ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4816 HLAB HB 238 - HB 283

388

Table 2
STATE PUBLIC UTILITY COMMISSIONS

State or other jurisdiction	Regulatory authority	Members: Number	Members: Selection	Selection of chair	Length of commissioners' terms (in years)	Number of full-time employees
Alabama	Public Service Commission	3	E	E	4	90
Alaska	Public Utilities Commission	5	GL	G(a)	6	49
Arizona	Corporation Commission	3	E	C	6	167
Arkansas	Public Service Commission	3	GS	G	6	101
California	Public Utilities Commission	5	GS	G	6	987
Colorado	Public Utilities Commission	3	GS	G	6	96
Connecticut	Public Utilities Control Authority	5	GL	C	4	107
Delaware	Public Service Commission	5	GS	G	5	17
Florida	Public Service Commission	5	GS	C	4	336
Georgia	Public Service Commission	5	E	C	6	119
Hawaii	Public Utilities Commission	3	GS	G	6	17
Idaho	Public Utilities Commission	3	GS	G	6	55
Illinois	Commerce Commission	7	G	G	5	348
Indiana	Public Service Commission	5	G(b)	G	4	91
Iowa	State Commerce Commission	3	GS	G	6	175
Kansas	State Corporation Commission	3	GS	C	4	254
Kentucky	Public Service Commission	3	G	G	3	90
Louisiana	Public Service Commission	5	E	C	6	74
Maine	Public Utilities Commission	3	GS	G	6	54
Maryland	Public Service Commission	5	GS	G	5	123
Massachusetts	Dept. of Public Utilities	3	G	G	4(c)	134
Michigan	Public Service Commission	3	GS	G	6	215
Minnesota	Public Utilities Commission	5	GS	G	6	24
Mississippi	Public Service Commission	3	E	C	4	115
Missouri	Public Service Commission	5	GS	G	6	261
Montana	Public Service Commission	5	E	C	4	44
Nebraska	Public Service Commission	5	E	C	6	54
Nevada	Public Service Commission	3	G	G	4	82
New Hampshire	Public Utilities Commission	3	C	G	6	51
New Jersey	Board of Public Utilities	3	GS	G	6	323
New Mexico	Public Service Commission	3	GS	G	6	40
New York	Public Service Commission	6	G?	G	6	605
North Carolina	Utilities Commission	7	GL	G	8	164
North Dakota	Public Service Commission	3	E	C	6	60
Ohio	Public Utilities Commission	5	GS	G	5	375
Oklahoma	Corporation Commission	3	E	C	6	433
Oregon	Public Utility Commissioner	1	G		4	349
Pennsylvania	Public Utility Commission	5	GS	G	10	575
Rhode Island	Public Utilities Commission	3	GS	G	6	41
South Carolina	Public Service Commission	7	GS	(d)	4	145(e)
South Dakota	Public Utilities Commission	3	E	C	6	24
Tennessee	Public Service Commission	1	E	C	6	155
Texas	Public Utility Commission	3	GS	C	6	204
Utah	Public Service Commission	3	GS	G	6	48
Vermont	Public Service Board	3	GS	G	6	26(e)
Virginia	State Corporation Commission	3	L	C	6	468
Washington	Utilities and Transportation Commission	3	GS	G	6	199
West Virginia	Public Service Commission	3	GS	G	6	177
Wisconsin	Public Service Commission	3	GS	G(f)	6	158
Wyoming	Public Service Commission	3	GS	C	6	41
Dist. of Col.	Public Service Commission	3	M	C	3	31
Puerto Rico	Public Service Commission	5	GS	GS	4	243

Source: National Association of Regulatory Utility Commissioners, *Annual Report on Utility and Carrier Regulation, 1984* (Washington, D.C. 1985)

Key
G—Appointed by Governor
GS—Appointed by Governor, with consent of Senate
GL—Appointed by Governor, with consent of entire Legislature
E—Elected by the Public
C—Elected by the Commission
L—Appointed by the Legislature
M—Appointed by the Mayor

(a) Chairman serves in that position for four years
(b) Legislation enacted in 1983 created a nominating commission, members of which submit a panel of three candidates to the governor for consideration
(c) Co-terminous with governor's
(d) Chairmanship rotates every two years
(e) Updated information not available. No response to survey
(f) Chairman serves in that position for two years

Source: Book of the States, 1986-1987, Council of State Governments, p. 358.

Many of the functions of the Alaska Power Authority (APA) are conducted by public utility commissions, utilities, and energy offices in other states. The APA also appears to be a unique entity among the 50 states. There are power project bonding authorities in other states but their roles are usually limited to that function alone. West Virginia created the Public Energy Development Authority in 1985 to issue bonds for constructing energy-related facilities (i.e., power plants and transmission lines). The function of the West Virginia authority is only to issue bonds. Energy plan development and facility promotion and financing are generally viewed as conflicting objectives in other states.

In the area of planning and forecasting, these activities are usually the responsibility of the office or division of energy. Most of the states discussed in this memorandum have an extensive planning process which results in the development of a statewide plan. The planning process entails the specification of energy policy and the formulation of objectives or goals. The plan identifies how these objectives are to be met and requires implementation and monitoring to assure that the goals are achieved. True strategic plans such as those of Nevada and Wisconsin are a dynamic process. In contrast, Alaska's Energy Plan, which is prepared by the APA, is more of a catalogue of energy information and activities. This is probably the result of the lack of a lead energy agency formulating state energy policy and the disaggregation of programs among agencies.

States vary considerably as to whether they conduct energy plans or whether the utilities are required to present plans developed in accordance with state statutes and regulations which are then incorporated by a state agency into a statewide plan. Most of the states discussed in this memorandum require utilities to submit plans; the costs for plans are covered by utility rates which are approved by the PUC. The states which require utilities to develop plans have generally been more successful with implementation and enforcement. In states where utilities prepare plans, the office of energy conducts demand and supply forecasts, provides technical information regarding conservation and alternative energy, and takes a lead role in formulating and carrying out state energy policies. In Wisconsin, for example, the PUC writes a statewide energy plan which incorporates the plans submitted by individual utilities.

In some states, the PUC is responsible for energy planning and demand forecasting. They believe this more closely ties the planning process to utility rate determinations, which is the ultimate objective of utility regulation. The Wisconsin PUC, for example, has divisions of planning, rate determination, and conservation.

Many of the offices of energy have a separate functional section that covers conservation, weatherization, and federal programs. Energy assistance (federal dollars to directly pay utility bill), however, is sometimes administered through departments of social service with other state and federal low-income assistance programs. In Alaska, weatherization and some federal dollars are administered by the Department of Community and Regional Affairs; energy assistance is administered by the Department of Health and social Services.

* * * *

If you have any questions, or wish additional information, please contact this agency.

Attachments

HB

239

5-0637B
Cramer
5/13/87

Original sponsors: Brown, Ellis, Davis, et al.

Rep Brown

Funding Information

General Fund	$ -0-
Other Funds	555,000
	$555,000

IN THE HOUSE

CS FOR HOUSE BILL NO. 239 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making special appropriations to the Alaska Power Authority for payment as grants to certain public utilities for preparing certain end-use studies, load management reports, and advance resource plans and to the Alaska Public Utilities Commission for certain costs; and providing for an effective date."

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

* Section 1. The sum of $500,000 is appropriated from the Railbelt energy fund (AS 37.05.153) to the Alaska Power Authority for payment as grants to Railbelt public utilities for the cost of preparing end-use studies, load management reports, and advance resource plans required by law.

* Sec. 2. The sum of $55,000 is appropriated from the Railbelt energy fund (AS 37.05.153) to the Alaska Public Utilities Commission for a position whose responsibility will be to assist public utilities in the preparation and review of load management and advance resource plans required by law.

* Sec. 3. The unexpended and unobligated portions of the appropriations made by this Act lapse into the Railbelt energy fund (AS 37.05.153) June 30, 1988.

* Sec. 4. This Act takes effect on the effective date of an Act enacted by the First Session of the Fifteenth Legislature that requires certain electric public utilities to prepare load management plans and advance

resource plans.

HB

250

An Update on the Liability Crisis

Tort Policy Working Group

March 1987

INTRODUCTION
AND
EXECUTIVE SUMMARY

In February of 1986 the Tort Policy Working Group issued a report entitled "Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability."[1] As its title indicates, the Report not only documented the existence of the crisis in insurance availability and affordability, but analyzed its various causes and made a number of appropriate policy recommendations.

The following is an update on that Report. It not only updates the Working Group's prior Report in the sense of reviewing the past year's developments as to both the insurance crisis and tort law (and, most importantly, tort reform), but it also summarizes and analyzes recently published empirical data on our Nation's tort system. In addition, it discusses new issues and questions relating to the liability crisis which have emerged in the course of the national debate during 1986 over the problems and the future of our civil justice system.

Chapter 1 of the Report (An Update On the Availability and Affordability of Liability Insurance) summarizes the current state of insurance availability and affordability in the United States. It indicates that while availability problems have substantially ameliorated since a year ago, they continue to exist in certain lines or types of coverage, where they remain serious. Affordability problems also have ameliorated, but only in the sense that premiums appear to have stabilized at much higher levels. This increased availability and price stability has been accompanied by, and in no small part is a result of, the use of higher deductibles, lower coverage limits and additional policy exclusions and limitations. Moreover, the past year has witnessed an increasing reliance on both self-insurance and captive insurer programs, though it remains to be seen whether such arrangements provide reliable long-term insurance coverage. Most importantly, the Chapter shows that, despite some assertions to the contrary, the impact of the crisis in insurance availability and affordability continues to be felt -- often acutely -- throughout much of the American economy.

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[1] The Tort Policy Working Group consists of senior Administration officials of eleven federal agencies, seven of whom serve as the chief legal officer of their agency.

Chapter 2 of the Report (The Insurance Industry's Economic Performance) updates the Working Group's prior analysis of the economic state of the property/casualty insurance industry. It indicates that the industry's profitability in 1986 improved markedly from 1984 and 1985, although its 1986 rate of return was roughly equivalent to its ten-year average, and was slightly less than the ten-year rate of return for Fortune 500 industrial corporations. The Chapter also shows that the two key lines that have been central to insurance availability and affordability problems -- Commercial General Liability and Medical Malpractice -- continue to generate disproportionately high underwriting losses. These two lines produced 13% of the industry's written premiums in 1986, but accounted for 33% of the industry's total underwriting loss. The Chapter also briefly discusses the fact that while the industry's profitability has varied cyclically, the industry's economic downturn in the mid-1980's was far more serious than its downturn in the mid-1970's.

Chapter 3 (The Contribution of Tort Law to the Crisis in Insurance Availability and Affordability) addresses a number of different issues relating to our tort system. Part I of the Chapter (Jury Awards) analyzes data recently published by the Rand Corporation's Institute for Civil Justice on jury award trends in Cook County, Illinois and San Francisco from 1960 through 1984. The Institute's data, which are inflation-adjusted, show that during this period the average jury malpractice award increased by 2,167% (from $52,000 to $1,179,000) in Cook County and 830% (from $125,000 to $1,162,000) in San Francisco. The comparable increase in average jury product liability awards was 212% (from $265,000 to $828,000) in Cook County and 1,016% (from $99,000 to $1,105,000) in San Francisco.

