

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4149 SJUD HB 288 - HB 356

1089

1 of this section may be taken only under nonsubsistence regulations.

2 (f) Takings authorized under this section are subject to reason-
3 able regulation of seasons, catch or bag limits, and methods and
4 means. Takings and uses of resources authorized under this section
5 are subject to AS 16.05.831 and AS 16.30.

6 Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries
7 and the Board of Game, acting jointly, may establish by regulation an
8 appeal procedure for persons aggrieved by the adoption or repeal of a
9 regulation.

10 * Sec. 7. AS 16.05 is amended by adding new sections to read:

11 Sec. 16.05.261. NO SUBSISTENCE DEFENSE. In a prosecution for
12 the taking of fish or game in violation of a statute or regulation, it
13 is not a defense that the taking was done for subsistence uses.

14 Sec. 16.05.262. SUBSISTENCE LICENSE. (a) The department shall
15 issue a subsistence license to a resident domiciled in a rural area of
16 the state who

17 (1) applies for the license on a form provided by the
18 department;

19 (2) pays an annual license fee of 25 cents; and

20 (3) presents proof that the applicant's annual family gross
21 income for the preceding calendar year was below the official federal
22 poverty line established by the director of the federal Office of
23 Management and Budget, as revised by the Secretary of Health and Human
24 Services under 42 U.S.C. 9847 and 9902.

25 (b) A subsistence license expires one year after the date of
26 issuance.

27 Sec. 16.05.263. LICENSE REQUIRED FOR SUBSISTENCE TAKINGS. A
28 person who takes fish or game for subsistence uses shall have in
29 possession a current, valid subsistence license that was issued under

1 AS 16.05.262 to the person or to another individual for whose benefit
2 the person is taking the fish or game.

3 * Sec. 8. AS 16.05.330 is amended by adding a new subsection to read:

4 (c) The Board of Fisheries and the Board of Game may adopt
5 regulations providing for the issuance and expiration of subsistence
6 permits for rural areas as needed for authorizing, regulating, and
7 monitoring the subsistence harvest of fish and game. The boards shall
8 adopt these regulations when the subsistence preference requires a
9 reduction in the harvest of a fish stock or game population by nonsub-
10 sistence users.

11 * Sec. 9. AS 16.05.940(22) is amended to read:

12 (22) "subsistence fishing" means the taking of, fishing for,
13 or possession of fish, shellfish, or other fisheries resources by a
14 resident domiciled in a rural area of the state for subsistence uses
15 with gill net, seine, fish wheel, long line, or other means defined by
16 the Board of Fisheries;

17 * Sec. 10. AS 16.05.940(23) is amended to read:

18 (23) "subsistence uses" means the noncommercial, customary
19 and traditional uses [IN ALASKA] of wild, renewable resources by a
20 resident domiciled in a rural area of the state for direct personal or
21 family consumption as food, shelter, fuel, clothing, tools, or trans-
22 portation, for the making and selling of handicraft articles out of
23 nonedible by-products of fish and wildlife resources taken for per-
24 sonal or family consumption, and for the customary trade, barter, or
25 sharing for personal or family consumption; in [FOR THE PURPOSES OF]
26 this paragraph, "family" means [ALL] persons related by blood, mar-
27 riage, or adoption, and a [ANY] person living in [WITHIN] the house-
28 hold on a permanent basis;

29 * Sec. 11. AS 16.05.940 is amended by adding new paragraphs to read:

1 (28) "domicile" means the true and permanent home of a
2 person from which the person has no present intention of moving and to
3 which the person intends to return whenever the person is away; domi-
4 cile may be proved by presenting evidence acceptable to the boards of
5 fisheries and game;

6 (29) "fish stock" means a species, subspecies, geographic
7 grouping or other category of fish manageable as a unit;

8 (30) "game population" means a group of game animals of a
9 single species or subgroup manageable as a unit;

10 (31) "personal use fishing" means the taking, fishing for,
11 or possession of finfish, shellfish, or other fishery resources, by
12 Alaska residents for personal use and not for sale or barter, with
13 gill or dip net, seine, fish wheel, long line, or other means defined
14 by the Board of Fisheries;

15 (32) "rural area" means a community or area of the state in
16 which the noncommercial, customary, and traditional use of fish or
17 game for personal or family consumption is a principal characteristic
18 of the economy of the community or area;

19 (33) "subsistence hunting" means the taking of, hunting for
20 or possession of game by a resident domiciled in a rural area of the
21 state for subsistence uses by means defined by the Board of Game.

22 * Sec. 12. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

23 * Sec. 13. This Act takes effect June 1, 1986.

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 288 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking of fish and game for
7 subsistence and personal use; and providing for an
8 effective date."

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

10 * Section 1. AS 16.05.251(a)(6) is amended to read:

11 (6) classifying as commercial fish, sport fish, personal
12 use fish, subsistence fish, or predators or other categories essential
13 for regulatory purposes;

14 * Sec. 2. AS 16.05.251(a) is amended by adding a new paragraph to read:

15 (12) regulating commercial, sport, subsistence, and personal
16 use fishing as needed for the conservation, development, and utiliza-
17 tion of fisheries.

18 * Sec. 3. AS 16.05.251 is amended by adding new subsections to read:

19 (d) Regulations adopted under (a) of this section must, con-
20 sistent with sustained yield and the provisions of AS 16.05.258,
21 provide a fair and reasonable opportunity for the taking of fishery
22 resources by personal use, sport, and commercial fishermen.

23 (e) The Board of Fisheries shall establish criteria for the
24 allocation of fishery resources among personal use, sport, and commer-
25 cial fishing. The criteria may, as appropriate to particular alloca-
26 tion decisions, include factors such as

27 (1) the history of each personal use, sport, and commercial
28 fishery;

29 (2) the number of residents and nonresidents who have

1 participated in each fishery in the past and the number of residents
2 and nonresidents who can reasonably be expected to participate in the
3 future;

4 (3) the importance of each fishery for providing residents
5 the opportunity to obtain fish for personal and family consumption;

6 (4) the availability of alternative fisheries resources;

7 (5) the importance of each fishery to the economy of the
8 state;

9 (6) the importance of each fishery to the economy of the
10 region and local area in which the fishery is located;

11 (7) the importance of each fishery in providing recreation-
12 al opportunities for residents and nonresidents.

13 * Sec. 4. AS 16.05.255(a) is amended by adding a new paragraph to read:

14 (10) regulating sport hunting and subsistence hunting as
15 needed for the conservation, development, and utilization of game.

16 * Sec. 5. AS 16.05.255 is amended by adding a new subsection to read:

17 (d) Regulations adopted under (a) of this section shall provide
18 that, consistent with the provisions of AS 16.05.258, the taking of
19 moose, deer, elk, and caribou by residents for personal or family
20 consumption has preference over taking by nonresidents.

21 * Sec. 6. AS 16.05 is amended by adding new sections to read:

22 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME.

23 (a) The Board of Fisheries and the Board of Game shall identify the
24 fish stocks and game populations, or portions of stocks and popu-
25 lations, that are customarily and traditionally used for subsistence
26 in each rural area identified by the boards.

27 (b) The boards shall determine

28 (1) what portion, if any, of the stocks and populations
29 identified under (a) of this section can be harvested consistent with

1 sustained yield; and

2 (2) how much of the harvestable portion is needed to pro-
3 vide a reasonable opportunity to satisfy the subsistence uses of those
4 stocks and populations.

5 (c) The boards shall adopt subsistence fishing and subsistence
6 hunting regulations for each stock and population for which a harvest-
7 able portion is determined to exist under (b)(1) of this section. If
8 the harvestable portion is not sufficient to accommodate all consump-
9 tive uses of the stock or population, but is sufficient to accommodate
10 subsistence uses of the stock or population, then nonwasteful subsis-
11 tence uses shall be accorded a preference over other consumptive uses,
12 and the regulations shall provide a reasonable opportunity to satisfy
13 the subsistence uses. If the harvestable portion is sufficient to
14 accommodate the subsistence uses of the stock or population, then the
15 boards may provide for other consumptive uses of the remainder of the
16 harvestable portion. If it is necessary to restrict subsistence
17 fishing or subsistence hunting in order to assure sustained yield or
18 continue subsistence uses, then the preference shall be limited, and
19 the boards shall distinguish among subsistence users, by applying the
20 following criteria:

21 (1) customary and direct dependence on the fish stock or
22 game population as the mainstay of livelihood;

23 (2) local residency; and

24 (3) availability of alternative resources.

25 (d) The boards may adopt regulations consistent with this sec-
26 tion that authorize taking for nonsubsistence uses a stock or popula-
27 tion identified under (a) of this section.

28 (e) Fish stocks and game populations, including bison, or
29 portions of fish stocks and game populations, not identified under (a)

1 of this section may be taken only under nonsubsistence regulations.

2 (f) Takings authorized under this section are subject to reason-
3 able regulation of seasons, catch or bag limits, and methods and
4 means. Takings and uses of resources authorized under this section
5 are subject to AS 16.05.831 and AS 16.30.

