

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5757 HOUSE JUDICIARY

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Legislators may have not only personal financial interests, but also sources of personal income which relate to state government or otherwise overlap with the interests of state government. Legislators also may have investments or property holdings which could be affected by government policies. The objective of the model law is to prevent the legislator from using his/her status and official prerogatives in state government for personal benefit and to prevent conflicts of interest.

The model law attempts to address these issues by allowing legislators to represent the interests of their constituents while at the same time preventing them from using public office for personal gain. In this sense, narrowly defined personal interests, regardless of the kind of legislative system one is considering, should never be a motivation for action by an elected representative.

The model law allows legislators to appear before state agencies as unpaid representatives. But, because legislators authorize the budgets and control legislation concerning state agencies, they should be prohibited from paid representation of particular groups or individuals before those agencies, excluding the courts. The model also requires legislators to abstain from voting on special legislation which affects their financial interests.

TABLE 28  
**SUBSTANTIVE RESTRAINTS ON ACTIVITIES OF GOVERNMENT OFFICIALS/EMPLOYEES**  
 (As of January 1, 1968)

Sources of Substantive Restraints on State/Provincial Government Officials/Employees Concerning:

Jurisdiction	Use of Public Position to Obtain Personal Benefits	Providing Benefits to Influence Official Actions	Use of Confidential Government Information	Post-governmental Employment	Receipt of Gifts by Officials or Employees	Expenditure of Public Funds		Receipt of Fees or Honoraria by Public Officials or Employees	Hypothetical	Competitive Bidding	Outside Employment or Business Activities of Public Officials or Employees
						Receipt of Public Funds by Public Officials or Employees	Receipt of Public Funds by Public Officials or Employees				
Alabama	S	S	S	S	S	S	S	S	S	-	S
Alaska	S	S	-	-	A	S	-	-	-	-	S
Arizona	S	S	S	-	S	S	-	-	S	S	S
Arkansas	S	S	S	-	-	-	-	-	-	-	-
California	S	S	-	S	S	S	S	S	-	-	S
Colorado	-	-	-	-	-	-	-	-	-	-	-
Connecticut	S	S	S	SA	SA	S	-	-	S	S	-
Delaware	S	S	S	S	S	S	-	-	R	S	S
Florida	S	S	S	S	S	S	-	-	S	S	S
Georgia	-	-	-	-	-	-	-	-	-	-	-
Hawaii	S	S	S	S	S	S	S	S	-	S	S
Idaho	S	S	-	S	S	S	-	-	-	S	-
Illinois	S	S	AS	S	AS	S	-	AS	AS	AS	AS
Indiana	AS	AS	AS	S	A	AS	-	A	S	S	A
Iowa	AS	AS	AS	S	A	AS	-	A	S	S	R
Kansas	S	S	S	S	S	S	S	S	A	S	S
Kentucky	S	S	S	S	S	S	S	S	R	S	R
Louisiana	S	S	S	S	S	S	S	S	S	S	S
Maine	S	S	S	S	S	S	S	S	S	S	S
Maryland	S	S	S	S	S	S	S	S	S	S	S
Massachusetts	S	S	S	S	S	S	S	S	S	S	S
Michigan	S	S	S	S	S	S	S	S	S	S	S
Minnesota	S	S	S	S	S	S	S	S	S	S	S
Mississippi	S	S	S	S	S	S	S	S	S	S	S
Missouri	S	S	S	S	S	S	S	S	S	S	S
Montana	S	S	S	S	S	S	S	S	S	S	S
Nebbraska	S	S	S	S	S	S	S	S	S	S	S
Nevada	S	S	S	S	S	S	S	S	S	S	S
New Hampshire	S	S	S	S	S	S	S	S	S	S	S
New Jersey	S	S	S	S	S	S	S	S	S	S	S

TABLE 28 (continued)  
**SUBSTANTIVE RESTRICTIONS ON ACTIVITIES OF GOVERNMENT OFFICIALS - FLORES**  
 (As of January 1, 1968)

Sources of Substantive Restrictions on State/Presidential Government Officials/Employees Concerning:

Jurisdiction	Representations of Private										Outside Employment or Business Activities of Public Officials or Employees <sup>1</sup>
	Use of Public Positions to Obtain Personal Benefits	Providing Benefits to Inferiors Official Actions	Use of Confidential Government Information	Post-governmental Employment	Receipt of Gifts by Officials or Employees	Receipt of Public Officials or Employees Fees or Honors by Public Officials or Employees	Map of	Competitive Bidding			
New Mexico	S	S	S	-	S	-	-	-	S	S	S
New York	E	S	-	-	R	-	R	-	S	-	R
North Carolina	-	-	-	-	-	-	-	-	-	-	-
North Dakota	-	S	S	S	S(c)	-	(c)	-	S	-	(c)
Ohio	S	S	S	S	S	S	S	S	S	S	S
Oklahoma	S	S	S	S	S	S	S	S	S	S	S
Oregon	S	S	S	S	R	R	R	R	S	S	S
Pennsylvania	S	S	S	S	S	S	S	S	S	S	S
Philadelphia, PA	S	S	S	S	S	S	S	S	S	S	S
Rhode Island	S	S	S	S	S	S	S	S	S	S	S
South Carolina	S	S	S	S	S	S	S	S	S	S	S
South Dakota	-	S	S	S	-	-	-	-	S	S	S
Tennessee	S	S	S	S	S	S	S	S	S	S	S
Texas	S	S	S	S	S	S	S	S	S	S	S
Utah	-	S	S	-	S	-	-	-	S	S	S
Vermont	S(d)	S	-	-	S	-	-	-	S	S	S
Virginia	S	S	S	(c)	S	S	S	S	S	S	S
Washington	S	S	S	S	S	S	S	S	S	S	S
West Virginia	E, S	E, S	S	S	E, S	S	S	S	A, E, S	A, E, S	A, E, S
Wisconsin	S	S	S	S	S	S	S	S	S	S	S
Wyoming	-	S	S	-	S	-	-	-	S	S	S
District of Columbia	S	S	S	S	S	S	S	S	S	S	S
U.S.A. (Federal)	S, R	S, R	S, R	S, R	S	S, R	S	S	S	S	S
Virgin Islands	S	S	S	S	S	S	S	S	S	S	S
Alberta	-	-	-	-	-	-	-	-	-	-	-
British Columbia	-	-	-	-	-	-	-	-	-	-	-
Newfoundland	-	-	-	-	-	-	-	-	-	-	-
Ontario	-	-	-	-	-	-	-	-	-	-	-
Quebec	-	-	-	-	-	-	-	-	-	-	-
Saskatchewan	-	-	-	-	-	-	-	-	-	-	-
Canada (Federal)	-	-	-	-	-	-	-	-	-	-	-

TABLE 20 (continued)  
 SUBSTANTIVE RESTRAINTS ON ACTIVITIES OF GOVERNMENT OFFICIALS/EMPLOYEES  
 (As of January 1, 1988)

Key:  
 — No restraint/Not applicable  
 A Administrative regulation  
 C Constitutional  
 E Executive order  
 L Case law  
 R Agency ruling  
 S Statutory  
 \* Restricted activity; source of restriction unavailable.  
 (a) The majority of the several hundred citations in the Illinois Revised Statutes which might be described as "conflict of interest" in character apply to specific agencies, offices or programs and are sometimes further implemented by agency rule or administrative regulation. A number carry civil penalties for violation, although a number encompass criminal sanctions. There are also a number of criminal statutes pertaining to bribery and official misconduct which are of generic application to officers and employees in state and local government. However, there is no separate statutory code of conduct applying evenly throughout Illinois state government.  
 (b) House and senate rules.  
 (c) No substantive restraints fall within the jurisdiction of the Ethical Practices Board.  
 (d) Judges only.  
 (e) Agency opinions.  
 (f) Not encompassed within the State Ethics Act.  
 (g) State employee contract also prohibits it.  
 (h) Statutory restraints for a few.

TABLE 26 (continued)  
 SUBSTANTIVE RESTRICTIONS ON ACTIVITIES OF GOVERNMENT OFFICIALS/EMPLOYEES  
 (as of January 1, 1989)

- Key:  
 — No restriction/Not applicable  
 A Administrative regulation  
 C Constitutional  
 E Executive order  
 L Case law  
 R Agency ruling  
 S Statutory
- \* Restricted activity; source of restriction unavailable.
- (a) The majority of the several hundred citations in the Illinois Forfeited Statutes which might be described as "conflict of interest" in character apply to specific agencies, offices or programs and are sometimes further implemented by agency rule or administrative regulation. A number carry civil penalties for violation, although a number encompass criminal sanctions. There are also a number of criminal statutes pertaining to bribery and official misconduct which are of generic application to officers and employees in state and local government. However, there is no separate statutory code of conduct applying evenly throughout Illinois state government.
- (b) House and senate rules.
- (c) No substantive restrictions fall within the jurisdiction of the Ethical Practices Board.
- (d) Judges only.
- (e) Agency opinions.
- (f) Not encompassed within the State Ethics Act.
- (g) State employee contact also prohibits R.
- (h) Statutory restrictions for a few.

NEW YORK'S NEW ETHICS LAW: TURNING  
THE TIDE ON CORRUPTION

Robert C. Newman\*

Earl Long, scion of the famous Longs of Louisiana, once was asked if he believed in using "ethics" in government. "Hell, yes," he replied. "I believe in using anything I can get my hands on."<sup>1</sup>

Revelations of recent years have made it appear that "anything goes" is the motto of a number of New York's public figures as well. From Hempstead<sup>2</sup> to Syracuse,<sup>3</sup> one official after another has been convicted of betraying the public trust. Most of these convictions occurred in the federal courts, where anti-racketeering laws facilitate the prosecution of systemic corruption. As a result, many observers questioned the state government's ability to maintain and uphold standards of official conduct.

In 1987, responding to intense pressure from the public, the news media, and Governor Cuomo, New York's legislature adopted the Ethics in Government Act.<sup>4</sup> This landmark law, the first overhaul of the state's ethics codes in two decades, will prohibit state officials, employees, and lawmakers from representing private parties in state agency proceedings, and will require them to make detailed

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\* B.A. Carleton College, 1969; J.D. New York University, 1972; Chairman, New York State Common Cause, 1986-88.

