

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4640 HJUD HB 24 - HB 28

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Rule 41. Bail.

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to AS 12.30.010—12.30.080.

(b) **Prosecuting Attorney — Appearance and Notice.** The prosecuting attorney may appear and be heard in all proceedings relating to bail. The judge or magistrate, in his discretion, may require that notice of such proceedings be given the prosecuting attorney.

(c) **Surrender of Defendant.** At any time before forfeiture of the undertaking or the cash deposit in lieu thereof, the sureties on the undertaking or the owner of the deposit may surrender the defendant to the custody of a peace officer or the defendant may surrender himself to the officer. There shall be delivered to the officer at the time of surrender a certified copy of the undertaking or a certificate as to the cash deposit executed by the clerk of court. The peace officer shall thereupon detain the defendant in custody as upon a commitment and acknowledge the surrender by a written certificate.

(d) **Forfeiture.**

(1) **Declaration.** If the person released on bail on the giving or pledging of security fails to appear before a court or judicial officer as required, the judge or magistrate before whom the person released was to appear shall set a time for hearing to determine if the nonappearance was willful. Notice of the hearing shall be furnished and opportunity to be heard shall be granted to the prosecuting attorney, the defendant, the defense attorney, and the person giving or pledging the security. Nothing in this section shall interfere with the issuance of a summons or bench warrant for a person who fails to appear as required before a court or judicial officer.

(2) **Judgment of Forfeiture.** If after the hearing the judge or magistrate determines that the nonappearance of the person released on bail was willful, the security, given or pledged, shall be forfeited. An appeal may be taken of the judgment of forfeiture in the manner of other appeals.

(3) *Enforcement.* Execution shall issue on judgments of forfeiture in the same manner as on other judgments for the payment of money. (Amended by Supreme Court Order 157 effective February 15, 1973)

Generally:

CROSS REFERENCES: Crim. Forms 55—59, 61—64, 66, 69—72

(a) **CROSS REFERENCES:** AS 12.30.010—AS 12.30.080 (as amended by c. 20 SLA 1966); Crim. Forms 53, 54

(c) **CROSS REFERENCES:** AS 12.30.020; Crim. Form 60

(d)(1) **CROSS REFERENCE:** Crim. Form 65

(d)(2) **CROSS REFERENCES:** Crim. Forms 67, 68

(2) *Setting Aside.* The court may direct that a forfeiture be set aside upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) *Enforcement.* When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. By entering into an undertaking the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses. The written undertaking shall provide for enforcement in accordance with this rule.

(4) *Remission.* After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(k) *Exoneration.* When the condition of the undertaking or the deposit of cash made in lieu thereof has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the undertaking or by a timely surrender of the defendant into custody. When exoneration is ordered and bail released, any cash deposit made in lieu of an undertaking shall be returned to the owner thereof. Before exoneration is ordered or bail released, reasonable notice of the application for same shall be given to the district attorney or to his authorized representative.

(l) *Recommitment of Defendant—New Bail.*

(1) *Recommitment.* The superior court may order that a defendant previously admitted to bail be recommitted and placed in custody in either of the following instances:

[a] Where there is a breach of the condition of the undertaking or the deposit of cash made in lieu thereof.

[b] Where it appears to the court that any surety on the undertaking is dead or not qualified.

[c] At any time following the return of an indictment or information.

If the defendant is present in court when the order is made, he must be placed in custody at that time. If he is not present, a bench warrant shall be issued for his arrest.

(2) *New Bail.* Except where the breach consists of the defendant's failure to appear for judgment upon conviction, the court shall permit him to furnish new bail with different sureties or in an increased amount, as specified in the order.

RECOMMENDATIONS. THERE BEING NO OBJECTION, THE MOTION PASSED.

House Judiciary Committee 4/10/86 8:00AM

NUMBER 367

THE COMMITTEE DISCUSSED HB 644. REP. GRUENBERG MOVED THE 3/31/86 VERSION OF CSHB 644 FOR THE PURPOSE OF DISCUSSION. THERE WAS NO OBJECTION.

REP. GRUENBERG EXPLAINED THE BILL BRINGS ALASKA INTO CONFORMANCE WITH 42 OTHER STATES AND THE FEDERAL SYSTEM. CURRENTLY THERE IS NO PROVISION ALLOWING THE COURT TO RETURN ALL OR PART OF THE BAIL BACK TO THE BAILER, IF THE OFFENDER IS BROUGHT INTO COURT AFTER JUMPING BAIL. ALASKA'S STATUTE WAS ORIGINALLY DRAFTED BASED UPON THE FEDERAL RULE OF CRIMINAL PROCEDURE WHICH WAS SUBSEQUENTLY AMENDED TO ALLOW REMISSION OF BAIL. THIS BILL WAS INTRODUCED AT THE REQUEST OF BAIL BONDING COMPANIES. THE BILL AUTHORIZES THE BONDING COMPANY TO ARREST THE PERSON IF A CERTIFIED COPY OF THE ARREST WARRANT HAS BEEN OBTAINED. THE BOND COMPANY WOULD BE REQUIRED TO COMPLY WITH COURT ORDERS. THE BILL ALSO ALLOWS THE BOND COMPANY TO APPLY FOR REMISSION OF BAIL.

NUMBER 427

REP. CLOCKSIN ASKED HOW THE MIRANDA RIGHTS APPLY TO A BAIL BONDSMAN. REP. TAYLOR ANSWERED IF THE BAIL BONDSMAN ATTEMPTS TO USE ANYTHING SAID BY THE OFFENDER IN COURT, THE BAIL BONDSMAN CANNOT APPLY FOR REMISSION OF BAIL.

NUMBER 434

REP. GRUENBERG REFERRED TO AN 1810 U.S. SUPREME COURT DECISION WHICH STATED THE DEFENDANT AND THE BAIL BONDER HAVE A CONTRACTUAL RELATIONSHIP WHICH CONTAINS NO CONSTITUTIONAL PROTECTIONS.

NUMBER 426

REP. CLOCKSIN ASKED FOR A LEGAL OPINION ON DUE PROCESS RIGHTS IN THIS SITUATION.

NUMBER 460

REP. PETTYJOHN ASKED FOR CLARIFICATION OF SECTION (C). REP. GRUENBERG EXPLAINED THE PROCEDURE. IF THE DEFENDANT DOES NOT SHOW UP FOR TRIAL A NOTICE OF HEARING AND ARREST WARRANT ARE ISSUED. THE HEARING DETERMINES WHETHER THE ORIGINAL ORDER FOR THE HEARING WAS VALID, AND WHETHER THE PERSON HAS NOT APPEARED. A JUDGEMENT OF FORFEITURE IS GRANTED IF THE COURT FINDS THOSE TWO FACTS. THE BILL WOULD APPLY IF THE DEFENDANT IS BROUGHT IN BETWEEN THE ORIGINAL NOTICE AND THE HEARING.

CHAIRMAN MILLER NOTED HB 644 WOULD BE HELD OVER UNTIL A LEGAL OPINION OF THE MIRANDA RIGHTS QUESTION COULD BE OBTAINED.

NUMBER 525

CHAIRMAN MILLER ASKED IF A PRIVATE CITIZEN HAS TO READ THE DEFENDANT'S RIGHTS WHEN MAKING AN ARREST. REP. CLOCKSIN ANSWERED NO.

House Judiciary Committee Meeting
4/30/86 1:30 P.M.

REPRESENTATIVE CLOCKSIN EXCUSED HIMSELF TO GO TO A DOCTOR'S APPOINTMENT AT 2:15.

NUMBER 125

CHAIR MILLER ANNOUNCED THAT THE COMMITTEE WOULD TAKE UP HB 644 NEXT, BUT WOULD STAND AT RECESS UNTIL REPRESENTATIVE GRUENBERG, THE PRIME SPONSOR, ARRIVED, AS HE WAS NEEDED BOTH FOR AN EXPLANATION OF THE BILL AND A QUORUM.

DUE TO TAPE MALFUNCTION --- TAPE BROKE, THE REMAINDER OF THE MEETING IS NOT RECORDED.

REPRESENTATIVE GRUENBERG ARRIVED AND THE MEETING WAS CALLED BACK TO ORDER.

A MOTION TO ADOPT COMMITTEE SUBSTITUTE TO HB 644 WAS MADE. THERE WERE NO OBJECTIONS SO THE CS WAS ADOPTED.

A MOTION TO MOVE CSHB 644, JUDICIARY, OUT OF COMMITTEE, WITH INDIVIDUAL RECOMMENDATIONS. THERE WERE NO OBJECTIONS SO CSHB WAS MOVED OUT.

THE MEETING WAS ADJOURNED AT 2:20 P.M.

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

DATE	PAGE	ACTION
02/17/85 (H)	2148	READ THE FIRST TIME - REFERRAL(S) STATE AFFAIRS JUDICIARY FINANCE RULES

HB 643

AN ACT RELATING TO CORPORATIONS.

PRIME SPONSOR: GP' IRG BY REQ
CO-SPONSORS:

CURRENT STATUS:) JUD

DATE	PAGE	ACTION
02/17/86 (H)	2149	READ THE FIRST TIME - REFERRAL(S)
02/26/86 (H)	2237	L&C REFERRAL WAIVED JUDICIARY RULES

HB 644

AN ACT RELATING TO ARREST BY A SURETY AND REMISSION OF BAIL.

PRIME SPONSOR: GRUENBERG
CO-SPONSORS: BOUCHER

CURRENT STATUS: (H) FIN

DATE	PAGE	ACTION
02/17/86 (H)	2149	READ THE FIRST TIME - REFERRAL(S)
05/01/86 (H)	3038	JUD RPT 5DP
05/01/86 (H)	3038	ZERO FIS'L NOTE FINANCE RULES

HB 645

AN ACT RELATING TO PREVAILING WAGES FOR PUBLIC CONSTRUCTION CONTRACTS; AND PROVIDING FOR AN EFFECTIVE DATE.

PRIME SPONSOR: HERRMANN
CO-SPONSORS: WALLIS

CURRENT STATUS: (H) SA

DATE	PAGE	ACTION
02/17/86 (H)	2149	READ THE FIRST TIME - REFERRAL(S) STATE AFFAIRS JUDICIARY FINANCE RULES

HB 646

AN ACT RELATING TO NONGAME WILDLIFE AND NONCONSUMPTIVE USE OF WILDLIFE.

PRIME SPONSOR: MILLER.MM
CO-SPONSORS:

CURRENT STATUS: (H) RES

Original sponsors: Gruenberg and Boucher

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 644 (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 arrest by a surety and remission
7 of bail."

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

9 * Section 1. AS 12.30.060 is amended by adding new subsections to read:

10 (b) If a person released under the provisions of this chapter
11 fails to appear before a court as required or violates the conditions
12 of release, upon the issuance of an arrest warrant by the judge or
13 magistrate, the surety or its agent may arrest the person and deliver
14 the person to a peace officer along with a certified copy of the war-
15 rant. This section does not limit a peace officer's power to arrest.

16 (c) After entry of a judgment of forfeiture, the surety may
17 apply to the court for a remission. If it appears that justice does
18 not require the forfeiture, the court may grant the application and
19 remit forfeiture, in whole or in part, upon conditions that the court
20 may impose. The conditions may include payment of the expenses in-
21 curred in the proceedings for the enforcement of the forfeiture and in
22 securing the return of the defendant.
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STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H JUD	1-28-87	1:30 p.m.
H JUD	1-29-87	1:30 p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/19/87

FURTHER REFERRALS:

DATE: 1/29/87

The Judiciary Committee has considered HB 24

"An Act relating to remission after forfeiture of bail."

RECOMMENDS:

- replace with CS HB 24 (Jud) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature: Kenneth Barnes Note]

[Handwritten signature]
Chairman's signature

(b) After entry of a judgment of forfeiture, the surety may apply to the court for a remission. The court may grant the application and remit forfeiture, in whole or in part, if the defendant subsequently appears before the court, and in other cases if it appears that justice does not require the forfeiture.

BILL NO: HB24

DATE: 2/11/87

TITLE: "An Act relating to remission after forfeiture of bail."

CONTACT: Maj. Walter J. Gilmour
Acting Director
269-5641

DEPARTMENT OF
PUBLIC SAFETY

POSTMASTER /

The Division of Alaska State Troopers' position is neutral on this legislation.

This legislation would permit the return of bail to a surety following a forfeiture of bail for some action of a defendant, but also require the surety to pay for expenses entailed in returning the defendant to the court.

The basic purpose of bail is to deter a non-appearance of the defendant. Passage of this legislation may help bail bondsmen in cases where they are not at fault for a defendant's flight.

William R. Nix

William R. Nix
Acting Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 24
Publish Date: _____

REQUEST
Revision Date: _____
Title: "An Act relating to remission
after forfeiture of bail."
Sponsor: Rep. Boucher
Requestor: House Judiciary

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments and C.I.B.

