

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 86/2

2583 HLC HB 509 - HB 569

Representative Hurlbert lives in Sleetmute which is about 200 miles up the Kuskokwim River from Bethel. The source of petroleum products including aviation gasoline, for this river system is Chevron's bulk plant in Bethel. Avgas can be purchased from Chevron FOB Bethel in new drums or 5 gallon pails or in bulk quantities delivered to a customer's barge or tank truck. There are two barge companies currently serving the river communities.

Sometime last fall Representative Hurlbert apparently had hauled a number of used drums down the river expecting to have the barge operator fill them directly from storage tanks or the barge. The barge operator was not a Chevron aviation fuel dealer but had purchased aviation gas in bulk from Chevron at Bethel. The barge operator, as an independent businessman, apparently adopted Chevron's policy regarding used drums and refused to fill them. Representative Hurlbert had to wait until bulk product was pumped ashore into another customers' tank then move his barrels to that location for filling.

#### 4. Alternate Marketing Options

It should also be noted that Chevron has implemented a new program in the lower 48 states concerning the sale and distribution of aviation fuels. This program could prove deleterious to the flow of Alaska commerce if implemented in this state.

In the lower 48 states, Chevron will deliver aviation fuel only in 10,000-gallon deliveries and only to its own airport dealers that meet its quality specifications. All other wholesale purchasers must take delivery of such fuels in minimum 10,000-gallon allotments at a Chevron bulk plant when Chevron has certified that the carrying vehicle is appropriate for the transport of aviation fuels.

5. House Bill No. 509

House Bill 509 as originally introduced protects only aviation fuel refiners from unreasonable assertions of liability. As indicated above, numerous and probably the majority of sales of aviation fuel in Alaska are made by independent businesses that are not owned or controlled by Chevron. Perhaps consideration should be given to:

- a) expending the protection of the bill to include within its protection all sellers of aviation fuel to the ultimate consumers, and
- b) restricting the bill's applicability to sales of less than a given amount, such as 10,000 gallons.

TDH

E. D. Hill  
T. D. Hunt  
W. D. Krar  
W. M. Crar



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 9, 1981

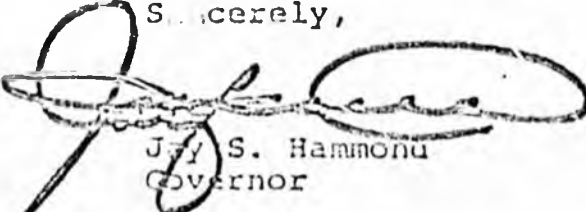
Mr. James Howard  
Chevron International  
P.O. Box 1580  
Anchorage, AK 99510

Dear Mr. Howard:

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

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

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

Sincerely,  
  
Jeff S. Hammond  
Governor

cc: Jessie Dodson  
Clarissa Quinlan

ROBERT B. ATWOOD  
Editor and Publisher

WILLIAM J. TOBIN  
Associate Editor  
and General Manager

FRED DICKEY  
Executive Editor

# Water fuel linked to air crash

Why water and rust contaminated the fuel system of the Cessna 207 at Merrill Field has been the subject of a fiery crash that took place in October 1979. A report on the accident, issued by the Transportation Safety Board, says that contaminated fuel in an underground fuel tank also said the air- was contaminated

clined to specify the terms.

Bud's Aircraft is no longer a part of the suit, and Cessna Aircraft has been added as a defendant. Came out said the partial settlement with Sperrnak "does not mean we've waived any rights with Cessna or Union Oil."

The suit alleges that an employee of Union Oil failed to perform a necessary test to detect the presence of water in a fuel tank at Sperrnak Airways on the morning of the crash on Oct. 6, 1979.

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

The suit also says the plane crashed as "a direct and proximate result" of Cessna's "defective de-

sign, manufacture, warning and instructions for use" of the craft's fuel and related systems.

Damages in excess of \$5 million are being sought, according to the suit.

George Sperrnak, owner of Sperrnak Airways, said he hadn't seen the transportation board's report and declined comment on it. When a portion of report was read to him Monday, Sperrnak said, "We've been here since 1935 and we haven't heard those reports."

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

Sperrnak said the same fuel tanks (See FUEL, page A-3)

## Fuel . . .

(Continued from page A-1)

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

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

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

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

"But the bill didn't go anywhere,"

Swanson said.

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

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

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

The report goes on to list several other instances which may prevent immediate detection of con-

taminated fuel and concludes, though the pilot, "although responsible, is presented with situations which water detection is difficult."

The board recommended that the Federal Aviation Administration adopt three specific regulations which would:

1. require design requirements for the installation, maintenance and inspection of aviation fuel storage and dispensing systems in airports certificated under Part 139.

2. require minimum specifications and design requirements for aviation fuel storage and dispensing systems at public use airports certified under Part 135.

3. require the FAA to promulgate

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# running out of gas

by Patti Epler  
Times Writer

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

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

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

Bender and Triplett are the only

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

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

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

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

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

Additionally, he said, more than  
(See AIRCRAFT, page A-3)

(Continued from page A-1)

600 pilots per month gas at his pumps.

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

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

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

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

have to make ends meet."

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

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

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

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

E-1001

NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

*room  
Linda Deegan*

ISSUED: February 6, 1981

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Forwarded to:

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

SAFETY RECOMMENDATION(S)

A-81-9 through -11

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

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

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

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

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

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

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

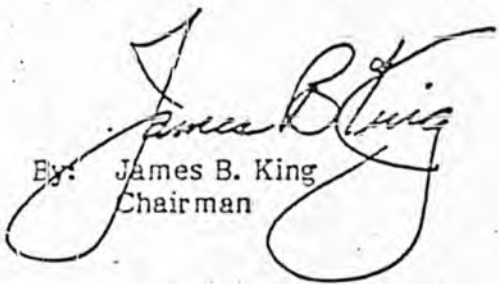
Therefore, the National Transportation Safety Board recommends that the Federal Aviation Administration:

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

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

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

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



By: James B. King  
Chairman

TESTIMONY OF GEORGE DAY  
OF CHEVRON U.S.A. INC. BEFORE  
THE HOUSE LABOR AND COMMERCE COMMITTEE  
CONCERNING HOUSE BILL 509  
FEBRUARY 2, 1984

Good Morning. My name is George Day, I am the Public Affairs Manager for Chevron U.S.A. Inc. in Anchorage. Chevron markets a complete line of petroleum products throughout Alaska and is the largest marketer of aviation fuels in the state. In 1983, Chevron sold a total of 160 million gallons of aviation fuel in Alaska. Jet fuel sales accounted for 147 million gallons, and only 13 million gallons of aviation gas were sold. For this reason, Chevron is vitally interested in the passage of HB 509.

Chevron has developed an extensive distribution system for supplying aviation fuels throughout the State of Alaska. Chevron recognizes that its primary responsibility is to deliver uncontaminated fuel to the next person in the distribution chain. Quality control is an ongoing process that requires constant supervision and the expenditure of much time and money. Nevertheless, inspection of the fuels for contaminants and for water is relatively easy. In order to demonstrate this, we have brought samples of jet fuel, Avgas 80, and Avgas 100.

[Demonstrate inspection process]

A description of our distribution process to the urban areas and to the bush areas of Alaska should help the committee members of understanding the liability problems faced by an aviation fuel refiner.

[Describe Anchorage process]

[Describe Bethel process]

The development of the theory of strict liability in products liability cases has greatly expanded the liability exposure of an aviation fuel refiner to fuel liability. As you may know, the plaintiff in a strict liability lawsuit need only demonstrate that he was sold a "defective product" by the defendant which caused damage to the plaintiff. The plaintiff is not required to demonstrate that the defendant's conduct in manufacturing or maintaining the product was negligent.

The essential distinction between aviation fuel and other products for which strict liability is imposed is that most other products such as automobiles or furniture or even airplanes are static in their quality once they have been manufactured. Generally speaking, barring unforeseen events, other products remain in the same form as they were immediately after their manufacture. However, the quality of aviation fuel is always subject to incremental change depending on the quality of the handling thereof.

At each stage of the distribution process, contamination is a distinct possibility that must carefully be guarded against. Fuel that is clean and dry going into a storage tank can come out wet, dirty, and/or contaminated depending on the quality of the storage and the method of handling. Once a

refiner has placed aviation fuel in the storage tanks of another person not under the refiner's control, we believe that it is unfair to hold the refiner liable for the continued quality and integrity of that fuel.

Nevertheless, because most refiners are large companies, plaintiffs' attorneys tend to join them in actions even where liability may be unlikely. Refiners may at times find it more economical to settle the case than spend thousands in defense, even when they believe there is no liability. In response to this increased exposure to liability, companies have quietly withdrawn from the aviation fuel market in Alaska. Texaco did so in 1980, and Union Oil Company has pulled out of the aviation fuel market in Southeast Alaska.

Barrels pose a particular dilemma for the refiner. Chevron continues to market aviation fuels in new barrels only in Alaska, and only as an accommodation to the unique reliance the state has on general aviation in remote areas where the most practical means of supply is by barrel. In all other states, Chevron does not sell aviation fuel in a barrel.

It is important to realize that there is no such thing as a "sealed barrel." All barrels, whether new or used, are susceptible to moisture contamination particularly when they are stored outside in the widely fluctuating temperatures encountered in Alaska. During such fluctuations, when moisture is present on

the top of the barrel near the bung hole, moisture can be pulled right through the threads on the bung with the expansion and contraction of the barrel. There is thus no guarantee that uncontaminated, clean, dry fuel purchased in a new barrel will remain so when it is stored improperly.

Obviously, used barrels pose additional problems beyond subsequent contamination. No dealer has the facilities to complete an accurate inspection of barrels prior to refilling them. For these reasons, Chevron declines to refill used barrels with aviation fuel.

These problems combine to create strong incentive to discontinue the present marketing system in the state. For example, in the lower 48 states, Chevron will deliver aviation fuel only in 10,000-gallon deliveries and only to its own airport dealers who meet its quality specifications. All other wholesale purchasers must take delivery of such fuels in minimum 10,000-gallon allotments at a Chevron bulk plant after Chevron has certified that the carrying vehicles are appropriate for the transport of aviation fuels.

It is imperative that the State of Alaska take immediate steps to provide a fair economic climate that would allow the continued distribution of aviation fuels to all areas of the state.

The sole purpose of HB 509 is to create a fair and reasonable business climate for aviation fuel refiners by removing unreasonable exposure to liability. This will go a long way toward assuring adequate supplies to remote geographical locations and to individual customers.

The means selected to achieve this objective are carefully tailored to meet the needs that have been stated. Under HB 509, refiners are still subject to liability when they place fuel directly into aircraft. This is as it should be, since the refiners have total control of the quality of the product up to final delivery.

Except for gross negligence, recklessness or intentional conduct, the refiner is not liable where the fuel is delivered other than directly into an aircraft. The important point to note here is that once title and possession have passed from a refiner, the refiner no longer has control over the integrity of the fuel and should not be held liable therefor.

Aviation fuel refiners will not dismantle quality control programs merely because of the passage of this legislation. It should be again emphasized that refiners are still fully exposed to liability where they fuel airplanes directly. Thus, the dismantling of the quality control program which results in the delivery of contaminated fuel into an aircraft by a refiner would still fully expose the refiner to liability.

Furthermore, even where the deliveries are not made directly into an aircraft, quality control programs will remain. The dismantling of a quality control program, and the use thereafter of little or no care in the manufacture of aviation fuel, may be held to be "gross negligence" under the bill. Thus, the refiners' liability would be maintained in such situations.

HB 509 re-establishes the balance that has often been lost in the development of products liability law. Each entity in the distribution chain must take responsibility for its actions in handling aviation fuel, and must be held responsible for failure to do so properly. Aviation fuel refiners must continue to ensure quality control during the manufacture and distribution of the product. Wholesalers and retailers must also take adequate steps to ensure the continued integrity of the product during their part of the distribution chain. Finally, airlines and private pilots must continue to handle fuel in a safe manner and test for quality before and after each transfer. Only by following such procedures for each fuel transfer can the integrity of the aviation fuel be assured. It is for precisely these reasons that Chevron urges the adoption of HB 509.



HB

535

## BACKGROUND

### HB 535

House Bill 535 is a single purpose piece of legislation designed to allowed retired state employees to continue their group life insurance after age 65. They would be required to pay the premiums on this coverage.

HB 535 arose from complaints from a constituent in House District 17 who is a retired state employee. At the time of her retirement, the group life insurance policy with the state was her only life coverage. By the time she was informed that she was no longer covered, her age made it impossible to purchase life insurance on the open market at a reasonable rate.

Cost of funerals in small, interior communities is very high. This is primarily due to the fact that graves cannot be dug in the winter, and bodies must therefore either be cremated or held in cold storage until after break-up.

STATE OF ALASKA  
THE LEGISLATURE

POUCH 1 - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 30, 1984

SUBJECT: Sectional analysis of HB 535

TO: Representative John Cowdery  
Chairman, House Labor and Commerce Committee

FROM: Edward H. Hein *EHA*  
Legislative Counsel

Under AS 39.30.090 state employees and others who participate in state-provided group life insurance are entitled to continue the insurance after terminating employment if they pay the cost of the insurance themselves. Only the coverage the person had at the time of leaving employment may be purchased. The conversion privilege is limited to persons under 65 years of age. HB 535 deletes the age requirement at page 2, line 23. All other changes reflected in the bill are technical.

EHH:ojb  
J3/015



Alaska Public  
Employees Association **APEA**

State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

MEMORANDUM

TO: Representative John Cowdery, Chairman  
House Labor and Commerce Committee

FROM: Cherie Shelley  
Executive Director

SUBJECT: HB 535

DATE: February 7, 1984

The Alaska Public Employees Association fully supports the provisions of HB 535 allowing all former public employees to continue to purchase group life insurance regardless of age.

This legislation will remove discriminatory language from state statute and make insurance coverage available at a time when people need it the most.

Cost to the state will be minimal since the premium will be paid by the former employees.