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16 (3) presents proof that the applicant's annual family gross
17 income for the preceding calendar year was below 130 percent of the
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20 of Health and Human Services under 42 U.S.C. 9847 and 9902.

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18 portation, for the making and selling of handicraft articles out of
19 nonedible by-products of fish and wildlife resources taken for per-
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22 this paragraph, "family" means [ALL] persons related by blood, mar-
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19 * Sec. 13. This Act takes effect June 1, 1986.
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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 13, 1986

SUBJECT: P.L.O. 1613, P.L.O. 601, and related problems
[CSHB 321(Finance)(draft)]

TO: Representative Sam Cotten

FROM: Richard A. Bradley
Legislative Counsel 

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Before preceding with the sectional analysis, it may be useful to offer some background comments.

In 1940, in order to protect the roads that promoted the development of the Territory of Alaska, the Department of the Interior withdrew 150 feet of public lands along both sides of several "through roads," including the Glenn, Richardson, and Haines highways. [Public Land Order (PLO) 601.] Congress criticized these withdrawals as excessive, stating that they hindered commercial and private development, and, in 1956, enacted a law providing that if the Secretary [of the Interior] revoked such a withdrawal "the lands involved shall be subject to disposal only under laws specified by the Secretary of the Interior, subject to easements as established by the Secretary." [43 U.S.C. 971a.] The law authorized the Secretary to "sell such restored lands for not less than their appraised value, giving an appropriate preference right to the holders of adjoining

claims or entries and to owners of adjoining private lands. [43 U.S.C. 971b.]

In 1958 the Department issued PLO 1613 revoking the earlier withdrawals, replacing them with easements, offering for sale "the lands released from withdrawal * * which, at the date of this order, adjoin lands in private ownership," and providing that released lands which on the same date "adjoin lands in valid unperfected entries, locations or settlement claims, shall be subject to inclusion in such entries, locations and claims." [PLO 1613.] Owners of private lands and holders of such entries were given a preference right to purchase the adjoining released lands or to amend their entries to include them, respectively

Many adjoining landowners or entry holders applied for the released lands located between the adjoining lands and the centerline of the highway, made the required payments, and received receipts, but their applications were not processed [by BLM or the Interior Department] for many years. Many who applied subsequently sold the lands adjoining the released lands. In August 1984 BLM issued decisions granting the released lands to the original applicants. In these consolidated appeals, present adjoining landowners claim the released lands should have been granted to them.

Appellants argue that Congress intended that the released lands be granted to owners of adjoining lands The released lands are important, and sometimes essential, to the present owners of the adjoining lands for access to those lands . . . and of no practical use to the original applicants, some of whom are deceased persons

BLM's decisions state that when the "purchase price was received * * * and a receipt for the purchase price was issued * * * equitable title vested in the applicant * * *" [Citations omitted.] Once equitable title vests, in BLM's view, "the Secretary has no discretion in the issuance of a patent and events subsequent to such vesting can have no bearing upon the claimant's right to patent," citing Wyoming v. United States, 225 U.S. 489 (1921).

Representative Cotten
Page 3
March 13, 1986

BLM's decisions must be affirmed. [Emphasis and bracketed material added.]

The above quote is from the decision of the Interior Board of Land Appeals, Robert and Patricia Bailey, IBLA 84-874 et al., decided November 22, 1985.

CSHB 321(Fin)(draft) is a response to the land title situation described in the Bailey decision; the Bailey decision, in fact, implicitly invites this legislation (as I note below).

Section 1 of the bill amends AS 09.25.050 by adding new subsections. The section itself now provides:

Sec. 09.25.050. CONCLUSIVE EVIDENCE OF ADVERSE POSSESSION. The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more is conclusively presumed to give title to the property except as against the state or the United States.

Sec. 50(b) as added in Section 1 of the bill is self explanatory; it provides that "possession" means "the exercise of dominion and control of the real property, including use, care, maintenance, the establishment of improvements, the payment of ad valorem property taxes, and other acts of ownership that openly and visibly indicate to the community in which the land is situated that it is in the possession and enjoyment of the claimant."

Sec. 50(c) is significant; it provides that except for the "easement created by Public Land Order 1613 [the reservation of the highway itself], adverse possession will lie against property that is held by a person who holds equitable title from the United States" under PLO 1613.

Recall that the Bailey decision holds that those who applied for the land and received a receipt from BLM have "equitable title." If the applicant has not been in "possession" of the land (compare Sec. 09.25.050(b) as added in this bill), then the present person in possession may gain title to the land by the principles of adverse possession. See AS 09.25.050, above.

Section 2 of the bill add a new section to AS 09.45, "Actions Relating to Real Property".

Representative Cotten
Page 4
March 13, 1986

Sec. 09.45.015(a) establishes a "statutory presumption" that a patent for land that was issued before April 7, 1958 (the date of PLO 1613) to land that adjoined a highway reservation listed in section 1 of PLO 1613 is presumed to have conveyed land up to the center-line of the highway subject only to the reservation for the highway itself created by PLO 601 as well as any highway easement created by PLO 1613. The statutory presumption would be of use to a person litigating the title to the land released from PLO 601 by PLO 1613.

Sec. 09.45.015(b) makes a similar point in a different way: it provides that the burden of proof in litigation involving title to the released land is "on the person who claims that the patent did not convey an interest in land up to the center-line of the highway."

Section 3 of the bill provides for an immediate effective date.

If I may be of further assistance, please advise.

RAB:csh
c6/036

REPRESENTATIVE
SAM COTTEN
DISTRICT 15



P.O. BOX 296, EAGLE RIVER, AK 99577
POUCH V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

TO: All House members
FROM: Rep. Sam Cotten^{SC}
DATE: April 2, 1986
RE: CSHB 321 (Fin)

The proposed CS for HB 321 aims to resolve rights-of way problems plaguing Chugiak area residents living along the Old Glenn Highway; it also affects similarly situated residents living on other Alaska highways. The problem stems from the federal government awarding ownership of a narrow strip of land in front of the lots to someone else.

The situation dates back almost 30 years when the Act of August 1, 1956 and Public Land Order 1613 (in 1958) allowed people to purchase highway lots and file for patents to the abutting highway easements. The intent of the law was to award the highway easement to the abutting landowner. However, after a decades-long delay, BLM has only recently started issuing these patents. In doing so, BLM has decided to award the patents to the original applicants, who in many cases, no longer live there, rather than the abutting owners. (In some cases the original applicants have died, in other cases the land has changed hands several times.) This administrative delay by BLM has meant that current highway residents face the situation of having someone else claim ownership to the highway easement they thought they owned. This clearly contradicts the intent of the law.

The situation has caused much distress and confusion among Chugiak area residents in particular. The lots have little value except nuisance value. The lots are fairly small, and are long narrow strips. They are also subject to highway easement which diminishes any potential value.

The original version of HB 321 required involvement by the Department of Transportation and would have used condemnation as the method to gain the P.L.O. lots. The proposed CS would solve the problem without cost to the state.

The proposed CS for HB 321 gives the abutting lot owner the ability to gain possession of the P.L.O. highway lots, subject to any P.L.O. easements, by use of adverse possession laws. The bill changes the existing law of adverse possession, by allowing adjoining owners to count time they occupied the highway lot while legal title was held by the federal government toward the seven year period required to gain title to the land. This is legal, as the federal government has determined that title is transferred upon payment of the purchase price of the highway lot.

Additionally, the bill provides that in cases where the existing owner believes the sale included the highway lot, the highway lot owner has the burden of proving that the deed clearly excluded the highway lot. If the highway lot owner fails to meet this burden, the adjoining land owner will get the highway lot in a quiet title action.

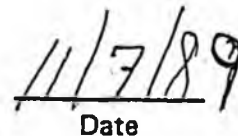
Passage of this bill would give the affected highway property owners a way to resolve a serious problem. The Dept. of Transportation has issued a zero fiscal note for the proposed CS.



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Date

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PREVIOUS ACTION

HB 126: Read the first time 01/25/85 with Governor's Transmittal Letter; 2 fiscal notes with analysis in Supplement #8; Referred to L&C Rpt 6DP, Jud Rpt with Committee Substitute 5DP, Finance and Rules.

CSSB 101: Read the first time 01/25/85 and referred to Jud Rpt Committee Substitute 5DP, Rules Rpt Calendar today; Read the second time 02/01/85, Judiciary Committee Substitute adopted with unanimously consent.

ACTION NARRATIVE

TAPE #44, SIDE ONE
Recording
Number 000

The meeting was called to order at 1:31 p.m. by Chairman Miller. Present were Representatives Miller, Taylor, Phillips, and Gruenberg. Representative Pettyjohn came later. Representatives Sund and Clocksin were absent.

The Chairman introduces CSSB 101.

Number 018

Gordon Evans, representing the Alaska Bar Association, is introduced.

Representative Pettyjohn arrives at 1:33 p.m.