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan
Division: Alaska State Troopers

Phone: 269-5691
Date: 1/26/87

Approved by Commissioner: William R. Dix *[Signature]*
Agency: Public Safety

Date: 1/27/87

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

JWR
1/27/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 2/6/87

REQUEST

Bill/Resolution No. : CSHB 24 (Judiciary)
 Title : Relating to remission after forfeiture of bail

Sponsor : Reps. Boucher & Gruenberg
 Requestor : House Judiciary Committee
 Date of Request : 1/30/87

FISCAL DETAIL

Agency Affected : Alaska Court System
 BRU : Trial Courts

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

The Alaska Supreme Court has held that the superior court has discretion to order remission of a forfeited bond (Adkerson v. State, No. 3153, 2/6/87). Since it is now established that the courts have inherent authority to take the action authorized by this bill, there is no fiscal impact attributable to the bill.

Prepared by : Karla Forsythe Phone : 264-8228
 Division : General Counsel, Alaska Court System Date : 2/6/87

Approved by Commissioner : Stephanie Gale for Art Snowden Date : 2-6-87
 Agency : Alaska Court System

Distribution (by Agency preparing fiscal note) :

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

Introduced: 1/19/87
Referred: Judiciary

1 IN THE HOUSE

BY BOUCHER AND GRUENBERG

2

HOUSE BILL NO. 24

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to remission after forfeiture of
7 bail."

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

9 * Section 1. AS 12.30.060 is amended by adding a new subsection to
10 read:

subsequently surrendered.

11 (b) After entry of a judgment of forfeiture, the surety may
12 apply to the court for a remission. If it appears that justice does
13 not require the forfeiture, the court may grant the application and
14 remit forfeiture, in whole or in part. The court may impose condi-
15 tions of remission, including payment of the expenses incurred in the
16 proceedings for the enforcement of the forfeiture and in securing the
17 return of the defendant.

if the S has been apprehended and returned or physically cannot be returned because of death or incarceration in another jurisdiction

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES



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

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3718
465-4968/4986

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

MEMORANDUM

DATE: January 27, 1987

TO: Members of the House Judiciary Committee

FROM: Max F. Gruenberg, Jr. *MFG*

RE: HB 24: "An Act relating to remission after forfeiture of bail "

HB 24 will allow the court to "remit" bail. "Bail remission" is a legal term meaning that the court can order a return of all or part of the bail if the offender is brought into court after jumping bail and forfeiting the bond. Without bail remission the bail bondsman has no incentive to apprehend the fleeing felon. Bail remission has resulted in the capture of many bail jumpers.

The bill will bring Alaska into conformance with at least forty-two other states and the federal system. Alaska Rule of Criminal Procedure 41 originally explicitly provided for the remission of bail. In 1973 the Alaska Supreme Court amended the rule to conform to the federal rule. The federal rule at the time did not provide for bail remission, but was subsequently amended to do so. Alaska has not updated its rule and now is in the strange position of being one of the few states (possibly the only state) to prohibit remission of bail after having at one time allowed bail to be remitted.

HB 24 is the same as HB 644, which passed out of the House Judiciary Committee last session, except that I have deleted the first section of HB 644, because it could have created problems. I also reworded some of the language in the bill for the purpose of clarity.

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

FISCAL DETAIL

Bill/Resolution No.: HB 24
 Title: Relating to remission
after forfeiture of bail

Agency Affected: Alaska Court System
 BRU: Trial Courts

Sponsor: Reps. Boucher & Gruenberg
 Requestor: House Judiciary Committee
 Date of Request: 1/22/87

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING : (Thousands of Dollars)

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

It is anticipated that workload and revenue impact will be minimal.

Prepared by: Karla Forsythe
 Division: General Counsel, Alaska Court System

Phone: 264-8228
 Date: 1/26/87

Approved by Commissioner: Stephanie Cole, Not Art Andersen
 Agency: Alaska Court System

Date: 1-27-87

Distribution (by Agency preparing fiscal note):

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

HB

25

REP. TERRY MARTIN

ELECTIVE DISTRICT 13
MOUNTAIN VIEW
RUSSIAN JACK SPRINGS
NUNAKA VALLEY
ELMENDORF A.F.B.
CREEKSIDE
EAST ANCHORAGE



HOME
3960 REKA DRIVE-B6
ANCHORAGE, AK 99508
PHONE 333-6990

DURING SESSION
P. O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE 465-3783

Alaska House of Representatives

M E M O R A N D U M

DATE: February 10, 1988
TO: Representative John Sund, Chairman
House Judiciary Committee
FROM: Representative Terry Martin
SUBJ: CSHB 25 - AFFIRMATIVE ACTION

With the recent implementation of the Governor's reorganization/consolidation of the state EEO offices under the new Office of Equal Opportunity, I feel that the time is appropriate to have public hearing on CSHB 25.

The legislation, in its original form empowered the Office of Equal Opportunity to direct the Department of Administration, Division of Personnel to take certain action with regard to employees who have been discriminated against by the state. However, in keeping with the recent reorganization this legislation has been changed to impact the Human Rights Commission. (Draft CS has been requested from Legal.)

Public interest in the issue of discriminatory action by the state against its employees runs very high. I have documentation on file from many individuals who claim that they have been discriminated against by the state. Some have entered into costly litigation, others could not afford to do so. In one case, after an employee took legal action against the state (at great personal expense) and later settled his case with the state, he was essentially blackballed from future re-employment with the state because of documentation remaining in his personnel records as a result of the discriminatory act that he had taken the state to court for in the first place.

This is just one incident, there are many, many more.



CSHB 25 - Affirmative Action
Page 2

The intent of CSHB 25 is to give the Human Rights Commission more specific statutory power to right the wrong being done to many state employees.

I hereby request that the House Judiciary Committee schedule a hearing on CSHB 25 - Affirmative Action at its earliest convenience.

Thank you for your consideration of my request.

/laj/sund.laj



Alaska State Legislature

House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

Date: February 10, 1987

To: House Committee on State Affairs

From: Lydia Jones, Legislative Assistant
Office of Representative Terry Martin

Re: HB 25 - Affirmative Action

For over two years, our office has been receiving complaints from members of an Anchorage based group called "Minority Victims of Alaska State Government Discrimination". This organization was founded by individuals who felt that they had been discriminated against by the State of Alaska. The group alleges that the State has been discriminatory in its hiring and promotion practices. They further allege that the state attempts to retaliate against employees who have filed discrimination complaints or who have pointed out improper procedures going on in State government.

Take for example the litigation initiated by an employee with six years of state service. Between 1977 and 1982, this individual filed a total of four discrimination suits with the Office of Equal Employment Opportunity and the Alaska Human Rights Commission. In his experience, the administrative complaints received by these state agencies did not result in relief or resolution agreements that were satisfactory to him. This complainant finally took his case to the Superior Court for adjudication. After reaching an out of court settlement with the state, this individual began to reapply for state jobs only to find that he was essentially "blackballed" because his personnel files still contained reports, performance appraisals and other documentation that was the result of the discriminatory practices that he had been subjected to during his past employment with the state.

Another example is that of a two year state employee who "blew the whistle" on certain improprieties regarding the management and control of state property. Investigation of these improprieties led to the firing of his boss and a grand jury probe into the affairs of the department. As a result of these revelations, this individual was laid off. He was told that the lay off was due to "budgetary constraints". This

individual filed two discrimination complaints with the Alaska Human Rights Commission. The arbitrator in this action concluded that this employee was laid off by certain state officials partly in retaliation for questioning safety practices at work and ordered that he be reinstated.

These examples are only two of many.

The State Office of Equal Employment Opportunity as established by statute in 1985, was given the responsibility to administer the equal employment opportunity program and to ensure its compliance. The office was never given the authority to "enforce" the concept of equal employment opportunity. Under AS 44.19, the Office of Equal Employment Opportunity can only recommend solutions to an agency if that agency is found to be in noncompliance with affirmative action guidelines. The agency is in no way obligated to comply with those recommendations.

HB 25 will enable the Office of Equal Employment Opportunity to enforce compliance with affirmative action standards, guidelines and procedures by:

- 1) forbidding an agency to hire or promote employees and requiring an agency to reverse a personnel action including a hiring decision if it finds that the action was based on a discriminatory employment practice.

- 2) requiring an agency to change its selection procedures if it finds that the procedures have a discriminatory affect on members of a protected class.

- 3) requiring an agency to hold a disciplinary hearing to determine whether an employee has violated this subsection; the Office of EEO may participate in the hearing.

HB 25 will also require the Division of Personnel in the Department of Administration to purge records from an employee's personnel file if the records are the direct or indirect result of complaint of unlawful discrimination by a state official or employee. One official of the State of Alaska acknowledged that, "The criminal justice system in this state basically treats convicted felons better than the State personnel system treats employees and former employees". By this he meant that under certain circumstances, a convicted felon may have his/her record purged after their sentence has been satisfied and they are released from probation. However, a state employee who has filed a complaint or who has

derogatory documentation on disciplinary actions in his/her personnel file has no such recourse.

We felt that it was important to provide for the protection of these individuals. Once information of this type has been placed in a personnel file, it remains there indefinitely. The end result is that the individual is passed over for promotion or finds it virtually impossible to get rehired by the state once he/she terminates.

In summary, we feel that this legislation will give the Office of Equal Employment Opportunity the "clout" it needs to really get down to the business of implementing the statewide Affirmative Action Plan.



Alaska Public
Employees Association **APEA**

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

MEMORANDUM

TO: Representative Fran Ulmer
Chairwoman, State Affairs Comm.

FROM: Cherie Shelley
Executive Director

SUBJECT: HB 25 - An Act relating to affirmative action

DATE: February 12, 1987

The Alaska Public Employees Association has no objection to the overall thrust of HB 25, a bill introduced by Representative Martin that would greatly strengthen the powers of the Office of Equal Employment Opportunity with respect to equal employment opportunity and affirmative action in the executive branch of state government. APEA does have questions about a couple of specific items in the bill, however.

Proposed AS 44.19.442(b)(5) (Section 1 of this bill) would require an agency to hold a disciplinary hearing to determine whether an employee has violated equal employment or affirmative action principles. It is unclear to us exactly how this would work. What type and amount of evidence would the office have to have before it could require such a hearing? Who would determine an appropriate sanction if some sort of violation were found? Would the hearing be a full-blown adversary proceeding, or just an opportunity for the employee to respond to accusations against him or her? How does this hearing fit into the contractual grievance procedure? (APEA of course would strenuously oppose this provision if it were intended to supplant the arbitration procedure.) In short, there are some questions about this section that definitely need to be answered.

Proposed AS 44.19.442(c) (Section 2 of the bill) provides that any collective bargaining agreement between the State and a labor association may not "contradict" the statutes on the Office of Equal Employment Opportunity. APEA has no problems with the basic principle of this section, that a collective bargaining

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

agreement must incorporate the concepts of equal employment opportunity and affirmative action. (The current agreements between the State and APEA provide that a special promotion list of minorities and/or women may be used instead of the normal promotion list when the need for the special list is certified.) However, again APEA has problems with the idea of prohibiting conflict with any of the myriad provisions of AS 44.19.441 - 44.19.449; this is, in our opinion, too constricting on the collective bargaining process. Thus, for instance, Rep. Martin's bill in proposed AS 44.19.442(b)(4) would empower the office to require an agency to change its selection procedures if it finds that the current procedures have a discriminatory effect. This might require the overriding of a carefully negotiated contract provision, one agreed to with affirmative action goals in mind. In our view the language of proposed AS 44.19.442(c) is just too broad.

CS/kr



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Alaska Public
Employees Association **APEA**

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

TO: Representative Fran Ulmer
Chairwoman, State Affairs Committee

FROM: John B. Gaguine *JBG*
General Counsel
Alaska Public Employees Association

DATE: February 17, 1987

At the State Affairs Committee's February 13 meeting, I orally suggested some changes to Representative Martin's HB 25 that would alleviate APEA's technical concerns. You asked that I put those suggestions in writing. Here they are:

1. Change the proposed new language in AS 44.19.442(b)(5) to read: "(5) request an agency to investigate whether an employee has violated this subsection, and to impose discipline if the investigation reveals facts warranting it."
2. Change the first sentence of proposed AS 44.19.442(c) to read: "A collective bargaining agreement adopted under AS 23.40.070 - 23.40.260 (Public Employment Relations Act) must be consistent with principles of equal employment opportunity and affirmative action."

Thank you for your consideration of these changes.

JBG/baa

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February
1987

Editor: Tim Weiss

UMC MEETING

February 6, 5-7:30 pm
Filipino Community Hall
251 South Franklin St.

AGENDA:

Appointment of Committees on UMC's function: membership, fund raising, legislative lobbying, Martin Luther King anniversary 1988, problem of UMC, solutions.

Meetings are open to the public.