Even more astounding is the increase in the "expected jury award" -- the average jury award multiplied by plaintiff's likelihood of success. From 1960 to 1984, the expected jury malpractice award (also inflation-adjusted) increased by 4,254% (from $13,000 to $566,000) in Cook County and 1,172% (from $34,000 to $616,000) in San Francisco. The comparable increase in expected jury product liability awards was 445% (from $76,000 to $414,000) in Cook County and 927% (from $56,000 to $575,000) in San Francisco.

It is interesting to note that both the average jury award and expected jury award data show that most of the increase in jury verdicts from 1960 to 1984 occurred during the 1980 to 1984 period. For example, in many of the expected jury award categories, the increase in awards from 1980 to 1984 was double or triple the entire increase in jury awards from 1960 to 1980.

The Institute's data also show a very substantial increase in inflation-adjusted million-dollar jury awards. Of particular

interest is the fact that million-dollar awards accounted for 85% of the total damages awarded by Cook County juries in 1980 to 1984 (as compared to 4% in 1960 to 1964) and 58% of the total damages awarded by San Francisco juries during the same period (as compared to 14% in 1960 to 1964). Thus, a small percentage of all tort cases appears to account for a very large percentage of the total tort damages awarded by juries.

Part II of the Chapter (Case Filings) addresses a number of arguments that have been raised regarding the Working Group's evidence of substantial growth in product liability and medical malpractice cases filed in federal court. The Chapter discusses the recent study of the National Center for State Courts, which has been widely cited for the proposition that there is no "litigation explosion" in the United States. Part II not only identifies a number of serious methodological deficiencies in the Center's study, but notes that because the Center's study aggregates all tort filings -- including automobile accident cases -- it cannot and does not provide any meaningful insights as to the growth in the type of complex tort litigation, such as product liability, medical malpractice and many municipal liability cases, that have been at the center of the debate over tort reform.

Part II also answers a number of assertions that have been made regarding the methodology and meaning of the federal district court caseload data compiled by the Administrative Office of the United States Courts.

Part III of the Chapter (Punitive Damages) discusses the most recent data collected by the Institute for Civil Justice on punitive damage awards. It also notes the growing consensus within the legal community that punitive damages have become a source of substantial litigation abuse, and discusses a number of reasons why punitive damages need to be reformed. Of particular importance is the fact that punitive damages not only exacerbate insurance availability and affordability problems, but that they often serve as a significant obstacle to settlement, even where the likelihood of a punitive damage award is relatively small.

Part IV (Transaction Costs) discusses data recently published by the Institute for Civil Justice on the overall transaction costs of the tort litigation system. The data show, for example, that out of a total tort litigation expenditure in 1985 of $29 to $36 billion, plaintiffs received at most $14 to $16 billion. If only non-automobile tort cases are considered, the net compensation paid plaintiffs amounted to only 43% of the system's total expenditures.

Part V of the Chapter (Doctrinal Changes in Tort Law) discusses the fact that many of the current problems of the tort system can be traced to the sweeping doctrinal changes in tort

law embraced by the courts over the past two decades. These doctrinal changes almost universally seem to have shared one common objective -- to increase plaintiff's likelihood of obtaining compensation. As noted in Part V, this has led to a systematic undermining of the most fundamental principles of tort liability -- most importantly, the roles of fault and causation. Part V notes that this judicial attack on the traditional limitations and conditions placed on tort liability has not only had the effect of increasing the amount of tort liability, but has introduced considerable uncertainty and unpredictability into tort law. This uncertainty and unpredictability greatly exacerbates the already serious problems of the tort system, and substantially increases the cost of liability insurance. And, as importantly, the lack of predictability has undermined and perverted the deterrent role of tort law.

Chapter 4 (Public and State Support for Tort Reform) summarizes the remarkable success of tort reform in 1986. It describes the wide-spread popular support for tort reform, as indicated by opinion polls, ballot initiatives, the breadth of many of the coalitions formed to advocate tort reform, and even the support for tort reform from much of the legal profession. The Chapter also describes the National Governors Association's recent unanimous endorsement of product liability reform, as well as the support for tort reform of a number of State Commissions and Task Forces which were directed to analyze the insurance and liability crisis and make appropriate recommendations. In addition, the Chapter summarizes the extraordinary record of tort reform initiatives in the State legislatures in 1986, a year in which over two-thirds of the States enacted tort reform legislation of one sort or another. Finally, the Chapter briefly summarizes the State legislative activity last year relating to insurance regulation.

Chapter 5 of the Report (An Analysis of Various Tort Reform Provisions) analyzes six areas of tort reform which were the subject of considerable legislative activity in State legislatures in 1986. The analysis reviews the strengths and weaknesses of some of the different legislative reform formulations enacted by the States. Where appropriate, the Chapter also sets out the legislative provisions drafted by the Working Group which were part of the Administration's civil justice reform package submitted both last year and this year to the Congress, and explains the reasons for the specific legislative language adopted by the Working Group.

Chapter 6 (The Relationship of Tort Reform to Insurance Availability and Affordability) addresses an issue which has been central to the debate over tort reform -- whether such reforms in fact have a significant effect on insurance availability and affordability. The Chapter explains the reasons why tort reforms take some time to affect the insurance market. But it also notes that there is persuasive evidence that over the long-term tort reforms can have a very substantial impact on insurance. Specifically, the Chapter compares the experience of California physicians, who have the benefit of a rigorous medical malpractice reform statute enacted in 1975, with that of New York and Florida physicians, who practice in States with far weaker medical malpractice reforms. The difference in the experience of California physicians to that of their New York and Florida colleagues is instructive, to say the least. The rate of increase of medical malpractice premiums paid by New York and Florida physicians from 1980 to 1985 was substantially higher than for California physicians; indeed, for high risk specialties such as obstetrics/gynecology and neurosurgery, the rate of increase was two to three times larger in New York and Florida than in California. And the premiums paid by obstetricians/gynecologists in 1985 was substantially less in California than in New York or Florida for similar coverage, both in absolute dollar terms as well as in the percentage of physician net income and physician gross revenue. Accordingly, it seems evident that strong tort reform measures, if given sufficient time, can have a very substantial impact on the insurance market.

The Appendix to the Report provides the results of an economic analysis by the Antitrust Division of the Department of Justice, prepared at the request of the Working Group, of the causes of the crisis in insurance availability and affordability. The analysis reviews the merits of the four most commonly alleged causes of the crisis -- insurer collusion, imprudent insurer business practices and declines in investment income, State insurance regulation, and changes in tort liability. It finds that it is unlikely that any of the first three of these alleged causes in fact caused the crisis. The analysis concludes that only the last alleged cause -- changes in tort liability -- can be directly responsible for the recent availability and affordability problems in property/casualty insurance. Based on its review of the property/casualty industry's financial performance, the Antitrust Division's analysis concludes that two specific aspects of the tort system -- changes in the average awards, and increased uncertainty -- have contributed greatly to the crisis in insurance availability and affordability.

The Conclusion to the Report lists eight conclusions of the Working Group regarding the insurance and liability crisis and the appropriate response of the federal government to that crisis.

Richard K. Willard
Chairman
Tort Policy Working Group

Robert L. Willmore
Chairman
Task Force on Liability
Insurance Availability

March, 1987

CITIZENS COALITION FOR TORT REFORM

907-561-6250

April 27, 1987

FEDERAL TORT POLICY REPORT UPDATE

In March, the Attorney General of the United States released a report of the federal interagency Tort Policy Working Group. This 140 page report is enclosed for your attention. The Executive Summary is only 5 pages long if you are short on time. But have your staff read the full text - its worth it.

Below are a few excerpts from the report:

Chapter 1 indicates that while availability problems have substantially ameliorated since a year ago, they continue to exist in certain lines or types of coverage, where they remain serious. The problem of affordability has stabilized with rates at a much higher level. This increased availability and high price stability are accompanied by, and in no small part are a result of, the use of higher deductibles, lower coverage limits and additional policy exclusions and limitations. The past year has also witnessed an increasing reliance on both self-insurance and captive insurer programs, though it remains to be seen whether such arrangements provide reliable long-term insurance coverage. Despite some assertions to the contrary, the impact of the crisis in insurance availability and affordability continues to be felt - often acutely - throughout much of the American economy.

Chapter 2 indicates that the industry's profitability in 1986 improved markedly from 1984 and 1985, although its 1986 rate of return was roughly equivalent to its 10-year average, and was slightly less than the 10-year rate of return for Fortune 500 industrial corporations. It also shows that the two key lines that have been central to insurance availability and affordability problems - Commercial General Liability and Medical Malpractice - continue to generate disproportionately high underwriting losses. These two lines produced 13% of the industry's written premiums in 1986, but accounted for 33% of the industry's total underwriting loss.

Chapter 3 addresses a number of different issues relating to our tort system. Part I (Jury Awards) analyzes data recently published by the Rand Corporation's Institute for Civil Justice on jury award trends in Cook County, Illinois, and in San Francisco from 1960 - 1984. The Institute's data, which are inflation adjusted, show that during this period, the average jury malpractice award increased by 2,167% (from $52,000 to $1,179,000) in Cook County and 830% (from $125,000 to $1,162,000) in San Francisco. The comparable increase in average jury product liability awards was 212% (from $265,000 to $828,000) in Cook County and 1,016% (from $99,000 to $1,105,000) in San Francisco.

P.O. Box 201668 • Anchorage, Alaska 99520

Even more astounding is the increase in the "expected jury award" - the average jury award multiplied by the plaintiff's likelihood of success. It is interesting to note that both the average jury award and expected jury award data show that most of the increase in jury verdicts from 1960-84 occurred during the 1980-84 period.

The Institute's data also show a very substantial increase in inflation adjusted million-dollar jury awards. Of particular interest is the fact that million-dollar awards accounted for 85% of the total damages awarded by Cook County juries in 1980-84 (as compared to 4% in 1960-64). Thus, a small percentage of all tort cases appear to account for a very large percentage of the total tort damages awarded by juries.

Part II of the Chapter discusses the recent study of the National Center for State Courts, which has been widely cited for the proposition that there is no "litigation explosion". Part II identifies a number of serious methodological deficiencies in the Center's study. It also answers a number of assertions that have been made regarding the methodology and meaning of the federal district court caseload data complied by the Administrative Office of the U.S. Courts.

Part III discusses the most recent data collected by the Institute for Civil Justice on punitive damage awards. It also notes the growing consensus within the legal community that punitive damages have become a source of substantial litigation abuse, and discusses a number of reasons why punitive damages need to be reformed.

Part IV discusses data recently published by the Institute for Civil Justice on the overall transaction costs of the tort litigation system. The data show, for example, that out of the total tort litigation expenditure in 1985 of $29 to $36 billion, plaintiffs received at most $14 to $16 billion. If only non-automobile tort cases are considered, the net compensation paid plaintiffs amounted only to 43% of the system's total expenditure.

Part V discusses the fact that many of the current problems of the tort system can be traced to the sweeping doctrinal changes in tort law embraced by the courts over the past two decades. These doctrinal changes almost universally seem to have shared on common objective - to increase plaintiff's likelihood of obtaining compensation... Added uncertainty and unpredictability greatly exacerbated the already serious problems of the tort system, and substantially increase the cost of liability insurance. And, just as importantly, the lack of predictability has undermined and perverted the deterrent role of tort law.

Chapter 4 describes the widespread popular support for tort reform, as indicated by opinion polls, ballot initiatives, the breadth of many of the coalitions formed to advocate tort reform, and even the support for tort reform from much of the legal profession. In addition, the Chapter summarizes the extraordinary record of tort reform initiatives in the State legislatures in 1986. Finally, the Chapter briefly summarizes the State legislative activity last year relating to insurance regulation.

