

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4842 HLAB SB 211 - SB 274

44

Page Three  
March 11, 1988

AS 09.17.040(d). I see the conference substitute will follow the language in SB 211 which provides that any party, as opposed to only the injured party, may request that future damages be paid on a periodic payment plan rather than as a lump sum payment. This provision is silly. A victim who has fought his way through the courts to the conclusion of a trial to obtain compensation for his damages should not be subjected to the arbitrary requests of the wrongdoer that he only be paid his judgment for future damages on a piece-meal periodic payment basis. This provision will tend to draw out litigation into the future, will result in continual administration expenses and will result in further involvement of the attorneys in a case. It will simply make more money for insurance defense attorneys because of the time they have to expend supervising and/or arguing about payment of future benefits. Of course, the plaintiffs' attorneys will also have to figure out some way to obtain payment.

I imagine this legislation would work like divorce judgments which require payment of child support or alimony into the future. The parties are always battling about late payments or simply non-payment. Simplification of the tort system should be one of the goals of any legislation. This defeats that goal.

AS 09.17.050(a). This provision is the same as was set out in SB 211. I have no objection to this provision.

AS 09.17.070 - Collateral Benefits. The drafters of this statute should be asked what they were attempting to accomplish. Attorneys and the courts would find this bill extremely difficult to implement. For instance the bill states: "the triers of fact shall be informed of the tax implications of an award of damages." The tax implications to whom? By whom are the triers of fact to be informed of this information? Must every plaintiff that goes to trial be required to employ the assistance of an expert witness to testify before the jury as to what he thinks the tax implications of a damage award are?

The statute goes on to say that the: "The court may take into account the value of a persons' right to coverage exhausted or depleted by payments of these collateral benefits by adding back a 'reasonable estimate of their probable value'...". Once again presumably an expert witness would be required to testify as to what the "reasonable estimate of their probable value" is. This is simply more expense and more confusion.

It would appear that the underlying principal behind introduction of this collateral benefit before the jury is to allow the jury to see what other benefits an individual has received by

Page Four  
March 11, 1988

virtue of his injuries. Traditionally jurors have not been allowed to know whether a defendant was insured or not because their determination of what damages the plaintiff has suffered as a result of the defendant's conduct should be based solely upon the evidence as to those damages. To disclose information regarding the defendant's insurance could taint the jury's determination as to what the plaintiff should receive. This same argument applies whether a plaintiff is rich or poor, has health insurance or not. This evidence should not be considered by the jury in determining the extent of damages suffered by that plaintiff at the hands of the wrongdoer.

If collateral sources such as health insurance are going to be introduced, then why not introduce evidence of all sources of wealth available to all parties to the litigation. The law has not been based upon the concept of "from the defendant according to his ability to pay to the plaintiff according to his need". It has been based upon the goal of compensating the victim for the damages which he proves that he suffered at the hands of the wrongdoer. Nothing more should be awarded because of ability to pay and nothing less should be awarded according to the plaintiff's needs.

The 1986 amendment allows the court, after the jury's decision, to take into consideration collateral benefits available to the plaintiff in making adjustments to the jury's award. Though I vehemently object to that statute, it certainly has more even-handedness and fairness to it than the proposed amendment.

AS 09.17.080(d). This provision is a significant improvement over the language in SB 211, which attempts to impose several liability in all cases. However, this statute needs additional improvement or significant additional exemptions for the public to be adequately protected. For instance, joint and several liability should exist in such situations where damages arise out of hazardous waste, intentional torts, where defendants have acted in concert, where defendants conspired to commit a wrongful act, where one defendant's share of the judgment is uncollectable, where the plaintiffs are fault free, where the damages arise out of land sale practices, in strict liability cases, product liability cases or where the defendants are more than 25% at fault. Notwithstanding the frailties of this statute as drafted, it is significantly better than what was originally introduced.

Page Five  
March 11, 1988

AS 09.17.900. I have no objections to the amendment to the definition section which appears to be the same or extremely similar to SB 211.

AS 09.60.010. This proposed legislation seeks to amend an already ambiguous piece of legislation. The proposed amendment would abolish the award of attorney's fees in the State of Alaska. However, the drafters do not seem to have nerve enough to just write the bill up that way.

The state of Alaska is one of the few jurisdictions which requires the losing party to pay the prevailing party's attorney's fees. This provision is a great deterrent to pursuit of marginal lawsuits; after all, if the loser will have to pay for pursuing litigation is he more or less likely to take the risk of being unsuccessful? The Alaska court system is already clogged with civil litigation. The abolition of attorney's fees awards against the losing party will only increase the amount of litigation since there will be no adverse consequences to going to trial other than losing. Insurance companies will force plaintiffs to try legitimate cases that are currently being settled, and plaintiffs with marginal cases will go to trial on matters which they would have dropped in order to avoid the significant sanctions of an award of attorney's fees.

The SB 211 amendment to this statute is written as gobbledygook and for the sake of clear and concise thinking on this subject, should be scratched. The statute should be amended to clearly state that attorney's fees may be awarded to the prevailing party in civil litigation, based upon Civil Rule 82. This has been the law in the State and Territory of Alaska since the turn of the century.

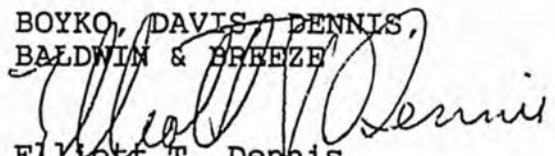
The additional proposed amendments set out in the conference substitute to SB 211 are not objectionable in substance. It would appear to be appropriate that the Insurance Directors annual report not only include an analysis of medical malpractice insurance rate changes and their reasons, but also an analysis of the rate changes of all liability insurance in Alaska and the profits generated by the insurance carriers issuing the coverage. After all, if there truly is an insurance crisis, the Legislature and the public should be able to know what type of profit is being earned by the insurance industry.

Page Six  
March 11, 1988

I hope my observations with reference to the changes to SB 211 are of benefit to you, and if I can be of any assistance to you in the future, please feel free to contact me.

Yours very truly,

BOYKO, DAVIS & DENNIS,  
BALDWIN & BREEZE

  
Elliott T. Dennis

ETD:jo

SB211

LAW OFFICES  
BERNARD P. KELLY & ASSOCIATES

A PROFESSIONAL CORPORATION  
310 K STREET, SUITE 506  
ANCHORAGE, ALASKA 99501-2040  
(907) 276-3188

BERNARD P. KELLY  
PAUL COSSMAN  
STEVEN PRADELL

RECEIVED  
APR 20 1987

April 15, 1988

Dave Donley  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, AK 99811

Re: Tort Reform Legislation/Insurance Anti-Trust Suit

Dear Mr. Donley:

I am writing to solicit your support in defeating any further tort reform legislation and supporting Alaska's involvement in the insurance anti-trust litigation, which Governor Cowper and Attorney General Schaible are reviewing. I would also urge you to support any insurance reform legislation. Enclosed, for your information, is an editorial from the April 13, 1988, Anchorage Daily News.

For the last three years we have been attempting to educate the public and inform our legislators that the "liability crisis" was a fraud perpetuated by the insurance industry to line its own pockets and victimize the victims from being adequately compensated when they are injured, through no fault of their own. It is very refreshing to see that someone out there has been listening, and it is not just an issue between the doctors and the attorneys which our local medical community along with the local tort reform committee has tried to perpetuate. We are all victims of the insurance industry, including the doctors, and it is time we put a stop to the blood letting by the insurance industry at the expense of our tort system.

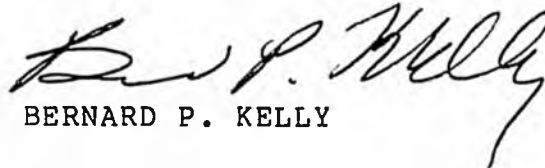
Insurance bad faith litigation is on the rise, and it is no mystery why it is when you have insurance companies categorically refusing to cover claims that are specifically included within their policies and therefore forcing companies or individuals to litigate for years to right their arbitrary and capricious ruling not to defend, indemnify, etc.

Alaska State Legislature  
April 15, 1988  
Page 2

Whatever you can do to assist the people of Alaska in this matter will be greatly appreciated.

Sincerely yours,

BERNARD P. KELLY & ASSOCIATES



BERNARD P. KELLY

ko  
0036o

# Anchorage Daily News



Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly  
Publisher

Howard Weaver  
Managing Editor

Michael Carey  
Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983  
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1946 by Norman C. Brown

## The liability crisis: Is it fact or fraud?

Remember the liability insurance crisis? Not so long ago, many businesses and cities couldn't buy coverage at any price. Those that could paid a small fortune. The subsequent uproar provoked widespread calls to overhaul state liability laws. Alaska lawmakers yielded to the clamor last year; a statewide tort reform coalition demands still more changes.

But now it turns out that liability laws may not be the culprit after all. The real cause may be an antitrust conspiracy.

At least eight states have filed antitrust suits against several of the country's largest liability reinsurance companies. (These are the firms that provide back-up coverage to smaller insurance companies.) The suits allege the reinsurance firms conspired to force smaller insurers to restrict or eliminate coverage — all while rates were going up.

Gov. Steve Cowper has asked his attorneys to study whether Alaska should join the suits. From what they've seen so far, the lawyers think the states have a strong case. There's only one drawback: it could be costly for Alaska to battle the well-heeled titans of the insurance industry. The case will cost at least \$50,000 a year, plus staff and travel; it could cost much more.

If further research bears out the state's preliminary legal findings, the suit will be worth the price. A state victory would yield large awards for Alaska cities victimized by vanishing coverage and high rates. It would also make it easier for private firms that had liability insurance problems to win damage awards.

Pursuing the suit will cost the state money, but that's part of the price it will have to pay for failing to regulate the insurance industry. If the state's insurance watchdogs had been awake, they might have howled. Given that they didn't, joining the suit is a way Alaska can start to dig out the facts about the liability insurance mess.

SB211

# CITIZENS COALITION FOR TORT REFORM

907-561-6250

April 15, 1988

RECEIVED  
APR 20 1988

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

Dear Representative Donley:

Please find enclosed a breakdown of the cost of a recent verdict in favor of the plaintiff and against Humana Hospital and MICA, The Medical Indemnity Corporation of Alaska.

This case is an example of what really happens in our civil courts. Many plaintiff's lawyers have told you that there are not judgements in the State of Alaska in excess of one million dollars. Here, before you, is an example of one. I am certain that many of you have heard Mr. Roller, from the Division of Insurance, testify that jury verdicts are only the tip of the civil litigation iceberg. Below the water level on this iceberg, where we cannot see or measure, are the settled cases. Nevertheless, jury verdicts serve as bench marks, or "shadow verdicts", if you will, and it is against these verdicts that insurance companies attempt to settle claims. There are some interesting facts which can be read between the lines in an evaluation of this judgement.

For the record, the Los Angeles County settlement was \$650,000.00 with the provision that the plaintiff would have to return \$300,000.00 to California if successful in his Alaska lawsuit. The plaintiff was clearly far more successful in Alaska than he was in California. Please note the difference between the Alaska award of \$1,859,518.90 and the California award of 650,000.00. This seems "clear and convincing evidence" of the value of tort reform in California vs. the lack thereof in Alaska.

What is of further interest is that the California settlement was reduced to present value - by the Alaska Court - when it subtracted the amount from the verdict awarded in Alaska. At the same time the Alaska court computed the costs for economic and non-economic costs on the basis of future economic value - as opposed to again using present economic value - when it came to making the award. It seems to me this is a clear inconsistency on the part of Judge Gonzales. Either we should calculate everything as present value or at future value, but not be selective in calculating the deductions at present value and awards at future value.

April 15, 1988

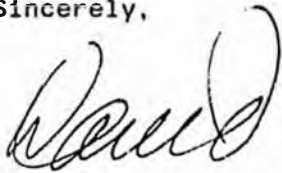
Page 2

Please note the cost of pre-judgement interest of \$683,534.00. The Alaska tort reform action in 1986 mandates pre-judgement interest be calculated from the date of filing. Had the 1986 law been in effect in 1982, there certainly would have been substantially less pre-judgement interest added to the award in this case. It is also very important to note there was no action taken on the Alaska case for a period of one year while the litigation was pursued in California. The one year lack of action in Alaska forced the pre-judgement interest award to increase \$117,446.