MEMBERSHIP DUES DUE

UMC Treasurer, Aida Ganey, has informed me that UMC membership dues are due. UMC needs your support to continue putting out this newsletter, to continue to provide support to the minority community, put on functions such as Martin Luther King Jr. Day celebrations, and future efforts. Dues are totally tax deductible.

AFFIRMATIVE ACTION BILL INTRODUCED

As Review by: Ben Holganza, UMC President

HB 25 entitled "An Act relating to affirmative action" was recently introduced by Representative Terry Martin. This would amend the State Office of EEO statute by adding a few requirements and duties to the office, namely:

- 1) *require the division of personnel in the Department of Administration to purge records from an employee's personnel file if the records are the direct or indirect result of complaint of unlawful discrimination by a state official or employee;*
- 2) *forbid an agency to hire or promote employees and require an agency to reverse a personnel action including a hiring decision if it finds that the action was based on a discriminatory employment practice;*
- 3) *require an agency to change its selection procedures if it finds that the procedures have a discriminatory affect on members of a protected class; and*

4) *require an agency to hold a disciplinary hearing to determine whether an employee has violated this subsection; the office may participate in the hearing.*

I have heard that the ideas in this bill originated from an actual case that Rep. Martin was aware of in which a state employee was "blackballed" after filing and winning a discrimination complaint. Apparently the fact that he/she had filed a complaint was kept in the personnel files and agencies who interviewed this person felt that he/she might be a troublemaker.

Several people have commented that even former convicts have more rights than state government employees do. Former convicts can have their conviction and arrest records purged after serving their probation, but state employees who file a complaint can't. Is-this justice?

This bill would also serve another valuable function, it would finally define the function of OEEEO more clearly and settle the dispute over whether OEEEO is a "resource" agency or an "enforcement" agency.

PUBLIC HEATH NURSES' APPEAL

On November 27, 1986, Superior court Judge Duane Craske directed the parties in the public heath nurses' case to get on with the appeal of the Human Rights Commission's Order. The commission decided earlier in January 1986 that the state Department of Health and Social Services and Department of Administration had discriminated against the nurses by paying them less than physician's assistants. The commission decided that nurses were victims of sex discrimination because their work was of comparable character to the work of the physician's assistants but were paid less.

In February 1986, the state appealed the commission decision and since then the progress of the appeal was stymied by disputes about which judge should decide the case and whether damages should be calculated before the appeal would be heard. In the most recent action, Judge Craske of Sitka told the parties to go forward on the appeal without a specific damage award.

Supreme Court Decisions

The following commentary on several important Supreme Court decisions is reprinted with the permission of the Michigan Department of Transportation, Bureau of Administration, Office of Small Business Liaison. It appeared in the Spring 1987 issue of Michigan Liaison. We hope you find it useful in your training sessions and other work.



Recent decisions by the U.S. Supreme Court have served to securely entrench in law one of our nation's most controversial legacies: affirmative action. Several Court cases on affirmative action issues were decided during the past few years, the most recent one being the March 25, 1987 decision which upheld the Santa Clara County Transit Agency's affirmative action plan. Following are summaries of some Supreme Court decisions which address the issue of affirmative action.

Johnson vs. Transportation Agency

The Supreme Court rejected a sex discrimination suit filed by a white male who was passed over for promotion in favor of a woman with a slightly lower score in a competitive interviewing process. The opinion written by Justice Brennan said that under Title VII of the Civil Rights Act of 1964, the federal job discrimination statute, the same standards that the Court has laid down to assess the legality of racial affirmative action plans should be used in assessing sex-based affirmative action plans and vice versa.

United States vs. Paradise

The Supreme Court ruled in a case involving Alabama state troopers that judges may order employers temporarily to use strict racial quotas in promotions, as well as hiring, to cure "egregious" past discrimination against blacks.

Local 93, Intl. Assn. of Firefighters vs. Cleveland

By a 6-to-3 vote the Supreme Court rules that a federal court could enforce a voluntary agreement between the City of Cleveland and the firefighters union to give minorities preference in hiring and promotion. In essence, the justices held that under Title VII of the Civil Rights Act of 1964, a voluntary public sector affirmative action plan

is valid when contained in a consent decree and Title VII does not preclude a court from approving a consent decree that is broader than the relief which could have been awarded by the Court after a trial.

Local 28, Sheet Metal Workers vs. Equal Employment Opportunity Commission

The Supreme Court approved a lower court ruling requiring a New York City sheet metal workers' local to meet a 29 percent minority membership quota by 1987 to rectify especially "egregious" discrimination. In this case the Court upheld the power of a federal court to impose an affirmative action plan on an unwilling defendant in cases of egregious discrimination or where necessary to dissipate the lingering effects of pervasive discrimination.

Wygant vs. Jackson Board of Education

In this case, the Supreme Court rules the Board of Education's collective bargaining agreement with the teachers' union unconstitutional because it allowed for layoffs of white teachers before minority-group teachers with less seniority thereby imposing too much of a burden on white teachers and hence violating the Equal Protection Clause of the 14th Amendment. The court reasoned that other less intrusive means, such as the adoption of hiring goals, were available to reduce past discrimination.

Perhaps the most important outcome of this case was the declaration that the benefits of race-conscious affirmative action plans are not limited to specific identified victims of racial discrimination.

Memphis Firefighters vs. Stotts

The Supreme Court ruled that a federal judge had no power under Title VII of the Civil Rights Act of 1964 to modify a consent decree by ordering that recently hired blacks keep their jobs while whites with more seniority were being laid off.

Weber vs. Kaiser Aluminum

In 1978, the Supreme Court ruled that the prohibition against racial discrimination in employment in Title VII did not bar a private employer from reserving for blacks half the positions in a special training program, to rectify "old patterns of racial segregation and hierarchy."

It is interesting to note that Justice Brennan cited the Weber case in his opinion on Johnson vs. Transportation Agency. In the opinion he wrote, "...Weber held that an

(Continued on next page)

EEO/AA Manual

J. Cooper and Associates has published a two-volume EEO/AA Manual which is being offered to AAAA members at a discount price of \$200.00 (Regular price is \$294.00). The lead author, Joseph Cooper, was formerly Director of OFCCP. For more information, contact J. Cooper and Associates, 733 15th St., NW, Suite 774, Washington, D.C. 20005, (202) 628-1423. To obtain the discount, identify yourself as an AAAA member.

**Workforce 2000: Work and Workers
In the 21st Century**

The Hudson Institute, Herman Kahn Center, 5395 Emerson Way, P.O. Box 26-919, Indianapolis, IN 46226, (317) 545-1000. Cost: \$10.00. This report from one of the nation's best-known think tanks examines the significant changes in the workforce and their dramatic impact on the protected classes.

**Projections 2000: The Labor Force,
Monthly Labor Review**

September 1987, U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. \$4.75. The entire issue is devoted to reports of how future change will affect the people served and championed by affirmative action. Contact: Government Printing Office, Superintendent of Documents, Washington, D.C. 20402.

Sexual Harassment Sensitivity Program Package

Developed by Oklahoma State University, this is an innovative and comprehensive program for students. Package consists of a 15-minute video tape and instructor's manual. For more information contact: C.S. Ross, 101 Whitehurst Hall, Oklahoma State University, Stillwater, OK 74078-0004. Phone: (405) 624-5627.

Affirmative Action Video Showcase

Jennifer Coplon, an active Region I member and a specialist in EEO/AA video training materials, is making available a unique and comprehensive annotated catalogue listing over 100 EEO/AA-related video resources. Contact: Resource Presentations, 230 Western Avenue, Boston, MA 02134. Phone: (800) 225-3959.

Valuing Diversity

This new three-part series of films/video examines the benefits and challenges arising from diversity and dramatically shows managers and employees how to deal with everyday practical issues which affect relationships, communication, and performance in multicultural organizations. Produced by Copeland Griggs Productions. For more information about costs, previews, rental or purchase, contact Copeland Griggs Productions, 411 15th Avenue, San Francisco, CA 94118. Phone: (415) 668-4200.

**Enhancing Your Person Impact:
Strategies for Becoming More Effective**

This is an in-house seminar which focuses on the organization's particular needs. Participants learn to understand the communication process and increase their abilities to communicate. Presented by AAAA Region I Director, James McClain. For more information call Glenda Best (617) 353-2151.

Supreme Court Decisions/continued from page 6

employer seeking to justify the adoption of a plan need not point to its own prior discriminatory practices, nor even to evidence of an arguable violation on its part. Rather it need point only to "conspicuous...imbalance in traditionally segregated job categories."

Interpretation

The Supreme Court decision in the Johnson case is perhaps the most significant of all. It defines the standards that could be used by employers in structuring affirmative action plans by establishing that sex, along with seniority, job performance, and other factors may be used to determine who is to be hired and promoted. Perhaps most important, the case clarified the distinction between affirmative action plans voluntarily adopted by employers and those imposed by the courts. The new ruling is expected to result in an increase in the percentages of women and minorities in job categories which have been traditionally underrepresented with minorities and women. ■

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	3-14-88	1:30 p.m.
H. JUD	3-11-88	1:30 p.m.
H. JUD.	2-25-88	1:30 p.m.

Adopted

5-0286Ba
Cramer

A M E N D M E N T #1

Offered in the Judiciary Committee

By Gruenberg

TO: CSHB 25 (State Affairs)

Page 1, lines 21 - 22:

Delete "have a discriminatory effect on members of a protected class"

Insert "violate state or federal laws prohibiting employment discrimination"

Original sponsor: Martin

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 25 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL
6 For an Act entitled: "An Act relating to affirmative action."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 44.19.442(b) is amended to read:

9 (b) The office may

10 (1) recommend legislative or administrative action to the
11 governor relating to equal employment opportunity and affirmative
12 action matters;

13 (2) require the division of personnel in the Department of
14 Administration to purge records from the personnel file of an employee
15 who has filed a complaint of unlawful discrimination;

16 (3) forbid an agency to hire or promote employees and
17 require an agency to reverse a personnel action including a hiring
18 decision if it finds that the action was based on a discriminatory
19 employment practice;

20 (4) require an agency to change its selection procedures if
21 it finds that the procedures have a discriminatory effect on members
22 of a protected class; and

23 (5) require an agency to investigate whether an employee
24 has violated this subsection and to impose discipline if the inves-
25 tigation reveals facts warranting it.

26 * Sec. 2. AS 44.19.442 is amended by adding a new subsection to read:

27 (c) A collective bargaining agreement adopted under AS 23.40.-
28 070 - 23.40.260 (Public Employment Relations Act) must be consistent
29 with principles of equal employment opportunity and affirmative

5-0286L✓
Cramer
3/10/88

Original sponsor: Martin

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 25 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to equal employment opportunity and
7 affirmative action."

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

9 * Section 1. AS 18.80 is amended by adding a new section to read:

10 Sec. 18.80.133. REMEDIES AGAINST THE STATE. In addition to
11 other measures that the commission may impose, if the commission finds
12 that the state has engaged in the discriminatory employment conduct
13 alleged in a complaint, the commission may

14 (1) if it finds that a personnel action was based on a
15 discriminatory employment practice,

16 (A) forbid an agency to hire or promote employees for
17 up to 30 days; and

18 (B) require an agency to reverse a personnel action
19 including a hiring decision;

20 (2) require an agency to change its selection procedures if
21 it finds that the procedures have a discriminatory effect on members
22 of a protected class; and

23 (3) require an agency to

24 (A) investigate whether an employee has violated this
25 section or AS 18.80.220; and

26 (B) impose discipline if the investigation reveals
27 facts warranting it.

28 * Sec. 2. AS 18.80.220(a) is amended to read:

29 (a) It is unlawful for

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Original sponsor: Martin

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
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15 who has filed a complaint of unlawful discrimination;

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17 require an agency to reverse a personnel action including a hiring
18 decision if it finds that the action was based on a discriminatory
19 employment practice;

20 (4) require an agency to change its selection procedures if
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22 of a protected class; and

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25 tigation reveals facts warranting it.

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27 (c) A collective bargaining agreement adopted under AS 23.40.-
28 070 - 23.40.260 (Public Employment Relations Act) must be consistent
29 with principles of equal employment opportunity and affirmative

1 action. AS 44.19.441 - 44.19.449 supercede the provisions of AS 39.25
2 (State Personnel Act).

3 * Sec. 3. AS 44.19.444 is amended to read:

4 Sec. 44.19.444. AFFIRMATIVE ACTION PLAN. The governor shall
5 establish an equal employment opportunity program and adopt annually
6 an affirmative action plan for the executive branch of state govern-
7 ment. The plan remains in effect until the governor adopts a subse-
8 quent plan. The office shall work with each agency to enhance equal
9 employment opportunity.

