

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 86/2

5332 SJUD HB 2 - HB 7

904

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 19, 1987

SUBJECT: HB 2 - Uniform Simultaneous Death Act

TO: Representative John Sund, Chair
House Judiciary Committee

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

The following is a section by section analysis of HB 2:

Section 1 Provides that certain general rules of evidence in determining death and status are applicable in proceedings under the Uniform Simultaneous Death Act, unless specifically displaced.

Section 2

13.43.010 - States the general rule, that in cases of simultaneous death the property of each person shall be disposed of as if that person had survived. This is a legal presumption that is simple, and avoids the difficulty of proving survivorship.

13.43.020 - Applies the same presumption of survivorship to a beneficiary or beneficiaries in simultaneous death situations.

13.43.030 - Provides for distribution of property held by joint tenants or tenants by the entirety in simultaneous death cases.

13.43.040 - Provides for distribution of community property in cases of simultaneous death of a husband and wife.

13.43.050 - Subsection (a) creates a conclusive presumption that when an insured and beneficiary die simultaneously, proceeds shall be distributed as if the insured had survived. This is presumed to be the intention of the insured, but the insured would be able to provide otherwise in the contract

of insurance, if it does not. Subsection (b) provides that when insurance is community property and an alternative beneficiary is not selected, proceeds are distributed as community property under 13.43.040.

13.43.060 - Allows a person to provide for a different kind of distribution of property than is provided in this chapter.

13.43.070 - Uniformity provision.

13.43.080 - Citation section.

Section 3 - This Act will not apply to distribution of property of those persons dying before the effective date of the Act.

MFF:mkr
M8/023

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

No. 1

REQUEST: _____

Bill Version: HB 2
Publish Date: HOUSE 1/28/87

Revision Date: 1/24/87
Title: An Act providing for the adoption
of the Uniform Simultaneous Death Act
Sponsor: Gruenberg, et al
Requestor: Rep. Gruenberg

Agency Affected: None
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact.

Prepared by: John Hartle, JH Committee Aide,
Division: House Judiciary Committee

Phone: 465-4990
Date: 1/24/87

Approved by Commissioner: Rep. John Sund, Chair
Agency: House Judiciary Committee

Date: 1/24/87

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

CONTENTS OF HB 2 COMMITTEE FILE

1. HB 2
2. Max Memo
3. '87 sectional analysis
4. '87 zero fiscal note
5. List of states that have adopted the Uniform Simultaneous Death Act and Prefatory note
6. Bill history of HB 408 with Journal pages for House Judiciary. Committee vote, House floor vote and Senate Judiciary Committee vote
7. House Judiciary Committee minutes referencing the bill 10/25/85 and 1/17/86
8. Senate Judiciary Committee minutes referencing the bill 4/15/86 and 5/9/86
9. Letter from Anchorage Estate Planning Council
10. Letter from Alaska Bar Association Probate section
11. Letter from Richard S. Thawtes, Alaska Bar Probate & Tax section



Official Business

Alaska State Legislature

House of Representatives

Committee on Rules

P. O. Box V
Juneau, Alaska 99811

Phone:
(907) 465-3764
465-3765

10:00 a.m. Floor Session

"10th day"

HOUSE CALENDAR FOR WEDNESDAY, JANUARY 28th, 1987

HB 2 - "An Act providing for the adoption of the Uniform
Simultaneous Death Act."
(by Representative Gruenberg)

CITATIONS

*HONORING:

- *Robert B. Atwood - by Reps. Boucher, Barnes, Collins, Donley
- *Dimond Lynx Volleyball Champions - by Reps. Hanley, Donley
- *Representative Mike Miller - by Reps. Ulmer, Hudson,
Grussendorf, Navarre, Pourchot, Koponen, Gruenberg, Goll, Davis,
Sund, Cotten; Sen. Duncan

IN MEMORIAM:

- *Hazel Jaeger MacKinnon - by Reps. Sund, Hudson, Ulmer, Cotten,
Taylor; Senator Jones, Duncan
- *Henry F. Warner - by Sens. Bennett, Fahrenkamp, Sturgulewski

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/19/87

FURTHER REFERRALS:

DATE: 1/27/87

The Judiciary Committee has considered HB 2

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

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 _____ 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:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

Chairman's signature

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES




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

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

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

MEMORANDUM

DATE: January 23, 1987
TO: Members of the House Judiciary Committee
FROM: Representative Max Gruenberg 
RE: HB 2, An Act providing for the adoption of the
Uniform Simultaneous Death Act

The Uniform Simultaneous Death Act has been adopted in forty-eight states. Only the State of Louisiana has failed to adopt it.

Alaska adopted it but repealed it by mistake when it adopted the Uniform Probate Code.

The Uniform Simultaneous Death Act provides for each person's estate to be settled as though that person had survived the others in a case of simultaneous deaths. This avoids costly court disputes to establish the sequence of death when there is not enough evidence to determine who, in fact, died first.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 19, 1987

SUBJECT: HB 2 - Uniform Simultaneous Death Act
TO: Representative John Sund, Chair
House Judiciary Committee
FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a section by section analysis of HB 2:

Section 1 Provides that certain general rules of evidence in determining death and status are applicable in proceedings under the Uniform Simultaneous Death Act, unless specifically displaced.

Section 2

13.43.010 - States the general rule, that in cases of simultaneous death the property of each person shall be disposed of as if that person had survived. This is a legal presumption that is simple, and avoids the difficulty of proving survivorship.

13.43.020 - Applies the same presumption of survivorship to a beneficiary or beneficiaries in simultaneous death situations.

13.43.030 - Provides for distribution of property held by joint tenants or tenants by the entirety in simultaneous death cases.

13.43.040 - Provides for distribution of community property in cases of simultaneous death of a husband and wife.

13.43.050 - Subsection (a) creates a conclusive presumption that when an insured and beneficiary die simultaneously, proceeds shall be distributed as if the insured had survived. This is presumed to be the intention of the insured, but the insured would be able to provide otherwise in the contract

Representative .nd
January 19, 1987
Page 2

of insurance, if it does not. Subsection (b) provides that when insurance is community property and an alternative beneficiary is not selected, proceeds are distributed as community property under 13.43.040.

13.43.060 - Allows a person to provide for a different kind of distribution of property than is provided in this chapter.

13.43.070 - Uniformity provision.

13.43.080 - Citation section.

Section 3 - This Act will not apply to distribution of property of those persons dying before the effective date of the Act.

MFF:mkr
M8/023

UNIFORM SIMULTANEOUS DEATH ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama	1949, p. 852	9-7-1949	Code 1975, §§ 43-7-1 to 43-7-3.
Arizona	1959, c. 77	6-20-1959	A.R.S. §§ 14-2804 to 14-2810.
Arkansas	1941, Act 15	1-30-1941*	Ark.Stats. §§ 61-124 to 61-130.
California	1945, p. 1885	9-15-1945	West's Ann.Cal.Prob.Code, §§ 296 to 296.8.
Colorado	1967, p. 104	3-14-1967	C.R.S.1973, 15-11-613.
Connecticut	1943, c. 266, p. 272	10-1-1943	C.G.S.A. § 45-287.
Delaware	1945, c. 234	4-18-1945*	12 Del.C. §§ 701 to 707.
Dist. of Columbia	1965, 79 Stat. 700	1-1-1966	D.C.Code 1981, §§ 19-501 to 19-506.
Florida	1941, c. 20884	6-12-1941	West's F.S.A. § 732.601.
Georgia	1966, p. 606	7-1-1966	O.C.G.A. §§ 53-11-1 to 53-11-a.
Hawaii	1941, Act 74	4-22-1941	HRS §§ 534-1 to 534-5.
Illano	1943, c. 83	2-23-1943*	I.C. § 15-2-613.
Illinois	1941, vol. 1, p. 6	7-16-1941	S.H.A. ch. 110½, §§ 3-1, 3-2.
Indiana	1941, c. 49	2-24-1941*	West's A.I.C. 29-2-14-1 to 29-2-14-8.
Iowa	1963, c. 326	1-1-1964	I.C.A. §§ 633.523 to 633.528.
Kansas	1947, c. 239	6-30-1947*	K.S.A. 58-701 to 58-707.
Kentucky	1942, c. 79	3-5-1942	KRS 397.010 to 397.080.
Maine	1941, c. 111	3-29-1941	18-A-M.R.S.A. § 2-805.
Maryland	1941, c. 191	6-1-1941	Code, Courts and Judicial Proceedings, §§ 10-801 to 10-807.
Massachusetts	1941, c. 549	7-29-1941	M.G.L.A. c. 190A, §§ 1 to 8.
Michigan	1941, No. 73	1-10-1942	M.C.L.A. §§ 720.101 to 720.104.
Minnesota	1943, c. 248	4-2-1943*	M.S.A. § 525.90.
Mississippi	1956, c. 214	7-1-1956	Code 1972, §§ 91-3-1 to 91-3-15.
Missouri	1947, Vol. 1, p. 13	9-10-1947	V.A.M.S. §§ 471.010 to 471.050.
Nebraska	1947, c. 112	3-8-1947	R.R.S.1943, §§ 30-121 to 30-128.
Nevada	1949, c. 44	3-9-1949*	N.R.S. 135.010 to 135.090.
New Hampshire	1941, c. 55	4-8-1941	RSA 563:1 to 563:9.
New Jersey	1947, c. 384	7-3-1947	N.J.S.A. 38:6-1 to 38:6-7.
New Mexico	1959, c. 172	3-31-1959	NMSA 1978, §§ 45-8-1 to 45-8-8.
New York	1966, c. 952	9-1-1967	McKinney's EPTL 2-1.6.
North Carolina	1947, c. 1016	4-5-1947	G.S. §§ 28A-24-1 to 28A-24-7.
North Dakota	1943, c. 211	3-17-1943	NDCC 31-12-01 to 31-12-06.
Oklahoma	1959, c. 385	10-2-1959	58 Okl.St. Ann. §§ 1001 to 1008.
Oregon	1947, c. 555	4-21-1947	ORS 112.575 to 112.645.
Pennsylvania	1972, No. 164	7-1-1972	20 Pa.C.S.A. §§ 8501 to 8505.
Rhode Island	1947, c. 1871	4-28-1947	Gen.Laws 1956, §§ 33-2-1 to 33-2-9.
South Carolina	1948, p. 1753	4-3-1948	Code 1976, §§ 21-9-10 to 21-9-80.
South Dakota	1941, c. 332	3-4-1941	SDCL 29-8-1 to 29-8-8.
Tennessee	1941, c. 59	2-10-1941	T.C.A. §§ 31-501 to 31-508.
Texas	1955, c. 55	1-1-1956	V.A.T.S.Probate Code, § 47.
Utah	1953, c. 78	5-12-1953	U.C.A.1953, 75-2-1001 to 75-2-1038.
Vermont	1941, No. 41	3-21-1941	14 V.S.A. §§ 621 to 627.
Virgin Islands	1957, c. 3	9-1-1957	15 V.I.C. § 98.
Virginia	1942, c. 63	2-25-1942	Code 1950, §§ 64.1-27 to 64.1-104.
Washington	1943, c. 113	3-16-1943	West's RCWA 11.05.010 to 11.05.910.
West Virginia	1953, c. 66	2-18-1953	Code, 42-5-1 to 42-5-10.
Wisconsin	1941, c. 234	6-25-1941	W.S.A. 351.55.
Wyoming	1941, c. 34	2-22-1941	W.S.1977, §§ 2-13-101 to 2-13-107.