CS/rb

Fairbanks Field Office  
825 D College Road  
Fairbanks, AK 99701  
Telephone: (907) 456-5412

Anchorage Field Office  
833 Gambell Street, Suite A  
Anchorage, AK 99501  
Telephone: (907) 274-1688

Juneau Field Office  
227 4th Street  
Juneau, AK 99801  
Telephone: (907) 586-6305

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST FISCAL DETAIL  
 Bill/Resolution No.: HB 535 Agency Affected All State Agencies  
 Title: An Act relating to purchase of group life insurance by retirees. Program Category Affected: Health Insurance  
 Sponsor: Shultz BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

|                    | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 |
|--------------------|-------|-------|-------|-------|-------|-------|
| Operating          |       |       |       |       |       |       |
| 100 Personal Svcs  |       |       |       |       |       |       |
| 100 Ptmnt. & Bnfts |       |       |       |       |       |       |
| 200 Travel         |       |       |       |       |       |       |
| 300 Contractual    |       |       |       |       |       |       |
| 400 Supplies       |       |       |       |       |       |       |
| 500 Equipment      |       |       |       |       |       |       |
| 600 Land & Struct  |       |       |       |       |       |       |
| 700 Grants, Claims |       |       |       |       |       |       |
| 700 TRS Match      |       |       |       |       |       |       |
| TOTAL CPEPA, '86   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

CAPITAL \_\_\_\_\_

REVENUE \_\_\_\_\_

FUNDING: (Thousands of Dollars)

|               |     |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|-----|
| General Fund  |     |     |     |     |     |     |
| Federal Funds |     |     |     |     |     |     |
| Other         |     |     |     |     |     |     |
| Total         | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-Time |  |  |  |  |  |  |
| Part-Time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

SOURCE OF FUNDS TO OFFSET IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: J.K. Humphreys Phone: 465-4460  
 Division: Retirement & Benefits Date: 2-3-84

Approved by Commissioner: Lisa Rudd Date: 2/15/84  
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

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

(Page 2 of 2)

House Bill 535  
Fiscal Note Analysis  
Prepared by the Division of Retirement & Benefits  
Department of Administration

February 3, 1984

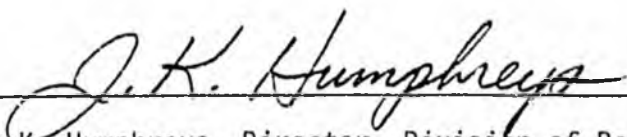
IV Analysis: This bill would allow retirees age 65 and older to continue to purchase optional group life insurance. Currently, retirees are ineligible to purchase this insurance after age 65.

There is no cost to the State. Premiums for this insurance would be paid by the retiree.

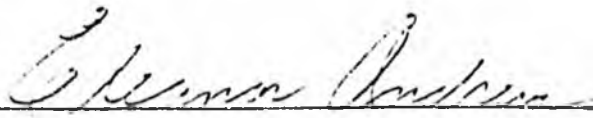
Position Paper

HB 535

The Department of Administration supports this bill. It offers retirees the choice of continuing to purchase optional group life insurance coverage beyond the current limit of age 65. This flexibility can be achieved with no cost to the state. Favorable premium rates would benefit the retiree.

  
\_\_\_\_\_  
J.K. Humphreys, Director, Division of Retirement & Benefits

2-3-84  
Date

  
\_\_\_\_\_  
for Lisa Rudd, Commissioner, Department of Administration

2/8/84  
Date



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

BILL ANALYSIS

|   |                               |  |
|---|-------------------------------|--|
| Department<br>Administration                                  | Sponsor (Principal)<br>Shultz | Bill Number<br>HB 535                                  |
| Department Position<br><br>The department supports this bill. |                               |  |
| Division Director<br>J.K. Humphreys <i>J.K. Humphreys</i>     | Date<br>2-3-84                | Commissioner's Signature<br>Lisa Rudd <i>Lisa Rudd</i> |
|   |                               | Date<br>2/8/84   |

GOVERNOR'S OFFICE USE

Comments:

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|   |    |      |
|---|----|------|
| <input type="checkbox"/> Position Noted | By | Date |
|---|----|------|

SUMMARY

|  |  |
|--|--|
| 1. a) Related Bills (Similar or Conflicting)<br>none | 1. b) Other Agencies Affected by Bill                  |
| 2. a) Organizational Support for Bill<br><br>Unknown | 2. b) Organizational Opposition to Bill<br><br>Unknown |

3. Program Effects of Bill

This bill would allow retirees to continue to purchase optional life insurance coverage beyond the current age limit of 65.

4. Fiscal Impact:  None  Fiscal Note Attached

5. Amendments Proposed:

6. Comments:

If this bill becomes law retirees who became ineligible in the past because of age and those who retired after reaching age 65 and were never eligible, would be given the opportunity to re-enroll in this coverage without evidence of insurability.

HB

540

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 540  
 Title: "..claims against a contractor's payment bond"  
 Sponsor: Rep. Bettisworth  
 Requestor: House Labor & Commerce  
 Date of Request: 2/10/84

FISCAL DETAIL

Agency Affected: Labor  
 Program Category Affected: Public Protection  
 BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

|                        | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 |
|------------------------|-------|-------|-------|-------|-------|-------|
| <b>OPERATING</b>       |       |       |       |       |       |       |
| 100 PERSONAL SERVICES  |       |       |       |       |       |       |
| 200 TRAVEL             |       |       |       |       |       |       |
| 300 CONTRACTUAL        |       |       |       |       |       |       |
| 400 SUPPLIES           |       |       |       |       |       |       |
| 500 EQUIPMENT          |       |       |       |       |       |       |
| 600 LAND & STRUCTURES  |       |       |       |       |       |       |
| 700 GRANTS, CLAIMS     |       |       |       |       |       |       |
| 800 MISCELLANEOUS      |       |       |       |       |       |       |
| <b>TOTAL OPERATING</b> | 0     | 0     | 0     | 0     | 0     | 0     |

|                |  |  |  |  |  |  |
|----------------|--|--|--|--|--|--|
| <b>CAPITAL</b> |  |  |  |  |  |  |
|----------------|--|--|--|--|--|--|

|                |  |  |  |  |  |  |
|----------------|--|--|--|--|--|--|
| <b>REVENUE</b> |  |  |  |  |  |  |
|----------------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

|               |   |   |   |   |   |   |
|---------------|---|---|---|---|---|---|
| GENERAL FUND  | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS |   |   |   |   |   |   |
| OTHER         |   |   |   |   |   |   |
| <b>TOTAL</b>  |   |   |   |   |   |   |

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870  
 Division: Labor Standards & Safety Date: 2/13/84  
 Approved by Commissioner: Jim Robison Date: 2/13/84  
 Agency: Labor

Distribution (by Agency preparing fiscal note):

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

12/1/83

Bill No. House Bill No. 540

Date February 13, 1984

Title "An Act relating to claims against  
a contractor's payment bond"

Contact: Eileen Plate, 465-2700  
Bob Bacolas, 465-4870

The bonding requirements of AS 36.25 are designed to provide persons performing labor or furnishing material on a public construction project with remedies comparable to those that are available to persons performing work or furnishing material on a private sector construction project. With respect to private construction, the following points are relevant:

1. A person who performs work or supplies materials on a private project may lien the property for recovery of monies owed for wages or materials;
2. A lien on the property may be filed for up to 90 days after the last date on which the person performed labor or furnished materials; and
3. The property is lienable by workers and suppliers of the general contractor or any subcontractor.

Public property, on the other hand, cannot be liened, and the bonding requirements of AS 36.25 evolved as an equitable alternative, with the only difference being the vehicle used for recovery -- on public construction, the contractor's bond; on private construction, lienable real property.

The amendments to AS 36.25.020(b), as set out in House Bill No. 540, propose to disrupt the equity presently provided by discriminating against the person who performs labor or furnishes material to a subcontractor on a public construction project. In fact, the proposed provision that these workers or suppliers must initiate their claims against the contractor's bond within ten days from the first date labor was performed or materials were furnished effectively denies them use of the system specifically designed to assist them. Few workers or suppliers would fear that money owed them was in jeopardy after only ten days. Further, the requirements of AS 36.25.010(a)(2) clearly contemplate that the general contractor is responsible for the protection of all persons who supply labor and material in connection with the construction contract. Therefore, the proposal to treat a subcontractor's workers and suppliers differently than those of a general contractor is not only without justification, but is also contrary to the spirit of the bonding law itself.

House Bill 540 is not in the best interest of Alaska's workers, and the department opposes its passage.

APPROVED:



Jim Robison  
Commissioner

**POSITION PAPER/Department of Labor**

~~Revised~~ Draft  
TESTIMONY OF

ALASKA CHAPTER  
THE ASSOCIATED GENERAL <sup>R</sup>CONTACTORS OF AMERICA  
TO THE  
HOUSE LABOR AND COMMERCE COMMITTEE  
ON  
VARYING THE NOTICE PROVISIONS TO PRIME CONTRACTORS  
BY  
SUBCONTRACTOR SUPPLIERS (HB 540)



1084

*Draft*

The change proposed in HB540 would not preclude claims of a subcontractor's supplier against a general contractor's payment bond. However, timely notice to the general contractor of the supplier's status and existence will become a prerequisite to filing a claim. This notice requirement will allow a general contractor to ensure that a subcontractor has paid all suppliers.

Under proposed HB540, a general contractor will know which persons may possibly have claims against his payment bond prior to a claim being made. Under existing law, a general contractor cannot determine, in advance of a claim being filed, which persons may be eligible to file a claim.

HB540 proposes a system somewhat analogous to the Alaska lien law (AS 34.35). In 1978 the lien laws for the State of Alaska were substantially revised. The revisions still provide protection to the subcontractor and material supplier but now subcontractor and suppliers have to take the initiative in assuring that the owner and lender are aware of their existence and ability to lien the project.

In summary, the A.G.C. believes HB540 will continue to provide protection to subcontractor suppliers but in a more enlightened and commercially reasonable manner. The A.G.C. urges this committee to consider all of the offered testimony and pass HB540 on to the next committee of referral.

*Draft*

The Alaska Chapter Associated General Contractors of America represents more than 800 companies including most of general contracting companies engaged in commercial construction. We appreciate the opportunity to present A.G.C.'s views on HB540.

The A.G.C. supports HB540 and offers the following brief explanation of the effect of the proposed change as we understand its intent.

Under existing law, a person with no direct contractual relationship with a general contractor, but who supplies labor or material to a subcontractor, may make a claim against the payment bond by giving the general contractor written notice within 90 days from the last date on which the person performed labor or furnished material. A general contractor has no way of knowing who may have supplied labor or materials to a subcontractor. Accordingly, a general contractor has no easy way to assure that a subcontractor has paid all his suppliers. Certification by a subcontractor that all labor and materialmen have been paid is no assurance if the certifying subcontractor is or becomes insolvent. The only "iron clad" safeguard for a general contractor is to delay payment to all subcontractors until 90 days after they have supplied labor or materials. This solution would do little to harmonize relations and increase cooperation between general contractors and subcontractors.

STATE OF ALASKA  
THE LEGISLATURE

POUCHY - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3400

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 27, 1984

SUBJECT: Sectional analysis of HB 540

TO: Representative John Cowdery  
Chairman, House Labor and  
Commerce Committee

FROM: Edward H. Hein *EHA*  
Legislative Counsel

Under AS 36.25.010(a)(2), a general or specialty contractor, as a condition of being awarded a contract for a public building or public works project exceeding \$100,000, must post a payment bond for the protection of all persons who supply labor and materials provided for in the contract.

Under AS 36.25.020(b), a supplier of labor or materials under a contract with a subcontractor, who has no contractual relationship with the prime contractor, has a right of action against the payment bond if the supplier notifies the prime contractor within 90 days after completing the work or the delivery of all materials.

The bill amends this section to provide that the supplier would have to give notice within 10 days after beginning performance. The goal is to give prime contractors earlier notice of claims that might be made against the payment bond so that the contractors can withhold adequate amounts from the subcontractors to assure that the suppliers will be paid.

Because the bill would require that notice be given in most cases before work is completed, it will often be impossible for the supplier to "state with substantial accuracy the amount claimed", as is now required in AS 36.25.020(b). Thus, that language is deleted at lines 16 - 17 of the bill. The new language inserted at lines 18 - 23 require that the notice also identify the project, describe the work or material furnished, and state the date on which performance began.

EHH:ojb  
J3/005

APRIL 17, 1984

To: JOHN  
FROM: KEN  
RE: HB 540

HB 540 MAKES CHANGES IN THE STATUTES DEALING WITH A CONTRACTORS PAYMENT BOND ON PUBLIC CONSTRUCTION AND PUBLIC WORKS PROJECTS. UNDER PRESENT STATUTE IF LABOR OR MATERIALS ARE SUPPLIED TO A PROJECT FOR USE BY A SUBCONTRACTOR WHO WAS HIRED BY THE GENERAL CONTRACTOR; THE PERSON OR COMPANY SUPPLYING THE LABOR OR MATERIALS HAVE UP TO 90 DAYS FROM THE LAST DATE SUCH MATERIALS OR LABOR WERE FURNISHED TO FILE A CLAIM AGAINST THE CONTRACTORS PAYMENT BOND, SHOULD THE SUBCONTRACTOR NOT PAY HIS BILLS. THE COMMITTEE SUBSTITUTE FOR HB 540 WOULD CHANGE THE STATUTE TO READ 30 DAYS FROM THE FIRST DATE LABOR OR MATERIALS WERE FURNISHED.

QUESTIONS:

1. WHAT IS WRONG WITH THE STATUTE NOW ? WHY IS SUCH A RADICAL CHANGE NEEDED ?

2. WOULD THIS CREATE AN UNNECESSARY AMOUNT OF ADDED PAPERWORK FOR THOSE SUPPLYING MATERIALS TO A CONSTRUCTION JOB ?

3. WOULDN'T THIS LEGISLATION REALLY BE FORCING THE MATERIAL SUPPLIERS, LABORERS AND SUBCONTRACTORS TO BE DOING THE GENERAL CONTRACTORS WORK. BY THAT I MEAN POLICING THE JOB ?