1. Address by Ann McBride, Senior Vice-President, Common Cause, Common Cause State Leadership Conference (Sept. 20, 1986).

2. Nassau Republican leader Joseph Margiotta was convicted of extortion relating to a kickback scheme involving the County's insurance business. Lubasch, *Jury, in 2d Trial, Finds Margiotta Guilty of Fraud*, N.Y. Times, Dec. 10, 1981, at A1, col. 5; see *United States v. Margiotta*, 688 F.2d 108 (2d Cir. 1982), cert. denied, 461 U.S. 913 (1983). He was also found civilly liable for requiring Nassau County workers to contribute a portion of their salaries to the Republican Party. *Cullen v. Margiotta*, 811 F.2d 698 (2d Cir.), cert. denied, 107 S. Ct. 3266 (1987).

3. Lee Alexander, former Democratic mayor of Syracuse, admitted being a central figure in a plot to collect millions of dollars in kickbacks from City contractors. Lynn, *Ex-Syracuse Mayor's Schemes Detailed in Memo*, N.Y. Times, Feb. 7, 1988, § 1, at 38, col. 1.

4. Ch. 813, 1987 N.Y. Laws 1404 (codified as amended in scattered sections of N.Y. EXEC. LAW; N.Y. GEN. MUN. LAW; N.Y. JUD. LAW; N.Y. LEGIS. LAW; N.Y. PUB. OFF. LAW).



ships are a government official selling goods or services to the agency that employs him; an official taking employment that would permit him to use "inside" knowledge and connections to the advantage of his employer and to the disadvantage of competitors; and an official receiving gifts, other income, or property from outside entities that have an interest in his official actions.

Another aspect of current legal thinking in the ethics area takes its cue from Justice Brandeis' admonition that "Sunlight is said to be the best of disinfectants; electric light the most effective policeman."<sup>10</sup> By requiring public disclosure of officials' financial holdings and sources of income, it is argued that citizens will have the information necessary to judge whether their representatives are acting in the public interest rather than for private gain. In spite of opponents' fears that government recruitment of talented professionals will be hampered,<sup>11</sup> financial disclosure laws have been enacted in numerous jurisdictions.<sup>12</sup>

Disclosure laws and "prophylactic" measures against conflict of interest each work best when applied in combination. Injunctions against impropriety are more easily enforced, and impropriety itself is deterred when financial disclosure is required. Most officials will draw back from ethically ambiguous conduct when they realize that truthful disclosures might generate scandal, while concealment risks discovery and prosecution. On the other hand, disclosure alone risks becoming "a symbolic act that increasingly becomes devoid of meaning" unless it stimulates public debate and provides the impetus for the further development of substantive conflict of interest standards.<sup>13</sup>

Crucial to any set of ethics laws is the enforcement mechanism. Laws work best when their implementation is entrusted to a specially designated agency that is committed to the laws' purposes. In the case of ethics laws, such an agency should be bipartisan and independent, beyond the direct control of any of the officials whose conduct is being monitored. As will be shown, the failure to create one

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UNIVERSITY OF CHICAGO LAW SCHOOL 4 (1961).

10. L. BRANDEIS, *OTHER PEOPLE'S MONEY* 92 (1932).

11. See Jacobs, *Ethics Act Prompts AG Staff Defections*, 39 *MANHATTAN LAW J.* 1 (1988) (stating that "[t]he impetus for the departures is the law's so-called revolving-door section . . . which prohibits lawyers from appearing before their former agencies for two years after they have left the government").

12. See *infra* notes 24-34 and accompanying text.

13. R. VAUGHAN, *CONFLICT-OF-INTEREST REGULATION IN THE FEDERAL EXECUTIVE BRANCH* 53 (1979).

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1986, Sept.-Oct. 1986.

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that fall under the jurisdiction of their committees.<sup>22</sup> Nevertheless, Congress has gone further than most state legislatures by treating its members as "full-time" public servants and placing some limits on the amount of outside honoraria that may be earned.<sup>23</sup>

### B. Other States

Virtually every state has anti-bribery statutes and laws restrict- ing public officials and employees from certain activities.<sup>24</sup> New York was an early leader in the enactment of ethics legislation in 1954,<sup>25</sup> but many other states and municipalities adopted more com- prehensive provisions in the 1970's<sup>26</sup> while calls to reform the New York statute went unheeded.<sup>27</sup> Many states have enacted language restricting officials from representing clients before public agencies, for example.<sup>28</sup>

In 1978, Massachusetts strengthened existing ethics statutes in response to a citizens' initiative petition.<sup>29</sup> Officials are prohibited

*Congress Faces an Ethics Gap*, NEWSWEEK, July 4, 1988, at 16-17.

22. See Kaplan, *Taking Stock*, COMMON CAUSE MAG., Nov.-Dec. 1987, at 29.

23. Both houses, by statute, have placed limits on members' speaking fees and other honoraria. See 2 U.S.C.A. § 31-1 (West Supp. 1988) (amending 2 U.S.C. § 31-1 (1982)). Only the House, however, has limited members' permissible outside earned income of all types. See House Rule 47, in U.S. HOUSE OF REPRESENTATIVES, ETHICS MANUAL FOR MEMBERS, OFFICERS AND EMPLOYEES (1987).

24. See, e.g., CAL. PENAL CODE §§ 67-68 (Deering 1988) (bribery of administrative officers and asking for or receiving bribes by public officers or employees); DEL. CONST. art. II, § 22 (dealing with bribery of executive, judicial, or legislative officers); FLA. STAT. § 110.122 (1986) (discussing bribery of employees); MD. ANN. CODE art. 27, § 562C (1987) (extortion by state or local officer or employees).

25. See *Staff Report on Conflict of Interest and Financial Disclosure Law in Govern- ment*, in 2 THE STATE-CITY COMMISSION ON INTEGRITY IN GOVERNMENT: STAFF MEMORANDA 47 (1987) [hereinafter SOVERN COMMISSION STAFF REPORT]; NEW YORK SPECIAL LEGISLA- TIVE COMMITTEE ON INTEGRITY AND ETHICAL STANDARDS IN GOVERNMENT, REPORT (1954).

26. See SOVERN COMMISSION STAFF REPORT, *supra* note 25, at 47-48; see, e.g., MASS. GEN. LAWS ANN. ch. 268A (West Supp. 1987) (ethics and financial disclosure); PA. STAT. ANN. tit. 65, §§ 401-413 (conflicts of interest).

27. See SOVERN COMMISSION STAFF REPORT, *supra* note 25, at 2, 47-54; *Ethics, and Anger*, in *New York*, N.Y. Times, Oct. 10, 1986, at B6, col. 1.

28. COMMON CAUSE, CONFLICT OF INTEREST LEGISLATION IN THE STATES 6 (1987) [hereinafter CONFLICT OF INTEREST LEGISLATION]; see also NATIONAL CIVIC LEAGUE, MODEL STATE CONFLICT-OF-INTEREST AND FINANCIAL DISCLOSURE LAW (1979); S. SCHNEI- DER, CAMPAIGN FINANCE, ETHICS AND LOBBY LAW BLUE BOOK 51-59 (1986).

29. See MASS. GEN. LAW ANN. ch. 268A (West Supp. 1988) (Code of Ethics); *id.* at 268B (Financial Disclosure). Although Massachusetts has strengthened the ethical guidelines for public officials and established an independent commission, difficulties persist in achieving the desired goals. See *Craven v. State Ethics Comm'n*, 390 Mass. 191, 454 N.E.2d 471 (1983) (holding that the State Ethics Comm'n had statutory authority to act as the primary investigatory body in cases of alleged violations of the conflict-of-interest law and financial

from acting as agents for any private person whose interests are adverse to the State's.<sup>30</sup> They are forbidden from having any substantial financial interest in any business dealings with the State.<sup>31</sup> Gifts are restricted<sup>32</sup> and so are appearances before state agencies,<sup>33</sup> although only to a limited extent. Post-employment restrictions are in place,<sup>34</sup> as are financial disclosure rules for officials and their spouses.<sup>35</sup> Local officials are also covered.<sup>36</sup> Somewhat unusual among ethics statutes is language restricting an official's business partner from engaging in representational activity that the official himself could not engage in,<sup>37</sup> and language prohibiting the "steering" of government insurance business arising from construction contracts to particular brokers.<sup>38</sup> Most importantly, the law is enforced by an independent Ethics Commission of five members, three appointed by the Governor, one by the Secretary of State and one by the Attorney General, all for five-year non-renewable terms.<sup>39</sup> The Commission has jurisdiction over ethics matters in all branches of government, and its adjudicatory proceedings are normally public.<sup>40</sup>

The constitutionality of the financial disclosure component of state laws has been tested in a number of states. Most courts have held that where the laws are carefully drafted they are valid, on the ground that the privacy interests of officials are outweighed by the more compelling public interest in preventing corruption and the appearance of corruption.<sup>41</sup>

disclosure law); *Saccoccia v. State Ethics Comm'n*, 395 Mass. 326, 480 N.E.2d 13 (1985) (holding that the State Ethics Comm'n lacked the power to enforce a provision which prohibits an officer or employee of a state, county, or municipal agency from using or attempting to use his official position to secure unwarranted privileges).

30. MASS. GEN. LAW ANN. ch. 268A, § 4(c) (West Supp. 1987).

31. *Id.* § 7 (restricting state employees from having financial interests in contracts of state agencies).

32. *Id.* § 4 (establishing criminal penalties for receiving compensation or gifts, directly or indirectly in relation to any particular state matter).

33. *Id.* § 5.

34. *Id.*

35. *Id.* ch. 268B.

36. *Id.* ch. 268A, §§ 17-18.

37. *Id.* § 5(c)(1).

38. *Id.* § 8.

39. MASS. GEN. LAW ANN. ch. 268B, § 2 (West Supp. 1987).

40. *Id.* § 3.

