

ALASKA LEGISLATIVE COMMITTEE ON JUDICIARY

2545 SJ HB 299 - HB 352

providing a tremendous service to Alaskans throughout the State. He said the law should be interpreted in such a way to serve the best interest of the public.

There was discussion by the committee and Chuck Kelly concerning the Alaska Directory Service.

TAPE#57 (Side B)
Recording
Number 0000

Continuation of discussion.

Number 0036

Chairman Furnace stated the Chair's intent to pass the bill on to the next committee of referral.

Number 0042

Rep. Cowdery moved and asked unanimous consent to pass the bill to the next committee of referral with individual recommendations.

Number 0047

Rep. Wendte objected, saying that he would like to see the motion expanded to read, 'with recommendation do pass'.

Number 0049

Rep. Cowdery made the motion. There being no further objection, HB 299 was advanced to the next committee of referral.

Number 0063

Chairman Furnace directed the committee's attention to SSHB 7.

Number 0083

Jeff Day, Professional Assistant to Representative Joe Hayes, the Prime Sponsor of SSHB 7, began testimony by reading a letter received after the bill was introduced. The letter was from the parents of a son who was killed in a traffic accident in Anchorage (available upon request).

Number 0122

Jeff Day said that the bill will go a long way towards ensuring that those who use the privilege to drive also accept the responsibilities that go along with it, and provide the incentives to use alternate means of transportation if one does not have insurance to operator a motor vehicle.

Number 0127

Jeff Day discussed the current law and its shortcomings.

Number 0146 He then discussed the provisions of SS#B 7 which are aimed at prevention.

Number 0192 He commented on some possible objections which may be raised concerning the legislation.

Number 0273 Jeff Day offered some amendments to clarify certain provisions in the bill (available upon request).

Number 0280 Chairman Furnace asked the committee to be brief in discussion due to time constraints. He proposed to continue the hearing later in the day. The committee members elected to defer questions until a later time.

Number 0289 Don Koch with the Division of Insurance, Department of Commerce and Economic Development, said that the Administration is not in favor of a mandatory liability insurance. He explained.

Number 0318 He offered some recommendations to the committee concerning insurance coverage.

Number 0346 Chairman Furnace asked the committee to take note of the proposed amendments.

Number 0346 Mike Thomas, representing American Insurance Association, came before the committee. He referred to his letter of April 15, 1983, as the basis of his testimony. He explained the Association's opposition to compulsory automobile insurance.

Number 0408 Mike Thomas addressed the cost factor of compulsory insurance.

Number 0429 Dan Motley, representing Self, stated that his prime concern was with section AS 23.22.540, concerning unused motor vehicles. He explained his dilemma and said that this section poses an extreme inconvenience to him and that SS#B 7 does not contain any provision which would address his concern.

Number 0467 Chairman Furnace recommended that after the hearing Mr. Motley share his concerns with Jeff Day in order to determine if the bill could be enhanced to make allowances for his particular situation.

Number 0470 The meeting was adjourned at 9:52 a.m.

Welder vows to keep his

by Ellis E. Conklin
Times Writer

The great telephone book war isn't quite over yet.

It's a battle for legitimacy, with the Anchorage Telephone Utility and the Alaska Directory Service each claiming that its telephone book is shinier, and better than its competitor — not to mention free of copyright infringement.

Now Clay Newman has joined the book battle.

Newman is pursuing a whole new tack. Unlike virtually everyone in Anchorage who simply ig-

nored a judge's order in February to return Alaska Directory's statewide phone books to the company, Newman marched in to the Alaska Directory office Thursday morning and returned his Anchorage Telephone Utility book.

Why?

"I'm sick and tired of the Anchorage telephone book. I'm in the welding business in Eagle River and I need the Alaska book because I do a lot of work in the Bush. I tell you, the all-Alaska book was a dream come true."

For Newman, he'd rather part

with, well, just about anything before giving back that Alaska book.

"They're not getting that Alaska book. They're going to have to pry it out of my fingers. They'll have to shoot first, shoot me first or throw rocks."

Newman doesn't stop here. He also plans to hit ATU where it hurts — in the pocketbook.

"When I'm down there, I'm also going to pull all of my ads out of the Anchorage book and put them in the Alaska book."

In case you missed it, the Anchorage Telephone Utility de-

4-3-83 'contraband' directory

clared open war on the Alaska Directory Service when the rival phone book firm went out and distributed about 200,000 of its own directories, replete with cross references and maps.

ATU, which publishes its own phone book and Yellow Pages, claimed the Alaska Directory stole the Anchorage names and phone numbers from its own white pages.

On Feb. 18, U.S. District Court Judge James von der Heydt slapped the private telephone directory with a \$10,000 contempt of court fine and ordered the

company to go out and retrieve the 200,000 copies it distributed after Dec. 20, and not to hand out and more.

Susan Blanchard, office manager at Alaska Directory Services, said only about 10 people have brought back the Alaska directory.

But Kim Tullis, a production manager for Alaska Directory Service, said to her knowledge, only one person obeyed the judge's order. In fact, the person who did surrender her Alaska book turned out to be a neighbor of Alaska Directory's president.

"It was kind of a joke," Tullis said.

Blanchard said Newman's satirical act of civil disobedience isn't the kind of support Alaska Directory Service is looking for right now.

"That's going to hurt us. It's bad publicity. It's like mud-throwing," Blanchard said. "It's nice that he'd rather have our book, but I feel that he's making the wrong statement."

"Of course, I can't say no. I can't tell him I won't take his (Anchorage Telephone Utility) book," Blanchard said.

ALASKA CLIPPING
SERVICE

Ketchikan Daily
News
Ketchikan, AK

JAN 29 1963

North in huff over state directory

ANCHORAGE (AP) — It's big, bold and brassy and it's got utility officials and attorneys in Anchorage and Fairbanks in a furor.

It's the Alaska Telephone & Information Directory, a statewide listing of telephone numbers in communities large and small, except for those in Southeast Alaska.

It's the brainstorm of Mary Ann O'Brannon of Anchorage.

The Municipality of Anchorage went back to federal court Friday in another effort to halt its distribution. Fairbanks City Attorney Herb Kuss said he will seek a similar injunction there.

The telephone utilities in both cities contend the directory constitutes a copyright infringement.

Ms. O'Brannon argues that they are just monopolies afraid of competition, and engaged in an illegal restraint of trade.

The distribution question is almost moot. Ms. O'Brannon said Friday about 200,000 of the hefty books have been distributed free around most of the state. That's about 90 percent of what she anticipated. She said the rest should be done within two weeks.

Callers who have business outside their community no longer are forced to thumb through dozens of phone books looking for numbers.

Besides telephone numbers, the directory contains marine radio designations for boats operating in Alaska waters. It also has maps and

594 pages of classified ads.

It's the "yellow pages" that upset the Anchorage and Fairbanks officials most, because they siphon off some of lucrative advertising.

The Anchorage Telephone Utility tried earlier to halt distribution by filing a copyright infringement suit, but U.S. District Judge James von der Heydt ruled distribution was not against the law.

Ms. O'Brannon and ATU then began voluntary negotiations to try to resolve the dispute. Distribution was halted briefly, but resumed when Ms. O'Brannon and her attorney decided ATU no longer was bargaining "in good faith."

Kuss, acting on behalf of the Municipal Utility System in

Fairbanks, said he will try to get a judge not only to order a halt, but to force distributors to pick up the books they've already handed out. He said he's also asked the FBI to investigate possible criminal infringement of the copyright laws.

Ms. O'Brannon obviously anticipated the controversy. In an "editorial" on the last of the yellow pages, she says, "the fact that you are reading this ... is proof that courage and conviction of the people of Alaska has come through again."

"Advertisers had no alternative to the many utility directories across the state," she wrote. "Thanks to the courage & independence of the people we've sold millions of dollars of advertising."

45
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ALASKA CLIPPING
SERVICE

Kodiak Mirror
Kodiak, AK

JAN 2 1986

Alaska Directory Service and their representative Mike would like to thank Kodiak residents and businesses for their friendliness and support of the local and state wide telephone book.

If I may have inadvertently missed or overlooked any advertiser, they may call Mike collect at: 272-5491

ALASKA FEVER

SO WHAT'S
YOUR PHONE
NUMBER?

I CAN'T
GIVE IT
TO YOU...

THE PHONE
COMPANY
CLAIMS
THEY OWN
THE COPYRIGHT
ON IT!



2-22

ERRY FLO
THE AMERICAN... 7/8/85

2-28-83

ANCHORAGE TIMES

Robert B. Atwood
Editor-in-Chief
and Publisher

Lana Johnson
Managing Editor



ALASKA FEVER



MI. 2
1913
1914 &
1915
U 1914 &
1915
U 1913 &
1914
Astoria
Astoria 60

HWY
WIRT
HOCKWY 51
HOLLIF B 1

630 E. 5th Avenue, Suite 200 • Anchorage, Alaska 99501 • (907) 272-5191

Alaska Directory Service

VOL. XXXV

Thursday, February 24
B

Entrepreneur expects to win phone book war

By Steve Hansen

Although facing a court order to come up with a plan to recall her product, the owner and creator of a statewide telephone directory said Wednesday she is winning the war against the Anchorage Telephone Utility.

Mary Ann O'Brannon, owner of the Alaska Directory Service, said she will continue to fight ATU and the municipality for the right to publish and distribute a new directory.

O'Brannon's statewide directory is in direct competition with the ATU phone book for local advertising.

Last week, U.S. District Court Judge James von der Heydt ruled O'Brannon wins in contempt of court because she distributed about 200,000 books after agreeing to halt free distribution on Dec. 20,

1982.

O'Brannon was fined \$10,000 and ordered to submit a plan by Friday for the "total recall" of the directories distributed after Dec. 20. The recall plan, which must be implemented by April 1, has to include the use of flyers, newspaper and television advertisements asking people to return the books to Alaska Directory Service.

About 200,000 books have already been distributed.

O'Brannon estimated advertising the recall would cost her about \$5,000.

But despite von der Heydt's action, O'Brannon said she's confident the statewide directory will prevail.

"I feel we lost the battle but are winning the war," she said.

O'Brannon said ATU has tried unsuccessfully on several occasions to gain a

temporary restraining order from the court to prohibit the distribution.

Brannon has filed a restraint-of-trade and anti-trust suit against the municipality listing the 3,000 advertisers in her book as "injured parties."

"It's not just me," she said.

The municipality, however, contends that O'Brannon has violated federal copyright laws by using ATU telephone names, numbers and addresses in her book. But O'Brannon said her company is entitled to compete in the free market with municipal telephone utilities, and that she has been assured by a copyright attorney that her actions are legal.

"They're just making a last ditch effort," she said.

As for von der Heydt's contempt ruling, O'Brannon said, "I think he did what he had to do."

She said she had voluntarily stopped distribution of her directory on Dec. 20 in order to negotiate a settlement between Alaska Directory Service and ATU. However, ATU did not bargain in "good faith," she said.

"What they wanted was 30 percent of our revenue," O'Brannon said. "Then (ATU general manager) Al Pistorius went to on vacation to Hawaii for two weeks (further delaying the negotiations)."

"That's when I said, 'That's it,'" she said, adding that she felt ATU had only been trying to delay her distribution until after the new ATU books were distributed.

O'Brannon said von der Heydt was then formally notified by her company that the distribution would be continued because ATU had not negotiated in "good faith."

Alaskans speak their minds

Tight grip

Dear Editor:

I will surrender my Alaska telephone and information director when they pry it from my cold dead fingers.

citizen and a member of the Right to Bear Directories of America.