4. HAS THE SUPPLIERS OF BUILDING MATERIALS WORKED WITH YOU ON THIS NEW COMMITTEE SUBSTITUTE ?

*ImPhase feb*

# UNITED Lumber Co., Inc.

WHOLESALE  
P.O. BOX 1318  
KENT, WA 98301  
(206) 872-7788

## Building Supply & Home Center

CORPORATE HEADQUARTERS  
P.O. BOX 6509 • ANCHORAGE, AK 99502  
TELEPHONE (907) 243-4545

ANCHORAGE  
5011 JEWEL LAKE RD.  
ANCHORAGE, AK 99502  
243-4545

EAGLE RIVER  
P.O. BOX 458  
EAGLE RIVER, AK 99845  
894-2764

PALMER  
P.O. BOX 1270  
PALMER, AK 99845  
745-2410

SOLDOTNA  
P.O. BOX 2109  
SOLDOTNA, AK 99689  
282-9081

BETHEL  
P.O. BOX 1888  
BETHEL, AK 99559  
543-2034

HOME CENTER  
501 W. RASPBERRY RD.  
ANCHORAGE, AK 99502  
349-7518

March 8, 1984

The Honorable John J. Cowdery  
Pouch V  
Juneau, Alaska 99811

Dear Representative Cowdery:

I, in my capacity as ~~Secretary/Treasurer and Controller for UNITED LUMBER COMPANY, INC.~~, have recently had the opportunity to review HB 540 which amends AS 36.25.020 (called the Little Miller Act). The proposed amendment adds subsection (d) which imposes certain notice requirements on suppliers of materials, equipment to be given to general contractors in order to preserve a right of action under the Act.

I have ~~discussed the ramifications of HB 540 with some of my colleagues in the retail/wholesale lumber industry, including representatives of Spenard Builders Supply and Superior Millwork, Inc. We are unanimous in our view that the proposed amendment (copy attached) would increase the cost of our business by placing additional account functions on suppliers. Therefore, we would urge you to vote against the passage of HB 540.~~

By way of background, in recent years the burden of preserving Mechanic's Lien rights for material suppliers and subcontractors has, in our view been unfairly shifted from those in the most logical and least burdened position to protect everyone's lien rights to the subcontractors and material suppliers.

For example, the Mechanics Lien Law was amended in 1979 and 1980 which resulted in changing priority between a Mechanic's Lien and a Deed of Trust securing the interim construction loan. The amendments further created the burden upon subcontractors and material suppliers to obtain an "acknowledgement of right to lien" from the owner if we were not selling directly to the owner. ~~It has generally been the view in the retail/wholesale lumber industry that the interim financing institutions could easily monitor construction draws to insure proper disbursement to subcontractors and material suppliers, yet this burden of notice was shifted to us.~~

~~We view HB 540 as another example of such unfair and unnecessary shifting of such burdens. Certainly the general contractor on a State funded project is in the best position to determine with whom his subcontractors are dealing with in the purchase of materials. Such could be a condition of draws by the subcontractors, and checks can be made payable jointly.~~

MILLWORK & TRUSS  
180 W. 68TH  
ANCHORAGE, AK 99502  
243-4545

MANUFACTURING PLANT  
MILE 7½ OLD SEWARD HWY.  
ANCHORAGE, AK 99502  
344-7812

UNITED COMPONENT & BUILDING SYSTEMS PLANT  
PALMER INDUSTRIAL PARK  
PALMER, AK 99845  
745-3052

SAWMILL  
147½ STERLING HWY.  
STARISKY, AK 99839



March 8, 1984  
Page 2

Speaking from personal experience, the staff in our Credit Department doubled in order to keep up with the new notice requirements of the amended Mechanics Lien Law. Now we are faced with additional notice requirements under AS 36.25.020 if HB 540 is passed in order to protect our rights under the Little Miller Act. Additionally, the proposed amendment under HB 540 requires that we give notice to the general contractor by registered mail, a costly and time-consuming method.

We would urge consideration by you as to the effect of this unnecessary and costly amendment. We would welcome the opportunity to meet with you personally if you are in Anchorage during this current session. In the alternative, please don't hesitate to call me collect if you have any questions or if I can further elaborate upon the position of the retail/wholesale lumber suppliers.

Sincerely Yours,

UNITED LUMBER COMPANY INC.

A handwritten signature in cursive script, appearing to read "O. Holmstrom".

O. Holmstrom  
Secretary/Treasurer

mak  
Attachment

Alaska State Legislature



REPRESENTATIVE

POUCH V  
JUNEAU, ALASKA 99811

ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET  
FARBANKS, ALASKA 99701

Memorandum:

From: Rep. Bob Bettisworth *RHB*

To: John Cowdery, Chairman House Labor and Commerce Committee

Re: Bill Analysis: HB 540 "An act relating to claims against a contractor's payment bond"

The purpose of the bill is to change the timing required for notice of a claim to a contractor by a third party having a contractual relationship with a subcontractor but no contractual relationship with the contractor.

At present a person furnishing labor or materials has 90 days after the last date the person provided labor or materials to make notice of a claim. In this situation the contractor often faces claims, against its payment bond from persons or businesses, which were filed long after the contractor has paid the subcontractor. The proposed bill will require notice by the person providing labor or materials within 10 days of the date they first provide labor or materials. This will not prevent claims against the payment bond. However, it will give the contractor notice of those people or businesses which may have claims so that the contractors will be able to take measures to insure that persons furnishing labor or materials are paid when the subcontractors are paid.

The bill also eliminates the requirement to state the amount claimed. In its place is a requirement to provide the nature of the materials or work provided and the date work or materials were first provided. This is necessary because the exact amount of the claim would not be known in all cases.

Alaska State Legislature



REPRESENTATIVE

POUCH V  
JUNEAU, ALASKA 99811

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211 CUSHMAN STREET  
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The bill also eliminates the requirement to state the amount claimed. In its place is a requirement to provide the nature of the materials or work provided and the date work or materials were first provided. This is necessary because the exact amount of the claim would not be known in all cases.

HB

545

SUMMARY: Intent of HB 545.

It has come to my attention that there are no current laws requiring employers of food service workers to provide a half-hour break for their employees during each shift.

There is also no federal or state law requiring an employer to provide employees with rest or meal periods during a work shift. However private employment agreements and collective bargaining contracts frequently require rest and meal periods and the Alaska Dept. of Labor will enforce those private agreements. Food service workers who do not have an employment agreement or collective bargaining contracts could then be required to work through a shift without having any break time.

The intent of this legislation is to implement by statute a break time requirement.

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 11, 1984

SUBJECT: Requiring Rest or Meal Periods for Food Service Workers (Work Order No. 13-1626)

TO: Representative Barbara Lacher

FROM: Teresa B. Cramer *Teresa B. Cramer* 2450  
Legislative Counsel

You have requested information about any current laws requiring employers of food service workers to provide a half-hour break for their employees during each shift. You have also asked for recommendations about how to require those employers to provide a break-time for their employees.

There is no federal or state law requiring an employer to provide employees with rest or meal periods during a work shift. However, private employment agreements and collective bargaining contracts frequently require rest and meal periods and the Alaska Department of Labor will enforce those private agreements. Federal regulations under the Fair Labor Standards Act (29 U.S.C. 201 - 219) recognize that employment contracts may require employers to provide rest or meal periods and address how to consider those periods when computing overtime compensation. (A copy of 29 C.F.R. 785.18 and 785.19 is attached for your information.)

The state cannot adopt laws in a field which federal statutes have pre-empted. The Fair Labor Standards Act does not address rest or meal periods. It sets a floor below which states may not go in regulating minimum wages and overtime compensation. It permits states to provide greater protections for employees than those of the federal law provided that those protections do not conflict with or frustrate the purpose of the federal law. The act does not prohibit Alaska from adopting requirements about break times.

A break-time requirement should be implemented by statute rather than by regulation. Neither AS 23.10 (the Alaska

lf nq ne on th ei w1 k f1 er b C C I: G Su E 18- ( . y' al be nf .o l eei s'f atc y n h iet no e c mp prt ar for :1 I.S. v. ) (4): sup d1 J.S. 30 1.E 1.1i 157 thll Ca 4,6t one 2.P tior lls int

Representative Barbara Lacher

Page 2

January 11, 1984

Wage and Hour Act) nor AS 18.60.010 - 18.60.105 (prevention of accident and health hazards) speaks directly to this proposed requirement. The Wage and Hour Act establishes minimum wage and overtime compensation standards. AS 18.60.010 - 18.60.105 addresses the prevention of work-related accidents and health hazards. Since regulations providing for rest or meal periods would not directly flow from existing statutory language, the safer course to follow would be to establish the requirement by statute in general terms and permit regulations to be adopted to implement it.

TBC:lmb  
L3/087

Attachment

## § 785.15 On duty.

A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employees while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employees who work away from the plant. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employee is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for his own purposes. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait. See: *Skidmore v. Swift*, 323 U.S. 134, 37 (1944); *Wright v. Carrigg*, 275 F. 2d 48, 14 W.H. Cases (C.A. 4, 1960); *Mitchell v. Wigger*, 39 Labor Cases, para. 66,278, 14 W.H. Cases 534 D.N.M. 1960; *Mitchell v. Nicholson*, 79 F. Supp. 292, 14 W.H. Cases 487 W.D.N.C. 1959))

## § 785.16 Off duty.

(a) *General.* Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

(b) *Truck drivers; specific examples.* A truck driver who has to wait at or near the job site for goods to be loaded is working during the loading period. If the driver reaches his destination

and while awaiting the return trip is required to take care of his employer's property, he is also working while waiting. In both cases the employee is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Washington, D.C. to New York City, leaving at 6 a.m. and arriving at 12 noon, and is completely and specifically relieved from all duty until 6 p.m. when he again goes on duty for the return trip the idle time is not working time. He is waiting to be engaged. (*Skidmore v. Swift*, 323 U.S. 134, 137 (1944); *Walling v. Dunbar Transfer & Storage*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Gifford v. Chapman*, 6 W.H. Cases 806; 12 Labor Cases para. 63,661 (W.D. Okla., 1947); *Thompson v. Daugherty*, 40 Supp. 279 (D. Md. 1941))

## § 785.17 On-call time.

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. (*Armour & Co. v. Wantock*, 323 U.S. 126 (1944); *Handler v. Thrasher*, 191 F. 2d 120 (C.A. 10, 1951); *Walling v. Bank of Waynesboro, Georgia*, 61 F. Supp. 384 (S.D. Ga. 1945))

## REST AND MEAL PERIODS

## § 785.18 Rest.

Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. (*Mitchell v. Greinetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10, 1956); *Ballard v. Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996 (S.D. Cal. 1945))

## § 785.19 Meal.

(a) *Bona fide meal periods.* Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purpose of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (*Culkin v. Glenn L. Martin, Nebraska Co.*, 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); *Thompson v. Stock & Sons, Inc.*, 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); *Biggs v. Joshua Hendy Corp.*, 183 F. 2d 515 (C. A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); *Walling v. Dunbar Transfer & Storage Co.*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Lofton v. Seneca Coal and Coke Co.*, 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); *Mitchell v. Tampa Cigar Co.*, 36 Labor Cases para. 65, 198, 14 W.H. Cases 38 (S.D. Fla. 1959); *Douglass v. Hurwitz Co.*, 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

(b) *Where no permission to leave premises.* It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

## SLEEPING TIME AND CERTAIN OTHER ACTIVITIES

## § 785.20 General.

Under certain conditions an employee is considered to be working even though some of his time is spent in sleeping or in certain other activities.

## § 785.21 Less than 24-hour duty.

An employee who is required to be on duty for less than 24 hours is work-

ing even though he is permitted to sleep or engage in other personal activities when not busy. A telephone operator, for example, who is required to be on duty for specified hours is working even though she is permitted to sleep when not busy answering calls. It makes no difference that she is furnished facilities for sleeping. Her time is given to her employer. She is required to be on duty and the time is worktime. (*Central Mo. Telephone Co. v. Conwell*, 170 F. 2d 641 (C.A. 8, 1948); *Strand v. Garden Valley Telephone Co.*, 51 F. Supp. 898 (D. Minn. 1943); *Whitsitt v. Enid Ice & Fuel Co.*, 2 W. H. Cases 584; 6 Labor Cases para. 61,226 (W.D. Okla. 1942).)

## § 785.22 Duty of 24 hours or more.

(a) *General.* Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. If sleeping period is of more than 8 hours, only 8 hours will be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked. (*Armour v. Wantock*, 323 U.S. 126 (1944); *Skidmore v. Swift*, 323 U.S. 134 (1944); *General Electric Co. v. Porter*, 208 F. 2d 805 (C.A. 9, 1953), cert. denied, 347 U.S. 951, 975 (1954); *Bowers v. Remington Rand*, 64 F. Supp. 620 (S.D. Ill, 1946), aff'd 159 F. 2d 114 (C.A. 7, 1946) cert. denied 330 U.S. 843 (1947); *Bell v. Porter*, 159 F. 2d 117 (C.A. 7, 1946) cert. denied 330 U.S. 813 (1947); *Bridgeman v. Ford, Bacon & Davis*, 161 F. 2d 562 (C.A. 8, 1947); *Rokey v. Day & Zimmerman*, 157 F. 2d 736 (C.A. 8, 1946); *McLaughlin v. Todd & Brown, Inc.*, 7 W.H. Cases 1014; 15 Labor Cases para. 64,606 (N.D. Ind. 1948); *Campbell v. Jones & Laughlin*, 70 F. Supp. 996 (W.D. Pa. 1947).)

(b) *Interruptions of sleep.* If the sleeping period is interrupted by a call to duty, the interruption must be

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 545  
 Title: "...relating to rest or meal periods for food service workers"  
 Sponsor: Representative Lacher  
 Requestor: House Labor & Commerce  
 Date of Request: 2/10/84

FISCAL DETAIL

Agency Affected: Labor  
 Program Category Affected: Public Protection  
 BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

|               |   |   |   |   |   |   |
|---------------|---|---|---|---|---|---|
| GENERAL FUND  | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS |   |   |   |   |   |   |
| OTHER         |   |   |   |   |   |   |
| TOTAL         |   |   |   |   |   |   |

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas, Sr. Phone: 465-4870  
 Division: Labor Standards & Safety Date: \_\_\_\_\_

Approved by Commissioner: Jim Robinson Date: 2/16/84  
 Agency: Labor

LEG:B:5  
 Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

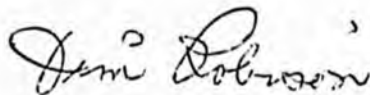
12/1/83

The Department of Labor is, from a safety and health standpoint, an advocate of the philosophy that workers need time away from their duties during the work shift, as provided for in House Bill 545. While there are presently no provisions in either state or federal law that require rest or meal periods for any class of worker, the absence of such provisions is premised upon the ability and good faith of employers and employees to negotiate suitable arrangements in this regard. This has been very workable and, generally, employers and employees do come to mutually acceptable terms on meal and rest periods. However, it appears that the food service industry has failed to satisfactorily police itself in this regard, and that workers in the industry are being denied the opportunity to negotiate for meal or rest periods which is commonly extended to workers in other industries.