41. See, e.g., *County of Nevada v. MacMillan*, 11 Cal. 3d 662, 522 P.2d 1345, 114 Cal. Rptr. 345 (1974); *Fritz v. Gorton*, 83 Wash. 2d 275, 517 P.2d 911 (1974); see generally Note, *The Constitutionality of Financial Disclosure Laws*, 59 CORNELL L. REV. 345 (1974); Annotation, *Validity and Construction of Orders and Enactments Requiring Public Officers and Employees, or Candidates for Office, to Disclose Financial Condition, Interests, or Relation-*

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44. See *Belle v*  
1978); N.Y. GEN. MU

45. NEW YORK  
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According to its Assembly sponsors, the Act was intended to maintain public trust and confidence by strengthening "prohibitions against behavior which may permit or appear to permit undue influence and broadening financial disclosure requirements to assure that the public is aware of all private and business interests which may influence public officials in their official acts."<sup>61</sup> The Ethics Act significantly improved upon existing law in the areas of (1) appearances before state agencies;<sup>62</sup> (2) post-employment restrictions;<sup>63</sup> (3) financial disclosure;<sup>64</sup> (4) coverage of certain political party leaders;<sup>65</sup> and (5) administration and enforcement.<sup>66</sup>

### C. Provisions of the Act

1. **Appearances Before State Agencies.**— Many government officials, particularly legislators who are also lawyers, have engaged extensively in practices involving the receipt of compensation for the rendition of services or appearance on behalf of private parties in various types of proceedings before state agencies. This practice is disturbing for at least two reasons. First, it places officials who draft statutes and administrative rules in the position of being able to look out for their own interests and their clients' interests while they are ostensibly concerned only with serving the public. This conflict is especially apparent when a legislator plays a key role on a committee with jurisdiction over a particular area of regulation. Second, the appearances of legislators before state agencies give rise to a perception that favoritism may come into play because the legislators control the agency officials' livelihoods, i.e., their budgets. Beyond this, there has been general discomfort with the intuitive but widely shared belief that it is the lure of special access and the desire to curry favor, and not professional competence, that attracts clients to retain public officials as their personal representatives.

*Fight on Ethics Code*, N.Y. Times, Apr. 16, 1987, at B2, col. 1; Schmalz, *New York's Legislature Tightens Ethics Rules in an Air of Tension*, N.Y. Times, Apr. 8, 1987, at A1, col. 1.

61. Sponsor's Memorandum in Support of N.Y.A. 1202 (Jan. 14, 1987); cf. Salant, *The Company They Keep*, CAPITAL REGION, Apr. 1987, at 24 (detailing potential conflicts of interest by state legislators who sit on numerous corporate and health care institution boards, or retain financial interests in partnerships and investments which might be affected by decisions by lawmakers).

62. See *infra* notes 67-78 and accompanying text.

63. See *infra* notes 79-89 and accompanying text.

64. See *infra* notes 90-107 and accompanying text.

65. See *infra* notes 108-21 and accompanying text.

66. See *infra* notes 122-48 and accompanying text.

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67. N.Y.S. 644 in Government Act.

68. "Appearance of services

OFF. LAW § 207(1)

69. *Id.*

70. See Attorn Attorney General R.

71. Model C Committee on Profe proper to waive the

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The final version of the Ethics Act<sup>67</sup> addressed this problem by preventing appearances<sup>68</sup> before state agencies in connection with: (i) the purchase, sale, rental or lease of real property, goods or services; (ii) rate-making; (iii) adoption or repeal of regulations; (iv) obtaining of grants or loans; (v) licensing; or (vi) franchises.<sup>69</sup> Appearances before administrative hearing officers in "quasi-judicial" proceedings, excluded from an earlier version of the Act, are now encompassed within the prohibition. What the Act does *not* prohibit, aside from the expected exclusions for appearances in "ministerial matters" and public advocacy on behalf of constituents, are appearances before courts, and appearances before (or negotiations with) the Attorney General in his prosecutorial and investigatory functions; indeed, civil and criminal prosecutions generally appear to be the major area in which the restrictions do not apply.<sup>70</sup>

Once the decision was made to prevent officials from practicing before state agencies, the question naturally arose as to whether it was proper for the officials' partners and associates to practice before the state agencies. According to the American Bar Association's Code of Professional Responsibility, representation by any member of a firm is equivalent to representation by the entire firm;<sup>71</sup> thus, the Code on its face would seem to require that the statutory ban apply to the official's partner. To a member of the public concerned about the appearance of undue influence, this seems eminently logical. However, a far greater number of lawmakers are associated with firms that appear before state agencies than the number who have commonly appeared before state agencies themselves. Indeed, state regulation is so extensive that it would be difficult for any firm with a large, business-oriented practice to avoid involvement in state agency matters. Placing a ban on partners' practice before agencies would, in effect, require many covered officials to resign from their firms, and would in all likelihood be a prelude to a declaration that

*New York's Legis-*  
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67. N.Y.S. 6441, N.Y.A. 8528, 210th Sess. (1987) (subsequently enacted as the Ethics in Government Act, ch. 813, 1987 N.Y. Laws 1404).

68. "Appearance" is broadly defined by the statute to include any "appearance or rendition of services . . . in relation to [a] case, proceeding, application or other matter." N.Y. Pub. Off. Law § 73(7)(a) (McKinney 1985).

69. *Id.*

70. See Attorney General's Legislative Program No. 164 at 4 (1988) (memorandum of Attorney General Robert Abrams in support of Program Bill 149).

71. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 5-1.5(D) (1982). The ABA's Committee on Professional Ethics, foreseeing this problem, has suggested that it would be proper to waive the rule in certain circumstances. See R. VALLETTA, *supra* note 13, at 80.

legislators are to be considered "full-time", with higher government salaries but strict limits on the amount of outside earned income they may receive. The Legislature is not yet willing to take this step.<sup>72</sup> Accordingly, a compromise was developed which permits officials' firms to appear before and transact business with state agencies so long as the official himself does not share in the "net revenues" resulting from such business.<sup>73</sup> As an added precaution, the official whose firm is "appearing" before an agency may not "orally communicate" with the agency, even without compensation, about the merits of the case.<sup>74</sup> The Legislative Ethics Committee is charged with developing guidelines regarding the calculation of the portion of a firm's profits that are attributable to practice before state agencies;<sup>75</sup> in the meantime, a legislator is safe from disciplinary action if he "reasonably believes, in good faith" that he is not sharing in the "net revenues" from state agency practice.<sup>76</sup> Finally, any official complying with these rules is immune from any disciplinary actions under the lawyers' Code of Professional Responsibility or similar professional disciplinary rules.<sup>77</sup>

It remains to be seen whether this highly complex, reined scheme designed to reconcile conflicting interests will succeed in building public confidence that officials are not trading their influence and reputations for private gain. Courts tamper with the scheme at their peril, however, for the lawmakers have declared that if the provisions permitting partners to practice are struck down by court action, then the entire package of changes in the conflict-of-interest rules is nullified as well.<sup>78</sup>

2. Post-employment Restrictions.— The need to slow down the "revolving door" between government service and private industry first became apparent at the federal level. Concern developed that regulatory agencies were becoming "captives" of those they regulated, and that large government contractors, especially defense con-

72. See *Charney, Pay Mike Should Beet Full-time Legislators*, *Legislative Gazette*, June 1, 1987, at 25, col. 1; Miles, *In Albany: Part-Time, Ethical Legislators*, *N.Y. Times*, May 23, 1987, at A29, col. 1.

73. N.Y. Pub. Off. Law § 73(10) (McKinney 1988).

74. *Id.* § 73(10)(12).

75. N.Y. Legis. Law § 90(a)(4) (McKinney Supp. 1988).

76. N.Y. Pub. Off. Law § 73(10) (McKinney 1988).

77. *Id.* § 73(11)(c); see also N.Y. Pub. Off. Law § 73(13) (McKinney 1988) providing that a submission to a state agency on a firm's letterhead shall not become an "appearance" by a public official merely by reason of the fact that the official's name appears on the letterhead.

78. See Ethics In Government Act, ch. 311, § 19, 1987 N.Y. Laws 114.

tractors, were by routinely agents.<sup>79</sup> Cons level are alrea

States and the need to str peddling and t individuals wit entering gover Ethics Act b. before their fo spect to matter in which he "p the realities of pearances befo matter at all."<sup>80</sup> two-year ban. ex-official pers

While pri tive aides were edv this, but th

79. R. VACON Steps in Congress Bar to rock Washing defense industry by Said to include J C

80. See 18 U.S.C.

81. See 114 C ment Act, presently

82. See, e.g., three year post-emp matters in which h with respect to whet of his city employ (1984) replacing an e N.Y.C. Charter Rev a lifetime ban. The s 1985 appearance to city prohibited a repe from City Councils (1985) this the N

83. N.Y. Pub.

84. N.Y. Pub.

85. *Id.*

86. N.Y. Pub.

## ALASKA STATE SENATE

JOE P. JOSEPHSON  
 DISTRICT 14 ANCHORAGE  
 3111 C STREET, SUITE 306  
 ANCHORAGE, ALASKA 99503  
 (907) 561-7811



WHILE IN JUNEAU  
 P.O. BOX 5  
 JUNEAU, ALASKA 99801  
 (907) 485-4829

November 10, 1988

The Honorable Pat Pourchot  
 Chairman  
 Legislative Ethics Committee  
 Alaska State Legislature  
 3111 C Street  
 Suite 306  
 Anchorage, Alaska 99503

Dear Representative Pourchot:

I am submitting the following list of clients whose matters involve controversies with agencies of the State of Alaska. Please incorporate this letter in the Journal for the purposes of public disclosure.

I represent the following individuals who are in litigation with the State of Alaska, Department of Natural Resources, Division of Agriculture.

Mr. Al Bannon, Sutton, Alaska;  
 Mr. Ed Zimmerman, Seward, Alaska;  
 Mr. & Mrs. Jerry Brehmer, Delta Junction, Alaska;  
 Mr. & Mrs. Glenn Helkenn, Delta Junction, Alaska;  
 Mr. & Mrs. Larrie Rule, Delta Junction, Alaska;  
 Mr. & Mrs. John Rutt, Delta Junction, Alaska;  
 Mr. Jesse Bannon and Mr. Wesley Bannon, Delta Junction, Alaska.