Duane I. Brown

letters from the people

Take my name, please

Reference: "State directory owner seeks list free," in the Daily News, Dec. 29:

I don't understand why M. A. O'Brannon, owner of Alaska Directory Services, Inc., should pay anything for the names in the telephone book. The names were not purchased, nor are they the sole property of Anchorage Telephone Utility. I, for one, did not sell them my name and gladly will join O'Brannon in a suit requesting that my name be given to anyone who wants it. At no cost.

Long live competition!

— Andre Piekarski

O'Brannon says she'll beat ATU

by Steve Hansen
Times Writer

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vacation to Hawaii for two weeks (further delaying the negotiations).

"That's when I said, 'That's it,'" she said, adding that she told ATU had only been trying to delay her distribution until after the new ATU books were distributed.

O'Brannon said von der Heydt was then formally notified by her company that the distribution would be continued because ATU had not negotiated in "good faith."

"I think he wanted us to get the directory out, otherwise he would have done something sooner," she said.

She said she violated the court order because "I had a responsibility to the public to get the book out and did."

"I'd do it again if I had to," she added.

"Anything that's going on now will not affect our future publication," she said.

Phone competition

It is laughable to see the "Daniel (sic) and Goliath" confrontation presently occurring between our municipally owned telephone monopoly and a company which has dared to produce an independent phone listing book. Small minds are often threatened when someone challenges them.

Nationally, the telephone industry is facing many challenges, as modern telecommunications and computer technology provide options beyond the scope of present telephones. The AT&T giant has been struck down by the courts in its efforts to control telephone communications from the subscriber's instrument through the network and beyond reason.

Now, in Alaska we see an independent telephone directory publishing company has rocked the cozy relationship

between Anchorage Telephone Utility and GTE Telephone Directories Company. An indignant ATU general manager, Al Pistorius, says copyright laws were broken because the new publisher did not pay enough to the utility for listings and the right to sell lucrative yellow page advertisements in the statewide directory.

A past administration "old boy" carryover, Pistorius may have a lot of reasons for being afraid of competition in the communications industry marketplace. Soon, simple adaptations to the family television may bring direct video communications without need of so many top-heavy empires like ATU funneling regulated tax dollars down a soon-to-be antiquated rat hole.

If the telephone utility were really service-oriented, it would welcome as many listings of numbers in as many places as possible. Instead, ATU is fighting consumers' best interests with tax dollars.

Donn Liston

Alaska Directory Service

*****ADVERTISING RATES*****

630 E 5th Avenue, Suite 200 • Anchorage, Alaska 99501 • (907) 272-5497

DISPLAY ADS

<u>AD SIZE</u>	<u>UNITS</u>	<u>FULL ANNUAL RATE</u>	<u>30% DOWN WITH ORDER</u>	<u>TOTAL CASH WITH 20% DISCOUNT</u>	<u>BANK CARD 15% DISCOUNT</u>
QC	5	325.00	97.50	260.00	48.75
DOC	10	650.00	195.00	520.00	97.50
HC	10	650.00	195.00	520.00	97.50
THC	15	975.00	292.50	780.00	146.25
DHC	20	1,300.00	390.00	1,040.00	195.00
THC	30	1,950.00	585.00	1,560.00	292.50
STRIP	40	2,600.00	780.00	2,080.00	390.00
RED INK	4	260.00	78.00	208.00	39.00
COUPONS	10	650.00	195.00	520.00	97.50

LISTINGS

WBL	1	65.00	19.50	52.00	9.75
BL	1	65.00	19.50	52.00	9.75
TN	2	130.00	39.00	104.00	19.50
TM	3	195.00	58.50	156.00	29.25
CTM	4	260.00	78.00	208.00	39.00
TBL	1	65.00	19.50	52.00	9.75
ABL	2	130.00	39.00	104.00	19.50
FL	3	195.00	58.50	156.00	29.25

IN-COLUMN ADVERTISING

1HS	2	130.00	39.00	104.00	19.50
2HS	3	195.00	58.50	156.00	29.25
3HS	4	260.00	78.00	208.00	39.00
4HS	5	325.00	97.50	260.00	48.75

DIRECTIONAL BLOCK - 65.00 (1 unit)

AW	1	65.00	19.50	52.00	9.75
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CD

25



Anchorage Daily News

118 PAGES

ANCHORAGE/ALASKA, THURSDAY, DECEMBER 16, 1982

Statewide phone directory prompts suit

By STEVE SEPLOCHA
Daily News business editor

About 80,000 people in Anchorage have received a new statewide telephone and information directory but the Anchorage Telephone Utility (ATU), claiming copyright infringement, has sued to stop distribution.

U.S. District Judge James von der Heydt on Wednesday denied a request for a temporary restraining order against Alaska Directory Service Inc. and will hear arguments Monday in the second phase of the injunction proceedings.

Mary Anne O'Brannon, owner of the new directory, said Wednesday that ATU is simply trying to keep competition out of the lucrative yellow pages directory business. She denied that her company has infringed on ATU phone listings and accused the utility of restraint of trade.

Al Pistorius, general manager of ATU, said he could not discuss the new directory because it is in litigation. The phone company's attorney was unavailable.

The new directory contains 350 pages of yellow pages advertising and offers phone listings and other information services on



Provided by M. O'Brannon

See Back Page, NEW

Mary Anne O'Brannon shows her new telephone directory.

Anchorage Daily News/John Lavrakas

Bill orders ATU to share listings

By STEVE SEPLOCHA

Daily News business editor

A bill that would force the Anchorage Telephone Utility to turn over its subscriber list and numbers to a competing telephone directory company was passed this week by the House in a 38-1 vote.

Rep. Mitch Abood, R-Anchorage, prime sponsor of the bill, said he understands there is a good chance for passage in the Senate.

Controversy over whether phone listings are public information surfaced when the telephone utility tried to block publication of a directory which would compete for advertising with the utility's contracted version.

The new directory was published late last year by Alaska Directory Service, Inc., owned by Mary O'Brannon. She has since been sued by the utility for copyright infringement and the litigation is pending.

Al Pistorius, general manager of the telephone utility, said Wednesday that the bill probably will have no impact on the position of the utility.

He still claims the list is protected by federal copyright law and the information requested by O'Brannon will probably cost her more than \$200,000.

Pistorius said he is trying to protect the \$5 million in "pure profit" the utility receives from GTE Directories Corporation, which has a contract for the listings.

The listing was offered to O'Brannon for \$218,000 last year, according to Pistorius. He said the names and numbers must be extracted from documents that contain confidential information about customers, and labor costs are expensive.

Whether the bill passes or not will not change these costs, he said.

O'Brannon has accused the phone company of charging an excessive amount for the lists. The bill, according to Abood, would require the utility to charge no more than duplicating fees.

Anchorage Daily News
4/28/83


A. C. Pistorius
March 11, 1982
Page 2

I understand the philosophy behind regulation of utilities to be a trade-off between regulation of rates, etc. and protection from competition. If a utility is told what its rates may be, what its return will be, and what services to provide, it is not fair to subject that utility to cut-throat competition by unregulated competitors. However, I'm not sure Ms. O'Brannon's request rises to that level of threat. Absent hard evidence that rates will be seriously affected, I think the law is clear that your new "white page" listings are public records and, thus, available to Ms. O'Brannon.

I would appreciate either your cooperation with Ms. O'Brannon or a response explaining why you still do not feel cooperation is appropriate.

Thank you.

Sincerely,



Rep. Don Clocksin

cc: Mary O'Brannon
APUC members
APUC Executive Director

Enclosure

DC:ne

'Phone book combines Treasure Valley listing

By DEBBY ABE
The Idaho Statesman

The southwestern Idahoans are letting their voices be heard through a new telephone book that has listings for residents and businesses throughout the Treasure Valley.

The book is the 1982-83 Treasure Valley edition of the *Aid's Telephone Directory*. It contains the resident, business and government listings included in the five Mountain Bell, Central and Frontland telephone company directories that cover Boise and points south to Primm, Nev., north to White Bird and west to Le. Ore.

Distribution of the 26,000 to 28,000 books began in December. All businesses in the Treasure Valley and a random selection of residents received one of the directories at their doorstep, said *Aid's Telephone Directory* President John Thayer, Ontario.

Thayer said he plans to print 125,000 copies of the next edition in August. Some copies are available at *Aid's* Boise office, 6027 Clinton

"Reaction to it has been great. We're getting sales and good response," Thayer said. "I've yet to meet anyone who doesn't like it." At residents — especially those in rural areas — like most, he said, is that they have access to numbers for all cities in the Treasure Valley. For example, a person in Ontario can dial up a McCall phone number. And listings are as recent as the telephone companies'

books because the companies sold their listings to *Aid's*, Thayer said. (Phone companies are required by law to sell listings upon request.)

Many like the directory's size, Thayer said. The 1½-inch thick, 10¼-by-7-inch book is more compact than the 9-by-11-inch Mountain Bell books. Older people like the book's large type size, he said.

The *Aid's* book offers some things that most phone company books do not: Idaho license plate codes, Idaho and Oregon zip codes, recreation information, a calendar of events, sports schedules and a section of coupons redeemable at Treasure Valley businesses.

But, just like the other phone books, *Aid's* directories are free. Advertisers in the "Yellow Pages" section of the directory paid for the book's publication and distribution. Advertising rates are 50 to 80 percent lower than Mountain Bell's rates, Thayer said.

Aid's plans to distribute a directory for the Mountain Home area soon and may eventually put out a northern Idaho directory.

"We have some investors looking at us. If they come in, we might go up there (north)," he said.

But as healthy as the young business seems now, a year ago it stood on shaky ground.

Thayer initially was a salesman for the company's original owners, Bill Landriani and Jess McCall, who operated through a corporation called L.J. Inc. Thayer was one of 200 salesmen who had worked for the business at one time or another since its start in December

1981.

The salesmen had sold more than \$100,000 worth of advertising to Treasure Valley merchants and promised them the book would come out in July 1982, as Landriani and McCall had told them, Thayer said. But when June 1982 rolled around and few layouts could be found, Thayer said, he and the three other remaining salesmen suspected the owners did not intend to publish it.

Thayer, who said he hoped to keep his reputation clean and to get in on what he thought was a good business opportunity, offered Landriani and McCall \$5,000 in June to take over the assets and liabilities of *Aid's Telephone Directory*.

"They were gone in three days," Thayer recalled. And "the \$60,000 to \$70,000 we had on the books turned out to be only \$10,000 or \$12,000," he said.

Thayer contacted the Boise police and local FBI office, but was told the men couldn't be sued or charged with violation of any law because they had protected themselves through their corporation.

Ken Thornberg, executive director of the Better Business Bureau of the Treasure Valley, confirmed Thayer's story of Landriani and McCall.

"They left with \$100,000 to \$130,000 and left Thayer and his group holding the bag," Thornberg said.

However, Thayer and his brother, Skip Thayer, said they had no idea of the owners' intentions. (See BOOK, Page 2C)

(Continued from Page 1C)

Thayer of Ontario, published the book by borrowing money from friends, relatives and their ranch, the Thayer Cattle Co. of Ontario.

"In July, I owed \$100,000 to put the book out. If we hadn't had the publishers and layout people who gave us good terms and let us spread out payments, we never could have done it," he said.

