapped Services Coordinator, Municipality of Anchorage

Pg 4, ln 26 - "commitment hearing, to be held if needed", Who determines need?

Sen. Josephson - Depends whether patient is voluntary or involuntary.

80 Dr. Conrad, Superintendent, API

Submitted memorandum on admission statistics for FY'83.

Out of 1013 admissions, 500 were voluntary, 36% came involuntary under Title 47. Out of 100 involuntary patients, 73% have dropped out of involuntary channel before 72 hour limit.

Agree with Dr. Geeseman's comment on page 3 that paragraph 2a is inappropriate, not allowed that option with an adult.

Under present statute, cannot release information on history of violence to law enforcement agencies. In our judgement, release of this information (when there's concern about safety) might be helpful.

140 Patient would be better served by expeditious entry into treatment using physician's certificate. Most times used is after a suicide attempt.

150 Sen. Ha'ford - In analysis of American Psychiatric Association guidelines, we don't allow certain types of evidence, we protect communication between patient and doctor. What kind of a problem does this bring up in involuntary commitment?

Has caused a problem by not allowing hearsay evidence at commitment hearing. Often it's highly relevant and meaningful evidence but due to rules of evidence not allowed because it's hearsay.

180 Often relatives and other people are frightened to testify for fear the person being committed will hold a grudge or seek revenge later. Also consider some people (to testify) live far away (would be expensive for transportation cost).

200 Sen. Josephson - What happens during, example a domestic conflict and people exaggerate testimony or state it falsely?

When it does occur, then don't rely on element of danger but fall back on object of evidence of mental illness. Do not proceed to commitment hearing if lacking evidence of mental illness.

210 In vast majority of cases, most do not go forward to hearing, and where there is mental illness, majority of patients accepts need for treatment. When cases do go to court, public defenders and probate masters become very involved.

240 Sen. Josephson - What is treated as confidential?

Commitment hearing itself is confidential.

260 David D. Samson, M.D., Psychiatric Supervisor, Anchorage Community Mental Health Center.

Mentally ill are more prone to be brought in for disturbing peace, public nuisance kinds of things, where their liberties are not essentially protected.

Concept of outpatient commitment should be addressed. What do you do when outpatients don't show up for their scheduled appointments?

Generally supportive of draft and comments that have also been made.

PART III

Voluntary medication on outpatient is a problem. Sometimes people are crafty enough to manipulate the system and be released (these are the dangerous ones).

30 Natalie Gottstein, Executive Director, Alaska Mental Health Association

Commends Committee for making changes, particularly inclusion of physician to be able to institute commitment procedures and redefinition of gravely disabled.

Pg 2, ln 10; concerned about definition of "timely", what's considered timely?

Dr. Conrad - Would interpret to be 8-12 hours.

70 N. Gottstein - Pg 16, ln 5; definition of mental health professional - important people working in the bush (social workers, etc) be included in this definition. A further clarification of social worker might be in order due to so many areas of social work.

90 Sen. Josephson - There's another bill on licensing of social worker and we may run into some difficulty with that.

100 Sen. Josephson - Is there an official position by Mental Health Association on this?

Not on this, but we will make recommendations before January.

- 110 Sen. Halford - What does Association think in terms of communication between doctor and patient, should be available in commitment hearings or not?

Don't have an official position. My opinion - if hearings are closed, then in very specific and well defined instances, that privilege should be opened. In individuals right to receive treatment, the doctor's opinion certainly is an important matter.

- 150 Sen. Josephson - Question of changing or relaxing rule of confidentiality, would it have the effect of causing people not to tell doctors what they would otherwise say? Or would it have a useful affect in bringing these matters out into the commitment hearing? The real danger would be if patients refused to give information to their doctors for fear it would be used against them (in court). That people shouldn't be afraid to see a psychiatrist when they have problems.

These relaxations in confidentiality need to be carefully worded, possibly be limited to psychiatric people for involuntary commitment.

- 200 Dr. Jav Verkozen, clinical psychologist (private practice)

Pg 13, lns 27-28; issue of psychosurgery, lobotomy, or other comparable forms of treatment. Not specific with other comparable forms. Consider these types of barbarisms and should be done away with. Psychosurgery has been abused.

PART IV

- 80 Sen. Josephson - (to Dr. Conrad) Has there been any record keeping in Alaska of psychosurgery or lobotomy given?

Dr. Conrad - No, the only way would be to ask all the neurosurgeons. Electroshock - no one to my knowledge at API has been administered with it.

J. Verkozen - But it does go on regularly at Providence.

Pg 14, lns 19-23; suspension of people's rights; if you're going to do something to someone, need to be clear about it with the person and if it's not in their interest to know about it, then it shouldn't be done.

- 150 You can't treat people psychologically unless you get them involved in it. If somebody might be better off with something, it doesn't mean you can force it on them.

- 170 Pg 8, ln 20 (#4) "efficient" - efficient for what? For commitment? For civil liberty?

- 250 Pg 8, ln 15 (#2); Right to view and copy all petitions - they should be given copies and helped to understand it.

Pg 12, lns 25-27; good point that family or guardian be notified on patient's absence.

Pg 11, ln 14; Disagree with 180 days for commitment, more advantageous for longer length of time.

Pg 5, ln 22; "gravely disabled" - too broad.

Pg 6, lns 4-5; replace "maximum extent possible" with absent of violence.

PART V

Dr. Conrad - Two cases of patients at API treated involuntary:
1. if violent to themself or to others; 2. severely catonic people
(who don't eat or drink)

J. Verkozen - Pg 6; objects to (e)(2) and (3), lns 14-18; aren't
necessary.

Pg 13, ln 9; objects to 72 hours, procedure should be
speeded up rather than be long.

Pg 4; notion of deputizing all physicians in state so they
can commit someone. This authority should stay with the police.
All physicians shouldn't have this type of power. You're just
making a cosmetic change, you're still locking someone up.

80 Dr. Glade Birch, Acting Director, Anchorage Community Mental
 Health Center

It's a good document.

Balance of right of people to receive treatment and their
civil liberties. That's the balance we're maintaining.

Regarding who has the authority to commit someone, remember
we're talking about all Alaska (including the bush). Physician
does have degree of training in recognizing mental illness, where
police officer dosen't. To protect civil liberties of people,
it's better for at least someone qualified in mental health to
make determination of commitment.

As a neuropsychologist, be very careful before you write
into statute prohibition against treatments.

150 Individuals released as outpatients from API, isn't a com-
 fortable solution to it. You may consider transitional living
 (intermediate type of commitment). (A transitional facility
 where they could receive supervision.)

Has reservations about having licensed social workers being
able to commit someone (pg 4). You may get a social worker who
has no actual diagnostic abilities.

180 Topic of confidentiality. Two solutions: 1) treatment (must
 maintain confidentiality in this); 2) examination with notice for
 commitment (person knows it is commitment, does not have to dis-
 close information, takes away effectiveness of examination).

190 Sen. Josephson - What a person discloses when he wants treatment
 is going to be in stream of what is revealed in commitment pro-
 cess, no way to unlearn that material.

That's why I tried to make the distinction. The disclosure
of patient's statement when presenting himself for treatment
needs to be protected. If someone is going to testify at commit-
ment proceeding, may have to be a separate examination by another
person.

200

Steve Harrison, Regional Administrator for South Central Region, Division of Mental Health

Agrees with Dr. Birch in including mental health professional in emergency detention. If we use a mental health professional, we should use those with national accreditation for social workers.

Law is workable, changes are good.

240

Frances Purdy, Mental Health Program Coordinator, Behavioral Health Division, Municipality of Anchorage

Thanks for nonsexist law.

Pg 3, Part a; lns 22-25 should be deleted, they should not be able to release someone who is dangerous.

Pg 12, lns 25-27; good idea to notify parents or guardians of patient's absence. May also want to add anyone that has been threatened by patient, also may add immediate notification instead of 3 hours.

Pg 14, lns 24-27; good idea.

Consider what other states have done with mental health professional being the office of involuntary commitment. Probably more important for Anchorage than for the bush. Impractical to have officer in bush for involuntary commitment. In Anchorage, specifically we're beginning to need an area of expertise in just emergency cases. Check into Washington state statutes. They have designated person who is trained to do reading of rights, is impartial, not hired by institution or other agency.

PART VI

Jim Parsons, Manager, Behavioral Health Division, Municipality of Anchorage (former member of licensing board of psychologists)

Concurs with Purdy's opinion of release of minors when we don't do that with adults.

Most of my concerns have been covered.

Pg 16; licensing law for psychiatrist is generic rather than specificity. There are some psychologist trained in areas other than clinical who may not have expertise in mental illness at all. May be a good idea to say licensed by state with adequate clinical training or something similar rather than clinical psychologist since we don't license in that sense.

Mention of social workers appears to be too broad. Perhaps should use national accreditation with it. Too broad to say experienced in field of mental illness rather than having some type of specific training in that area.

30

Cecilia Kleinkauf, Alaska Chapter, National Association of Social Workers

Pg 16; issue of professional social work, as included in definition of "mental health professional" - just received the draft copy and will have to be reviewed by board before Assoc. takes a position on it and makes recommendations.

Admission of minors at API - the bill, as it is, would constitute age discrimination on state in regards to minors. Minor has a constitutional right to liberty equal to adults. Unconstitutional to deprive minor of right to liberty for a greater amount of time than an adult (in institutionalizing). We have repeated this point at every hearing.

One item not covered in bill is protection of court for child's right regardless of his/her parent's right. Does not provide child the right to a court hearing which court then hears as to institutionalize the child. The bill leaves the right to child's parents and to mental health professional. Sometimes parents don't act in best interest of their children.

120 There are a number of children institutionalized at API whom mental health professionals say these children are not probably mentally ill but "there's no place else to put them".

The previous director of State Division of Mental Health testified at Senator Parr's Committee stating it is frequently difficult, if not impossible, to make definitive diagnosis with respect to mental illness in children.

130 Sen. Josephson - Which is an explanation as to why we have a longer period to evaluate. I don't think the Constitution requires that you cannot make classification if there is a rational basis for it.

250 Why is it ok to institutionalize a child without court's protection in mental illness, and in statutes of state, it's not ok to institutionalize without court's protection when it comes to delinquency?

PART VII

50 Grandfathering clause on social worker - the language and amendments proposed by National Association Social Work Chapter. Only spoke to baccalaureate level of social work. Individuals will not be grandfathered at master's level of social work with training in any other field. Anyone who is grandfathered, who wishes to be called a social worker and be licensed under social work law, could at maximum, only be licenses as a baccalaureate level. Only level grandfather amendments refer to.

60 Meeting was adjourned by Chairman Josephson at 12:50 pm.

BARANOF MENTAL HEALTH CLINIC

POST OFFICE BOX 1180
SITKA, ALASKA 99835
(907) 747-3994

STANLEY T. LAUGHRIDGE, Ph.D.
CLINICAL PSYCHOLOGIST

12-16-83

Honorable Joe Josephson
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Josephson:

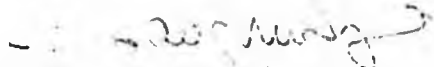
I have read the proposed draft bill that you are submitting to the legislature in the forth coming session. It contains precisely those very important amendments and stipulations that I have been trying to encourage for a number of years regarding mental health commitments.

If you will check the admission record of Sitka over the past six and a half years, that our clinic has been here; you will see that we have an extremely low admission rate. This is because we have treated people in our local hospitals rather than sending them to API. Often in doing so we have had great difficulty getting under the 72 hour limit before having to go into the court room. Usually within 72 hours, I am able to obtain the person's voluntary commitment but on those few cases where I am not able to do so we end up sending some to API that we could very easily have treated in our local hospitals.

Your bill will very nicely resolve that problem and should, if we in the mental health field do our part, reduce the admission rate to API dramatically.

Congratulations on your good work.

Cordial regards,


Stanley T. Laughridge, Ph. D.
Clinical Psychologist

cc: Joe Adelmeyer, ACSW Supervisor
Susan Will, R.N., M.S.

CORDOVA COMMUNITY HOSPITAL MENTAL HEALTH AND ALCOHOL CLINIC

P.O. Box 160

Phone: (907) 424-7131

CORDOVA, ALASKA 99574

Senator Joe Josephson
Alaska State Legislature
Senate
Pouch V.
State Capitol
Juneau, AK 99811

Oct. 27, 1983

RE: THE MENTAL HEALTH COMMITMENT LAW

Dear Senator Josephson:

We urge you to incorporate the changes proposed by the Department of Health and Social Services and the Alaska Psychiatric Association and in particular the amendment to add licensed psychologists in changing procedures for emergency detention for evaluation in Sec.47.30.705.

In our experience the present state of things in which a peace officer must be convinced that there is probable cause to believe that a person is gravely disabled or is suffering from mental illness and is likely to cause serious harm to himself or others and should be taken into custody for evaluation is highly precarious. Just recently we had a case of a possible suicide and homicide situation in which help was delayed past a critical point because the peace officer did not believe the physician and licensed psychologist who were urging intervention. When it's a matter of arranging a flight before dark every minute is crucial. It is perhaps unfair to expect a peace officer to understand the dynamics of depression or paranoia without any particular training when years of post-graduate training and supervised experience are needed for a psychologist to do so. It is time Alaska made better use of the unique qualifications that psychologists do provide for intervention in and prevention of tricky situations.

Sincerely,

Judy Ringenson-Knutsson
Judy Ringenson-Knutsson, Ph.D.
Clinical Psychologist



The Cordova Community Hospital

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

September 9, 1983

SUBJECT: Mental health commitment laws
(Work Order No. 13-1516)

TO: Senator Joe Josephson
Chairman, Senate Health, Education and
Social Services Committee

FROM: Edward H. Hein *EHA*
Legislative Counsel

You have asked for a comparison of the American Psychiatric Association's draft guidelines for psychiatric hospitalization of adults with Alaska's mental health commitment laws (AS 47.30.655 - 47.30.915). I have enclosed a section-by-section comparison, with the APA guidelines on the left-hand pages and the corresponding Alaska statutes on the right-hand pages. My comments follow.

In general, there are many similarities between the APA guidelines and Alaska law. Both provide for emergency or involuntary commitments, voluntary commitments, initial periods of detention followed by longer periods of extension, standards, hearings, patient rights, immunities for mental health professionals, and penalties for bad faith commitments. In most cases Alaska law appears to provide equal or better patient protections than those recommended by the APA.

The major specific differences between the guidelines and the statutes are as follows:

1. Emergency detention. Under APA section 4.A.2. a person taken into custody for emergency evaluation may not be placed in a jail or other correctional facility, except for protective custody purposes and only while awaiting transportation to a treatment facility. Under AS 47.30.705. a correctional facility may be used as an emergency evaluation facility if a regular evaluation facility is unavailable.