In addition, I have provided counsel to Mr. Paul Mertz, Mr. Richard Jansen, and Mr. Tom Kraus, although at this writing there is no litigation involving the State of Alaska. These individuals have also had disputes with the Department of Natural Resources, Division of Agriculture.

Very truly yours,

*Joe P. Josephson*  
 Joe P. Josephson  
 State Senator

# ate Legislature Senate

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

## ALASKA STATE LEGISLATURE

While in Ketchikan  
152 First Street  
Ketchikan, AK 99901  
907 225 9675



While in Juneau  
PO Box V  
Juneau, AK 99811  
907 463 3141

Senator Lloyd Jones

October 25, 1988

### MEMORANDUM

To, Senate Secretary

By Pearce *Pearce*

Compliance

70, I am disclosing the maintenance of  
relation involving a substantial matter  
Mr. Ronald A. Duncan and Mr. Robert

President of General Communication,  
owns in various real properties and

Chairman of General Communication,  
title to real property in Anchorage.

Representative Pat Furchot, Chairman  
Ethics Committee  
1111 C Street, Suite 506  
Anchorage, Alaska 99503

Dear Representative Furchot:

This letter is to inform the ethics committee that I am  
working as a consultant during the interim between the 1988  
and 1989 Alaska State Legislative sessions. In my capacity of  
consultant I will advise and represent the Sealaska  
Corporation on several issues, one of which is the proposed  
road link from Tolstoi Bay to the existing Prince of Wales  
Island road system.

I will represent my client, when clearly identified as a  
consultant, in meetings and discussions with Mark Hickey, the  
Commissioner of the Alaska Department of Transportation, and  
other employees of agencies which may affect this proposed  
project.

Sincerely,

*Lloyd Jones*  
Lloyd Jones



# Alaska State Legislature

HOUSE OF REPRESENTATIVES

Office of the Minority Leader

Official Business  
Room 24  
State Capitol

P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4841

TO: ETHICS COMMITTEE  
FROM: REPRESENTATIVE TAYLOR  
RE: CONFLICT OF INTEREST

DATE: 13 JANUARY 1989

Pursuant to AS 24.60.100:

I declare that during calendar year 1988 I did not represent any person for compensation before a state agency, board or commission. However, as the generic term "represent" could or may be given a broad definition I did assist one client Mr. Steve Thoassen in preparing his application for a limited entry Red & Brown King Crab permit which he submitted to the Limited Entry Commission. As I do not know whether or not "representation" includes the work of my associates I declare that N. Deliza Spangler of Wrangell Alaska was employed in my law office through March of 1988 to the best of my knowledge she did not represent any clients before an agency, board or commission of the state.

Mr. Michael Ledden was employed in Petersburg office through September 15, 1988 and I know that he assisted a client, Mr. Bud Samuelson in the preparation of his limited entry application for Red & Brown King Crab to the Limited Entry Commission. My secretary in Petersburg Vernique Bosworth also assisted a client Peter Thynes in his application for a King Crab permit which he submitted to the Limited Entry Commission. I do not believe that such incidental contact with a state agency, board or commission is encompassed by AS 24.60.100, or that my associates or employees are encompassed by this law but as the phrase "representation before an agency, board or commission..." lacks definition I have submitted the forgoing.

I am certain that in the routine and daily practice of the law that there have been many times when I or my associates might have had to get information from or, inquire of a state agency, board or commission. As example Domestic Relations clients concerned about child support enforcement, Fishermen concerned about Fish and Game regulations, Drivers concerned about their drivers licenses, a fish plant operator needing advice about D.E.C. regulations, a person wishing to sell his

Rep. Taylor  
page 2

home that is located on property he is purchasing under a state land sale, etc etc, the list is literally endless.

I currently and for many years have annually reported the list of all clients from whom my law offices received over \$100 a year.

To the best of my knowledge, other than incidental contact with state agency, board, or commission neither I or my associates or employees have represented any client for compensation before any state agency, board, or commission of the state in the calendar year 1988.

Representative Max Gruenburg and I have requested the Ethics Committee to give us an opinion on the proper interpretation and definition of the phrase "...representation before..." and I request the opportunity to delay and supplement this filing until a reasonable period after the Ethics Committee has reached it's decision.

Sincerely,

Robin L. Taylor

EMICS wcd

STATE OF ALASKA  
THE LEGISLATURE

PO BOX 111 STATE CAPITOL  
NINEIDA ALASKA 99511  
907 465 1000

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 23, 1989

SUBJECT: Representation of others by certain public officials and employees (WO 6-0634)

TO: Representative Peter Goll

FROM: Tamara Brandt Cook *TBC*  
Director  
Division of Legal Services

Here is a draft you requested dealing with representation of others by public officials and state employees before state agencies. At the request of Mr. Hayden Kaden, I have not, in this draft, addressed the issue of the application of the prohibition to other members of the business a public official or employee is involved in. The committee may wish to consider this matter.

TBC:kb  
wkk1/066

Enclosure

6-0634A  
Cook  
1/23/89

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to representation of others by  
7 certain public officials and state employees before  
8 state agencies."

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

10 \* Section 1. AS 24.60.100 is amended to read:

11 Sec. 24.60.100. REPRESENTATION. A person employed by the legis-  
12 lative branch of government [TO WHOM THIS CHAPTER APPLIES] who repre-  
13 sents as an advocate another person for compensation before an agen-  
14 cy, board, or commission of the executive branch of the state shall  
15 disclose the name of the person represented, the subject matter of the  
16 representation, and the body before which the representation is to  
17 take place in the journal of the appropriate body or, if the legis-  
18 lature is not in session, to the committee. The committee shall  
19 maintain a public record of the disclosure and forward the disclosure  
20 to the respective house for inclusion in the journal by the fifth day  
21 of the session. Nothing in this subsection requires disclosure of the  
22 rendering of technical assistance to another, so long as the person  
23 employed by the legislative branch of government does not advocate the  
24 position of the other person before an agency, board, or commission of  
25 the executive branch.

26 \* Sec. 2. AS 24.60.100 is amended by adding a new subsection to read:

27 (b) A legislator may represent another for compensation before  
28 an agency, board, or commission of the executive branch only as pro-  
29 vided under AS 39.50.090(c).

1 \* Sec. 3. AS 39.50.090(c) is amended to read:

2 (c) A public official may not represent a client before a state  
3 commission or board, or agency of the executive branch of state  
4 government for a fee. This [HOWEVER, THIS] prohibition does not apply  
5 to a

6 (1) municipal officer, or chairman or member of a state  
7 commission or board except with regard to representation before that  
8 commission or board; this exception from the general prohibition does  
9 not apply to one whose service on the commission or board constitutes  
10 the person as a full-time state employee under this title; or

11 (2) legislator rendering technical assistance to a client,  
12 so long as the legislator does not advocate the position of the client  
13 before a state commission or board, or agency of the executive branch  
14 of state government.

6-0634A  
Cook  
1/25/89

1 IN THE HOUSE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to representation of others by  
7 legislators and certain legislative employees before  
8 state agencies."

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

10 \* Section 1. AS 24.60.100 is amended to read:

11 Sec. 24.60.100. REPRESENTATION. A person to whom this chapter  
12 applies may not represent [WHO REPRESENTS] another person for compen-  
13 sation before an agency, board, or commission of the state. However,  
14 a person to whom this chapter applies who is an attorney may represent  
15 a client before a court [SHALL DISCLOSE THE NAME OF THE PERSON REPRE-  
16 SENTED, THE SUBJECT MATTER OF THE REPRESENTATION, AND THE BODY BEFORE  
17 WHICH THE REPRESENTATION IS TO TAKE PLACE IN THE JOURNAL OF THE APPRO-  
18 PRIATE BODY OR IF THE LEGISLATURE IS NOT IN SESSION TO THE COMMITTEE.  
19 THE COMMITTEE SHALL MAINTAIN A PUBLIC RECORD OF THE DISCLOSURE AND  
20 FORWARD THE DISCLOSURE TO THE RESPECTIVE HOUSE FOR INCLUSION IN THE  
21 JOURNAL BY THE FIFTH DAY OF THE SESSION].

HPB

151

# HOUSE COMMITTEE REPORT

(7)

Date Referred: February 6, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: \_\_\_\_\_

The JUDICIARY Committee recommends that:

HOUSE BILL NO. 151

[REPEAL PROBATION FEE AUTHORIZATION]

"An Act repealing the authority of the Alaska Court System to impose and of state agencies to collect a probation fee; and providing for an effective date."

[ ] be replaced with \_\_\_\_\_ [ ] the same title  
[ ] a new title

[ ] have attached amendment(s)

- [ ] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

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

ATTACHES NEW FISCAL NOTE(S):

- [X] fiscal impact *2/15/89*
- [ ] zero fiscal note
- [ ] zero with analysis

APPROVES PREVIOUS:

- [X] fiscal note(s) published: *2/15/89, 1/14/89*
- [ ] zero fiscal notes(s) published:

SIGNING DO PASS:

*Pete Jace*  
\_\_\_\_\_  
*Mike Davis*  
\_\_\_\_\_  
*Cliff Davidson*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNING OTHER THAN DO PASS:  
(Do Not Pass, No Recommendation, Amend)

*Mike Muller* No Rec  
\_\_\_\_\_  
*Terry Monda* No Rec  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Pete Jace* / *Mike Muller*  
\_\_\_\_\_  
Chairman's signature

Introduced: 2/6/89  
Referred: Judiciary and  
Finance

IN THE HOUSE

BY FOSTER

HOUSE BILL NO. 151

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act repealing the authority of the Alaska Court System to impose and of state agencies to collect a probation fee; and providing for an effective date."