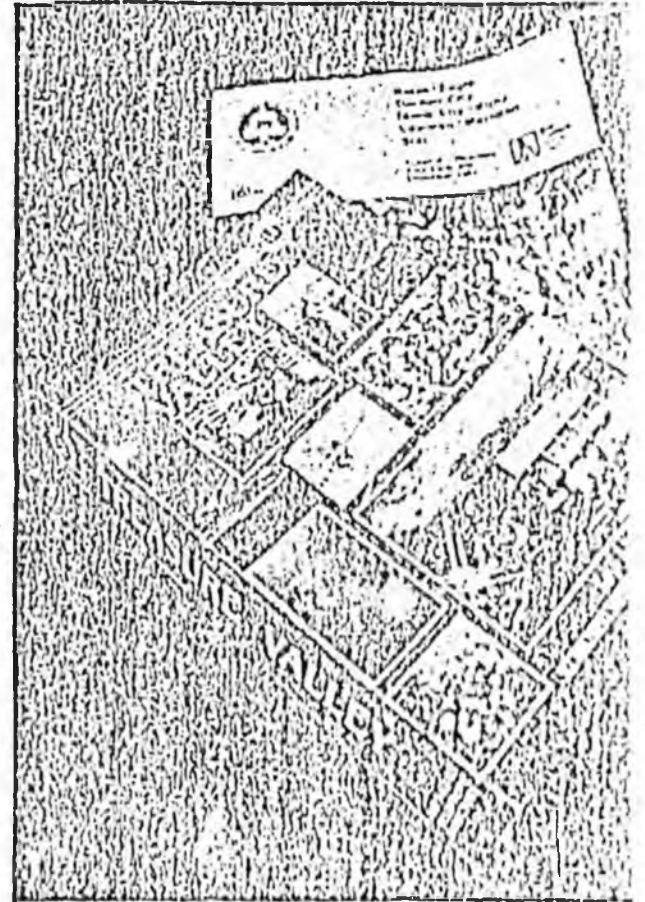
Thayer said at least half the debt incurred to publish the book has been paid back.

"It's a miracle the book came out," he said. "I really stuck my neck out. I've realized since then (when he took it over) that I made myself liable to a lot of things

contorted to, them, but they didn't. We're really grateful."

In compensation for the delay in publication and other problems, *Aid's* is giving advertisers in the first Treasure Valley book free advertising space in the August edition, Thayer said.

Landriani and McCall apparently moved to Oregon after their stay in Idaho, the Portland Better Business Bureau and the Portland field division of the FBI said. The Portland BBB reported that it had received complaints on the two men for conducting activities similar to those in Boise of the Oregon coast. Darwin Schroeder, special agent and informant



Aid's directory and Mountain Bell

FILED WITH FILE 211
Alaska State Legislature

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

While in Juneau
POUCH V
JUNEAU, ALASKA 99811



Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

May 15, 1983

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

Re: SCS HB 299.

Dear Senator Ray:

You asked me a few days ago to research the captioned bill.

I requested the Kubleys, who represent Ms. O'Brannon, to prepare a statement outlining the problem to which the bill is addressed. It is hereto attached.

I see nothing wrong with the bill inasmuch as a definite public service is provided.

On the other hand, I should add a caveat: The matter is being litigated in the courts in Fairbanks, Anchorage and the Mat-Su Borough. I have always been reluctant to intercede in such a situation because in essence we are prejudging the court - sort of upstaging it, as it were.

If you want to take it up at this time, I would be a "do pass".

Very truly yours,

3-

Robert H. Ziegler, Sr.

RHZ:lk

Attachment

Mary Ann O'Brannon lived with her 3 boys in Juneau for 10 years before moving to Anchorage. In Anchorage she started a little interior decorating business that she ran out of her home. She had a small yellow page add in the local telephone book. One month she received a bill for her add that was many times greater than she actually owed. When she told her problem to the yellow page people at the telephone co. she was told to either pay the bill that she didn't owe or they would shut off her phone, which they did. She went to the A.P.U.C. and asked them for advice on how to handle the situation and to see if they could help. She was told that they did not regulate the yellow pages, only the telephone directory. They also told her that she would be free to start her own yellow page book. Out of sheer frustration that is exactly what she did.

With \$75. she started the Alaska Directory Service. When she approached the Anchorage Telephone Utility and asked them to be able to purchase a simple list of the local telephone numbers she was first told no. After a great deal of wrangling they finally agreed to sell her the print out for around \$230,000. This same computer run out could be bought by you or I for \$200. She then found a company in the lower 48 that sold her a complete listing of the whole state of Alaska for \$1,100. This shows the extent the A.T.U. went through to keep her from having what , for everybody else, is public information.

Anchorage at that time contended that if they sold the list to Mary that it would cut in on the revenues generated by the city's monopoly on the yellow page business. However the year after The Alaska Directory Service was in existence the A.T.U.'s yellow page business not only did not decrease but on the contrary grew by 150 yellow pages. And in testimony before the Senate and House Labor and Commerce Committees Mr. Al Pestorius the Head of the A.T.U. admitted that the A.D.S. in fact did not and would not harm the revenue generating ability of the A.T.U.

The Alaska Directory Service does several things for the people of Alaska:

1. It gives the people of Alaska a book that allows them to access every community in the state of Alaska at no cost to the user.
2. It allows business to buy yellow page adds for the whole state for one low cost. Without A.D.S. these people would have to buy adds in some 18 telephone books across the state. There are very few business large enough to afford this great cost.
3. It gives people in the bush ,for the first time, the ability to order much needed supplies from Alaskan Companies rather than ordering out of catalogs from the lower 48 and sending the money out of Alaska.
4. It allows business in the large cities to be able to reach people in bush areas and provide them goods and services that they have never been able to get before.
5. At a time when many Alaskan leaders and people are trying to bring the state closer together through time zone changes and other means the A.T.D. does a great deal to help in the effort by putting the whole state at the finger-tips of its people.

The people of Alaska have spoken out in strong support for this much needed long overdue free service. This was reflected in the unanimous passage out of the House Labor and Commerce Committee, which is chaired by a man from Anchorage. It also was supported on the floor of the House by a 38 to 1 margin.

In Southeast Alaska it enables the people in all the little communities to be able to get ahold of friends, relatives, or business in a much more efficient manner. Including people on fishing boats or motor vessels as the A.D.S. contains a complete listing of all the registered boats in the state along with the name of the skipper and the call signs of the boat.

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LORENG - HOLDING BY POST OFFICE

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

LABOR AND COMMERCE COMMITTEE, CHAIRMAN
RESOURCES COMMITTEE
JUDICIARY COMMITTEE
FISHERIES SUB-COMMITTEE



P O BOX 143
SITKA, ALASKA 99835
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

MEMORANDUM

TO: Sen. Bill Ray, Chair
Senate Judiciary Committee

FROM: Sen. Dick Eliason *Dick*

DATE: May 24, 1983

RE: HB 308 --- "An Act relating to insurance."

As requested, I reviewed the above-referenced bill and I am now reporting my findings to you.

House Bill 308, introduced by the House Labor and Commerce Committee is very similar to a bill introduced in the Senate, SB 66. This legislation would allow the formation of a group of individuals interested in providing group self-insurance. These entities would participate in a reciprocal form of insurance and would be regulated by the Division of Insurance in the Dept. of Commerce and Economic Development.

Passage of this legislation would permit organizations, such as the Alaska Rural Electric Cooperative Association and the Alaska Municipal League, to offer this cost-saving insurance benefit to their members.



ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

May 25, 1983

The Honorable Richard I. Eliason
Alaska State Senate
Pouch V
Juneau, Alaska 99811

RE: House Bill 308

Dear Senator Eliason:

As you will recall, the committee substitute for SB 66 was developed in the Senate Labor and Commerce Committee as a compromise developed largely by the committee staff and representatives of the Division of Insurance. It has the effect of requiring us to reorganize our association's insurance program as a reciprocal insurer under the regulation of the Division. In return, we were to be exempted from participation in the assigned risk pool (workers' compensation) and the insurance company guarantee fund.

The House Labor and Commerce Committee introduced your committee substitute as HB 308. That committee then made the changes in the bill which I have marked in yellow on the attached copy. All of these changes are in the direction of further restricting who can benefit from this legislation.

Section 1 now limits the exemption from the assigned risk pool to reciprocals formed by groups of municipalities or nonprofit public utilities.

Section 2 now requires 10 or more municipalities to form a reciprocal.

Section 3 now requires 10 or more persons to organize a reciprocal whereas CS SB 66 only required 2.

Section 4 is unchanged.

Sections 5 and 6 now restrict exemption from the insurance company guarantee fund to assessable reciprocal insurers formed by and insuring only municipalities or nonprofit utilities.

CS HB 308 in its present form still meets the very urgent needs of our association, and we give it our unqualified support.

Sincerely,

David Hutchens
Executive Director

Enclosure

DEMOCRACY IN ACTION

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

March 23, 1983

BILL SHEFFIELD, GOVERNOR

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2515

Honorable Richard I. Eliason
Chairman
Committee on Labor and Commerce
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

RE: Position Paper SB 66

The Administration has carefully reviewed the ramifications of SB 66 and concludes that the public would best be served by a committee substitute that deletes the content of the current bill and replaces it with the enclosed changes which are similar to those forwarded to you on March 1, 1983.

SB 66 would allow two or more municipalities to pool their workers' compensation liabilities in a self-insured pool. The terms "self-insured pool" and "group self-insured" are anomalous terms. Self-insurance for two or more entities is insurance. The insurance code would normally apply to such situations. The bill as written, however, does not treat the combination of municipalities as an insurer. It would be more consistent with the general approach of the insurance code to treat this combination of municipalities the same as other combinations of other entities.

We recommend that SB 66 be replaced with a CS that would continue the regulation of insurers (group self-insurers) in the insurance code and apply the requirements for formation of an insurer to a group of municipalities. The requirements that would apply to municipalities, as well as public utilities, can be reasonably eased in view of the nature of those entities. The recommended easing would incorporate four changes. These are:

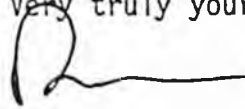
1. Reduction of the financial requirements for municipalities by permitting the use of a bond in lieu of cash surplus and by reducing the amount of operational surplus necessary;

March 23, 1983

2. Removal of any assigned risk liabilities that might otherwise accrue to an insurer formed by a group of municipalities or public utilities;
3. Reduction of the number of entities required to form a reciprocal insurer; and,
4. Removal of any liabilities in the Alaska Guaranty Association for insolvencies of other insurers if the insurer formed by a group of municipalities or public utilities is an assessable reciprocal insurer.

We believe that this is a reasonable stance which provides adequate public protection for claimants and policyholders.

Very truly yours,



Richard A. Lyon
Commissioner

RAL/cw#2113

Enclosure

cc: Art Peterson
Department of Law



ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

6000 C STREET • SUITE C • ANCHORAGE, ALASKA 99502 • (907) 276-3235

January 26, 1983

Senate Labor and Commerce Committee
Alaska State Legislature
Capitol Building
Pouch V
Juneau, Alaska 99811

RE: Senate Bill 66

Gentlemen:

I am sure that permitting the Alaska Municipal League to establish a group self-insurance program, as Senate Bill 66 now does, is in the public interest. However, we very strongly urge that this bill be expanded at least to include the utility industry. Our association has successfully operated a group self-insurance program for three years, but our program faces termination unless favorable legislation is enacted this year.

In 1979, the Alaska Rural Electric Cooperative Association applied to the Workers' Compensation Board for a self-insurance certificate for our member utilities. The certificate was issued effective January 1, 1980 and was renewed for a year effective January 1, 1981. Our program has been completely successful in meeting its obligations to the employees of its participants and in saving the participants substantial sums of money in insurance costs. Other associations, including the Municipal League, expressed interest in adopting group self-insurance programs modeled after ours.