* Date of approval.

SIMULTANEOUS DEATH

Historical Note

The Uniform Simultaneous Death Act was approved by the National Conference of Commissioners on Uniform State Laws, and the American Bar Association, in 1940. The Act was subsequently amended in 1953 and similarly approved.

PREFATORY NOTE

After more than five years study a Uniform Simultaneous Death Act has been approved by the National Conference of Commissioners on Uniform State Laws and recommended to the various legislatures for adoption. Two considerations justify the hope that the Act which is presented herewith will be received favorably by the legislative bodies of the various States. It may be a sad commentary, but the pace of modern living with its multiple forms of transportation has caused the instances of simultaneous death to occur with much greater frequency than in the past. More and more therefore courts will be called upon to administer the estates of persons who have died under circumstances that there is no evidence of survivorship and it is desirable to have a workable and uniform rule to apply in such instances. The second consideration which should recommend this Act to the various legislative bodies is the unsatisfactory variety of methods that have been devised either as a result of jurisprudence or the result of legislation to administer this troublesome legal situation. Some States have set arbitrary presumptions which are employed by the courts to determine the devolution of property. In other States there is the "common law rule" which indulges no presumption one way or the other and leaves the matter to the respective claimants to prove survivorship. Both situations seem to be unrealistic. Prescribed presumptions frequently ignore the facts of life. For instance in some States it is presumed (conclusively) that an adult in good health survives a minor child or infant. If the minor happened to be the son or daughter of the adult it is more reasonable to suppose that the adult would have used every expedient to protect the child even at the sacrifice of his own life. In those States where there is no presumption whatever indulged courts are faced with an anachronism. The reason for the difficulty of administration is that it is impossible to know which of the persons has survived. Yet the "common law rule" in effect says that the person who claims by virtue of an alleged survivorship must prove the survivorship which is tantamount to demanding the impossible.

The theory of the present Act makes no effort whatever to resolve the un-resolvable. The formula is a simple one and easily applied. The theory of the present Act is that as to the property of each person he is presumed to be the survivor and it is administered accordingly.

Perhaps a word ought to be said with respect to Section four which deals with contracts of insurance. The Act provides that when the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise

SIMULTANEOUS DEATH

than simultaneously the proceeds of the policy shall be distributed as if the insured had survived. Obviously this section creates a conclusive presumption. The special circumstances seem to justify the creation of a presumption relative to the survivorship of the insured or beneficiary. By providing that the insured presumably survived it is thought that the result will most nearly approximate the intention of the real party in interest. If it does not, he is at liberty to provide otherwise in the contract of insurance.

General Statutory Notes

Alaska. L.1972, c. 71, repealed former title 13 of the Alaska Statutes and enacted a new title 13 in lieu thereof. While the new title 13 contains provisions relating to simultaneous deaths (see A.S. §§ 13.06.035 and 13.11.220), they are not in substantial conformity with the uniform act. Accordingly, Alaska has been deleted from the table of jurisdictions wherein the uniform act has been adopted.

California. Adds sections as follows:

"§ 296.41. Proceeding to determine simultaneous death; petition; notice of hearing; service. When it is claimed that, in accordance with the provisions of this chapter, any persons have died under circumstances where there is no sufficient evidence that they have died otherwise than simultaneously, the executor or administrator of any such person, or any other person interested in the estate of any such person, may file a petition, in the estate proceeding where he received his appointment, or in which he claims an interest, seeking to have it determined that such persons died under circumstances where there is no sufficient evidence that they died otherwise than simultaneously. The clerk shall set the petition for hearing by the court and cause notice thereof to be personally served at least 10 days before the date of the hearing upon the executor or administrator of each other person claimed to have so died. If the representative of any such other person is also the petitioner then, in lieu of personal service upon him, such notice shall be mailed to the heirs and devisees of such other person, so far as they are known to

the petitioner, at least 10 days before the date of hearing."

"§ 296.42. Proceeding by executor or administrator to determine simultaneous death; hearing; determination of order of death; jurisdiction. At the time appointed, the court, upon proof that due notice of the hearing has been given, shall proceed to hear the petition and any objections thereto that may have been filed or presented; and if, after a full hearing, the court is satisfied that the named persons are dead and that there is no sufficient evidence that they died other than simultaneously, it shall make an order to that effect. If the court is satisfied that the named persons are dead and that they did not die simultaneously then the court shall make an order setting forth the order in which such persons died. Such order when it becomes final shall be a binding determination of the facts therein set forth and conclusive as against the personal representatives of the deceased persons named in the order and against all persons claiming by, through or under any such deceased persons. The probate court which first acquires jurisdiction under Section 296.41 shall have exclusive jurisdiction to determine, by its order, that there is no sufficient evidence that the named persons died otherwise than simultaneously or to determine the order in which the named persons died."

Florida. L.1974, c. 74-106, repealed West's F.S.A. § 736.05, which formerly constituted the Uniform Simultaneous Death Act, and reenacted said Uniform Act as part of the Florida Probate Code in West's F.S.A. § 732.601.

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3300

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

House Judiciary

10-25-85

1-17-86

Senate Judiciary

4-15-86

5-9-86



Anchorage Estate Planning Council

March 19, 1986

Representative Max F. Gruenberg, Jr.
1024 West Sixth Avenue, Suite 201D
Anchorage, Alaska 99501

Dear Representative Gruenberg:

The Estate Planning Council of Anchorage is an affiliate of a national organization comprised of certified public accountants, attorneys, certified life underwriters and trust officers who specialize in estate planning.

A number of bills which impact the estate planning process have been submitted this session. Consequently, the Estate Planning Council has created a committee to evaluate and comment upon those bills.

I hope you will find the attached comments enlightening as these bills come up for consideration.

If you desire further information, please feel free to contact me.

Yours very truly,

Kathryn A. Black

Kathryn A. Black,
Estate Planning Council President
1127 West Seventh Avenue
Anchorage, Alaska 99501

KAB/jy

HOUSE BILL 408

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

RECOMMENDATION:

The Estate Planning Council recommends adoption of this Bill in its current form.



ALASKA BAR ASSOCIATION

P.O. BOX 279, ANCHORAGE, ALASKA 99510. (907) 272-7469

PROBATE LAW SECTION

March 11, 1985

Representative Max Gruenberg
Pouch V
Juneau, AK 99811

RE: Prospective Amendments to Uniform Probate
Code deemed desirable by Probate Law Section
and Taxation Law Section of Alaska Bar
Association

Dear Mr. Gruenberg:

In response to your letter to the Alaska Bar Association, I have talked with David Shaftel and Rodney Kleedehn of the Alaska Bar Association's Taxation Law Section and with members of the Probate Law Section and offer the following as amendments to the Uniform Probate Code as enacted in Alaska.

Please note that the provisions under the letter from Mr. Goerig referring to the Uniform Simultaneous Death Act were essentially to be part of the Uniform Probate Code but were inadvertently eliminated when the Code was adopted in 1973. Alaska happens to be one of the few remaining states which does not have a specific provision in this regard.

Trigg Davis has advised me he would be willing to meet with you regarding these modifications to the statute as well as the proposed modification under the Taxation Law Section's letterhead as proposed by Dave Shaftel and Rodney Kleedehn.

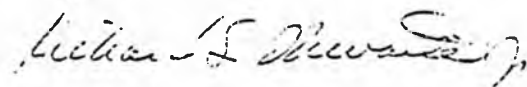
Both committees are currently working on more extensive proposals; however, those proposals will probably be pursued through the Code Revision Commission some time this Fall. These provisions were considered by all to be relatively non-controversial and fairly straightforward.

Mr. Max Gruenberg
March 11, 1985
Page 2

Your assistance in enacting these statutes will do much to bring Alaska residents up to par with the residents of other states in the area of estate and gift tax planning.

Your cooperation in this regard is greatly appreciated. If I can be of any assistance, please feel free to contact me.

Sincerely,



Richard S. Thwaites, Jr.

RST:lj

Enclosures

cc: David G. Shaftel, Esq.
G. Rodney Kleeöohn, Esq.
George E. Goerig, Jr., Esq.
Trigg T. Davis, Esq.

LAW OFFICES
DAVIS & GOERIG

A PROFESSIONAL CORPORATION
405 WEST 36TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99503

TRIGG T. DAVIS
GEORGE E. GOERIG, JR.

TELEPHONE 561-4420
AREA CODE 907

February 25, 1985

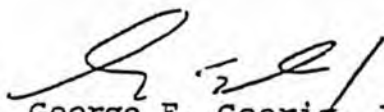
Richard S. Thwaites, Jr.
Chairman of the Alaska Bar Association
Probate Law Section
1031 West 4th Ave., Suite 500
Anchorage, AK 99501

Re: Introduction of the Uniform Simultaneous
Death Act in Alaska

Dear Dick:

Enclosed is a proposed statute relating to the Uniform Simultaneous Death Act. The statute provides for the disposition of non-probate property where there is no sufficient evidence that persons have died otherwise than simultaneously. I have left the provision regarding community property in the act because of the new statute which allows for community property status here in Alaska. The taxation law section supports enactment of this proposed statute.

Very truly yours,


George E. Goerig, Jr.
Attorney At Law

GEG/dvs

Enclosure


State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES

*File needs to be
in shape for me to
pull what this is on
floor*



Representative Max F. Gruenberg, Jr.
District 11

Spenard, Upper Midtown Anchorage

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JUNEAU, ALASKA 99811
(907) 465-3718
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February 26, 1987

The Honorable Jay Kerttula
Chairman
Senate Judiciary Committee


RE: HB 2, Uniform Simultaneous Death Act

Dear Mr. Chairman:

As per my testimony at your committee hearing on the above bill Thursday, February 26, 1987, enclosed please find items I would request be part of the official legislative history. This includes the entire bill history on HB 408, the identical bill in the Fourteenth Legislature, the Journal pages with all committee reports in the House and Senate and the Floor vote in the House plus the House Judiciary Committee minutes of October 25, 1985 and January 17, 1986 and the Senate Judiciary Committee minutes dated April 15 and May 9, 1986. Included also is a letter from the Anchorage Estate Planning Council and letters from the Alaska Bar Association Probate Section plus Richard S. Thwaites, Esquire.