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

\* Section 1. AS 12.55.100(a) is amended to read:

(a) While on probation and among the conditions of probation, the defendant may be required

(1) to pay a fine in one or several sums;

(2) to make restitution or reparation to aggrieved parties for actual damages or loss caused by the crime for which conviction was had;

(3) to provide for the support of any persons for whose support the defendant is legally responsible; and

(4) to perform community work in accordance with AS 12.-55.055 f; AND

(5) TO PAY A PERIODIC PROBATION FEE AS PROVIDED IN AS 12.-55.1051.

\* Sec. 2. AS 14.43.120(f) is amended to read:

(1) If a loan is in default, the commission shall notify the borrower that repayment of the remaining balance is accelerated and

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: "An Act repealing the authority of the Alaska Court System to impose."  
Sponsor: Rep. Foster  
Requestor: \_\_\_\_\_

Agency Affected: Department of Corrections  
BRU: Statewide Programs  
Components: Northern Region Probation  
Southcentral Region Probation  
Southeast Region Probation

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	-126.2	-126.2	0	0	0	0

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	62.0	62.0				
FEDERAL FUNDS						
OTHER	-62.0	-62.0				
TOTAL	0	0	0	0	0	0

**POSITIONS:**

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

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

This legislation will not result in additional operating costs, but the funding sources for FY89 and FY90 must be changed from program receipts to general fund.

Prepared by: Susan E. Knighton, Director Phone: 465-3376  
Division: Administrative Services Date: 3-21-89  
Approved by Commissioner Humphrey-Barnett Date: 3-21-89  
Agency: Department of Corrections

**Distribution (by preparer):**

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



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

Official Business

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

TO: House Judiciary Committee  
FROM: Representative Richard Foster *RF*  
DATE: February 6, 1989

RE: HB 151 "An Act repealing the authority of the Alaska Court System to impose and of state agencies to collect a probation fee; and providing for an effective date."

A special thanks to the House Judiciary Committee for scheduling the hearing on this bill. The situation this bill will correct is one that was brought to my attention by probation officers in Western Alaska. Current law requires that those on probation pay a \$45 per month fee to their probation officers. This bill would remove that requirement from state law.

Probation officers, particularly those in rural areas, have been encumbered in their attempts to enforce a statute that neither pays for itself or results in any positive change in behavior by those subject to paying the fees. In addition, the time spent by probation officers as fee agents is a useless expenditure when their efforts could be better spent at other tasks.

The situation of highly seasonal employment in rural areas creates a situation where those on probation often have no regular income, and frequently a meager amount when they do. The desire to enforce this statute is often met with frustration by both those on probation and those responsible for fee collection in areas on the edge of a cash economy. The option of community work service in lieu of cash is also unsuitable in that the probation officer is then required to supervise that work service has been completed.

This bill is supported by the Department of Corrections and received verbal endorsement from the Criminal Justice Working group during their meeting in Kotzebue this summer. In your packet is a letter of support from the Department of Corrections and another letter of support from a public defender in Nome. Also enclosed is a listing of those on probation (first name only) and a summary of individual probation fee payment status. Referenced statutes and a fiscal note are also enclosed.

Section 1 repeals the authority to require the defendant to pay a probation fee. Accomplishes this by removal from A.S. 12.55.100 (a)

under the "Conditions of Probation" a subsection (5) referencing A.S. 12.55.105 that dictates the probation fee requirements.

Section 2 accomplishes a technical change referencing defaulted loans and the authority to revoke permanent fund dividends.

Section 3 removes court ordered probation fees from A.S. 43.23.1056, section (b) (3) regarding exemptions of permanent fund dividends.

Section 4 is the meat of the bill in removing the probation fee requirement.

Section 5 an applicability section that pertains to how the bill would affect court ordered fees or outstanding debts since June 30, 1986 and before the effective date of this act.

Section 6 makes the bill effective immediately.

Thank you for your consideration of this legislation.

# STATE OF ALASKA

## DEPARTMENT OF CORRECTIONS

STEVE COWPER, GOVERNOR

REPLY TO:

P.O. BOX 7  
JUNEAU, ALASKA 99811-2000  
PHONE (907) 465-3376

October 10, 1988

The Honorable Al Adams  
Alaska State Legislature  
P.O. Box 333  
Kotzebue, Alaska 99752

Dear Representative Adams:

This letter is in support of your proposed legislation to repeal the statute requiring Alaska probationers to pay a monthly fee-for-service.

When the program was started two years ago, the Department of Corrections saw it as an opportunity to instill responsibility in the probationers and to raise revenues to offset the cost of their supervision. However, our experience in this endeavor has proved otherwise.

In FY 88, we collected \$126,200 under the program statewide: \$26,900 in the Northern Region; \$72,900 in the Southcentral Region; and \$26,100 in the Southeast Region. The work required by our Probation Officers to enforce this program has been considerable.

The Probation Officers enforce the court orders that include this \$45.00 monthly fee-for-service. Probationers in extreme financial hardship can substitute community work service in lieu of payment at the rate of \$5.00 per hour or nine hours per month. This, too, must be scheduled and then supervised by the Probation Officer.

When probationers fail to pay or perform community work service, they are in technical violation of their court order and the Probation Officer can then return the probationer to court. The Probation Officer must prove to the court that the probationer is able to pay or perform work but refuses to do so. The Probation Officer is then subject to cross-examination by the probationer's attorney. In fact, no Alaska judge has revoked probation for failure to pay or perform work because the dollar amount is so low (returning a probationer to an \$86.00 per day cell for failing to pay a \$45.00 per month fee).

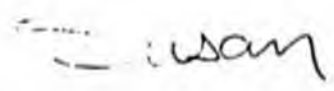
It is estimated that the three to four workdays per month required of each supervising field Probation Officer statewide is the equivalent of four fulltime officers per year. Add to that the equivalent of two fulltime clerks to handle correspondence, accounting and depositing of the fees balanced against the amount of \$126,200 raised statewide, the program is not cost effective.

The Honorable Al Adams  
October 10, 1988  
Page Two

Finally, as you know from your own region, requiring regular monthly payments discriminates against those on subsistence or seasonal employment. In the villages, where there is no supervised community work service option, the program makes no sense at all.

The current law applies to those probationers placed on probation after January 1987. Because the number grows each year, these problems will continue to grow. The Department of Corrections supports your efforts to repeal the fee-for-service for probationers' statute.

Sincerely

  
Susan Humphrey-Barnett  
Commissioner

SHB:BP:dlh

P.O. Box 1402  
Nome, AK 99762  
January 24, 1989

Senator Al Adams  
P.O. Box V  
Juneau, AK 99811

Dear Senator Adams:

I support your efforts to repeal A.S. 12.55.105 which requires probationers to pay probationary fee to the Department of Corrections. My experience in Northwest Alaska indicates that the probationary fee requirement creates an undue hardship on persons engaged in the predominately subsistence lifestyle of this region.

The major problem with the present statute is that imposition of the probationary fee is mandatory, that is, the sentencing court has no discretion to consider the probationer's ability to pay and determine whether the fee should be required. Thus, even if a probationer has no income except for the permanent fund dividend, the fee is still ordered. This approach is distinct from the procedures set out for determining the amount, if any, of restitution or a fine.

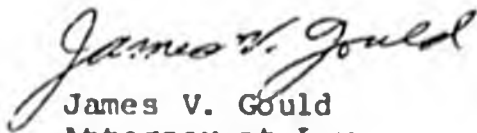
The second major problem is that the Department of Corrections, without statutory authorization, requires a probationer who cannot pay the fee to perform community work service in lieu thereof. Probation officers are collecting supervision fees and enforcing unlawful community work service requirements instead of providing necessary services to probationers.

It may be that probationers who are able to pay should pay a reasonable probationary fee. However, under the present statute, the judge is not allowed to consider ability to pay. The result is that probationers who truly need their permanent fund dividends to provide family necessities in Northwest Alaska are required to assign their dividends to the Department of Corrections. This is unfair. In the preceding 16 months I am unaware of even one probationer who was excused by the Department of Corrections from either paying the fee or doing community work service in lieu thereof.

Senator Al Adams  
Page 2  
January 24, 1989

I am enclosing a copy of the legal memoranda filed by the parties in a case in which the probationary fee was challenged. The issue became moot after the probationer committed a subsequent burglary, so was never fully litigated.

Sincerely,

A handwritten signature in cursive script that reads "James V. Gould".

James V. Gould  
Attorney at Law

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 SECOND JUDICIAL DISTRICT AT NOME

3 STATE OF ALASKA, )  
4 )  
5 Plaintiff, )  
6 vs. )  
7 ALEX I. ASHENFELTER, )  
8 Defendant. )

State of Alaska  
Second Judicial District

APR - 1 1988

Clarity

Case No. 2NO-S86-531Cr.

9 MOTION TO DISMISS PROBATION REVOCATION

10 Alex Ashenfelter was convicted of second degree  
11 burglary. He was given a suspended imposition of sentence. He  
12 is back before the court on a petition to revoke probation which  
13 alleges solely that he "has failed to pay the periodic probation  
14 supervision fee required by AS 12.55.105 to the Department of  
15 Corrections as directed by his probation officer." (petition to  
16 revoke p. 2).

17 Mr. Ashenfelter's position is that the statutory  
18 requirement that he pay a probation supervision fee is facially  
19 unconstitutional (in violation of both the U.S. and Alaska  
20 constitutions) in that it does not take into account a  
21 probationer's ability to pay. AS 12.55.105 provides that:

22 A court granting probation shall require a  
23 periodic probation fee to be paid to the  
24 Department of Corrections as a condition of  
25 probation.

26 The amount of that fee has been set by the Department of  
Corrections at \$45.00 per month. 22 AAC 10.050(b).

Alaska Public Defender Agency  
P.O. Box 203  
Nome, Alaska 99762  
Phone: (907) 443-2281

Alaska Public Defender Agency  
P.O. Box 203  
Nome, Alaska 99762  
Phone: (907) 443-2281

1 Mr. Ashenfelter contends that the statute is facially  
2 unconstitutional in that it provides that a condition of  
3 probation shall be the payment of a periodic probation fee. In  
4 effect then, the statute limits probation to only those able to  
5 pay a probation fee. The result of that statute is to  
6 discriminate against indigents when no valid basis for that  
7 discrimination exists.