At the beginning of 1982, our certificate was renewed for only a few months, and we were told that the Board was "reviewing the situation." In February 1982, Ms. Jacqueline McClintock of the Department of Labor requested an Attorney General's opinion regarding the legal status of group self-insurance programs in Alaska. In April, the Attorney General's opinion declared that since group self-insurance is not specifically mentioned in the Alaska statutes and it is in some other jurisdictions, it can be interpreted that group self-insurance is not authorized in this state.

Based on this opinion from the Attorney General, the Workers' Compensation Board terminated our certificate effective September 30, 1982. We appealed this action to the Superior Court, and we were successful in obtaining a stay of the Board action pending appeal. At the present time we are self-insured as a group by order of the Superior Court.

DEMOCRACY IN ACTION

Alaska
MUNICIPAL
League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

February 10, 1983

To: Senator Richard Eliason, Chair
Senate Labor & Commerce Committee
and all members of the Committee

From: Ginny Chitwood, Executive Director
Alaska Municipal League

Re: SB 66

The Alaska Municipal League supports SB 66 which says regulations may be adopted allowing municipalities to organize a self-insurance group in order to pool their liabilities. The League feels municipalities have that power now because of the strong cooperative agreement clause in Title 29:

"29.48.010 Municipalities have the following general powers, subject to other provisions of law:

- (4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;"

AS 29.48.310 and .320 also speak to the liberal construction of powers of boroughs and cities.

In addition to Title 29, the Alaska Constitution, Article X, Section 13, states "Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter." Article X, Section 1, also speaks to "maximum local self government".

(over)

In the attorney general's opinion dated April 19, 1982, to Jacquelyn McClintock, Amendola states "The broad grant of powers and the liberal construction given hereto indicate that municipal governments in the State of Alaska, through the Alaska Municipal League, can associate in order to provide workers' compensation coverage for their employees." However, in that same opinion Amendola says the Workers' Compensation Board is still without authority to grant approval for such a group self-insurance plan. Therefore the necessity for SB 66.

The program we wish to provide would be a cooperative effort on the part of participating municipalities to save money and to improve coverage. This type of cooperative effort is not new to the insurance field but in fact has existed throughout the country for the past 20 to 30 years. Through a cooperative approach to better coverage, the mass-purchasing power obtained through the combined strength of members means a stable, competitive source of insurance. The program is patterned after other municipal systems and is basically established on a non-profit basis to benefit the members. More than thirty state associations are now developing or have developed programs for counties and at least twenty state associations have set up group pools or self-insurance funds for their member cities.

We will not be soliciting the participation of the Municipality of Anchorage since they already are self-insured and it is working very well. The City of Fairbanks and the City of North Pole and the Fairbanks North Star Borough also are self-insured and are very pleased with their program which makes the League all the more anxious to be able to offer a self-insurance program to other municipalities.

hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors inside and outside this state;

(3) the systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or group of insurers to reflect the requirements of the operating methods of the insurer or group of insurers with respect to any kind of insurance, or with respect to a subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable;

(4) risks may be grouped by classifications for the establishment of rates and minimum premiums; classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both; the standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses;

(5) in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during a period of not more than the most recent five-year period for which experience is available;

(6) when there is an established program to inspect new and existing dwellings and the program has been certified by the director as likely to reduce the incidence of fires in inspected dwellings, then in any rate plan used in this state, dwellings which have been found by the inspection to meet the standards established by the program shall have credits applied to the rate in amounts approved by the director.

(b) Except to the extent necessary to meet the provisions of (a)(1) of this section, uniformity among insurers in matters within the scope of this section is neither required nor prohibited. (§ 1 ch 120 SLA 1966; am §§ 1, 2 ch 34 SLA 1977)

Effect of amendments. — The 1977 amendment, in subsection (a), deleted "and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a

period of not less than the most recent five-year period for which experience is available" from the end of paragraph (2) and added paragraphs (5) and (6).

Sec. 21.39.155. Assigned risk pool. (a) The director may require carriers, as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

(b) The assigned risk pool and the procedures to be followed in administering the pool shall be established by regulation. (§ 1 ch 252 SLA 1976; am § 60 ch 94 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "workers' compensation" for "workmen's compensation."

Sec. 21.39.175. Statistics. Any insurer providing malpractice coverage for health care providers shall collect, maintain and report information concerning claims against health care providers which it insures. The information shall be on forms prescribed by the director, and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the insurer shall report to the director the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to and the expenses incurred by the corporation during the year. This report shall be available to the public. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become available to the public may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All statistics, including the supplemental reports, shall be made available to the State Medical Board. (§ 38 ch 177 SLA 1978)

Editor's notes. — As to the purpose of the 1978 amendatory act, see § 1, ch 177, SLA 1978 as amended by § 7, ch. 46, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

Sec. 21.39.180. Definitions. In AS 21.39.010 — 21.39.180 "dwelling" means a residential structure containing not more than four family living units. (§ 3 ch 34 SLA 1977)

Chapter 42. The Insurance Contract.

Section	Section
75. Reimbursement of losses	350. [Repealed]
80. Power to contract — Purchase of insurance by minors	355. Coverage for cost of services provided by nurse midwives
130. Grounds for disapproval	360. [Repealed]
320 — 340. [Repealed]	370. Separate accounts
345. Required provision for coverage for newly born children	

Sec. 21.42.040. Interest of named insured.

NOTES TO DECISIONS

Applicability of section. — See Moran v. Kenai Towing & Salvage, Inc., Sup. Ct. Op. No. 1056 (File Nos. 1924, 1934), 523 P.2d 1237 (1974).

property damage, to which the maximum and minimum insured amounts apply;

(5) the maximums provided for in column (F) are net of applicable reinsurance;

(6) the deposit of surplus in the amount specified in columns (G) and (H) must thereafter be maintained unimpaired; the deposit is subject to the provisions of AS 21.24.010 — 21.24.130. (§ 1 ch 120 SLA 1966; am § 1 ch 127 SLA 1970; am § 60 ch 94 SLA 1980)

Effect of amendments. — The 1970 amendment, in subsection (b), added "Marine, Wet Marine, and Transportation" at the end of column (A), added "50" at the end of column (B), added "annual" at the end of column (C), added "\$1,000" at the end of column (D), added "\$25,000" at the

end of column (F), added "\$100,000" at the end of column (G), substituted "(6)" for "(7)" in column (H) and added "\$200,000" at the end of that column.

The 1980 amendment substituted "Workers'" for "Workmen's" in column (A) of subsection (b).

Sec. 21.69.490. Dividends to stockholders.

Cross references. — For exception to the requirements of this section, see AS 21.22.100(c).

Chapter 75. Reciprocal Insurers.

Article

- 1. General Provisions (§§ 21.75.010 — 21.75.290)
- 2. Cooperative Insurance Coverage (§§ 21.75.300 — 21.75.330)

Article 1. General Provisions.

Section

Section

- 30. Name, suits
- 50. Surplus funds required
- 55. Surplus funds for cooperative insurers
- 230. Nonassessable policies

Sec. 21.75.030. Name, suits. (a) A reciprocal insurer shall

(1) have and use a business name; the name shall include the word "reciprocal" or "interinsurer" or "interinsurance" or "exchange" or "underwriters" or "underwriting" or "association";

(2) sue and be sued in its own name.

(b) In addition to the requirements of (a) of this section, a cooperative insurer organized under AS 21.75.300 — 21.75.330 shall include the word "cooperative" in its name. (§ 1 ch 120 SLA 1966; am § 3 ch 150 SLA 1978)

Effect of amendments. — The 1978 amendment added subsection (b).

Sec. 21.75.050. Surplus funds required. (a) A domestic reciprocal insurer formed in accordance with the provisions of AS 21.75.010 —

21.75.330 shall have and maintain a surplus no less than an amount equal to the total of the capital and one-half of the surplus that would be required of a domestic stock insurer writing the same lines for which the reciprocal insurer seeks to be authorized.

(b) A foreign reciprocal insurer shall have and maintain a surplus no less than an amount equal to the total capital and surplus that would be required of a domestic stock insurer writing the same lines for which the reciprocal seeks to be authorized. (§ 1 ch 120 SLA 1966; am § 4 ch 150 SLA 1978)

Effect of amendments. — The 1978 amendment rewrote this section.

Sec. 21.75.055. Surplus funds for cooperative insurers. A cooperative insurer organized under AS 21.75.300 — 21.75.330, if it has otherwise complied with the applicable provisions of AS 21.75.010 — 21.75.330, may be authorized to transact insurance if it has and maintains surplus funds equal to one-half of the capital required for a domestic reciprocal insurer under AS 21.75.050(a) and such additional surplus as the director considers sufficient. (§ 5 ch 150 SLA 1978)

Sec. 21.75.230. Nonassessable policies. (a) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital and surplus required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee, the director shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for as long as all the surplus remains unimpaired.

(b) Upon impairment of the surplus, the director shall immediately revoke the certificate. The revocation shall not render subject to contingent liability a policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after the ~~revocation~~ ~~no policy may be issued~~ or renewed without providing for contingent assessment liability of the subscriber.

(c) The director may not authorize a domestic reciprocal insurer to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish the liability of all its subscribers and in all the policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of those subscribers which may acquire the policies in that state, and need not extinguish the contingent liability applicable to policies theretofore in force in that state. (§ 1 ch 120 SLA 1966; am § 6 ch 150 SLA 1978)

21.75.050

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§ 21.75.060

INSURANCE

§ 21.75.070

of a stock insurer for authority to transact a like combination of kinds of insurance. (§ 1 ch 120 SLA 1966)

Sec. 21.75.060. Organization of reciprocal insurer. (a) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the director for a certificate of authority to transact insurance.

(b) The proposed attorney shall fulfill the requirements of and shall execute and file with the director when applying for a certificate or authority, a declaration setting out

(1) the name of the insurer;

(2) the location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained in this state;

(3) the kinds of insurance proposed to be transacted;

(4) the names and addresses of the original subscribers;

(5) the designation and appointment of the proposed attorney and a copy of the power of attorney;

(6) the names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;

(7) the powers of the subscribers' advisory committee, and the names and terms of office of the members;

(8) that all money paid to the reciprocal (insurer) shall, after deducting any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;

(9) a copy of the subscribers' agreement;

(10) a statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six months at an adequate rate filed with and approved by the director;

(11) a statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by § 50 of this chapter is on hand;

(12) a copy of each policy, endorsement, and application form it then proposes to issue or use.

(c) The declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds. (§ 1 ch 120 SLA 1966)

Sec. 21.75.070. Certificate of authority. (a) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(b) The director may refuse, suspend or revoke the certificate of authority, in addition to other grounds, for failure of the at-

Sec. 21.80.170. Termination and distribution of funds. (a) The commissioner shall by order terminate the operation of the Alaska Insurance Guaranty Association as to any kind of insurance covered by AS 21.80.010 — 21.80.190 with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which

(1) is a permanent plan which is adequately funded or for which adequate funding is provided; and

(2) extends, or will extend to the Alaska policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to the policyholders and residents than the protection and benefits provided with respect to the kinds of insurance under AS 21.80.010 — 21.80.190.

(b) The commissioner shall by the same order authorize discontinuance of future payments by insurers to the Alaska Insurance Guaranty Association with respect to the same kinds of insurance so long as the assessments and payments continue, as necessary, to liquidate covered claims of insurers adjudged insolvent before the order and the related expenses not covered by the other plan.