10 * Sec. 4. AS 44.19.445 is amended by adding a new subsection to read:

11 (b) When the office finds that an agency has violated the affir-
12 mative action plan or its affirmative action program, the office may

13 (1) suspend the hiring authority of the agency; and

14 (2) impose mandatory affirmative action measures on the
15 agency to bring the agency into compliance.

5-0286L✓
Cramer
3/10/88

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15 discriminatory employment practice,

16 (A) forbid an agency to hire or promote employees for
17 up to 30 days; and

18 (B) require an agency to reverse a personnel action
19 including a hiring decision;

20 (2) require an agency to change its selection procedures if
21 it finds that the procedures have a discriminatory effect on members
22 of a protected class; and

23 (3) require an agency to

24 (A) investigate whether an employee has violated this
25 section or AS 18.80.220; and

26 (B) impose discipline if the investigation reveals
27 facts warranting it.

28 * Sec. 2. AS 18.80.220(a) is amended to read:

29 (a) It is unlawful for

1 (1) an employer to refuse employment to a person, or to bar
2 a person from employment, or to discriminate against a person in
3 compensation or in a term, condition, or privilege of employment
4 because of the person's race, religion, color or national origin, or
5 because of the person's age, physical or mental disability, sex,
6 marital status, changes in marital status, pregnancy or parenthood
7 when the reasonable demands of the position do not require distinction
8 on the basis of age, physical or mental disability, sex, marital
9 status, changes in marital status, pregnancy or parenthood;

10 (2) a labor organization, because of a person's sex, mari-
11 tal status, changes in marital status, pregnancy, parenthood, age,
12 race, religion, physical or mental disability, color or national
13 origin, to exclude or to expel a person from its membership, or to
14 discriminate in any way against one of its members or an employer or
15 an employee;

16 (3) an employer or employment agency to print or circulate
17 or cause to be printed or circulated a statement, advertisement, or
18 publication, or to use a form of application for employment or to make
19 an inquiry in connection with prospective employment, which expresses,
20 directly or indirectly, a limitation, specification or discrimination
21 as to sex, physical or mental disability, marital status, changes in
22 marital status, pregnancy, parenthood, age, race, creed, color or
23 national origin, or an intent to make the limitation, unless based
24 upon a bona fide occupational qualification;

25 (4) an employer, labor organization or employment agency to
26 discharge, expel or otherwise discriminate against a person because
27 the person has opposed any practices prohibited [FORBIDDEN] under
28 AS 18.80.200 - 18.80.280 or because the person has filed a complaint,
29 testified or assisted in a proceeding under this chapter;

1 (5) an employer to discriminate in the payment of wages as
2 between the sexes, or to employ a female in an occupation in this
3 state at a salary or wage rate less than that paid to a male employee
4 for work of comparable character or work in the same operation, busi-
5 ness or type of work in the same locality; [OR]

6 (6) a person to print, publish, broadcast or otherwise
7 circulate a statement, inquiry or advertisement in connection with
8 prospective employment that expresses directly, a limitation, speci-
9 fication or discrimination as to sex, physical or mental disability,
10 marital status, changes in marital status, pregnancy, parenthood, age,
11 race, religion, color or national origin, unless based upon a bona
12 fide occupational qualification; or

13 (7) an employer to maintain records of a complaint under
14 this chapter as part of an employee's personnel file; an employer
15 shall maintain records of a complaint and related information in a
16 separate, confidential file.

17 * Sec. 3. AS 23.40.070 is amended by adding a new subsection to read:

18 (b) A collective bargaining agreement adopted under AS 23.40.-
19 070 - 23.40.260 (Public Employment Relations Act) must be consistent
20 with principles of equal employment opportunity and affirmative action
21 under AS 44.19.441 - 44.19.449.

22 * Sec. 4. AS 44.19.442 is amended by adding a new subsection to read:

23 (c) AS 44.19.441 - 44.19.449 supersede the provisions of AS 39.-
24 25 (State Personnel Act).

25 * Sec. 5. AS 44.19.444 is amended to read:

26 Sec. 44.19.444. AFFIRMATIVE ACTION PLAN. The governor shall
27 establish an equal employment opportunity program and adopt annually
28 an affirmative action plan for the executive branch of state govern-
29 ment. The plan remains in effect until the governor adopts a

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subsequent plan. The office shall work with each agency to enhance equal employment opportunity.

* Sec. 6. AS 44.19.445 is amended by adding a new subsection to read:

(b) When the office finds that an agency has violated the affirmative action plan or its affirmative action program, the office may

(1) suspend the hiring authority of the agency; and

(2) impose mandatory affirmative action measures on the agency to bring the agency into compliance.

5-0286L
Cramer
2/14/88

Original sponsor: Martin

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18
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20 (2) require an agency to change its selection procedures if
21 it finds that the procedures have a discriminatory effect on members
22 of a protected class; and

23 (3) require an agency to investigate whether an employee
24 has violated this section or AS 18.80.220, and impose discipline if
25 the investigation reveals facts warranting it.

26 * Sec. 2. AS 18.80.220(a) is amended to read:

27 (a) It is unlawful for

28 (1) an employer to refuse employment to a person, or to bar
29 a person from employment, or to discriminate against a person in

1 compensation or in a term, condition, or privilege of employment
2 because of the person's race, religion, color or national origin, or
3 because of the person's age, physical or mental disability, sex,
4 marital status, changes in marital status, pregnancy or parenthood
5 when the reasonable demands of the position do not require distinction
6 on the basis of age, physical or mental disability, sex, marital
7 status, changes in marital status, pregnancy or parenthood;

8 (2) a labor organization, because of a person's sex, mari-
9 tal status, changes in marital status, pregnancy, parenthood, age,
10 race, religion, physical or mental disability, color or national
11 origin, to exclude or to expel a person from its membership, or to
12 discriminate in any way against one of its members or an employer or
13 an employee;

14 (3) an employer or employment agency to print or circulate
15 or cause to be printed or circulated a statement, advertisement, or
16 publication, or to use a form of application for employment or to make
17 an inquiry in connection with prospective employment, which expresses,
18 directly or indirectly, a limitation, specification or discrimination
19 as to sex, physical or mental disability, marital status, changes in
20 marital status, pregnancy, parenthood, age, race, creed, color or
21 national origin, or an intent to make the limitation, unless based
22 upon a bona fide occupational qualification;

23 (4) an employer, labor organization or employment agency to
24 discharge, expel or otherwise discriminate against a person because
25 the person has opposed any practices prohibited [FORBIDDEN] under
26 AS 18.80.200 - 18.80.280 or because the person has filed a complaint,
27 testified or assisted in a proceeding under this chapter;

28 (5) an employer to discriminate in the payment of wages as
29 between the sexes, or to employ a female in an occupation in this

1 state at a salary or wage rate less than that paid to a male employee
 2 for work of comparable character or work in the same operation, busi-
 3 ness or type of work in the same locality; [OR]

4 (6) a person to print, publish, broadcast or otherwise
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11 (7) an employer to maintain records of a complaint under
 12 this chapter as part of an employee's personnel file; an employer
 13 shall maintain records of a complaint and related information in a
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15 * Sec. 3. AS 23.40.070 is amended by adding a new subsection to read:

16 (b) A collective bargaining agreement adopted under AS 23.40.-
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 19 under AS 44.19.441 - 44.19.449.

20 * Sec. 4. AS 44.19.442 is amended by adding a new subsection to read:

21 (c) AS 44.19.441 - 44.19.449 supersede the provisions of AS 39.-
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24 Sec. 44.19.444. AFFIRMATIVE ACTION PLAN. The governor shall
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 29 employment opportunity.

1 * Sec. 6. AS 44.19.445 is amended by adding a new subsection to read:

2 (b) When the office finds that an agency has violated the affir-
3 mative action plan or its affirmative action program, the office may

4 (1) suspend the hiring authority of the agency; and

5 (2) impose mandatory affirmative action measures on the
6 agency to bring the agency into compliance.

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Original sponsor: Martin

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 25 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to affirmative action."

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

8 * Section 1. AS 44.19.442(b) is amended to read:

9 (b) The office may

10 (1) recommend legislative or administrative action to the
11 governor relating to equal employment opportunity and affirmative
12 action matters;

13 (2) require the division of personnel in the Department of
14 Administration to purge records from the personnel file of an employee
15 who has filed a complaint of unlawful discrimination;

16 (3) forbid an agency to hire or promote employees and
17 require an agency to reverse a personnel action including a hiring
18 decision if it finds that the action was based on a discriminatory
19 employment practice;

20 (4) require an agency to change its selection procedures if
21 it finds that the procedures violate state or federal laws prohibiting
22 employment discrimination; and

23 (5) require an agency to investigate whether an employee
24 has violated this subsection and to impose discipline if the inves-
25 tigation reveals facts warranting it.

26 * Sec. 2. AS 44.19.442 is amended by adding a new subsection to read:

27 (c) A collective bargaining agreement adopted under AS 23.40.-
28 070 - 23.40.260 (Public Employment Relations Act) must be consistent
29 with principles of equal employment opportunity and affirmative

1 action. AS 44.19.441 - 44.19.449 supercede the provisions of AS 39.25
2 (State Personnel Act).

3 * Sec. 3. AS 44.19.444 is amended to read:

4 Sec. 44.19.444. AFFIRMATIVE ACTION PLAN. The governor shall
5 establish an equal employment opportunity program and adopt annually
6 an affirmative action plan for the executive branch of state govern-
7 ment. The plan remains in effect until the governor adopts a subse-
8 quent plan. The office shall work with each agency to enhance equal
9 employment opportunity.

10 * Sec. 4. AS 44.19.445 is amended by adding a new subsection to read:

11 (b) When the office finds that an agency has violated the affir-
12 mative action plan or its affirmative action program, the office may
13 (1) suspend the hiring authority of the agency; and
14 (2) impose mandatory affirmative action measures on the
15 agency to bring the agency into compliance.
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FISCAL NOTE

REQUEST:

Revision Date: 03-17-88
Title: An act relating to affirmative action.
Sponsor: Martin
Requestor: _____

Agency Affected: Department of Administration
BRU: Personnel
Components: Centralized Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
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

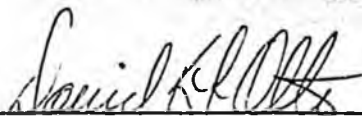
POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

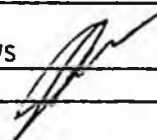
CSHB 25 (Judiciary) is consistent with current federal and State requirements regarding selection procedures. This bill will not have a fiscal impact on the Division of Personnel.

Prepared By: Dave Otto
Division: Personnel



Phone: 465-4430
Date: 3-17-88

Approved by Commissioner: John M. Andrews
Agency: Department of Administration



Date: 3/18/88

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

SPONSOR STATEMENT
CS House Bill 25
Representative Terry Martin

When the Office of Equal Employment Opportunity was established by statute in 1985, it was given the responsibility to administer the states equal employment opportunity program and to ensure its compliance.

The problems arose, however, when the OEEO was unable to do more than simply suggest solutions to agencies found to be in noncompliance with affirmative action and equal employment guidelines. The agency was in no way obligated to comply with those recommendations.

As a result of the Office's lack of enforcement authority, many complaints went unresolved or were unsatisfactorily resolved, forcing the complainant to refile his/her grievance with the Human Rights Commission, union or federal agency.

HB 25 was introduced to empower the OEEO to enforce compliance with established guidelines by directing the agency in question and/or the Division of Personnel to take certain action with regard to employees who have been discriminated against by the state.

At the time HB 25 was going through the committee process, the Governor's Office was developing plans to reorganize and consolidate the state's equal employment opportunity offices under the banner of the Office of Equal Opportunity. As a result of this reorganization, the OEO will no longer handle complaints directly, but will act solely in an advisory capacity. The Human Rights Commission is now the state agency responsible for investigating and resolving discrimination complaints.

Over the past year and a half, our office has been working in conjunction with the Governor's Office to tailor HB 25 so that it will be in line with the Governor's reorganization. The draft CS is the result of our joint efforts.

Specifically, the draft CS impacts the Human Rights Commission instead of the Office of Equal Employment Opportunity (now OEO). While the Commission is already empowered to take certain action against agencies, both state and private, found to have discriminated against an individual, it is vitally important that these particular measures are established by statute.

Public interest in the issue of discriminatory action by the state against its employees runs very high as evidenced by the documentation on file in our office from individuals who claim to have been discriminated against by the state. All of these individuals have filed complaints with the Office of Equal Employment Opportunity or the Human Rights Commission or both.

SPONSOR STATEMENT - CSHB 25

Page 2

In many cases, as a result of the unsatisfactory resolution of these complaints by the state agencies involved, many of these individuals have been forced to enter into costly litigation. Many others could not afford to do so.

In closing, we believe that this legislation, if enacted would offer some protection to individuals filing complaints of discrimination against the state and will statutorily define a more specific course of action against agencies or individuals found to have discriminated against another individual.