8 The SIS statute under which Mr. Ashenfelter was  
9 'sentenced' provides that a court may, in its discretion,  
10 suspend imposition of sentence and thereby place a person on  
11 probation "if it appears that there are circumstances in  
12 mitigation of the punishment or that the ends of justice will be  
13 served." AS 12.55.085. Mr. Ashenfelter was found to be an  
14 appropriate candidate under that qualification for an SIS. But,  
15 per the probation fee statute, an SIS in a felony case is  
16 further limited in its applicability, to only those defendants  
17 who can qualify by an ability to pay a probation fee. Mr.  
18 Ashenfelter is not able to pay a probation fee and is thus  
19 before the court on a petition to revoke probation. To deny him  
20 the benefits of the SIS statute because he does not have money  
21 to pay for supervised probation is an unconstitutional  
22 limitation.

23 Such a limitation has been struck down in a number of  
24 analogous contexts.

25 In Hood v. Smedley, 498 P.2d 120 (Alaska 1972) the  
26 Alaska Supreme Court struck down, as violative of equal

1 protection, a statute (former AS 12.55.010) which provided that  
2 a defendant who fails to pay a fine could be imprisoned until  
3 the fine is satisfied with a dollar amount credit per day in  
4 jail. The court said:

5 Because imprisonment stemmed solely from the  
6 indigency of the defendant, it was held to  
7 work the same invidious discrimination which  
8 was held unconstitutional in Williams v.  
9 Illinois, 399 U.S. 235 (1970).

10 . . . . .  
11 We must, therefore, hold that [AS  
12 12.55.010], when applied to an indigent  
13 defendant is unconstitutional.

14 Id, at 121. To allow the SIS statute and the other statutes  
15 providing for probationary sentences to be limited in  
16 applicability to only non-indigents, is to imprison defendants  
17 based on ability to pay. Those that can pay can be given  
18 probation, those that cannot pay will have probation revoked and  
19 be imprisoned (or at the least be given a permanent record of  
20 conviction). That result was disallowed in Hood v. Smedley and  
21 it must be disallowed here.

22 Lominac v. Anchorage, 658 P.2d 792 (Alaska App. 1983)  
23 considered a similar issue to the one presented by Ashenfelter's  
24 case. In Lominac, the defendant was given an SIS on condition  
25 of monthly payments toward restitution. The payments were not  
26 made and the state petitioned to revoke Lominac's SIS. At a  
hearing on Lominac's failure to pay, the trial judge found that  
the failure was not wilful - that Lominac had not been shown to  
have an ability to pay. but the trial judge nevertheless revoked

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1 her probation and sentenced her to jail. The court of appeals  
2 did not reach the constitutional issue presented but did reverse  
3 the trial court's decision and reinstated Lominac's SIS. The  
4 court of appeals opinion was based on AS 12.55.051 which  
5 disallows imprisonment as a consequence of failure to pay a fine  
6 or restitution unless the failure to pay is intentional - in  
7 other words unless there is an ability to pay proven. That  
8 statute does not refer to probationary fees - only to fines and  
9 restitution.

10 Karr v. State, 686 P.2d 1192 (Alaska 1984) dealt with  
11 the question of ordering a defendant to pay restitution. Karr's  
12 appeal alleged that the restitution order was invalid as she was  
13 ordered to pay \$300,000 in restitution without the judge first  
14 making a serious inquiry into her (Karr's) ability to pay that  
15 amount. The Supreme Court agreed with Karr, vacated the  
16 restitution order, and remanded for an ability to pay hearing.  
17 In the course of reaching that result, the court makes some  
18 comments which are applicable to Mr. Ashenfelter's case. The  
19 court said:

20 Restitution should not only compensate the  
21 victim for the harm inflicted by the  
22 offender, but should further the rehabili-  
23 tation of the offender. If restitution is  
24 ordered in an amount that is clearly  
25 impossible for the offender to pay, the  
26 offender's rehabilitation will be inhibited  
and not furthered. If the offender is haled  
into court for nonpayment of restitution  
under AS 12.55.051(a), or if the offender  
petitions the court under AS 12.55.051(c) to  
avoid this sanction, his reintegration into  
society will be disrupted. Also, an

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1 offender might simply give up and make no  
2 payments at all if the restitution ordered  
3 is clearly impossible to pay. This could  
4 result in the offender's incarceration under  
5 AS 12.55.051(a), or in his fleeing the  
6 jurisdiction to avoid this sanction, neither  
7 of which further the dual goals behind  
8 restitution.

9 Id, at 1197. (footnote omitted). To order Mr. Ashenfelter to  
10 pay a probationary fee when he is financially unable to pay that  
11 fee suffers from all the same problems that the court noted  
12 would result where an impossible amount of restitution was  
13 ordered.

14 A situation similar to Mr. Ashenfelter's was presented  
15 to the New Jersey courts in State v. DeVatt, 413 A.2d 973, a  
16 case in which the lower court had allowed terminating DeVatt's  
17 participation in a pretrial intervention program and permitted  
18 the state to proceed to prosecute the criminal charges, on the  
19 grounds that he had failed to make restitution. The appellate  
20 court reversed the lower court and held that the mere failure to  
21 make restitution was insufficient, in the absence of a  
22 consideration of the surrounding circumstances, to support the  
23 court's termination of pretrial intervention.

24 Although the appellate court's primary concern in  
25 DeVatt was that a defendant be given a full due process hearing  
26 before terminating the pretrial intervention, the lower court  
27 was further directed to "determine whether a factual basis  
28 exists for the conclusion that defendants have wilfully violated  
29 Pretrial Intervention conditions in a manner or under such

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1 circumstances as to justify termination of their right to  
2 further participation in the program." DeVatt, 413 A.2d 973 at  
3 976 (emphasis added). Mr. Ashenfelter here has the same  
4 opportunities under his suspended imposition of sentence as the  
5 defendants in DeVatt had under their pretrial intervention  
6 program, i.e., the opportunity to avoid incarceration and the  
7 opportunity to avoid having a permanent record of conviction.  
8 Before Mr. Ashenfelter can be deprived of those opportunities,  
9 this court should require, as the DeVatt court required, a  
10 wilfull violation of probationary conditions.

11 Mr. Ashenfelter is not asking this court to find that  
12 supervised probationers can never be required to pay a probation  
13 fee - he is only asking this court to construe the statute to  
14 require such payment only from those with an ability to pay.  
15 Other states requiring the payment of a probation fee have  
16 explicitly written ability to pay into their statutes. (See  
17 Oregon ORS § 423.570 and Florida Fla. Stat. § 945.30.). This  
18 court has only to construe the Alaska Statute to have implicitly  
19 included such a qualification into AS 12.55.105 to save its  
20 constitutionality.

21 In the absence of a finding of ability to pay and  
22 therefore a wilful violation of the order to pay the probation  
23 fee, Mr. Ashenfelter's probation should not be revoked. To  
24 revoke it without such a finding is violative of the equal  
25 protection clauses of the U.S. and Alaska constiutions and is  
26 further in violation of the Alaska constitutional provision

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which limits sentencing considerations in criminal cases to the two valid penological purposes of reformation and protecting the public. (Alaska Constitution, Art. I § 12).

CONCLUSION

For the foregoing reasons the probation revocation petition must be dismissed.

DATED this 31 day of March, 1988.

*Valerie Leonard*

Valerie Leonard  
Assistant Public Defender

I certify that a true and correct copy of the Motion to Dismiss Probation Revocation was served to the District Attorney's office and the Probation Office this 1st day of April, 1988.

*Lene Malquin*

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Alex I. Ashenfelter, 2NO-S86-531Cr.  
Motion to Dismiss Probation Revocation

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

SECOND JUDICIAL DISTRICT AT NOME

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ALEX I. ASHENFELTER, )  
 DOB: 11/06/66 )  
 )  
 Defendant. )

Case No. 2NO-S86-531 CR

OPPOSITION TO MOTION TO DISMISS  
PROBATION REVOCATION PETITION

The State has brought a petition to revoke Alex Ashenfelter's probation, alleging that he has not made any effort to pay the probation supervision fee required by AS 12.55.105. Defendant contends that the statute is unconstitutional in that it discriminates against individuals unable to afford the probation supervision fee.

The statute, AS 12.55.105, was enacted in 1986 as part of a larger measure designed to enhance state revenues. 1986 SLA. Ch. 138. AS 12.55.105(a) provides:

A court granting probation shall require a periodic probation fee to be paid to the Department of Corrections as a condition of probation. The fee amount shall be established by regulation adopted by the commissioner of corrections.

Section (b) of the statute authorizes assignment of permanent fund dividends to meet the probation fee obligation. The amount

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1 of the probation fee has been established by regulation as being  
2 \$45 per month. 22 AAC 10.050(b). The regulations also,  
3 however, recognize that there may be probationers who are  
4 unable to pay that amount:

5 The regional administrator of probation may  
6 temporarily defer, excuse, or authorize an  
7 alternate form of probation fee payment in a  
8 form and by procedures established by the  
9 commissioner if justified by a probationer's  
10 verified inability to pay.

11 22 AAC 10.050(d). As part of the regulatory framework, the  
12 Department of Corrections has specifically authorized community  
13 work service where a probationer has a demonstrated inability to  
14 pay the required fee. See Exhibit "A" -- Department of  
15 Corrections, Policies and Procedures, Section 902.09 (VI)(E).  
16 Mr. Ashenfelter's probation officer, Steve Korenek, has  
17 testified that Mr. Ashenfelter, apparently having an inability  
18 to pay the fee (and failing to file for his permanent fund  
19 dividend), has been offered the community work service option  
20 and has made no effort towards compliance.