(c) If the operation of the Alaska Insurance Guaranty Association is terminated as to all kinds of insurance otherwise within its scope, the association, as soon as possible thereafter, shall distribute the balance of money and assets remaining (after discharge of the functions of the association with respect to prior insurer insolvencies not covered by the other plan, together with related expenses) to the insurers which are then writing in this state policies of the kinds of insurance covered by AS 21.80.010 — 21.80.190 and which had made payments to the association, pro rata upon the basis of the aggregate of the payments made by the respective insurers during the period of five years next preceding the date of the termination order. Upon completion of this distribution with respect to all of the kinds of insurance covered by AS 21.80.010 — 21.80.190, AS 21.80.010 — 21.80.190 shall be considered to have expired. (§ 1 ch 121 SLA 1970)

Sec. 21.80.180. Definitions. In AS 21.80.010 — 21.80.190, unless the context requires otherwise,

(1) "account" means any one of the three accounts created by AS 21.80.040;

(2) "association" means the Alaska Insurance Guaranty Association;

(3) "commissioner" means the commissioner of the Department of Commerce or his representative;

(4) "covered claim" means an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which AS 21.80.010 — 21.80.190 apply issued by an insurer, if the insurer becomes an insolvent insurer after August 6, 1970, and (A) the claimant or insured is a resident of this state at the time of the insured event;

or (B) the property from which the claim arises is permanent & located in this state; "covered claim" does not include any amount due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise;

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except the Medical Indemnity Corporation of Alaska and the Health Care Providers Joint Underwriting Association established under AS 21.88.010 — 21.88.900, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

(6) "member insurer" means a person, except the Medical Indemnity Corporation of Alaska and the Health Care Providers Joint Underwriting Association established under AS 21.88.010 — 21.88.900, who

(A) writes any kind of insurance to which AS 21.80.010 — 21.80.190 apply under AS 21.80.020 including the exchange of reciprocal or inter-insurance contracts, and

(B) is licensed to transact insurance in this state;

(7) "net direct written premiums" means direct gross premiums written in this state on insurance policies to which AS 21.80.010 — 21.80.190 apply, less return premiums thereon and dividends paid or credited to policyholders on direct business; "net direct written premiums" does not include premiums on contracts between insurers or reinsurers. (§ 1 ch 121 SLA 1970; am §§ 43, 44 ch 102 SLA 1976)

Cross references. — As to constitutionality of ch. 102, SLA 1976, see notes to AS 09.55.536 and Alas. Const., art. II, § 14.

Effect of amendments. — The 1976 amendment inserted the language beginning "except the Medical Indemnity Corporation of Alaska" and ending "under AS 21.88.010 — 21.88.900" in paragraph (5)(A) and in the introductory language of paragraph (6).

Editor's notes. — Section 48, ch. 102, SLA 1976, provides: "AS 01.10.030 applies to this Act except that if any portion of AS 21.88.110 — 21.88.180 is held invalid all of AS 21.88.110 — 21.88.180 shall be void and the Medical Indemnity Corporation of

Alaska shall assume all duties and liabilities incurred by the Health Care Providers Joint Underwriting Association before the declaration of invalidity; and except that if the requirement that health care providers purchase medical malpractice insurance from the Medical Indemnity Corporation of Alaska is found to be invalid, secs. 41, 42, 43, and 44 of this Act are void; however, the Medical Indemnity Corporation of Alaska and the Health Care Providers Joint Underwriting Association shall continue to discharge and assess to pay claims incurred before the declaration of invalidity." AS 21.88.110 — 21.88.180 were repealed by § 40, ch. 177, SLA 1978.

NOTES TO DECISIONS

Applicability of AS 21.80.010 — 21.80.190. — AS 21.80.010 — 21.80.190 were applicable to a claim against a policyholder for personal injuries as a result of an automobile accident from the time his insurer became insolvent. King v.

Jordan, Sup. Ct. Op. No. 1956 (File Nos. 3400, 3401, 3673), 601 P.2d 272 (1979).

AS 21.80.010 — 21.80.190 on their face limits "covered claims" to those asserted by claimants or insureds. White v. Alaska Ins. Guar. Ass'n, Sup. Ct.

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COMMITTEE REPORT
SENATE

FURTHER:

20133

Date: 2-12-79

Mr. President:

The Committee on GOVERNMENT has had CONF. 91 (S)

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 1979-80 SF - 2000 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:

[Signature]
[Signature]
[Signature]

CHAIRMAN

COMMITTEE REPORT

HOUSE

(7)

FURTHER:

4/25/83

Date: 5-2-83

Mr. Speaker: (Returned to Judiciary 4/25/83)

The Committee on JUDICIARY has had HB 312

"An Act relating to harming a police dog."

under consideration and reports it back as follows:

do pass [] do not pass

[] do pass with attached amendments(s)

replace with CS for HB 312 (SUD) [] same title
[X] new title
and recommends _____

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

[] reports it back without recommendation [X] Zero Fiscal Note Attached

[] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature] No rec.
[Signature]

CHAIRMAN

Kotzebue

1 dog

not subject to harassment or threats

Alaska State Troopers

3 Search & Rescur Dogs

2 Narcotics Dogs

Support the legislation. Were to call back saturday
with info re: harassment

Did not call back

Ketchikan Police Department

1 Narcotics Dog - Not subject to threats or
harassment

Support the legislation

Kenai Police Department

1 Street Dog - Not aware of harassment. Dispatcher
could not comment on the bill

Juneau Police Department

No Dogs

Fairbanks Police Department

No Dogs

Anchorage Police Department

3 Street Dogs

2 Narcotics Dogs

Support the legislation. Their dogs (all of them) have
be harassed and threatened. One dog was threatened
wednesday (April 27) with a knife.

The department feels that it would be very difficult
to convince the prosecutors to file charges under
the Criminal Mischief Statute because it covers such
a broad range of offenses. If there were specific
statutes relating to harassment or injuring a police
dog it would be much easier to convince the prosecution
to prosecute.

The department has never attempted to file charges under
the criminal mischief statute as they felt there would
be no chance of prosecution.

COMMITTEE REPORT

HOUSE

FURTHER:

Date: _____

Mr. Speaker:

The Committee on _____ has had _____

under consideration and reports it back as follows:

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

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

MEMORANDUM

DATE: April 20, 1983

TO: File

FROM: Cynthia Nelson
Administrative Assistant

SUBJECT: Proposed CS for HB 312 (Judiciary)
"An Act relating to harming a police dog."

On April 20, 1983 I spoke with Deputy Chief Audie of the Anchorage Police Department. The Anchorage Police Department strongly supports this legislation and hopes that it will act as a deterrent to the threats which have been made towards their police dogs.

The Anchorage Police Department presently owns and maintains five (5) police dogs. Four (4) are classified as "Street Dogs" and are used for building searches and in situations where there would be a substantial danger to a police officer. In addition, "Street Dogs" are used for search and rescue situations locating lost persons.

The additional dog owned by the Anchorage Police Department is classified as a "Narcotics Dog". This particular dog was imported from Germany and is used to locate narcotics by smell. This dog in particular has been subjected to numerous threats of harm.

These dogs represent an investment of approximately \$12,000 each which includes an eight week training session with it's designated police officer "handler". This figure does not include salary and per diem paid to the officer while in training at the outside school.

There is not only a substantial financial investment in these dogs but a great deal of time investment. However, the value of these dogs to the life and safety of the public and to the police officers they serve would be difficult to measure.

MEMBERS:

REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WIENDE

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 21, 1983

SUBJECT: Harming police dogs
(CSHB 312 (Judiciary))

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: James H. Lear
Legislative Counsel *JHL*

You have asked our office to compare the penalties under the existing law and the penalties under CSHB 312 (Judiciary) associated with the crime of harming a police dog. Under AS 11.46.486 (Criminal mischief in the fourth degree) the prosecution would have to establish that the offender "tampered" with a police dog with reckless disregard for the risk of harm or with intent to cause substantial inconvenience to another person; or that the offender damaged a police dog in an amount less than \$50 and with the intent to cause such damage. Criminal mischief in the fourth degree is a class B misdemeanor.

Comparing criminal mischief in the fourth degree with proposed Sec. 11.56.710 (Harming a police dog in the second degree), one would observe that under the proposed statute it would be unnecessary to establish damage to a police dog. It would be sufficient for the prosecution to establish that the offender tormented, kicked, struck, stoned, or tampered with a police dog, knowing the dog to be a police dog. Such conduct would be punishable as a class A misdemeanor, a greater penalty than that imposed for criminal mischief in the fourth degree.

Under AS 11.46.484 (Criminal mischief in the third degree) the prosecution would have to establish that the offender intentionally damaged a police dog in an amount of \$50 or more but less than \$500. If the prosecution were successful, the offender would be facing a class A misdemeanor charge. Again, comparing this with the proposed section of harming a police dog in the second degree, the prosecution

Representative Charlie Bussell
Page 2
April 21, 1983

must establish damage to the police dog to prevail under the existing law, while under the new provision the offender would be punished even though he inflicts no physical injury to the police dog.

Under AS 11.46.482 (Criminal mischief in the second degree) the prosecution would have to establish that the offender intentionally damaged a police dog in an amount of \$500 or more in order to impose penalties as a class C felony. Compared with Sec. 11.56.705 (Harming a police dog in the first degree), one would observe that an offender is subject to penalties for a class C felony violation if the offender intentionally kills or causes serious physical injury to a police dog. Under the existing law the prosecution would have to establish that the intentional killing or infliction of serious physical injury amounted to more than \$500 in damages.

In short, a comparison of existing law with proposed CSHB 312 (Judiciary) shows that it would be easier to prosecute an offender under the proposed bill and in certain instances higher penalties could be attached upon conviction.

If you have any further questions, please feel free to contact our office.

JHL:ljb
15/026

STATE OF ALASKA
FISCAL NOTE

Revision Date: 4-15-83

I. REQUEST

Bill/Resolution No.: HB 312
 Title: "Act Relating to Harming a Police Dog"
 Sponsor: Representative Adams
 Requestor: House Judiciary

II. FISCAL DETAIL

Agency affected: Public Safety
 Program Category affected: Crime ID
 BRU, Program of Subprograms, affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul Conger Phone: 465-4338
 Division: Administrative Services Date: 4/14/83
 Approved by Commissioner: [Signature] Date: 4-15-83
 Department: Public Safety

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)



STATE OF ALASKA

BILL ANALYSIS

Department Public Safety	Sponsor (Principal) Adams	Bill Number HB 312
Department Position Support		
Division Director Col. M. C. Kolivoskv <i>mck</i>	Date 4-8-83	Signature <i>R. J. Sundberg</i> R. J. Sundberg
		Date 4-15-83

Comments:

Position Noted By _____ Date _____

SUMMARY

1. a) Related Bills (Similar or Conflicting)	1. b) Other Agencies Affected by Bill All law enforcement agencies statewide.
2. a) Organizational Support for Bill	2. b) Organizational Opposition to Bill

3. Program Effects of Bill

Passage of this bill will help to protect these valuable assets in police work. These animals are used not only for general police work but also in narcotics enforcement.

4. Fiscal Impact: None Fiscal Note Attached

5. Amendments Proposed:

6. Comments:

CITY OF KOTZEBUE

P.O. BOX 46
KOTZEBUE, ALASKA 99752

KOTZEBUE POLICE DEPARTMENT
907-442-3351

March 23, 1983

Representative Al Adams
Pouch V
State Capital
Juneau, Alaska 99811

HB312
RE: POLICE DOG PROTECTION BILL

I was given a copy of your draft bill amending AS 11.56 to protect police dogs.

I and the Police Department, and I am sure the City Fathers, thank you for this much needed legislation.

It is definitely a measure of protection for the dog and a protection to the large investment made by the City of Kotzebue and hopefully will act as a deterrent.