2. Petition for involuntary commitment. Under APA section 4.C. any "interested adult" may petition for an emergency psychiatric evaluation of another person. The APA does not define what "interested" means. Under AS 47.30.700 "any adult" may petition for involuntary commitment of another person.

3. Deadline for emergency examination. Under APA section 4.D.1. a treatment facility must examine a person under emergency detention "promptly" after arrival at the facility. Under AS 47.30.710 the examination and evaluation must be completed within 24 hours of arrival.

4. Advisement of rights. Under APA section 4.E. a treatment facility must notify a person admitted for emergency evaluation of the purposes and possible duration of the evaluation, as well as the person's legal rights relating to commitment. Under AS 47.30.725 there is no specific requirement of notice relating to the purposes and duration of evaluation. But the Alaska statute requires that notice be both oral and written and in a language the person understands.

5. Hearing after emergency detention. Under APA section 4.F. a person under emergency detention must receive a hearing before a court within five business days after being admitted to a facility. This right to a hearing may be waived in writing upon advice of counsel. The hearing is informal and is conducted under rules set by the court consistent with "fundamental fairness". After the hearing a person may be discharged by the court or committed for 30 days. Under AS 47.30.725 a person under emergency or involuntary detention has a right to a hearing within 72 hours of arrival at the facility. The person may not waive the right to a hearing, but may waive the 72-hour limit if the person is represented by counsel. However, the hearing must be held within seven calendar days of the person's arrival at the facility. The person has a right to communicate, immediately after arrival at the facility, with a guardian or other adult and with an attorney. At the hearing the person has a right to be represented by an attorney, to present evidence and to cross-examine witnesses. Subject to specified exceptions, the person has a right to be free of the effects of medicine or treatment before the hearing. After the hearing the person may be discharged or committed for a period of 21 days. Additional hearing rights are

specified elsewhere in the APA guidelines and the Alaska statutes.

6. Voluntary admission. Under APA section 5.A. a person believed to be mentally ill and in need of hospitalization may be admitted voluntarily if the person consents in writing after being advised of rights. The consent is effective for 60 days, but may be renewed for an unlimited number of periods of up to 180 days each. Under AS 47.30.670 the only requirements are that the person (1) in fact be suffering from mental illness, (2) be 14 years old or older, and (3) "voluntarily" signs the admission papers. A person under 14 years of age may be "voluntarily" admitted for a period of 21 days if (1) the minor's guardian or parent signs the admission papers and (2) the senior mental health professional at the facility concludes that specified criteria are met. Presumably the minor is automatically released after 21 days unless the minor is admitted again under the same requirements as for initial admittance.

7. Discharge from voluntary admission. Under APA section 5.B. any person voluntarily admitted must be discharged within five business days after submitting a written request for discharge, unless the treatment facility or the person's guardian files a petition for 30-day commitment. Under AS 47.30.685 - 47.30.695 a person who was voluntarily admitted to a treatment facility shall be discharged immediately upon submitting a written notice of intent to leave the facility. However, the treatment facility may hold the person for 48 hours after receiving an intent to leave notice in order to initiate involuntary commitment proceedings. In that case, the facility must give the person written notice of its intent to initiate the proceedings by the time the person would otherwise be released. A person who is under 14 years of age must be discharged immediately upon the request of the parent or guardian, unless the minor, if released, is likely to cause serious harm to himself or another as a result of a mental illness.

8. Conversion of status. Under APA section 5.C. a person who was committed involuntarily may change to a voluntary admittee with a psychiatrist's approval. No comparable provision exists in Alaska law.

9. Further periods of commitment. The APA guidelines provide for 30-day, 60-day, 90-day, and 180-day commitments. Alaska law provides for 21-day, 90-day, and 120-day

commitments. Each period of commitment is to be preceded by a hearing under both the APA guidelines and the Alaska statutes. The patient's rights at the hearing vary considerably, however, under the two different schemes. The most noticeable differences are that (1) the APA guidelines allows the use of hearsay evidence so long as it is relevant, while Alaska requires the use of civil rules of evidence; (2) the APA denies a patient's Fifth Amendment right to remain silent, while Alaska law specifically recognizes it; and (3) the APA does not allow the exclusion from evidence of privileged communications between the patient and psychiatrist or physician made during the course of evaluation or treatment, whereas Alaska law recognizes such an evidentiary privilege.

10. Petitions for further periods of commitment. Under both the APA guidelines and Alaska law, all commitments are initiated by the filing of a petition. Under APA section 6.A. a petition for a 30-day commitment of a person already at a treatment facility may be filed by the facility or by the person's "next of kin" or guardian. If the person is not currently committed, any "interested adult" may file a petition for a 30-day commitment of the person. The language of the guidelines does not make clear whether additional petitions may be filed for successive commitments of 30-days each. Under APA section 11.A. a person who "has been subject to" a 30-day commitment may be recommitted for an additional 60-day period upon a petition filed by the treatment facility or the person's "next of kin" or guardian. (The drafting here is imprecise and ambiguous. The phrase "has been subject to" could mean "has ever been subject to" or it could mean "is currently under" or it could mean "has met the criteria for".) Under APA section 11.B., a person committed for any period of time and who is dangerous to himself or herself may be committed for one additional period of "up to 90 days" upon a petition filed by the treatment facility or by the person's next of kin or guardian at any time before the current period of commitment expires. Under APA section 11.C., a person who "was committed for up to 30 days and is subject to 60-day recommitment" and who is likely to harm others may be committed for successive additional periods of 180 days each upon a petition filed by the person's next of kin or guardian, or by the state "upon advice of the treatment facility". Under AS 47.30.730, a petition for a 21-day commitment must be signed by two mental health professionals who have examined the person. It is not clear who may file

the petition. Under AS 47.30.740, a petition for a 90-day commitment may be filed by "the professional person in charge" while the person is under a 21-day commitment. Under AS 47.30.770 the "professional person in charge" may file a petition for a 120-day commitment of a person who is under a 90-day commitment. Successive commitments of 120 days each are authorized.

11. Informed consent. Under APA section 7, a treatment facility must obtain a patient's informed consent before administering medicine or treatment to a voluntary admittee in a non-emergency situation, unless the person lacks capacity to consent. A voluntary admittee may revoke consent in writing at any time except in an emergency. Under APA section 8, an involuntary admittee, or a voluntary admittee in an emergency, may be treated or given medicine without informed consent. Under AS 47.30.825, every mental patient has the right to know the name, purpose and side effects of medicine to be administered. In a "true medical emergency", surgery to save the "life, physical health, eyesight, hearing or member of the patient" may be performed without the consent of the patient, guardian or court. The law specifically recognizes an adult patient's right to not be operated on if the patient knowingly withholds consent on religious grounds.

12. Special therapies. Under APA section 8.C. experimental treatments, psychosurgery, aversive therapy or other special therapy designated by the appropriate state department may not be administered, except as provided by law or regulation. AS 47.30.825 provides that a lobotomy or psychosurgery may not be performed without specific informed consent, a full due process hearing, and a court order. Electro-convulsive therapy or aversive conditioning requires informed consent or, if the patient lacks substantial capacity to give informed consent, a court order. Under AS 47.30.830 experimental treatments involving any significant risk of physical or psychological harm are prohibited.

13. Patient rights. This is one area where the APA guidelines are more thorough than Alaska law. Under both schemes patients have rights to privacy, property, civil rights such as voting, mail, access to attorneys and visitors, and treatment consistent with the "least restrictive alternative" principle. APA section 10, however, also provides a right to "nutritionally sound and medically appropriate diet", a right to exercise and recreation, a

right to perform labor, and a right to be free from corporal punishment.

14. Discharge. Under APA section 12.F. a person may, as part of an individual treatment plan, be released from commitment at a facility to outpatient treatment. The person may, however, be returned to inpatient treatment for failure to comply with the outpatient treatment program requirements. APA section 15 provides that law enforcement or other appropriate authorities shall provide transportation of patients to and from a treatment facility. Under AS 47.30.825, a person upon discharge from a facility must be given a discharge plan suggesting, but not requiring, the kinds and amounts of treatment the person should have to maintain mental health. The person has a right to participate in formulating the discharge plan. Also, under AS 47.30.890 a person is entitled to "suitable clothing" upon discharge, and if indigent, to transportation to the person's permanent residence in the state and "a reasonable amount of money to meet immediate needs". See also AS 47.30.795.

15. Confidentiality. The APA guidelines adopt by reference the "Model Law on Confidentiality of Health and Social Service Records". AS 47.30.845 provides that patient records are confidential and not public records, and specifies the persons or agencies to whom records and information may be disclosed.

16. Grievance procedures. APA section 14.B. requires that treatment facilities establish "fundamentally fair" procedures for patients' grievances. Alaska statutes have no similar provision.

17. Immunities. Under APA section 18.A. employees of a treatment facility are not liable for acts or omissions within the scope of employment, absent willful misconduct or gross negligence. Other persons who act in good faith and with a reasonable basis are not liable for actions provided for under the guidelines. The guidelines disclaim any liability for actions by a patient who is absent from a treatment facility or who has been discharged. Finally, the guidelines disclaim any liability for failure to warn or notify anyone of a patient's discharge. Immunity under Alaska law is much more limited. Under AS 47.30.815 a person is not subject to criminal or civil liability for petitioning for evaluation or treatment of another person in

Senator Joe Josephson
Page 7
September 9, 1983

good faith and upon actual knowledge or reliable information. Also, four classes of officials may not be held civilly or criminally liable for detaining or releasing a person "at or before the end of" the period for which the person was committed, so long as the official acted in good faith and without gross negligence.

18. Penalties. APA section 18.B. provides that a civil fine, injunctive relief and money damages may be imposed or granted if a person (1) "knowingly and willfully gives substantial, false information or takes other wrongful action for the purpose of distorting, corrupting or interfering with the processes provided in this Act" or (2) commits, detains, discharges, or treats a patient, or otherwise affects a patient's "substantial rights" knowingly and willfully in substantial violation of the guidelines. AS 47.-30.815 makes it a class C felony to willfully initiate an involuntary commitment procedure without good cause.

19. Miscellaneous provisions. The last four pages of the comparison booklet (enclosed) consist of provisions of Alaska law for which there are no corresponding provisions in the APA guidelines. Note especially AS 47.30.760, providing for placement at the closest facility; AS 47.-30.765, providing for appeal of involuntary commitment orders; AS 47.30.875, providing for handling of nonresident patients; AS 47.30.880, adopting the Interstate Compact on Mental Health; and AS 47.30.895 - 47.30.900, disposition of personal property and money of patients who die while in custody or who leave a facility without authority. Note one error: AS 47.30.795, relating to outpatient care and appearing among the miscellaneous provisions, actually corresponds with APA section 12.F. and should have appeared opposite that section.

If you have any questions or comments, feel free to contact me at your convenience.

EHH:ljb

Enclosure
29/002

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H 01
JUNEAU, ALASKA 99811

OFFICE OF THE COMMISSIONER

PHONE: 465-3030

RECEIVED

April 14, 1983

APR 18 1983

Document No. 83-152

Alaska Psychiatric Institute
Administration Office

The Honorable Joe Josephson
Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Josephson:

RE: AS 47.30.655 - 47.30.915
(Involuntary Commitment Act for
Mentally Ill Persons)

We appreciate the work you are undertaking and would like to add our comments to those you have already received regarding possible amendments to Alaska's recently enacted civil commitment statutes for mentally ill persons. As you know, the Division of Mental Health and Developmental Disabilities supports the general intent of the Act but feels it is procedurally too cumbersome. This seems to have resulted in treatment staff wasting their time in complying with procedures and filling out numerous forms rather than providing treatment for mentally ill persons.

I have enclosed a copy of our earlier suggested amendments that were prepared during the previous administration. The status of these suggested amendments is unknown to us. Upon review, however, I believe that you will agree that they are primarily designed to facilitate treatment. In addition, I am confident that the Attorney General's Office will be able to assist your staff in determining which forms, notices and procedures that are presently required can be deleted while still protecting the rights of the mentally ill.

Another area of extreme importance in the successful implementation of this Act has been the availability, or lack thereof, of detoxification facilities and other alcohol and substance abuse programs and services. Experience has shown that the emergency involuntary hospitalization at API of persons with a primary diagnosis of alcoholism has increased dramatically since the new Act became effective. This is cause for considerable concern to us as our bed space for legitimate psychiatric emergency cases is in extremely short supply. We believe that if additional alcoholism and substance abuse programs offering emergency

inpatient care were available, especially in Anchorage, that the number of referrals of intoxicated persons to API would be substantially reduced. You may be interested to know that the provisions of the Uniform Alcoholism and Intoxification Treatment Act (AS 47.37.010 - 47.37.270) have never been fully implemented, partially as a result of a lack of inpatient facilities that offer various types of alcoholism services and treatment.

The most utilized provision of the Uniform Alcoholism and Intoxification Treatment Act seems to have been what is called the "12-hour drunk law." This provision allows persons that are seriously incapacitated as a result of alcohol to be placed in a local jail or state correctional center for up to 12 hours with no criminal charges being filed. In the past, this has permitted law enforcement agencies the opportunity to take intoxicated persons into custody and house them in a jail or correctional center until the person has regained sobriety and is no longer in danger of harm as a result of his inebriated condition.

Unfortunately, as a consequence of the extreme shortage of bed space in all of Alaska's correctional centers, law enforcement agencies are no longer able to deliver these incapacitated persons to correctional facilities and have them held in custody until they are no longer incapacitated by alcohol. More simply put, as a result of serious overcrowding in our correctional systems, drunks are being taken to API and kept there until they sober up sufficiently to make a diagnosis. More often than not, the diagnosis reveals that they are suffering primarily from alcoholism and not a major mental illness. At that point they are discharged and referred elsewhere. This results in a serious misuse of the few psychiatric resources we have. It is our position that these limited resources should be exclusively available to the seriously mentally ill person that presents himself, or is presented, to Alaska's only designated psychiatric hospital.

In addition to the recommended amendments contained in the enclosure, as well as the previously mentioned concerns, we have listed below a number of other changes to the Act that we would like to support:

- 1) We recommend that the period of commitment be changed from 21 days, 90 days, and 120 days to 30 days, 90 days, and 180 days. It is our opinion that this would reduce the administrative workload of our treatment staff while having little or no effect on the period of time patient's are actually involuntarily committed.

Rather than interrupt treatment after 21 days in order to undergo the 90-day commitment process, treatment could continue for an additional 9 days if necessary. This would allow medications and other forms of therapy some additional time to stabilize the patient, possibly resulting in a discharge between the 21st and 30th day. The change from 120

days to 180 days is simply to reduce the administrative and procedural requirements necessary for the long-term, chronic mentally ill patients that require extended periods of hospitalization.

