

ALABAMA LEGISLATURE COMMERCE AND INDUSTRY DEPARTMENT

2522 SJ SB 360 - SB 384

2522

Street Address _____

City and State _____

You are according to law hereby notified that a check dated _____, 19__ , drawn on the _____

Bank of _____ in the amount of _____

has been returned unpaid with the notation the payment

has been refused because of nonsufficient funds.

Within ten days from the receipt of this notice, you

must pay or tender to _____ (Holder)

sufficient monies to pay such instrument in full and any collection fees or costs not in excess of ten dollars.

Payment to holder of the face amount of the instrument, plus any collection fees or costs, not exceeding the additional sum of ten dollars, shall constitute a defense to a criminal charge brought hereunder if paid within ten days from receipt of this notice of dishonor. If payment of the above amounts is not made within ten days from receipt of this notice of dishonor, a civil penalty of the lesser of one hundred dollars or three times the amount of the instrument will be assessed. The notice may also contain a recital of the penal provisions and the possibility of a civil action.

In a case of a check or draft dishonored because the maker had no account the law provides that any person who issues a check, draft, or order, and, at the time of issuance, does not have an account with the bank is guilty of a class A misdemeanor.

It is a class C felony for a person, for himself or as the agent or representative of another, to issue draw, utter, or deliver any instrument a check if the drawer:

- (1) with intent to defraud, has no account at the time of issuance; OR
- (2) with intent to defraud, has insufficient funds at the time of issuance or presentment

within one week of original delivery (a criminal complaint must be executed within 90 days after the drawer receives notice of nonpayment from the holder); AND

- (3) has been previously convicted of issuing an instrument without an account or sufficient funds.

The fact of refusal for insufficient funds or no account is prima facie evidence of intent to defraud unless the drawer makes good within 30 days after he receives written notice of nonpayment by certified mail or personal service. The notice is the same as the one printed above except that the reason for refusal section states "because the drawer does not have an account."

OHIO

No person, with intent to defraud, may issue or transfer, or cause issuance or transfer of, any check or other negotiable instrument knowing that it will be dishonored.

A person who issues or transfers a check is presumed to know that it will be dishonored if he had no account at the time of issue or stated date (whichever is later), or if the check is dishonored on presentment within 30 days of issue or the stated date (whichever is later) and he does not pay the amount due within ten days after receiving notice of the dishonor.

Violation is a first degree misdemeanor if the check is for less than \$150. If it is for \$150 or more or if the offender has a previous conviction of a theft offense, the violation is a fourth degree felony.

OKLAHOMA

It is unlawful to obtain or attempt to obtain money, property, or anything of value with intent to defraud by means of any false or bogus check or other instrument. The term "false or bogus check" includes checks which are not honored because of insufficient funds or because drawn on a closed or nonexistent account when given in exchange for money or anything of value.

Making, drawing, uttering, or delivering a check, draft, or order, payment of which is refused by the drawee, is prima facie evidence of the maker's or drawer's intent to defraud and knowledge of insufficient funds or credit, unless the maker or drawer pays the amount due, together with protest fees, within five days from the date the check is presented for payment, provided the check is presented for payment within 30 days after delivery and acceptance.

If the check is for \$20 or less, violation is a misdemeanor punishable by a fine of up to \$1,000 and/or by imprisonment in the county jail for up to one year. If the check is for more than \$20 or if a number of checks in a common scheme to defraud total more than \$20, violation is a felony punishable by a fine of up to \$5,000 and/or by imprisonment in the state prison for from one to ten years.

OREGON

A person commits the crime of negotiating a bad check if he makes, draws, or utters a check or similar sight order for the payment of money knowing that it will not be honored by the drawee.

Unless the check is postdated, it is prima facie evidence of knowledge that the check would not be honored if the drawer had no account with the drawee at the time the check was drawn or uttered, or if payment is refused for lack of funds upon presentation within 30 days after utterance and the drawer fails to make good within ten days after receiving notice of refusal.

Negotiating a bad check is a class A misdemeanor. Violation is a class C felony if it is established beyond a reasonable doubt that the person has been convicted in the state, within the preceding five years, of the crime of negotiating a bad check or of theft by deception by means of bad check.

Negotiating a bad check may be prosecuted as theft by deception committed by means of a bad check if property or services are obtained. Provisions relating to prima facie evidence are the same as above. Penalties are dependent on the value of the property.

A prevailing plaintiff in a civil action may recover reasonable attorney's fees provided the court finds that he made written demand at least ten days before commencing action and that the defendant failed to tender to the plaintiff, prior to commencement of the action, an amount not less than the damages awarded.

PENNSYLVANIA

It is unlawful to issue or pass any check or order for the payment of money while knowing that it will not be honored.

The issuer is presumed to have known that a check, other than a postdated check, would not be paid if he had no account at the time of issuance or if payment was refused for lack of funds upon presentation within 30 days after issue and he fails to make the check good within ten days after receiving notice of the refusal.

If the amount of the check does not exceed \$200, violation is a summary offense punishable by a fine of up to \$300 and/or imprisonment for up to 90 days; if the amount exceeds \$200, violation is a second degree misdemeanor punishable by a fine of up to \$5,000 and/or imprisonment for up to two years.

RHODE ISLAND

It is unlawful for any person, with intent to defraud, to make, draw, utter, or deliver any check, draft, or other written order knowing at the time that the maker or drawer has insufficient funds or credit for payment in full upon presentation.

It is also unlawful to buy an item, pay by check, take possession of the item, and then stop payment. It is not a violation, however, if the item is returned to the vendor within two business days of the filing of the stop-payment order.

As against the maker or drawer, making, drawing, uttering, or delivering a check which is refused by the drawee because of insufficient funds or a stop-payment order is prima facie evidence of intent to defraud unless the amount due is paid within 15 business days after receipt of verbal or written notice that the check has been dishonored. If the check has not been paid within two business days of receipt of the notice (as evidence by the return receipt or return of the notice undelivered), the payee may notify the Attorney General who will prosecute violations within ten business days of such notice.

If the amount of the check is not more than \$100, violation is punishable by a fine of up to \$500 and/or imprisonment for up to one year. If the amount of the check is over \$100, violation is punishable by a fine of up to \$1,000 and/or imprisonment for up to one year.

SOUTH CAROLINA

It is unlawful for any person, with intent to defraud, in his own name or in any other capacity, to draw, make, utter, issue, or deliver any check, draft, or other written order (whether given for money, services, or anything of value) when, at the time, the maker does not have an account or does not have sufficient funds to pay the check upon presentation, or when the check has an incorrect or insufficient signature for payment upon presentation.

It is unlawful to induce, solicit, or aid and abet any other person to draw, make, utter, issue, or deliver any check, draft, or other written order while being informed, knowing, or having reasonable cause for believing that the maker has no account or insufficient funds for payment upon presentation.

To establish prima facie evidence of the identity of the party issuing the check and that he was authorized to draw upon the account, the full name, residence address, and home telephone number of the person presenting the check must be obtained. The information may be recorded on the check or the number of a check-cashing identification card issued by the receiver after the required information is on file may be used. In addition, the party receiving the check must witness the signature or endorsement and initial the check.

Before the drawee refuses to pay any check upon presentation, it must write or stamp on the check or an attachment the reasons for the dishonor. Introduction of an unpaid and dishonored check marked with the drawee's reasons for refusal is prima facie evidence of the making of the check, due presentation, and proper dishonor.

As against the maker or drawer, the withdrawing of funds necessary to insure payment upon presentation

within ten days after negotiation, or the drawing of a check, payment of which is refused by the drawee, is prima facie evidence of knowledge of insufficient funds in or credit with the bank, unless the payee, at the time of accepting the check, knew or had reason to believe that there were insufficient funds, in which case the payee instituting the prosecution would be assessed all costs.

It is prima facie evidence of fraudulent intent if the check is not paid because of no account or insufficient funds or an incorrect or insufficient signature, or the maker fails to pay the amount due plus a service charge of \$5 within 15 days after written notice has been sent by certified mail to the address on the check or given at the time of acceptance or provided on the i.d. card. A certificate by the payee that the notice has been sent as required is presumptive proof that the requirements have been met, regardless of the fact that the notice may not have been received.

There will be a presumption that the prosecution was instituted for reasonable and probable cause and the person instituting it will be immune from civil liability for the giving of notice in substantially the following form to the person and the bank if 15 days elapse before criminal proceedings are instituted:

You are hereby notified that a check or instrument, numbered _____, issued by you on _____ (date), drawn upon _____ (name of the bank), and payable to _____, has been dishonored. Pursuant to South Carolina law, you have fifteen days from the date this notice was mailed to tender payment of the full amount of such check or instrument plus a service charge of five dollars, the total amount due being _____ and _____ cents. Unless this

amount is paid in full within the specified time above, the holder of such check or instrument may turn over the dishonored check or instrument and all other available information relating to this incident to the solicitor or other appropriate officer for criminal prosecution.

Provisions do not apply to a postdated check; to a check given in full or partial payment of a preexisting debt; to a check given where the payee knows, has been expressly notified, or has reason to believe that the drawer did not have an account or did not have sufficient funds to insure payment; or to any check which has not been deposited within ten days of the date it was given to the payee.

Any court (including a magistrate's court) may dismiss a case for want of prosecution. When prosecutions are initiated, the party applying for the warrant will be liable for reasonable administrative costs of up to \$20 if the case is dismissed for want of prosecution. Unless waived by the court, the party applying for a warrant must notify the court no less than 24 hours before the time set for trial if full restitution has been made. This notice will relieve the party of responsibility to prosecute. Any court may dismiss a prosecution on proof of restitution and payment by the defendant of all administrative costs (up to \$20) submitted prior to the date set for trial after issuance of the warrant; however, after prosecution is initiated, payment of the dishonored check will not constitute a defense or ground for dismissal, but may be considered in mitigation of the sentence.

It is unlawful, with intent to defraud, to stop payment on a check given to obtain money, credit, goods, or services which were as represented at the time of issuance. The provision is inapplicable to postdated checks or when the payee or holder knew or

had reason to believe there were insufficient funds.

If the check is for \$200 or less, the magistrate's court has exclusive jurisdiction; however, a municipality may, by ordinance, adopt provisions of the law as a municipal offense and authorize its municipal court to try violations. A first conviction is punishable by a fine of from \$200 or imprisonment for up to 30 days; a second conviction by a fine of \$200 or imprisonment from 30 days; a third or subsequent conviction by imprisonment for 30 days. Where the amount of the check exceeds \$200, the Court of General Sessions (or any court with concurrent jurisdiction) has jurisdiction, and a first conviction is punishable by a fine of from \$200 and/or imprisonment for up to one year; a second by a fine from \$300 to \$1,000 and/or imprisonment for up to two years; and a third or subsequent conviction by a fine from \$500 to \$2,000 and imprisonment for from 30 days to ten years.

After a conviction or plea for drawing and uttering a fraudulent check and the defendant is charged or fined, he must be required to pay reasonable court costs (up to \$20). For a first offense for drawing or uttering a bad check, the court must suspend the sentence upon a showing of satisfactory proof of restitution and payment by the defendant of court costs (up to \$20). For second and subsequent convictions, suspension is discretionary.

After a first offense conviction for drawing or uttering a bad check, the defendant may apply for expunging of the records after one year if no other conviction has occurred. The record may be expunged only one time.

A first offense prosecution or a second offense resulting in conviction must be reported by the court to the Communications and Records Division of the Law Enforcement Division, which will keep records of

convictions.