Finally I would like to draw your attention to Rule 82 attorney's fees. Please note in the Alaska case alone, the cost was \$171,319.90. In its history, MICA has paid out nearly half a million dollars in Rule 82 fees. To its certain knowledge, MICA has never been successful in recovering a single dime for Rule 82 fees when it prevailed. I think this illustrates clearly our contention that Rule 82 is a one-way street. It is awarded when there is a pocket to pick; when there is not a pocket, there is no award. The net effect is to increase the cost of awards by 10% or so in the State of Alaska. Further testament is the fact that we, the consumers, pay a premium rider for Rule 82 fees for every policy written in the State of Alaska.

Obviously the present liability crisis is not over. The tort system is a clear and major part of the problem. I would urge your action on the Senate Bill 211, which is presently in Representative Donley's House Labor and Commerce Committee.

Sincerely,



David A. McGuire, M.D.  
Chairman, Citizens' Coalition for Tort Reform

MKD03003/vv

Dr. McGuire  
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**MICA** Medical Indemnity  
Corporation of Alaska

ALEUT PLAZA  
4000 OLD SEWARD HWY., SUITE 203  
ANCHORAGE, ALASKA 99503

TO: MICA Executive Committee  
MICA Claims Committee

FROM: Janet Johnston,  
Claims Manager

DATE: March 17, 1988

RE: Judgement in Justice Case

At 2:00 p.m. this afternoon I was informed by Jim Delaney's office that Judge Gonzales had entered judgement in the Justice case in the amount of \$1,859,518.90. That figure is inclusive of prejudgement interest and Rule 82 attorney fees but does not include plaintiff's costs which have yet to be determined at a cost hearing. I do not expect that those will exceed \$100,000.

The judgement of was broken down as follows:

|                 |                                       |
|-----------------|---------------------------------------|
| \$ 1,449,160.00 | Amount of the verdict                 |
| - 144,916.00    | 10% plaintiff contributory negligence |
| -----           |                                       |
| \$ 1,304,244.00 | Subtotal                              |
| - 210,201.00    | Present value of L.A. County settle-  |
| -----           | ment as of July 1985                  |
| \$ 1,094,043.00 | Subtotal                              |
| - 89,378.00     | Collateral medical benefits           |
| -----           |                                       |
| \$ 1,004,665.00 | Subtotal                              |
| + 683,534.00    | Prejudgement interest at 10 1/2%      |
| -----           | from May 30, 1982 - March 16, 1988    |
| \$ 1,688,199.00 | Subtotal                              |
| + 171,319.90    | Rule 82 attorney fees                 |
| -----           |                                       |
| \$ 1,859,518.90 | Final Judgement                       |

To this final judgement figure will be added plaintiff attorney costs as they will be determined by the judge at a cost hearing to be held in the future.



**ALASKA CHAPTER  
THE AMERICAN INSTITUTE OF ARCHITECTS  
P.O. BOX 10-3563 • ANCHORAGE, ALASKA 99510**

April 27, 1988

Reference: SB 211 - Public Hearing/Teleconference

To: State of Alaska, House of Representatives, Labor and Commerce  
Committee Members:

Rep. Dave Donley  
Rep. Nillo Koponen  
Rep. Red Boucher  
Rep. Cliff Davidson  
Rep. Johnny Ellis  
Rep. Walt Furnace  
Rep. Curt Menard

I waited for an hour and a half yesterday, Tuesday, to testify in favor of SB 211. I will be unable to attend the continuation of the teleconference this evening, so I am sending this letter to you today.

I am a Registered Architect in the State of Alaska and have my own business located in Anchorage. I represent the Alaska Chapter of the American Institute of Architects which has 140 members in Alaska.

As a body, the architects in the AIA have supported tort reform legislation for some time. Our members have suffered greatly in this crisis of insurance rate increases. Because of the high costs for errors and omissions (E & O) insurance, many architects are forced to go without this insurance. This situation has also been exacerbated by the recent court ruling on the Statute of Limitations in the State of Alaska. These architects are unable to compete for State and local, publically funded, projects which require the architects and engineers to have E & O insurance. This limits the design expertise available to the State and local governments.

We feel this legislation (SB 211) is a step in the right direction to help remedy this situation.

The Alaska Chapter, ATA, Executive Board met on April 19, 1988, and unanimously passed the following resolution:

The Alaska Chapter, American Institute of Architects, supports SB 211 and urges the Alaska House of Representatives to pass this bill in order to achieve meaningful tort reform measures during the current (thirteenth) legislative session.

For more details, Rich Ritter AIA of Minch, Ritter, Forrest in Juneau (586 1371) is available to this committee.

Sincerely,

John F. Ross AIA  
President  
Alaska Chapter, American Institute of Architects



# Alaska State Legislature

Please enter into the record my testimony to the HOUSE LABOR & COMMERCE COMMITTEE  
 committee name  
 committee on CSSB-211 - LIABILITY dated APRIL 26, 1989  
 bill/subject

I AM CHRIS BIRCH, A PROFESSIONAL ENGINEER AND PRESIDENT OF THE FAIRBANKS CHAPTER OF THE ALASKA SOCIETY OF PROFESSIONAL ENGINEERS AND <sup>A CO-</sup>SPONSOR ON THE RECENT SUCCESSFUL <sup>INITIATIVE</sup> DRIVE BY THE CITIZENS COALITION FOR TORT REFORM.

WE IN ALASKA ARE AT A CRITICAL CROSS-ROADS - WE HEAR TIME AND AGAIN OF THE NEED FOR ALASKA BUSINESS TO BE ABLE TO COMPETE IN NATIONAL AND INTERNATIONAL MARKETS, YET WE HAVE BEEN DELINQUENT IN ADDRESSING <sup>THE</sup> LEGITIMATE CONCERNS OF ALASKA CITIZENS AND BUSINESS. WE MUST ADDRESS TORT REFORM NEEDS, WORKMAN'S COMPENSATION LEGISLATION ~~AND~~ AND RELATED ISSUES NOT ONLY TO ALLOW OUR BUSINESS TO COMPETE OUTSIDE ALASKA BUT TO ENABLE <sup>THEM TO</sup> FAIRLY COMPETE ~~IN~~ IN DIMINISHED ALASKAN MARKETS.

PLEASE PASS THIS WIDELY SUPPORTED AND ~~BE~~ IMMEDIATELY NEEDED LEGISLATION.

Signed: Chris Birch CHRIS BIRCH - PRESIDENT - FAIRBANKS CHAPTER  
 Testifier ALASKA SOCIETY OF PROFESSIONAL ENGINEERS

Representing (Optional)

1300 VIEWPOINTE DRIVE, FAIRBANKS, AK 99709

Address

(907) 479-3706

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the LABOR + COMMERCE  
 committee name  
 committee on SB 211, dated 4/26/88  
 bill/subject

The issue of liability insurance in medicine represents crisis proportions. Affordability, availability, and adequacy are increasingly slipping beyond our grasp. Colleagues in Fairbanks are being forced out of the full spectrum of practice and needs of our community go unreserved. Nationwide 73% of fellows in my specialty have been sued, 40% more than three times. My premium in '84 was \$15,000, in '86-\$24,000, '87-\$40,272, '88-\$51,000, and 1990-\$71,575, all of which is passed to our patients as the cost of doing business. "Tail" coverage to move or discontinue practice is \$143,000 this year or \$225,000 in 1990! The U.S. (including Alaska) is 20<sup>th</sup> in the world in perinatal morbidity and mortality, the main issue in this country being access to care. The increasing cost of liability insurance fosters an increasing distance between a patient and his/her physician.

Signed: WIGEL G. WAPPETT, M.D.

Testifier

FAIRBANKS MEDICAL ASSOCIATION, TANANA VALLEY CLINIC

Representing (Optional)

1001 NOBLE ST, FAIRBANKS, ALASKA 99712

Address

(907) 452-1611

Phone No.

SENATE

HOUSE OF REPRESENTATIVES

- LEGISLATIVE COMMITTEE  
 Indicate House (H)  
 and/or Senate (S)  
COMMUNITY & REGIONAL AFFAIRS  
FINANCE  
HEALTH, EDUCATION and  
SOCIAL SERVICES  
JUDICIARY  
 LABOR & COMMERCE  
RESOURCES  
RULES  
STATE AFFAIRS  
TRANSPORTATION  
OTHER \_\_\_\_\_

- \_\_\_\_ FANNING  
 \_\_\_\_ FAHRENKAMP  
 \_\_\_\_ COGHILL  
 RESPONSE REQUESTED  
 \_\_\_\_ YES  
 \_\_\_\_ NO

- \_\_\_\_ MILLER  
 \_\_\_\_ KOPONEN  
 \_\_\_\_ DAVIS  
 \_\_\_\_ BOYER  
 \_\_\_\_ FRANK

\*\*Only those single messages delivered by the signing individual, by phone, hand delivered, or written at the Legislative Information Office will be accepted as a public opinion message.  
 (Legislative Council Policy 6/81)

FROM: \_\_\_\_\_ (H) PHONE: \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_ (W) PHONE: \_\_\_\_\_

CITY/STATE \_\_\_\_\_ ZIP: \_\_\_\_\_

SUBJECT: \_\_\_\_\_

MESSAGE: (50 Words or Less)

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SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_



R & M ENGINEERING CONSULTANTS • 4TH STREET & EAGLE, GRAEHL • BOX 2630 • FAIRBANKS, ALASKA 99707-2630 • PH. 907-452-1655

ENGINEERS  
GEOLOGISTS  
SURVEYORS

Testimony of James H. Wellman

Senate Bill No. 211 (Finance) Amended

I am president of R & M Engineering Consultants, an engineering firm that has done business in the Fairbanks area for nearly 20 years. As such, I have some concerns with regard to the proposed bill as it relates to the needs of design professionals.

Professional liability insurance constitutes the single largest individual cost for doing business of our firm, exclusive of payroll. This is the case, despite the fact that in nearly 20 years I have never filed a claim with our insurance company.

Insurance companies have the image of Alaska as being a high risk state. At the present time, I am aware of eleven licensed insurance carriers writing liability insurance policies for design professionals in the United States. Of these eleven, only five will write insurance in Alaska. Of these five, four exclude coverage for work involving geotechnical engineering (evaluation of soils conditions and requirements for structure foundations). Since our firm provides geotechnical services, only one licensed insurer remains who is willing to provide coverage. Is it no wonder that the cost for this insurance is astronomical?

I believe that the proposed bill, if suitably modified, could effectively erase the adverse impression that the insurance companies have of Alaska. Although I support the proposed bill, I recommend that deficiencies in the following two areas be addressed by amendment.

- 1) The bill should go further in discouraging frivolous lawsuits. Typically, over 50 percent of the lawsuits filed against architects and engineers are dismissed, with only about 3 percent ending with a court or jury verdict. I recommend that the proposed bill be amended to discourage suits that are totally without merit including:
  - a) Putting the plaintiff's attorney at risk when he files a case without first establishing that there is reasonable cause for filing the suit, as is provided in the Federal courts.

- b) Providing for a review board or for review by an impartial design professional or university professor, licensed in the same discipline as the defendant, to review all cases against architects and engineers, prior to the filing of the case, to determine if there is reasonable and justifiable cause for filing the action. California, Colorado, Hawaii, and Kansas have such laws, and according to my understanding, they have been effective in these states in reducing overall litigation and the number of jury trials.
- 2) The bill should protect design professionals from third party claims resulting from the death or injury of construction workers. The needed protection should apply where the architect or engineer has no responsibility for safety or control over the portion of the premises where the accident occurred and where the injury did not result from the negligent preparation of plans and specifications. Nationally, over one-fourth of all claims against architects and engineers are the results of such suits. The requested amendment would allow Alaska to join at least seven other states that prohibit such suits.

In summary, I support the bill but would like to see it strengthened to reduce frivolous lawsuits and third party suits against architects and engineers by injured construction workers. I believe that these two changes would eventually result in a significantly lower cost of doing business in Alaska.

26 April 1988

To the House Labor and Commerce Committee  
Chairman Donley, Members

I am Vincent S Haneman, Jr. a Professional Engineer and past president of the Alaska Society of Professional Engineers.

The profession of Engineering recognizes the primary rights of the individual for redress and compensation for wrongs committed by other parties, but the use of this concept to unfairly attach the assets of another is a miscarriage of justice. The systems which have evolved have provided a gross over support for those members of our society that have found a new method of obtaining financial security.

Primary among the problems is the question of joint and several. This has led to the "deep pocket" concept and the consideration of tying all causes to a source of funding far beyond that which either the individual defendant or the provable economic loss can sustain. The newspapers are full of the reports of this application of the law. A cap on the noneconomic awards is necessary to provide a FAIR and JUST compensation for both parties.

The rights of the criminal have been promulgated at the expense of the average citizen, not involved in crime. The situation has developed that "crime does pay". If the Criminal can not succeed one way he/she can by going to court, claiming the over use of force or restraint caused a hardship that must be redressed.