- 2) We propose that all references to a minor child be changed from age 14 to age 18 throughout the Act. Numerous situations have arisen as a consequence of this provision that indicate it has fostered confusion as well as placing young people and API in an awkward position with regard to their status. It is also not in concert with other provisions of Title 47 that address the care and treatment of minors in Alaska.
- 3) Under AS 47.30.730(a)(3), we recommend that the following language be added with regards to gravely disabled: "... or that painful or dangerous regression could be prevented and the respondent could maintain the capacity for self-reliance;...". It has been our experience that some gravely disabled individuals may not be expected to actually improve during hospitalization, but if left untreated can be expected to suffer substantially, even to the point of requiring permanent institutionalization as a result.
- 4) Under AS 47.30.840(4), (5), (6), and (7), we suggest that provision be made to restrict these rights in unusual circumstances in which harm to the patient or others may result if these rights are exercised. We propose adding "... unless the professional person in charge determines it is not in the best interests of the patient and will pose a threat to the safety or well being of the patient or others;..." to these sections.
- 5) We recommend that AS 47.30.845 be amended to add a provision that would allow confidential information or records to be disclosed to law enforcement agencies in emergency situations involving a current or former patient. In order to restrict this disclosure we suggest the following section be added: "(7) a law enforcement agency when there is substantiated concern over imminent danger to the community by a presumed mentally ill person."

This would allow the disclosure of information to law enforcement agencies that may be helpful in preventing needless injury or death occurring as a result of the actions of a mentally ill persons during an emergency situation.

- 6) An additional area that, in our opinion, should be revised is the area of involuntary outpatient commitment. Thusfar, there have only been a limited number of these types of commitments. It seems, however, that none have proven successful for various reasons. While the idea of involuntary outpatient

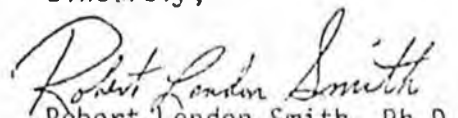
commitment appears sound, the provisions of the Act appear to militate against the successful utilization of this less restrictive alternative. Perhaps your proposed revision to the definition of "likely to cause serious harm" will have a positive influence on the successful use of outpatient commitment.

It should be noted, with regards to outpatient treatment, that AS 47.30.800(a) requires persons seeking conversion from involuntary outpatient commitment to inpatient commitment must have direct knowledge that the respondent is mentally ill or gravely disabled. If the respondent fails to report to the provider of service, than the provider will be unable to substantiate the allegations necessary to convert the commitment to inpatient treatment.

- 7) In AS 47.30.745(b), the last sentence should read "... not later than 90 days..." rather than "... not earlier" as it currently reads.
- 8) The final area in which we would recommend revision is the requirement that all patients be given the opportunity to be voluntarily admitted. We do not dispute the value of this option in the vast majority of cases that require psychiatric hospitalization; there are, however, instances in which it may not be wise or prudent to be required to offer or allow the voluntary admission of some patients to the hospital. Certainly, the substitution of "reasonable" for "every" in Section 1 of your draft is a step in the right direction. We would hope that it would be interpreted to mean in cases in which it was deemed unreasonable, that involuntary commitment proceedings would commence.

While I am confident that these recommendations for amendments do not represent a panacea for all that is wrong with such a complicated set of laws, I am certain that these, along with many other suggestions that you have received, represent a substantial improvement in providing for the care and treatment of Alaska's mentally ill. Again, I would like to thank you and your staff for giving this information your review and consideration. My staff and I look forward to working with you and other members of the Legislature in revising our civil commitment laws.

Sincerely,


Robert London Smith, Ph.D.
Commissioner

Enclosure

John Taber
Special Asst. to Commissioner
Division of Management & Budget

October 27, 1982

Robert W. Marshall, M.D.
Director
Division of Mental Health &
Developmental Disabilities

Legislative Changes
AS 47.30.655 - 47.30.915)

The attached copy of Chapter 84, SLA 1982 has been revised by members of my staff to reflect changes that are necessary or desirable to more effectively provide services under the law. As you will note, changes are made at the bottom of the page with line number noted for easier reference.

With respect to the Transition Legislation Package, the only change to Chapter 143, SLA 1982 reads as follows:

Page 14, line 8. Change "...two psychiatrists or two forensic psychologists..." to read "...one psychiatrist or one forensic psychologist..."

As of this writing, we have literally had no experience with the new law and are not prepared to recommend any additional changes at this time.

I hope this information is helpful to you. If you have any questions concerning this, please don't hesitate to contact me.

RWT:prp

Attachment

MEMORANDUM

State of Alaska

TO: Dr. Conrad
Superintendent

DATE: October 13, 1983

THRU: Corinne Carlson, ART
Medical Record Administrator

FILE NO:

TELEPHONE NO:

FROM: Reta J Sullivan *RJS*
Forensic Tech

SUBJECT: Admission Statistics for
FY'83 & Statistics for
Civil Commitments

FISCAL YEAR 1983

Total admissions - 1013

		<u>% Total Admissions</u>
1. Number of patients admitted via POA	163	16%
2. Number of patients admitted via Ex Parte	155	15%
3. Number of patients admitted as Jud-47	50	5%
4. Number of patients admitted as Voluntary	496	49%
5. Number of admissions, other legal categories (i.e., E&O, T-12, CP, CT, etc.)	147	15%

STATUS CHANGES

1. Number of POA to Ex Parte	35
2. Number of Ex Parte to 21-Day Commitment	78
3. Number of 21-Day Commitments to 90-Day	27
4. Number of 90-Day Commitments to 120-Day	6
5. Number of Jud-47 committed patients to Voluntary (73 from 21-Day) (4 from 90-Day) (1 from 120-Day)	78
6. Number of Voluntary to Ex Parte	58
7. Number Voluntary (M) to Ex Parte	11
8. Number of Correctional Transfers to Ex Parte	2

Fifty-five percent of the 21-day commitments went to a 90-day hearing. There were 39, 90-day commitment hearings scheduled. Of these, 27 were committed for 90 days, 5 were stipulated for 90 day placement at this facility, 4 signed voluntary before the hearing, 1 was discharged before the hearing, and 2 were found not-committable.

Nineteen percent of the 90-day commitments were scheduled for a 120 day hearing. There were 8, 120 day hearings scheduled in all. Of these, 6 were committed for 120 days, 1 signed voluntary before the hearing, and 1 was committed to out-patient care for 120 days.

The following figures were taken from a random sample of 100 patients admitted to the hospital during the fiscal year 1983. Of every 100 persons who entered the hospital involuntarily under the terms of the civil commitment law, 48 were admitted on Peace Officer applications and 52 were admitted on Ex Parte Orders. Of these, 53 signed applications for voluntary admissions within 24 hours, 8 signed voluntary applications shortly thereafter, 12 were discharged as improved before a commitment hearing was necessary, and 27 petitions for 21-day commitment were filed. Of those, 27 were scheduled for hearings, 9 signed applications for voluntary admission before their hearing, 14 were committed for 21 days, 2 were found not-committable, and 1 was committed to out-patient care for 21 days.

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811



Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

March 12, 1984

Senator Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: SB 346, An Act relating to the
treatment of mentally ill persons.

Dear Mr. Chairman:

I have attached copies of various materials I have received on the captioned bill. You will note, I am sure, as I did, that it appears to be highly controversial.

On balance, I am inclined to oppose the bill, for no one has ever bothered to make clear to me the need for the bill.

I had a letter from my friend "Pudge" the other day which we have somehow managed to mislay, but as I recollect her message, it was this: How come justification has to be given to hold an adult in custody for more than 72 hours but that a minor can be held for days on end without any such hearing?

For starters, I would suggest when you hold a hearing that you get some pro and con experts.

This is a pretty tough bill to digest and I am not sure that five lay persons can come to the right opinion without such help.

Very truly yours,

3

Robert H. Ziegler, Sr.

RHZ:lk

Enclosures

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H 0-1
JUNEAU, ALASKA 99811
PHONE:

DIVISION OF MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES

March 6, 1984

The Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Dear Governor Sheffield:

Your Mental Health Advisory Council has been following the developments of Senate Bill Number 346 amending an Act entitled: "An act relating to the treatment of mentally ill persons." We are aware that many public hearings have occurred prior to its introduction January 11, 1984 by Senators Josephson and Halford. Additionally, individual professionals, the Alaska Psychiatric Association and the Alaska Psychological Association have had consultation and input into these revisions with strong support for these amendments. These amendments are thought to represent improvements in the treatment of adolescents and adults from the standpoint of both providers and consumers.

Your advisory Council heard today that this bill is being held "hostage" pending untold bargaining possibilities. Since these amendments would improve the quality of care and likely result in more efficiently and less cost for both the Mental Health and Judicial Divisions, it seems unfortunate to delay its enactment.

Your Mental Health Advisory Council recommends your support for the quick passage of this act. On behalf of all Council Members thank you for your consideration.

Sincerely,



Herbert G.W. Bischoff, Ph.D.
Chairperson

Council Members

David R. Samson, M.D.
Anchorage, Vice Chairperson
Ann Egrass, McGrath
Mabel Rosvold, Petersburg
Alice Wardlow, Bethel
Barbara T. Wihloborg, Fairbanks
Robert Hunter, M.D., Mt. Edgecumbe
Kevin C. Ritcnie, Juneau

cc: Bill Ray, Chairman, Judiciary Committee
All Judiciary Committee Members
HGWB/dmb

02008 POM ANCHORAGE AK 15 03-10 1037 RST

PMS SENATOR ROBERT ZIEGLER

JUNEAU AK

PLEASE DO NOT SUPPORT 88848. I AM OPPOSED TO THE NURSING
STANDARDS REDUCTION CLAUSE.

JEAN BOGA

3105 WEST 31ST APT 1

ANCHORAGE AK 99503

3/8/84, SHIRLEE AHC LIO, 22466

THE FOLLOWING MESSAGE WAS RECEIVED IN THE U.S. MAIL BY THE ANCHORAGE LEGISLATIVE INFORMATION OFFICE.

TO: ?(SUGGEST THE MESSAGE BE GIVEN TO ALL SENATE MEMBERS?)

FROM: DENNIS GRUBA
P.O. BOX 3064
KENAI, AK 99611

'DEAR SIRs:

SENATE BILL 346 FOCUSES ON THE PROBLEM NOT THE SOLUTION. A.P.I. PATIENTS NEED HELP WITH ALCOHOLISM, DRUG ADDICTION AND REPRESSED FEELINGS, NOT, MORE DRUGS, SCARE TACTICS, AND BEING LOCKED UP. YOUR BILL CREATES AN EVEN GREATER SENSE OF IMPENDING DOOM RATHER THAN AN ATMOSPHERE OF RECOVERY."

BY DENNIS GRUBA

3/3/84, SHIRLEE AND LIO, 22466

THE FOLLOWING MESSAGE WAS RECEIVED IN THE U. S. MAIL BY THE ANCHORAGE LEGISLATIVE INFORMATION OFFICE.

TO: ALL MEMBERS
ALASKA LEGISLATURE

FROM: JEFFREY N. JOHNS
1102 WILD ROSE COURT
ANCHORAGE, AK 99502

SUBJ: ✓ SB 346 (INCREASING THE POWERS OF PSYCHIATRISTS)

IT IS VERY DANGEROUS TO GIVE PSYCHIATRISTS POLICE POWERS. PSYCHIATRISTS HAVE A SUICIDE RATE 7 TIMES HIGHER THAN THE GENERAL POPULATION (FREEMAN, AMERICAN JOURNAL OF PSYCHIATRY). ELECTRIC SHOCK, PSYCHOSURGERY AND DRUGS CAUSE MEMORY LOSS, KILL BRAIN CELLS AND OTHER WISE HARM INDIVIDUALS. THESE FACTS ARE WELL DOCUMENTED. PLEASE OPPOSE THIS LEGISLATION.

/S/ JEFFREY N. JOHNS

3/3/84, SHIRLEE AND LIO, 22466

THE FOLLOWING MESSAGE WAS RECEIVED IN THE U. S. MAIL BY THE ANCHORAGE LEGISLATIVE INFORMATION OFFICE.

TO: ALL LEGISLATORS

FROM: SHERWIN A. START
320 MCCARREY STREET, 'C'
ANCHORAGE, AK 99504
(H) 337-8988

SUBJ: ALASKA RAILROAD

*BEING AN RAILROAD TRANSPORTATION PLANNER, THE LEGISLATURE IS DOING A MONUMENTAL DISSERVICE TO BOTH THE LEGISLATURE AND THE FUTURE GENERATIONS OF RESIDENTS OF THIS STATE BY PURCHASING THE ALASKA RAILROAD AS IT WILL NEVER OPERATE IN THE BLACK!!! THE FEDS HAVE WITHHELD OR ALTERED THE INFORMATION AS TO COST OF TAKEOVER BY SUBSTANTIAL AMOUNTS (UNDERESTIMATED-ESTIMATED). I FURTHER BELIEVE THAT THE VOTERS OF THE STATE SHOULD HAVE A CHANCE TO VOTE WHETHER WE SHOULD BUY IT OR NOT!!!

/S/ SHERWIN A START

MSG 84-00022740 PRTY 1 03/09/84 12:54:26 ORIG: LF00 IN= 0005 OUT= 0074
FROM: TRACIE/FBX TO: JUN INFO
TARGET: LJHK SUBJ: POM

TO: SEN ZIEGLER, RAY, JOSEPHSON, ELIASON, PETTYJOHN
REPS DAVIS, BETTISWORTH, KOPONEN, RINGSTAD, M.W. MILLER
SENS BENNETT, FAHRENKAMP, MOSS

FR: MR. AND MRS. A. AARON, MEMBERS OF FBX ALLIANCE FOR MENTALLY ILL
F. O. BOX 74132
FBX, 99707-4132
456-4407-H

RE: SB 346 TREATMENT OF MENTALLY ILL

MSG: FAMILIES OF THE MENTALLY ILL SUPPORT SB346, KNOWING THAT ITS PROVISIONS
ARE WAYS TO ALLEVIATE SUFFERING, NOT EXPLOIT IT.

-----EOM

Amendments to SB 346

AS 47.30.840 Right to privacy and personal possessions is amended by adding new subsections to read:

(8) have the right to be free of corporal punishment;

(9) have the right to exercise and recreation;

(10) at any time have a telephone conversation with or be visited by ~~his~~ attorney;
THEIR AP

(11) not be retaliated against or subjected to any adverse change of conditions or treatment solely because of assertion of rights under this Act.