/laj/draft.laj

February 22, 1988

CONFIDENTIAL

Juliet Kay
POB 33453
Juneau AK 99803

Representative Terry Martin
Alaska House of Representatives
POB V Mail Stop 3100
Juneau AK 99811

Dear Representative Martin:

RE: CSHE 25

I would like to state that I support this legislation, CSHE 25 for the following reasons:

On September 9, 1985 I started my employment with the Alaska Department of Labor, Division of Workers' Compensation.

During my employment there, I was subjected to RACIAL harassment. Upon my opposing the harassment, my former Supervisor responded defensively creating a retaliatory work environment at the place of State employment. Since that, she influenced and encouraged my co-workers against me.

In addition, I was subjected to derogatory comments from my co-workers and supervisors. Events escalated to a physical assault on me by a co-worker. These actions were condoned by the Director. After my filing a complaint for Racial harassment with Alaska Office of EEO, I was terminated on June 9, 1986 in RETALIATION by Alaska Department of Labor for ALLEGED failure to meet the performance standards which they had prepared for my termination evaluation distinctively. These actions were CONDONED by former department EEO Rep as well as the former Commissioner.

According to Alaska Human Rights Commission, my employer has the right to harass me as long as they were harassing other employees because there are no laws stating that harassment on the basis of race, sex, religion, color or national origin, age, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood. For example, according to my Supervisors and Directors it is not discrimination if a person makes unwelcome jokes against another person who has mental disability as long as she/he was making unwelcome jokes against a person who has physical disability. According AK Human Rights Commission, my employers were treating us equally.

On March 3, 1987 I was rehired by Alaska Department of Labor, Division of Administrative Services. Upon my returning to department of Labor, certain employees responded defensively creating a RETALIATORY environment.

Starting from the first day of my employment my new Supervisor's attitude toward me was BIAS and ABRASIVE. It was as if he was taking in a BAD APPLE and also, as if I was already LABELLED as a TROUBLE MAKER.

Although my employers were receiving FEDERAL funding for my position, I was not provided with minimum office furnishings, adequate office space and a work station to perform my job responsibilities. I was denied office furnishings and office space by my supervisor with insulting remarks.

Discriminatory and inadequate accommodations resulted in back, shoulder and arm strain. Upon my filing an occupational injury report, I was reprimanded by my supervisor.

In addition, there were some jokes of SEXUAL harassment nature at the place of State employment. Upon my opposing those jokes, Co-workers and Supervisors responded defensively creating a retaliatory work environment.

It seemed that my performance evaluation reports were used to retaliate against me. In my evaluation I was rated as UNACCEPTABLE in Interpersonal Relationships. According to my supervisor, filing occupational injury report, opposing jokes of sexual harassment nature; calling APEA; calling office of EEO and bringing an EEO investigator were like making threats to the Co-workers, Supervisors and the management and it causes interpersonal relationship problems. I have never caused interpersonal relationship problems. I brought the EEO investigator because I felt threatened by my co-workers, Supervisors and Directors.

In addition, he rated my work performance according to seniority rights instead of my performance on the job. Furthermore, according to him, merit increases, promotions, training, office furnishings, office space and work station are supposed to be provided according to seniority rights instead of job responsibilities. My supervisor's actions were condoned because my evaluations were reviewed and approved by his Supervisors as well as the Director prior to giving them to me.

While seniority right is a plus, it is not everything. This means no-one should go to college, get a degree or get any kind of work experience because it is not important. This means a file clerk could qualify for any kind of position as long as the supervisor like this person for personal reasons.

Upon receiving my rebuttal to my evaluation, again he responded defensively for complaining about and reporting these activities through my rebuttal. In retaliation, he placed FRAUDULENT and LIBELUS memos in my personnel file. Again, my supervisor's actions were condoned by his supervisors as well as the Director.

Furthermore, he influenced and encouraged my co-workers against me creating a retaliatory work environment at the place of State employment. I was subjected to THREATS, VERBAL ATTACKS, RACIAL and CULTURAL harassment, NAME calling, OFFENSIVE personal remarks, joking INSULTS, casually expressed SLURS or DEROGATORY comments by my co-workers and supervisors. Again these actions were CONDONED.

When these kind of activities persisted, again, I opposed it in writing. Again, I was terminated on October 2, 1988 in RETALIATION by Alaska Department of Labor for ALLEGED failure to work to resolve interpersonal relationship in the work place.

It appears that Supervisors and Directors are trained and skilled to cover their tracks to go around the law instead of complying with the law. From my experience with Alaska Department of Labor, I have come to the conclusion that VERY WELL ESTABLISHED OLD HABITS from the OLD GENERATION and from the OLD ADMINISTRATION are not only still existing but also persisting in the Department of Labor.

According to Labor Relations, my employer's actions were not prohibited by the CONTRACT. If this is true, I was working under a BIASED contract because it seems that I was required to like unlawful harassment, discrimination and retaliation at the place of State employment. How can State employment have this kind of contract? How can State of Alaska be an Equal Employment Opportunity Employer?

Today, I am a victim of unlawful harassment, discrimination and retaliation and my constitutional rights have been VIOLATED numerous times in many ways by the Alaska Department of Labor.

I have received letters from Senator Duncan and Governor Cowper stating that this Administration doesnot permit, tolerate or condone unjlawful employment practices.

It is interesting to point out that personal relationships are interfering with professional decisions because all the involved Directors, Supervisors and co-workers are still employed by department of Labor while I was the only one who was terminated both times.

It appears that STATE is permitting, tolerating and condoning my Employers', Supervisors' and Co-workers' actions.

i hate being on the defensive. but I do not feel I can permit, tolerate or condone such MALICIOUS, FRAUDULENT, LIBELOUS and BIASED judgement about my personality and character go unanswered and I will not rest until JUSTICE is done.

Again, I want to state that I support CSHS 25 and I urge that it should be passed.

Sincerely,



Juliet Kay



CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
EXECUTIVE COMMITTEE, 1986 - 1988

April 29, 1987

EXECUTIVE COMMITTEE

President

Edward K. Thomas
Admin. Offices

Work (907) 586-1432
Res (907) 789-2929

First Vice President

David Lucas
PO Box 477
Metlakatla, Alaska 99926

Work (907) 886-4661

Second Vice President

Mark Jacobs, Jr.
PO Box 625
Sitka, Alaska 99835

Res (907) 747-8168

Third Vice President

John Hope
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Juneau, Alaska 99802

Work (907) 465-4890
Res (907) 789-0974

Fourth Vice President

Douglas W. Lunc
4002-A2 Westside
Sammamish, Penn. N.E.
Redmond, WA 98052

Work (206) 653-6585
Res (206) 882-4181

Fifth Vice President

Raymond F. Roberts
3725 Alaska Avenue
Ketchikan, Alaska 99901

Work (907) 225-8787
Res (907) 225-5481

Sixth Vice President

Richard J. Str. Sr.
9462 Broadway
Juneau, Alaska 99801

Res (907) 789-0010

Executive Director

Mr. Evelyn E. Myers
Admin. Offices

Work (907) 586-1432
Res (907) 780-6636

The Honorable Steve Cowper
Governor of Alaska
P. O. Box A
Juneau AK 99811

Dear Governor Cowper:

re Resolution 87/88-04 : Support for House Bill 25

The Central Council of Tlingit and Haida Indian Tribes of Alaska advised legislative committees of its support of HB 25 upon adoption of a Central Council position last week. The formal resolution is enclosed for your records.

We believe this piece of legislation is critical to the proper functioning of the EEO law, and we urge its enactment into law.

Please advise if we may provide further support. Thank you.

Sincerely,

Edward K. Thomas
President

EKT/jg
encls

cc: State Legislators
State Agencies
Bush Caucus
Rep. Terry Martin



CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801

FIFTY-SECOND GENERAL ASSEMBLY
Central Council of Tlingit and Haida Indian Tribes of Alaska
April 16-18, 1987
Juneau, Alaska

Resolution 87/88-04

Title: Support for HB 25

Submitted by: Juneau T&H Community Council

WHEREAS, the State Equal Employment Opportunity law, AS 44.19, was passed in 1985; and

WHEREAS, the Alaska Native Brotherhood, Central Council of Tlingit and Haida Indian Tribes of Alaska and Sealaska Corporation worked hard to assure the passage of the law; and

WHEREAS, Native hire in State government continues to remain a high priority for us; and

WHEREAS, HB 25 has been introduced in this legislative session to amend the EEO law; and

WHEREAS, the bill is designed to strengthen and give clout to current EEO law; and

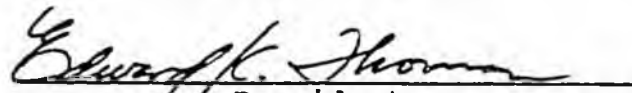
WHEREAS, HB 25 in its present form would provide the office of EEO tools necessary to adequately implement the EEO law;

NOW, THEREFORE, BE IT RESOLVED by the Central Council of Tlingit and Haida Indian Tribes of Alaska, in Annual Assembly, to go on record as supporting HB 25 in its present form; and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Bush Caucus, Representative Terry Martin, and Governor Steve Cowper.

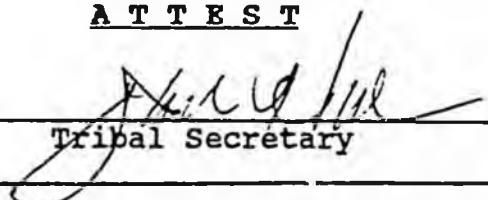
ADOPTED this 17th day of April, 1987, by the Fifty-Second General Assembly of the Central Council of Tlingit and Haida Indian Tribes of Alaska, in session at Juneau, Alaska.

C E R T I F I E D



President

A T T E S T



Tribal Secretary

TELEPHONE: 907/ 586-1432

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An act relating to affirmative BRU: Personnel
action.
 Sponsor: Martin Components: Centralized Administrative
 Requestor: _____ Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	115.0	115.0	115.0	115.0	115.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	115.0	115.0	115.0	115.0	115.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	115.0	115.0	115.0	115.0	115.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	115.0	115.0	115.0	115.0	115.0

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: (Attach a separate page if necessary)

Prepared By *Diana DeSimone* Phone: 465-4430
 Division: Personnel Date: 1-21-88

Approved by Commissioner: John M. Andrews Date: 1/23/88
 Agency: Department of Administration

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

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill No. HB 25

House Bill 25 grants the Office of Equal Employment Opportunity broad enforcement authority with respect to equal employment opportunity and affirmative action matters. Of concern to the Division of Personnel is that portion of the proposed bill which allows the office to require agencies to change their selection procedures, that is, to require new examination or testing methods for employment application. Currently, any examination device must adhere to federally mandated test validation procedures. The proposed legislation appears to impose requirements for test validation that are in addition to the federal requirements.

Depending on the scope of the validation exercise, i.e., number of job classes involved, number of positions concerned, number of job sites affected, costs may range from \$30,000 to \$200,000 per examination. The fiscal note assumes an average of these two figures with one test validation performed per fiscal year. Contractual rather than personal services are indicated because it is most cost effective to contract with firms who specialize in test validation than to recruit and hire State employees with these specialized qualifications.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 25
Publish Date: _____

REQUEST _____

Revision Date: _____
Title: An act relating to affirmative action.
Sponsor: Martin
Requestor: _____

Agency Affected: Division of Personnel
BRU: Personnel
Components: Centralized Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	115.0	115.0	115.0	115.0	115.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	115.0	115.0	115.0	115.0	115.0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	115.0	115.0	115.0	115.0	115.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	115.0	115.0	115.0	115.0	115.0

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: Attach a separate page if necessary

ATTACHED

Prepared By: Diana DeSimone *Diana DeSimone* Phone: 465-4430
Division: Personnel Date: 1-27-87

Approved by Commissioner: Garrey Peska *Garrey Peska* Date: 2/5/87
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill No. HB 25

House Bill 25 grants the Office of Equal Employment Opportunity broad enforcement authority with respect to equal employment opportunity and affirmative action matters. Of concern to the Division of Personnel is that portion of the proposed bill which allows the office to require agencies to change their selection procedures, that is, to require new examination or testing methods for employment application. Currently, any examination device must adhere to federally mandated test validation procedures. The proposed legislation appears to impose requirements for test validation that are in addition to the federal requirements.

Depending on the scope of the validation exercise, i.e., number of job classes involved, number of positions concerned, number of job sites affected; costs may range from \$30,000 to \$200,000 per examination. The fiscal note assumes an average of these two figures with one test validation performed per fiscal year. Contractual rather than personal services are indicated because it is more cost effective to contract with firms who specialize in test validation than to recruit and hire State employees with these specialized qualifications.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: HB 25
Publish Date: 1-19-87

Revision Date: _____
Title: An Act Relating to
Affirmative Action

Agency Affected: Office of the Governor
BRU: Commissions/Special Offices

Sponsor: Martin
Requestor: House State Affairs

Components: Equal Employment
Opportunity

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
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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: Michael A. Nizich, Director
Division: Administrative Services

Phone: 465-3616
Date: 2-6-87

Approved by Commissioner: Carol P. Kastelic
Agency: Exec. Assistant, Office of the Governor

Date: 2-6-87

Distribution (by preparer):

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

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/19/87

FURTHER REFERRALS: Judiciary
Finance

DATE: 4-24-87

The State Affairs Committee has considered HB 25

"An Act relating to affirmative action."