Many thanks for including this in the official bill history.

Cordially,



Max F. Gruenberg, Jr.

MFG/hma
Encl

Both file
Hadson
FEB 26 1987
on
(2)

HOUSE CALENDAR: 1-22-86

BILL HB0408
 PAGE 01159
 DATE 04/29/85
 CHAMBER HOUSE
 TEXT HOUSE BILL NO. 408 by Gruenberg, Taylor, Clocksin, M.M. Miller and Pettyjohn, entitled:
 "An Act providing for the adoption of
 the Uniform Simultaneous Death Act."
 was read the first time and referred to the Judiciary Committee.

BILL HB0408
 PAGE 01809
 DATE 01/16/86
 CHAMBER HOUSE
 TEXT Representative Sund added his name as co-sponsor to HOUSE BILL NO. 408 (providing for the adoption of the Uniform Simultaneous Death Act).

BILL HB0408
 PAGE 01828
 DATE 01/20/86
 CHAMBER HOUSE
 TEXT The Judiciary Committee has considered HOUSE BILL NO. 408 (providing for the adoption of the Uniform Simultaneous Death Act), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 408 (Judiciary) (same title) and reports it back as follows: M.M. Miller (Chairman), Sund, Gruenberg, Taylor, Pettyjohn, Phillips and Clocksin recommend do pass. A zero fiscal note was attached.

HB 408 was referred to the Rules Committee for placement on the calendar.

Uniform
 Simultaneous
 Death Act

HOUSE BILL NO. 408, by Reps. Gruenberg, Taylor, Clocksin, M. M. Miller and Pettyjohn. Amends Title 13 (Decedents, Estates, Guardianships and Trusts) by adding the Uniform Simultaneous Death Act as a new chapter. The Act bill addresses sufficient evidence of survivorship, survival of beneficiaries, joint tenants or tenants by the entirety, community property, insurance policies, inapplicable sections if decedent provides otherwise, and uniformity of interpretation. Does not provide effective date (takes effect 90 days after Governor signs bill).

Introduced April 29 and referred to Judiciary.

COMMITTEE REPORT

HOUSE

1/20
P.L.

(7)

FURTHER:

4/29/85

Date: _____

The Committee on JUDICIARY has had HB 408

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

under consideration and recommends:

do pass do not pass

do pass with attached amendments(s)

replace with CS for HB 408 (Jud) same title new title

and recommends DO PASS

AND attaches a "Letter of Intent" New Fiscal Note

reports it back without recommendation Zero Fiscal Note Attached

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Handwritten Signature]
[Handwritten Signature]
[Handwritten Signature]
[Handwritten Signature]
[Handwritten Signature]
[Handwritten Signature]

[Handwritten Signature]
CHAIRMAN

HB

3

Arts

PARIS COPY KING DANIEL DELAMARE MAKES A GOOD IMPRESSION(IST)

Art patrons often gasp in shock when they enter Daniel Delamare's gallery in Paris. Every expanse of wall space in the Avenue Matignon showroom is filled with the signed creations of immortal artists, among them Rousseau, Gauguin, Degas and Cézanne. In an age when modern masterpieces are scattered around the world, in museums, bank vaults and private collections, Delamare's showroom seems truly remarkable.

But wait a minute. Isn't that painting by Renoir, *In the Meadow*, normally found in the S.A. Lewisohn Collection in New York? And doesn't van Gogh's *Olive Trees*, *Blue Sky* hang in a gallery in Holland? If Daniel Delamare isn't an international art thief, then he must be the world's most brazen forger. *Au contraire*, says Delamare, 34, a former textile manufacturer, the paintings are not originals, but he isn't trying to con anyone. And the works, he insists, can stand on their own.

"These are," explains the fast-talking Frenchman, "genuine copies." Obviously connoisseurs agree, since the paintings, thus acknowledged, still sell for between \$5,000 and \$18,000. Created by a stable of 15 skilled painters, they are, says Delamare, copies "of high artistic value completely faithful to the style and spirit of the master. Each painter works with a technique as close as possible to the original. The copy has the same strength and feeling as the original." Not to mention the same signature.

"All the legal questions have been resolved when you buy a Daniel Delamare," the gallery's owner declares. None of the oil-on-canvas copies is exactly the same size as the original, he points out, and he has permission to reproduce the signatures—sometimes from the masters' descendants, who are occasionally rewarded with royal-

Painted by one of the Delamare gallery's anonymous artists, Gustav Klimt's *Black Feather Hat* is available for \$14,000.



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ties. What's more, says Delamare, nobody would really be fooled by his works for long. "The first thing an expert does," he says, grabbing a Degas from the wall and unceremoniously flipping it over, "is look at the back." Sure enough, there for all the world to see is a "Daniel Delamare-Copie" stamp.

"There is no misunderstanding possible," maintains Delamare, who even requires buyers to sign a certificate stating that they have knowingly bought a non-original. But the copies aren't a bad investment either. "Each one is unique," says Delamare proudly. "We're not going to make several copies of the same work. If somebody wants a Delamare that's already been sold, he must deal with the present owner, who can set his own price."

If, indeed, Delamares acquire real value in a secondary art market, much of the credit should go to the gallery owner's hardworking and more silent partner, Belgian art historian Danielle Van Santen, 32. It was Van Santen, a former art cataloger with the Belgian Ministry of Culture, who spent 2½ years meeting nearly 3,000 contemporary European painters in order to select the 15 who now work—anonymously—for the gallery. It was also Van Santen who decided, after viewing the first 60 paintings commissioned, that seven were artistically unworthy and would be destroyed. (They were redone by other artists.)

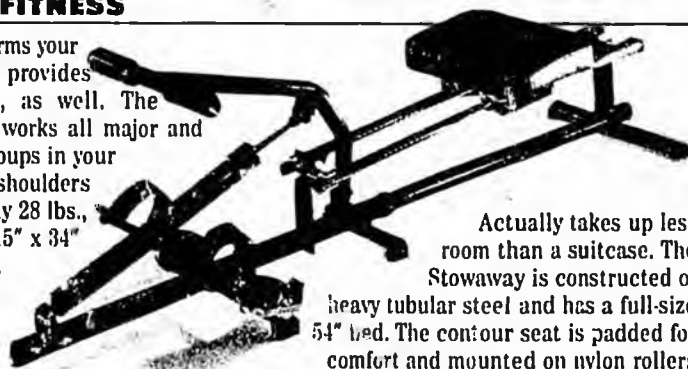
Van Santen met her partner in 1984, while they were standing in front of a friend's reproductions that both she and Delamare considered disappointing. After Van Santen found an artist who was able to duplicate Delamare's own favorite work, Turner's *Fighting Téméraire*, Delamare began planning for his gallery. "I thought it was an interesting idea, but not self-evident," admits Van Santen. "Little by little I was convinced. Lots of people want a copy of a painting they dream of."

Other gallery owners, however, find Delamare's big talk—and bigger success—hard to take. "They're green with rage! There was even a petition going around to get rid of me!" crows the self-described "megalomaniac." Distinguished art dealer Hervé Odermatt, head of his own gallery nearby, admits he is outraged by the respect the press has given the imitations. "It's not the first time that someone is selling copies," observes Oder-

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matt. "It's always been done. But for the press to make people believe that to hang up a copy is the same as hanging up a Renoir is a total lie."

Odermatt, moreover, has a low opinion of the quality of Delamare's unoriginals. "They're dead," he complains. "They're like dead cells. How can they pretend to vibrate, give emotion, like the genuine pieces?" Top Paris art auctioneer Guy Loudmer agrees: "I find it depressing. A copy is as much a work of art as a transvestite in the Bois de Boulogne is a high-society lady."

Delamare dismisses such complaints as mere highbrow snootiness. The youngest of four children whose father died when Daniel was 2, Delamare and his brother were raised in a children's home outside Paris. It was

there, he says, that "I learned to love art. Painting became my real family." Textiles, however, became his livelihood after he was trained in photography and served an unhappy stint in a Paris press agency. Following a short apprenticeship in a company owned by friends, he launched his own textile business in 1978, producing, among other things, Lacoste-look-alike shirts for Walt Disney that featured, in place of a little crocodile, a mini-Mickey Mouse holding a tennis racket.

The business brought Delamare prosperity (he owns a dozen antique cars and a seaside house in Deauville) but little satisfaction. These days he loves his work so much that he brings it home, rearranging his copies in the Paris penthouse apartment that he

shares with wife Estelle, 26, a manufacturer of women's ready-to-wear clothing, their son, Alexandre, 3, a maid and a nanny.

Delamare, in fact, seems positively triumphant as he contemplates his role as the ersatz-masterpiece maestro. Since the opening of his gallery last October, all 60 of his original non-originals have been sold, and he displays by appointment only. If critics don't like the copies, "let them buy van Goghs at \$50 million," he says. "The present art market is wrong. You can have Modigliani, Manet, Degas and Rousseau above your head for an affordable price." And yes, you *can* fool some of the people some of the time.

—By Ned Goeslin,
with Cathy Nolan in Paris

At home, Delamare displays another Klimt copy (*Woman with Hat and Boa*), along with wife Estelle and son Alexandre.



State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES



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

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

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 275-6844

January 20, 1988

MEMORANDUM

TO: Senator Jay Kerttula
Chair, Senate Judiciary Committee

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

RE: CSHB 3 (Rules), "An Act relating to the private sale
and consignment of works of art."

I would appreciate it if you would schedule a hearing on CSHB 3 (Rules) as soon as it is possible.

CSHB 3 (Rules) will help Alaskan artists.

I have enclosed a copy of six amendments that I would like to make to the bill in your committee.

I have asked my staff attorney, Mark Handley, to meet with your staff and answer any questions you might have about the bill or my amendments.

Thank you very much.

Thanks, Jay

A M E N D M E N T

Offered in the SENATE

TO: CSHB 3(Rules)

Page 1, lines 9 - 14:

Delete all material.

Page 1, line 15:

Delete "Sec. 2"

Insert "Section 1"

Comment: Some art dealers object to putting up a sign because it will not fit in with the decor of their galleries.

A M E N D M E N T

Offered in the SENATE

TO: CSHB 3(Rules)

Page 1, line 29:

Before "and", insert:

"(4) the art dealer is strictly liable for loss or damage to a work of art while the work of art is in the possession of the art dealer; the value of a lost or damaged work of art is the value established by written agreement between the artist and art dealer before the loss or damage of the work of art; if no written agreement establishing the value of the work of art exists, the value is the fair market value of the work of art less the art dealer's commission or fee;"

Renumber remaining paragraph accordingly.