Add a new section to read:

AS 47.30.856 Resolution of grievances. Every treatment facility shall establish a fair procedure for the assertion, resolution, and redress of patients' grievances, and shall have a patient representative or similar person who shall monitor patients' grievances and attempt to resolve problems and protect patients' interests.

Amend Section 22 of the bill (page 15, lines 22-27) to read:

(b) The patients' rights under (a) (4), (5) and (7) of this section may be suspended temporarily, following the initial evaluation period, if the professional person in charge of the patient determines it will pose a threat to the safety or well-being of the patient or others to grant the patient those rights.

4/5/79

MEMORANDUM

State of Alaska

TO: E. S. Rabeau, M.D.
Deputy Commissioner - Health
Office of the Commissioner

DATE: March 14, 1984

FILE NO:

TELEPHONE NO: 465-3370

FROM: Philip Shapiro, M.D.
Director
Division of Mental Health &
Developmental Disabilities

SUBJECT: Typical API Child And
Adolescent Admissions

The following are case summaries regarding typical admissions to the Children's and Adolescents Unit at the Alaska Psychiatric Institute.

1. First API admission: This 11-year-old boy has a history of oppositional behavior, playing with fire, school failure, marijuana use, and chronic stealing. He is referred by his mother and admitted with an application for voluntary admission. During the week prior to admission he had been placed at McLaughlin Youth Center for a stealing offense. He was felt to be too young for that program and was transferred to the Emergency Shelter, where he attempted to run away and upon being apprehended by staff there appeared to suffer from some kind of dissociative reaction. The Emergency Shelter felt that they could not contain him in their open program. The court first considered referring him to API with an order for psychiatric evaluation to assist in planning for him when he returns to court, but it was agreed by the attorneys present that mother would approach the hospital and admit him with an application for voluntary admission.
2. The first API admission. This 8-year-old girl with a history of extreme oppositional behavior at home and in school is referred by her father and stepmother who insisted that they were unable to contain her at home. We therefore referred her to the Division of Family and Youth Services, who has since assumed her custody and are in the process of seeking a placement for her.
3. This is the first API admission. This 8-year-old boy is referred by the Division of Family and Youth Services after repeated failures in foster care because of extremely aggressive behavior in the home. In his last foster home he did several hundred dollars' worth of damage, and exposed himself to dangerous situations by impulsively running away. He is referred by the Division for evaluation to determine the level of care he needs and to assist in finding a placement for him.
4. First API admission. This 4-year-old boy is referred by the Kotzebue Area School District. There is a history of medical and neurological problems. He is non-verbal. He suffers from seizures, is not toilet trained, is aggressive with spitting and biting, and is unable to be contained in school. His mother fears that she can no longer contain him in her home in their village. He is referred for evaluation to determine whether his difficulties are related to mental retardation, deafness, or social deprivation. It was requested of us that we assist the School District in evolving a program which would support his return home to his village.

5. The first API admission. This 10-year-old boy is referred to the hospital by his parents after he assaulted his 8-month-old brother by squeezing the child's neck and stomping on his face with his shoed foot. There is a history of extreme oppositional behavior at home and in school. He remained in his parents' custody and was returned to their care with the support of the local community mental health center.
6. The second API admission. This 10-year-old boy was referred by the Division of Family and Youth Services and Alaska Native Health Services due to repeated failures in foster and adoptive care and fear that he might assault his new young sibling. During the course of hospitalization, his custody was assumed by the Division of Family and Youth Services and he was placed in a residential treatment program.
7. The first API admission. This 12-year-old girl was admitted with an ex-parte order for psychiatric evaluation. Mother alleged that she had been raped three times during a period of a month while she was repeatedly away from home without supervision. There is a history of street drug and alcohol use, and of school problems. She was discharged to the custody of the Division of Family and Youth Services and placed in the Emergency Shelter after a period of evaluation.
8. The first API admission. This 12-year-old girl threatened suicide in her foster home by attempting to cut her wrists with a paring knife. She was hospitalized to assess the degree of suicidal potential and to assist the Division of Family and Youth Services in evolving a plan for her. She was discharged to their care.
9. Second API admission. This 12-year-old girl was referred by the Division of Family and Youth Services for repeatedly running away from the Emergency Shelter. It was felt at the Division that she was chronically exposing herself to dangerous situations on the street. Hospitalization was sought to contain her behavior and to provide help in assisting this girl in recovering from the suicide of her father after she told authorities he had sexually abused her. Discharged to the Division of Family and Youth Services and placed in foster care.
10. The first API admission for this 12-year-old girl. She was admitted on a referral from Providence Hospital after she had been treated for a purposeful overdose of insulin. She had attempted suicide two other times in a three-month period by either overdosing or withholding her insulin. There was a history of depression and difficult behavior at home and in school. During the course of hospitalization, we were able to document neglect, and referred her to the Division of Family and Youth Services. They assumed her custody and she was eventually placed in foster care.

11. This is the second API admission for this 16-year-old youngster from a small village. He was originally admitted with an ex-parte order because of suicidal behavior in his village. His treatment was not upheld, by the court and he was returned against recommendations of API staff. Several months later, he was returned again because of repeated suicide attempted, and this time his commitment was sustained by the court.

At the present time, this youngster has entered API for four months. While his suicidal ideation is abated, it is not recommended, yet, to return to his home village.

12. This is the sixth API admission for this 16-year-old female student. She was last placed in API in 1/83, and remained hospitalized until 11/83. She is gravely disabled and unable to care for herself. Her family is a multi-problem one, and is utterly unable to arrange for her care. During a period of several months, it was negotiated with the Division of Family and Youth Services that they assume her custody, and placement was arranged in a residential treatment program in Denver, Colorado. There were no residential programs in state which could contain and manage her behavior.

After several weeks of placement there, she was returned by that program and deemed to be too psychotic. At the present time, her prospects for discharge appear bleak, and we are re-exploring with the Division of Family and Youth Services to see whether some other more psychiatrically sophisticated program might be available to her.

13. This is the first API admission for this 17-year-old, young woman.

She had been living at the Emergency Shelter, and was escorted to API by the Emergency Shelter Social Worker, following a suicide attempt by slashing her wrists. The Shelter staff stated that they felt she needed more help than was available in that program, and requested that she be admitted to the hospital.

14. This is the second API admission for this 16-year-old male high school student.

E. S. Rabeau, M.D.
Deputy Commissioner - Health

-4-

March 14, 1984

Just prior to this hospitalization, he had been incarcerated at MYC. He was seen there by psychiatric consultants, who recommended his placement here at the hospital. According to the Program Director for the Detention Unit at McLaughlin Youth Center, "His condition and behavior were so different from other residents on the Boys' Detention Unit, he tends then to react negatively, and they, in turn, tend to provoke and precipitate his behavior...His psychotic condition and bizarre behavior make him inappropriate for our setting, unhealthy for him, and disruptive to the Boys' Detention Unit program."

PS/mbc

cc: Norma Lang, Special Assistant - Legis.

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811



Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

March 12, 1984

Senator Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: SB 346, An Act relating to the
treatment of mentally ill persons.

Dear Mr. Chairman:

I have attached copies of various materials I have received on the captioned bill. You will note, I am sure, as I did, that it appears to be highly controversial.

On balance, I am inclined to oppose the bill, for no one has ever bothered to make clear to me the need for the bill.

I had a letter from my friend "Pudge" the other day which we have somehow managed to mislay, but as I recollect her message, it was this: How come justification has to be given to hold an adult in custody for more than 72 hours but that a minor can be held for days on end without any such hearing?

For starters, I would suggest when you hold a hearing that you get some pro and con experts.

This is a pretty tough bill to digest and I am not sure that five lay persons can come to the right opinion without such help.

Very truly yours,

3

Robert H. Ziegler, Sr.

RHZ:lk

Enclosures

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H 04
JUNEAU, ALASKA 99811
PHONE:

DIVISION OF MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES

March 6, 1984

The Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Dear Governor Sheffield:

Your Mental Health Advisory Council has been following the developments of Senate Bill Number 346 amending an Act entitled: "An act relating to the treatment of mentally ill persons." We are aware that many public hearings have occurred prior to its introduction January 11, 1984 by Senators Josephson and Halford. Additionally, individual professionals, the Alaska Psychiatric Association and the Alaska Psychological Association have had consultation and input into these revisions with strong support for these amendments. These amendments are thought to represent improvements in the treatment of adolescents and adults from the standpoint of both providers and consumers.

Your advisory Council heard today that this bill is being held "hostage" pending untold bargaining possibilities. Since these amendments would improve the quality of care and likely result in more efficiently and less cost for both the Mental Health and Judicial Divisions, it seems unfortunate to delay its enactment.

Your Mental Health Advisory Council recommends your support for the quick passage of this bill. On behalf of all Council Members thank you for your consideration.

Sincerely,



Herbert G.W. Bischoff, Ph.D.
Chairperson

Council Members

David R. Samson, M.D.
Anchorage, Vice Chairperson
Ann Egrass, McGrath
Mabel Rosvold, Petersburg
Alice Wardlow, Bethel
Barbara T. Wihloborg, Fairbanks
Robert Hunter, M.D., Mt. Edgecumbe
Kevin C. Ritchie, Juneau

cc: Bill Ray, Chairman, Judiciary Committee
All Judiciary Committee Members
HGWB/dmb

02008 POM ANCHORAGE AK 15 03-10 1037 RST

PMS SENATOR ROBERT ZIEGLER

JUNEAU R.

PLEASE DO NOT SUPPORT 93346. I AM OPPOSED TO THE NURSING
STANDARDS REDUCTION CLAUSE.

JEAN FOGR

3105 WEST 31ST APT 1

ANCHORAGE AK 99503

3/8/84, SHIRLEE AND LIO, 22466

THE FOLLOWING MESSAGE WAS RECEIVED IN THE U.S. MAIL BY THE ANCHORAGE LEGISLATIVE INFORMATION OFFICE.

TO: ?(SUGGEST THE MESSAGE BE GIVEN TO ALL SENATE MEMBERS?)

FROM: DENNIS GRUBA
P.O. BOX 3064
KENAI, AK 99611

'DEAR SIRs:

SENATE BILL 346 FOCUSES ON THE PROBLEM NOT THE SOLUTION. ✓
A.P.I. PATIENTS NEED HELP WITH ALCOHOLISM, DRUG ADDICTION
AND REPRESSED FEELINGS, NOT, MORE DRUGS, SCARE TACTICS, AND
BEING LOCKED UP. YOUR BILL CREATES AN EVEN GREATER SENSE OF
IMPENDING DOOM RATHER THAN AN ATMOSPHERE OF RECOVERY."

BY DENNIS GRUBA

3/8/84, SHIRLEE ANC LIO, 22466

THE FOLLOWING MESSAGE WAS RECEIVED IN THE U. S. MAIL BY THE ANCHORAGE LEGISLATIVE INFORMATION OFFICE.

TO: ALL MEMBERS
ALASKA LEGISLATURE

FROM: JEFFREY N. JOHNS
1102 WILD ROSE COURT
ANCHORAGE, AK 99502

SUBJ: ✓ SB 346 '(INCREASING THE POWERS OF PSYCHIATRISTS)'

IT IS VERY DANGEROUS TO GIVE PSYCHIATRISTS POLICE POWERS. PSYCHIATRISTS HAVE A SUICIDE RATE 7 TIMES HIGHER THAN THE GENERAL POPULATION (FREEMAN, AMERICAN JOURNAL OF PSYCHIATRY). ELECTRIC SHOCK, PSYCHOSURGERY AND DRUGS CAUSE MEMORY LOSS, KILL BRAIN CELLS AND OTHER WISE HARM INDIVIDUALS. THESE FACTS ARE WELL DOCUMENTED. PLEASE OPPOSE THIS LEGISLATION.

JEFFREY N. JOHNS

3/8/84, SHIRLEE ANC LIO, 22466

THE FOLLOWING MESSAGE WAS RECEIVED IN THE U. S. MAIL BY THE ANCHORAGE LEGISLATIVE INFORMATION OFFICE.

TO: ALL LEGISLATORS

FROM: SHERWIN A. START
320 MCCARREY STREET, 'C'
ANCHORAGE, AK 99504
(H) 337-8988

SUBJ: ALASKA RAILROAD

*BEING AN RAILROAD TRANSPORTATION PLANNER, THE LEGISLATURE IS DOING A MONUMENTAL DISSERVICE TO BOTH THE LEGISLATURE AND THE FUTURE GENERATIONS OF RESIDENTS OF THIS STATE BY PURCHASING THE ALASKA RAILROAD AS IT WILL NEVER OPERATE IN THE BLACK!!! THE FEDS HAVE WITHHELD OR ALTERED THE INFORMATION AS TO COST OF TAKEOVER BY SUBSTANTIAL AMOUNTS (UNDERESTIMATED-ESTIMATED). I FURTHER BELIEVE THAT THE VOTERS OF THE STATE SHOULD HAVE A CHANCE TO VOTE WHETHER WE SHOULD BUY IT OR NOT!!!

/S/ SHERWIN A START

MSG 84-00022740 PRTY 1 03/09/84 12:54:26 ORIG: LF00 IN= 0005 OUT= 0074
FROM: TRACIE/FBX TO: JUN INFO
TARGET: LJHK SUBJ: POM

TO: SEN ZIEGLER, RAY, JOSEPHSON, ELIASON, PETTYJOHN
REPS: DAVIS, BETTISWORTH, KOPONEN, RINGSTAD, M.W. MILLER
SENS BENNETT, FAHRENKAMP, MOSS

FR: MR. AND MRS. A. AARON, MEMBERS OF FBX ALLIANCE FOR MENTALLY ILL
P.O. BOX 74132
FBX, 99707-4132
456-4407-H

RE: SB 346 TREATMENT OF MENTALLY ILL

MSG: FAMILIES OF THE MENTALLY ILL SUPPORT SB346, KNOWING THAT ITS PROVISIONS
ARE WAYS TO ALLEVIATE SUFFERING, NOT EXPLOIT IT.

-----EOM

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H 04
JUNEAU, ALASKA 99811
PHONE:

DIVISION OF MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES

March 6, 1984

The Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Dear Governor Sheffield:

Your Mental Health Advisory Council has been following the developments of Senate Bill Number 346 amending an Act entitled: "An act relating to the treatment of mentally ill persons." We are aware that many public hearings have occurred prior to its introduction January 11, 1984 by Senators Josephson and Halford. Additionally, individual professionals, the Alaska Psychiatric Association and the Alaska Psychological Association have had consultation and input into these revisions with strong support for these amendments. These amendments are thought to represent improvements in the treatment of adolescents and adults from the standpoint of both providers and consumers.