Any county council may establish a check clearing house to collect and distribute information on initiation and disposition of cases involving fraudulent checks. Magistrates would report upon issuance of an arrest warrant and upon arrest, and the clearinghouse would report pertinent information to magistrates. Records would be public, and interested parties could obtain information upon request.

SOUTH DAKOTA

It is unlawful for any person (for himself or as the agent or representative of another), for present consideration and with intent to defraud, to pass a check knowing at the time that there are insufficient funds for the payment of it and all others outstanding in full upon presentation (even though no express representation is made with reference thereto) or that there is no account. "Present consideration" includes goods which are delivered or constructively delivered, and services which are completed in seven days, exclusive of the date of delivery or completion and of Sundays and holidays, before or after payment.

Passing an insufficient funds check, is prima facie evidence of the maker's or drawer's knowledge of insufficient funds.

The holder of an insufficient funds check, before presenting it for prosecution, must service notice of dishonor on the writer by registered or certified mail, return receipt requested. The notice should be substantially as follows:

Date _____
 Name of issuer _____
 bank on which drawn _____
 Date of check _____
 Amount of check _____
 Merchant holding check _____

You are hereby notified that your check described above has been dishonored and is now being held by the above merchant for a period of five days from the above date.

After at least five days after the return of the receipt, the check (with attached bank return), a copy of the dishonor notice, and return receipt may be given to the state's attorney for prosecution. The five-day period need not be observed if the notice is returned undelivered or if the state's attorney finds there is reasonable cause to believe that the writer intends to leave the jurisdiction. The service of dishonor notice is not an element of the crime of passing a check against insufficient funds or an element of proof or a defense to any prosecution.

The making of a postdated or hold check, knowingly received as such, or a check issued under an agreement that it would not be presented for payment for a specified time, is not a violation. It is a defense to passing a no-account check if the account was closed without the knowledge of the person who passed the check. Evidence that the bank mailed a notice by certified or registered mail to the person in whose name the account was listed at the last address in the bank's records is prima facie proof that the actor had knowledge that the account was closed.

Criminal prosecution for an insufficient funds or no-account check must be commenced within six months after the holder received notice of dishonor. Failure to prosecute within that period bars criminal prosecution.

Passing a check of \$100 or less against insufficient funds is a class two misdemeanor punishable by a fine of up to \$100 and/or imprisonment for up to 30 days. The passing of an insufficient funds check (or series of checks within a 30-day period) for \$200 or less but more than \$100 is a class one misdemeanor punishable by imprisonment for up to one year and/or a fine of \$1,000. Passing a check or series for more than \$200 is a class six felony punishable by up to two

years' imprisonment and/or a fine of up to \$2,000 where there was no account, passing a check is a class five felony punishable by five years' imprisonment in the penitentiary and/or a fine of \$5,000. Under some circumstances, when the defendant has been convicted on one or two prior felonies, the class of the felony may be increased one degree, and after three or more prior felonies, another is a class one felony punishable by life imprisonment and a fine of up to \$25,000.

If a person is presented a check as payment by another person and the check is returned unpaid by the institution holding the account upon which the check is drawn because of insufficient funds in the account to pay the check, or because no account exists, the person accepting the check or his designee, whomever bears the cost of collection, may collect from the person issuing the check a service charge, in addition to the amount for which the check was drafted. The service charge is not subject to other provisions of law regulating interest rates or finance charges. The maximum service charge on an insufficient funds check or a no account check is twenty dollars.

TENNESSEE

It is unlawful for any person, with fraudulent intent, to make, draw, issue, utter, or deliver a check, draft, or order for the payment of money for the purpose of obtaining money, credit, services, or any article of value while knowing that the maker or drawer has insufficient funds to pay it and all others outstanding in full.

As against the maker or drawer, making, drawing, uttering, or delivering of a check, draft, or order, payment of which is refused, is prima facie evidence that the maker or drawer had intent to defraud and knowledge of insufficient funds, provided he has not paid the amount due within ten days after receiving personal or written notice of refusal. Written notice is presumed to have been given when mailed to the address on the check or last known address. Notice is not required if the bank is not located in the state or if the drawer is not a resident of the state, has left the state at the time of dishonor, or did not have an account with the drawee at the time the check was issued or dishonored.

Before refusing to pay, the bank must indicate the reasons for dishonor on the check or attachment. Introduction of an unpaid and dishonored check so marked is prima facie evidence of making or uttering and proper dishonor.

When the check is for an amount not exceeding \$100, violation is a misdemeanor punishable by imprisonment in the county jail for up to 11 months and 29 days and/or by a fine of up to \$500. When the amount of the check (or the combined amounts of more than one check) is more than \$100, violation is punishable by imprisonment in the penitentiary for from three to ten years. In addition to other punishments,

the court must require a convicted person to pay the holder of the check the amount due thereon.

TEXAS

It is theft by check to obtain property or services by issuing or passing a check or sight order for payment of money knowing that the issuer does not have sufficient funds for payment in full of it and all others outstanding.

The issuer's intent is presumed (except as to a postdated check) if he had no account with the bank at the time of issuance or if payment was refused because of insufficient funds on presentation within 30 days after issuance and the issuer failed to make payment within ten days after receiving notice of refusal. Notice may be any kind of actual notice or notice in writing sent by registered or certified mail, return receipt requested, or by telegram, report of delivery requested, and addressed to the address on the check, the bank's records, or the records of the person to whom the check was issued or passed. If written notice is given, it is presumed received no later than five days after it was sent.

Violation is a class C misdemeanor if the value is less than \$20; a class B misdemeanor if the value is \$20 but less than \$200 or the value is less than \$20 but the defendant has been previously convicted of any grade of theft; a class A misdemeanor if the value is \$200 but less than \$750; a third degree felony if the value is \$750 but less than \$20,000; and a second degree felony if the value is \$20,000 or more. Provision is made for repeat offenders. Amounts obtained pursuant to one scheme may be aggregated to determine the grade of the offense.

Another section of the penal code makes it an offense to issue or pass a check knowing that there are insufficient funds for full payment, regardless of the purpose for which the check was issued. Knowledge is

presumed if there was no account at the time of issuance or if payment was refused because of insufficient funds on presentation within 30 days and the issuer did not make good within ten days after receipt of notice. "Notice" may be notice in writing sent, by registered or certified mail, return receipt requested, or by telegram, report delivery requested, to the issuer at the address on the check, the bank's records, or the records of the person to whom the check was issued or passed. Notice is presumed received no later than five days after sent. Violation is a class C misdemeanor.

A county, district, or criminal district attorney may collect a fee if his office collects or processes a bad check. The fee, which is collected from any person who is a party to the offense, may not exceed \$5 if the face amount is up to \$10; \$10 if it exceeds \$10 but not \$100; \$30 if it exceeds \$100 but not \$300; \$50 if it exceeds \$300 but not \$500; and \$75 if it is more than \$500.

The Texas Credit Commissioner has taken the position that merchants cannot make a charge for returned checks given in payment of an account, however, such a charge is allowed for checks given for a cash sale.

A person charged with an offense under the bad check law may make restitution for the bad checks. Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office. In other cases restitution may, with the approval of the court in which the offense is filed, be made through the court, by certified checks, cashiers checks, or money order only, payable to the person that received the bad checks.

UTAH

A person who makes, draws, signs, or issues any check, draft, or order (whether as a corporate agent or otherwise) to obtain money, merchandise, property, or any other thing of value or to pay for services, wages, salary, or rent, will be liable to the holder for the amount, interest, and costs of collection if the instrument is not honored upon presentation and is marked "refer to maker" or if the account does not exist, has been closed, or contains insufficient funds for payment in full.

The holder of a dishonored check may give written or verbal notice to the maker, drawer, signer, or issuer and impose a service charge of up to \$5. Prior to filing an action, the holder must give the person written notice of intent to file a civil action and allow him seven days from the date the notice was mailed to tender payment in full plus the service charge.

"Notice" is personal or written notice to the person making, drawing, or issuing the instrument. Written notice is conclusively presumed to have been given when mailed, postage prepaid, by certified or registered mail, return receipt requested, to the signer at the address on the check or his last known address. The notice must take the following form:

Date _____

To _____

You are hereby notified that check(s) described below issued by you has been returned to us unpaid.

Check dated _____

Check number _____

Originating bank _____

Amount _____

Reason for dishonor (marked on check) _____

The foregoing check together with a service charge of \$5 must be paid to the undersigned within seven days from the date of this notice in accordance with Section 7-15-1, Utah Code Annotated 1953, or appropriate civil legal action may be filed against you for the amount due and owing together with service charges, interest, court costs, and attorney fees as provided by law.

In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated 1953: Any person who issues or passes a check or draft for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check or draft. The foregoing civil action does not preclude the right to prosecute under the criminal code of the State of Utah.

(Signed) _____

Name of Holder _____

Address of Holder _____

Telephone Number _____

A person who issues a check or draft for which payment is refused is presumed to have known the check would not be paid if he had no account at the time of issue.

A person is guilty of issuing a bad check or draft if he fails to make good and actual payment to the payee in the amount of the refused check or draft within 14 days of his receiving actual notice of the check or draft's nonpayment.

Violation is a class B misdemeanor if the check or draft (or series of checks or drafts made or drawn in

the state within a six-month period) amounts to no more than \$200; a class A misdemeanor if the amount exceeds \$200 but not \$300; a third degree felony if the amount exceeds \$300 but not \$1,000; and a second degree felony if the amount exceeds \$1,000.

The following requirement was enacted in the 1983 legislature and became effective on May 9, 1983.

Every check, draft, order, or other like instrument printed for a customer of any institution issuing transaction accounts in the state as part of a series shall have on its face the name and address of the account holder, the month and year the account was opened, and the number of the check, draft, order, or other like instrument in unbroken, sequential, numerical order, beginning with the number 101, except for initial deposits to open a new account or in case of lost or stolen checks when a limited supply of unnumbered counterchecks may be issued. Any person who violates this requirement is guilty of a class C misdemeanor.

VERMONT

One who makes, draws, utters, or delivers a check, draft, or order with knowledge of insufficient funds for full payment upon presentation will be liable to the holder for the face amount, interest, and collection costs (including reasonable attorney's fees) if the instrument is not paid in full upon presentation.

It is prima facie evidence of the knowledge of the maker or drawer if his check is refused for insufficient funds unless he pays the check, costs, and protest fees within eight days after receiving notice of nonpayment.

The criminal law prohibits issuing or passing a check or similar sight order knowing that it will not be honored.

The issuer is presumed to know that a check (other than a postdated one) will not be paid if he had no account at the time of issuance or if payment was refused for lack of funds upon presentation within 30 days after issue and the issuer failed to make good within ten days after receiving notice.

Violation is punishable by imprisonment for up to one year and/or a maximum fine of \$1,000.

Designedly, by false pretenses or false token and with intent to defraud, obtaining money, property, or discharge from obligation is punishable by imprisonment for up to ten years and a fine of up to \$1,000 if the value obtained exceeds \$25. This statute is sometimes used to prosecute a person who makes a minimum deposit to secure checks and then willfully writes check in excess of the deposit.

VIRGINIA

A section in the criminal code makes it unlawful for any person, with intent to defraud, to make, draw, utter, or deliver any check, draft, or order knowing at the time that the maker or drawer has insufficient funds in, or credit with, the bank for payment, although no express representation is made in reference thereto. Any person making, drawing, uttering, or delivering such an instrument as present consideration for goods or services will be guilty under this section.