Traditionally, a role of government has been to provide remedies to inequities when the more desirable self-regulating approach has failed. With this being the situation in the food service industry, it is, therefore, appropriate for government to assume the stronger role as provided for in House Bill 545.

The Department of Labor, therefore, supports passage of House Bill 545. It will not have a fiscal impact on the Department.

APPROVED:



---

Jim Robison  
Commissioner

**POSITION PAPER/**Department of Labor



Hotel

Employees &  
Restaurant

Employees Union

909 First Avenue — Fairbanks, Alaska 99701  
907-452-2332

— Farthest North Local —



Local 879

Daniel E. Loring  
Financial Secretary-Treasurer  
Business Manager

Mark Rosen  
President

6 February 1984

Rep. Niilo Koponen  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Representative Koponen,

Local 879 is pleased to see the introduction of H.B. 545, and would like to be kept informed of its progress in the Labor and Commerce Committee. As this bill is presently written, is it intended to provide workers with either a meal or a 30 minute break, but not necessarily both? It would seem to be a curious result if employers provided a meal but required the employee to eat it while on shift.

Thank you for introducing this bill, and for sending us your comments or further information on it.

Sincerely,

Beth E. Behner  
Business Agent, Local 879

P.S. Please let Rep. Ringstad know that his constituents favor this bill! *REB*



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

March 6, 1984

MEMORANDUM

TO: Representative Barbara Lacher

FROM: David Teal *Teal*  
Legislative Analyst

RE: Meal Period for Food Service Workers  
Research Request 84-057

You asked about state and federal laws and regulations pertaining to rest or meal periods for food service workers on an 8-hour shift. Alaska, like most states, defers to federal standards in lieu of state wage and hour regulation. Federal requirements for work breaks (except for minors) were abolished in the 1960s when equal pay and equal opportunity laws were adopted.<sup>1</sup>

I spoke with Don Wilson and James Sanwick, both of the Alaska Department of Labor, about states that have adopted laws and regulations governing meal periods. Washington, Oregon, California and Hawaii are some of the states that have state wage and hour requirements in addition to federal requirements.

Hawaii requires employers to provide breaks to employees who are minors, but does not require breaks for adult workers. California requires employers to provide a meal period to workers in some fields, but food service workers are not on the list of occupations covered by the regulations. A copy of California's regulations governing meal periods is attached to this memorandum.

Employers that are covered by state regulation in Oregon must provide a 10-minute break (15 minutes for minors) twice a day and must provide a meal break within 5 hours of the beginning of a shift. Oregon's

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<sup>1</sup>Until the federal equal pay requirements were adopted, employers were required to provide breaks to women and children employees. Federal regulations no longer require employers to give adult employees rest or meal breaks, but they do require that employees be compensated for breaks of less than 20 minutes and meal periods of less than one-half hour.

Representative Lacher  
Marh 6, 1984  
Page 2

wage and hour regulations apply only to those businesses that have gross sales of less than \$362,000 per year and do not participate in interstate commerce. Over 90 percent of the employers in Oregon are covered by federal regulations.

Washington's administrative code requires employers to allow employees to take a meal break of at least 30 minutes no less than two hours and no more than five hours from the beginning of a shift. In addition, employees must receive a paid 10-minute break for each four hours of work. The provisions apply to all employers in the state.

Several people I spoke with stated that most food service workers are allowed to eat before, after or during their shifts, often for free. Several contacts mentioned that a requirement for a meal break might cause "during shift" meals to change from the traditional no cost and no lost hourly compensation situation. If food service workers in Alaska are given meal breaks, they may no longer be paid for the meal period and could be required to pay for any of the employers' food which is consumed.

If you wish us to perform a more extensive survey of states, please contact the agency.

DT

Attachment

MARCH 7, 1984

TO: JOHN  
FROM: KEN  
RE: HB 545

THE LANGUAGE IN HB 545 IS VERY SIMPLE, BUT IT PROPOSES ACTION WHICH IS UNPRECEDENTED IN ALASKA STATUTE. THIS LEGISLATION WOULD MANDATE THAT WORKERS IN THE FOOD SERVICE INDUSTRY BE GIVEN A 30 MINUTE REST OR MEAL PERIOD DURING WORK SHIFTS THAT LAST EIGHT HOURS OR MORE.

QUESTIONS:

1. WHY HAVE FOOD SERVICE WORKERS BEEN SINGLED OUT IN THIS BILL ?
2. HAS THIS TYPE OF LEGISLATION BEEN PASSED IN OTHER STATES ?
3. IS THERE ANY LAW ON THE FEDERAL LEVEL THAT MIGHT SUPPORT SUCH LEGISLATION ?
4. IF THIS LEGISLATION IS PASSED, DO YOU EXPECT A LARGE NUMBER <sup>OTHER</sup> OF WORKERS WILL WANT THE SAME PRIVILEGE ?.  
WHO ?

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 545  
 Title: "...relating to rest or meal periods for food service workers"  
 Sponsor: Representative Lacher  
 Requestor: House Labor & Commerce  
 Date of Request: 2/10/84

FISCAL DETAIL

Agency Affected: Labor  
 Program Category Affected: Public Protection  
 BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

|               |   |   |   |   |   |   |
|---------------|---|---|---|---|---|---|
| GENERAL FUND  | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS |   |   |   |   |   |   |
| OTHER         |   |   |   |   |   |   |
| <b>TOTAL</b>  |   |   |   |   |   |   |

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Macolas, Sr. Phone: 465-4870  
 Division: Labor Standards & Safety Date: \_\_\_\_\_

Approved by Commissioner: Jim Robinson Date: 2/16/84  
 Agency: Labor

LEG:B:5  
 Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

12/1/83

Bill No. House Bill No. 545

Date February 15, 1984

Title "An Act relating to rest or meal periods for food service workers."

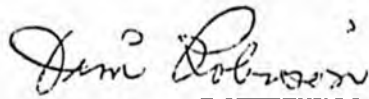
Contact: Eileen Plate  
465-2700  
Bob Bacolas  
465-4870

The Department of Labor is, from a safety and health standpoint, an advocate of the philosophy that workers need time away from their duties during the work shift, as provided for in House Bill 545. While there are presently no provisions in either state or federal law that require rest or meal periods for any class of worker, the absence of such provisions is premised upon the ability and good faith of employers and employees to negotiate suitable arrangements in this regard. This has been very workable and, generally, employers and employees do come to mutually acceptable terms on meal and rest periods. However, it appears that the food service industry has failed to satisfactorily police itself in this regard, and that workers in the industry are being denied the opportunity to negotiate for meal or rest periods which is commonly extended to workers in other industries.

Traditionally, a role of government has been to provide remedies to inequities when the more desirable self-regulating approach has failed. With this being the situation in the food service industry, it is, therefore, appropriate for government to assume the stronger role as provided for in House Bill 545.

The Department of Labor, therefore, supports passage of House Bill 545. It will not have a fiscal impact on the Department.

APPROVED:



Jim Robison  
Commissioner

**POSITION PAPER/**Department of Labor

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 545  
Title: "...relating to rest or meal periods for food service workers"  
Sponsor: Representative Lacher  
Requestor: House Labor & Commerce  
Date of Request: 2/10/84

FISCAL DETAIL

Agency Affected: Labor  
Program Category Affected: Public Protection  
BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

|               |   |   |   |   |   |   |
|---------------|---|---|---|---|---|---|
| GENERAL FUND  | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS |   |   |   |   |   |   |
| OTHER         |   |   |   |   |   |   |
| TOTAL         |   |   |   |   |   |   |

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Macolas, Sr. Phone: 465-4870  
Division: Labor Standards & Safety Date: \_\_\_\_\_  
Approved by Commissioner: Jim Robinson Date: 2/16/84  
Agency: Labor

LEG:B:5

Distribution (by Agency preparing fiscal note):

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

12/1/83

H B

569

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: February 14, 1984

REQUEST

Bill/Resolution No.: HB 569  
Title: An Act relating to Cemetary Associations.  
Sponsor: Representative Phillips  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce and Economic Dev.  
Program Category Affected: Consumer Protection  
BRU, Program or Subprogram(s) Affected: Banking, Securities and Corporations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

|               |       |       |       |       |       |       |
|---------------|-------|-------|-------|-------|-------|-------|
| GENERAL FUND  |       |       |       |       |       |       |
| FEDERAL FUNDS |       |       |       |       |       |       |
| OTHER         |       |       |       |       |       |       |
| TOTAL         | - 0 - | - 0 - | - 0 - | - 0 - | - 0 - | - 0 - |

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Willis F. Kirkpatrick, Director  
Division: Banking, Securities and Corporations

Phone: 465-2521

Date: 2/14/84

Approved by Commissioner: Richard A. Lvon  
Agent: Commerce and Economic Development

Date: 2/21/84

Distribution (by Agency preparing fiscal note):

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

12/1/83

# Alaska State Legislature



Speaker of the House of Representatives

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3720

Official Business

February 6, 1984

TO Rep. John Cowdery  
Labor and Commerce Committee Chairman

FROM Rep. Joe Hayes *JH*  
Speaker

RE: HB 569/ cemetery associations

Representative Phillips has introduced HB 569 relating to cemetery associations and I have referred it to the Labor and Commerce Committee.

I had intended to introduce similar legislation, and I am supportive of this bill. I would appreciate it if you would schedule HB 569 for a committee hearing as soon as convenient so that we might be able to bring it to the floor for a vote in the near future.

Thanks.

INTRODUCTION OF BILLS (House)

HB 538, (cont'd)

lating to agriculture, industry, horticulture, native plants or livestock, 3) indicating past, present, or future potential of a renewable resource that is related to the community, region or state, 4) showing household arts, and 5) including general interest subjects such as hobbies, arts, crafts, photography and school education.

Rewrites definition of "agricultural and industrial fair" to mean: ". . . a community, regional or state fair that includes in its activities exhibits of agriculture, industry, horticulture, native plants, livestock, and related domestic arts produced in the community, region, or state;" (currently an "agricultural and industrial fair" means a fair, the major focus of which is displays, exhibitions, demonstrations, contests or promotions of agricultural or industrial concern to the region in which the fair is located, or any fair which, before July 1, 1980, has received a grant under this chapter;"). Identical to SB 378, page 119.

Does not provide for an effective date (becomes law 90 days after Governor signs bill).

Introduced January 24 and referred to Resources, Finance.

Motorcycle  
Helmets  
(mandatory)

HOUSE BILL NO. 539, by Reps. Cato and M. M. Miller. Would require a person driving, operating, or riding as a passenger on a motorcycle, motor-driven cycle, or snowmobile to wear an approved motorcycle helmet. Does not provide for an effective date (becomes law 90 days after Governor signs bill).

Introduced January 25 and referred to State Affairs.

Contractor's  
Payment Bond  
(claims  
against)

HOUSE BILL NO. 540, by Rep. Bettisworth. Relates to the rights of persons who furnish labor or materials. Under this bill a person having direct contractual relationships with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond has a right of action on the payment bond upon giving written notice to the contractor within 10 days from the first date on which the person performed labor or furnished material for which the claim is made (under current law the person has a right to action within 90 days from the last date on which the person performed labor or furnished material). Requires the notice to state the name of the person to whom the material was furnished or for whom the labor was performed, ". . . identify the public building project or public work project for which the material was furnished or for which the labor was performed, describe the material furnished and to be furnished or the work performed and to be performed, and state the date on which the material was first furnished or the work was first performed. . . ." (currently the notice must state "with substantial accuracy the amount claimed and the name of the person to whom the material was furnished or for whom the labor was performed--underlined language added to current law by this bill). Does not provide for an effective date (becomes law 90 days following Governor's signature).

# Alaska State Legislature

IN SESSION:  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4949



BOX 142  
EAGLE RIVER, ALASKA  
99577

RECEIVED FEB 9 1984

Representative Randy Phillips

HOUSE DISTRICT 15

## MEMORANDUM

TO: The Honorable John Cowdery  
Chairman, House Labor & Commerce Committee

FROM: Representative Randy Phillips *R.E.P.*

DATE: February 8, 1984

RE: House Bill 569  
Re: Cemetery Associations

Ken Johnson of your office recently asked for background information regarding the captioned bill, which is set for hearing next Tuesday, February 14, 1984.

I am attaching a copy of a letter I received from the Chairman of the Special Committee of Angelus Memorial Park Association in Anchorage. As you can see from his letter, the Association wishes to build a building to house much-needed administration and service-related activities. Under present law, the Association could only accomplish the building of such a structure by selling off a portion of the land it owns; in other words, present statutes prohibit the Association from financing such structures. Additionally, under present statutes, a cemetery association cannot incorporate as a non-profit association. House Bill 569 would permit this.

I have asked Legal Services to prepare a sectional analysis of the bill and I hope to have it to your office before the hearing; however, I have been advised that due to the personal bill deadline, such sectional analysis may have to wait. I have notified Mr. Buswell of the meeting and he has indicated that the Association will either send someone to Juneau to testify or will submit written testimony.

If you have any questions, please contact me.

Enclosure

# Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

PHONE 344-1311  
OFFICE HOURS:  
10 A.M. TO 3 P.M.

January 19, 1984

CEMETERY  
AND  
OFFICE  
ON KLATT ROADMr. Randy Phillips  
State Legislator  
Juneau, Alaska

Dear Mr. Phillips:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining to non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, were to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years ago before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association really needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niche and storage vault. Also we can not even build a much needed administartion building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corperation is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non paid.

Sincerely,  
Special Committee  
Mr. Alvah C. Buswell, Jr.  
Chairman

ANGELUS MEMORIAL PARK ASSOCIATION

Enclosures

This material has also been sent to Representative Joe Hayes

ALASKA STATUTES

CHAPTER 30. Cemetery Associations

Sec. 10.30.070. Creation of irreducible fund. The association may by its bylaws provide that a stated percentage of the money realized from the sale of lots and donations (AND OTHER SOURCES OF REVENUE) constitutes an irreducible fund, which may be invested in the manner or loaned upon the securities the association or the trustees consider proper. The interest or income from the irreducible fund provided for in any bylaw or as much as may be necessary shall be devoted exclusively to the preservation and embellishment of the (CEMETERY) grounds, buildings and property of the association and or corporation and the lots and space in buildings or grounds sold to the members of the association and or corporation, or to the payment of the interest or principal of the debts authorized by the association for the purchase of land, equipment, erecting buildings and improvements. Where a bylaw has been enacted for the creation of an irreducible fund, (IT) the set amount or percentage stated in the bylaw, may not be amended except for the purpose of increasing the fund. (36-5-5 ACLA 1949)

I was told to use caps &  
put in brackets those  
words to be deleted and  
to underline all new  
wording.