Your advisory Council heard today that this bill is being held "hostage" pending untold bargaining possibilities. Since these amendments would improve the quality of care and likely result in more efficiently and less cost for both the Mental Health and Judicial Divisions, it seems unfortunate to delay its enactment.

Your Mental Health Advisory Council recommends your support for the quick passage of this act. On behalf of all Council Members thank you for your consideration.

Sincerely,



Herbert G.W. Bischoff, Ph.D.
Chairperson

Council Members

David R. Samson, M.D.
Anchorage, Vice Chairperson
Ann Egrass, McGrath
Mabel Rosvold, Petersburg
Alice Wardlow, Bethel
Barbara T. Wihloborg, Fairbanks
Robert Hunter, M.D., Mt. Edgecumbe
Kevin C. Ritchie, Juneau

cc: Bill Ray, Chairman, Judiciary Committee
All Judiciary Committee Members
HGWB/dmb

Senator Bill Ray, Chairman
Senate Judiciary Committee
State Capitol, Pouch V
Juneau, Alaska 99811

March 7, 1984

Re: Senate Bill 346

I am writing to share my concern regarding several aspects of Senate Bill 346 "An Act Relating to the Treatment of Mentally Ill Persons." I am a registered nurse with a Master's in psychiatric nursing and ten years of experience in the mental health area. As a general comment, it is unclear as to what the proposed changes are intended to provide other than an enhancement of the treatment facility's ability to manage its clientele.

I am very concerned about the incarceration and loss of civil liberties of the mentally ill. The current retrenchment in the attitude about the treatment of the mentally ill in this bill is alarming given the many advancements that have been made in providing safe and humane approaches to their care. It would seem that there needs to be a distinction made in the legal language between those who are mentally ill and the appropriate treatment and those who are criminal and mentally ill and the associated loss of civil rights that accompanies criminal status. Most mentally ill persons are not criminals.

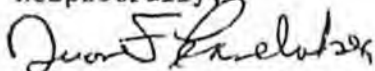
Specifically, Section 20 AS 47.30.840 (b) makes provisions for the professional in charge to suspend patients' rights under (a) (4) - (7). If rights can be suspended by such a professional person without the patient having access to counsel, then there were no rights in the first place. It is unclear as to what is meant by "in the best interests of the patient" and how these interests are determined specifically and by whom. I have not much faith in such a decision being made by a professional, given that the treatments that can be provided to the mentally ill are primarily supportive. There are no cures. In fact, there is now occurring an increase in the iatrogenic effects of treatments provided to the mentally ill. I do not mean to belabor the point, but treatment of the mentally ill consists of more than just prescribing and dispensing medications.

I am also concerned with the loss of rights taken from adolescents between the ages of 14 and 18. While treatment of this age group may be difficult, it is not a reason to remove their right to participate in self-determination. These changes are in Section AS 47.30.690. The implication is that this age group would not have the right to refuse treatment, even treatment that will have permanent effects upon them, such as psychosurgery and electroconvulsive therapy. These treatments are very serious in their consequence; and while they may be beneficial in the short term, they may be quite deleterious in the long term. In fact, I would propose a review board consisting of lay persons and professionals to approve such treatment prior to being administered.

In summary, I hope that serious review and consideration will be given to the possible effects of Senate Bill 346 upon the mentally ill and to the need for protecting their rights as citizens.

If you have any questions, feel free to contact me. Thank you for your serious consideration of my concerns.

Respectfully,



Duane F. Pennebaker, R.N., M.N., Ph.D.
324 Pribilof
Eagle River, Alaska 99577

S

B

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COMMITTEE REPORT
SENATE

FURTHER: HERE

Date: Jan. 29, 1979

Mr. President:

The Committee on APPROPRIATIONS has had HR 959

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SS 354-2 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

BILL SHEFFIELD, GOVERNOR

REPLY TO:

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 18, 1984

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

The Honorable Fritz Pettyjohn
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: SB 354 (as corrected)

Dear Senator Pettyjohn:

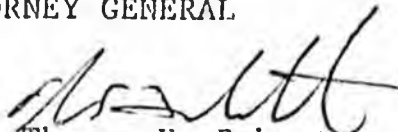
You have asked that we indicate whether the corrected version of SB 354 remedies the equal protection problems which we identified last year during consideration of HB 357. We believe that it does. For additional detail, please refer to our review of SCS CS HB No. 357 (RIs) am S, a copy of which is enclosed.

If you have other questions, do not hesitate to contact this office.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:



Thomas H. Robertson
Assistant Attorney General

THR:jca

Enclosure

July 19, 1983

x

The Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Re: SCS CSMB 357(Rls) am S --
state regulation of
religious schools
Our file: 388-095-83

Dear Governor Sheffield:

At the request of Emil Notti on your behalf, we have reviewed SCS CSMB 357(Rls) am S which addresses the degree to which certain religious schools are to be regulated by the state.

This bill diminishes the authority of executive agencies over all religious pre-elementary schools and over religious elementary and secondary schools which elect to comply with various requirements. The provisions of the bill, and the constitutional issues which they generate, are discussed below. We do not believe that the constitutional issues are sufficiently clear to require veto of this bill.

In order to qualify for the protections afforded by this bill, a school must be operated by a church or other non-profit religious organization that is exempt from federal taxation and does not receive direct state or federal funding. It is therefore possible that, except with respect to licensure of pre-elementary schools, executive authority over some religious schools would remain unchanged even if this bill becomes law.

Section 1 of the bill amends AS 14.07.020(8) which currently requires the Department of Education (DOE), in cooperation with the Department of Health and Social Services (DHSS), to "exercise general supervision" over public and private pre-elementary schools. The bill would delete reference to DHSS, would prohibit licensing of any pre-elementary schools, and would

eliminate authority to supervise the "educational component" of pre-elementary schools operated by a church or other qualifying religious organization.

Section 2 of the bill makes it clear that the system of voluntary accreditation of elementary and secondary schools established by AS 14.07.020(10) does not vest authority in DOE to "license" schools operated by a church or other qualifying religious organization.

Section 3 of the bill adds an exemption from compulsory public school attendance for children who attend an educational program operated by a church or other qualifying organization which meets the requirements set out in sections 4 -- 8 of the bill. The compulsory education statute, AS 14.30.010, which would be amended by sec. 3, currently exempts children who attend private schools which employ certificated teachers, who are tutored by certificated tutors, or who attend private schools in which the average student proficiency is not less than that found in nearby public schools, as measured by national achievement tests.

Sections 4 -- 8 of the bill would amend AS 14.45 to provide a means through which elementary and secondary schools operated by churches or other qualifying religious organizations can become partially exempt from state regulation. The exemption would not extend to laws relating to physical health, fire safety, sanitation, immunization, and physical examinations.

The requirements for exemption are set out in new AS 14.45.030 -- 14.45.040. New AS 14.45.030 requires that the religious school maintain monthly attendance records for each student, operate on a regular schedule for a school year of at least 180 days, and annually report to DOE the number of students in each grade and the school calendar. In addition, the parents of each child must file an annual notice of enrollment, signed by the parent and school administrator, with the local public school superintendent. The religious school must notify the superintendent if the child leaves school. New AS 14.45.035 requires that the religious schools administer at least one nationally standardized test, selected by the school from a list compiled by DOE, to children in grades 1, 3, 6, and 9. The test must measure achievement in English grammar, reading, spelling, and mathematics. The results must be maintained by the school and be made available to the child's parent or guardian and "authorized representatives" of the state. New AS 14.45.040 requires that the religious schools maintain "adequate" student records,

including records of immunizations, physical examinations, testing, and courses taken.

Finally, sec. 9 repeals AS 14.45.020 which authorizes DOE to provide final exam questions and diplomas for eighth graders in private and denominational schools. Apparently, this authority has not been exercised since well before statehood.

In general, SCS CSHB 357(R1s) am S would establish two categories of private schools, those which are operated by a church or other qualifying religious organization and those which are not. This gives rise to the legal question of whether or not the disparate treatment afforded each category is in keeping with the equal protection clauses of the state and federal constitutions.

Although courts have developed separate tests under each, the state and federal constitutions both require that there be reasons for treating these categories of private schools differently. The bill itself does not contain a statement of purpose. However, it has been characterized by supporters as an effort to accommodate the free exercise of religion.

The free exercise of religion is protected by the First Amendment to the United States Constitution and by art. 1, sec. 4, of the Alaska Constitution. Courts have developed a threefold test to determine whether state educational requirements impermissibly limit the free exercise of religion: (1) whether the regulated activity is motivated by and rooted in a legitimate and sincerely held religious beliefs; (2) the degree to which the parties' free exercise of religion has been burdened; and (3) whether the state has a compelling interest in the regulation which justifies the burden. Wisconsin v. Yoder, 406 U.S. 205, 32 L.Ed.2d 15, 92 S.Ct. 1526 (1972). The focus of this test is on the exercise of religion; "[t]he religious character of an organization does not provide a shield from regulation which no way affects religious beliefs or acts." In re Rabbinical Seminary Netzach Israel Ramailis, 450 F.Supp. 1078, 1081 (E.D. N.Y. 1978).

Unfortunately, the limits of permissible regulation have not been clearly established. On one hand, courts have acknowledged that religious schools combine religious and secular education and have invalidated state regulations which unreasonably interfered with the former. E.g., Lemon v. Kurtzman, 403 U.S. 602, 29 L.Ed.2d 745, 91 S.Ct. 1105, reh' den 404 U.S. 876, 30 L.Ed.2d 123, 92 S.Ct. 24 (1971); State v. Whisner, 351 N.E.2d 750 (Ohio 1976). On the other hand, courts have acknowledged that

"if the state must satisfy its interest in secular education through the instrument of private schools, it has a proper interest in the manner in which those schools perform their secular educational function." Board of Education v. Allen, 392 U.S. 236, 247, 20 L.Ed.2d 1060, 88 S.Ct. 1923 (1968). For example, state regulations requiring certified teachers, a minimum curriculum, and state licensure have been approved. E.g., New Jersey State Board of Higher Education v. Board of Directors of Shelton College, 448 A.2d 988 (N.J. 1982); State v. Faith Baptist Church, 301 N.W.2d 571 (Neb. 1981), app. dism. 454 U.S. 803, 70 L.Ed.2d 72, 102 S.Ct. 75 (1982); State v. Shaver, 294 N.W.2d 883 (N.D. 1980). See also Pierce v. Society of Sisters, 268 U.S. 510, 69 L.Ed.2d 1070, 45 S.Ct. 571 (1925).

This is also an area in which courts may defer to the legislature. In State v. Rivinius, 328 N.W.2d 220, 231 (N.D. 1982), the Supreme Court of North Dakota, after approving a teacher certification requirement, indicated that "[w]e are not implying or intimating that the legislature may not work out a system that will be satisfactory to both sides -- meaning the state and the defendants -- and still accomplish the constitutional mandate." See also West Virginia State Board of Education v. Barnette, 319 U.S. 624, 638, 87 L.Ed. 1620, 63 S.Ct. 1178 (1943).

Because the United States Supreme Court has yet to resolve some of these issues, we cannot state with certainty that SCS CSHB 357(R1s) am S provides protections to religious schools beyond those which are constitutionally required. However, since it precludes various means of regulation which, at least for elementary and secondary schools, have been approved by lower courts, we believe this result to be likely. If this is true, the legislation would fall on equal protection grounds unless other reasons based on actual differences between the two categories of private schools could be found to support it. In addition, it would be subject to challenge as an aid to religion under the establishment clauses of the state and federal constitutions.

It is noteworthy that present regulatory requirements of DOE are minimal and that this bill is based on legislation, enacted in North Carolina in 1972, which has not been challenged in court. N.C. Gen. Stat. § 115-257.1, et seq. (Cum. Supp. 1979). We also acknowledge that substantial arguments can be made in its support. See generally "State Regulation of Private Religious Schools in North Carolina -- A Model Approach," 16 Wake Forest Law Review 405 (1980). Accordingly, we do not believe that veto on constitutional grounds is required.

The Honorable Bill Sheffield
Governor
388-095-83

July 19, 1983
Page 5

Except as noted, this bill presents no constitutional or other major legal problems. It is possible, however, that problems of statutory interpretation could arise as DOE attempts to exercise its remaining authority in this area.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:THR:jal

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
SUNEAU ALASKA 995
907-465-3611

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 16, 1984

SUBJECT: Sectional analysis of SB 354

TO: Senator Jan Faiks
Chairman, Senate Rules Committee

FROM: Keith B. Levy *KBL*
Legislative Counsel

You have requested a sectional analysis of SB 354, "An Act relating to the regulation of private schools." The main thrust of the bill is to allow religious and other private schools to opt out of the general laws and regulations applicable to private schools if they agree to comply with certain minimal requirements.

Section 1 states that the purpose of the bill is to guarantee that the state will not interfere with the constitutional right of freedom of religion while at the same time ensuring the quality of all education in the state.

Section 2 amends the duties of the Department of Education with respect to private education (AS 14.07.020). It provides that the department will consult with the state fire marshall and the state sanitarian rather than the Department of Health and Social Services on matters of health and safety (AS 14.07.020(7)). It clarifies that the department must require physical examinations and immunizations in private pre-elementary schools (AS 14.07.020(7)). Section 2 also provides that the department is no longer responsible for the general supervision of private pre-elementary schools and nurseries. Supervision over public pre-elementary schools will no longer be done in cooperation with the Department of Health and Social Services (AS 14.07.020(8)). Finally, section 2 makes clear that the department may provide voluntary accreditation for any private school that requests it, although the department is not authorized to require private schools to be licensed (AS 14.07.020(10)).

Section 3 amends the state's compulsory education law

Senator Jan Faiks
Page 2
January 16, 1984

(AS 14.30.010) to provide that attendance at a school operating in compliance with AS 14.45 (see section 5, below) satisfies the compulsory education requirements.

Section 4 provides that a private school that does not choose to comply with AS 14.45 (see section 5, below), is not exempt from other laws and regulations relating to education and must make attendance reports in the same manner as public schools.

Section 5 provides the minimum requirements a religious or other private school must meet if it elects to be exempt from other provisions of law and regulations. However, even these schools are subject to laws and regulations relating to physical health, fire safety, sanitation, immunization, and physical examinations (AS 14.45.100).

The parent or guardian of a child enrolled in an exempt school must file an annual notice of enrollment with the local public school superintendent on a form signed by the school administrator and the parent (AS 14.45.110(a)). The school must notify the local public school superintendent if the child is no longer attending or enrolled in the school. The exempt school must maintain monthly attendance records, operate on a regular schedule of at least 180 days, and report to the commissioner of education annually the number of students enrolled in each grade and the school calendar (AS 14.45.110(b)).