Making, drawing, uttering, or delivering a check that is refused for lack of funds is prima facie evidence of intent to defraud and knowledge of insufficient funds unless the amount due plus interest and protest fees is paid within five days after the maker or drawer receives written notice that the check has been dishonored. Notice mailed by certified or registered mail, evidenced by return receipt, to the last known address is equivalent to notice having been received. If the check has an address printed or written on its face, notice by certified or registered mail (with or without return receipt requested) to that address is equivalent to notice having been received by the maker or drawer, whether or not returned undelivered. The maker or drawer of a no-account check is presumed to have had intent to defraud, and the five-day notice is not required.

Anyone causing arrest or prosecution will be deemed to have acted with reasonable or probable cause in any damage suit against him if the check was refused and he waited five days after notice of protest without the amount due being paid before bringing action.

Notation attached to or stamped on a refused check by the bank is prima facie evidence that the notation

is correct.

Identity may be established by introducing the unpaid or dishonored check bearing the notation of the full name, residence address, home telephone number and either the driver's license, social security number or credit account identification number of the person who delivered the check, the cashing party or its representative, and bearing the initials of the representative of the payee or charging party to whom the check was delivered.

Evidence consisting of a composite photograph of the check and of the person delivering the check and of other documentation identifying that person such as driver's license, social security card, or credit card, taken together at the time the check was delivered by the person to the payee may also be introduced.

Where the check had a value of \$200 or more, the issuer shall be guilty of a class 6 felony. Where the value of the check is less than \$200, the issuer shall be guilty of a class 1 misdemeanor.

In a civil action on a bad check, the court must award a prevailing plaintiff \$10 for costs of processing the returned check and the base wage of one employee for the time actually spent as a witness, in addition to the amount due for the check. The total amount allowable may not exceed \$250 (excluding restitution for the amount of the check). The award of costs is contingent upon a finding that the plaintiff complied with notice requirements and that the defendant failed to deliver payment or evidence of a bank error to the plaintiff within five days after receipt of notice.

Where a civil action is brought with regard to a bad check, the holder or his agent shall be entitled to claim legal interest from the date of the check, the protest or bad check return fee, if any, charged to the

holder by his bank and the processing charge, if any, not to exceed \$10, as is normally charged by the holder of the check on account of bad checks.

All checks, drafts, or similar negotiable or non-negotiable instruments drawn against funds held by a financial institution located in Virginia in a consumer deposit account opened after December 31, 1981 shall clearly display on the face of the instrument the month and year in which the account was opened. This requirement does not apply to temporary checks, drafts, or similar negotiable or non-negotiable instruments or orders of withdrawal or to a consumer's deposit account where the applicant either demonstrates through the production of monthly statements or represents in a writing which states it has been made under penalty of perjury that, for the twelve months immediately preceding his application, he has had an account at the same or another financial institution.

WASHINGTON

It is unlawful for any person, with intent to defraud, to make, draw, utter, or deliver a check or draft while knowing that there are insufficient funds in or credit with, the bank to meet the check in full upon its presentation.

Uttering or delivering of such a check without sufficient funds or credit is prima facie evidence of intent to defraud.

It is also illegal to, with intent to defraud, make, draw, utter, or deliver a check and then issue a stop-payment order and fail to pay or arrange a settlement (agreed upon by the holder) within 30 days of issuance.

Violation is unlawful issuance of a bank check punishable as a gross misdemeanor or, if the amount is greater than \$250, a class C felony. When a series of transactions are part of a common scheme or plan, they may be aggregated for purposes of determining the penalty.

When a check has been dishonored and has not been paid within 15 days after the holder sends notice to the drawer at his last known address, the drawer will be liable for interest at 12% and collection costs of up to \$20 or the face amount of the check, whichever is less. In addition, in the event of a court action, after notice and expiration of 15 days, the court must award reasonable attorney's fees to the holder.

Notice of dishonor in substantially the following form must be sent by certified mail:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to _____ in the amount of _____ has not been

accepted for payment by _____; which is the drawee bank designated on your check. This check is dated _____, and is numbered, No. _____.

You are CAUTIONED that unless you pay the amount of this check within fifteen days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

- (1) costs of collecting the amount of the check, including attorney's fees which will be set by the court; and
- (2) interest on the amount of the check which shall accrue at the rate of twelve per cent per annum from the date of dishonor.

You are advised to make your payment to _____ at the following address: _____.

No interest, costs, and attorney's fees may be recovered where the holder or his agent has demanded interest or costs in excess of those provided by law or prior to the expiration of the 15-day period, or has demanded attorney's fees either without their having been set by the court or before expiration of the 15-day period.

WEST VIRGINIA

The law defines two offenses: "obtaining property in return for a worthless check" and "issuing worthless checks."

The first of these is defined as obtaining money, services, goods, or other property or thing of value by check, draft, or order while knowing at the time of the making, drawing, issuing, uttering, or delivering that there are insufficient funds or credit for payment upon presentation. (An officer or agent who acts on behalf of a corporation will be liable to the same extent as though the instrument were his if he knows that there are insufficient funds.)

If the check is for less than \$200, obtaining property in return for a worthless check is a misdemeanor punishable by a fine of up to \$200 and/or imprisonment for up to six months. If the amount is \$200, or more, the violation is a felony punishable by a fine of up to \$500 and/or imprisonment for from one to five years. Payment of the check is not a defense or grounds for dismissal.

Issuing worthless checks is making, drawing, issuing, uttering, or delivering any check, draft, or order knowing or having reason to know that there are not sufficient funds or credit to pay upon presentation. (An officer or agent who acts on behalf of a corporation will be subject to penalties to the same extent as though the instrument were his own.)

Issuing a worthless check is a misdemeanor punishable by a fine of up to \$100 and/or imprisonment for up to 10 days. Payment of a dishonored check plus authorized charges or costs is a defense or grounds for dismissal of charges.

Sections on obtaining property in return for worthless checks and issuance of worthless checks do

not apply to postdated checks or when the payee or holder knew, was expressly notified prior to acceptance, or had reason to believe that the drawer did not have sufficient funds. Provisions on issuance of worthless checks also do not apply when the insufficiency of funds or credit is caused by an adjustment to the drawer's account by the bank without notice to the drawer or is caused by dishonor of an instrument deposited by him in the account, unless he had knowledge or reason to believe that the instrument would be dishonored.

The bank must indicate reasons for dishonor on the check or an attachment. Introduction of such a check is prima facie evidence of the making or uttering, presentation, and proper dishonor of the check; the maker or drawer's withdrawal of funds to insure payment upon presentation within a reasonable time; and knowledge of insufficient funds.

In a prosecution of obtaining property in return for a worthless check, the making, drawing, uttering, or delivery of a check refused for lack of funds or credit is prima facie evidence that the drawer had knowledge unless the check plus charges or costs is paid. In a prosecution for issuing a worthless check, it is prima facie evidence of the indentity of the drawer if, at the time of acceptance, the acceptor obtained the person's name; residence, business, or mailing address; and either a valid motor vehicle operator's number or the drawer's home or work phone number or place of employment. The information may be recorded on the check or a check cashing identification number under which the information is filed may be used. Providing false information at the time a check is presented or to obtain a check cashing identification card or similar privilege is a misdemeanor punishable by a fine of up to \$200 and/or

to the magistrate court of the county where venue lies. The law includes the following form to be used to file a complaint for warrant:

State of West Virginia

County of _____, to wit:

_____, upon oath complains that:

(a) Within one year past, on the ____ day of _____, 19__, in the county aforesaid (Maker) did unlawfully issue and deliver unto ____ his certain check of the words and figures as follows:

_____, 19__ No. __

(Name of Bank)

Pay to the Order of _____ Dollars

For _____ \$ _____

he the said _____ did not have funds on deposit in and credit with said bank with which to pay same upon presentation against the peace and dignity of the State of West Virginia and he the said _____ therefore prays a warrant issue and the said (Maker) may be apprehended and held to answer the said warrant and felt within relation thereto according to the law.

(b) At the time said check was delivered and before the same was accepted there was either on the check or on a card in the possession of complainant the following information regarding the identity of aforesaid maker:

- (1) Name _____
- (2) Residence address _____
- (3) Business address _____
- (4) Mailing address _____
- (5) Motor vehicle operator's number _____
- (6) Home phone _____
- (7) Work phone _____

(8) Place of employment _____

That since the time the check was delivered complainant has ascertained to the best of his knowledge and belief the following facts concerning the maker of said check:

Full name _____

Home address _____

Home phone no. _____ Business phone no. _____

Place of employment _____

Race _____ Sex _____ Height _____

Date of birth _____ (Day) _____ (Month) _____ (Year)

_____, Complainant

_____, (Address) _____, (Phone No.) _____

Taken, subscribed and sworn to before me,
this _____ day of _____, 19__.

My commission expires the _____ day
of _____, 19__.

Failure to supply the information indicated in part (b) of the form will not affect the sufficiency of the complaint.

After receipt of a complaint for warrant for obtaining property with a worthless check or issuing a worthless check, the magistrate court will issue warrant; however, no warrant may issue for a misdemeanor offense unless the payee or holder or the magistrate has sent notice to the drawer. A return receipt indicating that the notice was mailed to the drawer by certified mail or the mailed notice itself if it was not received or was refused by the drawer is proof that notice was sent by the payee or holder.

If the magistrate receives a complaint for a misdemeanor warrant unaccompanied by proof that notice was sent by the payee or holder, the court will mail a

notice to the drawer and impose additional court costs of \$10. The notice gives the drawer ten days to make payment of the check and costs to the court before the warrant will issue. At any time prior to trial, the drawer of an instrument against whom a warrant has been issued may pay the court the amount due and court costs which would be assessed if he were found guilty.

The person initiating prosecution will be liable for court costs if he accepts payment after filing the complaint; the payee or holder had reason to believe that the check would be dishonored; the check was postdated; or if the matter is dismissed for failure to prosecute.

As of July 1, 1983 a procedure for preparing a cumulative list of all check warrants issued by the magistrate of each county was created. Magistrates refer to this list when receiving a complaint for warrant. If the person named in the complaint has had 2 or more worthless check warrants issued against him in the time period covered by the lists a special notice is sent to the prosecuting attorney who then makes written recommendations to the magistrate court regarding issuing of certain warrants or stating that the case should be presented to the grand jury. The court then advises the complainant of the prosecutor's recommendation, stating that it is advisory only, and ask the complainant to advise the court as to how he desires to proceed.

Beginning on the first day of July, 1983, all checks, drafts, or similar negotiable or nonnegotiable instruments or orders of withdrawal which are thereafter printed to be used for drawing against funds held in a consumer deposit account by a supervised financial organization located in the state of West Virginia shall have clearly printed on the face thereof the words "Account opened" and a six-digit combination

of numbers and letters as follows:

(1) In the case of a consumer deposit account which has been open for less than one year, the first two digits, running from 01 through 12, shall numerically identify the month the account was opened, the third and fourth digits, running from 01 through 31, shall identify the day of the month the account was opened, and the fifth and sixth digits shall be the last two numbers of the year in which the account was opened.

(2) In the case of a consumer deposit account which has been open for one year or more, the six digits shall be "OneYr+": **Provided**, That a new account or an account which has been open for less than one year may be treated as an account which has been open for one year or more when a person authorized to draw against funds in the account shall demonstrate to the supervised financial organization through the production of account statements that he has had a demand or other similar deposit account or share account at the same or another financial institution for twelve months immediately preceding his request for printed checks.

WISCONSIN

It is unlawful to issue a check or other order with intent that it not be paid.

The law does not apply to postdated checks or checks given for past consideration (except payroll checks).

It is prima facie evidence of intent not to pay if, at the time of issuance, the maker did not have an account with the drawee or, at the time of issuance or presentment (within a reasonable time) he did not have sufficient funds to meet the check and failed to pay within five days after receiving notice of dishonor.