Comment: Arizona (ARS 44-1772.4), California (Title 1.1, Sec. 738.6), Colorado (Colorado Revised Statutes 6-15-102(4)), Massachusetts (104A, Sec. 3(c) MGLA), Minnesota (Sec. 324.03(3) Minn. Laws), Washington (Sec. 18.110 020(4) Washington Laws Annotated), and Wisconsin (Sec. 120.02(4) Wisconsin Statutes) provide strict liability for any loss or damage to art work in a dealer's possession. The measure of damages, however, should only be the artist's portion of the sale price. The amendment is taken essentially verbatim from the Colorado statute. The Arkansas (ABA 68-1809(d)) and Oregon (ORS 359.210(c)) statutes similarly define the measure of damages.

A M E N D M E N T

Offered in the SENATE

TO: CSHB 3(Rules)

Page 2, line 2:

Delete "the sale of the work of art"

Insert "receipt by the dealer; if the sale is on installment, the money from each installment shall first be applied to pay any balance due the artist on the sale, unless the artist expressly agrees in writing that the proceeds on each installment are to be paid according to a percentage established by the consignment agreement"

Comment: The "sale" technically occurs for a large piece, upon execution of the sale contract, although the dealer may not immediately receive the proceeds (for example the art work may still have to be shipped to the buyer and a check mailed to the dealer). Also, occasionally sales of art are on installment. The amendment covers these contingencies.

(Source: (Oregon ORS 359.225), (Washington WRS 18.110.020(3))).

A M E N D M E N T

Offered in the SENATE

TO: CSHB 3(Rules)

Page 1, line 29:

Before "and", insert:

"(4) the art dealer shall return an unsold work of art on demand of the artist:"

Renumber remaining paragraph accordingly.

Page 2, lines 20 - 22:

Delete all material.

Page 2, line 23:

Delete "45.67.040"

Insert "45.67.030"

Delete ", "

Insert "and"

Page 2, line 24:

Delete ", and 45.67.030"

Comment: This technical amendment simply includes AS 45.67.030 in AS 45.67.010, which governs artist-art dealer relationships, including return of unsold works of art. Waivers are already covered in AS 45.67.020.

A M E N D M E N T

Offered in the SENATE

TO: CSHB 3(Rules)

Page 2, lines 23 - 27:

Delete all material.

Page 2, line 28:

Delete "45.67.050"

Insert "45.67.040"

Page 4, after line 2:

Insert a new bill section to read:

"* Sec. 3. APPLICABILITY. The provisions of AS 45.67.010, 45.67.020, and 45.67.030 may not be construed to have an effect upon a written or oral contract or arrangement in existence on the effective date of this section, except by the mutual written consent of the parties."

AS 45.67.040 is put in a separate section and thus be printed in the special acts volume of the Michie statutes. It would appear as an editor's note to AS 45.67.010, .020, and .030.

A M E N D M E N T

Offered in the SENATE

TO: CSHB 3(Rules)

Page 4, lines 1 - 2:

Delete "a painting, sculpture, drawing, work of graphic art, photograph, or craft work, in any medium"

Insert "an original or multiple original art work including:

(A) visual art such as a painting, sculpture, drawing, mosaic, or photograph;

(B) calligraphy;

(C) graphic art such as an etching, lithograph, offset print, or silk screen;

(D) craft work in clay, textile, fiber, wood, metal, plastic, or glass materials;

(E) mixed media such as a collage or any combination of art media in this subparagraph"

Comment: Refines the original definition of "work of art" to include "mixed media." Taken from Arizona (ARS 44-1771(4)), Colorado (Colorado Statutes 6-15-101(4)), Connecticut (Connecticut Statute 42-116K(c)), and Oregon (ORS 359.200(e)), all of which are substantially identical to this amendment.

FISCAL NOTE

REQUEST:

Revision Date: March 25, 1988.
Title: "An Act relating to the private sale ... of works of art."
Sponsor: House Rules
Requestor: Senate Judiciary

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

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-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 25, 1988
Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: March 25, 1988
Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 3 (Rules)

The committee substitute for HB 3 sets out the property rights of artists, providing for the sale and consignment of works of art under Title 45. The bill, which adds a new Chapter to this Title, does not contain penalty provisions. Any disputes arising from the provisions of the bill would be civil matters between private parties and would not involve the Department of Law.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

No. 1

REQUEST: _____

Bill Version: HB 3
Publish Date: HOUSE 2/13/87

Revision Date: _____

Agency Affected: Department of Law
BRU: Legal Services

Title: "An Act relating to the private sale and consignment of works of art."

Sponsor: Repr. Gruenberg

Components: Operations

Requestor: House Labor and Commerce

EXPENDITURE/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	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: 1/21/87

Ronald W. Lorensen

Approved by Commissioner: Acting Attorney General

Date: 1/21/87

Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 3

2/13/87

This bill sets out some of the property rights of artists, providing for the sale and consignment of works of art under Title 45. The bill, which adds a new Chapter to this Title, does not contain penalty provisions. Any disputes arising from the provisions of the bill would be civil matters between private parties and would not involve the Department of Law.

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1988

SUBJECT: Private sale and consignment of works of art -
SCS CSHB 3(Jud)

TO: Representative Max Gruenberg

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

You have asked if AS 45.67.030 would be applicable to a sale or transfer that occurred prior to the effective date of SCS CSHB 3(Jud). The applicability language in section 2 of the bill and the general prohibition against retrospective application of statutes contained in AS 01.10.090, would preclude AS 45.67.030 from being applied to a sale or transfer that occurs prior to the effective date of the bill.

You have also asked how AS 45.67.030 affects a museum's right to reproduce a work of art. Under this section the right of reproduction is reserved to the grantor, unless expressly transferred in writing. Therefore, until the right of reproduction passes into the public domain, the museum would need written permission from the owner of the right of reproduction in order to reproduce the art work.

Please contact me if you have further questions.

MFF:bb
b4/081

5-0117X
Ford
3/30/88

Original sponsors: Gruenberg, Goll,
Larson, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 3 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the private sale and consignment
7 of works of art."

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

9 * Section 1. AS 45 is amended by adding a new chapter to read:

10 CHAPTER 67. ARTISTS AND WORKS OF ART.

11 Sec. 45.67.010. ARTISTS AND ART DEALER RELATIONSHIPS. (a) When
12 an artist delivers or causes to be delivered a work of art of the
13 artist's own creation to an art dealer for the purpose of sale, or
14 exhibition and sale, on a commission, fee, or other basis of compen-
15 sation, the acceptance of the work of art by the art dealer is a
16 consignment, and

17 (1) the art dealer is, with respect to the work of art, the
18 agent of the artist;

19 (2) the work of art is trust property in the hands of the
20 art dealer for the benefit of the artist;

21 (3) proceeds from the sale of the work of art are trust
22 funds in the hands of the art dealer for the benefit of the artist;

23 (4) the art dealer shall return an unsold work of art on
24 demand of the artist;

25 (5) the art dealer is strictly liable for loss or damage to
26 a work of art while the work of art is in the possession of the art
27 dealer; the value of a lost or damaged work of art is the value estab-
28 lished by written agreement between the artist and art dealer before
29 the loss or damage of the work of art; if no written agreement

1 establishing the value of the work of art exists, the value is the
2 fair market value of the work of art less the art dealer's commission
3 or fee; and

4 (6) the dealer shall transmit the proceeds to the artist
5 within 30 days of receipt by the dealer; if the sale is on install-
6 ment, the money from each installment shall first be applied to pay
7 any balance due the artist on the sale, unless the artist expressly
8 agrees in writing that the proceeds on each installment are to be paid
9 according to a percentage established by the consignment agreement.

10 (b) A work of art initially received as a consignment remains
11 trust property notwithstanding the subsequent purchase of the artwork
12 by the art dealer directly or indirectly for the art dealer's own
13 account until the consignment price due to the artist is paid in full.
14 The trusteeship continues until the fiduciary obligation of the art
15 dealer with respect to the transaction is discharged in full.

16 Sec. 45.67.020. WAIVER. (a) A provision of a contract or
17 agreement whereby the artist waives a provision of AS 45.67.010 is
18 void except as provided in this subsection. An artist may waive the
19 provisions of AS 45.67.010 if the waiver is clear, conspicuous, and
20 agreed to in writing by the artist. A waiver under this subsection is
21 not valid with respect to the proceeds of a work of art initially
22 received as a consignment but subsequently purchased by the art dealer
23 directly or indirectly for the art dealer's own account.

24 (b) A waiver under (a) of this section may not inure to the
25 benefit of the art dealer's creditors in a manner that is inconsis-
26 tent with the artist's rights under AS 45.67.010.

27 Sec. 45.67.030. RIGHT TO REPRODUCE WORKS OF ART. (a) When a
28 work of art is sold or otherwise transferred by or on behalf of the
29 artist who created it, or the heirs or personal representatives of the

1 artist, the right of reproduction is reserved to the grantor until it
2 passes into the public domain by act or operation of law, unless the
3 right is sooner expressly transferred by an instrument, note, or
4 memorandum in writing signed by the owner of the right or an author-
5 ized agent of the owner.

6 (b) When an exclusive or nonexclusive conveyance of a right of
7 reproduction or right to public display is made by the holder of the
8 right, or the holder's authorized agent, ownership of the physical art
9 work is presumed to remain with and be reserved to the grantor unless
10 expressly transferred in writing signed by the grantor or the
11 grantor's authorized agent.

12 (c) This section may not be construed to prohibit the fair use
13 of a work of art or to conflict with federal copyright law.

14 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-
15 text otherwise requires,

16 (1) "art dealer" means a person engaged in the business of
17 selling works of art, other than a person exclusively engaged in the
18 business of selling goods at public auction;

19 (2) "artist" means the creator of a work of art or, if
20 deceased, the heirs or personal representatives of the creator;

21 (3) "consignment" means that no title to or estate in the
22 goods or right to possession superior to that of the consignor vests
23 in the consignee, notwithstanding the consignee's power or authority
24 to transfer and convey, to third person, all of the right, title and
25 interest of the consignor, in and to the goods;

26 (4) "creditor" has the meaning given in AS 45.01.201;

27 (5) "right of reproduction" means a right to reproduce,
28 prepare derivative works of, or distribute copies of a work of art;

29 (6) "work of art" means an original or multiple original

1 art work including:

2 (A) visual art such as a painting, sculpture, drawing,
3 mosaic, or photograph;

4 (B) calligraphy;

5 (C) graphic art such as an etching, lithograph, offset
6 print, or silk screen;

7 (D) craft work in clay, textile, fiber, wood, metal,
8 plastic, or glass materials;

9 (E) mixed media such as a collage or any combination
10 of art media in this subparagraph.