Punitive damages are an indication that an illegal act was committed, that there was intent to do harm. This falls from the tort area into the criminal area and therefore should be handled in that section of the law. The use of civil justice to deal with these crimes is another miscarriage of justice.

The practice of engineering requires the professional to provide services that push the frontiers of knowledge to bring the best possible product to the client at the least cost with the requisite safety and public protection. For this country and for Alaska to be competitive, FAIR and JUST application of the laws to the designer-builder as well as the client as well as the lay public must occur. This does not happen and therefore, the cost is increased to cover the potential excessive awards being delivered. Outside firms, and outside countries are not faced with the problem. The net result is that either our firms are going bare or they are loosing to outside competition. This loss is a further drain on our economy. The second alternative is just as bad, don't use any new concepts, use only time honored methods at increased cost to the client and reduced performance. Alaska must provide its citizens with the best, with the dollars and safety desired.

Please consider the bill under consideration as a must piece of

legislation for the citizens of Alaska.



Fairbanks  
Memorial Hospital

1650 Cowles Street  
Fairbanks, Alaska 99701  
907-452-8181

STATEMENT TO BE READ BY RUSS COX AT THE  
SENATE BILL 211 HEARING BEFORE THE HOUSE, LABOR  
COMMERCE COMMITTEE  
CHAired BY DAVE DONLEY  
2:00 PM - APRIL 26, 1988

STATEMENT:

It is clearly the position of Fairbanks Memorial Hospital that we support the tort reform bill that is before the House, Labor and Commerce Committee. Senate Bill 211 is of paramount importance to this community hospital as we face the issues for years to come.

Fairbanks Memorial Hospital is and always has been in favor of several liability where we pay for any fault that is, in fact, our fault. We take the position where we are willing to pay for what we have caused and no more.

We, representing the hospital and nursing home industry, support this type of tort reform and feel it is of paramount importance that liability issues offer fair and reasonable cost to the consuming public. In order to keep insurance premiums at reasonable costs, it is simply imperative that we eliminate the "double-dip" recovery system currently in place. This occurs when a plaintiff receives money from multiple sources for the same damages. This has happened and is in the process of recurring in court cases related to medical malpractice issues at Fairbanks Memorial Hospital.

In all good conscience it is very clearly the position of the Fairbanks medical community and the Fairbanks Memorial Hospital that Senate Bill 211 be supported as step number 1 in addressing tort reform. We urge your serious consideration of this bill.

## Key Bank of Alaska

A KeyCorp Bank



Post Office Box 1230  
Fairbanks, Alaska 99707-1230  
(907) 452-2146

April 26, 1988

House Labor and Commerce Committee  
Representative Dave Donley, Chairperson  
P.O. Box V  
Juneau, AK 99811

RE: CS for Senate Bill No. 211 (Finance)  
Legislature of the State of Alaska  
Fifteenth Legislature - Second Session

Dear Representative Donley:

Key Bank of Alaska, Interior Region, wishes to express its support for the above referenced bill relating to tort reform.

The bank represents many customers and business persons in the Fairbanks area. Likewise, we are aware of previous cases involving exaggerated civil penalties which have been very harmful to businesses.

Broad implications of these civil penalties have been rising insurance rates. In some cases rising premiums have been extremely detrimental to Alaskan businesses. The cost of doing business in the state of Alaska is already generally higher than in many other places. Therefore, high and rising insurance rates may not be tolerable, contribute to a higher rate of business failures, and may prevent new businesses from forming or entering the state.

Key Bank of Alaska believes that passage of this Act will result in a measurable decrease in insurance rates in the state.

Sincerely,

Alan W. Fulp  
Assistant Vice President

cc: Niilo Koponen, Vice Chairperson



# Alaska State Legislature

Please enter into the record my testimony to the Insurance  
 committee name  
 committee on SB 211, dated 4/26/55  
 bill/subject

Signed: W. R. King MD  
 Testifier

Frederick W. King / Insurance / 700 N. C. Lewis, Inc.  
 Representing (Optional)

5 Bernice St, Fairbanks AK 99701  
 Address

456-5711  
 Phone No.

FEAR. Many people react to discussions of Tort Reform with expressions of fear. Fear that reform will block legitimate cases. Fear that lack of reform will allow liability fees to escalate and businesses to close.

The current system is not working. Businesses and government entities find it harder to find insurance and then to pay for it. The American Bar Association appointed a commission of various lawyers, judges and law professors to investigate the matter. They presented 22 recommendations at the national meeting February 1987. 17 of those 22 items comprised the original tort bill introduced in 1986 to the Alaska Legislature. Less than 70¢ of every dollar won in a Malpractice suit goes to the victim. Our current system is inefficient and ineffective in getting a greater share of the money to the victim. We also need to understand that there is only a FINITE amount of money. Some insurance companies have been bankrupted by several large awards--What of the other legitimate victims who filed suits but will never receive their fair share????

Americans have lost goods and services as a result of problems with access or affordability of insurance. Women in Fairbanks have lost the CU-7 IUD and services of an Obstetrician. Physicians in the Bush can not afford insurance, so they no longer deliver babies. Fairbanks has suffered the loss of goods and services. One Obstetrician in Fairbanks has quit OB. Two Family Practitioners in town raised rates 42% in order to continue to do OB--yet Lutheran Hospitals say they need a greater level of Insurance. Women in Fairbanks buy CU 7 IUDs in Canada.

How much more do we need to lose???? How many more phone calls and letters do you need to receive from us ?? Over 28,000 people signed a petition for a referendum ballot to cover one aspect of Tort Reform. When do we get help -- for all of us?? The issue is here to stay.

Mary C. Wing, MD  
Vice-President  
Fairbanks Medical Association

SENATE

HOUSE OF REPRESENTATIVES

LEGISLATIVE COMMITTEE

Indicate House (H)  
 and/or Senate (S)

COMMUNITY & REGIONAL AFFAIRS

FINANCE

HEALTH, EDUCATION and  
 SOCIAL SERVICES

JUDICIARY

H  LABOR & COMMERCE

RESOURCES

RULES

STATE AFFAIRS

TRANSPORTATION

OTHER

FANNING  
FAHRENKAMP  
COGHILL

MILLER  
KOPONEN  
DAVIS  
BOYER

RESPONSE REQUESTED  
YES  
NO

FRANK

\*\*Only those single messages delivered by the signing individual, by phone, hand delivered, or written at the Legislative Information Office will be accepted as a public opinion message.  
 (Legislative Council Policy 6/81)

FROM: Patty Meritt c/o Play N Learn (H) PHONE: 479-6487  
 MAILING ADDRESS 655 Chena Pump Rd. (W) PHONE: 479-0900  
 CITY/STATE Fairbanks, AK ZIP: 99709  
 SUBJECT: TORT REFORM

MESSAGE: (50 Words or Less)

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| 49 | 50 |    |    |

Please support CSSB 211. Child care centers cannot afford any more increases in insurance costs. Many family home providers are already "going bare". Reasonable limits need to be put on claims in order to keep costs down.

SIGNED: Patty Meritt

DATE: 4/26/88



**NFIB**® National Federation  
of Independent Business

The Guardian of Small Business.

April 27, 1988

TO: HOUSE LABOR & COMMERCE COMMITTEE

FROM: GARY L. JENKINS, DIRECTOR, GOVERNMENTAL RELATIONS

SUBJECT: POSITION ON CSSB 211 (Finance) am

This legislation deals with an issue which is of grave concern to small business across Alaska. The issue is the unavailability or extremely high cost of liability insurance for routine business operations. In response to the question on this issue on our 1988 ballot, NFIB/Alaska members voted 89% in favor, 4% opposed and 7% no opinion.

NFIB recognizes the difficulty you have making a reasoned decision on the various tort reform issues included in because of the widely diverse testimony which you have and will receive on the issue. One conclusion, however, can be reached solely on logic alone. That is if there are reasonable limits placed on the potential liability of the company writing the insurance, the market will stabilize and rates will eventually be reduced. It may require a suit against the insurance industry to bring rates down, however, that is a separate issue. The limits on liability must be in place first.

NFIB members across Alaska are confronted with the problems arising from the high cost or unavailability of liability insurance on a daily basis. In many cases businesses have been forced to close because they could not obtain necessary liability insurance. Since small business creates the majority of new jobs created in Alaska, this problem adds to the existing serious economic conditions across the State of Alaska. The NFIB members in your district urge you to pass out SB 211 retaining the existing provisions.

If any members of the committee have questions regarding our position on SB 211, feel free to contact me at 586-4100.

NFIB/ALASKA  
Legislative Office  
P.O. Box 210194  
Auke Bay, AK 99821  
907/586-4100



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

- Alaska Chapter -

27 April, 1988

Legislative Information Office

To: Representative Donley, Chairman-Labor & Commerce Committee

Re: SB 211

Dear Mr. Donley and committee members:

My name is Willem Van Hemert and I represent the Alaska section of Professional Engineers in Private Practice (ASPE/PEPP) as past chairman and state delegate to the national PEPP Board of Governors. ASPE/PEPP includes over 100 engineers statewide, practicing in all engineering disciplines. As an organization we have maintained involvement in important state-wide issues. SB 211 is very important to us and we strongly urge your support. Tort reform is not an issue of who is at fault but rather one of common sense. As professionals we are all responsible for our actions as engineers, however, we do not believe we must pay the cost of mistakes caused by others. For this reason we urge your support of SB 211.

A handwritten signature in cursive script, appearing to read 'Willem Van Hemert', is written in dark ink.



# Ketchikan General Hospital

3100 TONGASS AVE.  
KETCHIKAN, ALASKA 99901  
907-225-5171

April 27, 1988

Representative David Donley, Chairman  
Labor & Commerce Committee  
Box V  
Juneau, AK 99811

RE: Committee Substitute for Senate Bill 211

Representative Donley & Members of the Committee:

Thank you for the opportunity to testify. I urge passage of Committee Substitute for Senate Bill 211:

### Section I

The cap limit is important on non-economic damages at the \$100,000 level. I understand that this does not limit economic or punitive damages.

### Section II

Clarification in this section is very important in that punitive damages should be paid for "clear and convincing evidence of "fraud, malice, gross negligence or reckless misconduct by the defendant.

### Section V

It makes sense to allow either the plaintiff or the defendant to choose periodic payments rather than one huge payment. For many of our smaller businesses this amendment could be vital. It does not concern me that the trial attorneys may have a complicated payment schedule rather than one huge contingency fee. I think this amendment is in the public's interest.

### Section VII

This section seems to be the heart of the Bill. One should be liable for damages to the extent of one's negligence. To allow the "deep pocket theory of justice" to continue to exist is costing millions. It seems logical that the defendant pay for his or her degree of fault and not 200% of their fault if it is less than 50% as the law now requires.

### Section XII

I urge that by the elimination of Rule 82 you allow the market to set the hourly and contingency fee, without the influence of a State civil rule agreed to by attorneys. It is my understanding that no other State in the Union has anything like Rule 82.

KGH

①

April 27, 1988  
Representative David Donley  
Page 2

In conclusion, I know the trial lawyers have spent a great deal of money to defeat this Bill and others like it. Most of us do not have that kind of money. I believe this Bill protects the rights and interests of the victim while providing some relief for the business community as well as local governments, school districts and the State of Alaska.

Passage of this bill would be in the public's interest. I urge your passage of it and support for passage on the floor of the House. Thank you again for the opportunity to testify.

*Sister Barbara Haase*

Sister Barbara Haase  
Administrator

# Ketchikan General Hospital

3100 TONGASS AVE.

KETCHIKAN, ALASKA 99901

907--225-5171

April 27, 1988

Representative David Donley, Chairperson  
Labor & Commerce Committee  
Box V  
Juneau, Alaska 99811

RE: Committee Substitute for Senate Bill 461

Representative Donley & Members of the Committee:

You have heard much testimony regarding emergency services in hospitals and the effect of the Supreme Court's recent decision on Jackson vs. Powers which "legislates" deep pocket responsibilities to hospitals. I found their decision now being applied to obstetrics as well. The hospital is held liable for all of the actions and medical judgments of members of its medical staff without requiring the plaintiff to prove negligence on the part of the hospital or to prove the hospital has violated any specific regulatory requirement.

In cases ~~already~~ heard in this state, the effect has been that the plaintiffs dropped the suit against the physician and held only the hospital responsible (See Justice vs. Humana Hospital). The affect is that the hospital would be forced to sue the physicians involved to recover at least some damages. I find this position untenable for any kind of continued team effort to care for patients - and good patient care is what we all want. However, not every patient outcome will be perfect, nor can every procedure produce a miracle.