Mr . Evans testifies that this legislation would allow the Alaska Bar Association to utilize the services of the FBI in processing the fingerprint cards that are submitted by applicants to the Alaska Bar after July 1985. Currently the cards are submitted for processing only in Alaska. The Alaska Bar Association has approval as a secondary user of aegis to have the Alaska State Troopers do the processing for them. The information routinely only reflects in-state violations. Prior to 1981 the Bar Association had used the FBI but at that time the FBI had a rule change requiring statutory authority to provide this information. Many applicants for the Bar are out-of-state residents. Effective January 1 of this year the Alaska Supreme Court approved an amendment to the Bar rules which allow for admission without...

examination. Having access to FBI records which contain information from all states would enhance character investigation and background checks on Bar applicants and assist in adding a further level of protection to the public.

He requests an amendment on page 1, line 24, of the bill where it currently says "the board of governor's may use the information obtained from the fingerprinting only in its official determination of the character and fitness of the applicant for admission to the Alaska Bar Association." Would like to delete the period after "Association" and add "or in a disciplinary investigation proceeding."

Representative Taylor moves the amendment. The Chair objects in order to give Mr. Evans time for more background.

Mr. Evans says the Bar council has used the fingerprint card on only one occasion. A crime was committed in Alaska by an attorney and the fingerprint card was used to send to a second jurisdiction where this attorney was also admitted. It was discovered the attorney had been convicted of a felony there.

Number 109

Representative Gruenberg asks Mr. Evans to look at section 3.

Rep. Gruenberg feels it should be amended to state "and to disciplinary proceedings taking place after the effective date of this Act." Mr. Evans responds that AS.08.08.137 applies on certain dates so as long as that is amended it would be all right. Discussion follows

Representative Pettyjohn says he thinks a title change is necessary. The Chairman says it would be possible to submit a concurrent resolution.

Number 155

Hayden Kaden, staff council, says it is an act relating to character investigation of applicants. Discussion follows.

Number 186

Representative Gruenberg feels section 3 must be amended because AS. 08.08.137 applies only to applicants. He moves that

the amendment be amended. Must amend Section 3, line 2, strike the word "and" move the period, add a coma, "and to disciplinary investigation proceedings occurring after the effective date of this Act.

Number 234

There is no objection to the amendment to the amendment so it is before them.

Number 241

Representative Pettyjohn asks if they really want a concurrent resolution for what he considers a minor amendment.

Number 254

Representative Phillips opposes concurrent resolutions unless it is an emergency situation. Discussion follows.

Mr. Evans says the Bar Association can live with the bill as it is. Representative Gruenberg feels the amendment is important. Suggests a Judiciary Committee bill. Discussion follows.

Number 297

Representative Pettyjohn suggests introducing a bill to adopt the amendment.

Representative Gruenberg requests that the Judiciary Committee introduce a second bill covering only the amendment here

Number 324

Representative Taylor moves to withdraw his amendment.

Number 326

Representative Pettyjohn moves that the bill be moved out with individual recommendations. There are no objections and the motion is adopted.

Number 342

The Chairman introduces HB 126. Larry Carroll, Senior Securities Examiner, Department of Commerce and Economic Development is introduced along with Jeff Bush of the Department of Law. This bill attempts to amend the Alaska Securities Act to provide authority for the Division to regulate the offer and sale, primarily the offer and sale of oil and gas lease properties where the lease-held interest is in Alaska, but the offer is taking place between parties located outside the state of Alaska.

Representative Phillips says...
The problem being dealt with here is the

Read the first time 04/22/85 and referred to Jud, Fin and Rules; no previous committee action to record; fiscal note in Supplement No. 63; fiscal note zero. Today Jud reported out with CS 5DP, 2NR.

ACTION NARRATIVE

TAPE #102 SIDE ONE
Recording
Number 000

Chairman Mike Miller (Juneau) called the meeting to order at 1:41 p.m. Present were Representatives Pettyjohn, Phillips, Miller, Gruenberg, Sund and Taylor. Representative Clocksin arrived later. Chairman Miller announced that there were three bills before the committee. He thought two could be handled expeditiously.

Number 020

Chairman Miller introduced HB 322 for consideration. He reminded the committee of testimony received during the hearing on sunset for the Alaska Bar Association Board of governors. This language was agreed to during that hearing, but a title change would be necessary in a Senate bill. The committee decided to pass that bill out and remedy the problem in a new bill. He asked for a motion to move the bill.

Number 031

Representative Gruenberg moved that HB 322 be passed out with individual recommendations. There were no objections and so the bill passed out of committee. All members signed "do pass".

Number 040

Chairman Miller introduced HB 393 for consideration by members. Chairman Miller stated that this bill was drafted because after the committee had heard HB 172 by Duncan on the rights of physically and mentally disabled. The committee had removed items from that bill which had a fiscal impact and had a new bill drafted including those impacts. The intent had been to avoid delaying HB 172.

Number 049

Representative Gruenberg distributed a sectional analysis and discussed the changes. Section 1 provides that blind and deaf individuals can serve on juries. The court fiscal note is to cover the cost of providing interpreters and readers to assist

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 322
 Title: "...use of information from fingerprints of members..AK Bar Assoc.
 Sponsor: House Judiciary
 Requestor: House Judiciary
 Date of Request: 5/1/85

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Kathy Niles
 Division: Administrative Services

Phone: 465-4336
 Date: 5/1/85

Approved by Commissioner: [Signature]
 Agency: Public Safety

Date: 5/1/85

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

7/1/84



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/7/89
Date

H B

h b i

LEGISLATIVE AFFAIRS AGENCY

DEC 23 1985
MEMORANDUM

December 20, 1985

SUBJECT: CSSB 245 (Resources) (latest draft)
TO: Sen. Arliss Sturgulewski
Chairman, Senate Resources Committee
FROM: Ed Hein, LAA *EA*

Enclosed is the bill draft requested by Frank Homan. I have made an additional change in section 2. AS 12. 80.050 is of questionable legal validity because it has the effect of changing a Supreme Court Rule and was not adopted by a 2/3 vote. See the Revisor's Note following the text of the section in the statutes. Consequently, I thought it best to sidestep the 2/3 voting question in this bill by avoiding language that specifically says that a photograph is admissible evidence, as the previous language of the bill appeared to do. Now the section is more clearly directed to the prosecutor, instead of to the court. The purpose of this section is to assure that gear is not held for evidence longer than necessary and I think the new language will accomplish this goal.

February 26, 1986

Senator Fred Zharoff
Pouch V
Juneau, Alaska 99811

Dear Fred,

I have recieved the copy of the draft of HB 245, relating to the theft of commercial fishing gear, that you sent me for comment. Thanks.

I understand the reasons for the deletion of the provisions for mandatory sentencing and am sorry to have seen them go. I think they would have contributed to the deterrent effect on these types of crimes, but I appreciate the other problems that presumptive sentencing invloves, too.

I support the bill without the above, but would suggest that maybe a bit more teeth could be reintroduced along the deterrent lines if, under sec. 3, the court HAD to impose a suspension of commercial fishing privileges for one year after the FIRST conviction, rather than the second, then suspension of those priveliges for two years after the second conviction, etc, or maybe even two years after the first. Whatever is realistic, I guess, to get it into law---you have a better handle on that than I do.

Anyway, I like the bill, and hope to see it become a law sometime soon. Theft of commercial fishing gear has been an all too lightly handled offence for long enough.

Thanks for all your work on this bill.

Sincerely,

Dave S.

David Shrader
412 Willow St.
Kodiak, Alaska 99615

4-4-85

APR 9 1985

Hon: Fred Zarhoff:

I strongly support any anti-theft legislation as concerns the fishing industry.

I personally feel a thief should be denied a commercial fishing license forever!

Respectfully,



R. E. DeVol, R. S.

Industrial Chemist

Box 355

Kodiak, Alaska 99615



BUSINESS • FISHERMEN • PROCESSORS • INDIVIDUALS

ALASKA COASTAL COMMUNITIES ALLIANCE

P.O. Box 382 Kodiak, Alaska 99615 Phone (907) 486-5096

April 17, 1985

Senator Fred Zharoff
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Zharoff:

I am writing on behalf of the Alaska Coastal Communities Alliance. At our most recent board of directors meeting, David Shrader presented us with a work draft of your proposed Senate Bill relating to the theft of commercial fishing gear. An extensive discussion of the bill ensued, the results of which I would like to convey to you.

First, the general intent of the bill was received with overwhelming approval. As you are aware, with the difficult economic times in the fisheries the last several years there has been an increasing gear theft problem in our area. Because thefts most often occur at sea, or with stored gear on land when the gear or equipment is left unattended, apprehension and successful prosecution of offenders is rare and difficult. Therefore, when an individual is caught and successfully prosecuted it is imperative that the offender be appropriately punished if our laws are to have any deterrent value.

We did feel, however, that a \$500 minimum should also be established for theft of commercial fishing gear. We suggest this because we support the mandatory jail term for those convicted of gear theft, yet we do not feel, for example, that a young first offender who might be caught shoplifting, say a box of fish hooks, should be subject to a mandatory one year jail term.