11 * Sec. 2. APPLICABILITY. The provisions of AS 45.67.010, 45.67.020,
12 and 45.67.030 may not be construed to have an effect upon a written or oral
13 contract or arrangement in existence on the effective date of this section,
14 except by the mutual written consent of the parties.

HB

6

ADOPTED

AMENDMENT #1

Offered in the SENATE
TO: SCS CS HB 6 (HESS)

by Gruenberg

Page 1, Line 11, after "PURPOSE.":

Insert "The Legislature recognizes the unique social and economic importance of Alaska's colleges and universities to the state's future."

Page 1, line 14, after "acquisitions":

Delete ", during this period of decreased state revenue"

w/drawn

AMENDMENT #2

Offered in the SENATE
TO: SCS CS HB 6 (HESS)

by Gruenberg

Page 1, line 22, after "or":
Delete "\$100,000" and insert "\$10,000"

Page 2, line 18, after "or":
Delete "\$10,000" and insert "\$1,000"

Page 3, line 9, after "or":
Delete "\$10,000" and insert "\$1,000"

Page 3, line 27, after "or":
Delete "\$100,000" and insert "\$10,000"

Page 4, line 16, after "or":
Delete "\$100,000" and insert "\$10,000"

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M

April 16, 1987

SUBJECT: Constitutionality of SCSCSHB 6(HESS)
TO: Senator Paul Fischer, Chair
 Health, Education and Social Services
 Committee
FROM: Theresa L. Bannister *TB*
 Legislative Counsel

This memo accompanies the committee substitute for CSHB 6(Fin) am that has been requested for your committee. The CS adds private schools to the tax credit provisions.

Please be aware that a question exists about the constitutionality of the proposed CS because it covers private schools. The state constitution prohibits public money being spent "for the direct benefit of any religious or other private educational institution". Art. VII, sec. 1, Alaska State Constitution. Applying private school contributions as credits against taxes owed to the state might be construed to be using state money for the benefit of religious or other private educational institutions. There does not appear to be any case law directly on this point, so the result of a court challenge is unclear.

If I may be of further assistance, please advise.

TLB:mkr
m11/033

Enclosure

FISCAL NOTE

No. 4

Bill Version: CSHB 6(Fin)
 Publish Date: HOUSE 3/4/87

REQUEST

Bill/Resolution No.: CSHB 6 (FIN)
 Title: Act allowing tax credits for contributions to educational institutions
 Sponsor: Gruender, et. al
 Requestor: _____
 Date of Request: January 27, 1987

FISCAL DETAIL

Agency Affected: University of Alaska
 BRU: All
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached.

Prepared by: Brian Rogers, Budget Director
 Division: University of Alaska
 Approved by ^{Vice President} ~~Commissioner~~: Shannon Carter
 Agency: University of Alaska

Phone: 474-6490
 Date: January 29, 1987
 Date: January 29, 1987

Distribution (by Agency preparing fiscal note):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 6(Fin)

No. 4
CSHB 6(Fin)
3/4/87

It is impossible to give exact figures on what the revenue gain to the University of Alaska would be under HB 6 because, although the tax credit incentive can be analyzed, the degree of response to such a tax measure is not possible to gauge.

Corporations who now make charitable contributions will have an incentive to channel them toward qualifying institutions, as they will have an economic incentive to do so. Losses to the Alaska state treasury from the tax credit will be offset by corresponding gains - twice as large as the losses - to Alaska educational institutions.

This is particularly important in the case of multi-state corporations, who will, if the measure passes, have a strong economic incentive to contribute to qualifying educational institutions in Alaska, rather than institutions in other states. Non-Alaska tax-deductible organizations will tend to lose contributions as corporations operating in Alaska will retain a greater amount of net income by redirecting their contributions to qualifying Alaska educational institutions.

The magnitude of corporate contributions which might be affected is likely to be in the \$250,000 to \$1 million range annually. The oil industry, for example, contributed less than \$20 million to U.S. colleges and universities in 1984. If the University of Alaska could due to this tax credit garner 2% of the total U.S. oil industry contributions, the measure would generate \$400,000 for the university and cost \$200,000 to the state treasury.

Provisions in the legislation which deny eligibility for contributions accepted for endowment purposes will, however, be detrimental to current efforts by the University of Alaska. The university is seeking to increase the size of its endowments and to create endowed chairs in areas of excellence. These provisions (Sec. 43.20.014(b), Sec. 43.55.109(b), Sec. 43.56.018(b), Sec. 43.65.018(b), and Sec. 43.75.018(b)) will create economic disincentives for corporations and individuals to contribute to endowments; those wishing to contribute to the university will receive additional economic benefits if they contribute to current operations rather than endowments.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST _____

Bill Version: CSHB 6(Fin)
Publish Date: HOUSE 3/4/87

Revision Date: 2/3/87
Title: Tax Credits - Educational Institutions
Sponsor: Gruenberg et al
Requestor: House Health, Education & Social Services and Finance

Agency Affected: Revenue
BRU: Audit

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
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 -
LANDS & 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	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: See attached.

Prepared By: Steven E. Kettel
Division: Audit

Phone: 465-2320
Date: 2/3/87

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Date: 2/4/87

Distribution (by Agency preparing fiscal note):

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

Fiscal Note Bill Analysis

Section 1 - 7

HB 6 is very similar to CS for HB 688 which was introduced in the House last year. The bill provides for a tax credit to be given to those persons and businesses making cash contributions to certain educational institutions and restricting state tax deductions under 26 U.S.C. 170.

The credit is generally limited to 50 percent of the contribution and is further limited depending upon the type of tax being offset. The following tax types may receive the credit and the additional limitations are noted

TAX TYPE	LIMITATION
AS 43.20 Corporate Income Tax	Lesser of 10% of tax or \$20,000
AS 43.55 Oil & Gas Production Tax	Lesser of 10% of tax or \$ 1,000
AS 43.56 Oil & Gas Property Tax	Lesser of 10% of tax or \$ 1,000
AS 43.65 Mining Tax	Lesser of 10% of tax or \$10,000
AS 43.75 Fisheries Business Tax	Lesser of 10% of tax or \$10,000

For income tax purposes the credit is in lieu of the contribution deduction normally allowed by the Internal Revenue Code. A person with a tax liability in several of the creditable tax types may only receive credit under one type. There is no carryover of unused credits as drafted.

Contributions may not be earmarked for specific purposes and must be used for direct instruction, research, and educational support purposes, including library and museum acquisitions.

Both the Department of Revenue and each public college and university must file informational reports with the legislature.

Section 8

Provides that the tax credit will not reduce the 25 - 50 percent share of the fisheries tax that is shared to local municipalities.

Section 9

Provides an effective date applicable to contributions made after December 31, 1987.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

No. 6

REQUEST _____

Bill Version: CSHB 6(Fin)
Publish Date: HOUSE 3/4/87

Revision Date: _____
Title: An Act Allowing Tax Credits For
Contributions to Education Institutions
Sponsor: Gruenberg
Requestor: _____

Agency Affected: Revenue
BRU: _____
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	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	(See Attachment)					

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: MET Mary Ellen Frank/Dob Elliott BE
Division: Research
Approved by Commissioner: Hugh Malone RW for
Agency: Revenue

Phone: 465-2173
Date: 2/6/87
Date: 2/9/87

Distribution (by Agency preparing fiscal note):

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

Continuation for Fiscal Note Analysis

HB 6

It is impossible to give exact figures on what the revenue loss to the State would be under HB 6 because, although the incentives can be analyzed (below), the degree of response to the tax measure isn't possible to gauge.

1. The State will lose tax revenue but may also have less demand for existing revenues if educational institutions are funded by private contributions.
2. Non-educational tax deductible organizations will tend to lose contributions from companies because corporations will have a net gain in retained income by redirecting their contribution budgets to qualifying Alaska educational institutions.
3. Non-Alaskan tax deductible organizations including educational institutions will tend to lose contributions as corporations operating in Alaska will retain a greater amount of net income by redirecting their contributions to qualifying Alaska educational institutions.
4. On aggregate, companies that do not make charitable contributions now will have no economic incentives* to change that. Companies that have contribution budgets will have incentive to channel them toward qualifying institutions as they will have an economic incentive*. *Economic incentive here means having greater net income retained after contribution.
5. The Federal government will tend to gain tax revenue on aggregate. Companies which currently make contributions will have less deductions against Federal income taxes (due to the add back of state credits), and thus will have a greater Federal tax liability. In contrast, companies not already making contributions would have more deductions and less Federal tax liability if they chose to make contributions. However, as noted in item four above, they would have less retained income after contributions, and thus no economic incentive.
6. There will be less ability for the State and educational institutions to estimate revenues and subsequently to control budgets due to the unpredictable nature of the tax credits.

HB

7

JOHN SUND, REPRESENTATIVE

*2504 2nd Avenue
Ketchikan, Alaska 99901
(907) 225-5552*

*While in Juneau
P. O. Box V
Juneau, Alaska 99811
(907) 465-4919*

MEMORANDUM

TO: Honorable Jay Kerttula
FROM: Representative John Sund
DATE: May 6, 1987
RE: HB7 "An Act relating to volunteer guardian ad litem
in, and grants to, the Office of Public Advocacy".

.....
I would appreciate it if you would schedule HB7 at your earliest convenience.

The purpose of this bill is to amend AS 44.21.410 allowing the Office of Public Advocacy to develop and coordinate a program to recruit, select, train, assign, and supervise volunteer guardians ad litem from local communities to aid in delivering services in cases in which the Office of Public Advocacy is appointed as guardian ad litem.

The court is given authority by statute to appoint an attorney or a guardian ad litem for the child in a proceeding which is concerned with the child's custody, support, visitation or in any other legal proceedings involving his welfare. A guardian ad litem appointed pursuant to the Alaska Statutes is an advocate for the best interests of the child with not only the power but the responsibility to represent the child zealously and to the best of his ability. While the child's attorney advocates the child's wishes, these are not always in the best interest.

In 1974, Congress enacted the "Child Abuse Prevention and Treatment Act". According to the Act, the guardian ad litem was to be more than a simple advocate for the child, but rather a guardian to protect the child's long range interests.

HB7 carries a fiscal note, but is expected to save money in the long-run, as the funds needed to train and supervise 60 new volunteers would only fund two additional OPA staff.

CSHB 7 (Judiciary) - An act relating to volunteer guardians ad litem in, and grants to, the Office of Public Advocacy
Overview prepared by Rep. John Sund's office

SECTIONAL ANALYSIS

Section 1, subsection (a)(6) allows the Office of Public Advocacy set up a program to train and supervise volunteers to serve as guardians ad litem. The Office of Public Advocacy began a volunteer guardian program in August 1985, as a pilot project, because of the overwhelming need for additional guardians ad litem and the lack of available staff time. (each attorney guardian ad litem carries a caseload of between 80 and 100 people) As of 2/25/87, 10 volunteers were under the supervision of an attorney guardian from the Office of Public Advocacy.