Violation is a class A misdemeanor punishable by a fine of up to \$10,000 and/or imprisonment for up to nine months if the amount is less than \$500. Issuance of a check (or series of checks within a 15-day period) for \$500 or more is a class E felony punishable by a fine of up to \$10,000 and/or imprisonment for up to two years.

With respect to mechanic's liens, it is prima facie evidence of intent to defraud if, upon the removal of property, the person removing it issues a stop-payment order on his check, unless the product has been improperly repaired or serviced.

A person who commits fraud by check will be liable to the holder for the amount of the check plus interest, costs of collection, and reasonable collection fees. Once a warrant has been issued against a drawer, the bank will not be civilly or criminally liable for releasing information on the account to law enforcement officers.

If the check is for less than \$200, the crime is a misdemeanor punishable by a fine of up to \$750 and/or imprisonment in the county jail for up to six months. If the check is for \$200 or more or if the offender is convicted for fraud by check involving two or more checks within any sixty-day period in the state totaling \$200 or more in the aggregate, violation is a felony punishable by a fine of up to \$1,500 and/or imprisonment in the state penitentiary for up to three years.

WYOMING

It is fraud by check to issue a check with intent to defraud or deceive and to obtain money, property, or other thing of value if the check is not paid because of insufficient funds or no account, unless the check is paid by the maker within ten days of receiving notice of dishonor sent to the address on the check. Any of the following is prima facie evidence of intent that a check not be paid: (1) no account at the time of issuance; (2) insufficient funds at the time of issuance and failure to pay within ten days after receipt of notice.

Any person with acquired rights to a bad check may file a complaint regardless of whether he is the payee, holder, or bearer. If deferred prosecution or probation is ordered, the court may require the defendant to make restitution in addition to other terms appropriate for treatment or rehabilitation.

A drawee will not be civilly or criminally liable for releasing the following information on the drawer's account upon written request from any payee or holder of a dishonored check: (1) the status of the account and whether there were sufficient funds or credit at the time of issuance or presentation for payment; and (2) the current home and business addresses and telephone numbers of the drawer. The drawee may also release the following information to a law enforcement or prosecuting official investigating a complaint: (1) documents relating to the opening of the account; (2) correspondence between the drawer and drawee relating to status of the account; (3) periodic statements delivered for the two periods prior to and subsequent to the issuance of the check; and (4) the current home and business addresses and telephone numbers of the drawer.

is \$100 or less, the penalty is imprisonment for up to 90 days or a fine of up to \$100; if the value is over \$100 but less than \$2,500, imprisonment is for up to five years and/or a fine of up to \$5,000; or, if the value is over \$2,500, imprisonment is for up to ten years and/or a fine of up to \$10,000. The value of money or property obtained in a six-month period may be aggregated to determine the sentence.

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COMMITTEE REPORT

SENATE

FURTHER:

Date: 5/2/89

Mr. President:

The Committee on Education has had 2-33

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) same title
- replace with CS for _____ 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

FILE WITH SB 377
Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 PAWDEN 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

January 26, 1984

MEMORANDUM

TO: Senator Bill Ray, Chairman
Senate Judiciary Committee

FROM: Senator Robert H. Ziegler, Sr.
Chairman, Sub-Committee For SB 377

SUBJECT: SB 377, An Act repealing the termination date of an Act giving the supreme court authority over court facilities; and providing for an effective date.

Dear Bill:

In Section 3, Chapter 160, SLA 1980, the termination date of the Act was set for June 30, 1982.

The termination date of the Act was changed to June 30, 1984 in Section 2, Chapter 70, SLA 1982.

This bill, if approved, will remove the termination date and the Supreme Court will continue to have authority over court facilities until such time as a termination date is passed by the legislature.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ:lk

S

B

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81

COMMITTEE REPORT
SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on _____ has had _____

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 _____ 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:

Josephson

CHAIRMAN

Alaska State Legislature

OFFICIAL BUSINESS

CHAIRMAN
RULES COMMITTEE



Senate

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

January 30, 1984

MEMORANDUM

TO: Senator Bill Ray
Chair, Senate Judiciary Committee

FROM: Senator Jan Faiks

SUBJECT: Senate Bill 381-An Act making appropriations for a statewide crime lab facility in Anchorage; and providing for an effective date

Senate Bill 381 has been referred to the Senate Judiciary Committee. I would very much appreciate a hearing for the bill as soon as your schedule permits.

As I'm sure you recall, similar legislation was introduced last year and passed both Houses. However, the fiscal note was adjusted downward by the Senate Finance Committee to appropriate money only for design of the crime lab rather than planning and construction money. The bill was signed by the Governor on June 23, 1983 and is 28 SLA 83.

Site survey and soils testing has been completed by DOT/PF. The Department believes that construction could begin in the Spring of 1984 if money is appropriated for that purpose.

The State of Alaska is the only state with no crime lab. Historically the State has depended upon the FBI to perform tests on all its evidence to be used in a criminal trial. Federal budgetary restrictions and a 1980 General Accounting Office report charging the Bureau's policy of free laboratory services inhibits the growth of statewide crime labs raises the question of how long these services of the FBI will continue to be provided.

In the FY ending September 30, 1983 FBI laboratory examiners traveled to Alaska 50 times. A "testimony trip to Alaska is a 5 day affair for the FBI and salaries, per diem, and air fare alone cost the FBI \$2362 per trip. This is exclusive of overhead costs to the FBI.

I believe that Alaska should have its own crime lab for basic tests and rely on the FBI laboratory only for examinations which involve more sophisticated, expensive, and unusual equipment needs and areas of expertise.

The FBI operates an expansive training program for state and local forensic science personnel on a no-cost basis at their lab in Quantico, Virginia. They have indicated that prospective attendees from Alaska will go to the head of the list for positions in those training classes.

House Bill 487, sponsored by Representative Furnace is currently in House Judiciary and is scheduled for hearings this week. It has an additional referral to Finance. Agents from the FBI have indicated a desire to come to Alaska to testify on these bills and would like to do so when both bills are in their respective Finance Committees.

If you or your staff have any questions, please give me a call. I have quite a bit of information that you may like to have for your committee members.

Thank you.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SB 381

Support

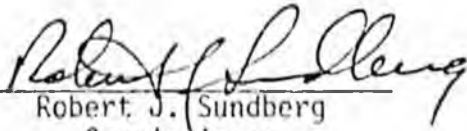
January 26, 1984

Passage of this bill will result in an increase in the number and quality of arrests and convictions in felony cases statewide. Construction of this Capital Project will mark a major shift in direction for the State Troopers from a limited service Crime Lab to a full service professional Forensic Laboratory designated to serve all law enforcement agencies statewide. This project will consist of 17,000 square feet of space for testing and analysis, and equipment to establish a full-service Statewide Crime Laboratory.

Within the last decade a series of Supreme Court decisions relative to search and seizure, interrogation and confessions has had the effect of limiting the scope of permissible investigative activities by law enforcement agencies. This situation, in turn, has resulted in the increased attention to the use of physical evidence in criminal investigations, and the subsequent development of crime laboratories to analyze this evidence throughout the nation.

The application of the technologies and techniques of the natural and physical sciences to items of evidence found at a crime scene is an increasing part of modern investigations and courtroom trials. The expectation that these sciences are devoid of prejudice makes the results of crime laboratory tests and analyses an often critical part of judicial proceedings. It also confers upon crime laboratories the responsibility for the highest degree of professionalism in their work. The availability of physical facilities is the essential first step in making these services available to Alaska's state & local law enforcement agencies. All services performed will be at no cost to the Troopers and the 25 or so local departments thru out the state.

Beyond establishing drug identification and fingerprint comparisons within the existing limited Laboratory, Alaska has no crime laboratory with the broad capabilities needed to analyze clothing from a rape, compare shell casings to bullets found at a homicide, analyze carbon residue from a suspected arson fire for traces of accelerants, compare blood characteristics of blood on an assault victim to the blood of a suspect, compare pry marks on a window casing with a tire iron found in possession of a suspect, and the many additional tests required for modern, effective law enforcement investigations. The existing "crime lab" is located in crowded quarters in the basement of the State Troopers headquarters building in Anchorage.



Robert J. Sundberg
Commissioner

Lack of additional personnel and physical limitations prevent its expansion. Alaska is the only state that does not yet have a full service lab to assist its local, as well as state, law enforcement agencies.

The greatest reason to develop a full service Crime Lab in Alaska is the increasingly longer time required to receive results of tests now routinely being sent to the FBI laboratory in Washington, D.C. The time required for laboratory tests of a routine nature from the FBI now require from four to six months. The reasons for this situation are a general budget tightening among federal agencies and an ever increasing number of requests nationwide for tests by the FBI laboratory. The problem of long turn-around sometimes conflicts with the Alaska Supreme Court Rule, which requires that the trial begin within 120 days following arrest, barring any delays by the judge as may be requested by either side. This problem is expected to increase in the future. Increasing turn-around time is also occurring with the very limited capabilities of the existing Trooper Laboratory. Currently the average time required for test results is several weeks for just drug-related tests. No room for expansion within current facilities is available or practical.

During the 1983 Legislative session the legislative appropriated \$402.0 to cover the Design & Engineering costs of this project (Chapter 28, SLA 83). This stage of the project has proceeded on schedule and current cost estimates by the architects have confirmed our original estimate of \$5,603.0.

An extensive study was made during FY'82 and FY'83 concerning the needs for a Statewide Crime Laboratory by the Department of Public Safety personnel. This study is too exhaustive to be made part of this bill analysis, however, copies may be obtained by contacting Colonel Michael C. Kolivosky, Division of Alaska State Troopers, P.O. Box 6188 Annex, Anchorage, AK 99502 (269-5646), or thru the Commissioner's office in Juneau.

THE DEVELOPMENT of a CRIME LABORATORY in ALASKA*

During the 1983 Legislative Session, \$402,000 was authorized for the architectural and engineering aspects of a modern crime laboratory to analyze evidence found at the scene of a crime. To be located adjacent to the existing Trooper headquarters in Anchorage and managed by them, the proposed 17,000 square foot facility would provide tests and analyses of crime scene evidence to all law enforcement agencies in Alaska, at no cost to those agencies.

The contract has been signed with an Anchorage Architectural and Engineering firm. Site survey and soils testing has been completed by the Department of Transportation and Public Facilities. Progress has been so rapid that the Department of Transportation believes construction could begin in the Spring of 1984, if construction funds can be made available. Nationwide advertising for a Professional Laboratory Director has been completed and the successful applicant will be hired in early 1984. An appropriations bill (HB-487) has been prefiled by Representative Walt Furnace (D) Anchorage for introduction in the 1984 session of the Legislature for funding of the construction and first years operating cost of \$5.842 million.

* * * * *

Within the last decade or so, a series of Supreme Court decisions relative to search and seizure, interrogation, and confessions have had the effect of limiting the scope of permissible investigative activities by law enforcement agencies nationwide. This situation has resulted in the increased analysis of physical evidence by crime laboratories and subsequent use of test results in courtroom trials, which often becomes a crucial part of judicial proceedings.

The analyses and tests performed upon crime scene evidence assists both the investigator and the prosecutor in their efforts to reconstruct and explain the crime, the crime scene and information about the possible offender. The results of crime lab tests provide facts contributing to the exoneration of the innocent and the establishment of proof of the guilty.

* This paper summarizes the more extensive report issued by the Department of Public Safety in September 1982 entitled "The Development of a Full Service Forensic Laboratory for Law Enforcement in Alaska". Copies are available upon request thru the Director, Alaska State Troopers, Anchorage.