Chapter 5 analyzes six areas of tort reform which were the subject of considerable legislative activity in state legislatures in 1986. The analysis reviews the strengths and weaknesses of some of the different legislative reform formulations enacted by the States.

Chapter 6 addresses an issue which has been central to the debate over tort reform - whether such reforms in fact have a significant effect on insurance availability and affordability. The Chapter explains the reasons why tort reforms take some time to affect the insurance market. But it also notes that there is persuasive evidence that over the long-term tort reforms can have a very substantial impact on insurance.

The Appendix to the Report provides the results of an economic analysis by the Antitrust Division of the Department of the Department of Justice of the causes of the crisis in insurance availability and affordability. the analysis reviews the merits of the four most commonly alleged causes of the crisis - insurer collusion, imprudent insurer business practices and declines in investment income, State insurance regulation, and changes in tort liability.

It finds that it is unlikely that any of the first three of these alleged causes in fact caused the crisis. The analysis concludes that only the last alleged cause - changes in tort liability - can be directly responsible for the recent availability and affordability problems in property/casualty insurance. Based on its review of the property/casualty industry's financial performance, the Antitrust Division's analysis concludes that two specific aspects of the tort system - changes in the average awards, and increased uncertainty - have contributed greatly to the crisis in insurance availability and affordability.

CONCLUSIONS

The primary conclusions regarding the insurance and liability crisis and the appropriate response of the federal government to that crisis are:

1. The crisis in insurance availability and affordability, while substantially ameliorated, continues to impose significant costs on much of the American economy. The effects of the crisis likely will be felt throughout the economy - particularly in certain sectors - for some time to come.

2. Tort liability is a key underlying reason for the crisis in insurance availability and affordability. Its contribution to the crisis is two-fold: rapidly expanding liability, including dramatically higher damage awards, have substantially increased the cost of the tort liability system; and, changing doctrinal standards have significantly heightened the uncertainty and unpredictability of the tort system, and thereby have exacerbated the already serious problems of the system.

3. Legislative tort reforms are a reasonable, legitimate and effective response to many of the deficiencies of tort law. Such

legislation, however, is by no means the only answer to the problems of the tort system; much of the responsibility for improvement remains with the courts.

4. Rigorous and meaningful tort reforms can have a real impact on insurance availability and affordability if given the opportunity and sufficient time to work.

5. The Working Group continues to believe that there is no justification or need for federal insurance regulation or the creation of federal insurance or indemnification programs.

6. There is an appropriate role for federal tort reform legislation in those areas where there is a compelling federal interest. Such areas include product liability, the liability of federal government contractors, and the tort liability of the federal government and its employees.

7. The Administration should continue to support and work actively with Governors and State legislators to achieve reasonable and workable tort reforms at the State level.

8. The Working Group continues to believe that the eight tort reforms recommended in its prior Report represent the most sensible and effective potential reforms of the American civil justice system.

The Citizens Coalition for Tort Reform is pleased to provide you with a copy of this important national report. We are in general agreement with the conclusions of the report. If you have any questions on the report or other national reports on the lawsuit crisis please give us a call.

Ric Davidge
Executive Director

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

TABLE OF CONTENTS

Official Business

Alaska State Legislature
House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

DATE: April 8, 1987

TO: House Community and Regional Affairs Committee

FROM: Representative Ron Larson

SUBJ: Bill Analysis, House Bill No. 250

This legislation is proposed in an effort to correct technical problems with tort reform legislation passed last year (Chapter 139 SLA 1986) and to clarify and strengthen the new law.

Section 1: Noneconomic Damages

This section amends AS 09.17.010(c) to reduce the cap on noneconomic damages from $500,000 to $100,000. This is only a cap on noneconomic damages; it does not limit economic or punitive damages. Noneconomic damages are defined as "subjective, nonpecuniary damages including pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, and all other nonpecuniary damages."

Section 2: Punitive Damages

This section amends AS 09.17.020 by clarifying the terms "clear and convincing evidence" as "evidence of fraud, malice, gross negligence, or reckless misconduct of the defendant." Current statute has the same burden of proof but does not specify the type of conduct that will trigger an award.

Section 3: Damages Resulting from Commission of a Crime

This section amends AS 09.17.030 by expanding the class of persons who may not recover damages for personal injury or death if incurred while the person was engaged in the commission of crime. Current statute is limited to those persons who commit and are convicted of a felony which substantially contributes to the injury or death. HB 250

replaces "felony" with "crime," and eliminates the requirement of substantial contribution to the injury or death.

Section 4: Recovery of Damages

This section amends AS 09.17.040(d) by allowing either the plaintiff or defendant to choose periodic payments rather than large one time cash awards. Current statute allows only the injured party to make such a request.

Section 5: Limited Liability of Certain Directors and Officers

This section amends AS 09.17.050 to add the member of the Board of Directors or an officer of an electric or telephone cooperative to the list of persons not liable for damages for personal injury, death, or damage to property in the course and scope of official duties.

Section 6: Collateral Benefits

This section repeals and reenacts AS 09.17.070 to require that a judge or jury be informed of any settlements by parties in the case, cash awards agreed to by the defendant and the plaintiff, or insurance payments granted. The new language provides that a person may only recover damages that exceed amounts that he or she has already received from a collateral source, whether it be a private, group, or government source, either contributory or noncontributory. The only exceptions are where the collateral source is from a federal program that by law must seek subrogation, or from death benefits paid under life insurance. The language also requires the judge or jury be advised of tax implications of awards. (Depending on how an award is structured, a victim can loose a significant portion of the award to taxes.)

Section 7: Several Liability

This section amends AS 09.17.080(d) by eliminating the theory of joint and several liability and replacing it with several liability. In any case involving a claim of negligence, the judge or jury will apportion to each person or entity, whether or not a party to the action, the percentage for which he/she/it is responsible for the damages awarded. Each party to the suit will be liable only for the portion of damages assessed to them. Under current

statute, a party can be held liable for all of the damages, even if that party has been allocated a certain percentage of the fault. The only exception under the present statute is that a party allocated less than 50 percent of the total fault may be liable up to twice his or her degree of fault.

Section 8: Definitions

This section clarifies the definitions of economic and noneconomic losses.

Sections 9: Elimination of Civil Rule 82

This section amends AS 09.60.010 by eliminating the language "unless the civil action is contested without trial, or fully contested as determined by the court." The amendment has the effect of allowing the supreme court to determine the costs which may be allowed a prevailing party in a civil action. Unless attorney fees are authorized by statute or by where an agreement between the parties, they may not be awarded in actions for personal injury, death, or property damage relating to fault.

Section 10: Sections Repealed by this Bill

This section: (1) repeals AS 09.16, the "joint liability" statute, consistent with Section 7 of this bill; (2) repeals AS 09.17.010(c) to remove exceptions to the cap on noneconomic damages (disfigurement and severe physical impairment), consistent with Section 1 of this bill; (3) repeals AS 09.17.040(c), which allows parties to agree to compute the award of future damages under the rule adopted in the case of Beaulieu v. Elliot, and therefore requires damage awards to follow the provisions set out in Section 4 of this bill; (4) repeals AS 09.55.548(b) to eliminate repetition with Section 6 of this bill.

Section 11: Attorney Fees

This section amends AS 09.60.010, having the effect of amending Alaska Rule of Civil Procedure 82 by prohibiting the award of attorney fees to the prevailing party in certain civil actions based on fault, unless allowed by statute or by agreement of the parties.

Sections 12 and 13: Effective Date

These two sections set an effective date.

What the Public Thinks

Americans have been suing each other in recent years with such vengeance and frequency that a 1986 national survey found that nearly two of every three people admit that "suing has become part of the American way of life."[1]

But while Americans are aware of the tremendous increase in liability suits, they certainly don't like it. A number of national studies from recognized opinion experts clearly show that the American people favor major changes in the laws governing civil liability suits.

One study found that a full 69 percent are convinced that it is too easy "for people to sue for damages when they have been injured or some wrong has been done to them."[2] The vast majority believe that our system of rectifying wrongs through the courts has gotten totally out of control.

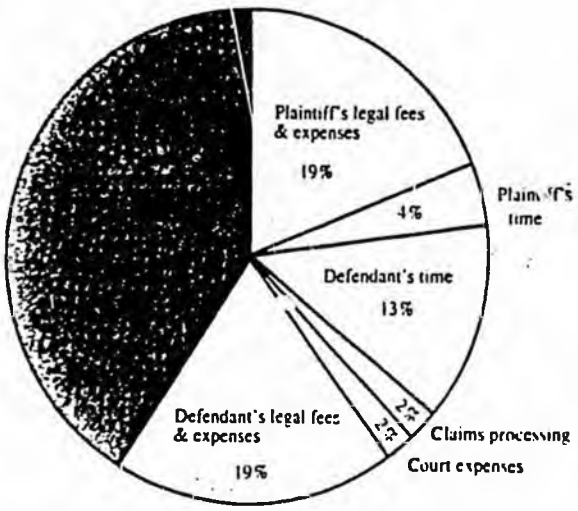
The cost of liability lawsuits in federal and state courts was between $27 and $34 billion last year. More than half of that money in non-auto cases went for the costs of litigation, including legal fees, related expenses, court costs and the value of litigants' time, according to a Rand Corporation study.[3]

Who or what's to blame? Most people point to lawyers in search of big fees, plaintiffs seeking unreasonably large financial awards, and laws that encourage people to sue.

This brochure highlights the key results of these recent studies, all showing widespread support for tort reform.

1. National representative study of over 1,000 respondents conducted for the American Tort Reform Association by Burson-Marsteller, 1986.
2. Harris Survey telephone poll of 1,243 adults nationwide, May 1986
3. Rand Corporation Study, April 1986.

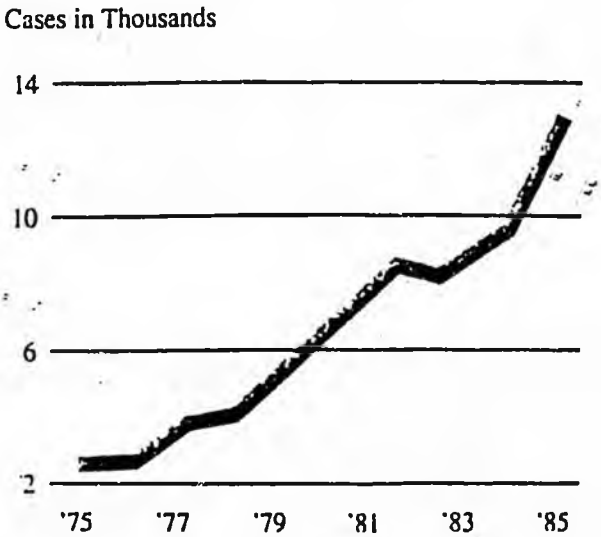
Who *Really* Benefits from Today's Tort System?



SOURCE: Rand Corporation, April 1986: costs and compensation paid for Average Non-Auto Lawsuits in 1985.