The volunteers have been able to provide more personal attention to the everyday requirements of their wards, such as coordinating meetings and conferring with social workers. This has allowed the staff additional time to perform the more specialized duties required of guardian ad litem.

Subsection (b)(3) allows the Office of Public Advocacy to solicit funds from governments and persons. Offers of monetary assistance for training and materials have been forthcoming from the Alaska Bar Association, the City of Anchorage and others, so this subsection was included in the bill to allow entities other than state government to support the program.

Section 2: restricts non-attorney guardians ad litem from giving legal advice or acting as an attorney for a minor and limits the civil liability of volunteer guardians, while participating within the program.

Sec. 44.21.450.: Limits the civil liability of volunteer guardians, while participating within the program. The National Court Appointed Special Advocate Association (CASA) suggested that the liability issue be addressed, as volunteer guardian programs in states without legislative protection are finding difficulty in obtaining affordable liability insurance.

Sec. 44.21.460.: Prohibits a nonattorney volunteer guardian ad litem from giving legal advice or acting in the capacity of an attorney. This section was added in Judiciary CS at the request of the OPA.

Sec. 44.21.490.: Defines volunteer guardian ad litem as a court-appointed special advocate (CASA) to relate Alaska's program to the national program. This section was added in the Judiciary C. at the request of the Court System.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Revision Date: 2/09/87

Title: "An Act relating to volunteer guardian ad litem program..."

Sponsor: Rep. Sund

Requestor: House HESS

Bill Version: HB 7
Publish Date: 1/19/87

Agency Affected: Administration
BRU: Office of Public Advocacy

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		53.1	84.2	87.6	91.1	94.7
TRAVEL		3.6	3.7	3.8	4.0	4.2
CONTRACTUAL		2.0	0	0	0	0
SUPPLIES		2.0	2.1	2.2	2.3	2.4
EQUIPMENT		2.4	9.3	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	63.1	99.3	93.6	97.4	101.3

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	63.1	99.3	93.6	97.4	101.3
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	63.1	99.3	93.6	97.4	101.3

POSITIONS:

FULL-TIME	-0-	1.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate Phone: 274-1684

Division: Office of Public Advocacy Date: 2/17/87

Approved by Commissioner: Garrey Peska, Commissioner Date: 2/10/87

Agency: Department of Administration

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 7

This bill relates to the establishment of a volunteer guardian ad litem program within the Office of Public Advocacy. This bill would substantially improve the ability of the Office of Public Advocacy to provide guardian ad litem representation to children in abuse and neglect cases as well as contested custody cases.

It is anticipated that the Office of Public Advocacy would need a program director position in FY88 and a clerk typist III position in FY89 in order to implement a volunteer guardian ad litem program.

BUDGET ANALYSIS

<u>Personal Services</u>	<u>FY88</u>	<u>FY89</u>
Associate Attorney II - Range 19/A (FY88)	53.1	55.2
Clerk Typist III - Range 08/A (FY89)	0	29.0
	53.1	84.2
 <u>Travel</u>		
3 Trips to Ketchikan		
3 Trips to Fairbanks	3.6	3.7
 <u>Contractual</u>		
Advertising		
Printing Training Material	2.0	0
 <u>Supplies</u>		
	2.0	2.1
 <u>Equipment</u>		
Associate Attorney II (FY88)	2.4	
Clerk Typist III (FY89)		9.3
	2.4	9.3
TOTAL:	63.1	99.3

Position Title		Associate Attorney II		No. of Positions	1	Range/Step	19/A	Org. Unit	X	
Time Status		Staff Months		Location		Election District				
PFT		12		Anchorage-EBA		8				
Type of Expenditure			Amount		Justification An Associate Attorney II position to act as program director is essential if the CASA, volunteer guardian ad litem program is to be successfully implemented. It is not possible for present staff positions to carry a full guardian ad litem case-load and assume the duties of establishing and coordinating the volunteer program. The half-time position that is currently funded by federal and private money is inadequate and ends in February, 1988. It is anticipated that the program director will coordinate recruitment, screening and training of volunteers in the Anchorage area. The program director will also be responsible for establishing similar volunteer programs in Fairbanks and Ketchikan, and will study the feasibility of establishing such a program in the rural areas of Alaska. Additionally, the position will be devoted to extensive community education and fundraising for the project.					
1		2		3						
Salary		40,236								
Benefits		12,882								
Premium Pay										
Other										
Total Personal Services				53,118						
Travel										
Contractual				2,000						
Commodities				2,000						
Equipment				2,429						
Other										
Total Cost				59,547						
Funding Source for Total Cost										
Federal Receipts		1002								
G. P. Match		1003								
General Fund		1001				59,547				
IA Receipts		1006								
CIP Receipts		1061								
Other										

Request For
New Position

Agency Department of Administration
BRU Office of Public Advocacy
Component Office of Public Advocacy

Page 3 of 4
Revised Date

FY 88

Position Title Clerk Typist III		No. of Positions 1	Range/Step 08/A	Org. Unit G
Time Status PFT	Staff Months 12	Location Anchorage-EBA		Election District 8
Justification				
A Clerk Typist III position will be needed to provide clerical support to the volunteer guardian ad litem program director. At present, Office of Public Advocacy has only 3 clerical support positions who provide clerical support to a professional staff of 12 in the Anchorage office. It is not possible for the present secretarial positions to absorb the additional clerical support generated by the program director and the volunteer program.				
Type of Expenditure		Amount		
1	2	3		
Salary	21,078			
Benefits	7,954			
Premium Pay				
Other				
Total Personal Services		29,032		
Travel				
Contractual				
Commodities				
Equipment		9,338		
Other				
Total Cost		38,370		
Funding Source for Total Cost				
Federal Receipts	1002			
G. E. Match	1003			
General Fund	1004	38,370		
IA Receipts	1006			
CIP Receipts	1061			
Other				

**Request For
New Position**

Agency Department of Administration
 BRU Office of Public Advocacy
 Component Office of Public Advocacy

Page 4 of 4
 Revised Date _____

FY 89

POSITION PAPER
House Bill 7

An Act relating to Volunteer Guardian
ad litem/Court Appointed Special Advocates
(VGAL/CASA) in the Office of Public Advocacy

House Bill 7 mandates that the Office of Public Advocacy (OPA) develop a volunteer guardian ad litem program and allows the agency to receive funds from additional sources for this purpose.

The following review of the history of OPA and the volunteer concept will provide the background underlying the OPA's support of HB7.

HISTORY AND DUTIES OF OFFICE OF PUBLIC ADVOCACY:

The Office of Public Advocacy was created and placed within the Department of Administration in the Spring of 1984. The Office of Public Advocacy is required by Statute (A.S. 44.21.410) to provide services in the following three areas.

(1) Guardian ad litem representation to abused children in Child In Need of Aid proceedings, guardian ad litem representation of children in custody disputes, legal representation of parents in Child In Need of Aid proceedings where there is a conflict with the Public Defender's Office, guardian ad litem activities in guardianships for minors, and a host of other civil functions, including legal representation of parents involved in custody disputes where the other party is represented by a public agency, i.e. Alaska Legal Services.

(2) Legal representation of indigent persons charged with crimes where the Alaska Public Defender Agency has a conflict of interest;

(3) Public Guardian services as well as payment to visitors, experts and attorneys for the respondent.

Prior to 1984, the Alaska Court System had provided these services primarily through a system of court appointed attorneys. The Public Guardian function was also within the Alaska Court System.

RESPONSIBILITIES OF A VOLUNTEER GUARDIAN AD LITEM/COURT APPOINTED SPECIAL ADVOCATE:

A Court Appointed Special Advocate/Volunteer Guardian ad litem (hereinafter known as VGAL/CASA) is an individual who is an advocate for a child's best interests in court proceedings. A

VGAL/CASA does not have the legal authority to make decisions effecting the child's person or property, i.e. medical decisions or financial investments. A VGAL/CASA's obligation is to objectively insure that the court receives all pertinent information necessary to make a decision which is in the child's best interest. A major difference between an attorney appointed to represent a child and a VGAL/CASA for a child is that the VGAL/CASA may disagree with the position of the child. A guardian ad litem from the Office of Public Advocacy or its contractors are appointed for every child for which the State of Alaska, Department of Health and Social Services petitions to be a Child In Need of Aid under A.S. 47.10.010 due to abuse or neglect. A child may also have a GAL in contested divorce custody proceedings, contested adoptions, and guardianships.

HISTORY OF CASA

In 1976, King County, Seattle, Washington, Superior Court Presiding Judge David W. Soukop began exploring ways to insure abused and neglected children's best interests were consistently presented to the court. Traditionally, the court appointed attorneys to serve as guardians ad litem for these children. However, due to the high number of cases involving children and the lack of adequate training by many attorneys, as well as cost considerations, Judge Soukop decided to recruit and train community volunteers who would be asked to make a long-term commitment to each child for whom they serve as GAL. The term Court Appointed Special Advocates (CASA) was coined by the National Council of Juvenile and Family Court Judges in 1982. This organization of judicial experts also recommended that every juvenile court in the United States implement a CASA project.

In May of 1985, the Office of Public Advocacy became a member of the National Court Appointed Special Advocate Association and began exploring the feasibility of a VGAL/CASA program in Alaska. The Office of Public Advocacy had informal meetings in Anchorage with judges, family and children's court masters, the Division of Family and Youth Services, Alaska Youth Advocates, the District Attorney's Office, Attorney General's Office, Public Defender's Office, community mental health providers, and the Alaska Bar Association to request their input and recommendations as to whether or not a VGAL/CASA program would be acceptable in the Anchorage area. Due to the overwhelming support of the concept, the Office of Public Advocacy recruited and trained five volunteers in the summer of 1985. The five volunteers were screened by an Advisory Committee. The Advisory Committee continues to assist Office of Public Advocacy staff in the development and operation of the VGAL/CASA program.

THE OFFICE OF PUBLIC ADVOCACY'S SUPPORT FOR HOUSE BILL 7:

The Office of Public Advocacy strongly supports passage of HB7. The Office of Public Advocacy would request that the statute be amended to state Volunteer Guardian ad litem Court

Appointed Special Advocate so as to be able to utilize the efforts of the National Court Appointed Special Advocate Association. The passage of HB7 would require that the Office of Public Advocacy recruit and develop a permanent VGAL/CASA program. Passage of HB7 would require creating the position of Program Director. It is believed that a non-attorney should be hired in order to implement the VGAL/CASA program first in Anchorage, then in Fairbanks and Ketchikan, and then study the feasibility of developing such a program in other areas of Alaska.