In reviewing the draft legislation, the two stumbling blocks I see is the phrase "knowing the dog to be a police dog" and the language following to the end of the sentence in Section 11.56.705 and Section 11.56.710.

By necessity the dog becomes a part of the Officers family and it is generally agreed that this is when the dog is most vulnerable. Police Department that have used dogs over a great period of time have found that the dogs are poisoned, shot at and injured mostly when "off duty".

All Police dogs are the property of the handlers employer and like an Officer, are "on duty" 24 hours a day.

Might it be possible to revise the language to reflect these concerns.

Sincerely,



DONALD E. BUEHLER
Chief of Police

cc: Representative Adams' file
City Manager
City Manager file
Sgt Jones

"GATEWAY TO NORTHWEST ALASKA"

H

B

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TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
A. <u>General</u>				
1. Governor	7 Years	Alk. Const. art. III, § 2	No	--
2. Lieutenant Governor	7 Years	Alk. Const. art. III, §§ 2 & 7	No	--
3. Board of Education Member	3 Years	AS 14.07.075	No	--
4. Legislator	3 Years	Alk. Const. art. II, § 2 AS 24.05.030	No	--
5. Supreme Court Justice	5 Years	AS 22.05.070	No	--
6. Court of Appeals Judge	5 Years	AS 22.07.040	No	--
7. Superior Court Judge	5 Years	AS 22.10.090	No	--
8. District Court Judge	5 Years	AS 22.15.160(a)	No	--
9. Magistrate	6 Months	AS 22.15.160(b)	No	--
10. Ombudsman	3 Years	AS 24.55.030	No	--
11. Borough Mayor	Up to 3 Years	AS 29.23.130(b)	No	--
12. Borough Assembly	Up to 3 Years	AS 29.23.050	No	--
13. City Mayor	Up to 3 Years	AS 29.23.250(a)	No	--
14. City Council	Up to 3 Years	AS 29.23.200(b)	No	--
15. Municipal Charter Commission	3 Years	AS 29.13.010	No	--

**** NO CHANGES ON THIS PAGE

TITLE	**DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
B. <u>Boards and Commissions other than Occupational Licensing Boards.</u>				
<u>Boards, which are a part of or affiliated with state government.</u>		There are 98 Boards and Commissions, other than Occupational Licensing Boards, which are a part of or affiliated with state government. There is a durational residence requirement for membership on seven of those boards and commissions. */		
1. Rural Affairs Commission	5 Years	AS 44.19.102	Maybe **/	None
2. Board of Fisheries	1 Year	AS 16.05.221 AS 16.05.940	No	--
3. Board of Game	1 Year	AS 16.05.221 AS 16.05.940	No	--
4. Judicial Qualifications Commission	10 years practice in Alaska	Al. Const. art. IV, § 10 AS 22.30.010	Maybe **/	--
5. Municipal Bond Bank Authority	30 days (qualified voter)	AS 44.85.030	No	--
6. Personnel Board	30 days (qualified voter)	AS 39.25.060	No	--
7. Alaska Power Authority	30 days (qualified voter)	AS 44.83.020	No	--

*/ This list includes only boards and commissions which have express durational residency requirements. Many boards have ex officio members who must meet residency requirements for those offices or positions. These boards include:

- (1) Alcohol Beverage Control Board (certain licensees); (2) Capital Site Planning Commission (borough mayors);
- (3) Coastal Policy Council (mayors, assembly and council members); (4) Code Revision Commission (members of legislature);
- (5) Citizens Advisory Commission on Federal Management Areas in Alaska (governor and other public officers); (6) Commission on Conference of the Law of the Sea (members of legislature); (7) Rural Development Council (members of legislature); (8) Teacher's Retirement Board (resident who is receiving retirement benefits); (9) Tourism Advisory Board (members of legislature); and
- (10) Governor's Commission on the Administration of Justice (judicial officers, legislators and municipal officials)

**/ It is difficult to imagine someone complaining about any possible constitutional problems here.

II. LICENSES

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<p>A. <u>Occupational Licenses.</u> The State of Alaska requires occupational licenses in 28 separate occupational areas. Residence requirements are imposed for the receipt of these licenses in seven of these occupational areas. For reasons set forth in Appendix A, we believe any residence requirement, even of zero durational length, will in most cases be unconstitutional.</p>				
Sec.2	1. Public Accountant (**delete residency requirement**)	1 Year (rebuttable)	AS 08.04.280 12 AAC 04.170	Yes None
	2. Attorney (** no change **)	Residence	Bar Rule 5(1)(a)	Yes Declared unconstitutional in Noll v. Alaska Bar Ass'n 8/13/82
Sec.3	Law Clerk (**delete residency requirement **)			
	3. Collection Agencies (** no change **)	1 Year, but non-resident may receive license on same basis as resident, except fee for branch offices is higher	AS 08.24.110 AS 08.24.370	No
	4. Morticians (** no change **)	1 Year in-state apprenticeship	AS 08.42.110	Yes None
	5. Guides			
	Master Guide (** no change needed; comes in through registered guide reference **)	Residence plus hunted 10 years	AS 08.54.100	Yes None
Sec.13	Registered Guide (** deleted **)	Resident	AS 08.54.110(2)	Yes None
	Class A Assistant Guide (** no change **)	20 years experience in guide district in which he is to be employed although not a specific residence requirement.	AS 08.54.120	Yes None
Sec: 13	Assistant Guide (** deleted **)	Resident	AS 08.54.140 (2)	Yes None
Sec. 13	Transporter (** deleted **)	Resident	AS 08.54.142 (a)(1)	Yes None

	TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<u>Occupational Licenses (Cont.)</u>					
	6. Junk Dealer & Metal Scrapper (**no change*)	No resident requirement, but defines "resident" as present for one year.	AS 08.60.030	No	--
Sec. 4	7. Real Estate Brokers and Salesmen (** delete residency requirement. **)	Resident	AS 08.88.171	Yes	None
Sec. 9	8. Insurance Brokers, Agents and Solicitors (**delete residency requirement.	No fee change -- keep differential **)			
	Resident Insurance Salesmen or Broker (non residents can be licensed but may pay a higher fee)	1 year	AS 21.27.090 (a)(2) res.	No	--
			AS 21.06.250 fees (no change)		--
Sec. 13	Insurance Solicitor ** deleted ** (residency requirement)	1 year	AS 21.27.220 (1)	Yes	None

B. Other Licenses

	1. Alcoholic Beverage License (**no change**)	1 year	AS 04.11.390	Maybe	None
	2. Resident Fish & Game License (resident license costs less than non-resident license) (** no change **)	12 consecutive months	AS 16.05.940	Maybe	None

III. PUBLIC RIGHTS AND BENEFITS

A. General

	1. Voting (** no change **)	30 days	AS 15.05.510	No	--
Sec. 5	2. Annulment of Marriage (** delete 1 yr. 1 Year retain 30 days **)		AS 09.55.130	Maybe	None

	TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE	
<u>General (Cont.)</u>						
Sec. 13	3. Low-Cost Housing Preference (** delete 1 yr. retain 30 days **)	1 Year	AS 18.55.330 AS 18.55.470(4) ** deleted	Probably	None	
Sec. 13	4. Vocational Substitution Program(* " " *)	1 Year	AS 39.25.155(g)	Probably	None	
Sec. 13	5. Industrial Incentive Tax Credits(* " " *)	Depends on % of 1-year residents	AS 43.26.095(b)(3)	Probably	Program is for all practical purposes no longer operating.	
Sec. 7	6. Bounties for Certain Animals (* " " *)	1 year abode in Unit plus "continually maintained residence in the state . . . "	AS 16.35.130	Yes	The program is a dead letter because it has not been funded for several years.	
B.	<u>Loan and Grant Programs.</u> Approximately 41 loan programs are provided for under Alaska Statutes. 35 of these are currently active programs. Of these 35, seven have some sort of durational residency feature. The dormant programs are inactive because of lack of funding. The state has one grant program requiring a period of residency for eligibility.					
	1. Fisherman's Note and Mortgage Program	NOTE: this was repealed in 1982	5 Years	AS 16.10.680(a)	Yes	AG opinion pending
	2. Commercial Fishing Loan	See HB 15 which deleted 5 yrs. & used 2 years.	5 Years	AS 16.10.310(a)	Yes	AG opinion pending
Sec. 12	3. Limited Entry Permit Loans (CFAB) (** delete 5 yrs., insert 2 years **)	5 Years	AS 44.81.210(a)(20)	Yes	Program inactive pending Court determination of legality of limited entry program in State v. Ostrosky.	
	4. Agriculture and Fishing Loan (CFAB) (** no change **)	1 Year	Board Policy	Maybe	None	
Sec. 8	5. Alaska Housing Finance Corp. One Percent Veterans' Housing Loan Rate Reduction (** delete 5 yrs., insert 2 years. **)	5 Years	AS 18.56.101(B) (a)	Yes	AG opinion 7/14/82 instructed agency not to enforce.	
Sec. 10	6. Veterans Loans (** delete 5 yrs., insert 2 years. **)	5 Years	AS 26.15.130(1)	Yes	Inactive because not currently funded.	

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING, IF APPLICABLE
<u>Loan and Grant Programs (Cont.)</u>				
7. Mining Business Loans (** no change **)	Residency and 5 Years Mining Experience in State.	AS 27.09.020	Maybe	None
8. Memorial Scholarship Loan Fund (** no change **)	No durational requirement to apply. 1/5 loan forgiven for each year employed in specialized field in Alaska.	AS 14.40.825(c)	No	- - -
9. Student Loan Program				
(a) eligibility to apply (** no change **)	2 Years	AS 14.40.765(b)	Probably	Issue pending in Andress v. Baxter
(b) 1/10 forgiven for each year of residency after education up to 50% of loan. (** no change **)	- -	AS 14.40.763(i)	Maybe	May be covered by Gilman v. Martin which is now pending in Alaska Supreme Court
Sec. 13 (c) Point Preference System for loan applicants (**repealed **)	1 Point; 2-5 Years 2 Points; 5-10 Years 3 Points; 10+ Years	renumber to 14.43.130 AS 14.40.767	Yes	Point system has not previously been utilized as Legislature has always funded all applicants.
10. Alaska Educational Incentive Grant (** no change **)	2 Years	Application form	Probably	Issue will be decided by result in Andress v. Baxter
C. <u>Land Disposal Programs</u>				
1. Land Disposal by Lottery (** no change **)	1 Year	AS 38.05.057(b)(2)	Maybe	Should be decided by Gilman v. Martin.
Sec. 13 2. Land Purchase Price Discount Program (** repealed **)	5% per year discount for each year of residency up to 10 years	AS 38.05.058	Probably	Should be decided by Gilman v. Martin.