There was also a consensus on the part of our members that the law should define active and lost fishing gear. It is not unusual for a fisherman to find a lost crab pot whose owner is impossible to identify. In such a circumstance it is an accepted practice for the finder to retrieve and keep the pot. A problem could arise if an original owner later identified the pot and claimed that it was in fact not lost. To further illustrate, this sort of problem could arise with beachcombed buoys and gear. If the law precisely defined the appropriate terms this sort of situation could be avoided to the benefit of all. We realize that our suggestion will complicate your worthy effort on our behalf, but we feel that time spent now writing a good and workable law will be well worth the effort.

The Alaska Coastal Communities Alliance would like to thank you for your past and present attentiveness to the needs and welfare of our fishing community. We would like to reaffirm our support for your intent in writing this bill. We hope you are able to bring this effort to a successful conclusion.

Thank you.

Sincerely,

Kevin B. O'Leary
Kevin B. O'Leary
Chairman, A.C.C.A.

cc: Representative Dave Thompson

April 2, 1984

Representative Fred Zharoff
Alaska State Legislature
Pouch V MS 3100
Juneau, Alaska 99811

Dear Fred,

This letter is to thank you for returning my telephone call the other day, and giving me the opportunity to express my thoughts concerning the need for stiffer penalties for those convicted of second degree theft of commercial fishing gear.

As I mentioned during our conversation, I feel that the difficulties faced by victims and enforcement officials in establishing evidence which would identify suspects, and the lack of any real mandatory minimum sentencing for those few who are in fact ultimately convicted, has created a situation that presents absolutely no deterrent to this type of criminal activity.

In addition, the ramifications of the theft of commercial fishing gear are inherently far-reaching; not only does the loss of the gear itself present immediate hardship to the victims of this type of crime, but the ability of the victim and his crew to make a living in future is also impaired very significantly. In the few cases where the gear IS recovered it can be tied up in the court system as evidence for the duration of the proceedings, still not available to the victims to try to make a living with.

I feel that the implementation of mandatory minimum sentences would definitely increase the law's deterrent impact. Also, in addressing the point that jail space is at a premium in our state, I would point out that convictions for this type of crime will continue to be very hard to get, and few and far between. I doubt that the number of convictions will increase at all, and for those few who are convicted, jail time will still be relatively short, while the benefit of the establishment of a significant mandatory minimum sentence will hopefully reduce the number of occasions this crime occurs. This may be an especially important time for the implementation of such deterrent legislation, as times seem to be particularly tough in the fishing industry at present, with little relief on the immediate horizon.

The mandatory minimum sentence I would suggest for each count of second degree theft of commercial fishing gear (first offense) is: one year in jail, AND loss of the privilege to fish commercially in Alaska for three years. Maximum penalties should also be increased to deter repeat offenders, to five years in jail and permanent loss of the fishing privilege. First, third, and fourth degree theft of fishing gear should probably be increased proportionally as well.

Thanks for considering my views on this situation, Fred. I'm looking forward to addressing you as "Senator".

Sincerely,

Dave S.
David Shrader
Box 128 Kodiak, Ak 99615

March 22, 1985

Senator Fred Zharoff
Pouch V MS 3100
Juneau, Alaska 99811

Dear Fred,

This is to advise you of my wholehearted support for your introduction of SB 245, "An Act relating to the Theft of Commercial Fishing Gear."

The theft of commercial fishing gear implies so much more than just the property value of the gear itself---it represents a very serious impairment to the victim's, and his crew's, ability to make a living for himself and his family, not only for the season during which the theft took place, but also for succeeding years beyond that.

Also, because so much fishing in Alaska is done in remote areas, fishing gear is particularly vulnerable to theft, and although an unwritten "code of trust" does exist generally among fishermen in an area, fishing gear, especially set gear such as crab pots which are left unattended for several days sometimes, that "code of trust" can not prevent blatant criminal actions.

I feel that the increased mandatory penalties are most definitely in order, and will definitely act as a deterrent to criminals, making them at least think twice before committing an illegal act such as theft.

Thanks very much for introducing this bill---I hope to see it become a law soon.

Sincerely,

David S

David Shrader
412 Willow
Kodiak, Alaska 99615

Dear Senator Zharoff & Representative Dave Thompson

I am writing on behalf of the Alaska Coastal Communities Alliance. At our most recent board of directors meeting, David Shrader presented us with a work draft of your proposed Senate Bill relating to the theft of commercial fishing gear. An extensive discussion of the bill ensued, the results of which I would like to convey to you.

First, the general intent of the bill was received with overwhelming approval. As you are aware, with the difficult economic times in the fisheries the last several years there has been an increasing gear theft problem in our area. Because thefts most often occur at sea, or with stored gear on land when the gear or equipment is left unattended, apprehension and successful prosecution of offenders is rare and difficult. Therefore, when an individual is caught and successfully prosecuted it is imperative that the offender be appropriately punished if our laws are to have any deterrent value.

We did feel however, that a \$500 minimum should also be established for theft of commercial fishing gear. We suggest this because we support the mandatory jail term for those convicted of gear theft, yet we do not feel for example, that a young first offender who might be caught shoplifting, say a box of fish hooks, should be subject to a mandatory one year jail term.

There was also a consensus on the part of our members that the law should define active and lost fishing gear. It is not unusual for a fisherman to find a lost crab pot whose owner is impossible to identify. In such a circumstance it is an accepted practice for the finder to retrieve and keep the pot. A problem could arise if an original owner later identified the pot and claimed that it was in fact not lost. To further illustrate, this sort of problem could arise with beachcombed bouys and gear. If the law precisely defined the appropriate terms this sort of situation could be avoided to the benefit of all. We realize that our suggestion will complicate your worthy effort on our behalf, but we feel that time spent now writing a good and workable law will be well worth the effort.

The Alaska Coastal Communities Alliance would like to thank you for your past and present attentiveness to the needs and welfare of our fishing community. We would like to reaffirm our support for your intent in writing this bill. We hope you are able to bring this effort to a successful conclusion. Thank you.

Sincerely,

Kevin B. O'Leary

Kevin B. O'Leary
Chairman A.C.C.A.

Alliance backs Zharoff bill to boost gear theft penalties

By CHRIS BLACKBURN
Special Correspondent

The Alaska Coastal Communities Alliance has given "overwhelming approval" to the general intent of Sen. Fred Zharoff bill to increase the penalties for the theft of commercial fishing gear.

Senate Bill 245, as introduced, makes the theft of commercial fishing gear a class C felony and provides for a mandatory jail sentence.

"With the difficult economic times in the fisheries the last several years there has been an increasing gear theft problem in our area," the alliance wrote Zharoff.

"Because thefts most often occur at sea, or with stored gear on land when the gear or equipment is left unattended, apprehension and successful prosecution of offenders is rare and difficult.

"Therefore, when an individual is caught and successfully prosecuted, it is imperative that the offender be appropriately punished if our laws are to have any deterrent value," the alliance wrote.

The alliance supports the mandatory jail term for gear theft,

but suggests that a \$500 minimum fine be also established so that a "young first offender who might be caught shoplifting, say a box of fish hooks," is not subject to a mandatory jail term.

The alliance members also felt that the final law should define active and lost fishing gear to avoid putting fishermen who retrieve derelict gear in a position where they might be accused of gear theft.

"It is not unusual for a fisherman to find a lost crab pot whose owner is impossible to identify. In such a circumstance it is an accepted practice for the finder to retrieve and keep the pot," the alliance wrote.

Those who pick up buoys while beachcombing could also at some point be accused of fishing gear theft unless some distinction is made between active and lost fishing gear, the alliance wrote.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

POUCH V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

*SB
HB 331
file*

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

M E M O R A N D U M

TO: Senator Patrick M. Rodey
Chairman - Senate Judiciary Committee

FROM: Senator Fred F. Zharoff

DATE: March 10, 1986

RE: HB 331

I respectfully request that a hearing be scheduled as soon as possible for House Bill 331, "An Act relating to the theft of commercial fishing gear". The bill presently is before your committee.

HB 331 is a companion piece of legislation to a bill I introduced last year, SB 245. Both bills were introduced in response to complaints from commercial fishermen about their problems with gear theft.

I also wish to discuss with you the possibility of a committee substitute which would incorporate elements of the Senate bill into the House bill.

Mr. Karl Ohls of my staff has complete background information on the bill. Please feel free to have your staff contact him for the details.

Thank you for your consideration.

1985

KODIAK ISLAND BOROUGH
RESOLUTION NO. 85-34-R

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY SUPPORTING SENATE BILL 245 AND HOUSE BILL 331 CONCERNING THE THEFT OF COMMERCIAL FISHING GEAR.