RECOMMENDS:

- replace with CS HB 25 (SA) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO/PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature]

 Chairman's signature

H B

2 8

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN : SPENARD

P.O. BOX V, JUNEAU 99811
(907) 465-3892



TO: ALL MEMBERS, HOUSE JUDICIARY COMMITTEE
FROM: REPRESENTATIVE DAVE DONLEY *DD*
RE: HB 28: MUNICIPAL PENALTIES FOR PROSTITUTION
DATE: FEBRUARY 16, 1987

HB 28 EMPOWERS LOCAL GOVERNMENTS TO ADOPT MANDATORY MINIMUM SENTENCES FOR CRIMES OF PROSTITUTION. IT IS A LOCAL OPTION LAW AND DOES NOT MANDATE ANY INCREASE IN EXISTING STATE OR LOCAL PENALTIES.

THE INCREASE OF PROSTITUTION ACTIVITY IN ANCHORAGE AND OTHER URBAN AREA OF ALASKA HAS RESULTED IN INCREASED PUBLIC DISTURBANCES AND STREET CRIME. THE APPEARANCE OF HOUSES OF PROSTITUTION AND STREETWALKERS CLOSE TO RESIDENTIAL AREAS HAS ADVERSELY IMPACTED NEIGHBORHOODS.

RECENT CRACKDOWNS ON PROSTITUTION BY SEVERAL MAJOR WEST COAST COMMUNITIES HAS RESULTED IN THE RELOCATION OF MANY PROSTITUTES TO ALASKA, WHERE STATE LAWS ARE FAR LESS STRIDENT FOR THIS ACTIVITY.

UNDER CURRENT ALASKA LAW, LOCAL GOVERNMENTS MANY NOT ADOPT PRESUMPTIVE CRIMINAL PENALTIES UNLESS ALREADY CONTAINED IN STATE LAW OR AUTHORIZED BY STATE STATUATE.

BY ALLOWING LOCAL GOVERNMENTS TO ADOPT MANDATORY MINIMUM SENTENCES FOR PROSTITUTION, ALASKA COMMUNITIES CAN FOLLOW THE LEAD OF MANY CITIES IN THE LOWER 48 STATES WHERE SUCH PENALTIES HAVE SUCCESSFULLY REDUCED PROSTITUTION PROBLEMS.

HB 28 HAS BEEN ENDORSED BY THE FOLLOWING:

ALASKA ASSOCIATION OF POLICE CHIEFS, ANCHORAGE POLICE CHIEF RON OTTE, FAIRBANKS POLICE CHIEF RICHARD CUMMINGS, VALDEZ POLICE CHIEF PAT SHELLY, THE ANCHORAGE ASSEMBLY, THE SPENARD COMMUNITY COUNCIL AND THE SPENARD ACTION COMMITTEE.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

December 17, 1986

SUBJECT: Mandatory sentences for prostitution
(Work Order No. 15-0301)

TO: Representative Max Gruenberg

FROM: Keith B. Levy ^{KBL}
Legislative Counsel

You have asked whether legislation would be required to enable municipalities to adopt ordinances providing for a mandatory minimum sentence for prostitution, and if so, whether such legislation would present any constitutional difficulties. I have concluded that while municipalities do not have the authority under existing law to enact such an ordinance, the legislature may grant that authority without running afoul of the constitution.

The Alaska Supreme Court has made it clear that a municipality may make prostitution a crime even though prostitution is already a crime under state law: "It is settled that an act may be made a penal offense under state statute, and also made punishable under an ordinance of a municipal corporation." Wester v. State, 528 P.2d 1179, 1185 (Alaska 1974).

In a later case, however, the court considered whether the City of Kodiak had the authority to enact an ordinance prescribing a mandatory minimum sentence for an offense. Article X, sec. 11, of the Alaska Constitution provides that "a home rule borough or city may exercise all legislative powers not prohibited by law or by charter." Thus, an ordinance is only invalid if it is somehow prohibited by statute or by the municipality's charter. Citing earlier cases, the court applied the following test for determining whether a municipal ordinance is invalid under state law:

A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exer-

Representative Gruenberg
Page 2
December 17, 1986

cise of authority has been prohibited to municipalities. The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law. City of Kodiak v. Jackson. 584 P.2d 1130, 1132 (Alaska 1978).

The court concluded that the mandatory minimum sentencing provisions were irreconcilable with certain criminal procedure statutes and were therefore invalid. However, the decision was based on the fact that the ordinance could not be reconciled with existing state law. There is nothing in the decision to indicate that the legislature could not amend existing law to expressly permit a municipality to enact an ordinance providing for mandatory minimum sentences. The enclosed bill draft does that with respect to prostitution and cures the problems raised in the City of Kodiak case.

If I may be of further assistance, please advise.

KBL:mkr
m7/073

Enclosure

- (b) Criminal possession of explosives is a
- (1) class A felony if the crime intended is murder in any degree or kidnapping;
 - (2) class B felony if the crime intended is a class A felony;
 - (3) class C felony if the crime intended is a class B felony;
 - (4) class A misdemeanor if the crime intended is a class C felony;
 - (5) class B misdemeanor if the crime intended is a class A or class B misdemeanor. (§ 7 ch 166 SLA 1975)

Collateral references -- 31 Am. Jur. Possession of bomb, molotov cocktail or
 2d Explosion- and Explosives, similar device as criminal offense. 42
 §§ 121-130. ALR3d 1230
 35 C.J.S. Explosives- § 12

Sec. 11.61.250. Unlawful furnishing of explosives. (a) A person commits the crime of unlawful furnishing of explosives if the person furnishes an explosive substance or device to another knowing that the other intends to use the substance or device to commit a crime.

(b) Unlawful furnishing of explosives is a class C felony. (§ 7 ch 166 SLA 1975)

Chapter 65. Offenses Against Public Convenience.

Secs. 11.65.010 — 11.65.020. [Renumbered as AS 30.50.020 and 30.50.010.]

Sec. 11.65.030. Tampering with posted notices. [Repealed, § 21, ch 166, SLA 1975.]

Chapter 66. Offenses Against Public Health and Decency.

Article

1. Prostitution and Related Offenses (§§ 11.66.100 — 11.66.150)
2. Gambling Offenses (§§ 11.66.200 — 11.66.250)

Article 1. Prostitution and Related Offenses.

Section	Section
100. Prostitution.	130. Promoting prostitution in the third degree.
110. Promoting prostitution in the first degree.	140. Corroboration of certain testimony not required.
120. Promoting prostitution in the second degree.	150. Definitions.

NOTES TO DECISIONS

Municipal ordinances not prohibited. — The enactment of this article does not prohibit municipal ordinances penalizing the solicitation of prostitutes by putative customers. Municipality of Anchorage v. Afualo, Ct. App. Op. No. 213 (File Nos. 7094, 7095, 657 P.2d 407 (1953).

There is nothing in this article which

would support an inference that the legislature sought to encourage men to patronize prostitutes; nor is there any indication in this article that the legislature sought statewide uniformity in regulating commercial sexual relations. Municipality of Anchorage v. Afualo, Ct. App. Op. No. 213 (File Nos. 7094, 7095, 657 P.2d 407 (1953).

Collateral references. — 69 Am. Jur. 2d Prostitution § 1 et seq.; 27 C.J.S. Disorderly Houses § 1 et seq.; 78 C.J.S. Prostitution § 1 et seq.; Constitutionality and construction of pending acts, 74 ALR 311.

Validity and construction of statute or ordinance prohibiting solicitation for purposes of prostitution, lewdness, or assignment — modern cases, 77 ALR2d 515.

Sec. 11.66.100. Prostitution. (a) A person commits the crime of prostitution if the person engages in or agrees or offers to engage in sexual conduct in return for a fee.

(b) Prostitution is a class B misdemeanor. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

Common law. — The keeping of a bawdyhouse was a misdemeanor at common law, whereas fornication and prostitution were not. Eleazar v. United States, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956) decided under former AS 11.40.220.

This section is not irreconcilable with a municipal ordinance prohibiting the solicitation of prostitutes by putative customers. Municipality of Anchorage v. Afualo, Ct. App. Op. No. 213 (File Nos. 7094, 7095, 657 P.2d 407 (1953).

Actual payment of a fee is not required; an act of prostitution is com-

plete when an offer is extended or an agreement made to engage in sexual conduct in return for a fee. Garibay v. State, Ct. App. Op. No. 221 (File No. 6245, 655 P.2d 1350 (1953).

Proof. — Customer's testimony that he agreed to purchase sexual favors for sum of \$200; his testimony that he charged the purchase price using his VISA card, and the VISA charge slip itself, were all highly probative of whether an agreement or offer to engage in sexual conduct in return for a fee was in fact made. Garibay v. State, Ct. App. Op. No. 221 (File No. 6245, 655 P.2d 1350 (1953).

Collateral references. — Prostitution as vagrancy, 14 ALR 1503; Entrapment to procure women for

immoral purposes, 18 ALR 166, 69 ALR 478, 68 ALR 265.

Sec. 11.66.110. Promoting prostitution in the first degree. (a) A person commits the crime of promoting prostitution in the first degree if the person

(1) induces or causes a person to engage in prostitution through the use of force.

(2) as other than a patron of a prostitute induces or causes a person under 16 years of age to engage in prostitution; or

(3) induces or causes a person in that person's legal custody to engage in prostitution.

(b) In a prosecution under (a) 2 of this section, it is not a defense that the defendant reasonably believed that the person induced or caused to engage in prostitution was 16 years of age or older.

(c) Except as provided in (d) of this section, promoting prostitution in the first degree is a class B felony.

(d) A person convicted under (a) 2 of this section is guilty of a class A felony. (§ 8 ch 166 SLA 1978, am. §§ 1, 2 ch 50 SLA 1988)

Effect of amendments. — The 1988 amendment added "Except as provided in section (c) and added subsection (d)" to the beginning of subsection (c) of this section.

NOTES TO DECISIONS

For case construing former statute prohibiting importing or exporting females for immoral purposes, see State v. Adkerson, Sup. Ct. Op. No. 294 (File No. 520), 408 P.2d 673 (1965).

For case construing former procurement statute, see Johnson v. State, Sup. Ct. Op. No. 832 (File No. 1336), 501 P.2d 762 (1972).

Sentence for procurement upheld — See Price v. State, Sup. Ct. Op. No. 1450 (File No. 2794), 565 P.2d 858 (1977).

For case construing former statute concerning necessary evidence for prostitution or seduction, see Johnson v. State, Sup. Ct. Op. No. 832 (File No. 1336), 501 P.2d 762 (1972).

Collateral references. — Transporting female for purpose of prostitution, 74 ALR 330.

Woman conniving or consenting to own transportation, 84 ALR 370.

Sec. 11.66.120. Promoting prostitution in the second degree.

(a) A person commits the crime of promoting prostitution in the second degree if the person:

(1) manages, supervises, controls, or owns, either alone or in association with others, a prostitution enterprise other than a place of prostitution; or

(2) procures or solicits a patron for a prostitute.

(b) Promoting prostitution in the second degree is a class C felony. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

For case construing former statute prohibiting soliciting or procuring for purpose of prostitution, see *Pias v. State*, Sup. Ct. Op. No. 1934 (File No. 3529, 3530), 598 P.2d 966 (1975).

Instruction — Trial court did not err in

refusing to give instruction requiring state to prove that prostitution enterprise involved in case was of an ongoing nature. *Garibay v. State*, Ct. App. Op. No. 21 (File No. 6240), 658 P.2d 1357 (1975).

Collateral references — Separate acts of taking earnings of or support from pro-

stitute as separate or continuing offenses of pimping. 3 ALR4th 1197.

Sec. 11.66.130. Promoting prostitution in the third degree. (a) A person commits the crime of promoting prostitution in the third degree if, with intent to promote prostitution, the person:

(1) manages, supervises, controls, or owns, either alone or in association with others, a place of prostitution;

(2) as other than a patron of a prostitute, induces or causes a person 16 years of age or older to engage in prostitution;

(3) as other than a prostitute receiving compensation for personally rendered prostitution services, receives or agrees to receive money or other property pursuant to an agreement or understanding that the money or other property is derived from prostitution; or

(4) engages in conduct that institutes, aids, or facilitates a prostitution enterprise.