Product Liability Cases in Federal District Court

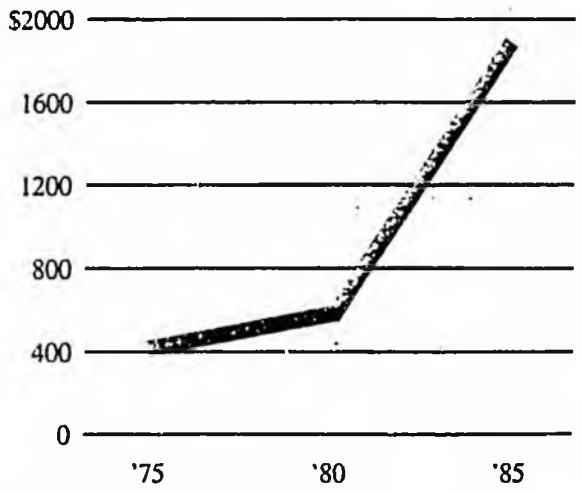
Increase in Lawsuits Filed in Federal Courts



SOURCE: Administrative Office of the United States Courts

Average Product Liability Jury Verdict

Dollars in Thousands



SOURCE: Jury Verdict Research, Inc.

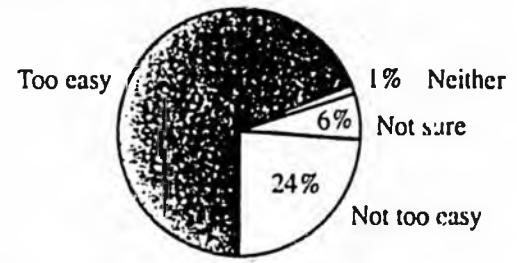
What is Causing the Liability Crisis?

	TOTAL	MALE	FEMALE
	1002 (100%)	504 (100%)	498 (100%)
Suing has become part of the American way of life	62%	61%	63%
Many frivolous lawsuits are being brought to court	54	53	56
Lawyers are trying to get rich from lawsuits	48	53	42
Courts and juries are too generous with the lawsuits awards	40	46	34
Many companies make dangerous products and deserve to be sued	24	23	24

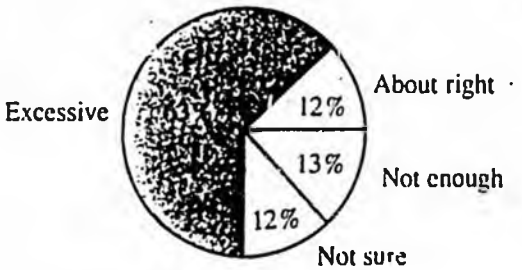
SOURCE: American Tort Reform Association, June 1986

Harris Survey: It's Too Easy to Sue, and Settlements Too High

Too Easy to Sue for Damages?

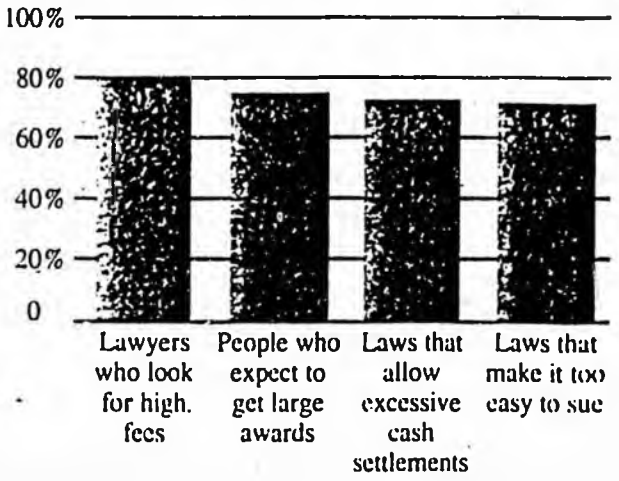


Cash Settlements Size Excessive?



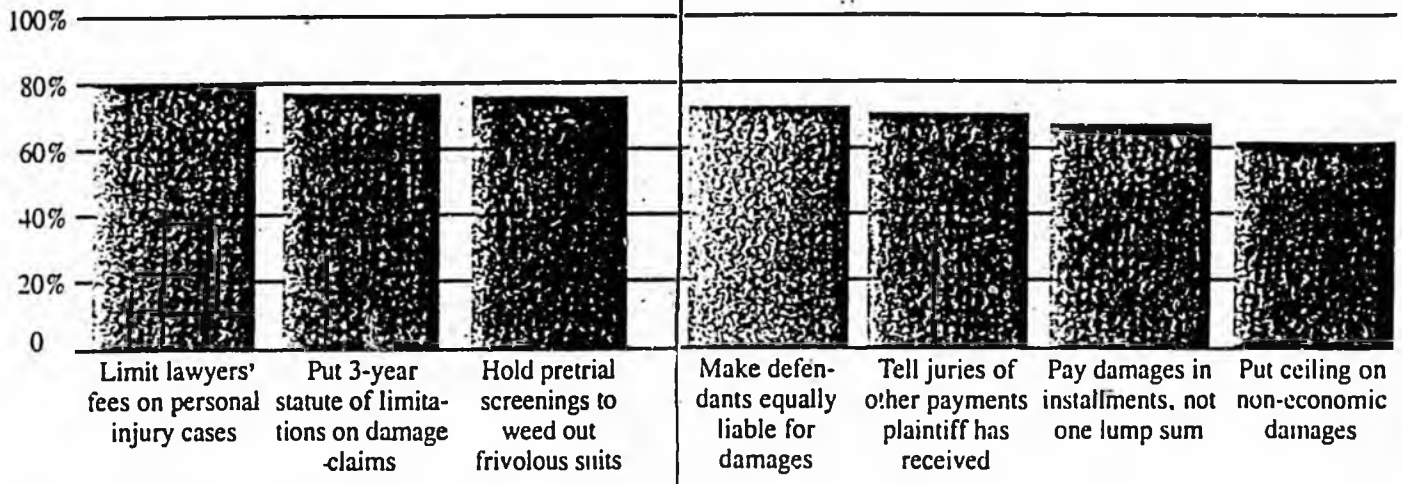
SOURCE: Harris Survey, May 1986

Factors Cited as "Very" or "Somewhat" Responsible for Increase in Lawsuits



SOURCE: Harris Survey, May 1986

A Call for Reform



SOURCE: Northwest Strategies, Seattle, Washington March 1986; a survey of Washington state residents.

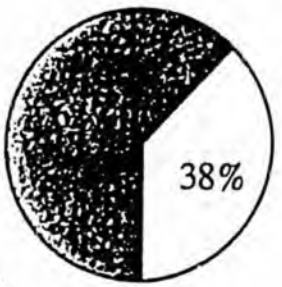
Percentage of Americans Who Agree with Proposals To...

	TOTAL	MALE	FEMALE
	1002 (100%)	504 (100%)	498 (100%)
Change how lawyers are paid so that they don't automatically get a share of the awards given by a jury	74	77	72
Limit amount people collect for pain and suffering to $250,000	66	67	66
Make the person who files and loses a lawsuit pay the legal fees of the defendant	58	65	52

SOURCE: American Tort Reform Association, June 1986

Voters Say Yes to Reform

In 1986, California voters overwhelmingly approved a ballot proposal to modify the doctrine of joint and several liability for non-economic damages. By a nearly 2-1 majority, the voters agreed that the liability of each party in a lawsuit should be limited only to the share of damages for which they were found responsible. The California Attorney General estimated that state and local governments will save as much as several million dollars a year because the voters adopted Proposition 51.



In California, referendum to modify joint and several liability passed by 62% of the voters.

LAW OFFICES OF

Camarot, Sandberg, Hunter & Smith

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

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ALASKA INSURANCE LAW AND NEWS LETTER

PUBLISHED WHENEVER THE SPIRIT MOVES US

A Survey of Recent Cases Affecting the Insurance Community Doing Business In Alaska

REFORM SCHOOL

Well, we have been tort reformed! A copy of the bill is attached. You may want to detach it and read along as we take a tour through the brave new world which those fun loving folks in Juneau have brought us:

1. Non-economic damages: The cap that isn't. The much heralded cap on non-economic loss isn't much of a cap at all. We suspect it will be the rare case in which it will be applied.

First of all, it only applies to actions "for personal injury based on negligence." Does that mean it does not apply in products liability cases? It sure looks like it.

Also, the cap does not apply to "damages for disfigurement or severe physical impairment." What does that mean? Who knows! Maybe it means that the cap only applies to back cases. We don't know.

2. Punitive damages. The Act raises the standard of proof from preponderance of the evidence to clear and convincing evidence, whatever that is, for punitive damages. We suspect that one has always needed clear and convincing evidence to get punitive damages anyhow.

3. Damages resulting from commission of a crime. You don't have to pay convicted felons if they get injured in the course of their crime.

4. Award of damages: back to the future.

(a) General verdicts are out. Verdict forms will apparently be itemized according to the statute, although we would note that the itemization says nothing about disfigurement or severe physical impairment.

Also, the Act refers to future wages which the plaintiff "could have been expected to earn." Does this mean housewives have no claim for loss of earning capacity? We don't know.

(b) Beaulieu is out. We are now a reduction to present value state although, interestingly enough, the statute does not say that non-economic loss gets reduced. More sloppy drafting, more work for lawyers.

(c) You can still have Beaulieu if you stipulate to it. This may be a good idea for small cases but we don't expect to see it in many big ones.

(d) The plaintiff can make an interest free loan to the insurance company if he wants to. Don't expect many plaintiffs to go this route.

(e) If you find one dumb enough to make you an interest free loan, you don't have to post security if you are an authorized carrier.

(f) Payments go on even if the plaintiff dies.

(g) Failure to pay can lead to a new lawsuit. why not just court enforcement?

5. Limited liability of certain directors and officers. Except for gross negligence, directors of non-profit corporations or various other civic groups are not liable.

6. Effective contributory fault: Harned overturned? In an action based on fault, which the definitions say includes strict liability, pure comparative negligence will be applied. This was not the rule in products liability cases before. Apparently it will be now.

7. Collateral benefits. The collateral source rule does not apply if the collateral sources do not have a right of

subrogation and they exceed attorney fees, less Rule 82, in the case plus premiums paid for the benefit. Since that should be something around one-third of the total recovery, this will be a seldom invoked section of the law, especially since it does not include Social Security or life insurance.

8. Apportionment of damages: a real difference. This should be a very interesting change in the law. As we read it:

A. Ordinary joint and several liability, as we know it, is out the window.

B. Each defendant or third party defendant, including defendants who have settled, is assigned a percentage of fault. This should be very interesting since defendants will be arguing that other defendants who settled were at fault and the plaintiff, who sued those settled defendants, will be arguing that they were not. The settled defendant, of course, will not be there. That should make for interesting trials.

C. Comparative negligence is disregarded in this calculation.

D. A party who is allocated less than 50% of the total fault may not be jointly liable for more than twice the percentage of fault allocated to that party. This should make it possible for municipalities and other deep pockets to be insurable again.

Plaintiffs now have a disincentive to shotgun but defendants have every reason to add more defendants.

9. Effect of release. We have to confess. They have really got us stumped on this one. The current statute governing the effect of a release appears at A.S. 09.16.040. This one, which does not purport to repeal the other one, will appear at A.S. 09.17.090. What's more, they are identical. Apparently we now have two statutes that say the same thing.

10. Definition. Fault includes negligence or recklessness. Apparently that means that comparative negligence will diminish an award of punitive damages based upon reckless conduct. It also means strict liability, breach of warranty and several other things that we don't understand.

11. Offers of Judgment: more teeth here. For the past several years the statute governing offers of judgment by the plaintiff has been hopelessly garbled. It has now been transformed into symetry with the rule governing offers by a defendant. A plaintiff can make an offer anytime up to 10 days before the start of the trial just like a defendant may.

If a defendant makes an offer and the plaintiff doesn't beat it, pre-judgment interest goes down 5% a year. If the plaintiff makes an offer and does beat it, pre-judgment interest goes up 5% a year. This could mean 15 1/2% on some claims. Ouch!