An exempt school must also administer a nationally standardized test to all students in grades one, three, six, and nine at least once each school year (AS 14.45.120(a)). The test must measure achievement in English grammar, reading, spelling, and mathematics (AS 14.45.120(b)). The school must maintain records of the results of these tests and make them available to the parent or guardian of the student. The school is required to make composite test results available annually to an authorized representative of the Department of Education, but these results are not public information unless each public school is subject to similar testing requirements, the result of which are also public (AS 14.45.120(c)).

The exempt schools are also required to maintain permanent student records reflecting immunizations, physical examinations, standardized testing, academic achievement, and courses taken at the school. The administrator of the

Senator Jan Faiks
Page 3
January 16, 1984

school must certify under oath that these records are being maintained (AS 14.45.130). Finally, "religious school," as used in these sections, is defined as a private school operated by a church or other religious organization that does not receive direct state or federal funding (AS 14.45.140).

It should be kept in mind that these provisions are not mandatory unless the private school chooses to exempt itself from other laws and regulations relating to education. Also, this option is available to all private schools, religious and otherwise.

KBL:ojb
J2/036

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COMMITTEE REPORT
SENATE

FURTHER:

Date 11/21/84

Mr. President

The Committee on Education considered SB 300

checking accounts.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt - CS for SB 300
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

Tougher bad-check penalties sought in proposed legislation

By Gary Dawson
Staff Writer

Proposed legislation that would make it more difficult to open checking accounts and increase penalties for passing bad checks was unveiled at the Minnesota Capitol today.

Sen. Marilyn Lantry and Rep. Randy Kelly, both St. Paul DFLers, said at a press conference sponsored by the Minnesota Retail Merchants Association that they will introduce the legislation in January when the 1983 session convenes.

The bill would require banks to more closely scrutinize checking account applicants and increase civil and criminal penalties for bad check writing.

Banks would be required to obtain the names of other financial institutions where

checking account applicants had accounts for the previous 12 months. They would also have to determine whether the previous accounts are open or closed and, if closed, whether the action was voluntary on the part of the applicant. Also, banks would have to determine if the applicant had been convicted of bad check writing within the past five years.

The proposal also would provide new civil remedies for holders of bad checks. Now, judges may order restitution when handing down criminal sentences, but there is no specific relief spelled out in the law for merchants. Under the proposed legislation, holders of bad checks would be able to sue offenders for twice the amount written, plus 18 percent annual interest and a \$15 service charge. Merchants would have to post those provisions in their stores.

The criminal portion of the legislation

would change current misdemeanor provisions to a system of graduated penalties, depending on the amount of the bad check.

The penalty would remain a maximum of 90 days in jail and a \$500 fine for checks under \$300; checks between \$300 and \$2,499 would carry a maximum sentence of three years and \$3,000; checks for \$2,500 or more would carry a maximum of five years in prison and \$5,000 fine.

A new forgery offense also would be created. It would carry a maximum penalty of 10 years in prison and \$10,000 fine for falsely altering or issuing a check.

The proposed legislation was developed by a task force of law enforcement officials, representatives of the banking and food retailing industries and the merchants association.

Nation/World

Turnbull's that authorized for near-1. Page 1C

INFLATION MODEST. Consumer prices rose only 0.1 percent in November, the smallest gain since March, the government said today. Page 3A

settlement the Metropolitan receive cash 100 in return that 338 on were de- Page 1C

200 FIRE DEAD. Exhausted firefighters armed with chemical foam and guided by associates of Texas oil-blaze troubleshooter Red Adair ringed a 3-day-old raging fuel-tank inferno in Venezuela... Page 3A

elter for 19 apartment

'CHEATED' OF CHILDHOOD. Christine

Sports

100-66 BASKETBALL. The Marquette Warriors were unpleasantly surprised to learn there is more to the Gophers than just Randy Breuer in their setback Monday night. Page 3C

50-34 FOOTBALL. All kinds of records were set Monday night as the San Diego Chargers avenged last year's "Ice Bowl" loss to the Cincinnati Bengals. Page 3C

rope: "We are prepared, things, to agree that the Soviets retain in Europe only as many are kept there by Britain and a single one more."

Opinion

HOPE WE'LL MAKE A to please can create an says columnist Ellen Good

Forecast: Cloudy

TWIN CITIES. Tonight:

Bad-check crackdown advocated

By the Associated Press

Minnesota merchants and legislative sponsors announced plans Tuesday to crack down on people who write bad checks.

Rep. Randy Kelly and Sen. Marilyn Lantry, both St. Paul DFLers, said they will ask the Legislature to enact tougher penalties on bad-check writers.

With the support of state retail organizations, they will push a three-pronged approach to the bad-check problem.

First, banks will be asked to gather more information about people who open new accounts. Under penalty of perjury, an applicant must provide the names of all banks where accounts were held in the last 12 months, and must state whether these accounts are open or closed.

The applicant must also state whether in the last three years an account was closed other than voluntarily, and whether the applicant has been convicted of a check offense in the last five years.

The proposed legislation calls for tougher civil penalties. It gives the holder of a bad check the right to collect twice the amount of the check, 18 percent interest, attorneys' fees and a \$15 service charge. The tougher civil penalties would apply only if a merchant displays written notice of the penalties on the premises.

There also are tougher criminal penalties. The penalty for passing bad checks worth \$2,500 or more is raised to 10 years in prison and a \$10,000 fine. From \$150 to \$2,500 of bad checks, the fine is \$3,000 and three years in prison, while the penalty for writing a bad check under \$150 would be 90 days in jail and a \$500 fine.

The bill allows the prosecution to aggregate the offenses, so a series of bad checks totaling more than \$2,500 would qualify for the toughest criminal penalties.

Bill Wheeler
Rt 2 Box 91
Delano, Mn.
55328
972-2282
1-6-83

Senator Marilyn Lantry
Representative Randy Kelly
Minnesota State Capitol
St. Paul, Mn.

Dear Legislators:

I am very glad to see that you are trying to change the law that seems to protect the criminal, the bad check writer. It's about time that this problem is dealt with.

As owners of a small seed business, we have become aware of the loopholes of the law that favor the bad check writer over the honest citizen.

We have learned that if the check is not written on the spot but sent through the mail and the check is bad, it alleviates all criminal liability. Also, if you agree to hold the check or receive only partial payment and the check is bad, it also eliminates any legal action.

Please refer to official form that explains several situations where a bad check becomes okay in our present system.

I think it is about time that this legalized theft is stopped.

Thank you again for trying to get this issue through.

Sincerely,

Bill Wheeler

Long awaited bad check bill is now law in Minnesota thanks to MRMA and efforts of legislative sponsors

Few problems in the commercial marketplace have been more burdensome to retailers than the frequency with which they are given worthless checks by consumers. A major part of the ongoing problem has been the inability to get any reasonable sense of satisfaction on most of the bad checks that retailers at all levels are confronted with each month.

In the past, retailers have blamed the financial institutions for making it too easy for individuals to open checking accounts. The financial institutions have contended that it is not their obligation to check on the future honesty of those people applying for new checking accounts. Thus the arguments have raged on while law enforcement officials have been unable to prosecute bad check writers for reasons ranging from a lack of personnel and sufficient information on the check writer to a general unwillingness of the courts to levy any kind of severe punishment.

With this as background, the MRMA together with other retail organizations, set out to try and get some "teeth" put in to the Minnesota state law. The most important ingredient, the MRMA was soon to learn, was getting two plucky legislators who would not be deterred in the commitment to the businesses that have been plagued by bad checks. Two such legislators were Rep. Randy Kelly (DFL-St. Paul) and Sen. Marilyn Lantry (DFL-St. Paul).

It can rightly be stated that retailers in Minnesota have a new, more effective bad check law on the books because of these two legislators.

Highlights of this new Bad Check law:

- financial institutions are required to ask a uniform set of questions of new checking account applicants including questions about previous accounts that were closed without the applicant's approval and whether the applicant has been convicted of a check offense. Financial institutions must now verify whether previous account was closed involuntarily. In those instances of involuntary closure of an account or conviction of a check offense by an applicant, the financial institution may not open the new checking account.

- merchants who get stuck with a worthless check will have the statutory authority, under this new law to charge a service fee of up to \$15.00 for returned checks.

- civil penalties have been increased to up to \$100, plus interest on the judgment and assessment of attorney's fees against those who pass bad checks.

- the ability to make a case in court against worthless checks has been improved by establishing that the check, with the proper information recorded on the back of the instrument, is now "prima facie" evidence of the presenter's identity. In addition, this new law now requires that financial institutions must release information about the account of a worthless check passer. That information must be released to both the holder of the bad check, such as the retailer, and the law enforcement authorities.

MRMA is busy drafting a handbook on "What Merchants Should Know About Minnesota's Worthless Check Laws". The handbook will be distributed to all MRMA members before the new law takes effect August 1, 1983.

PODIUM: Continued from pg. 4
Association during the coming year. We are going to be bringing you a series of informational articles during the months ahead on just how unemployment comp hits our retailing industry harder than our rightful share of the problem would reasonably dictate.

We are not out to make each MRMA member an expert on unemployment comp. We merely would hope to provide you with enough information to make you knowledgeable on the subject so that you could communicate your personal business concern to your legislative representatives prior to the March start of the 1984 session.

BANKRUPTCY: Cont. from pg. 1
between a tougher reform bill, which was killed in the House last year, and a weaker alternative. For now, it is the only hope retailers have for some measure of bankruptcy reform and relief.

Some of the bill's highlights include:

- Permits bankruptcy judges to dismiss flagrant cases.

- Requires repayment plans to be bona fide efforts to repay debts and extends repayment time to 5 years.

- Eliminates "loading up" before declaring bankruptcy. Debts incurred with 40 days of filing bankruptcy would not be dischargeable.

Customer Relations Advice

An important element to customer relations that is often overlooked is the customer who is unhappy, but does not make a formal complaint.

Many retailers do not realize that this dissatisfied customer will usually not return to their store and will tell others of their unpleasant experience.

Here's five ways you can improve your customer relations and reduce the number of dissatisfied customers.

1. Solicit complaints - make it easy for unhappy customers to tell you what their problems are.
2. Solve customer complaints as quickly as possible and with a smile.
3. Keep records of why complaints occur.
4. Analyze how complaints can be prevented and make changes in your

GOOD NEWS FOR WORKERS' COMP COVERAGE

MRMA's Workers' Comp Plan with Chandler Associates recently was expanded to include a Businessowner's Package Policy.

This additional line of insurance should provide eligible participants with dividends, subject to applicable law, based on loss experience.

The Businessowner's Plan, underwritten by Security Insurance Company, features competitive rates for Worker's Compensation, Property Liability, and Automobile coverage.

If you are not presently insured under our program and desire to receive a com-

RELEASE: 10:00 AM, Tues., Dec. 21, 1982
INFO: Randy Morris 227-6631 or 800-652-9773

LEGISLATORS ANNOUNCE CRACKDOWN ON BAD
CHECK WRITERS WITH PLANS FOR SWEEPING
CHANGES IN EXISTING MINNESOTA STATUTES

Two Minnesota legislators have announced that they will introduce legislation that will significantly change the way in which Minnesota laws deal with persons who write worthless checks. Rep. Randy Kelly (DFL-St. Paul) and Senator Marilyn Lantry (DFL-St. Paul) told a State Capitol news conference today that they plan to jointly introduce in the 1983 legislative session a "tough new law that we expect will act as a first line deterrent against the individuals in our society who repeatedly prey on the small businesses of this state by writing and passing worthless checks."

According to the legislators, the proposed bill would change existing Minnesota statutes by providing for certain bank account opening procedures; by extending the civil liabilities for issuing a worthless check; and by changing the legal penalties for passing a bad check.

Under penalty of perjury, persons opening new checking accounts will have to give the names of all banks where accounts were held during the previous 12 months; whether these accounts are open or closed; whether an account was closed other than voluntarily; and, whether the applicant had been convicted of a bad check offense in the previous ten years.

The proposed measure will also permit the holder of a dishonored check to collect from the check writer twice the amount of the check, plus an 18 percent annual interest charge; attorney's fees, and a service charge of up to \$15.00. These remedies are in addition to the criminal prosecution where restitution is discretionary.

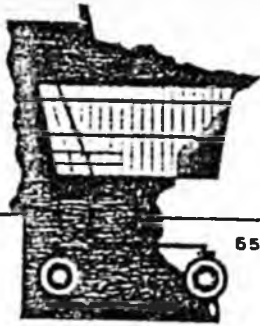
The proposed changes in the criminal penalties range from a jail sentence of 90 days and/or a \$500.00 fine for a bad check of up to \$300.00; to 5 years in prison and/or a \$5,000 fine for a worthless check in excess of \$2,500.00.

"Too few of us stop to realize what a terrible burden bad checks are for the small business people of this state," Representative Kelly stated. "One \$50.00 bad check, will often mean the merchant, depending on his rate of return, will have to sell an additional \$2,000.00 worth of merchandise in order to cover the loss from that one check," Kelly said.

The co-sponsors said that this legislation is directed at the "chronic and repeated bad check writers," and not the person who, on occasion, will inadvertently overdraw their checking account.

"Everybody talks about workers' compensation and unemployment compensation as the test for a good business climate in this state," Senator Lantry said. "Yet, there are few things that burden small businesses as much as the continuing flow of bad checks our state's merchants are now experiencing. Our studies have shown that some Minnesota supermarket and convenience store chains have received as many as 15,000 and 20,000 worthless checks during the single year of 1981. It is clear to us that the time has long since passed for the legislature to bring some badly needed relief to these business people," Lantry stated.

The bill that will be introduced in early January evolved from a bad check task force that included representatives from the banking community, the food retailers, the law enforcement authorities, county prosecutors, and the Minnesota Retail Merchants Association.