WHEREAS, Senate Bill 245 and House Bill 331 have been introduced and provide a definition for theft of commercial fishing gear as a crime of theft in the second degree, and

WHEREAS, this crime is then punishable, upon conviction, by a sentence of a term of imprisonment of not more than five years and forfeiture of commercial fishing license and all limited entry permits, and

WHEREAS, theft of commercial fishing gear is an ongoing problem and a real detriment to the financial stability of Kodiak Island's large fishing fleet, and

WHEREAS, this problem has become even more serious with the limited amounts of fish resources available for harvest.

NOW, THEREFORE, BE IT RESOLVED by the Kodiak Island Borough Assembly that Senate Bill 245 and House Bill 331 should be passed by the Legislature and signed into law, and

BE IT FURTHER RESOLVED that copies of this resolution be sent to the following individuals:

Honorable Bill Sheffield, Governor of Alaska
Honorable Patrick Rodey, Chairman, Senate Judiciary Committee
Honorable Arliss Sturgulewski, Chairman, Senate Resources Committee
Honorable M. M. Miller, Chairman, House Judiciary Committee
Honorable Albert P. Adams, Chairman, House Finance Committee
Honorable Fred F. Zharoff, Senator District N
Honorable David W. Thompson, Representative District 27

PASSED AND APPROVED this 4th day of April, 1985.

KODIAK ISLAND BOROUGH

By Thomas H. Peterson
Borough Mayor

ATTEST:

By Shirley Miller, CMC
Borough Clerk

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE COURT OF APPEALS OF THE STATE OF ALASKA

JODY D. THOMAS,)	
)	
Appellant,)	File No. A-721
)	
v.)	<u>O P I N I O N</u>
)	
STATE OF ALASKA,)	
)	
Appellee.)	[No. 549 - December 6, 1985]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Kodiak, Roy H. Madsen, Judge.

Appearances: Michael J. Wall, Assistant Public Defender, Kodiak, Dana Fabe, Public Defender, Anchorage, for Appellant. Susan S. McLean, Assistant District Attorney, Robert C. Anderson, District Attorney, Kodiak, and Harold M. Brown, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

COATS, Judge.

Jody Thomas was convicted, following a jury trial, of four counts of theft in the second degree, AS 11.46.130(a)(1), one count of theft in the third degree, AS 11.46.140(a)(1), and one count of theft in the fourth degree, AS 11.46.150(a). Judge Roy Madsen sentenced Thomas to sentences totaling eight years with four suspended on the four counts of second-degree theft. Thomas also received concurrent sentences of one year with six months suspended on the count of third-degree theft, and

ninety days on the count of fourth-degree theft. In addition Thomas was convicted, based on his no contest plea, of failure to appear for trial on these charges and received a concurrent sentence of two years with one suspended. Judge Madsen placed Thomas on probation, and as a special condition of probation ordered Thomas not to engage in any aspect of commercial fishing. Thomas appeals to this court, arguing that his sentence is excessive and that the special condition of probation is unjustified. We reverse.

Thomas, acting as the skipper of the fishing vessel Moonsong, supervised a crew of two people and engaged in numerous thefts of crab pots from around Kodiak Island. The thefts took place over a period of two months, and at least six fishing vessels had crab pots stolen. According to the presentence report the total value of the crab pots that Thomas stole was at least \$9,000 and was possibly as high as \$17,000. Thomas was thirty-seven at the time of these offenses and had no prior felony convictions. He had prior misdemeanor convictions for taking wildlife out of season and failure to appear, and had three prior convictions for commercial fishing without a valid permit.

The most serious theft offense of which Thomas was convicted, theft in the second degree, is a class C felony. The offense covers the theft of property or services in the amount of \$500 to \$25,000. AS 11.46.130. The maximum sentence is five years, the presumptive sentence for a second felony offender is two years, and for a third felony offender three years. AS 12.55.125(e). Thomas argues that as a first felony offender he should have received a sentence of less than the two-year presumptive sentence for a second felony offender unless his case can be classified as exceptional. See Austin v. State, 627 P.2d 657 (Alaska App.

1981). In sentencing Thomas, Judge Madsen referred to the Austin case and clearly found that Thomas' case was exceptional.

In making this determination Judge Madsen referred to aggravating factors which are specified in AS 12.55.155. Although we might question Judge Madsen's determination on some of the aggravating factors which he found, he found that Thomas' conduct was "among the most serious conduct included in the definition of the offense." AS 12.55.155(c)(10). We believe that the other aggravating factors which he found were subsumed within this finding. In finding that this was an exceptional case, Judge Madsen emphasized that stealing crab pots was particularly hard to detect, and had a very adverse effect on the crab fishing industry. The fisherman whose crab pots were stolen lost not only the crab pot but the crab which he might catch in the pot. The thefts involved a large number of crab pots and many different incidents over a nearly two-month period of time. We conclude that, based upon these findings, Judge Madsen could find that the theft offenses were particularly serious. In evaluating Judge Madsen's sentence we also must consider the fact that Thomas was convicted of failing to appear for his trial and that he had prior misdemeanor convictions.

However, we note that if all of Thomas' theft offenses are consolidated, the total value of the property which he stole was estimated to be \$17,000 at most. Theft in the second degree includes theft of property from \$500 up to \$25,000. Therefore, if all of Thomas' theft offenses are combined the value of the property which he stole does not come close to being above the upper limit for theft in the second degree. In Karr v. State, 686 P.2d 1192 (Alaska 1984), the supreme court upheld a sentence of ten years with five suspended for a first felony offender

with no prior record. However, that offense involved embezzlement of \$356,000 and more than fifty thefts over a two year period. Id. at 1196. Additionally, in Brezenoff v. State, 658 P.2d 1359 (Alaska App. 1983) we upheld a sentence of eight years with four suspended for a first felony offender who embezzled over \$140,000. However, Brezenoff's offense involved a substantially greater amount of money than is involved in Thomas' case, and Brezenoff was convicted of a class B felony, theft in the first degree, as a result. See also Fields v. State, 629 P.2d 46, 52-53 (Alaska 1981) (sentence of nine years with four years suspended was reversed. The supreme court held that the sentence should not exceed six years with three suspended. Fields had no significant criminal record, and received about \$25,500 through fraudulent sales of securities); Huff v. State, 598 P.2d 928, 935-36 (Alaska 1979) (A real estate salesman embezzled \$6,500 from a client. The supreme court upheld a three year sentence for embezzlement, but reduced a five-year concurrent sentence for perjury to three years.); Amidon v. State, 565 P.2d 1248, 1263 (Alaska 1977) (The supreme court held that three-year sentences for two first offenders convicted of embezzling \$65,000 should be reduced to sentences not to exceed one year.).

Based upon these cases and the presumptive sentences provided for class C felony offenders under the revised code, we conclude that even though Thomas' case could properly be termed exceptional, the sentence which Judge Madsen imposed was clearly mistaken. Although Judge Madsen could find that this was an aggravated theft offense, and also impose some additional time to serve because of the failure to appear charge, we note that under the revised code three years to serve is the presumptive sentence for a third felony offender convicted of a class C

felony. We conclude that Judge Madsen should not have imposed a sentence greater than five years with two years suspended.

This brings us to the special condition of probation that Judge Madsen imposed, preventing Thomas from engaging in any aspect of commercial fishing. A sentencing judge has broad authority to fashion special conditions of probation. However, conditions of probation must be "reasonably related to the rehabilitation of the offender and the protection of the public and . . . not unduly restrictive of liberty." Roman v. State, 570 P.2d 1235, 1240 (Alaska 1977); Edison v. State, ___ P.2d ___ Op. No. 546 at p.3 (Alaska App., November 29, 1985). Conditions which restrict constitutional rights are subject to special scrutiny to determine whether the restriction serves the goals of rehabilitation of the offender and protection of the public. Roman, 570 P.2d at 1241.

Thomas has been a commercial fisherman in Alaska for sixteen years. This appears to be his primary occupation. On the other hand, Thomas' current offenses are closely tied to his occupation as a fisherman, and he has three prior commercial fishing violations for not having a commercial license. It appears to us that the trial court could reasonably conclude that some restriction on Thomas' ability to fish commercially was related to his rehabilitation and was necessary to protect the public. However, since a restriction on Thomas' ability to fish commercially restricts his primary means of livelihood, we believe that the restriction must be particularly carefully scrutinized to make sure that it is narrowly drawn. It seems clear to us that the special condition of probation which prevents Thomas from engaging in any aspect of commercial fishing is far

too broad. We therefore vacate this special condition of probation and remand to the trial court for further proceedings on this issue.