The modern lab requires highly skilled scientists and technicians who use costly materials and sophisticated instrumentation in an expensive environment, for there can be no compromise in the quality of the work they perform.

A modern, fully equipped Crime Lab presents a wide array of expertise.

Some of these are:

- * Toxicology: A Toxicologist detects and identifies the presence of drugs or poisons in body tissues, fluids and organs. These tests are used in determining the presence and extent of alcohol that may have contributed to a death, as one example.
- * Firearms and Tool Marks Examination: The Examiner can match a spent bullet to the gun that fired it by examination of the microscopic markings on the bullet caused by the irregularities on the inner surface of the gun barrel, among other capabilities. As a Tool Marks Specialist, he can identify the tire iron or other implement found in the suspect's car as the one that did or did not pry open the window or door of the victim's home by using a microscope to compare and match the nicks on the blade of the tire iron to the impressions left in the window sill.
- * Forensic Serology: The Forensic Serologist, through analyses of body fluids found at the crime scene, can limit the population group of the assailant to those within certain blood groups, thus eliminating persons with other blood groups and characteristics as suspects in a given crime.
- * Questioned Documents Examination: The Questioned Documents Examiner can ascertain the source or authenticity of a document through the many characteristics of an individual's handwriting, as well as through the variations in typewriter letters as a function of the use and wear to the machine's moving parts, and through the analyses of inks and different types of paper.
- * Forensic Chemistry: The Forensic Chemist tests and analyzes unknown substances. By testing substances thought to be illegal drugs, he can determine the type drug, its relative purity and the substances that may be mixed with the drug. He can also identify small amounts of accelerants from a suspected arson fire by testing charred and burned materials found at the fire, as well as other tasks requiring chemical analysis.

- * Trace Evidence Examination: The Trace Evidence Examiner can narrow the origin of minute bits of evidence such as human hair and fibers, that are exchanged during a fight or rape, to a group that includes (or excludes) the suspect. The paint chips and broken headlights of a hit and run fatality may be analyzed to determine if they match the paint and headlight of the suspects car.
- * Fingerprint Examination: The Fingerprint Examiner can compare fingerprints found on a gun or some other surface to those of the suspect based upon the matching of the characteristics of the fingerprint ridges that are unique to each individual. (The Automated Fingerprint Identification System, funded during the 1982 session of the legislature, is now being developed and installed).

It is the use of carefully gathered evidence, analyzed by the latest methodologies of the physical and natural sciences that builds both a strong case against the guilty, while eliminating other persons as suspects.

Unfortunately, state and local law enforcement agencies in Alaska do not have such a laboratory. In fact, Alaska is the only state without a crime lab. The rudimentary facilities in the Alaska State Troopers building in Anchorage are limited by space, personnel and budget to only narcotics testing, fingerprint comparisons and some crime photography.

Historically Alaska has depended upon the FBI lab to perform criminalistics tests and has done so to a greater degree than any other state. While this dependence upon the FBI has worked reasonably well in the past, the FBI has recently suffered budget cuts as part of the general decrease in federal government services. As a result, some test results may not be received for up to six months. Since the Speedy Trial Rule in Alaska requires trial within 120 days of the arrest, test results may not be available by the time of trial, nor can additional investigation occur as a result of the outcome of the tests. Thus the investigation and prosecution functions are adversely affected.

Federal budgetary restrictions and a 1980 General Accounting Office report charging the Bureau's policy of free laboratory services actually inhibits the growth of statewide crime laboratories creates doubt that the extent of FBI services of the past will continue. Charges for certain services have already been instituted, and requests for laboratory examinations are carefully scrutinized.

Recently the FBI questioned the need for tests in a State Trooper's case that involved a double Homicide. Any further curtailment of service will be even more serious since Alaska is both increasing its population and experiencing a general crime increase while crime is generally decreasing nationwide. (Alaska had the highest incidence in the United States for rape in 1979, was number two in 1980, and first again in 1981, and 1982. Alaska was also second in murder in 1982. According to a recent public opinion survey, among other findings, Alaskans believe a basic cause of crime is the failure of the justice system to punish criminals.

While Alaska has some of its forensic tests performed by private laboratories elsewhere, this is not a good alternative for several reasons. Alaskan law enforcement agencies have no control over the scheduling, priorities, or the methodologies and techniques used by these facilities, nor is there any control over the caliber of personnel performing the tests. Additionally, such tests are usually expensive, since a profit is being made and the state has to pay a fee for all tests performed plus the travel and expenses of the technicians from the "lower 48" states who testify during trial.

Perhaps the most compelling reason for a full services crime lab is the high evidentiary value of the crime scene evidence that has been analyzed and tested, for the test results provide irrefutable information about the suspect to either link him to a crime, or to eliminate him from any further investigation. Laboratory test results can thus provide a high degree of proof of guilt.

The continuing lack of a crime lab to service Alaska's law enforcement efforts is affecting the decisions and perceptions of some police officers. Knowing they cannot obtain test results and analyses in a timely and affordable manner, some officers have had to place a decreasing value upon physical evidence found at the crime scene and therefore tend to rely upon other means to develop their case. Therefore their case will lack the high evidentiary value that often results from crime lab examinations. Any future, long term lack of a statewide lab, in the face of reduced services from the FBI, will probably result in the emergence of several small efforts by local enforcement agencies to provide their own testing facilities. These will likely be of limited scope, overlapping and fragmented efforts of unknown value. The smaller police departments, unable to afford their own limited facilities, and unable to pay the high costs charged by private labs elsewhere will simply do without.

The above reasons argue forcefully for the development of a statewide crime lab to provide services for all law enforcement agencies in Alaska. The next questions are how big a facility is needed, what services need to be provided and what are the costs involved?

Based upon the existing workload and the forecasted workload within the immediate future, the following staff personnel would be hired:

1. An additional Forensic Chemist
2. Serologist
3. Trace Evidence Technician
4. Firearms and Tool Marks Examiner
5. Administrative Assistant
6. Fingerprint I D Specialist
7. Questioned Documents Examiner

Full operating costs above current expenditures for the new facility and the additional personnel will be \$391,400. per year after the Lab is completed.

The lab would honor all requests by law enforcement agencies, by either performing the work in house or through contract for the less frequent tests elsewhere. Tests and related services would be provided by the lab at no cost to the requesting agencies.

The proposed lab would be constructed adjacent to the Troopers Headquarters in Anchorage, on state-owned land. Substantial assistance has been obtained from the FBI Laboratory during an intensive on-site visit to obtain their recommendations for construction requirements, space needs for scientific personnel and instrumentation, and the factors that should be used in calculating overall construction costs.

Using data recommended by the FBI to provide a Crime Lab with the staff earlier noted, plus those in the existing facility, necessary instrumentation, and the numerous support requirements, a classroom for training police officers, and space for expansion in the years ahead will require a structure of about 17,000 square feet. FBI data indicates that cost per square foot is about 180% of the cost of commercial construction due to the unique plumbing, heating, ventilation and construction aspects required by a forensic laboratory.

Estimated costs of the new lab are as follows:

Construction	\$3.825 million
Indirect Costs \$1.147 (\$.402) =	.745
Equipment	.962
Supplies and Materials	.071
First Year's Operating Costs	<u>.239</u>
Total	\$5.842 million - in 1984

An estimated 12% inflation factor would increase costs by a like amount if construction occurs during FY'85 rather than FY'84.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: SB 381
 Title: Statewide Forensic Sciences Lab
 Sponsor: Senator Faiks
 Requestor: Senate Judiciary
 Date of Request: 1-31-84

FISCAL DETAIL
 Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		195.4	353.0	374.2	396.7	420.5
200 TRAVEL		7.5	10.6	11.2	11.9	12.6
300 CONTRACTUAL		22.5	71.8	76.1	80.7	85.5
400 SUPPLIES		14.0	14.8	15.7	16.6	17.6
500 EQUIPMENT					150.0	150.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL		239.4	450.2	477.2	655.9	686.2
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		239.4	450.2	477.2	655.9	686.2
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		7	7	7	7	7
PART-TIME						
TEMPORARY		7	7	7	7	7

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan G.C.A. Phone: 269-5691
 Division: Alaska State Troopers Date: 01/26/84
 Approved by Commissioner: Robert J. Sundberg Date: 1-31-84
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

FISCAL NOTE
SECTION IV ANALYSIS

This legislation provides funds for the construction of a 17,000 square foot Statewide Crime Laboratory in Anchorage. The attached Schedule I details the Capital Cost and Schedule II details the Operating Costs. The vast majority of the Operating Costs represents a shift in direction for the Crime Lab from a limited service A.S.T. facility to becoming a full-service operation designed to meet the needs of all law enforcement agencies in the state. Personal Services costs for FY'85 reflect the hiring of the seven new staff members at various dates throughout the year. (See supporting schedules.) and other costs at 75% of a full years' cost.

FY'86 and each subsequent year reflect an anticipated 6% inflation rate and the cost of maintenance contracts on the new equipment.

By FY'88 it is anticipated that advances in technology will require replacement or new equipment to meet court evidence requirements each year.

ANCHORAGE COMBINED FACILITY

CAPITAL COSTS

1) Construction Costs

Crime Lab - 17,000 sq. ft. \$3,825.0

DOT/PF Overhead, Architect,
Planning Contingency, etc. \$1,147.0

CS SS HB 33 (402.0) 745.0

Subtotal \$4,570.0

2) Equipment 962.0

3) Commodities - Initial Stock 71.0

TOTAL \$5,603.0

ANCHORAGE COMBINED FACILITY

FY'85 OPERATING COSTS

100 Personnel Services

See attached schedule \$195,403

200 Travel

In-state & out-of-state travel needed
to attain and maintain professional
expertise
\$10,000 per full year x 75% = 7,500

300 Contractual Services

Telephone	\$ 12,500	
Electricity	9,100	
Other Utilities	3,500	
Building Repairs & Maintenance	4,900	
Subtotal	30,000	x 75% 22,500

(Note: Costs of maintenance agreements
of an estimated \$40,000 yearly will
begin in FY'86.)