Office

ALASKA STATUTES

CHAPTER 30. Cemetery Associations

Sec. 10.30.090. Debts of association and or corporation. A cemetery association and or corporation may (NOT) contract debts in anticipation of future receipts, (EXCEPT) for the (ORIGINAL) purchase of cemetery land and or for other cemetery purposes, the laying out and embellishment of the grounds and avenues of the cemetery, repairing their buildings, erection of new buildings, mausoleums, columbariums, and purchasing necessary equipment, for which debts the association may issue bonds or notes. The association may secure these debts by mortgage upon its lands, except lots which have been conveyed to the members of the Association, or by security interest in no more than 50% of the irreducib. fund. (36-5-5 ACLA 1949).

ALASKA STATUTES

CHAPTER 30. Cemetery Associations.

Sec. 10.30.125 Definition of "Cemetery Lot", one or more than one adjoining, lot, plot, space, grave, niche, mausoleum crypt, vault, and columbarium, for the interment of human remains.

ry or creation from execution. A new and existing or owning and existing dead bodies, incinerate remains by gift or otherwise the sole purpose crematory and remains. Such execution and appropriation for portions of such thereon may exclusively for with a view to h corporation. purposes shall and already corporation is all thereof may be more than 20 held for the he burial of ed 30 acres. such purposes lly used, the d by asking at any one

tions on corporation purposes of emetry or and caring ts bylaws, the money rial space, s or other an irreduc- e creation- ended to

direct than reducible? departed 172, shall units established bank of he trust directors the funds

the bank or trust company shall be governed by the provisions of ORS 128.057 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Secretary of State on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 27.810 (2) regarding endowment care funds. The Secretary of State may require the corporation to file, as often as he considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

(3) The interest or income arising from the irreducible fund provided for in this section or by any bylaws, or so much thereof as is necessary, shall be devoted exclusively to the preservation and embellishment of the grounds, buildings and property of the corporation and the lots and space in buildings or grounds sold to the members of the corporation, or to the payment of the interest or principal of the debts authorized by subsection (5) of this section for the purchase of land, erecting buildings, and improvements. Any surplus thereof not needed or used for such purposes shall be invested as provided in this section and shall become part of the irreducible fund.

(4) After paying for the land and the erection of the original buildings and improvements thereon, all the future receipts and income of the corporation subject to the provisions in this section relating to the creation of an irreducible fund, whether from the sale of lots and burial space, cremation of bodies, donations, gifts and other sources, shall be applied exclusively to laying out, preserving, protecting, embellishing and beautifying the cemetery or the crematory and grounds thereof, and the avenues leading thereto, and to the erection of such buildings and improvements as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

(5) No debts shall be contracted by such corporation in anticipation of any future receipts, except for originally purchasing the lands authorized to be purchased by it, laying out and embellishing the grounds and avenues, erecting buildings and vaults on such land, and improving them for the purpose of the corporation. The corporation may issue bonds or notes for debts so contracted and may secure them by way of mortgage upon any of its lands, buildings, property and improvements excepting lots or space conveyed to the

members. (1969 c.580 §96; 1971 c.225 §11)

**61.765 Selling land unsuited for burials.** If in the board of directors' opinion, any portion of the lands of a nonprofit corporation organized and existing solely for the purposes of either owning or operating a cemetery or the cremation of dead bodies and the burial and care of incinerate remains is unsuitable for burial purposes or other purposes of the corporation, the board of directors may sell such portion and apply the proceeds to the general purposes of such corporation in the same proportion and manner as provided by ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. (1959 c.580 §97)

**61.770 Burial lots or space; use, exemption from taxation, execution and liens; lien for purchase price of gravestone.** Burial lots or space for burial of incinerate remains in buildings or grounds sold by a nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall be for the sole purpose of interment or deposit and safekeeping of incinerate remains. Such lots or space shall be exempt from taxation, execution, attachment or other lien or process, if used as intended by the purchaser thereof from such corporation, or his assigns or representatives, exclusively for burial purposes, and in no wise with a view to profit. The vendor of any gravestone, however, shall not be prevented from having and enforcing a lien thereon for all or part of its purchase price. If a suit is brought to enforce such a lien, the decree therein is enforceable thereafter; and, for the purpose of enabling the lien to be had and enforced, the gravestone shall be deemed personal property and may be severed and removed, under execution and order of sale, from the lot where it is situated and may be sold in the same manner as any other personal property. (1969 c.580 §98)

**61.775 Recording plan; power to improve and regulate grounds.** A nonprofit corporation organized and existing solely for the purposes of owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall cause a plan of its land and grounds and of the lots laid out by it and of the niches or burial space in the buildings erected thereon to be made and recorded in the county in which such grounds and land are located, such lots or

Oregon

**SPECIAL PROVISIONS  
RELATING TO ORS 97.010 TO  
97.040, 97.110 TO 97.450, 97.510  
TO 97.730, 97.810 TO 97.920 and  
97.990**

97.010 Definitions for ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

(3) "Burial park" means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(5) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(6) "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

(10) "Entombment" means the placement of human remains in a crypt or vault.

(11) "Burial" means the placement of human remains in a grave.

(12) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(13) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains.

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment

of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(18) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

(19) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "Endowment care" means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund established and maintained pursuant to the provisions of ORS 97.810 to 97.860. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. (Amended by 1955 c.545 §1; 1965 c.396 §1)

**61.738 Procedure for revoking certificate of authority.** ORS 57.735, relating to revocation of certificate of authority, is applicable to nonprofit corporations. (1963 c.492 §38 (enacted in lieu of 61.735))

**61.740** (Renumbered 61.984)

**61.741 Application to corporation authorized to transact business in this state on December 31, 1959.** Foreign corporations which are duly authorized to transact business in this state on December 31, 1959, for a purpose or purposes for which a corporation might secure such authority under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, and from December 31, 1959, such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. (1959 c.580 §90)

**61.745 Transacting business without certificate of authority.** (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. No action, suit or proceeding shall be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state. (1959 c.580 §81)

**CEMETERIES AND CREMATORIES**

**61.755 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation.** A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution and taxation, and from any appropriation for public purposes, and lots or portions of such land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 600 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 30 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 10 acres at any one time. (1959 c.580 §95)

**61.760 Revenues; restrictions on uses thereof.** (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws, provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund,

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HEALTH AND SAFETY CODE

DIVISION 7. DEAD BODIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

7000. The definitions in this chapter apply to this division and to Divisions 8 and 9 of this code.

7001. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition and cremated remains.

7002. "Cremated remains" means human remains after incineration and necessary processing under Section 7054.1 in a crematory.

7003. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

- (a) A burial park, for earth interments.
- (b) A mausoleum, for crypt or vault interments.
- (c) A crematory, or a crematory and columbarium, for cinerary interments.

7004. "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes.

7005. Except in Part 5 of Division 8 of this code, "mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

7006. "Crematory" means a building or structure containing one or more furnaces for the reduction of bodies of deceased persons to cremated remains.

7007. Except in Part 5 of Division 8 of this code, "columbarium" means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

7008. "Crematory and columbarium" means a building or structure containing both a crematory and columbarium.

7009. "Interment" means the disposition of human remains by inurnment, entombment, or burial in a cemetery or, in the case of cremated remains, by inurnment, entombment, burial, or burial at sea as provided in Section 7117.

7010. "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory and the placement of the cremated remains in a grave, vault or niche or burial at sea as provided in Section 7117 of this code.

7011. "Inurnment" means placing cremated remains in an urn and placing it in a niche.

7012. "Entombment" means the placement of human remains in a crypt or vault.

7013. "Burial" means the placement of human remains in a grave.

7014. "Grave" means a space of ground in a burial park, used, or intended to be used, for burial.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be

used, for inurnment of cremated human remains.

7017. "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7019. "Cemetery corporation," "cemetery association," or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole.

7020. "Cemetery business," "cemetery businesses," and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property, including, but not limited to, any activity or business designed for the benefit, service, convenience, education, or spiritual uplift of property owners or persons visiting the cemetery.

7021. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

7023. "Plot owner," "owner," or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority.

7024. "Permit for Disposition of Human Remains" includes "burial permit" and is a permit, issued pursuant to law, for the interment, disinterment, removal, reinterment or transportation of human remains.

DIVISION 8. CEMETERIES

PART 1. GENERAL PROVISIONS

CHAPTER 1. CEMETERY DEFINED

8100. Six or more human bodies being buried at one place constitute the place a cemetery.

CHAPTER 2. VANDALISM

8101. (a) Every person is guilty of a misdemeanor and punishable by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not exceeding one year, or by both, who maliciously does any of the following:

- (1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or any property in a cemetery.
- (2) Obliterates any grave, vault, niche, or crypt.
- (3) Destroys, cuts, breaks or injures any building, statuary, ornamentation, tree, shrub, or plant within the limits of a cemetery.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

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

February 3, 1984

FEB 03 1984

The Honorable Joe Hayes  
Speaker of the House  
Alaska State House of  
Representatives  
Pouch V  
Juneau, AK 99811

Re: House Bill 569  
relating to nonprofit  
cemetery corporations

Dear Representative Hayes:

You have asked the Consumer Protection section of the Attorney General's office to review House Bill \_\_\_\_\_ regarding nonprofit cemeteries, and to inform you whether the Department of Law has any difficulties with the overall concept behind the bill, specifically whether it would pose a threat of injury to the consuming public dealing with nonprofit cemeteries in the state.

My understanding of the intent behind the bill is to modernize and clarify the 1949 Nonprofit Cemetery Association statute presently in effect. The bill would allow nonprofit cemetery associations to be incorporated as nonprofit corporations under AS 10.20 and would generally give the nonprofit cemetery association or corporation more flexibility in how it invests the monies in its irreducible fund, how it spends its other revenues and how and for what purposes it may contract debts. The crucial part of this updating was to add a definition of "cemetery lot" to include not only grave spaces but also mausoleum crypts, or crematory niches, since those items are often the preferred choice of modern consumers.

The Consumer Protection section in the Attorney General's office is not opposed to this bill and does not think that it will cause any harm to the public. If anything, the bill will allow those nonprofit cemetery associations operating in the state to better serve their own membership. Since these associations are like cooperatives, owned and controlled by the members, there is little danger of overreaching or abuse of the corporation's cemetery assets. The changes in this statute will only further the worthy purposes of the cemetery associations as

they will be able to respond to the needs of their own association for the erection of new buildings, acquisition of new lands or equipment or development of new cemetery services such as mausoleums.

The last section of the bill also adds a broader definition of "cemetery lot" to the Alaska Unfair Trade Practices and Consumer Protection Act. This definition refers to AS 45.50.471(b)(24), which regulates the sales of funeral or burial goods or services before "need" (i.e. before death). Under 471(b)(24) as it presently exists, a corporation or association making advance sales of funeral goods or services is required to deposit the consumers' monies in a trust fund pending actual use by the consumer. There is presently an exemption from trust deposit for the amount paid for the actual cemetery lot and grave marker. By expanding the definition of cemetery lot, an advance purchase of a mausoleum crypt, or a crematorium deposit space of some sort, would also be exempt from this trust deposit requirement.

The Department of Law does not oppose this change, since it seems reasonable that this broader definition of cemetery lot be adopted to meet with modern day marketing of burial goods such as crematory crypts. The Consumer Protection section does not believe that broadening this definition will lead to any abuse of the advance-need funeral statute, despite what members of the public or Legislature might fear because of the recent debacle with the Valley Memorial Garden Cemetery near Palmer. (Unfortunately, most of the advance-need burial sales made by that cemetery were made before the effective date of AS 45.471(b)(24), and it was the lack of any trust requirement for any portion of the advance-need sales price which allowed the abusive dissipation of those funds by the for-profit cemetery corporation known as Valley Memorial Gardens, Inc.)

If legislators have a concern that the purchase monies from consumers who purchase cemetery lots or crematory crypts in advance need further protection, a further sentence could be added to 471(b)(24) to the effect that cemetery lots (as more broadly defined by this bill) are exempt if they are in fact, upon payment of the purchase price, "transferred" from the seller to the consumer. Although transfer is not usually made in the sense of legal property "title" transfer, designation of the space as a consumer's by the placement of a grave stone marker already marked with the consumer's name and designation of the plot or crypt as the consumer's on the official map of the cemetery should be sufficient protection.

Honorable Joe Hayes  
Speaker of the House

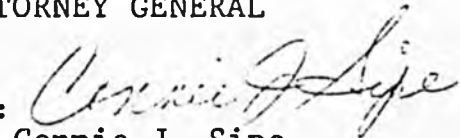
February 3, 1984  
Page 3

Overall, the Attorney General's office does not see significant problems with the enactment of House Bill \_\_\_\_\_.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:



Connie J. Sipe  
Assistant Attorney General  
Consumer Protection Section

# Alaska State Legislature




## Speaker of the House of Representatives

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3720

Official Business

February 8, 1984

To: Labor and Commerce Committee  
From: Joe L. Hayes  
Speaker of the House   
Re: HB 569/ cemetery associations

The following information is provided as background for this legislation.

During the past year, the Angelus Memorial Park Association in Anchorage acquired the Valley Memorial Garden cemetery in Palmer. Valley Memorial was in bankruptcy proceedings and many community residents feared that this cemetery would be lost as would many relatives buried in the cemetery.

After Angelus had come to the rescue, so to speak, of Valley Memorial Garden, it was discovered that the cemetery had never been properly surveyed, burials had been improperly made and the entire 7½ acre facility was in need of substantial capital improvement. However, state law relating to cemeteries is extremely outdated and is very restrictive as to what money and assets possessed by a cemetery association may be used for such improvements or as collateral.

The legislation is intended to remedy that situation and allow non-profit cemetery associations as Angelus more flexibility in using their funds to serve the public. This bill will allow the cemetery association to better serve its clients. As the letter from the Attorney General's office provided as backup indicates, these associations act like cooperatives and there would be little danger of abusing the corporation's assets.

In general, will allow cemetery associations to provide for the desires of today's community in the area of cemetery services.

-2-

We suggest an amendment which has been recommended by the Attorney General's office.

\* Add a section 13 to read

AS 45.50.561 is amended by adding a new paragraph to read:

(9) "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault or columbarium, used or intended to be used for the interment of human remains.

This is an amendment to the unfair trade practices statutes referred to in the second page of the letter provided as further backup.