12. Pre-judgment interest, no longer a premium for the lazy. Pre-judgment interest now runs from the day process is served or the day defendant receives written notification. No longer can a plaintiff camp on his claim for two years and have it grow 20%.

13. Costs and attorney fees allowed prevailing party: a real change. There are apparently no longer uncontested Rule 82 attorney fees. As we read this statute, it means that you can come in and pay your limits on a bad claim without paying anything for Rule 82 unless you have contested the claim. This should eliminate a major cause of uncertainty.

14. Applicability. The Act only applies to accidents that haven't happened yet. That's what "causes of action accruing after the effective date" means. For the next several years, we will have most cases proceeding under the old rules.

CONCLUSION

Well, that's it. The legislature labored mightily but gave birth to an undersized progeny. It is a masterpiece of poor drafting and ambiguity. About the only thing which appears to be certain is that no one who knew anything about tort law had anything to do with drafting it. Whether one is for tort reform or against it, this is a lousy bill.

The Tort Reform File

Unaffordable and Unavailable: The Crisis in Liability Insurance

In law, tort means wrongful doing — and for the past few years there has been an explosion in the number and cost of tort cases. The first $1 million tort verdict was awarded in 1961. In 1983, there were 360 awards for $1 million or more. Just for medical malpractice suits, the number of court claims doubled over the past six years. Nationally, the average jury award for medical malpractice cases jumped from $94,947 in 1975 to $338,463 in 1984.

Tort law is intended to resolve the disputes that arise when one person harms another. If it works properly, the tort law system not only compensates those who are wrongfully injured, but also provides incentives that encourage proper conduct.

Today, however, the tort law system has broken down. New theories have created uncertainty about what conduct will result in liability. And — exploiting these expansive theories of liability — people are filing suit in record numbers and reaping huge windfalls. A lottery mentality now infects the tort system.

Because of these developments, insurance underwriters have no way to predict the kinds or amounts of claims they may have to pay. The result: broad classes of liability insurance are now unavailable or unaffordable.

Everyone Is Affected Many businesses and even state and local governments have been forced to operate without insurance — sometimes in violation of the law. Medical practitioners are avoiding some areas of practice; companies are deciding not to develop some high-risk products (including life-saving medicines) and are taking established products off the market; and state and local governments are cutting back vital services.

Consumers also are hurt by the liability crisis. They are being denied essential services, such as health care, recreational and day care services. They also have been forced to pay the higher insurance premiums and taxes required to cover the surge in the number and size of tort awards.

Cause of the Crisis Unless physicians have suddenly become more careless, or contractors are building more faulty structures, or people are harming each other more frequently, there must be other causes of the tort law crisis. And there are several:

- There is a growing tendency to eliminate personal responsibility and risk from daily life, and to pass the buck to the most obvious and wealthy targets — government and business. Many people now believe they should be compensated for any adversity, whatever the cause.
- This shift from personal to collective responsibility has been encouraged by a fundamental change in the law. Tort law was once based on fault.

but it now primarily seeks to compensate injured parties — even if responsibility is shifted from the person most at fault (including the plaintiff) to the party with the greatest ability to pay.

- The huge court awards based on these new theories of liability have enticed thousands of new "victims" to buy a ticket (file suit) to enter the "lawsuit lottery." And the courts are clogged.

Recommendations for Reform

Reform of the tort system must balance the right of individuals to be compensated for wrongful acts with the need to set reasonable limits on liability and provide more predictability in the law. Following are key reforms enacted by some state legislatures and under consideration in many others:

- *Limit Non-Economic Damages:* Uncertainty about the damages awarded for "emotional distress" and "pain and suffering" has created a "hit-the-jackpot" mentality and prevented insurance companies from setting affordable rates. States should provide guidance to juries by establishing limits on the amount of money that can be awarded as non-economic damages.
- *Limit Punitive Damages:* Punitive damages should be reserved for cases where a defendant displays conscious and flagrant indifference to the safety of others. Limits also should be placed on the amount that can be assessed for punitive damages, with the awards set by a judge in a separate proceeding after compensatory damages have been established.
- *Eliminate Joint and Several Liability:* The doctrine of joint and several liability allows a plaintiff to require *one* of several defendants to pay the *full* amount of the award, even if only slightly at fault. Joint and several liability should be replaced with "comparative negligence," under which each defendant — and plaintiff — is liable only for the share of damages the party actually causes.
- *Make Government Standards a Defense:* Some products, such as new pharmaceuticals, cannot be marketed until approved by an expert government agency. The approval process is so comprehensive that government approval should provide a defense in a tort case, as long as all government regulations are followed and no material information is withheld.
- *Set Guidelines for Expert Testimony:* To prevent lawsuits from being decided on the basis of which party can afford to hire the most "experts," expert testimony should be admitted only when an expert possesses sufficient credentials and the testimony is corroborated by other objective evidence — such as a scientific study — that is consistent with generally accepted scientific principles.
- *Ban Frivolous Suits:* "Frivolous suits" — those with little legal merit or chance of success — often are filed to pressure a defendant to settle a case. Penalties should be assessed against plaintiffs who file such suits in order to discourage frivolous cases.
- *Limit Contingency Fees:* In some cases, especially those involving large amounts, contingency fees provide windfalls to lawyers. Contingency fees also may encourage frivolous suits to be filed, and can discourage reasonable settlements. Contingency fees should be subject to specific limits to control these abuses.

- *Enact Statutes of Limitation:* Lawsuits should be brought promptly — while witnesses' memories are fresh — and at some point a business must be able to "close its books" on a particular area of activity. Statutes of limitation should require a plaintiff to initiate a suit within a year or two after an injury. In addition, statutes of repose should be enacted to prohibit the filing of claims after a specified period of time from the date of manufacture of a product or the provision of a service, regardless of when the injury occurred.
- *Permit Damage Payments in Installments:* In cases of permanent disability, large amounts are awarded immediately to cover future medical and other costs. To make the use as well as the payment of the award both more equitable and manageable, awards for future damages should be paid on an installment basis.
- *Prevent "Double Dipping":* Legislation should prevent "double dipping" by eliminating a rule that allows plaintiffs to receive payment — for the *same* expenses — from both a defendant *and* from their insurance company or employer.
- *Return to Fault-Based Liability:* Recently, some courts have held defendants liable for *any* injury related to their activity — regardless of whether the injury was foreseeable or could have been prevented, and regardless of whether the plaintiff might have avoided the injury. Liability should be based on a standard of fault, so a defendant is liable only for the harm caused by his or her negligence, and only for injuries that could have been foreseen and prevented.

More than 30 states considered tort reform legislation in these areas during the 1986 legislative sessions. This level of activity alone gives impressive evidence of the need for reform. According to the National Conference of State Legislatures, over 25 states enacted some form of tort reform in 1986. While five states adopted comprehensive reforms which addressed most major elements of the tort system, most states acted only in limited areas of tort law. The issue of tort reform promises to be high on the agendas of most state legislatures across the nation in 1987.

Limits on Non-Economic Damages

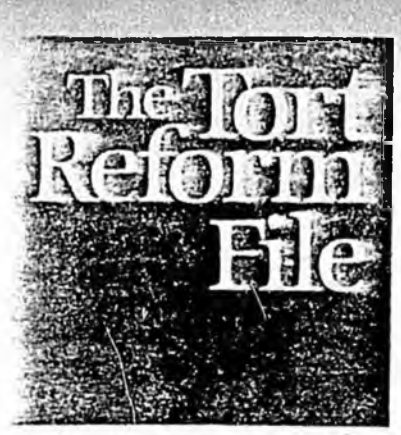
The Problem Economic damages awarded in a liability case are based on tangible or out-of-pocket expenses, while non-economic damages are awarded for intangible injuries such as "pain and suffering" and "emotional distress." So, unlike economic damages that are based on objective evidence (hospital bills, lost wages), damages for "pain and suffering" are based on subjective judgments.

Awards for non-economic damages vary widely from case to case, with plaintiffs who suffer similar injuries receiving vastly different amounts. This has led to a "hit-the-jackpot" mentality among plaintiffs and their legal counsel. And the huge awards that result have driven up the costs of litigation and liability insurance, so that many local governments and organizations as well as companies can no longer afford such insurance.

Why Reform is Needed

- Juries can — and do — award any amount they want for non-economic damages. Judges can reduce these awards only if they "shock the judicial conscience." This system makes it difficult to achieve reasonable settlements.
- It is unfair for plaintiffs suffering similar injuries to receive vastly different amounts for non-economic damages.
- Our society does not have unlimited financial resources. Juries must receive reasonable guidance in determining non-economic damages. And it's important to remember that taxpayers and insurance policy-holders ultimately pay the costs of huge, unreasonable awards.
- When legislatures establish a limit on non-economic damages, companies then have a basis for managing their business risks. And insurance companies are provided with a much-needed sense of certainty and predictability that permits them to determine rates and structure coverage.

What Should be Done **The legislature should provide guidance to juries by establishing limits on the amount that can be awarded as non-economic damages.**



Limits on Punitive Damages

The Problem Punitive damages originally were awarded to punish a party for committing a malicious or deliberately harmful act. The theory was that, by making an example of a defendant through the assessment of punitive damages, the defendant and others would presumably be deterred from engaging in such conduct in the future. Evidence was required to prove that the defendant acted with a willful disregard for the safety or interests of the injured party.

Today, the situation is totally different. The basic standards for awarding punitive damages have been eroded. Many juries are awarding punitive damages where there is little or no evidence of malicious behavior by a defendant. Punitive damages now are used to intimidate defendants and increase the size of awards, and meritless claims are often filed solely to coerce "nuisance value" settlements. A recent study by the Institute for Civil Justice found that punitive damages in Chicago increased from an average of $15,000 during 1960-64 to an average of $3.65 million during 1975-79.

Why Reform is Needed

- The application of punitive damage awards is widely misinterpreted and abused. Defendants who cause an injury — but not in a malicious or purposeful manner — are increasingly being required to pay millions of dollars in "punitive damages."
- America's legal system has a wide range of laws and penalties to deter criminal acts and punish criminal behavior. So today the key objectives of punitive damages, punishment and deterrence are now achieved through numerous other laws.
- Today's multimillion dollar punitive damage awards place a heavy burden on all U.S. citizens. Everyone bears the bulk of these payments through higher insurance premiums, tax increases and higher priced products.
- Generally, there is no limitation on either the amount awarded in punitive damages or on the number of times a defendant may be assessed such penalties. A manufacturer of a defective product may be "punished" by every judge and jury before whom a product liability suit is tried.

What Should be Done **There should be a limit on the amount of punitive damages that can be assessed against a defendant, and such damages should be set by a judge in a separate proceeding, after compensatory damages are awarded by a jury.**

Periodic Payments of Large Awards

The Problem In cases where an injury causes permanent disability, the court may award large amounts to a plaintiff for lost wages, continuing pain and suffering and *future* medical costs. These damages are ordinarily based on the plaintiff's life expectancy. In many states, the defendant is now required to pay the entire award at once, in a lump sum. This imposes an enormous financial burden on many defendants, particularly individuals and small businesses.

Such lump sum awards also pose potential problems for the plaintiffs who receive them. According to a 1980 American Bar Association (ABA) study, the great majority of plaintiffs have problems managing large lump sum awards. The ABA study found that 90 percent of the persons who had received lump sum awards of more than $100,000 had nothing left after five years.