SB 461 corrects the Supreme Court ruling by clarifying that hospitals are not liable for acts or omissions of non-employed physicians or other health professionals solely for the reason that they must provide those services under Alaska Statute and Regulations. The Bill returns the law to where it was prior to the Court's decision, with the hospital liable for its own negligence or intentional misconduct. We also understand that we still have the responsibility of properly credentialing, referencing and reviewing the actions of the members of the medical staff. We also must see that peer review is properly conducted within the medical staff of each hospital. Therefore, we feel we are not allowing negligent physicians to operate within our hospitals. Rather, we are trying to make certain that they are human beings and that we can help one another as much as possible to see that high quality medical care is available to all Alaskans.

I urge your committee to pass Committee Substitute for Senate Bill 461 and also to support it on the floor of the House. The State of Alaska's health facilities need this legislation.

*Sister Barbara Haase*

KCH  
Sister Barbara Haase  
Administrator

(2)

DAVID A. MCGUIRE, M.D.

*Orthopedic Surgery*

DIPLOMAT OF THE AMERICAN BOARD  
OF ORTHOPAEDIC SURGERY

4048 LAUREL STREET  
SUITE 202

ANCHORAGE, ALASKA 99508

PHONE 907-562-4142

April 15, 1988

RECEIVED  
APR 22 1987

Dave Donley, Representative  
House Labor & Commerce Committee  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Dear Representative Donley:

I am enclosing a recent memorandum from the staff at Providence Hospital. As you may know, the Supreme Court recently, in its Jackson vs Powers decision, allocated to the Hospital a non-delegable duty relative to care provided within the Emergency Room. This, in the view of the Sisters of Providence, has substantially increased their liability relative to malpractice actions against the Hospital. In their opinion, they already have an unacceptably high exposure, and the Supreme Court decision makes their continued operations untenable without enjoining physicians in the lawsuits provided.

Please note the second motion enacted by the Executive Committee of the staff of Providence Hospital, April 13, 1988. The unhappy fact of the matter is that continued escalation of liability exposure has brought the staff of Providence Hospital and the Administration of Providence Hospital, to very bitter loggerheads. There is more than a possibility that medical services are going to be curtailed as a result of this Supreme Court interpretation and as a result of the attendant liability.

Clearly there are at least two factors operating in this arena. The first is the magnitude of the liability, and the second is the distribution of the liability. Many may not quarrel that the distribution of the liability is appropriate relative to the Supreme Court's decision in Jackson vs Powers. Nevertheless, if that's the case, then the magnitude of the liability must be reduced or simply not tenable for the hospital to continue with the kind of loss exposure that it's had.

I am also enclosing correspondence between our Clinic, Anchorage Orthopedic Associates, and the other large orthopedic clinic in Anchorage, namely the Anchorage Fracture & Orthopedic Clinic. Again, I think the correspondence is self-explanatory. Nevertheless it's worth pointing out that from our point of view, (that is Anchorage Orthopedic Association), we cannot take the risk of interpreting films that are copies because they may miss some important detail. Anchorage Fracture & Orthopedic Clinic does not feel

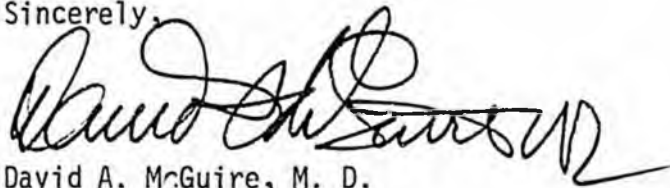
page 2 - Representative Don Donley

they can release the films because they've had instances in which the films have been stolen, misplaced, lost, etc. If litigation ensues and the films are not available, it's the physician's word against the patient and the plaintiff attorney. Clearly an untenable situation for "risk management". The immediate consequence to the citizens of the State of Alaska is that when I see a patient for a second opinion, I'm compelled to order new X-rays. These X-rays are an approximate cost of \$150.00. Given that I see an average of five to ten patients in any given week for second opinions, the arithmetic becomes important.

Representative Donley, this is an important problem, and we cannot afford to continue to ignore it. I understand that the Attorney General is contemplating action against the insurance companies for anti-trust, etc. To the extent that such activities are responsible for the present state of affairs, we support that investigation. To say that that alone is sufficient is clearly short-sighted if not self-serving. I'm certain that you are well aware that the Medical Mutual Insurance Companies in the State of Alaska have nothing whatever to do with Aetna, SIGMA, or any of the other major insurance companies that are being part of this action. To say that the action on the part of those insurance companies has anything whatever to do with the current state of affairs so far as medical liability insurance is concerned is to obscure the issue.

In 1976 and '76, the liability crisis became acute within the State of Alaska. There was a period of time in which medical care was provided only on an emergency basis. There were patients who were denied care because of their affiliation with identifiable subsets of the community. This is an unhappy state of affairs and should not be allowed to occur again. I do not feel that we can afford to ignore any longer that 20 to 40% of the physicians in the State of Alaska are uninsured, and not by choice. The insurance is available, it's simply not affordable. Recent verdicts and settlements in malpractice actions illustrate the point. It's not clear to me that we can afford a system that allocates one individual \$1.8 million dollars when he's already received \$650 thousand from a settlement in California. The parents of a baby born in Ketchikan recently received \$2.2 million dollars and the lawsuit continues. It doesn't take a genius to do the arithmetic to divide these kind of costs amongst the citizens of a state of 500,000 people. I urge your expeditious action to hold a hearing on Senate Bill 211 and the related issue of defining hospital liability.

Sincerely,



David A. McGuire, M. D.

DAM:li

Thank you Chairman Donnelly :

My name is Harold Thomas. I am a professional engineer and past-President of the Anchorage Branch of the American Society of Civil Engineers. Our organization represents some 600 civil engineers in Southcentral Alaska and some 900 statewide.

ASCE would like to express its strong support for SB 211. We passed a resolution in support of the bill last week and copies of this resolution have been sent to the appropriate legislative committee chairman.

Thank you for the opportunity to testify in support of SB 211.

Sincerely,

Harold Thomas

4-27-88



4/26/88

GOOD AFTERNOON, MY NAME IS ART JACOBS, AND I HAVE RECENTLY RETIRED FROM A POSITION AS A PRINCIPAL IN AN ENGINEERING FIRM HERE IN ANCHORAGE. I WILL ADDRESS THREE OF THE ITEMS CONTAINED IN CSSB 211.

THE FIRST ITEM IS THE PROPOSED CAP ON NON-ECONOMIC DAMAGES. THESE ARE DAMAGES WHICH CANNOT RATIONALLY BE ASSESSED IN TERMS OF DOLLARS, AND WHICH ARE TYPICALLY DETERMINED BY JURIES AS A RESULT OF THE EMOTIONAL PLEAS OF THE ATTORNEY REPRESENTING THE PLAINTIFF. THE TRUE MOTIVATOR WHICH DETERMINES <sup>THE</sup> AMOUNT CLAIMED IN MOST OF THESE CASES IS THE RESULTANT INCREASE IN THE FEE COLLECTED BY THE PLAINTIFF'S ATTORNEY, RATHER THAN HIS CONCERN FOR THE WELFARE OF HIS CLIENT. WE NEED NOT ONLY A CAP ON AWARDS IN THIS CATEGORY OF DAMAGES, BUT ALSO A REASONABLE SCHEDULE OF ATTORNEY'S FEES.

THE SECOND ITEM I WISH TO ADDRESS IS THE PUNITIVE DAMAGES SECTION. THESE DAMAGES ARE SUPPOSEDLY IMPOSED BECAUSE OF ILLEGAL ACTIONS BY THE DEFENDANT WHICH RESULTED IN THE CLAIMED INJURIES. IF THAT IS THEIR TRUE BASIS, ANY PENALTY, OR FINE, WHICH IS WHAT IT WOULD AMOUNT, TO SHOULD BE IMPOSED, AND COLLECTED, BY THE STATE, WITHOUT ALLOWING A X PERCENTAGE OF THE AMOUNT TO FURTHER ENRICH THE PLAINTIFF'S ATTORNEY.

THE LAST ITEM IS PURE SEVERAL LIABILITY. I BELIEVE THIS SHOULD BE APPLIED IN ALL CASES, WITHOUT THE EXCEPTIONS WRITTEN INTO THE SENATE BILL. EACH DEFENDANT SHOULD BE MADE RESPONSIBLE FOR ONLY HIS OWN ACTIONS, NOT FOR THE ACTIONS OF OTHERS WHO MAY NOT BE ABLE TO PAY, OR WHO MAY BE MORE SUCCESSFUL THAN HE IN HIDING OR DISGUISE ASSETS.

IN CLOSING, I WOULD LIKE TO SAY THIS BILL, WHICH IS A WELCOME ADDITION TO EXISTING LAW, STILL FALLS SHORT OF COVERING THE AIMS OF THE TORT REFORM MOVEMENT.

M E M O R A N D U M

TO: ALL MEMBERS OF THE PROVIDENCE HOSPITAL MEDICAL STAFF  
FROM: GEORGE RHYNEER, M.D., PRESIDENT, MEDICAL STAFF *GR*  
SUBJECT: ACTIONS OF THE EXECUTIVE COMMITTEE MEETING OF APRIL 12, 1988  
DATE: APRIL 13, 1988

The following motion was passed at the Executive Committee meeting on April 12, 1988.

MOTION AS AMENDED

Thomas Vasileff, M.D. moved that the Executive Committee representing Providence Hospital Medical Staff, believes that a major error in policy and/or judgment has occurred (perhaps secondary to poor legal advice), reflected by recent actual and threatened legal actions by the Sisters of Providence resulting in the unwilling embroilment of staff physicians in malpractice suits.

We believe such actions, taken without the acquiescence of the Medical Staff, are harmful, both to the affected physicians and to the staff in general. These actions are furthermore harmful to Providence Hospital and to the Mission of the Sisters of Providence.

We are aware of the potential grave consequences faced by all hospitals in Alaska because of the Jackson/Powers Supreme Court Decision. It is our firm belief that solutions are best achieved through meaningful dialogue between physicians and hospitals and are willing to participate in dialogue among all affected parties, including hospital administrators and representatives of the legal and insurance industries.

Additionally, we request reasoned investigation of the above actions which have been taken by the Sisters' employees and representatives, and request participation of the Executive Committee in this analysis and in subsequent corrective actions by the Sisters. We further request Mr. Camosso to commit tonight that there will be no further legal actions against physicians.

Finally, we ask that all completed legal actions such as outlined in paragraph one be immediately dropped.

The motion was seconded by James Lanier, M.D. and the motion carried with 2 voting against and one abstention.

A second motion was also passed which is as follows:

MOTION

Mohammed Sarwar, M.D. moved that if the action is turned down by the Governing Board, it is recommended that a meeting of the General Staff be called within ten days. The motion was seconded by Thomas Vasileff, M.D. and approved by the Executive Committee.

1137m



ANCHORAGE BRANCH  
AMERICAN SOCIETY OF CIVIL ENGINEER

A RESOLUTION

SUPPORTING ALASKAN TORT REFORM LEGISLATION

RECEIVED  
APR 22 1987

WHEREAS: Alaskan communities, businesses, school districts and private citizens continue to suffer undue economic hardships due to the problems of limited availability and premium escalation of insurance coverage, and

WHEREAS: A fundamental cause of Alaska's continuing liability crisis is the increasing and unpredictable size of damage awards and settlements, and

WHEREAS: Backlogged courts, windfall verdicts, high transaction costs of our legal system and escalating liability insurance prices are symptoms of the need for clear and decisive reforms, and

WHEREAS: There exists a widespread awareness of the need for change and some legislative reforms have been enacted, the need for comprehensive, fair and reasonable reforms has not been satisfied.

NOW, THEREFORE BE IT RESOLVED THAT:

The Anchorage Branch of the American Society of Civil Engineers supports HB250 and CSSB211 (Finance) and urges the Alaska House of Representatives to act on these Bills in order to achieve meaningful reform measures during the current (fifteenth) legislative sessions.

Signed:

*Lynda L. Barber*  
Lynda Barber, President

Dated: April 19, 1988

Woodward-Clyde Consultants  
01 Sesame Street  
Anchorage, Alaska 99503



SB211

# CITIZENS COALITION FOR TORT REFORM

907-561-6250

April 15, 1988

APR 15 1988

Senator Jalmar (Jay) M. Kerttula  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Kerttula:

Please find enclosed a breakdown of the cost of a recent verdict in favor of the plaintiff and against Humana Hospital and MICA, The Medical Indemnity Corporation of Alaska.