400 Commodities

Heating Fuel	\$ 17,600	
Miscellaneous	1,100	
Subtotal	18,700	x 75% 14,025
TOTAL		<u>\$239,428</u>

FISCAL YEAR 1985

100 Personal Services Increased Staff

Job Class Range	Trace Evidence Specialist Range 19	Firearms & Tool Marks Specialist Range 19	Forensic Chemist Range 19	Serologist Range 19	Fingerprint ID Specialist Range 17	Admin Ass't II Range 14	Questioned Documents Examiner Range 19	Total
Annual Salary	\$38,124	\$38,124	\$19,062	\$19,062	\$16,542	\$ 6,723	\$ 9,531	\$147,168
Overtime	-0-	-0-	-0-	-0-	-0-	1,552	-0-	1,552
Sub total	\$38,124	\$38,124	\$19,062	\$19,062	\$16,542	\$ 8,275	\$ 9,531	\$148,720
Benefits	6,833	6,833	3,416	3,416	2,965	1,483	1,708	26,654
SBS	2,337	2,337	1,169	1,169	1,014	507	584	9,117
Health Insurance	2,728	2,728	1,364	1,364	1,364	682	682	10,912
Total	\$50,022	\$50,022	\$25,011	\$25,011	\$21,885	\$10,947	\$12,505	\$195,403
Starting Date	7/1/84	7/1/84	1/1/85	1/1/85	1/1/85	4/1/85	4/1/85	

BASE YEAR

100 Personal Services Increased Staff

Job Class Range	Trace Evidence Specialist Range 19	Firearms & Tool Marks Specialist Range 19	Forensic Chemist Range 19	Serologist Range 19	Fingerprint ID Specialist Range 17	Admin Ass't II Range 14	Questioned Documents Examiner Range 19	Total
Annual Salary	\$38,124	\$38,124	\$38,124	\$38,124	\$33,084	\$26,892	\$38,124	\$250,596
Overtime	-0-	-0-	-0-	-0-	-0-	2,483	-0-	2,483
Sub total	\$38,124	\$38,124	\$38,124	\$38,124	\$33,084	\$29,375	\$38,124	\$253,079
Benefits	6,833	6,833	6,833	6,833	5,930	5,265	6,833	45,360
SBS	2,337	2,337	2,337	2,337	2,028	1,801	2,337	15,514
Health Insurance	2,728	2,728	2,728	2,728	2,728	2,728	2,728	19,096
Total	\$50,022	\$50,022	\$50,022	\$50,022	\$43,770	\$39,169	\$50,022	\$333,049

FISCAL YEAR 1986

100 Personal Services Increased Staff

Job Class Range	Trace Evidence Specialist Range 19	Firearms & Tool Marks Specialist Range 19	Forensic Chemist Range 19	Serologist Range 19	Fingerprint ID Specialist Range 17	Admin Ass't II Range 14	Questioned Documents Examiner Range 19	Total
Annual Salary	\$40,411	\$40,411	\$40,411	\$40,411	\$35,069	\$28,506	\$40,411	\$265,632
Overtime	-0-	-0-	-0-	-0-	-0-	2,632	-0-	2,632
Sub total	\$40,411	\$40,411	\$40,411	\$40,411	\$35,069	\$31,138	\$40,411	\$268,264
Benefits	7,243	7,243	7,243	7,243	6,286	5,581	7,243	48,082
SBS	2,477	2,477	2,477	2,477	2,150	1,909	2,477	16,444
Health Insurance	2,892	2,892	2,892	2,892	2,892	2,892	2,892	20,242
Total	\$53,023	\$53,023	\$53,023	\$53,023	\$46,397	\$41,520	\$53,023	\$353,032

1.	POSITION TITLE Trace Evidence Specialist*			RANGE/STEP 19/A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY 1 of 7	LOCATION Anchorage	ELECTION DISTRICT 99	LEG.	
3.	CONTINUATION LEVEL			JUSTIFICATION					
4.	TYPE OF EXPENDITURE								
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	38,124							
6.	Benefits	6,833							
7.	Supplemental Benefits	2,337							
8.	Fixed Benefits	2,728							
9.	TOTAL PERSONAL SERVICES	01	50.0						
10.	Travel	02							
11.	Contractual	03							
12.	Commodities	04							
13.	Equipment	05							
14.	Other								
15.	TOTAL COST		50.0						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts	1002						
17.		G.F. Match	1003						
18.		General Funds	1004	50.0					
19.		I-A Receipts	1005						
20.		Program Receipts	1028						
21.		Other							

The Trace Evidence Examiner can narrow the origin of minute bits of evidence such as human hair and fibers, that are exchanged during fight or rape, to a group that includes (or excludes) the suspect. The paint chips and broken headlights of a hit and run fatality may be analyzed to determine if they match the paint and headlight of the suspects car.

The position will function in the new expanded Statewide Forensic Science Laboratory and provide a new expertise capability which will expand the level of service that can be provided to law enforcement agencies in Alaska.

* New classification pending.

FOR B&M USE ONLY
4A KEY NUMBER

13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
PROGRAM Crime ID & Apprehension
BRU Alaska State Troopers/S&S
COMPONENT Laboratory Services

FY 85

Page 1 of 7
Revised Date

1.	POSITION TITLE Firearms & Tool Marks Specialist*				RANGE/STEP 19	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.	
2.	TYPE OF POSITION PFT	STAFF MONTHS 12.0	RP NUMBER	PCN NUMBER	BRU PRIORITY 2 of 7	LOCATION Anchorage	ELECTION DISTRICT 99	LEG.			
3.	CONTINUATION LEVEL				JUSTIFICATION						
	ADDITION <input checked="" type="checkbox"/>										
4.	TYPE OF EXPENDITURE			AMOUNT							
	1		2		3						
	PERSONAL SERVICES										
5.	Salary		38,124								
6.	Benefits		6,833								
7.	Supplemental Benefits		2,337								
8.	Fixed Benefits		2,728								
9.	TOTAL PERSONAL SERVICES		01		50.0						
10.	Travel		02								
11.	Contractual		03								
12.	Commodities		04								
13.	Equipment		05								
14.	Other										
15.	TOTAL COST				50.0						
	RECEIPT CODE				FUNDING SOURCE						
16.					Federal Receipts 1002						
17.					G.F. Match 1003						
18.					General Funds 1004						
19.					I-A Receipts 1005						
20.					Program Receipts 1028						
21.					Other						
FOR B&M USE ONLY											
4A KEY NUMBER _____											

The Firearms & Tool Marks Specialist can match a spent bullet to the gun that fired it by examination of the microscopic markings on the bullet caused by the irregularities on the inner surface of the gun barrel, among other capabilities. As a Tool Marks Specialist, he can identify the tire iron or other implement found in the suspect's car as the one that did or did not pry open the window or door of the victim's home by using a microscope to compare and match the nicks on the blade of the tire iron to the impressions left in the window sill.

The position will function in the new expanded Statewide Forensic Science Laboratory and provide a new expertise capability which will expand the level of service that can be provided to law enforcement agencies in Alaska.

* New classification pending.

13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
PROGRAM Crime ID & Apprehension
BRU Alaska State Troopers/S&S
COMPONENT Laboratory Services

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Revised Date _____

FY 85

1.	POSITION TITLE Forensic Chemist*				RANGE/STEP 19	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 6.0	RP NUMBER	PCN NUMBER	BRU PRIORITY 3 of 7	LOCATION Anchorage	ELECTION DISTRICT 99	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE									
	1		2		AMOUNT					
	PERSONAL SERVICES									
5.	Salary		19,062							
6.	Benefits		3,416							
7.	Supplemental Benefits		1,169							
8.	Fixed Benefits		1,364							
9.	TOTAL PERSONAL SERVICES		01		25.0					
10.	Travel		02							
11.	Contractual		03							
12.	Commodities		04							
13.	Equipment		05							
14.	Other									
15.	TOTAL COST				25.0					
16.	RECEIPT CODE	FUNDING SOURCE								
17.		Federal Receipts 1002								
18.		G.F. Match 1003								
19.		General Funds 1004		25.0						
20.		I-A Receipts 1005								
21.		Program Receipts 1028								
		Other								
FOR B&M USE ONLY										
4A KEY NUMBER										

The Forensic Chemist tests and analyzes unknown substances. By testing substances thought to be illegal drugs, he can determine the type drug, its relative purity and the substances that may be mixed with the drug. He can also identify small amounts of accelerants from a suspected arson fire by testing charred and burned materials found at the fire, as well as other tasks requiring chemical analysis.

The position will function in the new expanded Statewide Forensic Science Laboratory and provide an additional expertise capability which will expand the level of service that can be provided to law enforcement agencies in Alaska.

* New classification pending.

13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
 PROGRAM Crime ID & Apprehension
 BRU Alaska State Troopers/S&S
 COMPONENT Laboratory Services

Page 3 of 7
 Revised Date

FY 85

1.	POSITION TITLE Serologist/Toxicologist*			RANGE/STEP 19	BARG. UNIT GGU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 6.0	RP NUMBER	PCN NUMBER	BRU PRIORITY 4 of 7	LOCATION Anchorage	ELECTION DISTRICT 99	LEG.	
3.	CONTINUATION LEVEL	ADDITION	<input checked="" type="checkbox"/>						
4.	TYPE OF EXPENDITURE			JUSTIFICATION					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	19,062							
6.	Benefits	3,416							
7.	Supplemental Benefits	1,169							
8.	Fixed Benefits	1,364							
9.	TOTAL PERSONAL SERVICES	01	25.0						
10.	Travel	02							
11.	Contractual	03							
12.	Commodities	04							
13.	Equipment	05							
14.	Other								
15.	TOTAL COST		25.0						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts	1002						
17.		G.F. Match	1003						
18.		General Funds	1004	25.0					
19.		I-A Receipts	1005						
20.		Program Receipts	1028						
21.		Other							

The Forensic Serologist/Toxicologist analyses of body fluids found at the crime scene, can limit the population group of the assailant to those within certain blood groups, thus eliminating persons with other blood groups and characteristics as suspects in a given crime. Toxicology detects and identifies the presence of drugs or poisons in body tissues, fluids and organs. These tests are used in determining the presence and extent of alcohol that may have contributed to a death, as one example.

The position will function in the new expanded Statewide Forensic Science Laboratory and provide an additional expertise capability which will expand the level of service that can be provided to law enforcement agencies in Alaska.

* New classification pending.

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13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
 PROGRAM Crime ID & Apprehension
 BRU Alaska State Troopers/S&S
 COMPONENT Laboratory Services

Page 4 of 7
 Revised Date _____

FY 85

1.	POSITION TITLE Fingerprint ID Specialist*				RANGE/STEP 17	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 6.0	RP NUMBER	PCN NUMBER	BRU PRIORITY 5 of 7	LOCATION Anchorage	ELECTION DISTRICT 99	LEG.		
3.	CONTINUATION LEVEL		ADDITION	X	JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2		3						
	PERSONAL SERVICES									
5.	Salary	16,542								
6.	Benefits	2,965								
7.	Supplemental Benefits	1,014								
8.	Fixed Benefits	1,364								
9.	TOTAL PERSONAL SERVICES	01		21.9						
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04								
13.	Equipment	05								
14.	Other									
15.	TOTAL COST			21.9						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		21.9						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

The Fingerprint Examiner can compare fingerprints found on a gun or some other surface to those of the suspect based upon the matching of the characteristics of the fingerprint ridges that are unique to each individual. (The Automated Fingerprint Identification System, funded during the 1982 session of the legislature is now being developed and installed).

The position will function in the new expanded Statewide Forensic Science Laboratory and provide an additional expertise capability which will expand the level of service that can be provided to law enforcement agencies in Alaska.

* Rewrite of class specification in progress.

13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
PROGRAM Crime ID & Apprehension
BRU Alaska State Troopers/S&S
COMPONENT Laboratory Services

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Revised Date _____

FY 85

1.	POSITION TITLE Questioned Document Examiner				RANGE/STEP 19/A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPRD.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 3.0	RP NUMBER	PCN NUMBER	BRU PRIORITY 6 of 7	LOCATION Anchorage	ELECTION DISTRICT 99	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1			2		3				
	PERSONAL SERVICES									
5.	Salary	9,531								
6.	Benefits	1,708								
7.	Supplemental Benefits	584								
8.	Fixed Benefits	682								
9.	TOTAL PERSONAL SERVICES	01		12.5						
10.	Travel	02								
11.	Contractual	03								
12.	Commodities	04								
13.	Equipment	05								
14.	Other									
15.	TOTAL COST			12.5						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		12.5						
19.		I-A Receipts 1005								
20.		Program Receipts 1020								
21.		Other								
FOR B&M USE ONLY 4A KEY NUMBER										

The Questioned Documents Examiner can ascertain the source or authenticity of a document through the many characteristics of an individual's handwriting, as well as through the variations in typewriter letters as a function of the use and wear to the machine's moving parts, and through the analyses of inks and different types of paper.

* New classification pending.