Why Reform is Needed

- Both plaintiffs and defendants could be helped by the periodic payment of large awards, because such awards would be more equitable and manageable for both parties.
- Plaintiffs benefit from structured award payments. While some argue that an award is a plaintiff's to use as he or she pleases, the money in fact is awarded by a court to pay for specific costs. Lump sum payments, in all too many cases, are poorly managed, leaving an injured party unable to make house payments or pay medical bills.
- Most defendants fully cooperate in compensating injured parties. At the same time, periodic payments are a reasonable way to help defendants pay the award in a manner that does not destroy a defendant's life or business.
- And structured payments also help taxpayers, since plaintiffs who prematurely use up lump sum payments often turn to state and local agencies for relief.

What Should be Done **Large awards for lost wages, continuing pain and suffering and *future* medical costs should be paid on an installment basis.**

Eliminate Joint and Several Liability

The Problem In most states, injured persons who sue two or more defendants can collect the entire award from the defendant with the most money — the one with the "deep-pockets." This is the doctrine of joint and several liability.

For example, a defendant found to be only 20 percent responsible for an injury can be made to pay 100 percent of the award if the other responsible parties do not have sufficient funds. In many cases, "wealthy" defendants are included in lawsuits solely in the hope that the jury will find these defendants at least slightly responsible — thereby guaranteeing that someone will pay the judgment, no matter how large it may be.

Juries, in turn, often award huge judgments thinking that little harm is done to the wealthy parties. But this is not the case. Tremendous harm is caused to the individuals, businesses and governments that are drawn in as the "deep-pockets" defendants, and to the taxpayers and consumers who ultimately pay the costs through higher taxes, more expensive goods and services and reduced government services.

Why Reform is Needed

- Nothing is more unfair than forcing someone — a city, county, state, school, business or individual — to pay for damages caused by another party.
- The repeal of joint and several liability would result in substantial savings for state and local governments and others who now are often required to pay for damages that are caused by someone else. In California, where in 1986 joint and several liability was repealed for non-economic damages, the state Attorney General estimated that savings for the state could amount to several million dollars annually.
- Joint and several liability contributes to the overload on our court system by encouraging lawsuits that would probably not be brought but for the potential of a "deep-pocket" defendant paying a large award.
- Private citizens as well as governments and businesses ultimately pay for unreasonably high awards through higher insurance premiums and taxes — and cancelled or reduced services.

What Should be Done Fairness and an overburdened court system require that joint and several liability be replaced by the principle of "comparative negligence," under which **defendants are held liable only for the share of damages for which they are responsible — and no more.**

Collateral Source Rule

The Problem Under the collateral source rule, juries cannot be informed of any payments that plaintiffs may have already received as compensation for their injuries or illnesses. These payments can come from many different sources, including federal and state disability plans, employee wage continuation plans and federal, state and private health insurance programs.

Since a jury cannot be told about the previous payments, and thus cannot consider other compensation in computing damages, its award may be the second or third payment a plaintiff receives for the same injury. This "double dipping" raises the costs of employer and government insurance and disability plans.

Why Reform is Needed

- According to studies by the American Bar Association and the Rand Corporation, eliminating the collateral source rule would reduce court awards between 18 and 20 percent. This, in turn, would lead to lower insurance rates.
- When the collateral source rule was established, plaintiffs found even partially at fault for their injuries could not receive any compensation. Today, just the opposite is true: even if plaintiffs are found largely at fault for their injuries, in many states they can still receive more than one payment for those injuries.
- Some argue that the wrongdoers should not benefit from the fact that a plaintiff obtained insurance. Many of the people held "liable," however, are only slightly responsible for the injury. And the plaintiff may even be largely responsible for his own injury.
- In most cases, eliminating the collateral source rule would not take money away from prudent insurance owners; it will save the money of taxpayers and employees who contribute to group insurance plans.

What Should be Done To cut costs to taxpayers and insurance holders and still make sure that an injured party is fairly compensated, **the court should reduce its final judgment by the sum of the payments that a plaintiff is entitled to receive from other sources.**

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THANK YOU.
BARBARA MORSE-QUINN, EXECUTIVE DIRECTOR
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P.O. Box [illegible]
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March 7, 1988

Dave Donley, Chairman
House Labor & Commerce Committee
Room 17, State Capitol
Juneau, Alaska 99801

Via Fax

RE: HB 297, CPS Legislation

Dear Representative Donley:

In 1984 and 1986 I wrote letters in support of legislation [illegible] Certified Professional Secretary (CPS) designation. [illegible] attached.

Once again a bill is before you on this subject. [illegible] reasons why I support the legislation. Please [illegible] give it your support. The [illegible] as the report you received last session. At this [illegible], there are no state employees who hold the CPS designation. [illegible] preparation and the difficulty of the examination I [illegible] flood of candidates because of the passage of this bill. [illegible] encourage the secretaries who are the [illegible] capstone and, in doing so, receive some [illegible] will benefit from their professionalism.

Sincerely,

Helen Allen

Helen Allen CPS
Member, Bill[illegible] Chapter
Professional Secretaries International

cc: Members of the House Labor & Commerce Committee

COPY

(3)

psi professional Secretaries International

Since 1942 Known as The National Secretaries Association (International)

[illegible]

Please reply to:

[illegible] 03136
[illegible] 99510

February 1[illegible], 198[illegible]

The Honorable Albert P. Adams
House of Representatives
Room 503, State Capitol
P.O. Box V
Juneau, AK 99811

Dear Representative Adams:

Representatives Terry Martin and [illegible] and HB 511) relating to [illegible] for State employees. Although [illegible] professional secretaries [illegible] employers are not yet familiar [illegible].

The two-day, six-part examination [illegible] covers the many areas a professional secretary should know [illegible] science in business, business law, [illegible] accounting, office administration and communication, [illegible] administered twice a year, at the [illegible] and universities across the nation [illegible] complete the exam. CPS grants approximately [illegible] the exam will tell you that it is not an easy [illegible] 8 percent pass on the first try.

The Billikin Chapter of Professional Secretaries International [illegible] you to support this legislation. A State employee [illegible] has made the effort to become the very best in [illegible] and deserves consideration in the area of compensation.

Sincerely,

Helen Allen

Helen Allen CPS
President

(4)

COPY

[illegible], CPS
P. O. Box 100136
Anchorage, AK 99510

July 13, 1984

The Honorable John J. Cowdery [illegible]
Box 10-1623
Anchorage, Alaska 99511

Dear Representative Cowdery:

The "CPS" after my name stands for [illegible] Although Alaska has the highest [illegible] per capita than any other [illegible] the rating or what it can mean to them.

The two-day, six-part examination [illegible] many areas a professional secretary [illegible] science in business, business law, [illegible] office administration and communication, [illegible] given only once a year, [illegible] Occupations Department of Anchorage [illegible] and universities across the United States [illegible] successfully achieve the rating [illegible] and business subjects. [illegible] not an easy task; in fact, only [illegible] sitting.

There are [illegible] reward successful candidates with [illegible] form of recognition. They have [illegible] exam and the resulting [illegible] and accomplished this goal. But [illegible] program although it has been in existence since [illegible] throughout the United States, in Canada, and [illegible].

Representative Terry Martin is planning [illegible] a bill in the Alaska Legislature next session in support of the Certified Professional Secretary designation. Governor Sheffield signed [illegible] Proclamation April 16, 1984, recognizing the 124 exceptional secretaries [illegible] State of Alaska who have proven their outstanding [illegible] the rating of Certified Professional Secretary and is aware of the proposed legislation. Several other states have already recognized their Certified Professional Secretaries.

PSI2/I1

(5)

COPY

I hope that you will look the same [illegible] this bill [illegible] this pa[illegible] to educate the professionals [illegible] with the designation of [illegible] by this bill. I am [illegible] and examination.

Sincerely,

Helen Allen

Helen Allen, CPS

Enclosures (portions of 1984 CAPS[illegible])

cc Patricia Slater, CPS

PSI2/I

TO: Rep. Dave Loveless, Chair

FROM: Helen Allen

487/EZ

STATE OF ALASKA
1988 LEGISLATIVE SESSION

Bill Version: HB 257
Publish Date: 1-21-88

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act Relating to Certified Professional Secretaries and Amending the Scope of the Personnel Rules.
Sponsor: Martin, Phillips, Hanley, Barnes
Requestor:

Agency Affected: 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	10.0	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	10.0	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	10.0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	10.0	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)

The above information shows the fiscal impact on the Division of Personnel. See the attached analysis for an explanation of the contractual services needed and an explanation of our estimate of statewide impact.

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

Approved by Commissioner: John M. Andrews
Agency: Department of Administration
Date: 1/25/88

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

5/4K1/040387-02/V3/1-2

Rev: 1/11/87

FISCAL NOTE ANALYSIS
HB 257

Section 1 of this proposed bill amends AS 39.25.150 to grant employment preference rights to persons who are certified professional secretaries and professional legal secretaries in clerical or secretarial positions.

The bill identifies "secretarial and clerical job classes" as those to receive this employment preference. The Division of Personnel would interpret this to mean all 35 clerical related job classes covered by the Office Skills Test. However, sponsor staff indicated by telephone on April 2, 1987, that this is not the intention. Intent is to include only seven job classes: Secretary I and II, Legal Secretary I and II, and Executive Secretary I, II, and III.

A total of $10,000 in contractual services would be required to implement Section 1. Assuming that adding points to final scores would be the method used to award employment preference, the Division of Personnel would have to rewrite the two most complex programs in the Applicant Tracking System. It would also require modifying the two largest record files on line plus additional updates and modifications to other portions of the system.

Section 2 of the proposed bill would provide a direct monetary award in the form of a "bonus" salary increase to those current and prospective State employees who hold a Certified Professional Secretary (CPS) or Professional Legal Secretary (PLS). There are at present approximately 150 such individuals in Alaska. There are currently 266 positions in the job classes mentioned above that would be eligible for a CPS or PLS preference under this bill.

The following assumptions were made in calculating the increased personal services cost:

- As mentioned above, sponsor staff has identified seven job classes which would be impacted by this legislation. The bill should eventually be worded to specifically identify those job classes. Currently, the wording is very broad and would include all 35 clerical-related classes covered by the Office Skills Test.

- A starting figure of seven positions is used which reflects the assumption that 3.0% of the workforce has obtained a CPS or PLS. This is based on documentation provided by the sponsor. According to this documentation there are 5,754 secretaries employed throughout the state. A total of 170 have a CPS or PLS, amounting to 3.0% of all secretaries throughout the state. This fiscal note uses the 3.0% figure assumption to reflect the number of CPS and PLS employees working for the State in the seven subject job classes. 3.0% times 266 positions rounded off amounts to seven now possessing the CPS or PLS.

- A further assumption of a 50% increase in the number of employees who obtain a certificate with each succeeding fiscal year is also employed in the fiscal note. This assumption is made because Section 2 provides a direct monetary incentive for obtaining the CPS or PLS. Therefore, the increased cost in successive fiscal years is based on increased numbers of employees qualifying for the bonuses, not on assumed salary increases.