21 Defendant makes much of the cases dealing with failure  
22 to make restitution and the requirement that such a failure be  
23 shown to be "willful" before probation may be revoked. See Karr  
24 v. State, 686 P.2d 1192 (Alaska 1984). Defendant's  
25 constitutional argument need not be addressed by the court. The  
26 court has the obligation to construe statutory provisions to  
avoid the dangers of unconstitutionality. State v. Rice, 626  
P.2d 104, 108 (Alaska 1981); Keith v. State, 612 P.2d 977  
(Alaska 1980). Thus legislation will be read, if possible, such

1 as to imply matters requisite to constitutional validity. See  
2 Kimoktoak v. State, 584 P.2d 25 (Alaska 1978). Assuming  
3 defendant to be correct in his assertion that determination of  
4 ability to pay or "willfulness" is somehow a constitutional  
5 requirement of the probation fee statute, the court may construe  
6 the statute accordingly without a determination of its  
7 constitutionality. With this in mind, it is apparent that the  
8 statute and its regulations adequately account for a person's  
9 ability to pay. If a person is unable to pay, alternatives are  
10 available. If a person is unable to perform any of the  
11 alternatives, for a legitimate reason, the fee may be waived.  
12 There simply is no danger that a person might be incarcerated  
13 simply because he is poor.

14 What the court really must address is not a  
15 constitutional question, but a factual question: is Mr.  
16 Ashenfelter in non-compliance with the terms of his probation  
17 and is that non-compliance willful? Mr. Korenek has testified  
18 that Mr. Ashenfelter has not complied with the conditions or  
19 alternatives that have been offered to him. Ashenfelter states  
20 that he has a "lack of interest" in certain available jobs.  
21 (Exhibit "B" - Ashenfelter's monthly report for January). He  
22 apparently has a lack of interest in anything resembling work.  
23 Anybody who neglects to apply for their permanent fund dividend  
24 can be said to be truly lazy. Mr. Ashenfelter should obviously  
25 be given an opportunity to explain himself (should he manage to  
26 bestir himself long enough to acknowledge the current court

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1 proceedings), but, absent some compelling explanation, the  
2 factual question before the court must be resolved against Mr.  
3 Ashenfelter.

4 DATED this 20 day of April, 1988, at Nome, Alaska.

5 GRACE BERG SCHAIBLE  
6 ATTORNEY GENERAL

7   
8 \_\_\_\_\_  
9 John R. Vacek  
District Attorney

10 True copy to  
11 James Gould, Public  
12 Defender's court box  
13 at the Nome trial court.

14 LB 4/20/88

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26

Subject: PROBATION SUPERVISION FEE

interstate transfer of probation supervision. The investigating/supervising officer shall enter the probation fee obligation into the interstate documentation and ensure that it is accepted by the sending state and the probationer as a condition of probation prior to accepting the case for supervision in Alaska; and

2. A probationer transferred out of Alaska for interstate transfer of supervision will pay the probation fee of the receiving state, if there is one, as a condition of the transfer of supervision. If the receiving state does not have a probation fee, the probationer will not be required to pay the probation fee obligation while supervised outside of Alaska and/or in a state that does not have a probation fee.
- E. An alternate form of probation fee payment may be authorized, as follows:
1. A probationer may choose to assign his or her permanent fund dividend received under AS 43.23.005 to the Department as credit toward or payment of the probation fee. This option may be exercised in coordination with the supervising probation officer in accordance with procedures established for this purpose. A permanent fund dividend received per this section will be receipted, recorded and transmitted as outlined under B.4. above;
  2. A probationer's permanent fund dividend may be attached for non-payment of probation fees in accordance with AS 12.55.105(c). The Probation Officer shall prepare the paperwork in conformance with procedures established in coordination with the Department of Revenue. The dividend must be considered as a source of payment ahead of any alternate form or excused payment authorization. A dividend received under these circumstances will be receipted, recorded and transmitted as outlined under B.4. above;
  3. For a probationer who is unemployed, the probation fee may be excused for up to 30 days. A probationer who remains unemployed for more than 30 days shall be assigned to a community work service project by or through his or her probation officer. The probationer shall perform unpaid community service and will be credited with \$5.00 for each hour of community service work toward his or her probation fee. Community service performed in lieu of payment of probation fees must be worked during the month for which the probation fee is due. This alternate form of probation fee payment is an exception and may not be routinely applied to any probation case for longer than three months during the term of probation. However, upon the recommendation of the District or Unit Supervisor, the Regional Administrator may, at his or her discretion, extend this alternative form of payment on a month-to-month basis beyond the three month limit on a case-by-case basis;

EXHIBIT "A"

PLEASE PRINT

DATE 12-18-87

Name	Date of Birth	Telephone Number
Alex Ashenfelter	11-06-66	None
Mailing Address		
<del>10000</del> White Mountain Box 411		
Who did you work for this month?	How Many Days?	
_____		
What is your employer's address?	Telephone Number	
_____		
What kind of work did you do this month?		
no jobs or not qualified		
If you didn't work this month, what was the reason?		
None		
Did you have any contacts with the Police this month?		
YES <input checked="" type="radio"/> (NO) (circle one) If yes, explain below. _____		
Money received this month:	Money spent this month:	
0	0	
Your take-home pay from wages or salary:	\$ 0	Living Expenses: \$ 0
Your mates take-home pay from wages or salary:	\$ 0	Payments on Debts: \$ 0
Unemployment Compensation:	\$ 0	Restitution Paid: \$ 0
Welfare Benefits:	\$ 0	Child Support Paid: \$ 0
Pension and other sources of income:	\$ 0	Fines Paid: \$ 0
Total Received:	\$ 0	Total Spent: \$ 0
<p>Comment here on how you are doing, and mention any problems you are having or questions you may have. (Use back if necessary)</p> <p>Doing okay so far, no luck with any jobs here. I'm always not qualified enough or I have a lack of interest in that certain job, but I am still waiting for Kawarak to contact me about trade school so I can get some experience in my cooking field. Merry x-mas and have a happy new year.</p>		

EXHIBIT "B"

Alex Ashenfelter

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
SECOND JUDICIAL DISTRICT AT NOME, ALASKA

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ALEX I. ASHENFELTER, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )  
 Case No. 2NO-S86-531Cr.

REPLY MEMORANDUM

COMES NOW Alex Ashenfelter, through counsel, and submits the following memorandum in reply to the state's opposition to Ashenfelter's motion to dismiss.

I. Introduction

In its response the state does not challenge Ashenfelter's central argument that imprisonment because of indigency is unconstitutional. Neither does the state challenge Ashenfelter's argument that a statute which results in imprisonment because of indigency is unconstitutional. The state takes the position that this particular statute, A.S. 12.55.105, can be interpreted by this court in a manner consistent with the constitution, that is, that the statute must be interpreted to require a consideration of ability to pay. Thus, at a probation revocation hearing Ashenfelter would be able to defend on the grounds that his failure to pay the probation fee was not willful, that is, that payment of the fee was unreasonable in light of his financial situation.

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II. Argument

Up to this point, there appears to be agreement between the parties. However, there is disagreement on two additional and critical points: 1) whether ability to pay must be considered at the time the court sets conditions of probation as well as at the revocation hearing, and 2) whether a consideration of ability to pay can be lawfully performed by the Department of Corrections rather than by the court?

a. Consideration at Time of Sentencing

The above two questions overlap to some degree. The first question has been answered in a weak affirmative by the State of Alaska. The Department of Corrections has adopted regulations and policies providing for pre-revocation review of the requirement that the probation fee be paid. However, the court should make a determination of ability to pay at the time of sentencing. Admittedly, the cases which hold that at the time of sentencing the court must determine a defendant's ability to pay a fine or restitution and set the amount accordingly are based upon an interpretation of the relevant statutes. (A.S. 11.55.035, A.S. 12.55.045). Each of these statutes explicitly requires the sentencing court to take into account the financial resources of the defendant and the nature of the burden its payment will impose. However, since no revocation can occur for non-payment of the probation fee unless the non-payment was willful, just as no revocation can occur for non-payment of a fine or of restitution unless the non-payment

1 was willful, a similar requirement must be read into the  
2 probation fee statute to save its constitutionality. Since  
3 ability to pay is a necessary consideration at the revocation  
4 hearing, it is also a necessary consideration at the time the  
5 court imposes the payment requirement. See Karr v. State, 686  
6 P.2d 1192, 1197 n.14 (Alaska 1984)(in many jurisdictions courts  
7 must consider ability to pay even in the absence of a statutory  
8 requirement).

9 b. Determination by the Department

10 The state also argues that the statute is  
11 constitutional since the Department of Corrections has adopted  
12 regulations and policies which provide for alternate forms of  
13 payment of the probation fee. This argument is falacious.

14 Conditions of probation must be reasonably related  
15 to the goals of rehabilitation. Oyoohok v. Municipality of  
16 Anchorage, 641 P.2d 1267, 1270 (Alaska App. 1982). Ashenfelter  
17 has a statutory and common law right to be free of any condition  
18 of probation not reasonably related to his rehabilitation.  
19 Tiedeman v. State, 576 P.2d 114, 116 (Alaska 1978); Sprague v.  
20 State, 590 P.2d 410, 418 (Alaska 1979). The probation fee  
21 statute is a revenue measure designed to secure funding for the  
22 Department of Corrections. See A.S. 12.55.105(b-d). This  
23 condition of probation has nothing to do with the goals of  
24 sentencing. Therefore, it is unlawful to substitute community  
25 work service which is related to the goals of sentencing for the  
26 probation fee, which is unrelated to the goals of sentencing.

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1                    Additionally, there is no authority for the Department  
2 to impose community work service as a condition of probation.  
3 Under A.S. 12.55.055 the court may allow a defendant to  
4 substitute community work service for a fine or for  
5 imprisonment. However, there is no authorization for the  
6 Department to make that substitution. Unlike the probation fee,  
7 both a fine and imprisonment are related to the goals of  
8 sentencing. Substitution of community work service for a fine  
9 or imprisonment is therefore both reasonable and lawful.

10                    Finally, the Department's assumption of the power to  
11 determinaton whether payment of the probation fee should be  
12 excused is unlawful. Determination of whether a probation fee  
13 should be ordered, the amount, and whether it should be excused  
14 is a judicial responsibility. See Kerr v. State, 686 P.2d 1192,  
15 1197 n.15 (Alaska 1984); Brezenoff v. State, 658 P.2d 1359,  
16 1363-64 (AlaskaApp. 1983) (probation officer may not be delegated  
17 the judicial responsibility of determining the amount of  
18 restitution to be paid and the terms of payment). Sentencing is  
19 a judicial function rather than an administrative function.