TITLE	DURATIONAL RESIDENCE REQUIREMENT	AUTHORITY	CONSTITUTIONAL PROBLEM	ACTION TAKEN OR PENDING IF APPLICABLE
<u>Land Disposal Programs (Cont.)</u>				
Sec. 11 3. Homesite Entry Program (** delete 3 yrs. and 20 yrs.) require 1 year. **	3 years or 20 years of earlier residency) to apply	AS 38.08.030(a)(2)	Yes	AG opinion pending
	Priority given longest resident	AS 38.08.040(b)	Sec. 13 **repealed **	
4. Remote Parcel Leasing Program (** no change **)	1 Year	AS 38.08.077(1)(2)	Maybe	Should be decided by Gilman v. Martin.
<u>D. Special Old Age Programs</u>				
1. Longevity Bonus Program (** no change in this bill **)	25 years and presence in State at or before statehood.	AS 47.45.010(a)	Yes	Issue Pending in Vest v. Schafer
2. Pioneers' Home Program (** no change in this bill **)	15 years immediately before application; or 30 years cumulative	AS 47.25.020(a) AS 47.25.035	Yes	None
Sec. 13 3. Senior Citizen Special Assessment Exemption (** delete 1 yr and retain 30 days. **)	12 months	AS 29.63.065(d)(1)	Maybe	None
Sec. 6 4. Senior Citizen Exemption from Fishing License Requirement (** delete 30 years and insert 1 year **)	30 years total residence	AS 16.05.400	Yes	None

Appendix A

The federal constitution's Privileges and Immunities Clause seeks to prevent discrimination against nonresidents, to further the concept of federalism, and to create a national economic unit. Shely v. Alaska Bar Ass'n, 620 P.2d 640, 642 (Alaska 1980) ("Sheley"). Although the Clause does not preclude some disparity of treatment between residents and nonresidents, it does protect activities which are "fundamental right": i.e., "basic and essential activities, interference with which would frustrate the purposes of the formation of the Union." Baldwin v. Fish & Game Comm'n, 436 U.S. 371, 388 (1978).

One such "fundamental right" is the right to engage in "common callings" and to pursue "ordinary livelihoods." Toomer v. Witsell, 334 U.S. 385, 403 (1948). This includes "professional occupations." Sheley, 620 P.2d at 643.

In order to discriminate against nonresidents when a fundamental right is involved, there must be: (1) some showing that nonresidents are "a peculiar source of the evil" which the residence requirement is meant to remedy; and (2) the discrimination against nonresidents must "bear a substantial relationship to the particular 'evil' they are said to present." Hicklin v. Orbeck, 437 U.S. 518, 526-527 (1978). For example, there cannot be less restrictive means to combat the problems attempted to be solved by the residency requirement. Sheley, 620 P.2d at 645.

A good example is the recent Alaska Supreme Court case Noll v. Alaska Bar Ass'n, ___ P.2d ___, Op. No. 2546 (August 13, 1982). In Noll, a nonresident challenged the constitutionality of Alaska Bar Rule 5(1)(a), which required that an applicant for admission to the state bar be domiciled in Alaska when he or she was actually admitted. The bar association argued that the residency requirement was needed:

(1) to assure the competency of the members of the bar;

(2) to assure familiarity with local practice and local issues;

(3) to facilitate service of process and communication with other attorneys; and

(4) to assure that members of the state bar are readily amenable to discipline and fee arbitration and are available for service on the committees that administer those procedures.

The Alaska Supreme Court rejected each and every reason offered. Although recognizing the legitimacy of those goals, the court either found these goals were not "substantial" enough to justify the discrimination, could be attained by other nondiscriminatory means, or were not furthered by the discrimination. As can be seen, this constitutional test is difficult to meet. Consequently, all residency requirements for occupational licensing are called into substantial doubt.

STATE OF ALASKA
FISCAL NOTE

Revision Date June 13, 1983

I. REQUEST

Bill/Resolution No.: SCS CS Hb323(SA)
 Title: "Residency & Residency Requirements"
 Sponsor: State Affairs Committee
 Requestor: Senate State Affairs Committee

II. FISCAL DETAIL

Agency Affected: FISH AND GAME
 Program Category Affected: Fisheries & Game
 BRU, Program of Subprogram(s) Affected: Sport Fisheries and Game

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL						
REVENUE	-0-	(80.6)	(88.0)	(95.5)		

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund - In light of declining General Fund revenue, this may be very difficult.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reame *Beverly Reame* Phone: 465-4120
 Division: Administration Date: _____
 Approved by Commissioner: Don W. Collinsworth Date: 6/15/83
 Department: Fish and Game

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
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- Copy to Requestor (if different from Sponsor)

3/8/83

SCS CS HB 323 (SA)

The 1980 Census showed 19,640 Alaskans ages 60 and over. It also showed 32,260 Alaskans 55 and over. Assuming the age spread is even, 2524 Alaskans will reach age 60 each year between 1980 and 1985. Population estimates adding the Alaskans reaching 60 and an overall 5% population growth would be as follows:

FY 84	28,573
FY 85	31,223
FY 86	33,873

Using a conservative estimate, assume that 15% of the population fishes and 11% hunts, we would forego the following revenue:

	<u>Sport Fish</u> \$10 license	<u>Game</u> \$12 license
FY 84	42.9	37.7
FY 85	46.8	41.2
FY 86	50.8	44.7

STATE OF ALASKA
FISCAL NOTE

Revision Date 6/14, 1983

I. REQUEST

Bill/Resolution No: SCSCSHB 323 (SA)
Title: Residency and residency re-
quirements
Sponsor: State Affairs Committee
Requestor: Senate Judiciary

II. FISCAL DETAIL

Agency Affected: Revenue
Program Category Affected: Coll. & Mgmt.
BRU, Program of Subprogram(s) Affected: Administration & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	0	1.0	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	0	3.0	1.3	1.4	1.5	-
500 EQUIPMENT	0	2.0	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	0	6.0	1.3	1.4	1.5	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	0	6.0	1.3	1.4	1.5	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
Sport Fish Fund	0	(18.2)	(38.5)	(40.8)	(43.4)	-
Game Fund	0	(14.1)	(30.0)	(31.8)	(33.6)	-

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Cecilia A. Wagoner
Division: Revenue - Fish and Game

Phone: 465-2376
Date: 6/13/83

Approved by Commissioner: *Joseph R. Donohue*
Department: Revenue

Date: 6/14/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

IV. Analysis of SCSCSHB 323 (State Affairs)

Three thousand is needed to initially design and print applications and the permanent I.D. card and to order enough laminating jackets for the fiscal year. Each subsequent fiscal year we will have the cost of additional laminating jackets. The equipment cost is for three laminating machines; one for the Public Services Counter in Anchorage, one for Fairbanks, and one for Juneau. The travel expenditure is for the Records & Licensing Supervisor to go to Anchorage and Fairbanks and instruct the counter employees.

According to data received from the Department of Labor and the Committee for Older Alaskans, the percentage rate of senior citizens in our state is fairly stable from year to year.

Using FY 82 as the base, it is estimated that there will be a six percent increase in resident sales every year. It is also estimated that three percent of the resident sales are sold to residents sixty years or older.

We are recommending that this bill be amended to include an effective date of January 1, 1984, because license changes traditionally take place at the beginning of a calendar year. If implemented in the middle of the year, some licensees who could be eligible would have already purchased their license and it wouldn't be fair to them. Middle of the year implementation would also require special printing and mailing costs. Time is also needed to properly inform the public of the new law so that all who are eligible can apply.

Assuming that the bill goes into effect 1/1/84, there will be no effect in FY 83. There will be losses to both the Sport Fish and Game Funds in each subsequent fiscal year. FY 84 has a much smaller loss because only half of the fiscal year will be effected.

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Alaska State Legislature



Representative Mitch Abcock
CHAIRMAN

House Committee on State Affairs

The enclosed chart on durational residency, originally prepared by former Attorney General Wilson Condon and Assistant Attorney General Bob Maynard, in 1982, has been used extensively in the preparation and drafting of "An Act relating to residency and residency requirements; and providing for an effective date." The Committee, staff and consultants would like to extend their appreciation to the invaluable research done by Mr. Condon and Mr. Maynard.

To help clarify the statutory changes contained in the House State Affairs residency bill, we have included these changes as they apply to the programs appearing on Mr. Condon's chart. They are:

- 1) The left-hand margins reflect the section numbers found in the residency bill.
- 2) material enclosed by brackets and asterisks (** **), indicate effect of the residency bill on the various programs listed.

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



SECTIONAL ANALYSIS OF: SCSCS HB 323 (SA)

"An Act relating to residency and residency requirements; and providing for an effective date."

Section 1 amends AS 01.10 by adding a new section defining bona fide residency in the State of Alaska. A person establishes residency in the State by being physically present in Alaska with the intent to remain in Alaska indefinitely and to make a home in the State. Under (b)(1) in the section, a person must maintain a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation.

Section 2 repeals and reenacts AS 08.04.110 relating to the personal requirements of certified public accountants. The present residency requirement has been deleted.

Section 3 amends AS 08.04.260 relating to temporary certificates for certified, public accountants. The present residency requirement has been deleted.

Section 4 amends AS 08.08.207 (a) by removing the requirement that an individual be a resident of Alaska in order to be a law clerk.

Section 5 amends AS 08.42.050(a)(4) by eliminating the residency requirement for embalmer trainees.

Section 6 amends AS 08.42.110(4) to conform the definition of "trainee" to the change made in Section 5, above.

Section 7 amends AS 08.88.171 relating to qualifications for a real estate broker's license, an associate broker's license, or a real estate salesman's license. The one-year residency requirement has been deleted.

Section 8 amends AS 09.55.130 by deleting the one-year residency requirement for the annulment of a marriage. Under current law, if a person was not married in Alaska, that marriage can only be annulled if the plaintiff had been a resident for at least one year prior to the commencement of an action.

Section 9 amends AS 16.05.400(b) by changing the 30-year consecutive residency requirement to a one-year requirement for a hunting, fishing or trapping license exemption for persons 60 years of age or older.

Section 10 amends AS 16.35.130 by deleting the one-year residency requirement in the section dealing with the non-payment of bounty on certain animals. Presently, in order for a bounty to be paid, an individual is required to maintain a place of abode inside the game management unit or in part of the game management unit for one year preceeding the time the animal is taken and the bounty paid. In addition, no bounty is paid to a person who has not continually maintained legal residence in Alaska. The one-year residency requirement has been replaced by a 30-day requirement.

Section 11 amends AS 18.56.101 (1)(B), dealing with the eligibility for the one percent veteran's interest rates reduction on AHFC loans, by deleting the five-year residency requirement ~~and substituting a one-year requirement~~. The present law requires a veteran who was not a resident of Alaska at the time of entry into the service, to be a resident of Alaska for one year at the time of the date of application for a loan and also requires the applicant to have been a resident of Alaska for five years.

Section 12 amends AS 21.27.090 (a)(2), dealing with the qualifications for insurance agent and broker licenses, by deleting the one-year residency requirement and substituting a 30-day requirement. There is no change in fee differential.

Section 13 amends AS 26.10.080(d)(1)(13), relating to veteran's burial allowances, by reducing the residency requirement from five years to one year at the time of death for veterans who were not residents at the time of entry into service.

Section 14 amends AS 26.15.130 (a), dealing with the eligibility for veteran's loans, by deleting the five-year residency requirement and inserting a one-year requirement. To receive a loan under current law a veteran who was not a bona fide resident of the State or Territory of Alaska at the time of entry into the service, is required to have been a resident of the State or territory for five years.

Section 15 amends AS 38.08.030 (a)(2), dealing with applications for the non-site entry, by deleting the three-year residency requirement and the 20-year requirement, and substituting a one-year requirement. Under current law an individual must submit proof that he/she has been a resident of Alaska for three years immediately preceding the date of application, or, that the person has been an Alaskan resident for a total of 20 years.

Section 16 amends AS 44.81.210 (a)(20), dealing with limited entry permit loans (CFAB), by deleting the five-year residency requirement and substituting a two-year requirement. Under current law, a person must be a resident of Alaska for a continuous period of five years immediately preceding the date of application for the loan and who has had a crew member or commercial fishing license under AS 16.05.480 or a permit under AS 16.43.010 - 380, for any one of the past five years. That person must also have actively participated in the fishery during that period.

Section 17 grants authority to the Commission on Postsecondary Education to adopt the most stringent residency requirements allowable under the Constitution if the current two year residency for scholarship loans is declared unconstitutional by a court of competent jurisdiction.