(b) Promoting prostitution in the third degree is a class A misdemeanor. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

Editor's notes — The cases cited in the notes below were decided under former AS 11 40.280, 11 40.330, 11 40.330, 11 40.410, and 11 40.420.

Common law. — The keeping of a bawdyhouse was a misdemeanor at common law. *Elezar v. United States*, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956).

Lessor may be guilty as keeper. — If a man leases his house to a woman to be kept as a bawdyhouse for purposes of prostitution, and it is kept for such purposes with his knowledge, he is guilty as keeper. *Rosenkranz v. United States*, 155 F. 38 (9th Cir. 1907).

As well as agent of lessor. — The agent of an owner, who rents a house knowing that it is to be used as a house of prostitution, and that it is so used, may be found guilty as a keeper. *Rosenkranz v.*

United States, 155 F. 38 (9th Cir. 1907).

For case construing former statute prohibiting employment in a house of prostitution or living on the earnings of a prostitute, see *Johnson v. State*, Sup. Ct. Op. No. 832 (File No. 1338), 501 P.2d 762 (1972).

For case construing former statute prohibiting importing or exporting females for immoral purposes, see *State v. Adkerson*, Sup. Ct. Op. No. 294 (File No. 520), 403 P.2d 673 (1965).

For case construing former statute prohibiting pimping, see *Johnson v. United States*, 260 F. 755 (9th Cir. 1915).

For case construing former statute prohibiting a male's living with or on the earnings of a prostitute, see *Dunn v. State*, Sup. Ct. Op. No. 409 (File No. 735), 426 P.2d 993 (1967).

Collateral references. — 27 C.J.S. Disorderly Houses; §§ 1 to 18; 73 C.J.S. Prostitution; § 6.7.

Constitutionality of statute conferring on chancery courts power to abate bawdyhouse as nuisance. 5 ALR 147; 22 ALR 542; 75 ALR 129.

Number of females who reside in house or resort thereto for immoral purposes as

affecting disorderly character thereof. 12 ALR 529.

Entrapment to commit offense as to house of prostitution or as to pandering. 51 ALR2d 1194.

Construction of provision of pendant statute as to placing a female in charge of custody of another. 54 ALR2d 117.

Sec. 11.66.140. Corroboration of certain testimony not required. In a prosecution under AS 11.66.110 — 11.66.130, it is not necessary that the testimony of the person whose prostitution is alleged to have been compelled or promoted be corroborated by the testimony of any other witness or by documentary or other types of evidence. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

For case construing former rule as to corroboration of prostitute's testimony, see *Johnson v State*, Sup. Ct. Op. No. 832 (File No. 1338, 501 P.2d 762 (1972)).

For cases construing former statute

providing that common fame was competent evidence in a prosecution for keeping a bawdyhouse, see *Bottle v United States*, 155 F. 50 (9th Cir. 1907); *Hall v United States*, 155 F. 52 (9th Cir. 1907).

Sec. 11.66.150. Definitions. In AS 11.66.100 — 11.66.150, unless the context requires otherwise,

- (1) "place of prostitution" means any place where a person engages in sexual conduct in return for a fee.
- (2) "prostitution enterprise" means an arrangement in which two or more persons are organized to render sexual conduct in return for a fee.
- (3) "sexual conduct" means genital or anal intercourse, cunnilingus, fellatio, or masturbation of one person by another person. (§ 8 ch 166 SLA 1978)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

Article 2. Gambling Offenses.

Section	Section
200 Gambling	240 Possession of gambling records in the second degree
210 Promoting gambling in the first degree	250 Affirmative defenses
220 Promoting gambling in the second degree	260 Possession of a gambling device
230 Possession of gambling records in the first degree	270 Forfeiture
	280 Definitions

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ducts and differing societal interests are 258 (File No 5821), 665 P.2d 829 (1953)

Sec. 11.66.120. Promoting prostitution in the second degree.

NOTES TO DECISIONS

Promoting prostitution and manag- did not violate double jeopardy since the
ing prostitution enterprise. — Punish- offenses proscribed by the two statutes in-
ment for inducing or causing a person un- volve different intents and different con-
der the age of 16 to engage in prostitution ducts and differing societal interests are
(AS 11.66.110 a-2) and for managing furthered Bell v. State Ct App Op No
supervising, controlling or owning a pro- 258 (File No 5821), 665 P.2d 829 (1953)
stitution enterprise (AS 11.66.120 a-1)

Sec. 11.66.130. Promoting prostitution in the third degree.

NOTES TO DECISIONS

Quoted in Bell v. State Ct App Op
No. 258 (File No 5821), 665 P.2d 829
(1953)

Sec. 11.66.140. Corroboration of certain testimony not re-
quired.

NOTES TO DECISIONS

Cited in Bell v. State Ct App Op No.
258 (File No 5821), 665 P.2d 829 (1953)

Sec. 11.66.150. Definitions.

NOTES TO DECISIONS

Quoted in Bell v. State Ct App Op
No. 258 (File No 5821), 665 P.2d 829
(1953)

Chapter 70. Miscellaneous Provisions.

Secs. 11.70.010 — 11.70.030. Intent to defraud; use of evidence by
person on charge of perjury; intoxication as defense. [Repealed, § 21,
ch 166, SLA 1978. For current law, see AS 11.46.990-10, 11.81.630.]

Editor's notes. — The repeal line
above is set out to correct an error in the
main pamphlet

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applies to the offense of felon in possession of a concealable firearm. *State v. LaPorte*, Ct. App. Op. No. 396 (File No. 722), 7255, 672 P.2d 462 (1983).

Conviction upheld — A person may be convicted of being a felon in possession of a concealable firearm when the predicate conviction is on appeal and the sentence stayed. *Berg v. State*, Ct. App. Op. No. 564 (File No. A-665), 711 P.2d 553 (1985).

Conviction and sentence upheld — *See Afari v. State*, Ct. App. Op. No. 572 (File No. A-703), 711 P.2d 1198 (1985).

Conviction and sentence for kidnapping assault in the first degree misconduct involving weapons in the first degree

and robbery in the first degree were affirmed. *See Wortham v. State*, Sup. Ct. Op. No. 414 (File No. 7353), 659 P.2d 1133 (1984).

Sentence upheld — *See Gilbreath v. State*, Ct. App. Op. No. 275 (File No. 7097), 607 P.2d 1354 (1983).

Applied in *Shaw v. State*, Ct. App. Op. No. 313 (File No. 7551), 673 P.2d 781 (1983).

Cited in *State v. Frazier*, Ct. App. Op. No. 45 (File No. A-415), 697 P.2d 1212 (1985); *Ackermann v. State*, Ct. App. Op. No. 605 (File No. A-931), 716 P.2d 5 (1985); *State v. Frazier*, Sup. Ct. Op. No. 067 (File No. S-972), 719 P.2d 261 (1985).

Sec. 11.61.210. Misconduct involving weapons in the second degree.

NOTES TO DECISIONS

Sentence affirmed. — *See Afari v. State*, Ct. App. Op. No. 572 (File No. A-703), 711 P.2d 1198 (1985).

Chapter 66. Offenses Against Public Health and Decency.

Article 1. Prostitution and Related Offenses.

Sec. 11.66.110. Promoting prostitution in the first degree.

NOTES TO DECISIONS

Precluding mistake of age as defense. — Subsection (b) of this section, which expressly dispenses with mistake of age as a defense to promoting prostitution in the first degree, does not violate due process of law. *Bell v. State*, Ct. App. Op. No. 285 (File No. 5521), 665 P.2d 829 (1983).

Under the Revised Alaska Criminal Code, it is defendant's intentional procurement of a person under the age of 16 years for prostitution that renders him liable for first-degree promoting, regardless of his actual awareness of that person's age. *Bell v. State*, Ct. App. Op. No. 285 (File No. 5521), 665 P.2d 829 (1983).

The act of procuring another for pur-

poses of prostitution is mature in se, without regard to the age of the person procured, and thus, in a prosecution for procuring a person under the age of 16 years, the intent to procure satisfies the minimal constitutional requirement of criminal intent. *Bell v. State*, Ct. App. Op. No. 285 (File No. 5521), 665 P.2d 829 (1983).

Promoting prostitution and managing prostitution enterprise. — Punishment for inducing or causing a person under the age of 16 to engage in prostitution (AS 11.66.110(a)(2)) and for managing, supervising, controlling or owning a prostitution enterprise (AS 11.66.120(a)(1)) did not violate double jeopardy since the offenses proscribed by the two statutes in-

NOTES TO DECISIONS

Municipal ordinances not prohibited. — The enactment of this article does not prohibit municipal ordinances penalizing the solicitation of prostitutes by putative customers. *Municipality of Anchorage v. Afualo*, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).

There is nothing in this article which

would support an inference that the legislature sought to encourage men to patronize prostitutes nor is there any indication in this article that the legislature sought statewide uniformity in regulating commercial sexual relations. *Municipality of Anchorage v. Afualo*, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).

Collateral references. — 63 Am. Jur. 2d, Prostitution, § 1 et seq.

27 C.J.S., Disorderly Houses, § 1 et seq.; 73 C.J.S., Prostitution, § 1 et seq.

Constitutionality and construction of pandering acts, 74 ALR 311.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation — modern cases, 77 ALR3d 519.

Sec. 11.66.100. Prostitution. (a) A person commits the crime of prostitution if the person engages in or agrees or offers to engage in sexual conduct in return for a fee.

(b) Prostitution is a class B misdemeanor. (§ 8 ch 166 SLA 1978)

NOTES TO DECISIONS

Common law. — The keeping of a bawdyhouse was a misdemeanor at common law, whereas fornication and prostitution were not. *Eleazar v. United States*, 16 Alaska 561, 241 F.2d 385 (9th Cir. 1956), decided under former AS 11.40.220.

This section is not irreconcilable with a municipal ordinance prohibiting the solicitation of prostitutes by putative customers. *Municipality of Anchorage v. Afualo*, Ct. App. Op. No. 213 (File Nos. 7094, 7095), 657 P.2d 407 (1983).

Actual payment of a fee is not required; an act of prostitution is com-

plete when an offer is extended or an agreement made to engage in sexual conduct in return for a fee. *Garibay v. State*, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).

Proof. — Customer's testimony that he agreed to purchase sexual favors for sum of \$200, his testimony that he charged the purchase price using his VISA card, and the VISA charge slip itself, were all highly probative of whether an agreement or offer to engage in sexual conduct in return for a fee was in fact made. *Garibay v. State*, Ct. App. Op. No. 221 (File No. 6246), 658 P.2d 1350 (1983).

Collateral references. — Prostitution as vagrancy, 14 ALR 1501.

Entrapment to procure women for

immoral purposes, 18 ALR 186; 66 ALR 476; 86 ALR 263.

Sec. 11.66.110. Promoting prostitution in the first degree. (a) A person commits the crime of promoting prostitution in the first degree if the person

(c) This section applies to home rule and general law municipalities. (§ 7 ch 74 SLA 1985)

Chapter 23. Municipal Officers and Employees.

[Repealed, § 16 ch 118 SLA 1972; § 24 ch 83 SLA 1979; § 88 ch 74 SLA 1985.]

Chapter 25. Municipal Enactments.

Section	Section
10. Acts required to be by ordinance	60. Codification
20. Ordinance procedure	60. Resolutions
30. Emergency ordinances	70. Penalties
40. Codes of regulation	

Sec. 29.25.010. Acts required to be by ordinance. (a) In addition to other actions that this title requires to be by ordinance the governing body of a municipality shall use ordinances to

- (1) establish, alter, or abolish municipal departments;
- (2) provide for a fine or other penalty, or establish rules regulations for violation of which a fine or other penalty is imposed;
- (3) provide for the levying of taxes;
- (4) make appropriations, including supplemental appropriations or transfer of appropriations.
- (5) grant, renew, or extend a franchise;
- (6) adopt, modify, or repeal the comprehensive plan, land use and subdivision regulations, building and housing codes, and the official map;
- (7) approve the transfer of a power to a first or second class borough from a city;
- (8) designate the borough seat;
- (9) provide for the retention or sale of tax-foreclosed property;
- (10) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025; this paragraph applies to home rule and general law municipalities.

(b) This section grants no authority but requires the governing body to use ordinances in exercising certain of its powers. (§ 8 ch 74 SLA 1985)

Opinions of attorney general. — The borough assembly could levy taxes only by means of an ordinance enacted under the terms of a former, similar provision. 1963 Op. Att'y Gen. No. 25.

Under a former, similar provision, where a proposed incorporation petition provided that public health services should be administered not by the bor-

ough assembly but by a board of health which was to be appointed by the borough assembly, but otherwise to operate autonomously in making rules and regulations with the force of law, such rules and regulations would have been illegal ordinances since they would have been promulgated by the board of health rather than by the borough assembly. The board of health would have constituted a borough department illegally established by the incorporation petition, and not by ordinance. 1962 Op. Att'y Gen. No. 9.