This case is an example of what really happens in our civil courts. Many plaintiff's lawyers have told you that there are not judgements in the State of Alaska in excess of one million dollars. Here, before you, is an example of one. I am certain that many of you have heard Mr. Roller, from the Division of Insurance, testify that jury verdicts are only the tip of the civil litigation iceberg. Below the water level on this iceberg, where we cannot see or measure, are the settled cases. Nevertheless, jury verdicts serve as bench marks, or "shadow verdicts", if you will, and it is against these verdicts that insurance companies attempt to settle claims. There are some interesting facts which can be read between the lines in an evaluation of this judgement.

For the record, the Los Angeles County settlement was \$650,000.00 with the provision that the plaintiff would have to return \$300,000.00 to California if successful in his Alaska lawsuit. The plaintiff was clearly far more successful in Alaska than he was in California. Please note the difference between the Alaska award of \$1,859,518.90 and the California award of 650,000.00. This seems "clear and convincing evidence" of the value of tort reform in California vs. the lack thereof in Alaska.

What is of further interest is that the California settlement was reduced to present value - by the Alaska Court - when it subtracted the amount from the verdict awarded in Alaska. At the same time the Alaska court computed the costs for economic and non-economic costs on the basis of future economic value - as opposed to again using present economic value - when it came to making the award. It seems to me this is a clear inconsistency on the part of Judge Gonzales. Either we should calculate everything as present value or at future value, but not be selective in calculating the deductions at present value and awards at future value.

April 15, 1988

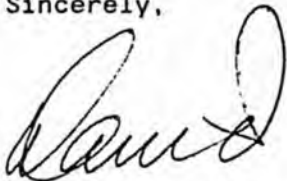
Page 2

Please note the cost of pre-judgement interest of \$683,534.00. The Alaska tort reform action in 1986 mandates pre-judgement interest be calculated from the date of filing. Had the 1986 law been in effect in 1982, there certainly would have been substantially less prejudgement interest added to the award in this case. It is also very important to note there was no action taken on the Alaska case for a period of one year while the litigation was pursued in California. The one year lack of action in Alaska forced the pre-judgement interest award to increase \$117,446.

Finally I would like to draw your attention to Rule 82 attorney's fees. Please note in the Alaska case alone, the cost was \$171,319.90. In its history, MICA has paid out nearly half a million dollars in Rule 82 fees. To its certain knowledge, MICA has never been successful in recovering a single dime for Rule 82 fees when it prevailed. I think this illustrates clearly our contention that Rule 82 is a one-way street. It is awarded when there is a pocket to pick; when there is not a pocket, there is no award. The net effect is to increase the cost of awards by 10% or so in the State of Alaska. Further testament is the fact that we, the consumers, pay a premium rider for Rule 82 fees for every policy written in the State of Alaska.

Obviously the present liability crisis is not over. The tort system is a clear and major part of the problem. I would urge your action on the Senate Bill 211, which is presently in Representative Donley's House Labor and Commerce Committee.

Sincerely,



David A. McGuire, M.D.  
Chairman, Citizens' Coalition for Tort Reform

MKD03003/vv

Dr. McGuire  
4

**MICA** Medical Indemnity  
Corporation of Alaska

ALEUT PLAZA  
4000 OLD SEWARD HWY., SUITE 203  
ANCHORAGE, ALASKA 99503

TO: MICA Executive Committee  
MICA Claims Committee

FROM: Janet Johnston,  
Claims Manager

DATE: March 17, 1988

RE: Judgement in Justice Case

At 2:00 p.m. this afternoon I was informed by Jim Delaney's office that Judge Gonzales had entered judgement in the Justice case in the amount of \$1,859,518.90. That figure is inclusive of prejudgement interest and Rule 82 attorney fees but does not include plaintiff's costs which have yet to be determined at a cost hearing. I do not expect that those will exceed \$100,000.

The judgement of was broken down as follows:

|                 |                                       |
|-----------------|---------------------------------------|
| \$ 1,449,160.00 | Amount of the verdict                 |
| - 144,916.00    | 10% plaintiff contributory negligence |
| -----           |                                       |
| \$ 1,304,244.00 | Subtotal                              |
| - 210,201.00    | Present value of L.A. County settle-  |
| -----           | ment as of July 1985                  |
| \$ 1,094,043.00 | Subtotal                              |
| - 89,378.00     | Collateral medical benefits           |
| -----           |                                       |
| \$ 1,004,665.00 | Subtotal                              |
| + 683,534.00    | Prejudgement interest at 10 1/2%      |
| -----           | from May 30, 1982 - March 16, 1988    |
| \$ 1,688,199.00 | Subtotal                              |
| + 171,319.90    | Rule 82 attorney fees                 |
| -----           |                                       |
| \$ 1,859,518.90 | Final Judgement                       |

To this final judgement figure will be added plaintiff attorney costs as they will be determined by the judge at a cost hearing to be held in the future.

Mr. Chairman, and members of the Committee;

Thank you for the opportunity to testify. I am Dr. Annette Thorn, a board certified specialist in internal medicine. I am also a specialist in public health, occupational medicine, and toxicology. I do work for the state, but today I am not testifying as a representative of the state, but instead as a private citizen. The administration has not taken a position on this legislation so it is very important that you understand that none of my views reflect the position of the administration.

However, as a member of the public health community, I am very concerned about the public health policy implications of the bill before you, Senate Bill 211. I am also concerned about the bill as a physician who needs malpractice in order to be able to practice. I may never be able to make my occupational health skills available in private practice in Alaska due to the cost of malpractice. I am very concerned about both implications of the bill.

Currently the tort system is the only effective deterrent against irresponsible disregard for the

health and safety of individuals exposed to toxic chemicals in their homes, in the process of production, or while enjoying hobbies.

The tort system acts as the only real sanction which is effectively making producers warn potential users of the true health hazards of a chemical product.

Since the toxic tort case law has developed (in such instances as the Johns Mansville Asbestos case), I have noted a progressive improvement in the quality of the instructions, information and the warnings made available to the public and the users of products.

However, there are many producers who still refuse to appropriately warn consumers of the potential dangers of products for fear of losing sales. Only when the monetary consequences of concealing information outweigh potential profits, will producers take note and act responsibly either by removing defective or dangerous products from the market or by appropriate effective warnings.

IUDs provide an example of this. When I was a medical student in 1974, the literature was

replete with studies showing that IUDs could cause infertility, septic shock and death. Yet producers did not provide warnings or guidelines for use in young women who might want to have children. In fact they continued to reassure physicians of their safety. Physicians, continued to insert IUDs in young women despite the findings in their literature. Finally multiple suits brought by injured women has resulted in better information provided to physicians about the risks by the producers and the removal of the Dalcon Shield from the market. I personally presented the data to the department of Obstetrics and Gynecology but could get no change in the practice of inserting IUDs in young women by members of the department.

When you limit the punitive damages by requiring such a high burden of proof, limit noneconomic damages due to pain and suffering to \$100,000 and allow the escape from joint and several responsibility in such circumstances, you detooth the only effective public health sanctions society has against the poisoning or injury of consumers in the community, in the workplace or at home.

I have seen this time and time again in Alaska with employees injured by a chemical which the employer and the employee had no idea was harmful. I have called the producer who claims that such well documented damage is impossible. Only after citing article after article about an effect that is well known to occur as a consequence of the chemical, does the manufacturer acknowledge the problem, and promise that they will put warnings on the product. However in follow up of such products the improvement in warning did not occur. In my experience this has occurred for example with foam-in-place isocyanate products which are known to cause sudden death from anaphylaxis, and solvents in paints containing methylene chloride acts like carbon monoxide in the blood, and can cause death from a heart attack.

It would be cheaper for these producers to pay \$100,000 in noneconomic damages, and pay economic damages for several cases, than suffer the consequences of loss of profit due to appropriate warnings to unsuspecting consumers.

In the workplace, the right to know law does not

have the teeth necessary to ensure adequate warnings in material safety data sheets used to warn employees and employers of dangers unless the torte system backs the law up. The potential of a sizeable award from a toxic torte action is the only real guarantee that the MSDS contains appropriate warnings of serious hazards. Alone, the Right to Know Law provides for only a maximum fine of \$10,000 for a grievous misrepresentation of a danger on a material safety data sheet, but most probably would cost the manufacturer \$1,000 for an omission if caught by OSHA. The proposed changes to the torte system will have unanticipated repercussions on preventive mechanisms upon which the society has come to rely. I believe that many members of the public will be dismayed by the loss of protections which they now take for granted, and upon which they rely, when they actually experience the consequences of this kind of change to the torte system.

When employees are harmed by toxic chemicals, they often have to turn to the torte system because the worker's compensation system is entirely inadequate to compensate the employee's health problems. By making these kinds of changes to the torte law you may be creating the same problems with the torte

system that you now have with the worker's compensation system.

The worker's compensation system, in fact acts as a disincentive to effective preventive of health and safety in the workplace because the costs of injuring an employee is not really borne by the perpetrating employer. It is amortized out over many employers and can be calculated in as a cost of doing business. This is probably why effective prevention of illness and injury in the workplace is the last frontier of public health in why it is so difficult to eliminate unnecessary injury and illness in the workplace. We are doing abysmally on a state and national level. Alaska has the highest rate of years of potential life lost in the country and the second highest injury and illness rate in the country. There is no effective deterrent to taking significant risks with employee health when profit due to production is compared with the cost of an injury or illness which now can be predicted and figured into the cost of doing business. There is a significant risk that you will create the same type of situation with this tort reform bill. It is a very bad public health policy change.

There is also a significant risk that compensation will be inadequate. By placing caps on noneconomic awards and relying on the replacement of economic loss, you create a system with the same types of inherent flaws that you have in the worker's compensation system. The worker's compensation system is expeditious in compensating injuries due to physical trauma such as loss of a finger or a hand or an eye or something which is obvious. However the awards are often totally inadequate to compensate the individual for the pain and suffering and the impact of that injury on the persons life. As an example, an employee who loses an arm due to negligence will at a maximum be compensated \$59,000. An employee made totally deaf will be compensated at a maximum \$37,800. By changing the tort system you are likely to create these kinds of inequities.

However the greatest problem is that many of the cases are never compensated. The insurance company automatically controverts most occupational disease claims and employs well trained lawyers to fight the claim. Proof of illness due to a chemical exposure or repetitive motion exposure is often very difficult, complex, and requires an immense amount of research. Very few plaintiffs attorneys have the

expertise and resources to fight the insurance company resources, especially when you consider the limitations placed on compensation of the plaintiff's attorneys by the worker's compensation system. I have found very few attorneys willing to take the time and resources necessary to win the employees rightful compensation in occupational disease cases given their level of compensation. The awards are too small. You run the risk of similar results in civil litigation if you make these kind of changes. In fact, given the complexity of the proof in occupational disease cases, the employees would be much more fairly served and compensated by being removed entirely from the Workman's Compensation system and allowed to take action in civil court. By making the anticipated changes proposed in this bill, you will be removing much of the alternative that the tort system offers to employees injured by toxic exposure.

The only real remedy many individual employees or consumers have at this point is civil litigation. For most employees damaged by a chemical, or toxic agent such as asbestos, tort litigation is the only remedy which can truly compensate their loss.

Is \$100,000 an adequate compensation for a person with the degree of pain and suffering suffered for 12 years while dying a slow and laborious death due to asbestosis? Is \$100,000 adequate to compensate an individual who was knowingly exposed to a lung carcinogen, and who spends two years in severe pain due to lung cancer; suffocating to death with recurrent infections, and lack of oxygen? Will it be enough of a disincentive for a producer who is making millions off of the product world wide to not conceal information? I would ask you to seriously consider not taking away this most important deterrent, which is protecting the health and safety of employees, consumers, and the community.

Though this bill exempts hazardous waste, environmental pollution and violations of state or federal antitrust statutes from several liability in accordance with that party's percentage of fault, it does not exempt those harmed by defective products, chemicals or toxic agents, or employees intentionally harmed by employers. These should be exempted. What is more important is the fact that \$100,000 in noneconomic damages is far too little to act as a deterrent in this day and age where potential profits far outweigh these kind of

consequences.

I am sympathetic to those who must spend years in court defending themselves against a spurious charge. I am also just as concerned as the next physician as to what I am going to have to spend in the future in malpractice payments. However this bill does nothing to remedy these situations and removes the sanctions which are vital to protection of the health of those who I went into medicine to help. This Bill does nothing to require the lowering of premiums or to remedy the lack of availability of insurance for entities that can not get insurance. A study of the link between insurance rates and the amount and frequency of awards in this state is a good idea; but if done, would probably embarrass those physicians and others (except for the insurance companies) who have been convinced that this bill is a good idea.