13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
PROGRAM Crime ID & Apprehension
BRU Alaska State Troopers/S&S
COMPONENT Laboratory Services

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Revised Date _____

FY 85

1.	POSITION TITLE Administrative Assistant II				RANGE/STEP 14/A	BARG. UNIT SUPV.	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 3.0	RP NUMBER	PCN NUMBER	BRU PRIORITY 7 of 7	LOCATION Anchorage	ELECTION DISTRICT 99	LEG.		
3.	CONTINUATION LEVEL		ADDITION	X	JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1			2		3				
	PERSONAL SERVICES									
5.	Salary	inc O/T	8,275							
6.	Benefits		1,483							
7.	Supplemental Benefits		507							
8.	Fixed Benefits		582							
9.	TOTAL PERSONAL SERVICES		01	11.0						
10.	Travel		02							
11.	Contractual		03							
12.	Commodities		04							
13.	Equipment		05							
14.	Other									
15.	TOTAL COST			11.0						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		11.0						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
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4A KEY NUMBER _____										

This position is needed to support the six new professional positions being requested and part of this Capital Project and the two new additional professional positions added to the Crime Lab during FY'83 and FY'84 through RP. Without this additional administrative support the professional staff will loose much of its productive capacity performing administrative tasks that could more economically be done by this position.

This position will supervise the other clerks presently employed in the Crime Lab including those in the O/I Photo section.

13 REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
PROGRAM Crime ID & Apprehension
BRU Alaska State Troopers/S&S
COMPONENT Laboratory Services

FY 85

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Revised Date _____

S

B

3

8

4

COMMITTEE REPORT
SENATE

FURTHER:

Date June 2, 1954

Mr. President

The Committee on Education and Labor considered HR 3000

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 C3 for SA 3000 (1)
- 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

Alaska State Legislature

Representative Niilo Koponen

FAIRBANKS
Box 252
Fairbanks, Alaska 99707
479-6782

JUNEAU
Pouch V
Juneau, Alaska 99811
465-4992

MEMORANDUM

TO: Representative Niilo Koponen

FROM: Deborah Niedermeyer, Legislative Aide *DMN*

DATE: January 27, 1984

RE: HB 496 "An Act Relating to Foodbanks" / *SB 387*

HB 496 is "Good Samaritan" legislation which has two main purposes:

- 1) To release donors to foodbanks from liability if the food which they, after careful inspection and with no knowledge of adulteration, contribute in good faith, nevertheless turns out to be unfit for human consumption, and
- 2) To release foodbanks themselves from liability if they, after careful inspection and with no knowledge of adulteration nevertheless give away food unfit for human consumption.

As of October 1983 Alaska was one of only three states which had not passed legislation similar to HB 496. The other two states which still hold foodbanks and donors to them liable are New Hampshire and Vermont. (Source: Second Harvest National Organization of Foodbanks)

History

In May of 1980 the Eleventh Alaska State Legislature passed HB 686, a bill releasing donors to foodbanks from civil and criminal liability. The measure was vetoed by Governor Hammond. The governor's veto message expressed concern because the bill included manufacturers, packers, and bottlers in the release from liability. He said "It could permit a manufacturer to donate food of marginal fitness and then obtain a tax credit."

Comparison

There are significant differences between HB 496 and the bill passed by the Eleventh Legislature:

A) HB 496 specifically excludes commercial manufacturers, processors, and bottlers. The previous legislation did not.

B) Where HB 496 describes in detail the conditions a foodbank or a donor must meet in order to be released from liability, the 1980

legislation said only that adulteration could not result from "intentional or grossly negligent conduct by the donor".

C) HB 496 releases both foodbanks and donors from liability and imposes conditions for that release on both. The vetoed bill dealt only with donors.

This session's legislation is a more specific, more tightly written bill. It would appear that it could answer Governor Hammond's concerns.

Position of the Department

The Department of Environmental Conservation has responsibility for regulating food manufacture and storage in Alaska. The Department supports this bill and has given it a zero fiscal note. Joe Cladouhos, D.E.C. Director of Environmental Quality Management feels, in fact, that HB 496 could go farther than it does and still not endanger the health or safety of Alaskans.

Mr. Cladouhos oversees D.E.C.'s regulation of food manufacture, processing, packing and storage. Though he may not be able to make it to Saturday's committee meeting, Mr. Cladouhos explained to me today that D.E.C.'s regulation of food industries in Alaska already provides safeguards that would allow manufacturers, packers and processors to be included in the HB 496 release from liability.

Possible Amendments

Foodbanks would like to be able to receive fresh meat, produce, and bakery good from major grocery stores. However, it is not clear whether a grocery store meat counter would be considered a "packer" and a grocery store bakery a "producer". To classify them as such would exclude them from the protections in HB 496, and make it more difficult for foodbanks to receive donations from these sources. Mr. Cladouhos suggests that language specifically including retail food outlets in HB 496 would be both safe and appropriate.

A red meat slaughterhouse and packing facility will soon be built in Fairbanks. Foodbanks in Interior Alaska would prefer to have surplus meat from that facility go into their freezers rather than into the garbage. Mr. Cladouhos feels that it would be safe for such a facility, which will be under D.E.C. supervision, to be released from liability within the conditions established by HB 496.

Attachments: Senate CS for CS for HB 686 am S (5/19/80)
Gov. Hammond's veto letter (7/1/80)
"Waste Not, Want Not" (The Economist, 11/19/83)

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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

February 6, 1984

The Honorable Mae Tischer
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Tischer:

On February 2, 1984, I met with Representative Niilo Koponen; Deborah Neidermeyer, Administrative Assistant; and Russ Josephson, Legislative Affairs Attorney. We discussed HB 496. We focused on the concern which this office had that the legislation did not change the law but merely restated law as it stands now.

Although I have not seen the wording of a sponsor substitute for this house bill, I believe that language will be offered which will limit the liability on donors of food. The care standard for food donors will be gross negligence. The care standard for food banks, however, will be negligence.

I would like to note that included among donors are retailers which would include food markets. It is also our understanding that there will be language changes which will allow slaughter houses which are inspected by the state to be included as food donors. Also a change may be made in the wording of proposed AS 17.20.347(1)(B) which will state that certain persons that work in commercial capacities will be excluded from the definition of donor only if their primary activity is being a manufacturer, packer, processor, or bottler. These language changes bring the definition closer and closer to the problem identified in the legislation in 1980 ... that commercial business will be treated the same as non-business donors.

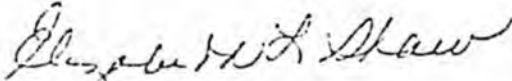
The Honorable Mae Tischer
Representative
Re: HB 496

February 6, 1984
Page 2

If you have any further questions regarding this bill,
please feel free to let me know.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Elizabeth L. Shaw
Assistant Attorney General

ELS:bap

Enclosure

cc: Honorable Niilo Koponen
Representative

REPLY TO:

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

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 26, 1984

JAN 1984
RECEIVED

The Honorable Mae Tischer
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Tischer:

This office has reviewed HB 496 as you requested in your January 24, 1984, letter to the Attorney General. You have asked that this office concentrate on the legal questions raised in 1980 when Governor Hammond vetoed SCS CSHB 686 am (limiting liability of donors of food). For your information I have included a copy of a letter drafted by the Department of Law which was sent to Governor Hammond regarding the 1980 bill. You will note that the "fatal flaw" was the fact that manufacturers, bottlers, and packers of food were included in the definition of donors thereby excluding them from a well established principle of law that they are liable for damages resulting from a failure to exercise that degree of care required to insure that the product that they produce is fit for use and is free from taint.

HB 496 excludes manufacturers, processors, bottlers or other similar entities from the definition of donor. In that respect this bill is different from the 1980 bill. However, HB 496 does not appear to change the law as it now exists.

Under HB 496 a donor of food will not be subject to civil or criminal liability arising from an injury or death attributable to the condition of the donated food if

1. the donor inspects the food and finds it apparently fit for human consumption;
2. the donor has no actual or constructive knowledge that there is anything wrong with the food or that it is harmful to health; and,
3. the injury or death is not a result of the negligence, recklessness, or intentional misconduct of the donor.

The Honorable Mae Tischer
Representative
Re: HB 496

January 26, 1984
Page 2

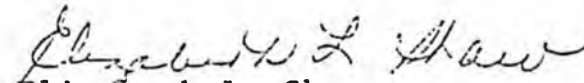
In essence the donor will be liable if he or she is negligent. ~~Such would be the case without this bill. This office~~ assumes that HB 496 is an attempt to encourage food donations by limiting the liability of food donors. In fact, however, the bill does not limit liability but merely provides that if a food donor is negligent, he or she will be liable. If he or she is not negligent, he or she will not be liable. The same analysis would hold true for the second part of the bill regarding a food bank.

If you have any further questions regarding this bill, please feel free to let me know.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Elizabeth L. Shaw
Assistant Attorney General

ELS:bap

Enclosure

REQUEST

Bill/Resolution No.: CSHB 496(HESS)
 Title: An Act relating to food banks

Sponsor: Koponen, M.M. Miller

Requestor: and Davis

Date of Request: 2/10/84

FISCAL DETAIL

Agency Affected: Environmental Conservation
 Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:
Environmental Quality Mgmt.

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		0	0	0		
200 TRAVEL		0	0	0		
300 CONTRACTUAL		0	0	0		
400 SUPPLIES		0	0	0		
500 EQUIPMENT		0	0	0		
600 LAND & STRUCTURES		0	0	0		
700 GRANTS, CLAIMS		0	0	0		
800 MISCELLANEOUS		0	0	0		
TOTAL OPERATING		0	0	0		
CAPITAL		0	0	0		
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0		
FEDERAL FUNDS		0	0	0		
OTHER		0	0	0		
TOTAL		0	0	0		

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Joe Cladouhos, Director

Division: Environmental Quality Management

Phone: 465-2640

Date: 2/15/84

Approved by Commissioner: Richard A. Neve

Agency: Environmental Conservation

Date: 2/15/84

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

12/1/83

Alaska State Legislature

Representative Niilo Koponen

FAIRBANKS
Box 252
Fairbanks, Alaska 99707
479-6782

JUNEAU
Pouch V
Juneau, Alaska 99811
465-4992

MEMORANDUM

TO: Representative Niilo Koponen

FROM: Deborah Niedermeyer, Legislative Aide *DN*

DATE: 6 February, 1984

RE: Foodstamp Program

The foodstamp program does not adequately cover the needs of Alaska's poor. An income low enough to meet foodstamp eligibility standards only barely meets other basic monthly costs. Applicants with no income at all must wait at least 5 days before receiving assistance. This memorandum details foodstamp waiting periods and eligibility requirements which force many Alaskans to turn to foodbanks for help.

Eligibility

In December, 1983 5% of Alaskans (22,000 people) were using the foodstamp program.

To be eligible for benefits, a person who lives alone must make less than \$659.00 per month. At that income level, a person receives \$10.00 per month in foodstamps. A single person with no income receives the maximum assistance level of \$112.00 in foodstamps per month.

A household of four must make no more than \$1,342 per month to receive receive the minimum of \$30.00 in foodstamp assistance. At zero monthly income, the four person household receives \$374 per month in foodstamps.

Waiting Period

There is a maximum waiting period of 30 days between application for foodstamps and determination of eligibility. The Division of Public Assistance says, however, that due to the caseload, the thirty day legal maximum waiting period is also the minimum. Public Assistance admits that in some cases applicants wait even longer to find out if they will be eligible. Foodstamps must be in the mail to an applicant within 10 days of having been found eligible. Thus, the total waiting period is at least 40 days.