For further background, I would suggest the committee request testimony from Connie Sipe in the Consumer Protection section of the Attorney General's office. She has been instrumental in the drafting of this legislation.

# Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

PHONE 344-1311  
OFFICE HOURS:  
10 A.M. TO 3 P.M.

January 19, 1984

CEMETERY  
AND  
OFFICE  
ON KLATT ROADRepresentative Joe Hayes  
Alaska State Legislature  
Juneau, Alaska

Atten: Mr. Jeff Day:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining to non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years ago before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association really needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niches and storage vault. Also we can not even build a much needed administration building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corporation in our amendments is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non-paid.

Sincerely,  
Mr. Douglas W. Brown  
President of Board of Trustees

ANGELUS MEMORIAL PARK ASSOCIATION

Enclosures

This material has also been sent to Representative Randy Phillips

JAN 25 1984

*Cregon*

the bank or trust company shall be governed by the provisions of ORS 128.057 and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Secretary of State on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 97.910 (2) regarding endowment care funds. The Secretary of State may require the corporation to file, as often as he considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

(3) The interest or income arising from the irreducible fund provided for in this section or by any bylaws, or so much thereof as is necessary, shall be devoted exclusively to the preservation and embellishment of the grounds, buildings and property of the corporation and the lots and space in buildings or grounds sold to the members of the corporation, or to the payment of the interest or principal of the debts authorized by subsection (5) of this section for the purchase of land, erecting buildings, and improvements. Any surplus thereof not needed or used for such purposes shall be invested as provided in this section and shall become part of the irreducible fund.

(4) After paying for the land and the erection of the original buildings and improvements thereon, all the future receipts and income of the corporation subject to the provisions in this section relating to the creation of an irreducible fund, whether from the sale of lots and burial space, cremation of bodies, donations, gifts and other sources, shall be applied exclusively to laying out, preserving, protecting, embellishing and beautifying the cemetery or the crematory and grounds thereof, and the avenues leading thereto, and to the erection of such buildings and improvements as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

(5) No debts shall be contracted by such corporation in anticipation of any future receipts, except for originally purchasing the lands authorized to be purchased by it, laying out and embellishing the grounds and avenues, erecting buildings and vaults on such land, and improving them for the purpose of the corporation. The corporation may issue bonds or notes for debts so contracted and may secure them by way of mortgage upon any of its lands, buildings, property and improvements excepting lots or space conveyed to the

members. (1969 c.580 §96; 1971 c.228 §1)

**61.765 Selling land unsuited for burials.** If in the board of directors' opinion, any portion of the lands of a nonprofit corporation organized and existing solely for the purposes of either owning or operating a cemetery or the cremation of dead bodies and the burial and care of incinerate remains is unsuitable for burial purposes or other purposes of the corporation, the board of directors may sell such portion and apply the proceeds to the general purposes of such corporation in the same proportion and manner as provided by ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. (1959 c.580 §97)

**61.770 Burial lots or space; use, exemption from taxation, execution and liens; lien for purchase price of gravestone.** Burial lots or space for burial of incinerate remains in buildings or grounds sold by a nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall be for the sole purpose of interment or deposit and safekeeping of incinerate remains. Such lots or space shall be exempt from taxation, execution, attachment or other lien or process, if used as intended by the purchaser thereof from such corporation, or his assigns or representatives, exclusively for burial purposes, and in no wise with a view to profit. The vendor of any gravestone, however, shall not be prevented from having and enforcing a lien thereon for all or part of its purchase price. If a suit is brought to enforce such a lien, the decree therein is enforceable thereafter; and, for the purpose of enabling the lien to be had and enforced, the gravestone shall be deemed personal property and may be severed and removed, under execution and order of sale, from the lot where it is situated and may be sold in the same manner as any other personal property. (1969 c.580 §98)

**61.775 Recording plan; power to improve and regulate grounds.** A nonprofit corporation organized and existing solely for the purposes of owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains shall cause a plan of its land and grounds and of the lots laid out by it and of the niches or burial space in the buildings erected thereon to be made and recorded in the county in which such grounds and land are located, such lots or

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**SPECIAL PROVISIONS  
RELATING TO ORS 97.010 TO  
97.040, 97.110 TO 97.450, 97.510  
TO 97.730, 97.810 TO 97.920 and  
97.990**

**97.010** Definitions for ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

(3) "Burial park" means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(5) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(6) "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

(10) "Entombment" means the placement of human remains in a crypt or vault.

(11) "Burial" means the placement of human remains in a grave.

(12) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(13) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains.

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment

of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(18) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

(19) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "Endowment care" means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund established and maintained pursuant to the provisions of ORS 97.810 to 97.860. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. (Amended by 1955 c 545 §1; 1965 c 396 §1)

61.736 Procedure for revoking certificate of authority. ORS 57.735, relating to revocation of certificate of authority, is applicable to nonprofit corporations. [1963 c.492 §36 (enacted in lieu of 61.735)]

61.740 (Renumbered 61.984)

61.741 Application to corporation authorized to transact business in this state on December 31, 1959. Foreign corporations which are duly authorized to transact business in this state on December 31, 1959, for a purpose or purposes for which a corporation might secure such authority under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, and from December 31, 1959, such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. 1959 c.580 §80(f)

61.745 Transacting business without certificate of authority. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. No action, suit or proceeding shall be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state. [1959 c.580 §81]

CEMETERIES AND CREMATORIES

61.755 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation. A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution and taxation, and from any appropriation for public purposes, and lots or portions of such land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 600 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 30 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 10 acres at any one time. [1959 c.580 §95]

61.760 Revenues; restrictions on uses thereof. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund,

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## HEALTH AND SAFETY CODE

### DIVISION 7. DEAD BODIES

#### PART 1. GENERAL PROVISIONS

##### CHAPTER 1. DEFINITIONS

7000. The definitions in this chapter apply to this division and to divisions 8 and 9 of this code.

7001. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition and cremated remains.

7002. "Cremated remains" means human remains after incineration and necessary processing under Section 7054.1 in a crematory.

7003. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault interments.

(c) A crematory, or a crematory and columbarium, for cinerary interments.

7004. "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes.

7005. Except in Part 5 of Division 8 of this code, "mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

7006. "Crematory" means a building or structure containing one or more furnaces for the reduction of bodies of deceased persons to cremated remains.

7007. Except in Part 5 of Division 8 of this code, "columbarium" means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

7008. "Crematory and columbarium" means a building or structure containing both a crematory and columbarium.

7009. "Interment" means the disposition of human remains by inurnment, entombment, or burial in a cemetery or, in the case of cremated remains, by inurnment, entombment, burial, or burial at sea as provided in Section 7117.

7010. "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory and the placement of the cremated remains in a grave, vault or niche or burial at sea as provided in Section 7117 of this code.

7011. "Inurnment" means placing cremated remains in an urn and placing it in a niche.

7012. "Entombment" means the placement of human remains in a crypt or vault.

7013. "Burial" means the placement of human remains in a grave.

7014. "Grave" means a space of ground in a burial park, used, or intended to be used, for burial.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be

used, for inurnment of cremated human remains.

7017. "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7019. "Cemetery corporation," "cemetery association," or "cemetery corporation or association" means any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole.

7020. "Cemetery business," "cemetery businesses," and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property, including, but not limited to, any activity or business designed for the benefit, service, convenience, education, or spiritual uplift of property owners or persons visiting the cemetery.

7021. "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

7023. "Plot owner," "owner," or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority.

7024. "Permit for Disposition of Human Remains" includes "burial permit" and is a permit, issued pursuant to law, for the interment, disinterment, removal, reinterment or transportation of human remains.

## DIVISION 8. CEMETERIES

### PART 1. GENERAL PROVISIONS

#### CHAPTER 1. CEMETERY DEFINED

8100. Six or more human bodies being buried at one place constitute the place a cemetery.

#### CHAPTER 2. VANDALISM

8101. (a) Every person is guilty of a misdemeanor and punishable by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not exceeding one year, or by both, who maliciously does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or any property in a cemetery.

(2) Obliterates any grave, vault, niche, or crypt.

(3) Destroys, cuts, breaks or injures any building, statuary, ornamentation, tree, shrub, or plant within the limits of a cemetery.

# Senior Voice

OPAG

Older Persons Action Group, Inc., Vol. 6, No. 12, December 1982

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## Bankrupt Palmer cemetery's fate still in limbo



Cemetery bankruptcy affects more than 1,000 consumers.

by Rebecca Goodman

Sighs of relief swept across a federal courtroom in Anchorage as nearly 100 older consumers heard Judge Douglas Williams' decision to delay for three months abandonment of the bankrupt Valley Memory Gardens Cemetery in Palmer.

But consumers' relief may be premature and, for some, may never come.

There are still no buyers ready to take over the cemetery property.

Even worse, consumers who purchased pre-need funeral services will probably never recover their money for those items.

The 90-day delay granted by Williams allows the state Consumer Protection Office time to locate a buyer for the nine-acre cemetery.

Included in the bankruptcy case—the biggest in Alaska's history in terms of numbers of creditors involved—are over 1,000 consumers who purchased plots and pre-need funeral services from the cemetery between 1966 and 1982. Many of those consumers, frustrated and angry about their financial losses, sat through long hours of court hearings last month trying

to figure out what happened to their money.

Court testimony painted a confusing picture of cemetery mismanagement and complicated land deals. It was testified that:

- Arthur Richmond, as

president and major shareholder of Valley Memory Gardens, Inc.,

neglected to put consumers' money for pre-need services into individual trust accounts as required by state law.

- The cemetery was a major portion of collateral in a loan deal involving the cemetery firm, Arthur Richmond, and another businessman, Wayne Lofgren. They borrowed \$500,000 from the Matanuska

See related stories,  
pages 8, 9, 10, 11  
Opinion, page 4

Valley Valley Federal Credit Union to finance a new business venture, then defaulted on the loan.

As the major creditor in the case, the Matanuska Valley Federal Credit Union could become the new owner of the cemetery in mid-February. However, the court is accommodating consumers by allowing the Consumer Protection Office and assistant attorney general Connie Sipe a chance to locate a buyer for the cemetery by February 17, 1983.

If the credit union becomes owner, it is uncertain what would happen to the cemetery

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Continued on page 7

## Bankruptcy frustrates cemetery consumers

by Rebecca Goodman

The gray-haired woman jostled through the packed courtroom clearing a path for the disabled man behind her. He moved haltingly on his one leg with crutches, searching each row for vacant seats.

The pair had already spent an hour winding up and down corridors and stairs as court officials herded consumers through two courtrooms too small to hold everyone.

It was standing room only in this big courtroom too. The man and woman had to settle for vacant wall-

space to lean against.

During the next two hours they listened along with more than 100 other consumers to questions and testimony in the bankruptcy proceedings of the Valley Memory Gardens cemetery.

The man grew impatient and more agitated with every question. He muttered aloud: "They act as though there's nobody even buried out there... What's going to happen to my kids' graves?"

The audience exploded when one attorney explained that consumers probably would lose not only their

money, but also their cemetery plot.

Several consumers shouted. "We should've been warned if they weren't placing our money into trust accounts... Why aren't they filing criminal charges?"

Finally the man gathered his nerve and raised his hand to speak.

"I have some questions that I think every single person in this courtroom wants answered," he began.

"I bought land and headstones and vaults at Valley Memory and I have two people buried there. I scraped together money and paid for

Continued on page 9

## OPINION PAGES

### 'Cemetery laws in this state are lousy'

"I didn't know that my cemetery plot came with a 'consumer beware' tag attached to the deed," said one disgruntled older consumer involved in the Valley Memory Gardens cemetery bankruptcy.

"Boy! The cemetery laws in this state are lousy," he fumed.

As is reported elsewhere in this issue, more than 1,000 Alaskan consumers are caught up in the Palmer cemetery's bankruptcy and stand to lose all or nearly all of the money they have paid for cemetery lots and funeral services. Probably all of them would agree with that assessment of Alaska's laws on cemetery operation.

The most startling single thing to come out of the Valley Memory case—aside from the losses suffered by individuals and families—is this:

*As it stands right now, Alaska just doesn't even have basic laws regulating cemeteries.*

It would certainly seem appropriate that the new state administration and the new legislature address this lack of consumer protection laws as a top priority.

This present lack of laws with teeth in them hit consumers three different ways in the Valley Memory case:

1. There are no regulatory boards overseeing cemetery sales practices.

2. There are no dedication procedures for cemeteries. (Proce-

dures that would recognize cemeteries as special purpose property and set aside that property forever.)

3. There are no requirements that each deed in a burial plot must be recorded as property.

The main problem—lack of regulatory boards to oversee cemetery practices—means that there is no clout behind the few cemetery laws that are on the books.

For example, a 1977 law requires that individual trust accounts be established by cemetery firms to handle every pre-need sale of funeral services.

In the Valley Memory Gardens case, court testimony revealed that consumers' money for pre-need sales was held for a short while in a single collective trust prior to 1979. Then, as a financial squeeze hit the firm, the trust moneys, according to court testimony, were removed from the trust account and distributed to general fund accounts. Consumers' money vanished.

Currently, Alaska has no statutes to provide for regular checks on established trust accounts of consumers' sales funds. It is left to the cemetery firm to establish and maintain these trust accounts. As evidenced in the Valley Memory Gardens bankruptcy, the requirement to establish trust accounts is a weak law.

A second problem that hurt

Valley Memory Gardens consumers was the lack of dedication procedures for cemeteries. Dedication means that designated property is recognized as a cemetery forever and cannot be abandoned. If something happens to the property to threaten its cemetery status, dedication would provide for "rescue" and maintenance by the state.

In the Valley Memory Gardens case, the cemetery was viewed as commercial property: 5,500 unsold, unoccupied cemetery plots. In a loan arrangement in 1980 with the Matanuska Valley Federal Credit Union, owners of the cemetery used this commercial value to obtain a \$500,000 loan. The cemetery with its 500 occupied gravesites became the major portion of collateral for the \$500,000 loan.

When the loan was defaulted upon, consumers who had purchased plots or had relatives buried in Valley Memory Gardens were astonished to discover that mortgages could be made on cemeteries.

According to Connie Sipe, assistant attorney general for Alaska: "No one should ever be allowed to make mortgages on cemeteries; that's why dedication procedures are important. We need to restructure the laws."

The third problem area needs attention too: there are no requirements that each deed to a burial plot must be recorded as property.