A national survey of all VGAL/CASA programs in the nation was undertaken by the National Court Appointed Special Advocates Association in July, 1985. This nationwide survey found that the average volunteer handled 2.56 cases. It is the belief of the Office of Public Advocacy that a VGAL/CASA program in Anchorage would result in the recruitment of at least 30 volunteers in its first year who could be assigned at least 60 cases. It is believed that a system could be developed in 3 years to have in excess of 100 volunteers in the Anchorage area providing advocacy services to children.

Passage of HB7 would substantially improve the ability of the Office of Public Advocacy to provide guardian ad litem representation to children. Since the Anchorage Office of Public Advocacy began accepting guardian ad litem cases, approximately 1200 cases in Anchorage alone have been opened from the period of January, 1985 through January, 1987. The Office of Public Advocacy currently has two attorney and two associate attorney positions who handle guardian ad litem responsibilities. Under Alaska law a guardian ad litem does not need to be an attorney. The Office of Public Advocacy is attempting to use non-attorneys with training in the needs of children to provide the effective delivery of guardian ad litem services.

A 1985 national study by Donald N. Duquette, J.D., of the Child Advocacy Law Clinic at the University of Michigan Law School and Sarah H. Ramsey, J.D. of the Syracuse College University of Law clearly indicates that a trained and supervised VGAL/CASA provides superior services than an attorney without specific training in child abuse, and services equal to that of trained social workers and attorneys. However, it is essential that non-attorney VGAL/CASA's have the backup support of an attorney to ensure that the best interests of the child are adequately litigated in contested court cases. Staff attorneys at the Office of Public Advocacy would provide this function.

It is anticipated that the trend of dramatic increases in child abuse and neglect cases will continue. Additionally, the State of Alaska, Department of Health and Social Services' decision in October of 1985 to be in compliance with the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, will result in the involvement of the guardian ad litem past the

dispositional stage of a Child In Need of Aid proceeding. The effect of Public Law 92-272 will be higher caseloads for the Office of Public Advocacy due to the continued monitoring of cases by a guardian ad litem. With current average caseloads of 150 children per staff person at the Anchorage Office of Public Advocacy, there is grave concern that the quality of representation will decline with these projected increases. The implementation of the VGAL/CASA project is a viable solution to this impending crisis.

Brant McGee
Brant McGee
Public Advocate

February 6 1987
Date

Garrey Peska
Commissioner Garrey Peska
Department of Administration

2/10/87
Date

POSITION PAPER

HOUSE BILL NO. 7

For an Act entitled: "An Act relating to volunteer guardians ad litem in the Office of Public Advocacy."

This bill amends AS 44.21.410 to allow the Office of Public Advocacy to expand services of guardians ad litem by developing and maintaining a corps of volunteer guardians ad litem.

AS 47.17.030(e) states that "in all" actions taken by the Department or a Health and Social Services agency of a local government under this chapter that result in a judicial proceeding the child shall be represented by a guardian ad litem in that proceeding. Funds available for salaried guardians ad litem are not adequate to retain sufficient personnel to serve all children in Alaska who have a legal right to the services of a guardian ad litem under AS 47.17.030(e). This results in assignment of guardians only to those cases determined to be the most complicated and a lowering in quality of guardian services due to excessive caseloads. The average caseload in Anchorage is 150 cases per guardian ad litem. This is well above the level at which adequate services can be provided.

Volunteer guardian ad litem programs such as proposed in this bill have proven successful in many states. A stable corps of paid professional staff would be able to maintain a quality service at an expanded level by providing necessary recruitment, training, and supervision for a volunteer corps.

The Department strongly supports this bill.

RECOMMENDED:

Yvonne M. Chase, Director
Division of Family
and Youth Services

DATE:

APPROVED:

Myra M. Munson
Myra M. Munson, Commissioner
Department of Health
and Social Services

DATE:

2/24/87

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

17 March 1987

To: LouAnn Cutler

From: Jim Slocum *JS*

Subj: Guardian ad Litem Program, Office of Public Advocacy

There have been two RPL's (attached) for this program in FY87:

RPL 02-7-0062 provides \$25,596 to start up and run the program. There will be a \$17,500 carryover to FY88.

RPL 02-7-0347 provides an additional \$11,000 for the program, \$4,936 of which will be spent in FY87. \$6064 will be carried over to FY88 for a total of \$23,564.

MEMORANDUM


State of Alaska

TO: Jay Hogan
Associate Director
Division of Budget Review
Office of Management and Budget
Office of the Governor

DATE: January 29, 1987

FILE NO:

TELEPHONE NO: 465-2200

FROM: Commissioner Garrey Peska 
Department of Administration

SUBJECT: Request for Revised
Program Type 4 - RPL
ADN 027-0347

The Department of Administration, Office of Public Advocacy (OPA), is requesting authority to receive and expend additional federal funds.

(1) Funding Availability

- (a) Office of Public Advocacy has applied for a grant in the total amount of \$11,000.00 to expand the Volunteer Guardian ad litem Program (VGAL). This grant will be partially received in FY 87 in the amount of \$4,936.00.
- (b) Funding will be pass-through funds provided by the U.S. Department of Justice, Office of Juvenile Justice and Delinquency, through the National Council and Family Court Judges, Permanent Families for Children Project.
- (c) It is anticipated that these funds will be awarded, however, official notification has not as yet been received. These funds would be awarded to carry out a one-time-only special project, i.e., to expand the VGAL. No future support is anticipated.

(2) New or Expanded Services to be Provided

- (a) The funds are needed to expand operation of the Volunteer Guardian ad litem Program which has previously received funding from the U.S. Department of Health and Human Services, the Alaska Bar Association, and the National Court-Appointed Special Advocate Association (CASA). The Volunteer Guardian ad litem Program is aimed at providing higher quality representation to abused and neglected children through a cost effective means by using volunteers in addition to Office of Public Advocacy staff. The funds provide partial salary and travel expenses for a half-time Program Director of the program. Beneficiaries of these activities are the clients of the Office of Public Advocacy, specifically abused and neglected children before the Court on Child in Need of Aid petitions.
- (b) The funds in this program will be added to those grants previously mentioned to increase hours of the Program Director, provide supplies for program operation and volunteer recruitment, and allow for travel to Ketchikan and Fairbanks to establish the beginnings of Volunteer Guardian ad litem Programs in those

communities. The funds will be utilized to allow the Program Director to develop advisory committees and to train and recruit prospective volunteers for these activities in other parts of Alaska as well. Funds anticipated to be received and expended during FY 87 are as follows:

Personnel Services	\$3,353.00
Travel	1,034.00
Supplies	375.00
Other	174.00
	<u>\$4,936.00</u>

- (c) Direct services to abused and neglected children will be provided through the expansion of the Volunteer Guardian ad litem Program.
- (d) This RPL request will expand activities previously authorized by RPL No. ADN 02-7-0062.
- (e) The effect of a delay in approval of this RPL would be the inability of the Program Director to increase her hours and jeopardize the ability of the program to meet its goals and objectives.

(3) Impact on the General Fund

- (a) No general funds have been appropriated for this Volunteer Guardian ad litem Program.
- (b) Receipt of these funds will not obligate the state to replace the non-general funds in the future.
- (c) No matching state funds are required as a condition of receiving these funds.

(4) Position to be Funded

No new positions or existing vacant positions will be created or funded by this grant.

(5) Technical and Budget Aspects of the RPL

- (a) These funds were not included in OPA's FY 87 budget as OPA did not know at the time the budget was prepared if the grant would be awarded. Funds anticipated to be received and expended during FY 87 (January 1, 1987 to June 30, 1987) are as follows:

Personnel Services	\$3,353.00
Travel	1,034.00
Supplies	375.00
Other	174.00
	<u>\$4,936.00</u>

- (b) As the grant period of this project is January 1, 1987, through February 14, 1988, OPA has included the remaining funds from this grant for the final seven-and-one-half months of the project (July 1, 1987 through February 14, 1988), in its FY 88 budget.
- (c) OPA has not received official funding approval for this project, and the increased expenditure authorization will be restricted pending receipt of the official document.
- (d) The funds requested in this RPL will be spent during FY 87 from January 1, 1987, through June 30, 1987.

GP/GMB/ljo
4/1D1/0122-03

REVISED PROGRAM, NO. 02-7-0347

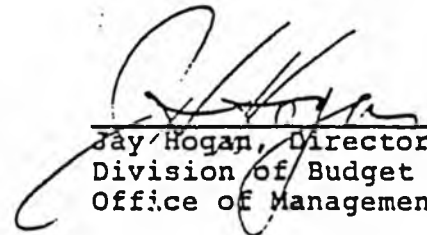
DATE 2/11/87

PAGE NO. 4

✓ Mike Maher 2/11/87

Mike Maher
Budget Analyst
Division of Budget Review
Office of Management and Budget

Approved this 12 day of Feb, 1987.


Jay Hogan, Director
Division of Budget Review
Office of Management and Budget

MEMORANDUM

State of Alaska

TO: Jay Hogan
Associate Director
Division of Budget Review
Office of the Governor

THRU: *Eleanor Andrews*
Commissioner Eleanor Andrews
Department of Administration

FROM: Gary Bader *YMB*
Director
Division of Administrative Services
Department of Administration

DATE: August 14, 1986

FILE NO:

TELEPHONE NO: 465-2277

SUBJECT: Request for Revised
Program Type 4 - RPL-FY 87
ADN 02-7-0062

100 - 21194

200 4150

300 252

The Department of Administration, Office of Public Advocacy (OPA), requests authorization to receive and expend an additional \$25,596.00 in funds from grants awarded to support a one-time volunteer project.

I. Funding Availability

- A. Office of Public Advocacy was awarded two grants: (1) in the amount of \$23,096.00 to carry out a demonstration grant, and (2) \$2,500.00 for a start-up grant.
- B. The Department of Health and Social Services, Office of Human Development Services (OHD), awarded the demonstration grant funds to OPA; the National Court Appointed Special Advocate Association (CASA) awarded the \$2,500.00 start-up grant to OPA.
- C. These funds were awarded to carry out a one-time-only special project, Volunteer Guardian Ad Litem Program (VGAL) and no future support is anticipated.