I am however concerned about the lack of availability of affordable insurance in Alaska. I believe that formulas used by insurance companies to project the probability of future claims can be used to falsely elevate projected claim costs. Legislation should be considered which would create

two insurance categories for professionals. Legislation should require lower insurance rates based on actual awards for a group of competent physicians and design professionals who receive good ratings from their peers. The State needs competent professionals who can provide services to all areas of the state. I believe if legislation created a mechanism of mandatory confidential peer review as a condition of licence renewal, insurance companies are likely to be more than willing to offer insurance to the group with adequate ratings, even with a cap on the insurance. It is about time we start talking about mandatory caps on insurance rates rather than award rates. Then the insurance companies and the professionals are likely to have the needed motivation to cooperate in realistic ratings. Only the negligent and incompetent physicians, and design professionals should have to pay the higher rates based upon their peer's opinions of them and their own litigation history.

I believe the majority of Alaska's physicians and design professionals are competent and will not experience the liability which is being projected by insurance formulas. There does not appear to be a real crisis in increasing rates of litigation filed,

or awards based on available numbers quoted during these meetings. The crisis appears to be due to internal financial problems in the insurance industry.

Perhaps the rate of rise of insurance can be curtailed by a thorough investigation of insurance practices used to project future awards.

In order to assure relief in medical malpractice rates, I would suggest the following measures;

1. Remove any cap on awards for noneconomic damages for product liability, toxic tort, community pollution and hazardous waste.
2. Pass legislation which addresses the medical and hospital malpractice crisis specifically; as well as design professional specifically, while leaving the rest of the tort system intact so that it may function to protect the health and safety of the public, the community and employees.
3. In order to specifically remedy the medical malpractice crisis I would suggest the

following:

- a. allow exemption for joint and several liability only for physicians and hospitals.
- b. change the law to remove all deterrents and interferences in sanctioning and the potential removal from practice of incompetent physicians, or physicians using medically dangerous, useless, or otherwise unacceptable therapy. The current legal protections of physicians in this state makes it very unlikely that unacceptable practices or incompetent practitioners can be stopped through the licensure process.
- c. make it necessary that a medical malpractice plaintiff prior to filing a claim, show that sufficient evidence exists to pursue a claim against an individual as is required for claims requesting punitive damages. This will cut down on the unnecessary defense costs in legal fees as well as unnecessary time

expenditure and stress for physicians .

- d. ban medical malpractice insurance which requires a tail, and instead require that all malpractice insurance be claims made.
- e. change the way future litigation liabilities are projected. If the number of physicians is too small to make reliable projections of risk for Alaska, do not use formulas based on a litigation environment which is entirely different than our own. Choose more realistic projections based on the actual state experience even if the statistical reliability is inadequate rather than relying on outside numbers and formulas. Every action feasible needs to be taken to assure that physicians in the State of Alaska are not subsidizing British rates.
- f. In exchange, require that the physicians in the state develop a set of objective criteria of competent and incompetent action and use this criteria to have physicians audit peers. A mechanism of

peer review should result in warnings to the physicians found to be deficient. A sufficient period of time should be given to deficient physicians to give them an opportunity to demonstrate that the deficiencies have been remedied and they have come in line with the criteria of performance. This should precede the audit result being used to influence that individual's malpractice rates. If the individual refuses to change harmful practices or deficiencies, only then would the individual lose the right to buy malpractice at a lower rate.

As much as I would like, for my own purposes to never have to face a malpractice claim, I believe the people of the state should continue to have access to fair compensation for objectively verifiable pain and suffering such as that which we know occurs with certain diagnoses such as cancer. Economic losses do not include the increased income and higher quality of life the individual may have obtained had the individual not been harmed.

Changes need to be made, but I would recommend you

consider changing the law to guarantee that medical and design professionals can get affordable insurance and not gut the effectiveness of the entire tort system.

# Ketchikan General Hospital

3100 TONGASS AVE.  
KETCHIKAN, ALASKA 99901  
907-225-5171

April 27, 1988

Representative David Donley, Chairman  
Labor & Commerce Committee  
Box V  
Juneau, AK 99811

RE: Committee Substitute for Senate Bill 211

Representative Donley & Members of the Committee:

Thank you for the opportunity to testify. I urge passage of Committee Substitute for Senate Bill 211:

## Section I

The cap limit is important on non-economic damages at the \$100,000 level. I understand that this does not limit economic or punitive damages.

## Section II

Clarification in this section is very important in that punitive damages should be paid for "clear and convincing evidence of "fraud, malice, gross negligence or reckless misconduct by the defendant.

## Section V

It makes sense to allow either the plaintiff or the defendant to choose periodic payments rather than one huge payment. For many of our smaller businesses this amendment could be vital. It does not concern me that the trial attorneys may have a complicated payment schedule rather than one huge contingency fee. I think this amendment is in the public's interest.

## Section VII

This section seems to be the heart of the Bill. One should be liable for damages to the extent of one's negligence. To allow the "deep pocket theory of justice" to continue to exist is costing millions. It seems logical that the defendant pay for his or her degree of fault and not 200% of their fault if it is less than 50% as the law now requires.

## Section XII

I urge that by the elimination of Rule 82 you allow the market to set the hourly and contingency fee, without the influence of a State civil rule agreed to by attorneys. It is my understanding that no other State in the Union has anything like Rule 82.

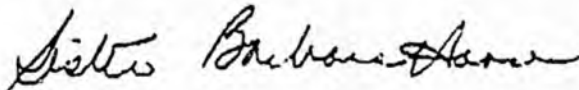
KGH

①

April 27, 1988  
Representative David Donley  
Page 2

In conclusion, I know the trial lawyers have spent a great deal of money to defeat this Bill and others like it. Most of us do not have that kind of money. I believe this Bill protects the rights and interests of the victim while providing some relief for the business community as well as local governments, school districts and the State of Alaska.

Passage of this bill would be in the public's interest. I urge your passage of it and support for passage on the floor of the House. Thank you again for the opportunity to testify.



Sister Barbara Haase  
Administrator

# Ketchikan General Hospital

3100 TONGASS AVE.  
KETCHIKAN, ALASKA 99901  
907-225-5171

April 27, 1988

Representative David Donley, Chairperson  
Labor & Commerce Committee  
Box V  
Juneau, Alaska 99811

RE: Committee Substitute for Senate Bill 461

Representative Donley & Members of the Committee:

You have heard much testimony regarding emergency services in hospitals and the effect of the Supreme Court's recent decision on Jackson vs. Powers which "legislates" deep pocket responsibilities to hospitals. I found their decision now being applied to obstetrics as well. The hospital is held liable for all of the actions and medical judgments of members of its medical staff without requiring the plaintiff to prove negligence on the part of the hospital or to prove the hospital has violated any specific regulatory requirement.

In cases ~~already~~ heard in this state, the effect has been that the plaintiffs dropped the suit against the physician and held only the hospital responsible (See Justice vs. Humana Hospital). The affect is that the hospital would be forced to sue the physicians involved to recover at least some damages. I find this position untenable for any kind of continued team effort to care for patients - and good patient care is what we all want. However, not every patient outcome will be perfect, nor can every procedure produce a miracle.

SB 461 corrects the Supreme Court ruling by clarifying that hospitals are not liable for acts or omissions of non-employed physicians or other health professionals solely for the reason that they must provide those services under Alaska Statute and Regulations. The Bill returns the law to where it was prior to the Court's decision, with the hospital liable for its own negligence or intentional misconduct. We also understand that we still have the responsibility of properly credentialing, referencing and reviewing the actions of the members of the medical staff. We also must see that peer review is properly conducted within the medical staff of each hospital. Therefore, we feel we are not allowing negligent physicians to operate within our hospitals. Rather, we are trying to make certain that they are human beings and that we can help one another as much as possible to see that high quality medical care is available to all Alaskans.

I urge your committee to pass Committee Substitute for Senate Bill 461 and also to support it on the floor of the House. The State of Alaska's health facilities need this legislation.

*Sister Barbara Haase*

KCH  
Sister Barbara Haase  
Administrator

# PROFESSIONAL LIABILITY



## UPDATE

APR 8 1988

March 1988

Accompanying this month's newsletter is an updated bibliography listing recent publications on professional liability that are of particular interest. Individual copies of articles are available for a duplication charge of \$.30 per page plus a \$3.00 per order handling and mailing charge.

### NEW RESEARCH

The average medical professional liability insurance premium for obstetricians has increased almost 240% in the last five years, from \$10,946 in 1982 to \$37,015 in 1987. These results are contained in a recently released study by the American College of Obstetricians and Gynecologists (ACOG). The study, a survey of almost 2,000 obstetricians and gynecologists, is the third in a series of biennial reports examining the impact of medical professional liability.

Concurrent with increasing premiums, an increasing number of obstetricians and gynecologists report making changes in the way they practice medicine. As the table below indicates, the percentage of physicians limiting their care of high risk pregnancies has increased sharply. In 1983, that percentage was 17.7%. By 1985, it had risen to 23.0%; in 1987, it was 27.1%. Similarly, the percentage of physicians limiting gynecological surgical procedures has increased significantly. In 1983, that percentage was 5.7%; in succeeding surveys, it was 6.9% and 9.0%. The other categories of physician response -- decreased number of deliveries, no longer practice obstetrics, and no longer do major gynecological surgery -- experienced no significant growth or declined slightly over the past two years. Still, the percentages in all three categories for 1987 are up over the figures reported in the original 1983 survey.

Changes in Practices of Obstetricians and Gynecologists  
as a Result of Professional Liability Risks,  
1983-1987

| <u>Physician Response</u>                   | <u>Percent of Physicians</u> |             |             |
|---|------------------------------|-------------|-------------|
|   | <u>1983</u>                  | <u>1985</u> | <u>1987</u> |
| Decreased Level of High Risk OB Care        | 17.7%                        | 23.0%       | 27.1%       |
| Decreased Number of Deliveries              | 10.1                         | 13.7        | 12.9        |
| No Longer Practice Obstetrics               | 9.1                          | 12.3        | 12.4        |
| Decreased Gynecological Surgical Procedures | 5.7                          | 6.9         | 9.0         |
| No Longer Do Major Gynecological Surgery    | 2.5                          | 3.3         | 3.3         |

Source: American College of Obstetricians and Gynecologists.

Professional Liability Clearinghouse, American Medical Association, Center for Health Policy Research,  
535 N. Dearborn Street, Chicago, Illinois 60610. (312) 645-5380.

While the percentage of physicians who no longer practice obstetrics has leveled off over the past two years, the current data suggest that such physicians are making this decision at an earlier age. In the 1985 survey, 54.2% of those not practicing obstetrics reported that they stopped prior to age 55; in 1987, that percentage was 66.8%. In 1985, 25.3% reported that they stopped prior to age 45; in 1987, that percentage was 29.3%. In 1985, 2.8% reported that they stopped before age 35; in 1987, that figure was 6.1%.

The current study indicates that obstetricians and gynecologists remain targets of medical professional liability claims. Over 70% of those surveyed reported that they had at least one claim filed against them in their careers. Respondents listed a total of 3,011 claims. Approximately 52% involved obstetrical issues and 48% involved gynecological concerns. Respondents reported that an average of 3.5 years passed between the time of the injury's occurrence and the closing of the claim.

The full report provides a detailed explanation of the results presented above, as well as sections dealing with survey design, physician demographics, costs of insurance, and tables comparing national data with those grouped by geographical areas. Copies of the full report, entitled "Professional Liability and its Effects: Report of a 1987 Survey of ACOG's Membership," may be obtained from the Department of Professional Liability, The American College of Obstetricians and Gynecologists, 600 Maryland Avenue S.W., Washington, DC, 20024. Report summaries are also available through the same address.

## FEDERAL DEVELOPMENTS

The Department of Health and Human Services has issued proposed regulations for the national data bank of physician information created by the Health Care Quality Improvement Act, PL 99-660, Title IV. The data bank will serve as a source of information on adverse licensure actions taken by state boards, payments on malpractice claims, and adverse actions on clinical privileges. The primary purpose of the data bank is to make information available to hospitals and state licensing boards for their credentialing and licensing activities.

The proposed regulations appear in the March 21, 1988 Federal Register. Comments may be filed with HHS by May 20, 1988. Because no money was appropriated for the data bank in FY88, this activity is not expected to be operational before next year.

## STATE LEGISLATIVE HIGHLIGHTS

The AMA Department of State Legislation reports that the Oregon Attorney General has issued an opinion negating a provision of Oregon's 1987 tort reform legislation. The provision would have made it illegal for the Oregon Medical Association to require OMA membership before a physician could purchase OMA group medical liability insurance. The attorney general ruled that the provision was unenforceable as long as OMA was considered a "purchasing group" under the provisions of the federal liability Risk Retention Act of 1986.