Households of any size which demonstrate that the household income for the previous month was less than \$150.00 and that the household has less than \$100.00 in liquid resources, qualify for "expedited determination". A quarter of Alaska's foodstamps applicants do qualify. In this case the foodstamps must be in the mail within 5 days of application. All those who are eligible for expedited determination are supposed to get the service automatically, however the Fairbanks office of the Alaska Legal Services Corporation routinely deals with cases where this has not happened.

NEWS MINER 2/7/84

State suing to get food stamp boost

JUNEAU—Failure by the federal government to enact a food stamp differential for rural Alaskans reportedly facing grocery prices amounting to 222 percent of the national average has prompted the state to sue the U.S. Secretary of Agriculture, an official said Monday.

Dr. Robert L. Smith, commissioner of the Alaska Department of Health and Social Services, said the suit was filed Friday in U.S. District Court in Washington, D.C.

Congress amended the Food Stamp Act in December of 1981 by directing the Secretary of Agriculture to adjust the amount of food stamps available to households in Alaska and Hawaii, based on their higher food costs.

But that differential has not been implemented by the Agriculture De-

partment, which administers the Food Stamp program.

A November 1983 market basket survey by the Cooperative Extension Services showed that food costs in some rural communities were as much as 222 percent of the national average, Smith said. The lowest cost community surveyed in Alaska was Anchorage, which showed prices at 109 percent of the national average.

MY NAME IS CARL LARSEN. I AM THE GENERAL MANAGER ^{OF} ~~FOR~~ THE FOOD BANK OF ALASKA. I WOULD LIKE TO THANK YOU FOR ALLWOING ME TO TESTIFY ON BEHALF OF HOUSE BILL 496.

BILLS SIMILAR TO HB 496, OR GOOD SAMARITAN LAWS, HAVE BEEN PASSED IN ALL FIFTY STATES SAVE THREE, NEEDLESS TO SAY, ALASKA IS ONE OF THESE THREE. ALTHOUGH MOST OTHER STATES DON'T EXEMPT MANUFACTURERS IN GOOD SAMARITAN LEGISLATION, HB 496 IS ^{STILL} NECESSARY FOR SEVERAL REASONS. FIRST AND FORMOST, MANY ORGANIZATIONS RELY ON FOOD DONATIONS TO HELP STRETCH THEIR BUDGETS. THE FOOD BANK SERVES OVER THIRTY FIVE SUCH AGENCIES. WE DON'T PROVIDE ALL OF THEIR FOOD AND THERE ARE MANY AGENCIES THAT WE DONT SERVE. BUT THE ONES WE DO SERVE SAVE A SUBSTANTIAL AMOUNT OF MONEY THAT NOW GOES TOWARD DIRECT PROGRAMS THAT, WITHOUT FOOD DONATIONS, WOULD HAVE TO BE SPENT ON FOOD.

DURING 1983 WE DISTRIBUTED TO OUR AGENCIES 323,985 POUNDS OF FOOD. THIS DOES NOT COUNT THE FOOD DONATED DIRECTLY TO THESE AGENCIES THAT ~~WOULD HAVE TO BE SPENT ON FOOD~~ SOLICIT THEIR OWN DONATIONS. FOOD DONATIONS HAVE BEEN VERY SPARCE IN SOME AREAS, THIS BILL WOULD HELP ALLEVIATE ONE PROBLEM: POTENTIAL DONORS HAVE WITH DONATING: FEAR OF LIABILITY. REMOVE THAT FEAR AND IT WOULD, IN TURN CREATE FURTHER SAVINGS FOR MANY AGENCY'S FOOD BUDGETS. BY INCREASING DONATIONS.

MANY POTENTIAL DONORS DON'T DONATE FROM THEIR FEAR OF CRIMINAL OR CIVIL LIABILITY. ALTHOUGH IN THE TWENTY SOME YEARS THE FOOD BANKING INDUSTRY HAS BEEN IN ACTION THERE HAS NOT BEEN ONE LAWSUIT RESULTING FROM DONATED PRODUCT, THE POTENTIAL HARM THAT COULD RESULT FROM SUCH A SUIT IS STAGGERING. THIS FEAR OF LIABILITY EXPRESSES ITSELF MAINLY IN REDUCED DONATIONS

OR DONATIONS OF LIMITED ITEMS. DAIRY, PROTEIN AND FROZEN ITEMS OFTEN, ALTHOUGH NOT SPOILED, GO TO WASTE ^{From} FOR FEAR OF LIABILITY. MEAT IMPROPERLY WRAPPED, VEGETABLES PARTIALLY THAWED AND REFROZEN AND MINOR FREEZER BURN, ALTHOUGH MAKING FOOD UNMARKETABLE, DO NOT DETRACT FROM THE FOODS EDIBILITY.

THIS BILL WOULD ADDRESS THIS FEAR IN TWO WAYS. ONE, THE WORDING OF THE BILL ITSELF RELEASES THE DONOR FROM LIABILITY, AND SECOND THE ACT OF DONATING TO A FOOD BANK WITH PAID, TRAINED STAFF WOULD PROVIDE ANOTHER INSPECTION POINT IN THE LINE FROM DONOR TO CONSUMER.

RATHER THAN GIVING DIRECTLY TO AN AGENCY THAT SERVES PEOPLE, AN AGENCY WITH LIMITED STAFF AND RESOURCES, THAT MAY OR MAY NOT BE CAPABLE OF PROPERLY HANDLING THE QUANTITY OF FOOD DONATED, THE FOOD BANK WOULD PICKUP, SORT AND SALVAGE THE FOOD. DISPOSING OF ANY UNSUITABLE OR UNEDIBLE FOOD. THE AGENCY STAFF WOULD THEN HAVE MORE TIME TO PREPARE AND PLAN MEALS AND DO OTHER DIRECT SERVICE TO THEIR CLIENTS WITH LESS TIME SPENT SOLICITING AND SORTING DONATED PRODUCT.

SAVINGS OF TIME AND MONEY FOR AGENCIES AND RELEASING A DONOR FROM LIABILITY THAT IN TURN ENABLES HIM TO GIVE EVEN MORE, ^{Thus} ESCALATING

^{Summary} THOSE SAVINGS IS WHY THE LEGISLATURE SHOULD WHOLEHEARTEDLY SUPPORT HOUSE BILL 496.

thank you.

First Reading

Gleaners fight hunger, salvage food in 11 states

In produce fields and fruit groves scattered across America, hard-pressed Americans are increasingly using a concept as old as the Bible to fight hunger. It is gleaning, the salvaging of food that otherwise would rot in the fields, whether inadvertently left behind or discarded because of blemishes, bruises, or low prices.

Gleaners are gathering some of that food through privately organized efforts in at least 11 states: Arizona, California, Colorado, Florida, Kansas, Maryland, Michigan, Missouri, Oregon, Texas, and Washington. They help fill what Congress' General Accounting Office calls "an unmet need" for food assistance among those not qualifying for government food programs, and GAO says states can help increase the amount of gleaned food.

California and Oregon, for example, give state tax deductions to farmers for the value of food gleaned from their fields. First passed in 1977, California's A.B. 120 this year was extended through 1984.

"It's an incentive for churches and other groups to go out and get the produce and say to a store or grower that he can get a tax deduction," says California Assemblyman David Kelly, who sponsored the renewal. Stores and growers can claim a charitable deduction — in addition to the business expense — for the value of gleaned or discarded food. A study is underway to determine the amount of lost taxes on such food.

In addition, the Food Marketing Institute says that 34 states have passed "Good Samaritan" laws limiting the liability of food donors. Ohio's is illustrative: "No person who in good faith donates perishable food to an agency is liable in civil damages for injury, death, or loss to persons or property that arises because that perishable food . . . is not fit for human consumption," if the food was

reasonably considered safe at the time it was donated.

Tax deductions and Good Samaritan laws, the GAO said, are "positively affecting the amount of food being donated."

Gleaning takes its cue from Leviticus 19:9-10: "When you harvest the produce of your field, do not completely mow the edge of your field or gather the gleanings of your harvest . . . leave them for the poor." Today food is also gleaned from supermarket waste.

Gleaners are the needy or volunteers gathering food for others. The needy keep what they can use with the excess going to such places as food banks. "It's not a freebie program — you work for what you get," says Judi Amos, of Everett, Wash., who has labored as a gleaner among potatoes and peaches.

"The program's really helped out my budget," adds Rachel Brown, who supports three children on welfare and food stamps. After years of dependence on others, she says with pride, "I'm helping myself and helping others."

--Bill Curry



GLEANNING HARVEST — Rachel Brown and her nephew, Anthony Miller, stand next to boxes of pears and vegetables that were her share for a day's work of gleaning in Washington state.

In-state preference laws enacted to govern public contract awards

One sidelight of the recent recession is that several legislatures are worried about state and local government contracts being awarded to out-of-state firms. As a consequence, at least 21 legislatures have enacted in-state preference laws.

The "Buy Minnesota" law passed last May, for example, has received nationwide publicity reflecting the generic pros and cons of implementing such protectionist legislation. (These laws differ from "Buy American" laws requiring the purchase of American-made goods and services over those from foreign countries — which don't

specify whether they must come from in-state firms.)

According to the author of the Minnesota legislation, State Representative Pat Beard, the law was intended to improve in-state employment and thus increase state tax revenues.

Beard found that 13 other states exercise in-state preference laws that include a 2-15 percent break in bidding on public works jobs against out-of-state contractors. States exercising preference are Alaska, Arizona, Arkansas, Hawaii, Louisiana, Maine, Montana, New Mexico, Oklahoma, South Carolina, Washington, West

Virginia, and Wyoming. Among them, the preference law may apply only to state agencies or extend also to municipalities and school districts.

The Minnesota law includes a provision that says any contract awarded by a state agency for engineering services, erection, construction, alteration or repair of any public building or structure, or for any public work improvement, when competitive bidding is not required, must be awarded to a Minnesota resident.

"If competitive bidding is required by law," the statute continues, "the contract must be

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 1, 1980

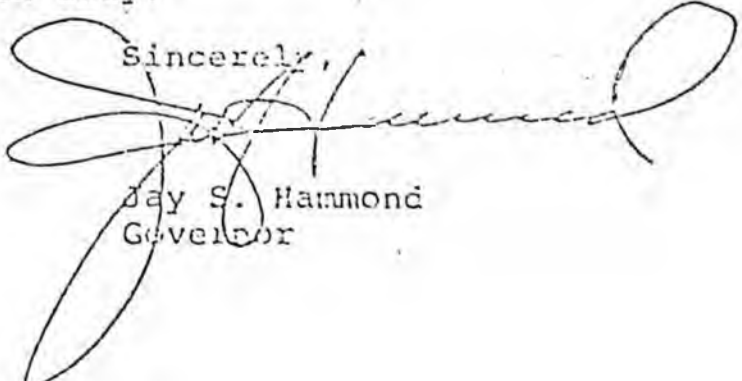
ole Clem Tillion
of the Senate
The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President and Mr. Speaker:

The legal review of Senate Committee Substitute for Committee Substitute for House Bill 686 amended Senate has convinced me to veto the measure. While on the surface it appears worthy to make it more appealing for persons to donate food to non-profit organizations by relieving them of liability due to adulteration or misbranding of the food they are donating, the failure of the bill to distinguish between donors who are manufacturers, packers or bottlers and those who are not is a fatal flaw. It could permit a manufacturer to donate food of marginal fitness and then obtain a tax credit. People receiving donated food are entitled to the same protection as persons that might buy food from the same donor.

The class of persons who manufacture food should be held to a uniform standard of care regardless of whether the food is sold or given away.

Sincerely,



Jay S. Hammond
Governor