REVERSED and REMANDED.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 331
 Title: "An Act relating to theft of commercial fishing gear."
 Sponsor: Thompson
 Requestor: Special Comm. on Fisheries
 Date of Request: 4/15/85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: _____
NRMEC
 BRU, Program or Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie
 Division: Administrative Services

Phone: 465-4350

Date: 4/15/85

Approved by Commissioner: Robert J. Sundberg
 Agency: Public Safety

Date: 4/15/85

Distribution (by Agency preparing fiscal note):

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

7/1/84

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 331 (Jud)
 Title : "An Act relating to the theft
 of commercial fishing gear."
 Sponsor : Rep. Thompson
 Requestor : Senate Judiciary
 Date of Request : 4/14/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Fish & Wildlife Protection
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : *K Niles* Kathy Niles, Admin Assistant Phone : 465-4336
 Division : Commissioner's Office Date : 4/14/86
 Approved by Commissioner : *mmfs* Date : 4/14/86
 Agency : Public Safety

Distribution (by Agency preparing fiscal note) :

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

HB 284

SOUTHEASTERN ALASKA
SEINE BOAT OWNERS & OPERATORS

P.O. BOX 9579
KETCHIKAN, ALASKA
99901
mailing address

907-225-5156

728 WATER STREET
KETCHIKAN, ALASKA
99901

April 9, 1986

Representative John Sund
P.O. Box V
Juneau, Alaska 99811

Dear Representative Sund,

Thank you for your information on vessel insurance and subsistence.

Insurance is becoming an increasing problem for our fleet. The large majority of the southeast seine fleet is still made up of wood boats. Finding insurance for wood hulls is becoming difficult and the price is becoming prohibitive. P & I insurance is an even scarier problem. P & I rates are skyrocketing. Since most seiners owe money on their boats and our crews are too large to be made up of family members, the option of not carrying insurance is not really available. So lots of seiners are scrambling, trying to get covered for the 1986 season.

Knowledgeable insurance people tell us that rates will never be as low as they have been in the past. Forming pools, individually incorporating so that our liability is limited to our fishing operation, encouraging legislation to modify the Jones Act, and increasing the safety of our operations are ways seiners are attempting to "solve" the problem. I don't know the best way the state of Alaska can help, but at this time it looks to me like it can help by making it easier to form pools, by helping fishermen get the federal Jones Act modified, by continuing support of the Division of Insurance and by providing resources for transfer of safety and seaworthiness information.

Regarding subsistence, we are also very concerned about the effects of the subsistence priority on the commercial fisheries. As long as any other user group is given priority over commercial fishing, there is a large potential for negative impacts on our industry. Whether this potential is realized depends on the content of the subsistence legislation and the way the department and the courts interpret this legislation.

So far, the Board of Fish and ADF&G have used common sense in interpreting the subsistence priority in Southeast Alaska and I don't believe any of the commercial groups have lost fishing opportunities because of the subsistence law. Our fear is that somewhere else in Alaska the courts or ADF&G will set the precedent that subsistence goals must be met before commercial fishing is allowed, and that then this precedent will be applied to Southeast.

If a subsistence law is interpreted in this fashion then almost all of the

Southeast streams listed by ADF&G as having been authorized for subsistence fishing could potentially impact commercial fishing. Systems with the most potential are Klawock (seining in District 4), Hetta-Eek (seining in District 3 and 4), Hugh Smith Lake (gillnetting and seining in District 1), Karta (gillnetting in District 6, seining in District 2), Basket Bay (seining in District 12 and 14), Chilkat River (gillnetting in District 15, seining in District 12 and 14), and the Taku River (gillnetting in District 11, seining in District 12 and 14). Klawock is the major sockeye system with depressed stocks and poses the immediate problem for the seine fleet. (Hopefully, this potential Klawock problem may be solved by the production of sockeye at the Klawock hatchery.) As long as the department and Board of Fish do not point their finger at the Noyes Island fishery as an interceptor of Klawock sockeye, we are okay, but if future tagging information were to show that this fishery does have an impact then ADF&G might be forced to significantly curtail our District 4 fishery, even if Klawock sockeye are an insignificant part of our catch.

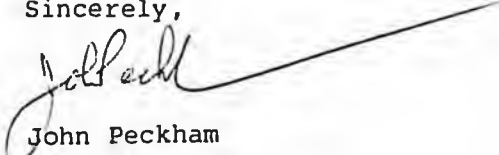
ALSO
SITKOH
BAY
SEINING
IN DISTRICTS
12 & 13

To prevent significant curtailment of commercial fishing, I think the content or the intent of the subsistence legislation should address the following:

- 1.) It should not result in a significant increase or the potential for a significant increase in the number of subsistence fish taken.
- 2.) If a priority to harvest the resource must be given then it should be limited to subsistence users.
- 3.) Commercial and sport fisheries should be managed in such a way that over the long term subsistence users will have the opportunity to harvest their traditional number of fish. This means that in most years of normal or above normal returns subsistence users will have the opportunity to harvest their traditional number. They can not be "guaranteed" this opportunity in years of low abundance. In fact, there can be no guarantees. No one can guarantee that a fish harvester will catch the fish that are available. No one can guarantee that stocks will be as strong as the predicted return. If ADF&G had to "guarantee" fish to a "subsistence" system no matter what the condition of the stocks, then their management would always have to be extremely conservative and the state and commercial fisheries would accordingly suffer a loss of income.
- 4.) The economy of a rural community should never be threatened by the significant curtailment of that community's commercial fishing for the purpose of guaranteeing the availability of subsistence fish.
- 5.) When stocks are low in a subsistence system, management should be able to attempt to satisfy subsistence needs by allowing subsistence fishing in other available systems or by substituting another species for the traditional one.

I hope you can make use of my comments. Thank you for the information.

Sincerely,


John Peckham
President

Hein
4/17/86 ✓

Original sponsors: Thompson, Sund,
Marrou and Taylor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
 2 SENATE CS FOR CS FOR HOUSE BILL NO. 331 (Judiciary)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 FOURTEENTH LEGISLATURE - SECOND SESSION
 5 A BILL

6 For an Act entitled: "An Act relating to the theft of commercial fishing
7 gear."

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

9 * Section 1. AS 12.55.045 is amended by adding a new subsection to read:

10 (d) In a case in which the defendant is convicted of a violation
11 of AS 11.46.120 - 11.46.150 and in which the property is commercial
12 fishing gear as defined in AS 16.43.990, the court shall consider the
13 victim's need for, and may order, restitution that may include compen-
14 sation for loss of income.

15 * Sec. 2. AS 12.80.050 is amended by adding a new subsection to read:

16 (c) In a prosecution for a violation of AS 11.46.120 - 11.46.150
17 in which the property is commercial fishing gear as defined in AS 16.-
18 43.990, the gear shall be returned to the owner as soon as possible.
19 The prosecutor may obtain photographs of the gear for use as evidence
20 in accordance with (a) and (b) of this section.

21 * Sec. 3. AS 16.05.710 is amended by adding a new subsection to read:

22 (b) Upon a first conviction of a person for a violation of
23 AS 11.46.120 - 11.46.150 in which the property is commercial fishing
24 gear as defined in AS 16.43.990, the court shall, in addition to the
25 penalty imposed by law, order a suspension of the person's commercial
26 fishing privileges for one year. Upon a second or subsequent convic-
27 tion, the court shall, in addition to the penalty imposed by law,
28 order a suspension of the person's commercial fishing privileges for
29 two years.

Alaska State Legislature

DISTRICT 27
AKHIOK
CHIGNIK
CHIGNIK LAGOON
CHIGNIK LAKE
CHINIAK
IVANOF BAY
KARLUK
KODIAK
LARSEN BAY
OLD HARBOR
OUZINKIE
PERRYVILLE
PORT LIONS
WOMENS BAY



Representative
Dave Thompson

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-2487
(907) 465-2498

P.O. BOX 75
KODIAK, ALASKA 99615
(H) (907) 486-4899
(LIO) (907) 486-8116

April 8, 1986

To: Senator Pat Rodey
Chair, Senate Judiciary

From: Representative Dave Thompson *DWT*

Re: HB 331

This is to confirm my request to have HB 331, Theft of Commercial Fishing Gear, heard in Judiciary. I support the changes requested by Senator Fred Zharoff, and would like to have it heard as soon as possible.

Thank you.

c.c.: Senator Fred Zharoff



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

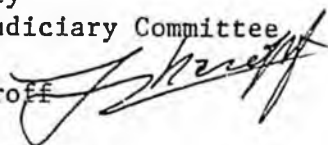
P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Patrick Rodey
Chairman - Senate Judiciary Committee

FROM: Senator Fred F. Zharoff 

DATE: April 18, 1986

RE: Amendment to HB 331

I wish to request that the following amendment be made to the Judiciary Committee Substitute for HB 331, "An Act relating to the theft of commercial fishing gear."

(b) in Sec. 3 (page 1, lines 22 and 23) should be amended to read:

(b) Upon a first conviction of a person for a violation of AS 11.46.120 - 11.46.130 (11.46.150) in which the property is commercial fishing gear....

The effect of the amendment is to make the suspension of commercial fishing privileges applicable only to individuals convicted of first or second degree theft (class B and C felonies).