In the Valley Memory Gardens case, consumers' plots do not show up in the district recorder's title records. The nine-acre cemetery property is recorded, but not each individual gravesite.

There is now some question whether consumers' deeds of trust to their cemetery plots are actually legal deeds. In court testimony, Arthur Richmond, president of the cemetery firm, stated that those deeds were for "right to future interment" only. No ownership rights were transferred according to Richmond's testimony.

Since there were no plots recorded as property in the district recorder's office and no laws requiring such a record, consumers may be the ultimate losers in this controversy over deeds.

In commenting on the case, Sipe, who is head of the state's consumer protection agency, said:

"In most states there is more protection for consumers.

"Maybe we can prevent this from happening again if the statutes are changed to protect future consumers of cemetery services. Some good may still come out of this case."

But that will only happen if the state administration and the legislature take it upon themselves to make sure that a Valley Memory Gardens case doesn't happen again.

## Need information? Try OPAG's directory

Recently we attended a large meeting of senior citizens where participants were urged to voice their most pressing problems.

"There's no place we can go to get all the information we need," said one woman to a round of applause.

lady seemed to want, it does contain a wealth of information of help to the senior citizen.

Two years ago the state Division of Adult and Aging Services gave OPAG a pilot project grant to publish the first directory, a 68-page compilation of agencies, programs, organizations and business

zations directly affecting seniors. These listings cover 89 different communities across the state.

Information for the directory was gathered from a variety of sources, including local senior citizen programs, local organizations and state aging officials.

Seniors have told us they like

"(This is) one of the best pieces here because it is just right," he said of the booklet. "Shape and contents and handling all fit together ideally; heads (headlines) visible at a glance, clear and incisive."

A grant from the Municipality of Anchorage to OPAG included

## Valley Memory Gardens:

# Cemetery 20-year history reveals land deals

A legal tangle of questions remains to be answered about events leading up to the Valley Memory Gardens Cemetery bankruptcy.

To put recent events into perspective, it's helpful to look at the history of the cemetery, from 1962 to present:

1962 - Arthur Richmond pur-

chased property for Valley Memory Gardens Cemetery on Old Palmer Highway. Richmond sold lots, vaults and funeral services. He testified during recent court hearings that no pre-need services were sold between 1962 and 1966.

1966 - Valley Memory Gardens is incorporated. Assets conveyed into the limited corporation include 26 acres with shop buildings, house, equipment and cemetery. Richmond's shareholder interest in the corporation is, by his own estimate, 85 percent. There are 10 to 12 other shareholders, all with small interests in the corporation.

In 1966 Richmond began selling a pre-need package plan that included a plot, vault and services. The average cost of these pre-need plans was \$4,000. According to Richmond, land was purchased by the corporation during this period and by 1980 over 40 acres of land had been acquired with the purpose

of subdividing and selling as residential lots.

Richmond testified recently that all proceeds from sales were plowed back into the cemetery corporation. Valley Memory Gardens, Inc. sold the contracts for both residential lots and cemetery plots and services to three finance corporations in exchange for cash advances. These cash advances ranged between 50 and 90 percent of the face value of the contracts. Although no total dollar figure was disclosed in recent testimony, Richmond testified that the cash advances for these contracts accounted for a significant portion of Valley Memory Gardens' operating income.

1977 - The State of Alaska amended the Alaska Consumer Protection Act to require that all funerals and other services sold to families on a pre-need basis be fully funded in individual trust accounts for the benefit of persons purchasing those services.

1978 - According to recent court testimony by Dean Erich, Valley Memory Gardens' secretary-treasurer, the corporation had a single collective trust endowment account in National Bank of Alaska that totaled approximately \$200,000 to \$300,000 during 1977-1978. Erich further stated that when he became a corporate officer in 1979, records indicated that these trust funds had been transferred to a general account.

1979 - Consumer Protection Office filed suit against Valley Memory Gardens, Inc. charging the cemetery with six counts of fraud in the sale of pre-need funeral services. The suit charged that Valley Memory Gardens was in violation of the 1977 law requiring trust accounts for pre-need contracts.

August 22, 1979 - Consumer Protection Office received sworn deposition from Arthur Richmond claiming that a trust account was established for pre-need services. No sum was disclosed in that deposition.

1980 - During recent court hearings, Richmond testified that he was approached by a loan broker, William Lang and an investor, Wayne Lofgren, in 1980 to arrange a \$500,000 loan for needed operating funds from the 11,000-member Matanuska Valley Federal Credit Union. Richmond claims that the credit union gave the cemetery corporation \$25,000, promised it another \$25,000 to be paid

planned to use the loan money for the plant.

The collateral used for that credit union loan included the cemetery, approximately 22 acres of adjacent property and contracts from cemetery sales. Richmond claims that no attorney was present during loan transactions. Richmond also testified that Lofgren put up no collateral of his own, yet received approximately \$450,000 of the \$500,000 loan.

According to credit union attorney, Jan Ostrowsky, Lofgren has paid back some portion of that \$500,000 loan. According to Richmond, Lofgren has paid back a \$28,000 Small Business Administration loan included in the \$500,000 loan package.

January 1981 - Dean Erich, secretary-treasurer of VMG, Inc., testified recently that the cemetery corporation had a single trust account during this time that totaled approximately \$6,000 to \$7,000.

...during this period...over 40 acres was acquired with the purpose of subdividing and selling residential lots

April 1981 - Two years after it initiated the suit, the Consumer Protection Office received a consent judgement in the 1979 suit against Valley Memory Gardens. The cemetery refused to acknowledge any wrongdoing. It later appealed the order to retroactively place all money it had received since January 1, 1977 for pre-need services into separate trust accounts. The cemetery corporation claimed it was sufficient that all money was in one collective trust.

September 1981 - Valley Memory Gardens, Inc. files for bankruptcy under Chapter 11 of the U.S. bankruptcy code to allow for reorganization of the corporation.

January 1982 - The 1981 appeal by Valley Memory Gardens regarding the legality of establishing a single collective trust fund fails. The Alaska Supreme Court upholds the earlier order that pre-need payments must be placed into individual trust accounts.

If you know someone who bought cemetery services and may be unaware of the current bankruptcy proceedings, contact Connie Sipe at the Consumer Protection Office, (907) 279-7428.

June 1982 - Bennie Leonard of Anchorage, a real estate sales representative, is appointed trustee by the bankruptcy court to take possession of all cemetery assets during bankruptcy proceedings. Services by the cemetery were officially halted June 16, 1982. No further payments were accepted by the corporation after this date.


July 1982 - Valley Memory Gardens, Inc. files for bankruptcy under Chapter 7, which mandates the complete liquidation of company assets and payment distribution to the creditors.

September 1982 - Federal bankruptcy court approves the motion to move Valley Memory Gardens into Chapter 7 bankruptcy. All consumers who have purchased services from the cemetery and received no "performance" on those purchases become creditors according to bankruptcy law.

November 16, 1982 - During abandonment hearings, a federal judge gives a 90-day continuance

to allow consumer creditors time to locate a buyer for the cemetery. This move delays abandonment of the cemetery to the major creditor with a secured (mortgaged) claim, the Matanuska Valley Federal Credit Union. Connie Sipe, assistant attorney general, was given until February 17, 1983 to locate a buyer for the Valley Memory Gardens cemetery. Sipe continued to explore options and benefits of starting a non-profit cemetery association or expanding an existing one. Sipe planned to poll creditors about their opinions on the non-profit association idea in late November.

November 18, 1982 - Arthur Richmond appeared in court during continuation of the first creditors' meeting. Three hours of questioning shed little light on what happened to consumers' money. Richmond refused to answer or failed to recall numerous details about the events that led to the bankruptcy.



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**Valley Memory Gardens:**

**Bankrupt Palmer cemetery's fate still in limbo**

Continued from page 1

property. One option open to the credit union includes sale of the cemetery lands and consolidation of existing plots into a smaller parcel of land.

"We're hoping it won't come to that," Sipe explained. "The State's No. 1 priority in this case is to preserve the cemetery and the right to peaceful burial."

Consumers must now decide what options to pursue to save the cemetery and existing plots.

Since it is unlikely that a for-profit cemetery firm would move in and take over the financial woes of the Valley Memory Gardens cemetery, the current focus is on non-profit cemetery associations.

The Consumer Protection Office is exploring alternatives for non-profit associations and is about to poll consumers on those alternatives.

One alternative would expand an existing non-profit cemetery association. The other would form an entirely new non-profit association.

"From the poll, we'll decide whether consumers feel this is worth pursuing and how much they'd be willing to spend on membership fees," Sipe said.

As far as court proceedings are concerned, many questions remain unanswered.

Richmond's questioning during a recent creditors' meeting shed little light on what happened to consumers' money. He refused to answer many questions and often could not recall answers to other questions.

Attorneys for the creditors tried to determine whether any trust funds were established by

the cemetery for consumers' pre-need accounts.

Under a 1977 amendment to the Consumer Protection Act, funeral directors are required to place into individual trust accounts all funds for funerals and other services sold on a pre-need basis.

Court testimony from Richmond revealed that one collective trust may have been established sometime prior to 1979 and may have contained a total of \$100,000.

Secretary-treasurer of Valley Memory Gardens, Inc., Dean Erich, testified that those trust funds were transferred into general accounts sometime after 1979.

The cemetery firm operated for years as a land development company, according to attorney for the trustee, Cabot Christianson.

"The cemetery was really only a small part of the lands owned out there," Christianson said. "There's a 38-acre subdivision, and property all over in the valley being foreclosed upon."

"It appears that the corporation took consumers' money and put it into undeveloped lands with the hopes of big money from sales of residential lots," he added.

One of consumers' biggest concerns is whether their deeds of trust to cemetery plots are actually legal deeds with ownership rights.

Across the top of most deeds issued after 1966 are the words "deed for right to be interred."

There are no seals or stamps on most deeds, and Richmond claims that the cemetery considered the papers "certificates

of pre-arrangement" only, without rights of ownership.

The cemetery lots do not show up in the property records by the district recorder, and it would appear that the deeds are not considered acceptable property deeds.

In a similar case in Washington courts, certificates of pre-arrangement were not considered by the courts as real deeds of trust.

Some future ruling on the legality of these papers may be necessary if abandonment proceedings are continued in mid-February.

The court-appointed trustee for the case, Bennie Leonard, an Anchorage real estate representative, is currently reviewing all claims against the cemetery.

The biggest angle claim is held by the Matanuska Valley Federal Credit Union for its \$500,000 loan to Richmond, the cemetery and Lofgren.

Under bankruptcy laws, the credit union's claims take priority over all consumers' claims.

Leonard and attorneys in the case are attempting to piece together what happened in 1980 when the loan deal was arranged, then defaulted upon.

Richmond said that Lofgren intended to invest the loan money in a new fish processing plant in Palmer. Richmond said he received \$25,000 of the loan and a "promise" of another \$25,000 to be handed over in six months.

According to Richmond's testimony, Lofgren paid off a \$28,000 Small Business Administration loan, but ended up with the remaining \$400,000.

Credit union officials report that some portion of the loan

**Questions about deeds, trusts, money and laws surround case**

*Editor's note: Throughout bankruptcy hearings for the Valley Memory Gardens cemetery, consumers have struggled to understand what happened. They want to know where their money went, whether their contracts will be honored, whether criminal charges will be filed and what the state cemetery laws cover. Senior Voice tackled answers to those questions and more...*

**Q:** What happened to consumers' money? What did Valley Memory Gardens do with pre-need funeral service payments?

**A:** Arthur Richmond, president of Valley Memory Gardens, Inc., has refused to answer those questions. From court testimony of other witnesses, however, it appears that the cemetery took consumers' money and, rather than placing it into trust

through and invested moneys were lost.

**Q:** Do we have legal deeds of trust with ownership rights to our cemetery plots?

**A:** According to Connie Sipe, assistant attorney general, the deeds held by consumers may not actually be deeds. Most of the deeds are titled "deed for interment rights." Richmond said in court that those deeds were pre-arrangement rights, not ownership rights. It remains for the courts to figure out what consumers actually have in those "deeds."

**Q:** Why aren't the cemetery lots recorded as deeds of trust?

**A:** Apparently state law does not require deeds to burial plots to be recorded as property. Property record of cemetery lots does not show up in the official title records. Burial plots are not accepted by the district recorder.

vidual trust deposits for every consumer purchasing pre-need funeral services. The 1977 laws do not cover cemetery spaces, just pre-plot plans.

**Q:** Will criminal charges be filed against Richmond or others?

**A:** To bring criminal charges against Richmond would require the involvement of the district attorney. Currently the district attorney is reviewing the matter. It would have to be shown that Richmond took cor-

Continued on page 9

**Cemetery president Richmond**

President of Valley Memory Gardens cemetery, Arthur Richmond, has been an elusive figure throughout bankruptcy proceedings. Richmond tried unsuccessfully to dodge a Senior Voice photographer prior to his appearance at a recent creditors' meeting in the federal building in Anchorage.



was paid back by Lofgren. No other details were revealed.

Attorneys continue to explore the loan arrangement and the questions surrounding the signing of papers. Richmond said that no attorney was present during the signing procedures and has mentioned a number of "promises" that were never placed in writing.

No criminal charges have been filed in this case, but the district attorney is following the proceedings.

According to Sipe, the case

may not be resolved for another six to 12 months.

In the meantime, consumers are being informed of proceedings and requested to retain their opinion polls on the matter of forming a non-profit association.

"This case points out the need for more protection for consumers," Sipe said. "Some think that we over-regulate, but it should be known that Alaska lacks some basic laws for consumer protection in this area. We need to completely restructure cemetery laws in this state."

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Valley Memory Gardens:

## Few alternatives left for cemetery creditors

It's a hard lump to swallow. No one likes being "kipped off." And no one likes the idea of plunking down more money just to hang onto what he or she already owns.

But that's the problem facing over 1,000 Anchorage area consumers, mostly older persons, as a result of the Valley Memory Gardens bankruptcy case.

The cemetery's bankruptcy is shaping up to be what the Internal Revenue Service calls a "totally worthless bad debt." Creditors who paid as much as thousands of dollars for lots and services may end up with little or nothing.

So where does that leave the persons who paid for cemetery services or lots? What alternatives are there for recouping losses or planning new funeral arrangements?

For those consumers who paid only for funeral services, but not for lots, there is little

hope of recovering any money owed them by the cemetery. About the only alternative these consumers have is a possible tax write-off for bad debts.