Calculation of Annual Costs

JOB CLASS	NO. OF POSITIONS	AVERAGE PAY RATE (MONTH)	WEIGHTED TOTAL
Legal Secretary I	91	$2,155	$196,105
Legal Secretary II	30	2,314	69,420
Secretary I	108	2.042	220,536
Secretary II	22	2,236	49,192
Executive Secretary I	3	2,324	6,972
Executive Secretary II	9	2,608	23,472
Executive Secretary III	3	2,791	8,373
TOTAL	266		$574,070

(Weighted) Average Monthly Pay Rate: $\frac{574,070}{266}$ = $2,158

Bonus Salary Increase		Per Person Monthly	Per Person Annual
Salary: .0355 x $2,158		$76	$ 912
Benefits: plus .33	=	25	300
		$101	$1,212

FY 89 Annual Cost for 8	$ 9,696
FY 90 Annual Cost for 12 (50% increase)	14,544
FY 91 Annual Cost for 18 (50% increase)	21,816
FY 92 Annual Cost for 27 (50% increase)	32,724
FY 93 Annual Cost for 41 (50% increase)	49,692
Annual Cost for 266 (Increase to maximum)	$322,392

A

ALASCOM

Telegram

1988 MAR 18 AM 11: 30

09007 NL ANCHORGE ALASKA 84 03-18 830A AST
PMS

REP DAVE DONLEY

22L

JUNEAU

RECEIVED
MAR 21 1987

I, AND MANY OF US, COULD NOT BE HALF AS EFFECTIVE WITHOUT THE LOYAL AND CAPABLE SUPPORT OF OUR CLERICAL ASSISTANTS. HB257 RECOGNIZES AND COMMENDS THE SECRETARIAL CONTRIBUTION MANY AGENCIES ENJOY. YOUR HELP IN FACILITATING THE PASSAGE OF HB257 WOULD BE MOST APPRECIATED. PLEASE CALENDAR HB257 IN YOUR LABOR AND COMMERCE COMMITTEE AS SOON AS POSSIBLE. IT IS NECESSARY FOR THIS LEGISLATION TO BE RECEIVED IN A TIMELY MANNER BY THE GOVERNOR, DUE ITS ANTICIPATED EFFECTIVE DATE OF APRIL 25.
THANK YOU.
BARBARA MORSE-QUINN, EXECUTIVE DIRECTOR
ALASKA STATE BUILDING AUTHORITY

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

HB

268

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/13/87 FURTHER REFERRALS: Finance

DATE: 4/23/87

The Labor & Commerce Committee has considered HB 268

"An Act relating to unemployment insurance."

RECOMMENDS:

[ ] replace with CS HB 268 (L+C) [ ] the same title

[ ] attached amendment(s) [X] 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

[ ] zero fiscal note

[X] zero with analysis

[ ] same as previous fiscal note published ______________

[ ] same as previous zero fiscal note published ______________

SIGNING DO PASS:

Dave Donley

Johnny Ellis

Cliff Davidson

Niilo Koponen

SIGNING OTHER RECOMMENDATIONS:

Curt Menard N. Rec.

Walt Furnace no rec

Dave Donley

Chairman's signature

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

HL+C 4-23-87 1:30p.m.

Original sponsor: Rules/Governor

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 268 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the use of employee contributions for unemployment insurance; and clarifying provisions related to repayment of advances to the unemployment trust fund."

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

* Section 1. AS 23.20.135(b) is amended to read:

(b) The department, or a designee of the department, shall immediately deposit, upon receipt, all money payable to the fund in the clearing account. Refunds of contributions erroneously collected and payable under AS 23.20.225 and 23.20.526(a)(11) may be paid from the clearing account in the same manner, or from the training and building fund. Interest and penalty payments may not be refunded from the unemployment compensation fund. After clearance, all money in the clearing account, except for that portion of employee contributions under AS 23.20.140, shall be immediately deposited with the United States Secretary of the Treasury to the credit of the account of this state in the unemployment trust fund established and maintained under 42 U.S.C. 1104 (sec. 904, Social Security Act), as amended.

* Sec. 2. AS 23.20.140 is amended to read:

Sec. 23.20.140. ADVANCES. When, in accordance with 42 U.S.C. 1321 - 1324 (Title XII, Social Security Act), as amended, the balance in the unemployment trust fund reaches a point where the governor must apply for an advance in order to obtain for the state and its citizens the advantages available under 42 U.S.C. 1321 - 1324, the department

shall notify the governor and take other action which is appropriate to obtain an advance to the unemployment trust fund and arrange for its repayment in accordance with 42 U.S.C. 1321 - 1324.

wo1487ha
Cramer

A M E N D M E N T

By Ulmer

TO: HB 268

Page 2, after line 1:

Insert a new bill section to read:

"* Sec. 3. AS 23.20.378(c) is amended to read:

(c) An insured worker is disqualified for waiting-week credit or benefits for a week of unemployment while the insured worker is pursuing an academic education [ATTENDS AN ESTABLISHED SCHOOL IN A COURSE OF STUDY PROVIDING ACADEMIC INSTRUCTION OF 10 OR MORE CREDIT HOURS PER WEEK, OR THE EQUIVALENT]. A disqualification under this subsection begins with the first week of academic instruction and ends with the week immediately before the first full week in which the insured worker is no longer attending classes if the insured worker certifies that the period of nonattendance will last at least 60 days. However, an insured worker who was working at least 30 hours a week while pursuing an academic education is not disqualified for waiting-week credit or benefits under this subsection if the insured worker became unemployed because the worker was laid off or the worker's job was eliminated. In this subsection,

(1) "pursuing an academic education" means attending an established school in a course of study providing academic instruction of 10 or more credit hours per week, or the equivalent;

(2) [THE TERM] "school" includes primary schools, secondary

schools, and institutions of higher education."

STEVE COWPER
GOVERNOR

HB 268

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to unemployment insurance.

AS 23.20 contains a comprehensive scheme for both the collection of unemployment insurance contributions from employers and employees and for the payment of unemployment insurance benefits to unemployed workers in the State of Alaska. The economic conditions in the State of Alaska over the past couple of years have created a situation in which, at the same time that employee and employer contributions to the unemployment compensation fund have decreased, the payment of benefits out of that fund has dramatically increased. The result will be that by or near the end of 1987, the ability of the state to pay unemployment insurance benefits will be in jeopardy because the fund balance will be reduced to near zero.

Therefore, in accordance with existing AS 23.20.140, the state will need to obtain advances from the federal government in order to support the payment of unemployment insurance benefits until such time as the economic conditions in the State of Alaska turn around and employer and employee contributions once again are sufficient to keep the fund solvent.

Since 1982, the federal government has charged interest on the advances it makes to states. Under federal law (42 U.S.C. 1322(b)(5)), the interest may not be paid from employer contributions, nor may it be paid from the unemployment compensation fund. The Department of Labor has determined that interest can, however, be paid from a portion of employee contributions to the fund. This bill clarifies the Department of Labor's authority to pay the interest on advances by using employee contributions.

Section 2 of the bill is a housekeeping measure that simply makes a related provision make sense.

I recommend prompt and favorable action on this proposal.

Sincerely,

Steve Cowper
Governor

STATE OF ALASKA 1987 LEGISLATIVE SESSION No. 1
FISCAL NOTE

REQUEST:

Bill Version : HB 268
Publish Date : HOUSE 4/13/87

Revision Date:
Title : "An Act relating to Unemployment Insurance."
Sponsor : Governor
Requestor :

Agency Affected : Labor
BRU : Employment Security
Components : Unemployment Insurance

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						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Harry Sturnock

Prepared by : Joe Sitton, Director
Division : Employment Security
Phone : 465-2712
Date : 3/19/87

Approved by Commissioner : Jim Sampson
Date : 3/19/87
Agency : Labor

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : HB 268
Publish Date :

REQUEST:

Revision Date:
Title : "An Act relating to unemployment insurance."
Sponsor : Governor
Requestor : House Labor and Commerce

Agency Affected : Labor
BRU : Employment Security

Components : Unemployment Insurance

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						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by : 13 Joe Sitton
Division : Employment Security
Phone : 465-2712
Date : 4/14/87

Approved by Commissioner : 13 Jim Sampson
Agency : Labor
Date : 4/14/87

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

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

April 15, 1987

Honorable Ben Grussendorf
Speaker
House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

The Department of Labor has one critical piece of legislation, House Bill 268, that I would like to bring to your attention.

As you may be aware, the economic downturn throughout the state is literally draining Alaska's Unemployment Insurance Trust Fund. We project that this fund, which is comprised of employee and employer payroll contributions that are used to pay unemployment insurance benefits to unemployed workers, will be insolvent by early 1988.

As background information, I would explain that Alaska's employer and employee contribution rates are designed to be responsive to benefit outlays. However, the formula did not anticipate the sharp and prolonged economic decline being experienced. Accordingly, aside from drastically reducing benefit outlays immediately, it does not appear that any corrective measures can be instituted in time to arrest depletion of the Trust Fund. Other states which have encountered solvency problems have also found that by the time the impact is realized on a Trust Fund, there is not sufficient time to implement corrective measures to reverse the trend. In addition, the corrective measures themselves are unattractive in recessionary periods as they serve to fuel further economic decline.

As Governor Cowper explained in his transmittal letter for House Bill 268, the federal government will advance the money to permit the continued payment of benefits. However, interest on the advanced money cannot be paid from the Trust Fund. Legislation is, therefore, needed to permit using employee contributions, which presently go into the Trust Fund, to pay the interest. House Bill 268, introduced April 13, effects the necessary statute change.

7-G9LH

We need to have this legislation in place before the end of 1987, and due to the short time remaining in this legislative session, I wanted to make you aware of the situation.

It is expected that economic recovery, combined with the self-correcting mechanisms built into our existing unemployment insurance law, will return the fund to a solvent condition in 1991.

Thank you.

Sincerely,

Jim Sampson
Commissioner

JS:cm
10401

HB

273

STEVE COWPER
GOVERNOR

CC

HB273

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 14, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to include the title "savings bank" as an appropriate designation for a financial institution organized under AS 06.30 (Alaska Savings Association Act). This bill provides a cure for an inequality placed upon state-chartered savings and loan associations as a result of deregulation.

Federally chartered savings and loan associations may apply under federal law to receive the designation "savings bank" in their name after being granted certain additional banking powers. A state-chartered savings and loan association has recently been granted authority to exercise similar powers, but current Alaska law does not allow a name to reflect this new authority and resulting increased banking services.

This bill simply provides that those financial institutions organized under AS 06.30 which have expanded authority in banking may apply for the use of the name "savings bank" in their title, not only to better reflect their authorized service charter, but also to maintain parity with federally chartered financial institutions.

Sincerely,

Steve Cowper
Governor

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 273
Publish Date: HOUSE 4/15/87

REQUEST:

Revision Date:
Title: Relating to reorganization of Financial Institutions
Sponsor: RULES
Requestor: Governor

Agency Affected: Comm. & Econ. Dev.
BRU: Banking

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-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Willis F. Kirpatrick, Director
Division: Banking, Securities and Corporations
Phone: 465-2541
Date: April 14, 1987

Approved by Commissioner: J. Anthony Smith, Commissioner
Agency: Department of Commerce and Economic Development
Date: April 14, 1987

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

0003k41487a

HB

283

STATE OF ALASKA
1988 LEGISLATIVE SESSION

Bill Version: HB 283
Publish Date: 1-21-88

FISCAL NOTE

REQUEST:

Revision Date:
Title: An act prohibiting certain employers from testing employees for *
Sponsor: Sund, Adams, Koponen, Wallis and Brown
Requestor:

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

* drugs or other substances consumed by employees.