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/7/89
Date

H B

5 5 6

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
2/17	NOTIFY GUYA PHILADELPHIA OF THE DIV. OF INSURANCE
	WHEN HIS LOAN IS SCHEDULED (2575)
2/14	INITIATED SUM HOLDING IN GUYENBERG'S
	OFFICE & REQUESTED HOLDING

NOTIFIED
2/14

STATE OF ALASKA
THE LEGISLATURE

FOURTH STATE CAPITOL
JUNEAU ALASKA 99811
307 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

October 4, 1985

SUBJECT: HB 356

TO: Representative M.M. Miller
House Judiciary Committee

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have requested an analysis of HB 356. This bill would specify that an individual could assign a group life insurance policy. Although no state law at present prohibits such assignment, this would clearly establish the right to make such a transfer.

MFF:mkf
MI:033

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST

Bill/Resolution No: HB 356
 Title: Assignment of Group Life Insurance Policies
 Sponsor: Gruenberg, Taylor, Pettyjohn
 Requestor: House Judiciary
 Date of Request: 11/27/85

FISCAL DETAIL

Agency Affected: Department of Revenue
 BRU: Audit
 Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: The bill will have no impact on this agency, nor on any of the tax revenues this agency administers..

Prepared By: Martin J. Richard *Steen E. Keltet*
 Division: Audit Division

Phone: 465-2320
 Date: 12/9/85

Approved by Commissioner: *Frank Miller*
 Agency: Revenue

Date: 12/10/85

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/resolution No.: HB 356
 Title: An assignment of group life policies of insurance
 Sponsor: Gruenberg et al.
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.
 Program Category Affected: Consumer Protection
 BRU, program or subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FI 83	FI 84	FI 85	FI 86	FI 87	FI 88
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-

GRANTS: (Thousands of Dollars)

FEDERAL FUNDS						
OTHER						
TOTAL						-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

EMPLOYEES: Attach a separate page if necessary

Prepared By: John George, Director Phone: 465-2515
 Division: Insurance Date: 4/25/85
 Approved by Commissioner: Loren K. Lounsbury Date: 4/25/85
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

7/1/84

State of Alaska

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
(Co-Chairman)
HOUSE JUDICIARY
HOUSE COMMUNITY AND
REGIONAL AFFAIRS



POUCHA
JUNEAU, ALASKA 99811
(907) 465-4968

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spennard, Upper Midtown Anchorage

January 24, 1986

PRESS RELEASE

RE: HB 136. "Assignment of Group Life Insurance Policies"

Increased federal taxes for Alaskans could result from legislation scheduled for a House floor vote today, according to Max Gruenberg, Anchorage Democrat and prime sponsor of HB 136. "Assignment of Group Life Insurance Policies."

The bill authorizes assignment of group life insurance policies by an insured person to another party.

"Forty-eight other states already have group life policies assignable by statute. By joining the other states, we correct an inequitable federal tax situation which discriminates against Alaskans," said Gruenberg.

"According to the IRS, for tax purposes you need specific statutory authorization to assign your group life policy to someone else. Without the authorization, IRS requires payment of estate taxes on the policy before the proceeds go to the heir."

"The reduction in federal tax income is insignificant, but the bill makes estate planning simpler and fairer for Alaskans," said Gruenberg.

HOUSE JUDICIARY
OCTOBER 25, 1985
10:00 AM

Members Present:

Rep. Mike ...
Rep. ...
Rep. ...
Rep. ...
Rep. ...
Rep. ...

Members Absent:

Rep. ...

COMMITTEE CALENDAR

HB 356:

An Act relating to assignment of group life policies of insurance.

HB 408:

An Act providing for the adoption of the Uniform Simultaneous Death Act.

HB 358:

An Act relating to nonprobate transfers.

HB 368:

An Act adopting the Uniform Comparative Fault Act; and amending rules of Civil Procedure 7, 49, 52 and 58.

WITNESS REGISTER

Jim Jordan
Division of Insurance
Dept. of Commerce & Economic Development
3601 C St.

Rodney Kleedehn
Alaska Bar Association
550 W 8th Ave.
Anchorage, AK 99501
Position Statement: In favor of HB 353

George Goerig
Alaska Bar Association
405 W 36th
Anchorage, AK 99503
Position Statement: In favor of HB 356 and HB 408

David Carter
420 E. 56th Ave. A
Anchorage, AK 99578
Position Statement: In favor of HB 363

J.P. Tansen
American Council of Life Insurance and
American Insurance Association
P.O. Box 1111
Fairbanks, Alaska
Position Statement: American Council of Life Insurance
supports HB 353
American Insurance Assn supports HB

PREVIOUS ACTION

ACTION NARRATIVE

TAPE ONE SIDE ONE
NUMBER 01.3

The House Judiciary Committee was called to order at 10:15 AM by Chairman Miller. Members present were: Rep. Sund, Rep. Clocksin, Rep. Pettyjohn and Rep. Gruenberg. Rep. Taylor arrived later.

Rep. Miller asked all those testifying to be very specific as to the bill they are speaking about.

George Goerig testified, representing the Alaska Bar Association, Taxation Committee. Mr. Goerig gave a background on HB 356. In other states, some of the major assets a person owned were either grouped in policies or the type of group plans that denied the person a right to do certain things with them. Many people trying to plan estates tried to transfer ownership out of that person's estate to avoid federal death taxes. The Internal Revenue Service decided that if the state where the person is a resident enacts a law saying it is legal, they will no

*Goerig
HB 356*

longer question it. There are only one or two states other than Alaska who have not enacted legislation to allow the transfer of ownership.

TAPE ONE SIDE ONE
NUMBER 05.3

Rep. Miller asked why a person would want transfer of ownership rather than to be designated a beneficiary. Mr. Goerig answered that if a transfer is made more than 3 years prior to the owner's death, the policy is not taxable.

TAPE ONE SIDE ONE
NUMBER 06.7

Rep. Gruenberg asked if the owner transferred the policy to someone else, is that taxed as a gift? Mr. Goerig replied it is taxable if it has value. Often the group policies do not have a cash surrender value. Many times the owner would borrow the money out, leaving no cash surrender value, and then transfer the policy. Rep. Gruenberg then asked if a state estate tax exists, and if so, if this bill would decrease the amount of money coming into the state of Alaska. Mr. Goerig answered the amount would be minimal. When the Uniform Probate Code was adopted in 1971 the inheritance tax was abolished but a "pick-up" tax was retained. The "pick-up" tax is a certain amount the federal government will allow as a state death tax credit. In effect, the federal government would collect the taxes if the state did not. The amount is minimal however, because if you reduce the person's federal estate taxes you also reduce the amount of credit available for the state to pick up.

Gift Tax
State Tax

TAPE ONE SIDE ONE
NUMBER 09.2

Rep. Clocksin asked how many states have adopted this legislation. Mr. Goerig answered approximately 43 or 49. Rep. Clocksin noted the committee should obtain a fiscal note from the Estate Tax Division.

Rep. Sund noted that it is not actually a loss of revenue as the tax would be collected at a later date upon the death of the transferee.

Rep. Clocksin asked if this legislation would apply to the Alaska Bar Association's group life policy and the State of Alaska's group life policy. Mr. Goerig answered yes, any type of group policy would be affected.

TAPE ONE SIDE ONE
NUMBER 17.2

Rep. Gruenberg suggested making the title of the bill more specific.

HB 358

TAPE ONE SIDE TWO
NUMBER 000

Rep. Clocksin asked if the goal of the bill was to pay certain benefits, such as the proceeds of life insurance policies, directly to the beneficiary without any of it going to pay off debts. Mr. Kleedehn responded that the bill does accomplish that purpose. Mr. Kleedehn also stated life insurance proceeds are a quick liquid asset often provided for the family to get through the period of probate and that probate assets are used to pay debts.

TAPE ONE SIDE TWO
NUMBER 12.3

Rep. Gruenberg questioned lines 11-12 on page 1 of HB 358. He asked if the intent of the legislation was to prevent creditors from obtaining a savings bond or mortgage or escrow. He also asked if the intent of that section was to shift the burden of showing that the testator's intent is that the money go to creditors. Mr. Goerig stated that these types of things have always been treated as assets of the estate and was unclear as to why they were included. Mr. Kleedehn noted the substantive language is in subsection c which states that the proceeds of these types of contracts, if left to the estate, are not subject to creditors claims to any greater extent than if they were left to someone else. Rep. Gruenberg asked the members of the Bar Association to work with him during the interim on the bill as the intent of the language is unclear.

TAPE ONE SIDE TWO
NUMBER 21.4

Rep. Gruenberg asked if the intent of the bill was to be revenue-neutral. Mr. Goerig stated yes. Rep. Gruenberg asked if the Department of Revenue prepares a fiscal note with some impact, will it be necessary to add any language to the bill to bring it back to a revenue-neutral situation. Mr. Goerig answered no because it is controlled by federal rather than state law. Rep. Clocksin requested the committee obtain a fiscal note from the Department of Revenue.

Jim Jordan from the Division of Insurance testified on HB 356. Rep. Gruenberg asked Mr. Jordan the Division's position on the bill. Mr. Jordan stated the Division favored the bill. Rep. Sund asked what the probable fiscal impact would be and Mr. Jordan replied, "by the Division of Insurance, zero, because it really does not affect our acct."