REP. DONLEY

BOX 837 SOLDOTNA, ALASKA 99688 CONSULTING ENGINEERS (807) 889-4824

# Mike Tauriainen, P.E.

April 26, 1988

Rep. Dave Donley, Chair  
House Labor & Commerce Committee  
Pouch V  
Juneau, AK 99669

Subject: SB 211 - Tort Reform

Representative Donley:  
Committee Members:

I am a licensed professional engineer and have been in business for over 10 years. Tort reform is essential to the economic well-being of our state. I am testifying in favor of SB 211. This legislation is a good start on correcting our tort system, and I urge you to move it out of committee (with minor modification as noted below) and pass it into law this session.

I circulated the petition on elimination of joint liability and obtained nearly 200 signatures in about a month. The response was overwhelmingly favorable.

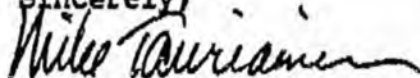
The liability situation has become significantly more difficult since I began in business. I have watched my professional liability insurance virtually double every year, and then become unavailable when my underwriter pulled out of the Alaska market, leaving me "bare" for quite a while.

I strongly recommend an amendment to Section 9 (pg 4, line 7) AS 09.17.080(d) to delete joint liability for hazardous waste and environmental pollution. This will penalize firms working on pollution cleanup that had no part in the original pollution.

For example, an engineer involved in the abatement of an existing pollution problem, using current technology and accepted practice, could be held liable for a mess created by someone else. No professional liability insurance is currently available for hazardous waste or pollution work. Therefore joint liability really leaves us hanging out and discourages engineers from involvement in proper environmental cleanup.

I respectfully encourage passage of SB 211 with Section 9 amended to delete joint liability for hazardous waste and environmental pollution.

Sincerely,



Mike Tauriainen

c: Rep. Mike Navarre  
Rep. John Sund

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

5-3-88

6:30p.m.

S B

2 2 3

(7)

# HOUSE COMMITTEE REPORT

Date referred: 4/30/87

FURTHER REFERRALS: Judiciary

DATE: 4/26/88

The Labor & Commerce Committee has considered SB 223

"An Act relating to civil liability of zoos and zoo operators."

**RECOMMENDS:**

- replace with CS SB 223  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

\_\_\_\_\_

*Scott Morrison*

\_\_\_\_\_

*Chip Davidson*

\_\_\_\_\_

*W. Furnace*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_

*David Dauley (NO REC)*

\_\_\_\_\_

*John Ellis (no rec)*

\_\_\_\_\_

*Walter Kozman (no rec)*

\_\_\_\_\_

*Ed A. ... (no rec)*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*David Dauley*

Chairman's Signature

STATE OF ALASKA 1988 LEGISLATIVE SESSION  
FISCAL NOTE

|   |   |
|---|---|
| <b>REQUEST:</b><br><hr/> Revision Date: 03/10/88<br>Title: An act relating to civil liability of zoos and zoo operators<br>Sponsor: Faiks<br>Requestor: Finance | Bill Version: SB 223<br>Publish Date:<br><br>Agency Affected: Alaska Court System<br>BRU: Trial Courts<br><br>Components: |
|---|---|

| EXPENDITURES/REVENUES: | (Thousands of Dollars) |            |            |            |            |            |
|------------------------|------------------------|------------|------------|------------|------------|------------|
| OPERATING              | FY 88                  | FY 89      | FY 90      | FY 91      | FY 92      | FY 93      |
| Personal Services      | . . . .                | . . . .    | . . . .    | . . . .    | . . . .    | . . . .    |
| Travel                 | . . . .                | . . . .    | . . . .    | . . . .    | . . . .    | . . . .    |
| Contractual            | . . . .                | . . . .    | . . . .    | . . . .    | . . . .    | . . . .    |
| Supplies               | . . . .                | . . . .    | . . . .    | . . . .    | . . . .    | . . . .    |
| Equipment              | . . . .                | . . . .    | . . . .    | . . . .    | . . . .    | . . . .    |
| Land & Structures      | . . . .                | . . . .    | . . . .    | . . . .    | . . . .    | . . . .    |
| Grants & Claims        | . . . .                | . . . .    | . . . .    | . . . .    | . . . .    | . . . .    |
| <b>TOTAL OPERATING</b> | <b>0.0</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|         |         |         |         |         |         |         |
|---------|---------|---------|---------|---------|---------|---------|
| CAPITAL | . . . . | . . . . | . . . . | . . . . | . . . . | . . . . |
|---------|---------|---------|---------|---------|---------|---------|

|         |         |         |         |         |         |         |
|---------|---------|---------|---------|---------|---------|---------|
| REVENUE | . . . . | . . . . | . . . . | . . . . | . . . . | . . . . |
|---------|---------|---------|---------|---------|---------|---------|

| FUNDING:      | (Thousands of Dollars) |            |            |            |            |            |
|---------------|------------------------|------------|------------|------------|------------|------------|
| General Funds | 0.0                    | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Federal Funds | . . . .                | . . . .    | . . . .    | . . . .    | . . . .    | . . . .    |
| Other         | . . . .                | . . . .    | . . . .    | . . . .    | . . . .    | . . . .    |
| <b>TOTAL</b>  | <b>0.0</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

| POSITIONS: |         |         |         |         |         |         |
|------------|---------|---------|---------|---------|---------|---------|
| Full-time  | . . . . | . . . . | . . . . | . . . . | . . . . | . . . . |
| Part-time  | . . . . | . . . . | . . . . | . . . . | . . . . | . . . . |
| Temporary  | . . . . | . . . . | . . . . | . . . . | . . . . | . . . . |

**ANALYSIS:** (Attach a separate page if necessary)

No fiscal impact.

|  |                 |
|--|-----------------|
| Prepared by: Jan Strandberg, General Counsel | Phone: 264-8228 |
| Division: Alaska Court System                | Date: 03/10/88  |

|   |                |
|---|----------------|
| Approved by: Arthur H. Snowden, II, Administrative Director | Date: 03/10/88 |
| Agency: Alaska Court System                                 |                |

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

5-0978B

Ford  
4/25/88

Original sponsors: Faiks and Sturgulewski

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 223 (L&C)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil liability of zoos and zoo  
7 operators."

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

9 \* Section 1. AS 09.17 is amended by adding a new section to read:

10 Sec. 09.17.100. CIVIL LIABILITY OF ZOOS. (a) A person may not  
11 recover damages for injury to person or property from a zoo or a zoo  
12 operator, if the damages occurred as a result of an inherent risk of  
13 attendance at a zoo, notice of the inherent risk was posted as re-  
14 quired under (b) of this section, and the zoo operator exercised  
15 reasonable care to prevent the injury.

16 (b) A zoo operator shall post signs at prominent places within a  
17 zoo and at each zoo entrance. Each sign shall include a statement  
18 warning that the zoo is not liable for injuries to person or property  
19 occurring as a result of dangers or conditions inherent in attending  
20 the zoo.

21 (c) In this section

22 (1) "inherent risk of attendance" means the dangers or  
23 conditions that are an integral part of a zoo and the physical prox-  
24 imity of wild animals;

25 (2) "zoo" means a place where wild animals are kept for  
26 exhibition to the public that is

27 (A) owned by the state or a municipality; or

28 (B) owned and operated by a nonprofit organization.

No 289

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: SB 223

Publish Date: \_\_\_\_\_

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

Agency Affected: Alaska Court System

Title: Civil liability of zoos  
and zoo operators

BRU: Trial Courts

Sponsor: Faiks

Components: \_\_\_\_\_

Requestor: Senate Judiciary Committee

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  | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS |   |   |   |   |   |   |
| OTHER         |   |   |   |   |   |   |
| TOTAL         |   |   |   |   |   |   |

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

\_\_\_\_\_

Prepared by: ART SNOWDEN

Phone: 264-0457

Division: Alaska Court System

Date: 4-23-87

Approved by Commissioner: [Signature]

Date: 4-23-87

Agency: \_\_\_\_\_

Distribution (by preparer):

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

# Alaska State Legislature



PRESIDENT  
907-465-3755

JAN FAIKS  
POST OFFICE BOX V  
JUNEAU, ALASKA 99811

## Senate

April 6, 1987

### MEMORANDUM

**TO:** Senator Jay Kerttula, Chairman  
Senate Judiciary Committee

**FROM:** Senator Jan Faiks  
President of the Senate

**SUBJECT:** Background on Senate Bill 223  
An Act relating to civil liability of zoos and  
zoo operators

Senate Bill 223 has been referred to your committee for consideration. The purpose of this bill is to limit the civil liability of zoos and zoo operators in Alaska.

SB 223 provides that a person may not recover damages for injuries sustained at a zoo as a result of an inherent risk of attendance at a zoo, provided that notice of the inherent risk was posted and the zoo operator exercised reasonable care to prevent the injury.

The bill further provides that a zoo operator shall post warning signs at prominent places within the zoo and at each entrance.

"Inherent risk of attendance" is defined as the dangers or conditions that are an integral part of the physical layout of a zoo and the physical proximity of wild animals.

I would appreciate the committee's consideration of the legislation at its earliest convenience. Should you need any additional information, please let me know.

Thank you.

OUT OF SESSION

6060 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611

# Alaska State Legislature

PRESIDENT  
907-465-3755

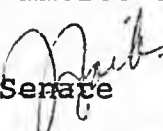
JAN FAIKS  
POST OFFICE BOX V  
JUNEAU, ALASKA 99811

## Senate

May 4, 1987

### MEMORANDUM

TO: Representative Dave Donley, Chairman  
House Labor and Commerce Committee

FROM: Senator Jan Faiks   
President of the Senate

SUBJECT: Background on Senate Bill 223  
An Act relating to civil liability of zoos and  
zoo operators

Senate Bill 223 has been referred to your committee for consideration. The purpose of this bill is to limit the civil liability of zoos and zoo operators in Alaska.

SB 223 provides that a person may not recover damages for personal or property injuries sustained at a zoo as a result of an inherent risk of attendance. The bill further provides that the zoo operator must use reasonable care to prevent the injury, and has a duty to post warning signs at prominent places within the zoo and at each entrance.

"Inherent risk of attendance" is defined as the dangers or conditions that are an integral part of the physical layout of a zoo and the physical proximity of wild animals.

This legislation addresses the standard of care to be applied in liability cases which may be brought against zoos and zoo operators in Alaska.

There are two theories of liability which have been applied to such keepers of wild animals. The rule of "absolute liability" is that one who keeps wild animals on his premises must see to it at his peril that they do no damage to others. Stated

OUT OF SESSION

6060 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611



differently, one who harbors a wild animal, which by its very nature is vicious and unpredictable, does so at his peril, and liability for injuries inflicted by such animal is absolute, regardless of fault.

This theory of "absolute liability" has been refuted in several cases throughout the country involving city-owned zoos, in favor of a duty of reasonable care. The argument that maintenance of a caged polar bear creates absolute liability for any injuries sustained was first rejected in a 1952 California case. The court found that the bear was properly caged and that the injury occurred when the victim strained against the barrier and brought his hand close to the bear's mouth in trying to feed it sugar. McKinney v. City and County of San Francisco, 241 P.2d 1060 (Cal. 1952). The most recent case on point, Kennedy v. City and County of Denver, 506 P.2d 764 (Colo. App. 1972), held that the rule of absolute liability does not extend to situations where a municipality maintains and operates a zoo for the benefit of the public and in response to the public's obvious desires. The wild animal rule has been held inapplicable in the context of today's society and present zoological techniques, as it would be unrealistic to hold that operation of a municipal zoo exposes the public to inordinate risk. City and County of Denver v. Kennedy, 476 P.2d 762 (Colo. App. 1970).

However, that line of cases has been applied only to zoos which are owned by municipalities. There are no city-owned zoos in Alaska; the Alaska Zoo is owned and operated by a non-profit organization for the benefit of the public.

The purpose of this legislation is to hold the Alaska Zoo, and other zoos which may be established in Alaska, to a standard of reasonable care, rather than to the theory of absolute liability. Ownership of a zoo should not determine the standard of care that it is held to.

The application of the duty of reasonable care to zoos and zoo operators conforms to the standard of care of ski area operators, another activity which has recognized inherent risks.

Senate Bill 223 applies only to personal or property injuries which occur during attendance at a zoo. The zoo operator must act reasonably to protect the public from harm, and must prominently place signs to warn the public of danger.