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:	0	0	0	0	0	0
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)

There will be no fiscal impact to the Division of Personnel

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

Approved by Commissioner: John M. Andrews
Agency: Department of Administration
Date: 1/25/88

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

15/4K4/0115-07/1

Rev. 1/11/87

Date referred: 4/17/87 FURTHER REFERRALS: Judiciary

DATE: 5/13/87

The Labor & Commerce Committee has considered HB 283

"An Act prohibiting certain employers from testing employees for drugs or other substances consumed by employees."

RECOMMENDS:

[ ] replace with CS HB283 (L+C) [ ] the same title

[ ] attached amendment(s) [ ] a new title

[X] 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

[X] zero fiscal note

[X] zero with analysis

[ ] same as previous fiscal note published _____

[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

J. Ellis

Cliff Davidson

Nick Kopan

SIGNING OTHER RECOMMENDATIONS:

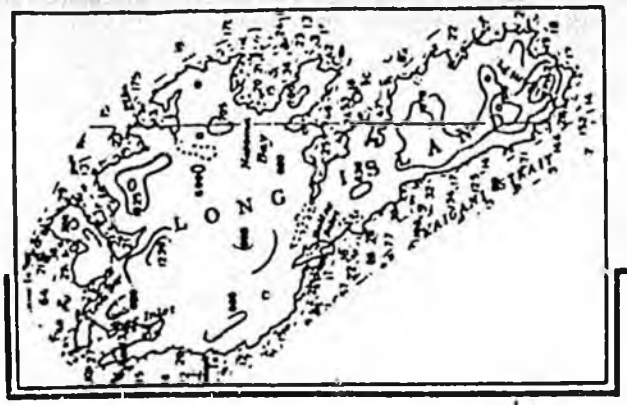
Scott Wagner NOBC

Dave Manley NOBC

Dave Manley

Chairman's signature

as a condition of employment. However, an employer may require a specific employee to submit to blood [illegible]



LONG
ISLAND
DEVELOPMENT, INC.

P.O. Box 5960 • Ketchikan, Alaska 99901 • 907-225-2675

April 23, 1987

Representative John L. Sund
Box V
Juneau, AK 99811

Dear Mr. Sund:

As the President and General Manager of Long Island Development, an employer of 400 plus employees, I'm amazed and equally disappointed that someone with your excellent reputation would have his name attached to a piece of garbage Legislation such as House Bill No. 283.

As a father of two teenage children in attendance at Ketchikan High School, and another in the sixth grade at White Cliff Elementary School, I'm also equally concerned with your apparent encouragement of Drugs in society. Apparently my children's, and all the kids of Ketchikan's, welfare are much more important to me than to you.

It is hard for me to keep this letter to you strictly on a business standpoint, because kids are more important to me than my business. Any Legislation, that encourages Drugs in society, is misdirected.

Long Island Development became interested in Drugs, and their toll in the work force, due to our poor safety record in 1984. We read all the studies on the subject, and remained on the side lines as to forming any sort of a Drug Policy.

However, late in 1985 one of our employees overdosed on Cocaine at our Long Island Camp and just about died. The fact that we had a killer, like Cocaine in our camp, prompted us to research into our problem at Long Island.

We found out that we had employees threatening to kill other employees if they talked about the Drug problem. We became aware of nightly and weekly Drug parties, and that we had pushers of Drugs employed by us, and that they were being supplied by people from Ketchikan.

It, also, was very evident that we had a small community of 150 people who were extremely frightened by the environment in which they were living.

We, also, connected poor attendance and safety with our drug problem. All studies state this connection as fact, and we wondered if we were yet another fact.

We implemented a Drug Policy to commence with the start of the 1986 work season. Since that Policy was implemented, we have reduced by 50% our Workers Compensation claims. We have eliminated those employees who were threatening others, and Long Island residents now live in a much better atmosphere.

As a side benefit, our productivity also increased significantly in 1986.

The logging industry is a very dangerous industry, and it is no coincidence that since the advent of Drugs into society that industrial accidents and fatalities have been on the rise. Long Island Development believes that the "rights" of our employees to work and live in a drug free environment, which then becomes a more safer environment, is a much larger issue. The rights of a drug user to continue his habit in the work force and subsequently jeopardize himself as well as those around him to possible injury or death is of no concern to us.

We strongly urge you, Mr. Sund, to withdraw your support from House Bill No. 283, and join forces with us to make Southeast Alaska a better and safer place to live and raise children.

Very truly yours,

Donald I. Mellison
President/General Manager
Long Island Development, Inc.

DIM/sf

child?"

The most reasonable course of action to take - and it must be taken immediately - is to ensure that these sea lions don't come flocking to the channel because it's a fine place to be for a soft and easy life. That means any deliberate feeding of the mammals must be prohibited, and the prohibition rigidly enforced - just like the "don't feed the bears" rules in national parks.

In addition, we must ensure that there is no non-deliberate feeding of the sea lions through poor dumping practices.

Kodiak is blessed with much of nature's bounty and beauty. And the magnificent, protected species of sea lions have their place in all of this. But that is not, definitely not, losing their fear of humans and living a lifestyle where they come to expect a free lunch from every two-legged creature they see.

- Kodiak Mirror

Letters

Ktn. Daily News 5-14-87

Disturbed

EDITOR, Daily News.

I have become aware of proposed House Bill No. 283 sponsored and authorized by Rep. John Sund of Ketchikan. If passed, this legislation will prohibit Alaskan employers the right of testing either present or prospective employees for the presence of drugs in their system.

I have two children presently enrolled at Ketchikan High School. My children, as well as all the children of Ketchikan, are exposed to drugs every day in the community and at school. Drugs are a problem in Ketchikan and society in general, and it greatly disturbs me that Rep. Sund clearly stands for drugs in Ketchikan by his very support of this legislation.

I have been in contact by letter with John Sund and asked him to withdraw his support of this legislation. To date I have had no response from Rep. Sund. Fortunately, Southeast's other representatives, Robin Taylor and Lloyd Jones, do understand the problems with drugs and have committed to work hard against House Bill No. 283.

I trust the voters of this district, when at the polls next time Rep. John Sund chooses to run for public office, will remember his support for drug legislation and elect someone else with a little more concern for the community we live in, and the youth of Ketchikan.

Very truly yours,
DONALD I. MELLISON
Ketchikan

Get involved

EDITOR, Daily News.

To: Members of Bartenders Culinary Workers Union

I'm writing this letter regarding your lack of support of the pickets in front of the 108 Bar.

There are only a small number of union members who faithfully walk the picket line. Evidently, a larger number of union members have been lax in attending union meetings and are not fully aware, or are uninformed or misinformed as to why the 108 Bar is being picketed.

Come on, get into it! Attend the meetings! Support your fellow members. Get informed; find out what's going on! Face it, if this establishment is able to withdraw from the union and other businesses follow their path, what will happen to your wages and other benefits? How could anyone live on minimum wages, without health and welfare insurance benefits to help take care of your families?

Think about your future; get involved with your union. Your livelihood is at stake! Don't just pay your dues; get yourself to the meetings and support your Union!

W. GONZALES
Alaska Fishermans Union

Washington today

A last que

By LAWRENCE L. KNUTSON
Associated Press Writer

WASHINGTON (AP) — Hundreds of questions had been asked and answered, and attorney Arthur L. Liman had just one more.

To ask it, he had to imply, perhaps even to declare, that as the secrecy of the Iran-Contra connection was evaporating last November, Robert C. McFarlane the former national security adviser, had violated his own principles, had participated in a lie.

The ultimate question, posed before the House-Senate Iran-Contra investigating committees in the House Foreign Affairs Committee hearing room, was a simple one: "How did it happen? What's the lesson?"

McFarlane didn't answer it, although he said he would if asked again.

Instead, he vented anger, asserting that after more than five hours of questioning he had not been permitted to place in understandable context the secret arms sales to Iran and the diversion of some of the proceeds to Nicaragua's Contra rebels.

"I think Mr. Liman that's at the heart of the purpose that we share

Washington briefs

WASHINGTON (AP) — The federal government has requested a quick appeal in the General Motors Corp. X-car case, saying evidence suggests brake systems on the 1980-model cars pose a danger to motorists while 848,000 of the vehicles remain on the road.

The government has been waging a three-year struggle to force a recall of 1980 GM X-cars. The ju

HOUSE LABOR AND COMMERCE COMMITTEE
ALASKA STATE LEGISLATURE
P.O. BOX V, JUNEAU 99811
(907) 465-3892

May 15, 1987

Donald Mellison, President & General Manager
Long Island Development, Inc.
P.O. Box 5960
Ketchikan, Alaska 99901

Dear Mr. Mellison:

We are writing to express our dismay at your continued personal attacks on a member of our body for introducing a bill that would prohibit random drug tests on employees without probable cause.

HB 283, by Representative Sund, was heard by the House Labor and Commerce Committee last week. Like yourself and Representative Sund, we are all concerned about drug use in the workplace and the effects of drugs on our communities and our children.

However, we are also concerned about the negative aspects of random drug testing programs. To suggest that Representative Sund, by introducing HB 283, and our Committee, by having the audacity to hear it, are somehow condoning drug use in the workplace is patently ridiculous.

During our Committee hearing we heard compelling testimony that random drug tests without probable cause are a clear violation of basic constitutional rights.

Further, we learned that current drug testing programs in Alaska are dangerously inaccurate and too often result in "false positive" readings.

Drug testing itself is an embarrassing and traumatic experience for most Alaskans. A false positive can cost a worker their job, prevent them from finding another one, disgrace them in the eyes of their community and forever strip them of their good name.

It is entirely appropriate for the Legislature to consider measures to protect Alaskan workers in these circumstances. Public testimony on HB 283 was strongly in favor of the measure.

HB 283 does not prohibit testing of employees when there is any reason to believe they are actually under the influence of drugs or using drugs on the job. Nor does the measure prohibit routine and random testing of employees in positions

involving public safety such as firefighters, peace officers and pilots.

Your attempts to stifle public debate by threats and innuendo, and your insistence on vicious personal attacks on elected officials is unfortunate and unwarranted.

We suggest that you change your tactics so that reasoned debate by reasonable people can produce legislation that protects the inherent rights of all Alaskans without unduly interfering with an employers ability to eliminate drugs from the workplace.

Sincerely,

Representative Dave Donley, Chair

Representative Niilo Koponen, Vice-Chair

Representative Johnny Ellis

Representative Cliff Davidson

Representative Red Boucher

Representative Curt Menard

Representative Walt Furnace

cc: Ketchikan Daily News

Original sponsors: Sund, Adams,
Koponen, et al.

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 283 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act prohibiting certain employers from testing employees for drugs or other substances consumed by employees."

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

* Section 1. POLICY. (a) The legislature declares that it is the public policy of the state that all citizens enjoy the full benefits of the rights to privacy and due process of law, and the protection against unreasonable searches and seizures guaranteed by art. I, secs. 7, 14, and 22, Constitution of the State of Alaska.

(b) It is the purpose of this Act to protect employees against unreasonable inquiry and investigation into conduct and activities that happen outside of work and that are not directly related to the actual performance of job responsibilities.

* Sec. 2. AS 23.10 is amended by adding a new section to article 1 to read:

Sec. 23.10.038. TESTS FOR CONSUMED SUBSTANCES. (a) An employer may not request, require, or conduct random or company-wide blood, or urine, ~~or encephalographic~~ testing. An employer may not suggest or require that an employee or an applicant for employment submit to a blood, urine, or encephalographic test that tests for the presence of drugs or other consumed substances as a condition of employment. However, an employer may require a specific employee to submit to blood or urine testing if

(1) the employer has reasonable grounds to believe that the