DIV Ins
HB 358
Favors the
bill

HB 408

Rep. Miller noted Rep. Taylor's presence. Rep. Gruenberg asked Mr. Goerig if he received the sponsor substitute to HB 408. Mr. Goerig replied yes.

Mr. Goerig noted the Uniform Simultaneous Death Act was enacted to provide for disposing of a persons assets and to prevent lawsuits in a situation when there was no evidence of who died first. The Uniform Probate Code contains a provision which sets out a procedure if neither person survives the other by 120 hours. The problem with this provision is that it only deals with probate property. Alaska is the only state to repeal the Uniform Simultaneous Death Act. All other states that have adopted the Uniform Probate Code did retain the Uniform Simultaneous Death Act. There is a slight conflict between the legislation and the Uniform Probate Code as the number of hours are not included in the bill. The community property section was left in the bill for the protection of the spouse.

no - it
15 OK

TAPE ONE SIDE ONE
NUMBER 40.8

Rep. Gruenberg asked if the intention of the bill is to extend the concept of unravelling a simultaneous death problem to a nonprobate estate. Mr. Goerig replied yes and that Alaska has the highest ratio of simultaneous deaths. Rep. Gruenberg noted the difference between the 2 bills is the addition of sections 13.43.020(a) page 1, line 13 and (b) on page 2, line 3 in the sponsor substitute. Mr. Goerig stated subsection b essentially says if the Probate Code presumptions are applied then they will apply over section 13.43.020. Rep. Gruenberg asked Mr. Goerig's opinion about amending the statute where it says that the rules of evidence apply unless specifically displaced by 13.06-13.06 to read 13.06-13.43. Mr. Goerig felt it would clarify the statute.

TAPE ONE SIDE ONE
NUMBER 40.8

Rodney Kleedehn from the Alaska Bar Association, Taxation Committee, testified on HB 358. HB 358 concerns the liability of retirement benefits and life insurance proceeds from creditors claims against the estate. The change would provide that employee benefits and life insurance proceeds left to a probate estate or to a testamentary trust would also be exempt from claims of creditors, instead of allowing the exemption only to an individual. Essentially the mechanism through which the employee benefits or life insurance pass would not determine whether or not creditors can retain those benefits. The mechanism can be an estate, individual, or trust, for example. In theory a testamentary trust does not come into existence until the probate estate is closed.

program." Rep. Clocksin asked whether the Division of Insurance handled the state's life group insurance policy. Mr. Jordan replied the Division of Retirement and Benefits in the Dept. of Administration handles the life group insurance policy. Mr. Jordan stated that the State life insurance plan already allows for the assignment of benefits therefore it would not be affected.

TAPE ONE SIDE TWO
NUMBER 30.6

David Carter, representing self, testified on HB 368. Mr. Carter urged passage of the bill in its present form. Mr. Carter stated that prior to 1975 Alaska used the common law rule of contributory negligence. He felt the rule was unnecessarily harsh, and was shelved. The state adopted the pure form of comparative fault and negligence in 1975. The legislature adopted in 1970 the Uniform Contribution Among Joint Tortfeasor Act which allows for pro rata contribution among joint tortfeasor. The difficulty with the system of requiring each party to pay an equal share of the loss is that the defendants are often not equally responsible. HB 368 brings Alaska law up to date with the adoption of pure comparative negligence regarding contributions among joint tortfeasors. Mr. Carter clarified the following sections: Sec.09.17.010 (page 1, line 12) essentially codifies what was judicially adopted in the Katz opinion; Sec. 09.17.020 requires the fact finder to answer special interrogatories to the issue of the amount of fault of each party to the action and also entities that are not party to the action. Mr. Carter felt the controversial portion of Sec. 09.17.020 is section (d) which provides all parties bear the effect of another party's insolvency according to their share of adjudicated fault.

Rep. Miller questioned why if a person is 50% guilty he should have to pay 70%. Mr. Carter answered that is derived from the common law doctrine joint and several liability which some people would advocate be abolished, however others feel it would leave a lot of people without a solvent judgement debtor. This act seeks to impose the risk of insolvency in an equitable manner on other solvent defendants and the claimant, if the claimant is at fault, in proportion to the degree of fault.

TAPE TWO SIDE ONE
NUMBER 000

Discussion of Sec. 09.17.020 (b) continued. Mr. Carter explained that Sec. 09.17.030 states the claim and the counterclaim may not be set off against each other except by agreement of the parties. Essentially this section requires each insurance company to pay the full amount of

the claim rather than paying the offset amount. Section 09.17.040 was then discussed. Mr. Carter felt this section deals with the right of contribution and reviews when a person has a right of contribution. The section changes the basis of the share from pro rata to each person's equitable share of the obligation. Mr. Carter then discussed Sec. 09.17.060 which he felt was controversial. He explained the section to say that if a claimant settles with one of the defendants and the defendant's share amounts to more than the amount of money received in the settlement, the other defendants are not responsible for that portion of the share. Under the current law other defendants are entitled to a pro tanto reduction in the judgement. Rep. Sund asked which method would encourage people to settle. Mr. Carter replied the current system in his opinion because although it is inequitable it does not require precision. Rep. Gruenberg felt this section to be an "absent chair" situation. Mr. Carter suggested the following article to committee members found in Volume 30 of the Hastings Law Journal, May 1979, by John Fleming, entitled "Report to the Joint Committee of the California Legislature on Tort Liability on the Problems Associated with American Motorcycle Association vs. Superior Court".

TAPE TWO SIDE ONE
NUMBER 29.1

Rep. Gruenberg asked whether it would be proper for the legislature to repeal the Uniform Contribution of Tortfeasors Act whether the bill was adopted or not. Mr. Carter answered that such an action would create more difficulty and would be dodging the issue. Rep. Gruenberg noted the Supreme Court has asked the Legislature to look at the statute several times.

TAPE TWO SIDE ONE
NUMBER 31.0

J.P. Tangen, representing the American Council of Life Insurance testified. He stated the Council asked him to advise the committee that HB 356 is already law in most states and it has no objection to amending the statute, therefore supports the bill. HB356

Mr. Tangen, also representing the American Insurance Association, testified on HB 368. He informed the committee of similar laws in other states. What is known as "Type 1 Comparative Negligence" has been adopted either judicially or statutorily in 13 states as of December 1982. The states that have adopted it judicially include Alaska, California, Florida, Illinois, and Michigan. The states that have adopted it statutorily are Louisiana, Michigan, Mississippi, New York, Puerto Rico and Washington state. He finds problem with comparative negligence to be that it HB368

represents an extreme correction to a difficult situation which was posed by the earlier law in Mr. Tangen's opinion. Mr. Tangen feels the insurance companies are going to be setting their rates based on the predictability of risk so a well drafted statute which will help predict risks for the insurance carrier to formulate would be desirable.

TAPE TWO SIDE ONE
NUMBER 41.3

Rep. Gruenberg spoke about the word "uncollectible" on page 2, line 19. He gave an example of a person who is solvent but who through specific planning has made a judgement uncollectible. Rep. Gruenberg also stated that claimants are looking at governments as a deep pocket more frequently. Mr. Tangen stated the contribution between joint tortfeasers is a very substantial problem. He informed the committee that certain municipalities are contemplating disincorporation to avoid this responsibility. Mr. Tangen concluded his testimony by saying he would be prepared to make stronger recommendations by the beginning of the session.

Rep. Miller recessed the meeting until 1:30 PM.

Rep. Miller reconvened the meeting at 1:45 and adjourned the meeting due to lack of further legislature.



Official Business

Alaska State Legislature

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

DATE: February 11, 1986

TO: Senator Rodey, Chair
Senate Judiciary Committee

FROM: Rep. Max Gruenberg, Jr. *MG*

RE: HB 356:
"An Act relating to the assignment of group life
insurance policies"

I would greatly appreciate it if HB 356, which relates to the assignment of life insurance policies and amends AS 21.42.270, would be scheduled in the Judiciary Committee as soon as it may be possible.

Thank you very much.

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2515

DIVISION OF INSURANCE

February 11, 1986

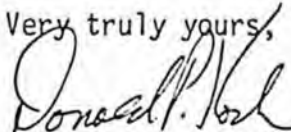
The Honorable Fred Zharoff
Chairman
Senate Labor & Commerce Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Zharoff:

Re: HB 356 - Assignment of Group
Life Insurance

A number of questions concerning references to an Attorney General's Opinion were raised at the Senate Labor and Commerce hearing on HB 356 held on February 10, 1986. The suggestions of Mr. Jordan never resulted in a formal request for an Attorney General's Opinion. There were some casual discussions with the director at that time and the Attorney General's Office. The general drift of discussions at that time was, that in view of the potential impact from federal estate tax situations, the preferred method of dealing with the issue would be specific legislation to clarify the extent of assignment possible. The thinking was that interpretations would be subject to question where clear statutory language would probably not be so subject. I'm sorry that I did not anticipate the questions generated by the memo and accompany it with an explanation.

Very truly yours,



Donald P. Koch
Chief of Market Surveillance

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