The Alaska Zoo presently requires that all children be accompanied by an adult guardian, and one adult must accompany a group of five children, as a means of protecting them from harm.

I would appreciate the committee's consideration of the legislation at its earliest convenience. Should you need any additional information, please let me know.

Thank you.

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

4-26-88

1:30 p.m.



Official Business

DATE: April 26, 1988

# SIGN-IN

- HB 544 Contractor bonds/public buildings and works
- SB 61 Civil liability for plane inspection
- SB 61 Rehire of injured state employees
- ✓ SB 309 Definition of commercial fisherman
- SB 211 Civil liability
- SB 461 Liability of hospitals for nonemployees

PLEASE PRINT  
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT  
TO TESTIFY?

SUBJECT:  
BILL #

|                     |                                      |                                     |                          |                   |                  |
|---------------------|--------------------------------------|-------------------------------------|--------------------------|-------------------|------------------|
| ✓ Sharon Anderson   | Humana Hospital                      |                                     | H<br>W 276-1131          | Yes               | SB 461           |
| ✓ Adrienne Anderson | Nat'l Campaign Against Toxic Hazards | 1266 Cook St. Denver Colorado 80206 | H<br>W 303-333-9714      | YES               | SB 211<br>SB 461 |
| ✓ Jeff Stepan       | DOT & PF                             | P.O. Box 2 Juneau                   | H<br>W 465-2151          | IF<br>NEEDED      | HB 558           |
| Karl Ohls           | Sen. Zharoff                         | P.O. Box V, Juneau                  | H<br>W 465-4922          | Yes, if needed    | SB 309           |
| ✓ David McGuire     | Citizens Coalition for Reform        | 4001 Laurel                         | H 349-1752<br>W 562-4142 | yes               | SB 211<br>SB 461 |
| ✓ AN GROSS          | ATIL                                 | 8470 N. D. ...                      | H<br>W                   | yes               | SB 211           |
| ✓ Paul Roller       | D.O.I                                |                                     | H<br>W 465-2513          | Yes               |                  |
| RICHARD RITTER      | AMERICAN INST. of ARCHITECTS         | 800 GLACIER AVE., JUNEAU            | H<br>W 586-1371          | YES,<br>IF NEEDED | SB 211           |
| MARY KANCEWICK      | AEL                                  | Assembly Bldg                       | H<br>W                   | yes               | SB 211           |
|                     |                                      |                                     | H<br>W                   |                   |                  |

NEEDS TO TESTIFY TODAY WON'T BE IN JUNEAU 11/27  
Must also testify today before 5



S B

2 6 4

# HOUSE COMMITTEE REPORT

(7)

Date referred: 5/13/87

FURTHER REFERRALS: HESS

DATE: 1/12/88

The Labor & Commerce Committee has considered SB 264

"An Act relating to the practice of chiropractic; and providing for an effective date."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the Hess Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

*[Handwritten signatures: Ellis, ...]*

*[Handwritten signature: Dan Ouley]*

*[Handwritten signature: ...]*

*[Handwritten signature: ...]*

*[Handwritten signature: ...]*

*[Handwritten signature: ...]*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*[Handwritten signature: Dan Ouley]*

Chairman's signature



STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

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

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

1-12-88

1:30 p.m.

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

**REQUEST:** \_\_\_\_\_

Bill Version: SB 264  
Publish Date: 4/17/87

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

Agency Affected: Commerce & Economic Dev.

Title: An Act relating to the practice of chiropractic; and providing for an effective date.

BRU: Occupational Licensing

Sponsor: Senators Josephson and Ahood

Components: \_\_\_\_\_

Requestor: Senate HESS

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

|         |   |   |   |   |   |   |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

|         |   |   |   |   |   |   |
|---------|---|---|---|---|---|---|
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

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

**ANALYSIS : (Attach a separate page if necessary)**

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144

Division: Occupational Licensing Date: 5/5/87

Approved by Commissioner: J. Anthony Smith Date: 5/11/87

Agency: Commerce and Economic Development

**Distribution (by preparer):**

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

*Occupational Licensing*

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: SB 264  
Publish Date:

REQUEST: \_\_\_\_\_

Revision Date:  
Title: An act relating to the practice of chiropractic  
Sponsor: Josephson & Abood  
Requestor: Sen. Fischer

Agency Affected: Alaska Court System  
BRU: Trial Courts  
Components:

| EXPENDITURES/REVENUES: |       | (Thousands of Dollars) |       |       |       |       |  |
|------------------------|-------|------------------------|-------|-------|-------|-------|--|
|                        | FY 87 | FY 88                  | FY 89 | FY 90 | FY 91 | FY 92 |  |
| OPERATING              |       |                        |       |       |       |       |  |
| Personal Services      | ••••• | •••••                  | ••••• | ••••• | ••••• | ••••• |  |
| Travel                 | ••••• | •••••                  | ••••• | ••••• | ••••• | ••••• |  |
| Contractual            | ••••• | •••••                  | ••••• | ••••• | ••••• | ••••• |  |
| Supplies               | ••••• | •••••                  | ••••• | ••••• | ••••• | ••••• |  |
| Equipment              | ••••• | •••••                  | ••••• | ••••• | ••••• | ••••• |  |
| Land & Structures      | ••••• | •••••                  | ••••• | ••••• | ••••• | ••••• |  |
| Grants & Claims        | ••••• | •••••                  | ••••• | ••••• | ••••• | ••••• |  |
| TOTAL OPERATING        | 0.0   | 0.0                    | 0.0   | 0.0   | 0.0   | 0.0   |  |
| CAPITAL                | ••••• | •••••                  | ••••• | ••••• | ••••• | ••••• |  |
| REVENUE                | ••••• | •••••                  | ••••• | ••••• | ••••• | ••••• |  |

| FUNDING:      |       | (Thousands of Dollars) |       |       |       |       |  |
|---------------|-------|------------------------|-------|-------|-------|-------|--|
| General Funds | 0.0   | 0.0                    | 0.0   | 0.0   | 0.0   | 0.0   |  |
| Federal Funds | ••••• | •••••                  | ••••• | ••••• | ••••• | ••••• |  |
| Other         | ••••• | •••••                  | ••••• | ••••• | ••••• | ••••• |  |
| TOTAL         | 0.0   | 0.0                    | 0.0   | 0.0   | 0.0   | 0.0   |  |

| POSITIONS: |       |       |       |       |       |       |  |
|------------|-------|-------|-------|-------|-------|-------|--|
| Full-time  | ••••• | ••••• | ••••• | ••••• | ••••• | ••••• |  |
| Part-time  | ••••• | ••••• | ••••• | ••••• | ••••• | ••••• |  |
| Temporary  | ••••• | ••••• | ••••• | ••••• | ••••• | ••••• |  |

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

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

Phone: 264-8228  
Date: 5-5-87

Approved by: *Stephanie J. Cole*  
Stephanie J. Cole, Deputy Director  
Agency: Alaska Court System

Date: 5-5-87

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

S B

274



Original sponsor: Fahrenkamp

1 IN THE SENATE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 274 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to access to employment security  
7 records."

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

9 \* Section 1. PURPOSE OF AS 23.20.110(i). The state is experiencing  
10 high unemployment with substantial economic problems for its residents.  
11 Since the Department of Labor is responsible for promoting the welfare of  
12 wage earners of the state and advancing their opportunities for profitable  
13 employment, the department needs access to data on residency of employees  
14 hired by employers in order to publicly encourage employers to voluntarily  
15 consider the availability of qualified job seekers in the state.

16 \* Sec. 2. AS 23.20.110(a) is amended to read:

17 (a) Except as provided in (h) and (i) of this section, the [THE]  
18 department shall hold information obtained from an employing unit or  
19 individual in the course of administering this chapter and determina-  
20 tions as to the benefit rights of an individual confidential and may  
21 not disclose them or open them to public inspection in a manner which  
22 reveals the identity of the individual or employing unit. A claimant  
23 or the legal representative of the claimant is entitled to information  
24 from the records of the department to the extent necessary for the  
25 proper presentation of the claim in a proceeding under this chapter.  
26 Subject to restrictions which the department prescribes by regulation,  
27 the information may be made available to an agency of this state or  
28 another state or federal agency charged with the administration of an  
29 unemployment compensation law or the maintenance of a system of public

1 employment offices, or, for the purposes of the Federal Unemployment  
2 Tax Act, to the Internal Revenue Service of the United States, or, for  
3 tax purposes, to the Department of Revenue. Information obtained in  
4 connection with the administration of the employment service may be  
5 made available to persons or agencies for purposes appropriate to the  
6 operation of a public employment service.

7 \* Sec. 3. AS 23.20.110 is amended by adding new subsections to read:

8 (h) The department shall make information obtained from an  
9 employing unit or an individual available on request to an adminis-  
10 trator of a joint administered defined pension benefit plan estab-  
11 lished under 29 U.S.C. 1001 - 1461 (Employee Retirement Income Securi-  
12 ty Act) to assist the administrator in verifying whether a person  
13 receiving a retirement benefit from the plan has been employed in the  
14 last six months. To the extent the information is available to the  
15 department, the department shall provide the administrator with the  
16 name and address of the person's current employer and the person's  
17 current occupation. The administrator shall keep information received  
18 under this subsection confidential. However, the administrator may  
19 reveal the information if it is relevant to a legal proceeding in  
20 which the administrator or the plan is a party. The department may  
21 require the plan to reimburse the department for the cost of furnish-  
22 ing the information.

23 (i) The department may publicly disclose information obtained  
24 from an employing unit or an individual as provided in this subsection  
25 to encourage employers to voluntarily consider the availability of  
26 qualified job seekers who are residents of the state. The department  
27 may disclose an employer's name and the results of the department's  
28 analysis of the employer's practice of hiring persons who are not  
29 residents of the state. The department may not use the results of the

1 analysis to limit or deny services or benefits or to discriminate  
2 against the employer. The department may not disclose information  
3 under this subsection that would individually identify an employee.

4 (j) Notwithstanding (h) or (i) of this section, the department  
5 may not release information to an administrator under (h) of this  
6 section or on an employer's hiring practices under (i) of this section  
7 if the United States Secretary of Labor rules that release of the  
8 information would be grounds to find that the state is in substantial  
9 noncompliance with 42 U.S.C. 503(a).

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: HCS for CSSB 274 (L&C)

PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Labor  
 Title: " An Act relating to access to  
employment security records." BRU: Employment Security  
 Sponsor: Fahrenkamp Components: Unemployment Insurance  
 Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND&STRUCTURES   |       |       |       |       |       |       |
| GRANTS,CLAIMS     |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   | 0.0   |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| REVENUE |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

|               |     |     |     |     |     |     |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND  |     |     |     |     |     |     |
| FEDERAL FUNDS |     |     |     |     |     |     |
| OTHER         |     |     |     |     |     |     |
| TOTAL         | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Joe Sitton, Director Phone: 465-2712  
 Division: Employment Security Division Date: 03/02/88  
 Approved by Commissioner: Jim Sampson Date: 03/02/88  
 Agency: Department of Labor

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

# Alaska State Legislature

SENATOR BETTYE FAHRENKAMP  
CHAIRMAN, LEGISLATIVE COUNCIL  
CHAIRMAN, OIL AND GAS COMMITTEE  
515 7TH AVENUE, SUITE 130  
FAIRBANKS, ALASKA 99701  
OFFICE (907) 452-4882  
HOME (907) 456-2899



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
CAPITOL ROOM 125  
OFFICE (907) 465-3834  
HOME (907) 780-6027

## Senate

### MEMORANDUM

TO: House Labor & Commerce Committee Members

FROM: Senator Fahrenkamp

DATE: March 2, 1988

RE: CSSB 274 (L&C)

CSSB 274 (L&C) An act relating to access to employment security records by Senator Bettye Fahrenkamp

#### Background

I introduced this legislation because it has come to my attention that some recipients of retirement plans authorized under the federal Employee Retirement Income Security Act (ERISA) collect their pensions while continuing to work in the same line of work.

Under private pension plans established under ERISA, the administrator of the plan may discontinue benefits to the recipient if the recipient returns to employment in the same line of work for more than 39 hours per month. However, the administrators often have great difficulty in demonstrating that a recipient is no longer eligible to draw retirement benefits, i.e. that he or she is working in the same line of work.

#### What the bill does

This bill would allow the Alaska Department of Labor Employment Security Division to provide to administrators, on a confidential basis, the name and address of a worker's current employer and the current occupation if known. The Division should have such information because employers are required to make unemployment insurance contributions on behalf of their employees and report them quarterly.

The department is prohibited from releasing information if the U.S. Secretary of Labor rules that the release of the information would cause noncompliance with federal