II. New or Expanded Services to be Provided

- A. Funds are necessary as a matching requirement to the OHD grant provided to the OPA. Without matching funds, the federal grant will not be awarded. The funds will specifically be utilized to implement a volunteer guardian ad litem program. As can be found in detail in the attached proposal that was submitted to the OHD, guardian ad litem services are utilized to represent the best interests of a minor in judicial proceedings. Most cases involve child abuse and neglect, juvenile delinquency, or contested custody in divorce. Due to very high caseloads, the current staff at the OPA is barely able to adequately represent clients. Each staff guardian ad litem is currently carrying a caseload of 100 to 120 cases. The volunteer guardian ad litem program will follow for

All personal services for staff attorney time, secretarial time, and contractual funds for office space will be in the form of an in-kind contribution from OPA and will not require general fund disbursements. Funds from OPA's general fund appropriation in the amount of \$1,954.00 for travel and \$500.00 for printing a VGAL manual will be used in carrying out this grant project and should be transferred to the federal grant collocation code assigned.

4. Position to be Funded

No new positions or existing vacant positions will be created or funded by these grants. ✓

5. Technical and Budget Aspects of the RPL

- A. These funds were not included in OPA's FY 87 budget as OPA did not know at the time the budget was prepared if the grants would be awarded.
- B. As the grant period of this project is September 1, 1986, through January 31, 1988, OPA will include the remaining funds from the OHD grant for the final seven months of the project (July 1, 1987, through January 31, 1988) in its FY 88 budget.
- C. OPA has received official grant approval for this project. A copy of the Notice of Financial Assistance Awarded is attached.
- D. The funds requested in this RPL will be sent during FY 87 from September 1, 1986, through June 30, 1987.
- E. The indirect costs involved in carrying out this project are included as part of the matching funds (in-kind contributions) provided by OPA as a condition of receipt of the OHD grant.

Your approval of this increased authorization is appreciated. If we can be of further assistance, please let us know.

GB/JH/jr
7/101/0813-02
Attachments

BILL SHEFFIELD, GOVERNOR

OFFICE OF PUBLIC ADVOCACY

300 W 5TH AVENUE
SUITE 205
ANCHORAGE, ALASKA 99501
PHONE: 307-274-1624

FEB 10 1987

January 26, 1987

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

Dear Representative Sund:

The Office of Public Advocacy is currently in the process of developing a Volunteer Guardian ad litem Program. A Guardian ad litem (GAL) is appointed by the Court for every child the State of Alaska, Department of Health and Social Services petitions to be a Child In Need of Aid due to abuse or neglect. The volunteers are individuals who advocate to the Court what he or she believes to be in the child's best interest.

The Volunteer Guardian ad litem Program is headed by an advisory committee consisting of volunteers who are judges, family and children's court masters, attorneys, community mental health providers, and current volunteer GALs. The advisory board strongly supports the passage of the volunteer GAL Bill, HB7, and establishment of Alaska Children's Trust Corp., SB19 and HB57.

The advisory committee would like to arrange a joint teleconference with Representative Sund, Representative Goll, Senator Kerttula, and Commissioner Peska. We would like to discuss with you these bills and the possibility of the GAL Program being a beneficiary of the Children's Trust. Jay

(Continued)

Letter, Representative Sund
January 26, 1987

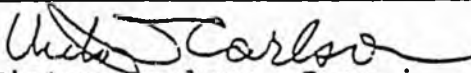
Page 2 of 2

McCarthy, Assistant Public Advocate, is coordinating this effort. He will be contacting you in the next week to make these arrangements.

We appreciate your concern for children in Alaska and look forward to working with you on these matters.


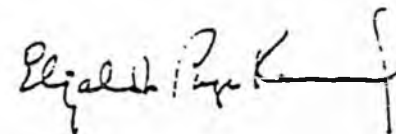
Sincerely,

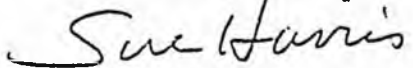
Volunteer Guardian ad litem Advisory Committee

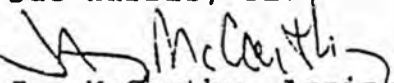

Victor Carlson, Superior Court Judge

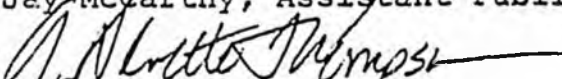

William Hitchcock, Children's Court Master

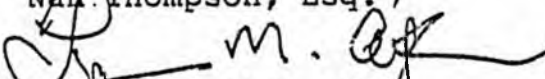
Janet Kowalski, Executive Director, AWAIC

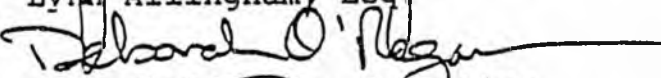

Elizabeth Kennedy, Assistant Attorney General 

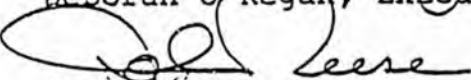

Sue Harris, Division of Family and Youth Services

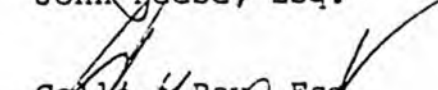

Jay McCarthy, Assistant Public Advocate

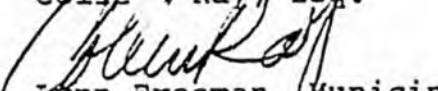

Nan Thompson, Esq.

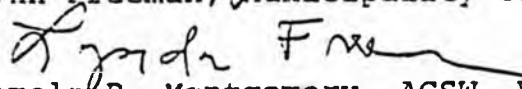

Lynn Allingham, Esq.

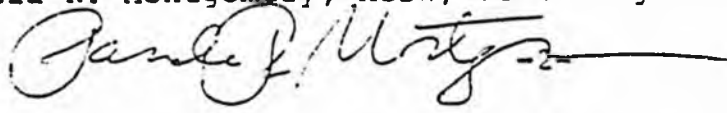

Deborah O'Regan, Executive Director, Alaska Bar Association


John Reese, Esq.


Colleen Ray, Esq.


Lynn Freeman, Municipality of Anchorage


Pamela R. Montgomery, ACSW, VGAL Program Director



HB 7 - Volunteer Guardian Ad Litem Program

Letters of Support for the program are from:

Deborah O'Regan, Executive Director
Alaskan Bar Association

Frank Dalley, Regional Social Services Manager
Division of Family and Youth Services

Dana Fabe, Public Defender

Veronica Duke, Chief of Clinical Social Work Services
Division of Mental Health and Developmental Disabilities

Elizabeth Sheley, Assistant District Attorney

Ann Stockman, Director of Crisis Services
S.T.A.R.

Gordon Lantrip, Director
Alaska Baptist Family Services

Milli Andreini, Executive Director
The Center for Children and Parents

William D. Hitchcock
Master, Childrens Court, Third Judicial District

Pamela Kirk and Phillip Kaufman
Human Relations Center

Corrine Radergraham, Coordinator
Close Encounters and Alaska Permanency Planning Task Force

Douglas J. Serdahely, Presiding Judge
Third Judicial District

Rick Calcote
Ohlson Psychological Services

Ardis J. Cry, Custody Investigator
Superior Court Third Judicial District

Yvonne Chase, Deputy Director
Southcentral Counseling Center

Peter Scales, PhD
Family Connection

Letters and petition signatures from 137 individuals.

Original sponsors: Sund, Gruenberg
and Goll

Change from CS HB 7 (2nd);
New sec. 2 - see p. 2,
line 23

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 7 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the office of public advocacy and
7 volunteer guardians ad litem."

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

9 * Section 1. AS 44.21.410 is amended to read:

10 Sec. 44.21.410. POWERS AND DUTIES [OF PUBLIC ADVOCACY OFFICE].

11 (a) The office of public advocacy shall

12 (1) perform the duties of the public guardian under AS 13.-
13 26.360 - 13.26.410;

14 (2) provide visitors and experts in guardianship proceed-
15 ings under AS 13.26.131;

16 (3) provide guardian ad litem services to children in child
17 protection actions under AS 47.17.030(e) and to wards and respondents
18 in guardianship proceedings who will suffer financial hardship or
19 become dependent upon a government agency or a private person or
20 agency if the services are not provided at state expense under AS 13.-
21 26.112;

22 (4) provide legal representation in guardianship proceed-
23 ings to respondents who are financially unable to employ attorneys
24 under AS 13.26.106(b), to indigent parties in cases involving child
25 custody in which the opposing party is represented by counsel provided
26 by a public agency, and to indigent parents or guardians of a minor
27 respondent in a commitment proceeding concerning the minor under
28 AS 47.30.775;

29 (5) provide legal representation and guardian ad litem

1 services under AS 25.24.310; in cases arising under the Uniform Inter-
2 state Compact on Juveniles (AS 47.15); in cases involving petitions to
3 adopt a minor under AS 25.23.125(b); in cases involving petitions to
4 remove the disabilities of a minor under AS 09.55.590; in children's
5 proceedings under AS 47.10.050(a); and in cases involving indigent
6 persons who are entitled to representation under AS 18.85.100 and who
7 cannot be represented by the public defender agency because of a
8 conflict of interests;

9 (6) develop and coordinate a program to recruit, select,
10 train, assign, and supervise volunteer guardians ad litem from local
11 communities to aid in delivering services in cases in which the office
12 of public advocacy is appointed as guardian ad litem.

13 (b) The commissioner of administration may

14 (1) adopt regulations that the commissioner considers
15 necessary to implement AS 44.21.400 - 44.21.440;

16 (2) report on the operation of the office of public advo-
17 cacy when requested by the governor or legislature or when required by
18 law;

19 (3) solicit and accept grants of funds from governments
20 [THE FEDERAL GOVERNMENT] and from persons [PRIVATE FOUNDATIONS], and
21 allocate or restrict the use of those funds as required by the gran-
22 tor.

23 * Sec. 2. AS 44.21.410 is amended by adding a new subsection to read:

24 (c) The commissioner of administration shall separately account
25 for money received under (b)(3) of this section and deposited in the
26 general fund. The annual estimated balance in the account may be used
27 by the legislature to make appropriations to the Department of Admin-
28 istration to carry out the purposes of this section.

29 * Sec. 3. AS 44.21 is amended by adding new sections to read:

1 Sec. 44.21.450. CIVIL LIABILITY OF VOLUNTEER GUARDIANS. (a) A
2 volunteer guardian ad litem under the supervision of the office of
3 public advocacy is not civilly liable for acts or omissions during the
4 good faith performance of duties as a guardian unless the acts or
5 omissions constitute gross negligence.

6 (b) This section does not affect the civil liability of the
7 office of public advocacy.

8 Sec. 44.21.460. NONATTORNEY VOLUNTEER GUARDIANS AD LITEM. A
9 nonattorney volunteer guardian ad litem may not give legal advice or
10 act in the capacity of attorney for a minor before a court or adminis-
11 trative agency.

12 Sec. 44.21.490. DEFINITION. In AS 44.21.410 - 44.21.490, "vol-
13 untee guardian ad litem" means a court-appointed special advocate
14 (CASA).
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