Section 18 repeals the residency requirements for:

driver's license, AS 08.24.110(1)

guide license, AS 08.54.110(2)

assistant guide licenses, AS 08.54.140(2)

transporter license, AS 08.54.142(a)(1)

definition of "resident" in the chapter regulating guides, AS 08.54.240(3)(B)

granting student loans based on accumulated points determined by length of residency, AS 14.43.130

ASHA low-cost housing, AS 18.55.470(4)

insurance solicitor license, AS 21.27.220(1)

(CONT)

Section 18 repeals the residency requirements for:

senior citizen special assessment exemption, AS 29.53.065(d)(1)

state land sale discounts, AS 38.05.058

homesite entry permits, AS 38.08.040(h)

vocational substitution program, AS 39.25.155(g)

industrial incentive tax credits, AS 43.26.095(b)(3)

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COMMITTEE REPORT
SENATE

FURTHER:

Date Nov 19 1951

Mr. President

The Committee on Internal Security considered HR 1080

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for HR 1080
- 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

Amendment #1, Department of Law

Page 1, Line 26, between "verbatim" and "record" insert
"written".

Justification: Recently the Alaska Court System has adopted a policy of interpreting the phrase "verbatim record" and the language of Rule 32(f) of the Alaska Rules of Criminal Procedure which calls for a transcript of a sentencing proceeding, to be satisfied by supplying a cassette tape. This is a departure from past practices of the Court System whereby written transcripts of the sentencing proceeding were provided. If judges when sentencing uniformly indicated on their judgments how the sentence was imposed, recommendations for treatment and restrictions on the liberty of the convicted offender, written transcripts would not be necessary. However, this is not the case.

In order to realize meaningful compliance with current law, especially in light of recognition of the victim's interests vis a vis sentencing and subsequent rehabilitative decisions, state officials need to have a useful tool which would permit intelligent decisions. Both institutional corrections personnel and probation and parole authorities need to have at a minimum synopses of the

sentencing hearing. In this way decisions on release, rehabilitation programs and offender/victim interaction can be properly attained. Written transcripts would enable the appropriate authority to scan the sentencing record for offenders and achieve the desired results. The provision of cassette tapes of sentencing is rendering this decision-making process fruitless in the absence of sufficient additional personnel to review each tape and note relevant input and recommendations. In fact, this change by the Court System has led only to the accumulation of massive numbers of nearly useless cassette tapes by corrections and parole officials.

CSHB 345

Amendment #2, Department of Law

Page 2, Line 4, after "(4)" and before "recommendations",
insert "any".

Justification: This is a clarifying amendment
which indicates that at times, no recommendation may be
rendered by the courts at sentencing.

Amendment

Insert page 3, line 9:

(6) the right to obtain access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having medical assistance administered; however, an employee of the law enforcement agency may, if necessary accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER


CS for House Bill 345

"An Act relating to victims' rights; and amending Rule 32(d)(2) of the Alaska Rules of Criminal Procedure"

It is very important to consider the effects of crimes upon victims and delineate victims rights, so the Council on Domestic Violence and Sexual Assault supports CS for HB 345. This legislation will promote a consistent focus on victims' rights throughout the state. A victim impact statement should make the courts aware of the trauma caused by crimes and make them more sensitive to the problems encountered by victims. It should also assist courts in determining appropriate restitution to victims. Consideration of a victim's input will promote his/her safety and assist in empowering the victim. Victim input needs to be considered in many instances, particularly for parole and furlough of an offender who has committed a violent crime.

The delineation of victims' rights is very important. Often the victim feels overwhelmed or further victimized by the criminal justice system. Victims' needs should be considered. Of particular importance to the Council are the rights to protection from harm and threats arising out of cooperation with law enforcement and to access immediate medical assistance.

The change in AS 18.66.060, the law that established the Council on Domestic Violence and Sexual Assault, does not create any problems. Domestic Violence and Sexual Assault programs must provide services to victims in need and do not require cooperation with prosecution in order to receive services.


Jana Varrati
Vice-Chair
Council on Domestic Violence
and Sexual Assault

FILE WITH CS HB 345

ADULT CORRECTIONS AGENCY
Pouch T
Juneau, Alaska 99811

POSITION PAPER
CS for House Bill No. 345 (Judiciary)

"An Act relating to victims rights; and amending Rule 32 (d) (2) of the Alaska Rules of Criminal Procedures."

The Adult Corrections Agency supports the concept of evidence and statements of the victim being included for consideration in sentencing, parole hearings and furlough determinations. The committee substitute has addressed the concerns this agency had regarding the bill as originally drafted. The victim, or their family, will be able to present comments for consideration by the sentencing judge, parole board and/or commissioner. The final determination of the felony offender's status can then be made taking all known facts into consideration.

Prepared by:

Roger C. Lange
Roger C. Lange
Internal Management Administrator

Date:

2/8/84

Approved by:

Roger V. Endell
Roger V. Endell
Deputy Commissioner
Adult Corrections Agency

Date:

2/8/84

Amendment #1, Department of Law

Page 1, Line 26, between "verbatim" and "record" insert
"written".

Justification: Recently the Alaska Court System has adopted a policy of interpreting the phrase "verbatim record" and the language of Rule 32(f) of the Alaska Rules of Criminal Procedure which calls for a transcript of a sentencing proceeding, to be satisfied by supplying a cassette tape. This is a departure from past practices of the Court System whereby written transcripts of the sentencing proceeding were provided. If judges when sentencing uniformly indicated on their judgments how the sentence was imposed, recommendations for treatment and restrictions on the liberty of the convicted offender, written transcripts would not be necessary. However, this is not the case.

In order to realize meaningful compliance with current law, especially in light of recognition of the victim's interests vis a vis sentencing and subsequent rehabilitative decisions, state officials need to have a useful tool which would permit intelligent decisions. Both institutional corrections personnel and probation and parole authorities need to have at a minimum synopses of the

CSHB 345

Amendment #3, Department of Law

Page 5, Lines 10-11, delete

"unless the victim does not wish to be notified."

Page 5, Lines 24-25, delete

"unless the victim does not wish to be notified."

Page 6, Line 11, delete

"unless the victim does not wish to be notified."

Justification: Clarifying amendments to add internal consistency to these respective sections. At one point this legislation placed the burden on state officials to notify the victim unless the victim indicated they didn't want to be notified. In House Judiciary, this approach was amended to place the burden on the victim to request notification; however, the language proposed for deletion was inadvertently left in.

CSHB 345

Amendment #2, Department of Law

Page 2, Line 4, after "(4)" and before "recommendations",
insert "any".

Justification: This is a clarifying amendment
which indicates that at times, no recommendation may be
rendered by the courts at sentencing.

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COMMITTEE REPORT

SENATE

FURTHER:

07/13/83

Date: 7/13/83

Mr. President:

The Committee on COMMERCE has had CS 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

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:

CHAIRMAN

09.65.110

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§ 09.65.120

CODE OF CIVIL PROCEDURE

§ 09.65.130

sec. 1 of this Act, is in addition to liability in a civil action under Rule 52 of the Rules for an award of reasonable attorneys' fees of Civil Procedure, which may be made to the prevailing party

Sec. 09.65.120. Definition of death. A person is considered medically and legally dead if, in the opinion of a medical doctor licensed or exempt from licensing under AS 08.64.010 — 08.64.380, based on ordinary standards of medical practice, there is no spontaneous respiratory or cardiac function and there is no expectation of recovery of spontaneous respiratory or cardiac function or, in the case when respiratory and cardiac functions are maintained by artificial means, a person is considered medically and legally dead, if, in the opinion of a medical doctor licensed or exempt from licensing under AS 08.64.010 — 08.64.380, based on ordinary standards of medical practice, there is no spontaneous brain function. Death may be pronounced in this circumstance before artificial means of maintaining respiratory and cardiac function are terminated. (§ 1 ch 3 SLA 1974)

Sec. 09.65.130. Representation of child. (a) The court may, upon the motion of either party or upon its own motion, appoint an attorney to represent the minor with respect to his custody, support, and visitation or in any other legal proceeding involving his welfare. When custody, support, or visitation are at issue in a divorce, it is the responsibility of the parties or their counsel to notify the court that those matters are at issue. Upon notification, the court shall determine whether the child should have legal representation or other services and shall make a finding on the record before trial. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney and may further order that other services be provided for the protection of the child.

(b) If custody, support, or visitation is an issue, the order for costs, fees, and disbursements shall be made against either or both parents, except that, if one of the parties responsible for the costs is indigent, the costs, fees, and disbursements for that party shall be borne by the state. If either or both parents are only temporarily without funds, as determined by the court, the court may advance payment for legal representation or other services rendered to the child; however, no repayment may be required for those who are receiving legal services for the indigent. The attorney general is responsible for enforcing collections owed the court, and repayment shall be made directly to the court under the provisions of rules governing the administration of the courts. The court shall, if possible, avoid assigning costs to only one party by ordering that costs of the child's legal representation or other services be paid from proceeds derived from a sale of property belonging to both parties, before a division of property is made.

(c) Instead of, or in addition to, appointment of an attorney under (a) of this section, the court may, upon the motion of either party or upon

POSITION PAPER

HOUSE BILL NO. 352

"An Act relating to the definition of death; and providing for an effective date."

BACKGROUND

A Uniform Definition of Death has been endorsed by the National Conference of Commissioners on Uniform State Laws, the American Medical Association, the American Bar Association, the President's Commission for the Study of Ethical Problems in Medical and Biomedical and Behavioral Research as well as by the American Academy of Neurology and the American Electroencephalographic Society. The Uniform Definition is as follows:

"An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards."

According to information received from the Commissioners on Uniform State Laws, 19 states have now adopted this definition, up from two states in 1981.

DISCUSSION

The definition proposed in this Bill, differs from the Uniform Definition in several respects:

1. In the Bill, "person" is substituted for "individual". The Uniform Definition purposely included the term "individual" to conform to the standard designation of a human being. The term "person" was not used because it is sometimes used by the law to include a corporation. Although that particular confusion would be unlikely to arise, the narrower term "individual" is more precise and thus avoids possibility of confusion.
2. In the Bill, the phrase "medically and legally dead" is used. The Uniform Definition prefers the phrase "is dead" since the broader provisions were considered to be misleading. The President's Commission stated, "A law setting a general standard without explicit limitations would be assumed to apply for all legal purposes; to say so in the statute, however, only raises needless questions (e.g., what does 'all legal purposes' leave out? For example, proceedings in equity?)"

1/ Defining Death. Medical, Legal and Ethical Issues in the Determination of Death. President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. Pg. 79. Government Printing Office, Washington, D.C., 1981.

3. The Bill sets the standard for establishing death as "ordinary standards of medical practice", while the Uniform Definition adopts "accepted medical standards". This difference is probably not important.
4. The Bill adds a provision that death may be pronounced "before artificial means of maintaining respiratory and cardiac function are terminated." The Uniform Definition avoids the necessity for such a provision by simply stating that an individual "is dead" when either "irreversible cessation of circulatory and respiratory function or irreversible cessation of all functions of the entire brain, including the brain stem" has occurred. When either of these circumstances prevails, the appropriateness of stopping medical intervention is apparent.

POSITION

While the Department considers the definition proposed in the Bill to be better than the current statutory definition, it would prefer that the Uniform Definition of Death be adopted.

Recommended by:

E. S. Rabeau

E.S. Rabeau, M.D.
Director
Division of Public Health

Date:

April 15, 1983

Approved by:

Robert London Smith

Robert London Smith, Ph.D.
Commissioner
Department of Health and
Social Services

Date:

4/18/83