MINNESOTA FOOD RETAILERS ASSOCIATION

655 WABASHA STREET / SUITE 215 / SAINT PAUL, MINNESOTA / 55102 / (612) 225-7809
Toll Free Number 800-652-9030

HUGH R. COSGROVE, CAE
President

"Bad Check Statistics"

2000 Food Stores in MN.

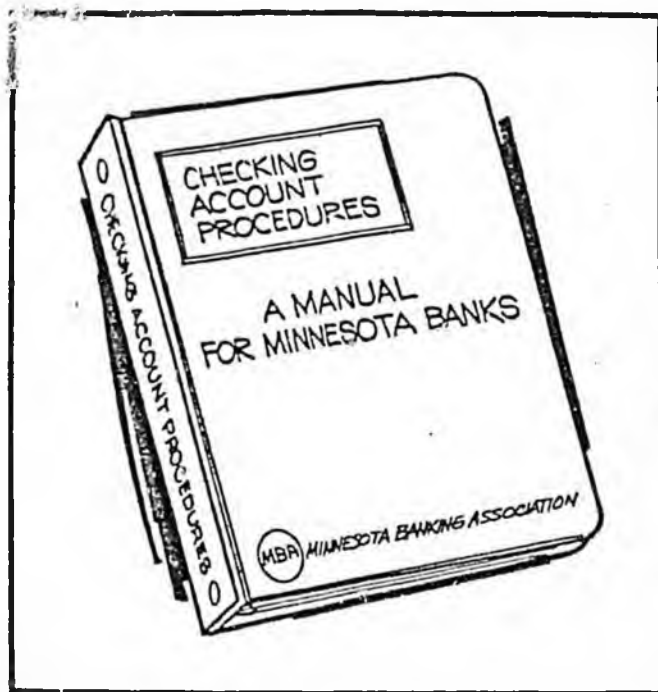
13,284,000 in Bad Checks ~~1/4/81~~ ⁽¹⁹⁸¹⁾ ~~1/2/81~~
(# 6642 average per store)

10,384,000 recovered (78%)
(# 5192 ave. per store)

2,900,000 lost to bad checks (22%)
(# 1450 ave. per store)

? Cost of recovery

4,036,920,000 Total Food Sales
in MN - 1981
(# 2,018,460 ave. per store)



POLICIES AND PROCEDURES FOR OPENING NEW ACCOUNTS

Each bank should create a written policy in regard to new account opening procedures. The following are policy ideas that may be considered in the development of your policies. All bank staff should be given a copy of these policies for their review and reference.

New account personnel shall be responsible for opening all new accounts. If at all possible, bookkeepers and tellers should not open new accounts because of their daily activity in the control of these accounts. Exception may be necessary in smaller banks due to the overlay of duties.

New account personnel should be trained to recognize account frauds and determine the acceptability of the account. It is far better for new account personnel to stop a fraud when an account is opened than for the bank and merchants to suffer a loss.

New account personnel should know the legal implications and the bank's policies concerning various kinds of accounts. They should be well versed and be able to offer understandable explanations of individual accounts, tenancy-in-common, joint tenancy with right of survivorship, trustee accounts of beneficiary, minor's accounts, powers of attorney, trade names, sole ownership, partnership, corporation, fraternal and any other accounts.

Each new account shall have a new account application completed in detail. This account should be verified by your check systems program and all of the information obtained shall be noted on the back of the application. (Do not deface application.)

The new accounts representative should explain the bank's policies and procedures regarding overdrafts, insufficient fund checks, statement cut-offs, account reconciliation, uncollected funds, service charges, etc. to the new checking account customer. The bank's policy for unsatisfactory checking accounts should be explained.

All necessary documentation is a vital function in opening new accounts. Vital documentation, other than the new account application, consists of signature cards, contractual agreements (usually incorporated in signature cards), applicable resolutions, credit applications, power of attorney, special agreements and other documents, depending on the kind of account opened.

Documentation is sometimes required for the assignment of account numbers and for setting up the new account on the bank's records. Bank policy, systems and the kind of account will govern the amount of documentation required.

Proper resolutions and other documentation must be obtained for persons signing in connection with accounts of corporations (private and non-profit), clubs, lodges, associations and other organizations. These applicants should be authorized to sign or countersign checks, notes and other instruments only to the extent that their authority to do so is indicated in the respective corporation's/organization's bylaws or in resolutions adopted by its Board of Directors or other governing body.

In order to deal with such persons and honor instruments signed by them, it is important that the bank obtain, for its records, a certified

copy of the bylaws or resolutions authorizing the signing of checks, notes and other instruments. This copy should also indicate the extent of the authority that has been granted to the person(s) signing.

Checks made payable to any of the authorized organizations must be deposited into the account.

A power of attorney, partnership certificate or other legal document giving authority should be obtained from individuals signing for other individuals or partnerships. The legal document should indicate the extent to which the individual is authorized to sign.

The bank should obtain copies of court orders, last wills and testaments, trust agreements or other similar instruments from persons signing as personal representatives or in other like fiduciary capacities. Copies of court orders should be certified unless they are authenticated as genuine by a responsible law firm or a well-known customer, in which case acceptance should be with officer approval only.

In the above situations, completed papers of authority for checking accounts should be reviewed and approved by an authorized individual before they are filed in a controlled area.

A form of resolutions covering facsimile signatures should be obtained in all cases where a machine signature will be used. Resolutions or other papers of authority covering the use of facsimile signatures should provide the same protection as the American Bankers Association form.

Checks may be signed the way the applicant usually signs the name, but the signature should be the same as the one on the signature card. That will help insure that checks are not returned because of an irregular or unauthorized signature. Signature cards should be signed with a ball point pen or regular type pen. Individual characteristics of a person's writing are lost when felt-tipped pens are used, consequently, forgeries are harder to detect.

If all of the necessary papers are not available when the account is opened, the new account representative should be assured by the customer that the proper papers will be furnished on or before a specified date agreed upon at the time that the account is opened. All delay agreements should be approved by an officer.

A tickler system should be established on all temporary signature cards, resolutions, etc. and if not received within a reasonable time period, a follow-up should be made to acquire the document.

The opening deposit ticket should be completed by the person opening the account and the deposit slip should be headed up exactly the same as it is shown on the new account application. If checks are included in the deposit, they should be scrutinized to be certain that they are payable to those in whose name the account will be carried, and properly endorsed over to the bank for collection and credit. If checks drawn on other banks are being deposited, the applicant should be informed that an "uncollected funds hold" will be placed on the account until the check is clear.

No cash back or split deposits should be allowed on any new accounts.

When the new account deposit ticket and documentation has been completed, the new account representative should take the applicant to a teller and obtain a receipt for the deposit. This will give the new account representative a chance to show the applicant how to make future deposits and give a teller the opportunity to meet the applicant. If cameras are used by the bank, a picture will be taken of the individual at this time.

The new account representative should place a hold on the initial deposit (other than cash) if the applicant and/or the identity of the drawer of the check being used for the initial deposit is not well known. The hold should be placed on the account for the actual number of days that it generally takes to clear the item.

The new account person should be especially wary of the following in opening a new account:

1. Forged checks
2. Stolen checks
3. Altered checks
4. Split entries
5. Payable through drafts
6. Checks drawn on other banks
7. Forged forms, e.g. signature cards, power of attorney, etc.

The task of opening accounts is not completed when the first deposit is processed and the new customer has left the bank. All new account applications should be sent to the Credit Department or the individual responsible for verifying the authenticity of the application. The Credit Department or authorized individual should verify the authenticity of the information by:

1. Confirming address
2. Verifying employment
3. Verifying references and obtaining credit reports
4. Reviewing the information on the application to assess its accuracy

Some banks verify signatures with former banking relations.

After the Credit Department is satisfied that the new account will be handled in a satisfactory manner, a dual purpose verification and public relations letter should be sent to all new account customers. Any undeliverable letters should be investigated immediately to determine the reason for its return.

Daily or regular listing of new accounts should be prepared and circulated within the bank. This will provide some control and will enable

bank personnel to identify new customers more easily. In some instances, it will enable them to thank a new customer for their business personally.

After the new account information has been verified, the supplies that a customer needs to use the account should be ordered. Start numbering all new account checks at No. 101. Any exception to this policy should be documented on the account application form.

The initial check order may consist of 50 checks or less. These checks should include name and address. A post office box is not sufficient for an address. Any exception to your bank's policy should be documented on the account application form. Use discretion in the issuance of temporary (starter) checks.

Some banks have new account kits that include the supplies needed for the type of account opened. Deposit tickets, bank-by-mail envelopes, I.D. cards, bank rules and regulations, literature explaining banking hours, facilities and other services are common enclosures.

Imprinted checks, endorsement stamps, special imprinted deposit tickets and similar supplies should be ordered by new account personnel after Credit Department acceptance. Choice of colors, sizes and fees should be thoroughly explained by the person opening the account. If checks are not ordered through the bank, new account personnel should ascertain if the checks will meet the necessary MICR standards in order to avoid possible future processing problems.

New accounts should be reviewed after a period of time to determine whether the account is being maintained in a satisfactory manner.

Customers should be encouraged to come into the bank if they experience difficulties or start having problems. New account personnel should explain that perhaps the bank could counsel a customer and resolve the problem before it gets out of hand and the account has to be closed.

Randy C. Kelly

District 67A

Ramsey County

Committees:

Environment and Natural Resources

Judiciary

Criminal Justice Division

Taxes

Economic Development Division, Chairmar



Minnesota House of Representatives

Harry A. Sleben, Jr., Speaker

January 31, 1984

RECEIVED

As per our conversation, I am sending you a copy of the bad check law which I authored and which became law on August 1, 1983.

I am also including the bill as first introduced and some other material.

In the summer of 1982, I formed an ad hoc taskforce comprised of bankers, merchants, police and prosecutors to identify what the problems were in this area and possible solutions.

We found a major criticism in that financial institutions rarely checked on predecessor account information for new applicants. So one of the major elements in the bill was to require some uniform information to be taken and a requirement for the financial institutions to verify this information. The banking community lobbied strongly against this provision but we prevailed.

The legislation is working well with approximately a 25% decline in the issuance of bad checks in Minnesota.

Please feel free to share this information I am sending with legislators in Alaska.

Good luck. It was a tough fight here in Minnesota but the results so far indicate that it was a worthwhile effort.

Sincerely,

Handwritten signature of Randy C. Kelly in cursive.

Randy C. Kelly
State Representative

RK:DP

Reply to: 343 State Office Building, St. Paul, Minnesota 55155

Office: (612) 296-4277

1901 Hyacinth, St. Paul, Minnesota 55119

Distributed By
 Secretary of the SENATE
 Room 231, State Capitol
 St. Paul, 296-2343

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relating to commerce; establishing standards and
 procedures for the release of financial information;
 establishing procedures for opening checking accounts;
 providing for civil liability for issuance of
 dishonored checks; clarifying conciliation court
 jurisdiction for actions on dishonored checks;
 requiring release of certain account information to
 check holders and law enforcement authorities;
 amending Minnesota Statutes 1982, sections 487.30,
 subdivision 4; 488A.12, subdivision 3; 488A.29,
 subdivision 3; and 609.535; proposing new law coded in
 Minnesota Statutes, chapters 48 and 332; proposing new
 law coded as Minnesota Statutes, chapter 13A;
 repealing Minnesota Statutes 1982, section 48.511.

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

Section 1. [13A.01] [DEFINITIONS.]

Subdivision 1. [SCOPE.] For the purpose of this chapter,

 the following terms have the meanings given them.

Subd. 2. [FINANCIAL INSTITUTION.] "Financial institution"

 means any office of a bank, savings bank, industrial loan

 company, trust company, savings and loan, building and loan,

 credit union, or consumer finance institution, located in the

 state.

Subd. 3. [FINANCIAL RECORD.] "Financial record" means an

 original of, a copy of, or information known to have been

 derived from, any record held by a financial institution

 pertaining to a customer's relationship with the financial

 institution.

3 government, or any officer, employee, or agent of it.

4 Subd. 5. [CUSTOMER.] "Customer" means any natural person
5 or authorized representative of that person who utilized or is
6 utilizing any service of a financial institution, or for whom a
7 financial institution is acting or has acted as a fiduciary, in
8 relation to an account maintained in the person's name.

9 Subd. 6. [LAW ENFORCEMENT INQUIRY.] "Law enforcement
10 inquiry" means a lawful investigation or official proceeding
11 inquiring into a violation of, or failure to comply with, any
12 criminal or civil statute or any rule or order issued pursuant
13 to it.

14 Sec. 2. [13A.02] [ACCESS TO FINANCIAL RECORDS BY
15 GOVERNMENT AUTHORITIES PROHIBITED.]

16 Subdivision 1. [ACCESS BY GOVERNMENT.] Except as
17 authorized by this chapter, no government authority may have
18 access to, or obtain copies of, or the information contained in,
19 the financial records of any customer from a financial
20 institution unless the financial records are reasonably
21 described and:

22 (1) The customer has authorized the disclosure;

23 (2) The financial records are disclosed in response to a
24 search warrant;

25 (3) The financial records are disclosed in response to a
26 judicial or administrative subpoena; or

27 (4) The financial records are disclosed pursuant to section
28 609.535 or other statute or rule.

29 Subd. 2. [RELEASE PROHIBITED.] No financial institution,
30 or officer, employee, or agent of a financial institution, may
31 provide to any government authority access to, or copies of, or
32 the information contained in, the financial records of any
33 customer except in accordance with the provisions of this
34 chapter.

35 Nothing in this chapter shall require a financial
36 institution to inquire or determine that those seeking

3 warrant, subpoena, or written certification pursuant to section
4 609.535, subdivision 5, or other statute or rule, served on or
5 delivered to a financial institution shows compliance on its
6 face.

7 Subd. 3. [NOTICE TO CUSTOMER.] Within 180 days after a
8 government authority obtains access to the financial records of
9 a customer pursuant to a search warrant or a judicial or
10 administrative subpoena, it shall notify the customer of its
11 action unless a delay of notice is obtained pursuant to section
12 3. The notice shall be sufficient to inform the customer of the
13 name of the government authority or government authorities
14 having had access to the records, the financial records to which
15 access was obtained, and the purpose of the law enforcement
16 inquiry, including transfers of financial records made pursuant
17 to subdivision 5. Notice may be given by providing the customer
18 with a copy of the search warrant or subpoena.

19 Subd. 4. [DUTY OF FINANCIAL INSTITUTIONS.] Upon receipt of
20 a request for financial records made by a government authority,
21 the financial institution shall, unless otherwise provided by
22 law, proceed to assemble the records requested within a
23 reasonable time and be prepared to deliver the records to the
24 government authority upon receipt of the search warrant or
25 subpoena required under this section.

26 Subd. 5. [USE OF INFORMATION.] Financial records
27 originally obtained pursuant to this chapter may be transferred
28 to another government authority provided the transferred records
29 are pertinent and necessary to the receiving authority in
30 initiating, furthering, or completing a law enforcement inquiry.

31 When financial records subject to this chapter are
32 transferred to another government authority, the transferring
33 authority shall include the name of the receiving authority and
34 the financial records transferred in the notice required by
35 subdivision 3 of this section or, if the transfer occurs after
36 the notice has been sent to the customer, the transferring

3 the financial records were transferred.

4 Subd. 6. [STATUS OF RECORDS.] All financial records
5 obtained by a government authority pursuant to this section are
6 subject to the provisions of section 13.82, subdivision 5.