Any consumer involved in the bankruptcy case who wants to know what their tax write-off options are should call the Internal Revenue Service for publication 548, "Deductions for Bad Debts." Call 276-1040 or write the I.R.S., P.O. Box 1500, Anchorage 99510.

According to tax specialist Mane Lozano, "Consumers will have to prove that their contract with the cemetery is worthless and a mere bankruptcy doesn't prove that it's worthless."

In other words, to file capital loss deductions, consumers will have to wait until final distribution of assets has been made at the end of the bankruptcy hearings six to 12 months from now.

For consumers who purchased cemetery lots, the alter-



More than 100 consumers owed money by the bankrupt Valley Memory Gardens Cemetery line up outside federal courtrooms in Anchorage during a recent abandonment hearing. The crowds were so large that court officials had to move hearings to a larger courtroom. Involved in the case are some 1,000 consumers who purchased plots and pre-need funeral services.

natives look more positive.

If the State of Alaska Consumer Protection Office manages to locate a buyer for the cemetery before February 17, 1983, the federal bankruptcy court will not abandon the cemetery lot to the major creditor, the Matanuska Valley Federal Credit Union.

But finding a buyer won't be easy. It is unlikely that a for-profit cemetery would agree to take over Valley Memory Gardens. The legal and financial complications alone would probably prevent such a business from being a profitable enterprise.

For that reason, the Consumer Protection Office is exploring two alternatives involving non-profit cemetery associations.

The two alternatives include expanding an ongoing non-profit cemetery association such as Angelus Memorial Park in Anchorage, or forming an entirely new non-profit association.

Either way, all consumer creditors would be asked to join

the association for a membership fee that would cover equipment and caretaking costs for the cemetery. Membership would not be limited to those who purchased lots at Valley Memory Gardens, anyone could join.

A new non-profit cemetery association would require only five members to form and would be permitted to operate cemetery land so that people who have paid for plots could still be buried there in the places they have already paid for.

Conkie Sipe, assistant attorney general with the Consumer Protection Office, is currently polling all consumers involved in the case to determine their interest level in forming a non-profit association. Sipe also wants to find out how much consumers would be willing to pay for association membership fees.

"It's up to the consumers to let me know whether they think this idea is worth pursuing," Sipe said. "A non-profit cemetery association is really the best deal we can work out."

For consumers who want to

begin again to plan funeral arrangements, one local consumer-run, non-profit society assists consumers in funeral pre-arrangement details.

Whether you're interested in cremations, simple ceremonies or elaborate services, the Cook Inlet Memorial Society offers, for a \$10 one-time membership fee, the opportunity to compare cost levels of various funeral services and arrange through the society's contractual agreement with a local funeral director some of the lowest-cost services available in the Anchorage area.

As a new member, you are asked to fill out a simple form giving instructions to your family and/or funeral director spelling out exactly what you want. A copy of your form is kept on file with the society and with the funeral director.

For more information about Cook Inlet Memorial Society, contact Perry Gazaway, president, at 277-2073 or write CIMS, P.O. Box 2414, Anchorage, AK 99510.

## Glossary spells out explanations of bankruptcy legal terminology

**Chapter 11 bankruptcy** - Bankruptcy laws are federal laws that pre-empt all state laws. Chapter 11 is corporate reorganization and allows a corporation to evaluate their situation and recover, if possible.

**Chapter 7 bankruptcy** - Chapter 7 bankruptcy is complete liquidation of assets with no hope of reorganization. All assets are taken and divided up according to federal bankruptcy law. Valley

federal court judge in a bankruptcy case to stop all actions by the corporation. It is the trustee's responsibility to figure out how to pay the biggest creditors and legally proceed to pay off debts.

**Creditors** - There are two sorts of creditors, those with secured claims and those with unsecured claims. The credit union is the major creditor in this case because it has a secured (mortgaged) claim on the cemetery for its

the cemetery and are now owed money because the cemetery either lost their money or failed to perform on consumers' contracts.

**Creditors' Committee** - Group of five consumers nominated by the consumer themselves to supervise the trustee. The creditors' committee may call creditor meetings for the purpose of gathering information. Creditors' meetings are not attended by federal court judges.

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## Valley Memory Gardens:

# Bankruptcy frustrates consumers

Continued from page 1  
everything—\$12,000 for all of it. My question is, do I still have it?"

"And if my kids have to be moved, who's going to pay for it and who in the court will order it? And why isn't the judge here to hear this?"

The attorneys glanced at each other, not knowing where to begin to tackle the man's barrage of questions.

Breaking the uncomfortable silence, Candy Powers, clerk of court, answered his last question first.

"During the first meeting of creditors, the bankruptcy court operates without the bankruptcy judge. Please understand that this is only the beginning and it doesn't happen very fast," Powers said.

The man on crutches never did get any real answers to his questions until the proceedings ended.

That's when Connie Sipe, assistant attorney general, took over the task of fielding questions from frustrated, confused consumers.

"This is going to get more legally complicated, but I will keep you informed of everything that happens," Sipe promised.

"To answer your questions," Sipe nodded to the man on crutches, "the deeds held by consumers may not actually be deeds; it isn't a black-and-white issue."

"We're trying to figure out whether those papers are promises for interment rights or real deeds of ownership. We figure 90 percent of the consumers don't have any real deeds; they have pre-arrangement certificates."

Consumers who had begun to leave the courtroom at the end of proceedings drew closer to hear Sipe's remarks.

"And as to the removal of bodies," Sipe continued, "the state is in opposition to removal of anyone from that cemetery. We can prevent the abandonment of the cemetery if we start a non-profit cemetery association run by consumers. You must all show up at the next abandonment hearing to let the judge know how you feel. The state agrees with consumers; the cemetery should not be abandoned."

## Questions surround use of money, deeds, trust

Continued from page 7  
porate funds and used them for personal uses for any criminal charges to be filed. Richmond invested funds for corporate uses in the documents renewed by the court.

Q: Who are the major creditors with outstanding claims against the cemetery property?

A: Those with secured or mortgaged claims include the Matanuska Valley Federal Credit Union, \$500,000 loan; Alaska Pacific Bank, \$15,000 loan; National Bank of Alaska, \$10,000

priority under bankruptcy law.

Q: What will happen if the cemetery is abandoned to the Matanuska Valley Federal Credit Union, the largest creditor?

A: The credit union is under obligation to its shareholders to get the most money possible from property and investments. That obligation may also apply to the commercial value of the cemetery property. In three similar cemetery abandonments in the State of Washington, the cemeteries were consolidated, bodies exhumed

information saying that Valley Memory Gardens belonged to a national cemetery organization and if we purchased services with him, those would be transferable to other cemeteries. Is that so?"

Sipe promised to ask Richmond this question and did so during a second creditors' meeting. Court testimony revealed that despite the \$50 annual dues required for membership in the national cemetery organization, about the only guarantees provided were for yearly certificates to post on the cemetery's office wall.

One man listened a long while to the questions and answers, then held up his deed and said, "I'll sell this to anyone who wants it—real cheap."

There was little laughter. Sipe summed up the feelings of consumers by saying, "We need big improvements in the cemetery laws. Too many consumers have spent considerable sums of money and have no hope of ever recovering it."

This is the hardest and saddest case I've ever dealt with."

Another woman asked: "What happens if I die tomorrow?"

Sipe replied: "No one can be buried in that cemetery right now, everything's in limbo. About all I can say is 'try not to die for awhile.'"

Another woman asked: "When we said it was no longer a sound business we stopped our payments into the pre-need account. Valley Memory went to a collections agency and they tried to ruin our credit rating. All we wanted was to be sure that it was a sound business. Who wants to pay for something they won't ever get to use?"

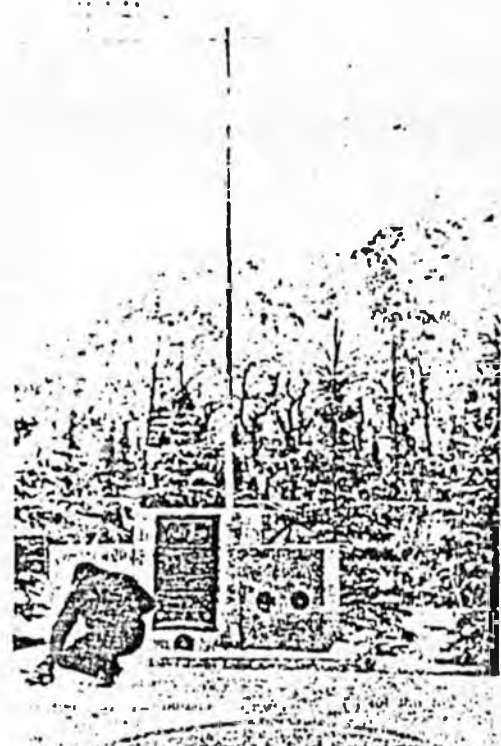
Sipe explained how Valley Memory took its consumer contracts to finance corporations in exchange for cash advances for about 60 percent of the face value of the contracts.

"Even if a business sells a payment to a third party, you still don't have to pay that third party if the original contract was broken," Sipe added. "You can see how complicated each individual case can become."

Others complained about not being notified of the bankruptcy.

"I wasn't even aware of the problem," said one man. "My wife died last spring and I ordered a headstone in July. My check was cashed by the cemetery, but no headstone ever showed up. I got nothing."

Another consumer remarked, "Richmond gave me



Visitor lays wreath at military honor memorial at Valley Memory Gardens Cemetery. Over 500 persons are buried in the nine-acre Palmor cemetery.

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*Jim Clark*

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LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 13, 1984

SUBJECT: Sectional analysis of HB 569

TO: Representative Randy Phillips

FROM: Edward H. Hein *EHA*  
Legislative Counsel

Section 1 allows a nonprofit cemetery to incorporate under AS 10.20 as an alternative to forming as a cemetery association.

Section 2 adds clean-up provisions necessitated by section 1.

Section 3 expands to which a cemetery's endowment fund may be put to include improvement of the grounds, buildings, and lots, and the repayment of debts.

Section 4 adds clean-up provisions necessitated by section 1.

Section 5 expands a nonprofit cemetery's authority borrow money to construct and repair buildings and mausoleums, to purchase or lease equipment, and other purposes. Such debts may be secured by mortgages on the cemetery's land, except those burial lots in which association members or corporate officers, trustees, or employees have more than a one-half interest.

Sections 6 - 11 add clean-up language necessitated by section 1.

Section 12 adds a definition for the term "cemetery lot".

EHH:ojb  
J3/089

# Angelus Memorial Park

ALASKA'S FIRST MEMORIAL PARK CEMETERY

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January 19, 1984

CEMETERY  
AND  
OFFICE  
ON KLATT ROADRepresentative Joe Hayes  
Alaska State Legislature  
Juneau, Alaska

Atten: Mr. Jeff Day:

The Board of Trustees of Angelus Memorial Park Association approved a motion to present to the Legislature, amendments to the Alaska Cemetery Statutes, pertaining to non-profit cemetery associations. A committee was appointed consisting of Mr. Alvah C. Buswell, Jr. and Mr. Robert F. Shary, who are board members and Mr. Sidney Abbott, park manager, to work on the proposed amendments of the present statutes.

The present Alaska non-profit cemetery statutes were patterned after the Oregon Statutes many years ago before Statehood and are badly out dated. The State of Oregon has since amended their Statutes, twice, and now Alaska needs to do the same, so that a non-profit cemetery can better serve the community. To our knowledge Angelus is the only non-profit cemetery in the state.

Enclosed are copies of Oregon Statutes that have been amended and a copy of our proposed revisions to the Alaska State Cemetery Statutes.

The association really needs these changes in order to grow, as it is now, we can not serve the community as a modern cemetery, because of the way the laws are written. The public wants all the services a cemetery is suppose to supply, such as, a columbarium for inurnment of cremated remains, mausoleum, niches and storage vault. Also we can not even build a much needed administration building. We now have to rent a very inadequate building for an office. The association has never had a maintenance building. The present laws prevent our growth.

The reason we included association and or corporation in our amendments is that Angelus intends to incorporate in order to help lessen the personal individual liability of the board members. Angelus board members are non-paid.

Sincerely,  
Mr. Douglas W. Brown  
President of Board of Trustees

ANGELUS MEMORIAL PARK ASSOCIATION

Enclosures

This material has also been sent to Representative Randy Phillips

JAN 25 1984



**SPECIAL PROVISIONS  
RELATING TO ORS 97.010 TO  
97.040, 97.110 TO 97.450, 97.510  
TO 97.730, 97.810 TO 97.920 and  
97.990**

97.010 Definitions for ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

(3) "Burial park" means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(5) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(6) "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

(10) "Entombment" means the placement of human remains in a crypt or vault.

(11) "Burial" means the placement of human remains in a grave.

(12) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(13) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb cremated human remains.

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment

of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(18) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

(19) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "Endowment care" means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund established and maintained pursuant to the provisions of ORS 97.810 to 97.860. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. (Amended by 1955 c.545 §1; 1965 c.396 §1)

61.738 Procedure for revoking certificate of authority. ORS 57.735, relating to revocation of certificate of authority, is applicable to nonprofit corporations. [1963 c.492 §36 (enacted in lieu of 61.735)]

61.740 (Renumbered 61.984)

61.741 Application to corporation authorized to transact business in this state on December 31, 1959. Foreign corporations which are duly authorized to transact business in this state on December 31, 1959, for a purpose or purposes for which a corporation might secure such authority under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under ORS 61.005 to 61.125, 61.131 to 61.370, 61.375 to 61.481 and 61.505 to 61.950. [1959 c.580 §80]

61.745 Transacting business without certificate of authority. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. No action, suit or proceeding shall be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state. [1959 c.580 §81]

CEMETERIES AND CREMATORIES

61.751 Lands of cemetery or crematory corporation; exemption from execution, taxation and condemnation. A nonprofit corporation organized and existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains, may purchase or take, by gift or devise, and own and hold lands for the sole purpose of either a cemetery or a crematory and burial place for incinerate remains. Such lands shall be exempt from execution and taxation, and from any appropriation for public purposes, and lots or portions of such land and space in any buildings thereon may be sold, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such corporation. The land so held for cemetery purposes shall not exceed 500 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 20 acres at any one time. The land so held for the purposes of a crematory and the burial of incinerate remains shall not exceed 30 acres, but if the land already held for such purpose by the corporation is all practically used, the amount thereof may be increased by adding thereto not more than 10 acres at any one time. [1959 c.580 §95]

61.760 Revenues; restrictions on uses thereof. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws, provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund,

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