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 343-422. 62 C.J.S., Municipal Corporations, § 411 et seq.

Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil, or other natural products within municipal limits. 10 ALR3d 1226.

Civil liability of private person as affected by invalidity of statute or ordinance for violation of which arrest was made. 16 ALR3d 535.

Validity of statute, ordinance, or charter provision requiring that workmen on public works be paid the prevailing or current rate of wages. 18 ALR3d 944.

Validity of loitering statutes and ordinances. 25 ALR3d 836.

Validity of municipal regulation of aircraft flight paths or altitudes. 36 ALR3d 1314.

Validity and construction of municipal ordinances regulating community antenna television service (CATV). 41 ALR3d 384.

Validity of statute, ordinance, or regulation requiring fingerprint of those engaging in specified occupations. 41 ALR3d 732.

Validity and construction of zoning ordinance regulating architectural style or design of structure. 41 ALR3d 1397.

Validity and construction of state and municipal enactments regulating lobbying. 42 ALR3d 1046.

Validity of statute or ordinance forbidding pharmacist to advertise prices of drugs or medicines. 44 ALR3d 1301.

Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold. 46 ALR3d 369.

Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations. 46 ALR3d 1393.

Validity, construction, and application

of enactments restricting land development by dredging or filling. 46 ALR3d 1422.

Validity of municipal ordinance imposing income tax or license upon nonresidents employed in taxing jurisdiction (commuter tax). 48 ALR3d 343.

Buffer provision in zoning ordinance as applicable to abutting land in adjoining municipality. 48 ALR3d 1303.

Operation of nude-model photographic studio as offense. 48 ALR3d 1313.

Validity and construction of statute or ordinance forbidding treatment in health clubs or massage salons by persons of the opposite sex. 51 ALR3d 936.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.

Validity and construction of regulations dealing with misrepresentation in the sale of kosher food. 52 ALR3d 959.

Validity of municipal ordinances regulating time during which restaurant business may be conducted. 53 ALR3d 942.

Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity. 59 ALR3d 93.

Validity and construction of curfew statute, ordinance, or proclamation. 59 ALR3d 321.

Validity and construction of statute or ordinance prohibiting commercial exhibition of malformed or disfigured persons. 62 ALR3d 1237.

Application of city ordinance requiring license for laundry, to supplier of coin-operated laundry machines intended for use in apartment building. 65 ALR3d 1296.

Validity and construction of statutes or ordinances providing for arbitration of labor disputes involving public employees. 68 ALR3d 885.

Application of statute or regulation dealing with registration or carrying of weapons to transient nonresident. 68 ALR3d 1253.

Larceny as within disorderly conduct statute or ordinance. 71 ALR3d 1156.

Validity and construction of ordinance prohibiting roof signs. 76 ALR3d 1162.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation — modern cases. 77 ALR3d 519.

Validity of statutes, ordinances, and regulation requiring the installation or maintenance of various bathroom facilities in dwelling units. 79 ALR3d 716.

**Municipality
of
Anchorage**



P.O. BOX 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4311

FEB 3 1987

Larry Baker, Assemblyman
3947 Locarno Drive
Anchorage, Alaska 99504
Telephone (907) 565-2906

January 30, 1987

Representative Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Dave:

Thank you for your letter of January 21, 1987. I certainly was pleased to learn that you and Max Gruenberg have introduced legislation to strengthen our statutes on prostitution.

I have felt for many years that our community was in need of stronger legislation by the State of Alaska in order to assist local communities in solving their prostitution problems.

I fully support your efforts and will work with Assemblymen Faulkner and Kubitz to develop solutions on a local level.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry W. Baker".

Larry W. Baker
Chairman

cc: Bill Faulkner
Jim Kubitz

Municipality
of
Anchorage



P.O. BOX 6650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4311

FEB 4 1987

ANCHORAGE ASSEMBLY

Assemblyman Jim Kubitz
3008 Brookside Drive
Anchorage, AK 99517
January 30, 1987

Representatives Donley & Gruenberg
P.O. Box V
State Capitol
Juneau, Alaska 99811

Dear Representatives Donley and Gruenberg:

I would like to offer my support for House Bill 28 giving municipalities the authority to prescribe minimum penalties for the violation of an ordinance that prohibits prostitution.

Our community and I thank you for taking the lead on this issue.

Sincerely,

A handwritten signature in cursive script that reads "Jim Kubitz".

Assemblyman Jim Kubitz
Anchorage, Seat 3E



Telegram

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PMS

REF DAVE DONLEY

JUNEAU AK

I AM VERY SUPPORTIVE OF HB28. PLEASE HELP US CLEAN UP OUR
NEIGHBORHOODS. THANK YOU.

DR BILL FAULKNER, ANCHORAGE MUNICIPAL ASSEMBLYMAN

400 L ST SUITE 104

ANCHORAGE AK 99501

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Municipality of Anchorage

MEMORANDUM

RECEIVED

DATE: January 28, 1986
TO: Commissioner of Public Safety
FROM: Deputy Chief Otte
SUBJECT: Prostitution in the Spenard Area

JAN 28 1986

MUNICIPALITY OF ANCHORAGE
OFFICE OF PUBLIC SAFETY

The following information concerning prostitution in the Spenard area is submitted for your review.

During the past 5 1/2 months, approximately 50 prostitution related arrests have been made in the Anchorage area. For the most part these arrests are evenly divided between the downtown area and the Spenard area. The majority of arrests are for street prostitution offenses, but there are also several involving the various escort services located in the Spenard area. During the past few weeks we have continued to make cases as time and resources allow, however numerous felony cases requiring the assistance of the officers normally assigned to prostitution cases have limited our response.

Currently the three officers assigned to the night shift detective general investigation unit focus most of their time on prostitution related problems. They are supplemented as time permits by the area patrol cars and on occasion by members of the Crisis Intervention Response Team. It is our intent as warmer weather approaches to apply additional resources from Investigations, Patrol and special units in an attempt to preclude the problems experienced last summer both downtown and in the Spenard area. I believe that we can create an environment from an enforcement perspective, in which prostitutes find other locations outside of Anchorage much more pleasant and desirable.

It must be remembered that a long term solution to the prostitution problem in Anchorage requires more than just a commitment on the part of the police department. Our enforcement efforts are only a small portion of the total equation. The rest of the criminal justice system must be committed to dealing with the problem before any long term results will be visible. Although we have repeatedly stressed this point, it has always been overlooked and ignored in years past. When we make arrests, the prosecutor's office must be willing and able to provide the prosecutorial resources necessary. Additionally, and probably most important, the courts must begin to sentence convicted prostitutes in a manner that reflects the feelings within the community. Suspension of jail time and moderate fines will not deter prostitutes from practicing their trade openly on the Anchorage streets.

Commissioner of Public Safety
January 28, 1986
Page Two

Interviews with prostitutes arrested by APD officers during this past summer reveal that most prostitutes come to Anchorage for two reasons. First, they have heard rumors about the money to be made in Alaska. Secondly, crackdown on prostitution in other jurisdictions in the Lower 48 have made Anchorage a more desirable location. In tracking 20 prostitution arrests through the justice system recently, it was learned that only one case resulted in the convicted prostitute receiving any jail time. I do not feel that prostitutes interested in working in Anchorage would feel particularly concerned by these kinds of sentences from the courts.

The other issue that has surfaced periodically concerning prostitution in the Spenard area has to do with the large concentration of massage parlors. While the issues previously discussed apply to individual prostitutes working out of the massage parlors, this in itself would not remove the parlor from existence. It has been our experience that the only way to remedy the large numbers of massage parlors is to initiate and follow through with a civil abatement process against the individual residences. This again requires a long term commitment on the part of the prosecutor and Municipal Attorney's office as well as a long term commitment on the part of the police department to provide the necessary resources to gather the needed information.

I will continue to apply enforcement pressure with the resources available but would request that we attempt a coordinated approach to the problem so as to insure a more long term solution.

Respectfully,



R. Otte
Deputy Chief, Operations

RO:d1



Spenard Action Committee

2308 West 4th Street • Anchorage, Alaska 99517
Phone (907) 243-7768

January 23, 1987

TO: The members of the House of Representatives;

My name is David Erlich, I am Chairman of the Spenard Action Committee, a non-profit corporation made up of citizens of the Anchorage area.

Our concern for our community and city are real and sincere. Crime in Anchorage has come a long way the past 20 years and in some respects has surpassed many major cities outside. Our rape rate is the highest in the nation, 5 times the national average, pornography sells at 6 times the national average, organized crime has infiltrated our city as well and now enjoys freedom of operation in prostitution, gambling, pornography, drugs and other activities.

Our laws in the State of Alaska are probably the weakest in the nation to deal with this ongoing threat. We are currently the only state which does not have a conspiracy bill dealing with these activities. Dave Donley bill, HB30 would pertain only to certain crimes but would aid law enforcement authorities here in Anchorage to deal with these certain situations.

Another bill, HB28, deals with the prostitution problems here in our city and would not impact other areas of the state. By allowing the municipality to institute mandatory minimum sentences on a first offense, second offense and third offense basis this will mirror what other cities have done outside to curb their prostitution problems. We currently have 30-40 houses of prostitution operating in Anchorage with a summer influx of hundreds of streetwalkers, who find Anchorage easy prey and weak laws inviting. Your concern and understanding of our particular situation will be greatly appreciated.

In closing, the passage of these bills will help crime prevention in our city, protect the communities retail trade, maintain property values and generally protect and preserve the quality of our neighborhoods, commercial districts and the quality of urban life.

Sincerely

David Erlich
Spenard Action Committee Chairman

JAN 21 1987

CITY OF UNALASKA

P.O. BOX 29K 112
UNALASKA, ALASKA 99685
(907) 581-1251

"Capital of the Aleutians"



January 21, 1987

TO: Nancy Gross, City Manager
FROM: Peter Davis, Public Safety Director
RE: Review of House Bill No. 28

I have several objections to this bill. They are as follows:

- A. It assumes that prostitution is considered to be the more serious violation or problem present in all municipalities; more so than already encoded. This, of course is, and may not be the case.
- B. It would be contrary to the stated position of the Courts. Violations with fines exceeding \$300 and with extended jail terms, are required to be handled as misdemeanors.
- C. If such an ordinance were to be accepted and enforced, the defendant would be entitled to a jury trial and a defense attorney. The municipality would then have to prosecute the case with its own attorney and provide the defendant with a public defender, if required.

In all, at least for Unalaska, we have other areas of greater concern. Prostitution is not a major, nor an obvious problem, and we have just amended our ordinances to assure better enforcement by making them all violations. It is a nothing bill!

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	5-7-87	1:30 p.m.
H. JUD.	5-4-87	1:30 p.m.
H. JUD.	2-27-87	1:30 p.m.
H. JUD.	2-20-87	1:30 p.m.

HOUSE COMMITTEE REPORT

7)

Date referred: 2/6/87

FURTHER REFERRALS:

DATE: 5-7-87

The Judiciary Committee has considered HB 28

An Act relating to municipal penalties for prostitution."

RECOMMENDS:

- replace with CS HB 28 (Jud) [] the same title
- attached amendment(s) [] a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: [] _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact [] same as previous fiscal note published _____
- zero fiscal note [] same as previous zero fiscal note published 3/11/87
- zero with analysis

SIGNING DO PASS:

W. J. [Signature]

John I. Taylor

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

Mike [Signature] - no rec

[Signature]

[Signature]

Chairman's signature

5-0185L ✓
Levy
5/4/87

Original sponsors: Denley and Gruenberg

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 28 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal penalties for prosti-
7 tution and promoting prostitution."

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

9 * Section 1. AS 29.25.070(a) is amended to read:

10 (a) For the violation of an ordinance, a municipality may by
11 ordinance prescribe a penalty not to exceed a fine of \$1,000 and
12 imprisonment for 90 days. A municipality may prescribe a penalty
13 requiring a court to impose a minimum sentence of imprisonment of up
14 to three days for a first conviction, 10 days for a second conviction,
15 and 30 days for a third or subsequent conviction, and a fine not to
16 exceed \$1,000, as provided in an ordinance, for violation of an ordi-
17 nance that prohibits prostitution. In this subsection, prostitution
18 includes all conduct prohibited under AS 11.66.100 - 11.66.150 and
19 also includes paying or agreeing to pay a fee in exchange for sexual
20 conduct.

21 * Sec. 2. AS 29.25 is amended by adding a new section to read:

22 Sec. 29.25.080. STATE'S COSTS. A municipality that adopts an
23 ordinance providing for a minimum sentence of imprisonment for prosti-
24 tution under AS 29.25.070(a) shall reimburse the state for actual
25 costs incurred by the court system and the Department of Corrections
26 as a result of the ordinance.

5-0185L
Levy
5/1/87

Original sponsors: Donley and Gruenberg

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5-0185L
Levy
3/11/87

Original sponsors: Donley and Gruenberg

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