7 Sec. 3. [13A 03] [DELAYED NOTICE.]

8 Subdivision 1. [APPLICATION.] Upon application of the
9 government authority, a customer notice pursuant to section 2,
10 subdivision 3, may be delayed by order of an appropriate court
11 if the judge finds that:

12 (1) The law enforcement inquiry being conducted is within
13 the lawful jurisdiction of the government authority seeking the
14 financial records;

15 (2) There is reason to believe that the records being
16 sought are relevant to a legitimate law enforcement inquiry; and

17 (3) There is reason to believe that the notice will result
18 in (i) endangering life or physical safety of any person; (ii)
19 flight from prosecution; (iii) destruction of or tampering with
20 evidence; (iv) intimidation of potential witnesses; or (v)
21 otherwise seriously jeopardizing an investigation or official
22 proceeding or unduly delaying a trial or ongoing official
23 proceeding.

24 An application for delay must be made with reasonable
25 specificity.

26 Subd. 2. [ORDER.] If the court makes the findings required
27 in subdivision 1, it shall enter an ex parte order granting the
28 requested delay for a period not to exceed 180 days and an order
29 prohibiting the financial institution from disclosing that
30 records have been obtained. If the court finds that there is
31 reason to believe that the notice may endanger the life or
32 physical safety of any person, the court may specify that the
33 delay be indefinite.

34 Extensions of the delay of notice of up to 90 days each may
35 be granted by the court upon application.

36 Subd. 3. [NOTICE.] Upon expiration of the period of delay

3 Sec. 4. [13A.04] [EXCEPTIONS.]

4 Subdivision 1. [STATUTORY VIOLATIONS.] Nothing in this
5 chapter precludes any financial institution, or any officer,
6 employee, or agent of a financial institution, from notifying a
7 government authority that the institution, or officer, employee,
8 or agent has information which may be relevant to a possible
9 violation of any statute or rule and providing access to
10 financial records relevant to the possible violation.

11 Subd. 2. [RELEASE INCIDENT TO ANOTHER PROCEEDING.] Nothing
12 in this chapter precludes a financial institution, as an
13 incident to perfecting a security interest, proving a claim in
14 bankruptcy, or otherwise collecting on a debt owing either to
15 the financial institution itself or in its role as a fiduciary,
16 from providing copies of any financial record to any court or
17 government authority.

18 Subd. 3. [GOVERNMENT ASSISTANCE PROGRAMS.] Nothing in this
19 chapter precludes a financial institution, as an incident to
20 processing an application for assistance to a customer in the
21 form of a government loan, loan guaranty, or loan insurance
22 agreement, or as an incident to processing a default on, or
23 administering a government guaranteed or insured loan, from
24 providing access to an appropriate government authority with any
25 financial record necessary to permit the authority to carry out
26 its responsibilities under a loan, loan guaranty, or loan
27 insurance agreement.

28 Whenever a customer applies for participation in a
29 government loan, loan guaranty, or loan insurance program, the
30 government authority administering the program shall give the
31 customer written notice of the authority's access rights under
32 this subdivision. No further notification shall be required for
33 subsequent access by that authority during the term of the loan,
34 loan guaranty, or loan insurance agreement.

35 Financial records obtained pursuant to this subdivision may
36 be used only for the purpose for which they were originally

3 (a) Prohibits the disclosure of any financial records or
4 information which is not identified with or identifiable as
5 being derived from the financial records of a particular
6 customer;

7 (b) Prohibits examination by or disclosure to the
8 commissioner of banks of financial records or information in the
9 exercise of his supervisory, regulatory, or monetary functions
10 with respect to a financial institution;

11 (c) Shall apply when financial records are sought by a
12 government authority under the rules of civil or criminal
13 procedure in connection with litigation to which the government
14 authority and the customer are parties;

15 (d) Shall apply when financial records are sought by a
16 government authority in connection with a lawful proceeding,
17 investigation, examination, or inspection directed at the
18 financial institution in possession of the records or at a legal
19 entity which is not a customer;

20 (e) Shall apply to any subpoena or court order issued in
21 connection with proceedings before a grand jury;

22 (f) Shall apply to subpoenas issued in civil cases pursuant
23 to the rules of civil procedure; or

24 (g) Shall apply when a government authority is seeking only
25 the name, address, account number, and type of account of any
26 customer or ascertainable group of customers associated with a
27 financial transaction or class of financial transaction.

28 Sec. 5. [48.512] [PROCEDURES FOR OPENING CHECKING
29 ACCOUNTS.]

30 Subdivision 1. [DEFINITIONS.] For the purpose of this
31 section the following terms have the meanings given:

32 (a) "Financial intermediary" means any person doing
33 business in this state who offers transaction accounts to the
34 public.

35 (b) "Transaction account" means a deposit or account
36 established and maintained by a natural person or persons under

3 permitted to make withdrawals by negotiable or transferable
4 instruments, payment orders of withdrawal, or other similar
5 device for the purpose of making payments or transfers to third
6 persons or others, including demand deposits or accounts subject
7 to check, draft, negotiable order of withdrawal, share draft, or
8 other similar item. A transaction account does not include the
9 deposit or account of a partnership having more than three
10 partners, the personal representative of an estate, the trustee
11 of a trust or a limited partnership.

12 Subd. 2. [REQUIRED INFORMATION.] Before opening or
13 authorizing signatory power over a transaction account, a
14 financial intermediary shall require one applicant to provide
15 the following information on an application document signed by
16 the applicant:

17 (a) full name;
18 (b) birth date;
19 (c) address of residence;
20 (d) address of current employment, if employed;
21 (e) telephone numbers of residence and place of employment,
22 if any;

23 (f) social security number;
24 (g) driver's license or identification card number issued
25 pursuant to section 171.07. If the applicant does not have a
26 driver's license or identification card, the applicant may
27 provide an identification document number issued for
28 identification purposes by any state, federal, or foreign
29 government if the document includes the applicant's photograph,
30 full name, birth date, and signature;

31 (h) whether the applicant has had a transaction account at
32 the same or another financial intermediary within 12 months
33 immediately preceding the application, and, if so, the name of
34 the financial intermediary;

35 (i) whether the applicant has had a transaction account
36 closed by a financial intermediary without the applicant's

3 (j) whether the applicant has been convicted of a criminal
4 offense because of the use of a check or other similar item
5 within 24 months immediately preceding the application.

6 A financial intermediary may require an applicant to
7 disclose additional information.

8 An applicant who makes a false material statement that he
9 does not believe to be true in an application document with
10 respect to information required to be provided by this
11 subdivision is guilty of perjury. The financial intermediary
12 shall notify the applicant of the provisions of this paragraph.

13 Subd. 3. [CONFIRM NO INVOLUNTARY CLOSING.] Before opening
14 or authorizing signatory power over a transaction account, the
15 financial intermediary shall attempt to verify the information
16 disclosed for subdivision 2, clause (1). The financial
17 intermediary may not open or authorize signatory power over a
18 transaction account if (i) the applicant had a transaction
19 account closed by a financial intermediary without his consent
20 because of his issuance of dishonored checks within 12 months
21 immediately preceding the application, or (ii) the applicant has
22 been convicted of a criminal offense because of the use of a
23 check or other similar item within 24 months immediately
24 preceding the application.

25 If the transaction account is refused, the reasons for the
26 refusal shall be given to the applicant in writing.

27 Subd. 4. [IDENTIFICATION IS REQUIRED.] A financial
28 intermediary shall not open or authorize signatory power over a
29 transaction account if none of the applicants provides a
30 driver's license, identification card, or identification
31 document as required by subdivision 2. When a minor is the
32 applicant and the minor does not have a driver's license or
33 identification card issued pursuant to section 171.07, the
34 identification requirements of subdivision 2, clause (g), and
35 this subdivision are satisfied if the minor's parent or guardian
36 provides identification of his own that meets the identification

3 or account with the financial intermediary for at least one year
4 immediately preceding the time of application.

5 Subd. 5. [NO LIABILITY.] The requirements of this section
6 do not impose any liability on financial intermediaries offering
7 transaction accounts or, except as provided in subdivisions 3
8 and 4, limit a financial intermediary's discretion as to whether
9 to grant or deny an application subject to this section.

10 [WORTHLESS CHECK COLLECTIONS]

11 Sec. 6. [332.50] [CIVIL LIABILITY FOR ISSUANCE OF
12 WORTHLESS CHECK.]

13 Subdivision 1. [DEFINITIONS.] "Check" means a check,
14 draft, order of withdrawal, or similar negotiable or
15 nonnegotiable instrument.

16 "Credit" means an arrangement or understanding with the
17 drawee for the payment of the check.

18 Subd. 2. [ACTS CONSTITUTING.] Whoever issues any check
19 that is dishonored and is not paid within 30 days after mailing
20 a notice of dishonor and a copy of sections 6 and 609.535 in
21 compliance with subdivision 3, is liable to the holder for the
22 amount of the check plus a civil penalty of up to \$100, interest
23 at the rate payable on judgments pursuant to section 549.09 on
24 the face amount of the check from the date of dishonor,
25 reasonable attorney fees if the amount of the check is over
26 \$1,250, and a service charge not exceeding \$15 if written notice
27 of the service charge was conspicuously displayed on the
28 premises when the check was issued.

29 This subdivision prevails over any provision of law
30 limiting, prohibiting, or otherwise regulating service charges
31 authorized by this subdivision.

32 Subd. 3. [NOTICE OF DISHONOR REQUIRED.] Notice of
33 nonpayment or dishonor and a copy of sections 6 and 609.535
34 shall be sent by the payee or holder of the check to the drawer
35 by certified mail, return receipt requested, or by regular mail,
36 supported by an affidavit of service by mailing, to the address

3 drawer that the address is the correct address for receipt of
4 mail concerning the check. Failure of the drawer to receive a
5 regular or certified mail notice sent to that address is not a
6 defense to liability under this section, if the drawer has had
7 actual notice for 30 days that the check has been dishonored.

8 An affidavit of service by mailing shall be retained by the
9 payee or holder of the check.

10 Subd. 4. [PROOF OF IDENTITY.] The check is prima facie
11 evidence of the identity of the drawer if the person receiving
12 the check:

13 (a) records the following information about the drawer on
14 the check, unless it is printed on the face of the check:

15 (1) name;

16 (2) home or work address;

17 (3) home or work telephone number; and

18 (4) identification number issued pursuant to section 171.07;

19 (b) compares the drawer's physical appearance, signature,
20 and the personal information recorded on the check with the
21 drawer's identification card issued pursuant to section 171.07;
22 and

23 (c) initials the check to indicate compliance with these
24 requirements.

25 Subd. 5. [DEFENSES.] Any defense otherwise available to
26 the drawer also applies to liability under this section.

27 Sec. 7. Minnesota Statutes 1982, section 487.30,
28 subdivision 4, is amended to read:

29 Subd. 4. [JURISDICTION; WORTHLESS DISHONORED CHECKS.] The
30 conciliation court has jurisdiction to determine a civil action
31 commenced by a plaintiff, resident of the county, to recover the
32 amount of a worthless dishonored check issued in the county
33 within the meaning of section 609.535, notwithstanding that even
34 though the defendant or defendants are not residents of the
35 county provided that, if the notice of nonpayment or dishonor
36 required by described in section 609.535, subdivision 3, is sent

3 payments of money may commence a conciliation court action in the
4 county where the worthless dishonored check was issued to
5 recover the amount of the check. This subdivision does not
6 apply to a check or other order for payments of money that has
7 been dishonored by a stop payment order. Notwithstanding any
8 law or rule of civil procedure to the contrary, the summons in
9 any action commenced under this subdivision may be served
10 anywhere within the state of Minnesota. The conciliation court
11 clerk shall attach a copy of the dishonored check or other order
12 for payments of money to the summons before it is issued.

13 Sec. 3. Minnesota Statutes 1982, section 488A.12,
14 subdivision 3, is amended to read:

15 Subd. 3. [JURISDICTION.] (a) Excepting actions involving
16 title to real estate, the court has jurisdiction to hear,
17 conciliate, try, and determine civil actions at law where the
18 amount in controversy does not exceed the sum of \$1,250. The
19 territorial jurisdiction of the court is coextensive with the
20 geographic boundaries of the county of Hennepin.

21 (b) Notwithstanding the provisions of clause paragraph (a),
22 or any rule of court to the contrary, the conciliation court of
23 Hennepin county has jurisdiction to determine an action brought
24 pursuant to section 504.20 for the recovery of a deposit on
25 rental property located in whole or in part in Hennepin county,
26 and the summons in the action may be served anywhere within the
27 state of Minnesota.

28 (c) Notwithstanding the provisions of clause paragraph (a),
29 or any rule of court to the contrary, the conciliation court of
30 Hennepin county has jurisdiction to determine a civil action
31 commenced by a plaintiff, a resident of Hennepin county, to
32 recover the amount of a worthless dishonored check issued in the
33 county within the meaning of section 609.535, notwithstanding
34 that even though the defendant or defendants are not residents
35 of Hennepin county provided that, if the notice of nonpayment or
36 dishonor required by described in section 609.535, subdivision

3 order of payment of money may commence a conciliation court
4 action in the county where the worthless dishonored check was
5 issued to recover the amount of the check. This clause does not
6 apply to a check or other order for payment of money that has
7 been dishonored by a stop payment order. Notwithstanding any
8 law or rule of civil procedure to the contrary, the summons in
9 any action commenced under this clause may be served anywhere
10 within the state of Minnesota. The conciliation court
11 administrator shall attach a copy of the dishonored check or
12 other order for payment of money to the summons before it is
13 issued.

14 Sec. 9. Minnesota Statutes 1982, section 483A.29,
15 subdivision 3, is amended to read:

16 Subd. 3. [JURISDICTION.] (a) Excepting actions involving
17 title to real estate, the court has jurisdiction to hear,
18 conciliate, try and determine civil actions at law where the
19 amount in controversy does not exceed the sum of \$1,250. The
20 territorial jurisdiction of the court is coextensive with the
21 geographic boundaries of the county of Ramsey.

22 (b) Notwithstanding the provisions of clause paragraph (a)
23 or any rule of court to the contrary, the conciliation court of
24 Ramsey county has jurisdiction to determine an action brought
25 pursuant to section 504.20 for the recovery of a deposit on
26 rental property located in whole or in part in Ramsey county,
27 and the summons in the action may be served anywhere in the
28 state of Minnesota.

29 (c) Notwithstanding the provisions of clause paragraph (a)
30 or any rule of court to the contrary, the conciliation court of
31 Ramsey county has jurisdiction to determine a civil action
32 commenced by a plaintiff, resident of Ramsey county, to recover
33 the amount of a worthless dishonored check issued in the county
34 within the meaning of section 509.535, notwithstanding that even
35 though the defendant or defendants are not residents of Ramsey
36 county provided that, if the notice of nonpayment or dishonor