### 20                    III. Conclusion

21                    The statute is unconstitutional on its face for it  
22 does not provide for a consideration of ability to pay. (See  
23 A.S. 12.55.035 and .045 for properly written statutes). The  
24 statute can be saved by interpreting it as requiring a  
25 consideration of ability to pay, therefore avoiding imprisonment  
26 for indigency. However, such an interpretation must also

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1 provide for a meaningful judicial determination of ability to  
2 pay. Therefore, if this court saves the statute through  
3 interpretation, this court should also conclude that a judicial  
4 consideration of ability to pay must be made at the time  
5 sentence is imposed and that substitution of community work  
6 service for the revenue producing probation fee requirement is  
7 unlawful.<sup>1</sup>

8 DATED this 25 day of April, 1988 at Nome, Alaska.

9  
10 James V. Gould  
11 James V. Gould  
12 Assistant Public Defender

13 I certify that a copy of the  
14 above was placed in the box  
15 in the Clerk's Office, Nome.  
16 This 25 day of April

17 10 AM

18 Wack

19 Public Defender Agency

20 By: J.V. Gould

21  
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24 1. See James v. Strange, 407 US 128, 32 LEd2d 600, 92  
25 S.Ct. 2027 (1972); Fuller v. Oregon, 417 US 40, 40 LEd2d 642, 94  
26 S.Ct. 2116 (1974); State v. Ayala, 623 P.2d 584 (N.M. App.  
1981); Peterson v. State, 384 So.2d 965 (Fla. 1980); State v.  
Rowton, 645 P.2d 551 (Ore. App.1982).

Sec. 12.55.090. Granting of probation.

NOTES TO DECISIONS

- I. General Consideration.
- II. Five-Year Limitation.

I. GENERAL CONSIDERATION.

Sentence on revocation of probation. — It is not unreasonable to impose a sentence on revocation of probation consecutively to a sentence imposed for crimes committed while on probation. *Hernandez v. State*, Ct. App. Op. No. 424 (File Nos. A-186, A-193), 691 P.2d 287 (1984).

II. FIVE-YEAR LIMITATION.

Tolling of period.

The running of probation is tolled by the filing of a petition to revoke probation. *Gage v. State*, Ct. App. Op. No. 484 (File No. A-643), 702 P.2d 646 (1985).

Where a petition to revoke probation formally charging a probationer with committing a violation is filed and the court subsequently determines that the alleged violation was in fact committed,

there can be no legitimate justification for allowing the probationer to claim credit for time served on probation during the period between the filing of the petition and its ultimate adjudication. *Gage v. State*, Ct. App. Op. No. 484 (File No. A-643), 702 P.2d 646 (1985).

Revocation for offense discovered after probationary period has run. — Where a defendant is convicted of an offense and placed on probation for two years and commits a further offense within the two-year period which is not discovered by the division of corrections until after the two-year period runs, the trial court may revoke probation so long as the petition to revoke probation was filed within the five-year maximum probation period authorized by statute. *Galaktionoff v. State*, Ct. App. Op. No. 686 (File No. A-1625), 733 P.2d 628 (1987).

Sec. 12.55.100. Conditions of probation. (a) While on probation and among the conditions of probation, the defendant may be required

- (1) to pay a fine in one or several sums;
- (2) to make restitution or reparation to aggrieved parties for actual damages or loss caused by the crime for which conviction was had;
- (3) to provide for the support of any persons for whose support the defendant is legally responsible;
- (4) to perform community work in accordance with AS 12.55.055; and
- (5) to pay a periodic probation fee as provided in AS 12.55.105.

(b) The defendant's liability for a fine or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation. (§ 8.10 ch 34 SLA 1962; am § 13 ch 166 SLA 1978; am § 3 ch 104 SLA 1984; am § 13 ch 138 SLA 1986)

Effect of amendments. — The 1986 amendment added paragraph (5) of subsection (a) and made a related grammatical change.

Editor's note: Catchline "End quiring payme the main pam: See the note b line. .

Limitation fine. — The relative limita amount of a fi the apparent vided for und keeping with tory construct solved in favo two statutes. No. 421 (File (1984).

The \$5,000 in former AS plied limitatic impose a fine under subject App. Op. No. P.2d 22 (198-

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Sec. 12. shall requi Correction lished by (b) A pr by assignn under AS form to the of Revenu (c) The c dividend c (d) Mon: general fu account for general fu the accoun the depart SLA 1986

NOTES TO DECISIONS

Editor's notes. — The note under the catchline "Enforcement of court orders requiring payment of fines or restitution" in the main pamphlet should be disregarded. See the note below under the same catchline.

Limitation on authority to impose fine. — The existence of an express legislative limitation on the permissible amount of a fine effectively conflicts with the apparent open ended authority provided for under subsection (a)(1), and in keeping with accepted principles of statutory construction, this conflict must be resolved in favor of the more specific of the two statutes. Stone v. State, Ct. App. Op. No. 421 (File No. A-245), 690 P.2d 22 (1984).

The \$5,000 maximum fine provided for in former AS 17.10.010 constitutes an implied limitation on the court's authority to impose a fine as a condition of probation under subsection (a)(1). Stone v. State, Ct. App. Op. No. 421 (File No. A-245), 690 P.2d 22 (1984).

Remand for determination of earning capacity for restitution order. — Though a presentence report recommended restitution, it did not discuss the defendant's earning capacity or the kinds of jobs that she could reasonably be ex-

pected to perform in the future; it was therefore necessary that the case be remanded to the trial court for further findings. Zimmerman v. State, Ct. App. Op. No. 524 (File No. A-921), 706 P.2d 343 (1985).

Enforcement of court orders requiring payment of fines or restitution. — AS 12.55.051(a) prescribes a specific method for dealing with enforcement of court orders requiring the payment of fines or restitution, regardless of whether such orders are directly imposed as part of the original sentence, under AS 12.55.045, or indirectly imposed as a condition of probation, under this section; AS 12.55.051 expressly provides that imprisonment for failure to pay court-ordered restitution is permissible only if the failure to pay was intentional or the result of bad faith. Lominac v. Municipality of Anchorage, Ct. App. Op. No. 220 (File No. 5960), 658 P.2d 792 (1983).

Quoted in Hood v. Smedley, Sup. Ct. Op. No. 800 (File No. 1406), 498 P.2d 120 (1972); Thibedeau v. State, Sup. Ct. Op. No. 2182 (File No. 4325), 617 P.2d 759 (1980).

Cited in Golden Valley Elec. Ass'n v. Revel, Sup. Ct. Op. No. 3063 (File No. S-1011), 719 P.2d 263 (1986).

Sec. 12.55.105. Probation fee. (a) A court granting probation shall require a periodic probation fee to be paid to the Department of Corrections as a condition of probation. The fee amount shall be established by regulation adopted by the commissioner of corrections.

(b) A probationer may choose to make the probation fee payments by assignment of the probationer's permanent fund dividend received under AS 43.23.005. The Department of Corrections shall provide a form to the probationer to indicate this preference to the Department of Revenue.

(c) The commissioner of corrections may attach the permanent fund dividend of a probationer that is in arrears on the probation fee.

(d) Money collected under this section shall be deposited in the general fund. The commissioner of administration shall separately account for money that the Department of Corrections deposits in the general fund under this subsection. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of AS 33.05. (§ 14 ch 138 SLA 1986)

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(1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220;

(2) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100;

(3) a court ordered probation fee under AS 12.55.105; or

(4) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired.

(c) Claims listed in (b) of this section have priority in the order listed over other claims on a permanent fund dividend. (§ 1 ch 102 SLA 1982; am § 1 ch 157 SLA 1984; am § 1 ch 57 SLA 1985; am § 67 ch 138 SLA 1986)

Revisor's notes. — Sections 12 and 13, ch. 99, SLA 1985, amend this section and add new (b) and (c). The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the section will read: "(a) Fifty percent of a cash permanent fund dividend payment is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash permanent fund dividend payments taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220; (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired; or (3) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation has been taken.

"(b) The department shall require an in-

dividual to take 100 percent of the permanent fund dividend in cash if the department receives a levy, execution, garnishment, attachment or other legal remedy for the collection of a past due debt described in (a)(1) or (2) of this section.

"(c) The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 — 12.55.051 or 12.55.100, require the defendant to take the defendant's permanent fund dividend in cash."

Effect of amendments. — The 1984 amendment added the last sentence and, in the next-to-last sentence, substituted "An exemption is not" for "No exemption is," inserted "(1)," and added the language beginning with "(2) a debt" at the end of the sentence. Section 2, ch. 157, SLA 1984 limits the application of the 1984 amendment to dividends issued for 1984 and subsequent years.

The first 1985 amendment added "or (3) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100" at the end of the next-to-last sentence and in the last sentence inserted "or court ordered restitution" and "and court ordered restitution."

The second 1985 amendment, effective if § 1, ch. 99, SLA 1985 is repealed, rewrote subsection (a) and added subsections (b) and (c).

The 1986 amendment rewrote this section.

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Sec. 14.43.105. Administration of program. The executive secretary shall administer the programs subject to review by the committee and in accordance with the regulations adopted by the committee. The adoption of these regulations is subject to the Administrative Procedure Act (AS 44.62). A summary of the regulations shall be distributed to each applicant. (§ 1 ch 98 SLA 1971; am § 5 ch 136 SLA 1974)

Revisor's notes. — Formerly AS 14.40.757. Renumbered in 1982.

Sec. 14.43.110. Undergraduate loans. The student financial aid committee may make a loan, not to exceed \$5,500 in any one school year, to an undergraduate student eligible under AS 14.43.125. The committee may make a loan for a summer term, even if the total loan for the school year exceeds the \$5,500 maximum, if the loan for the summer term is counted against the \$5,500 maximum for the following school year. (§ 1 ch 98 SLA 1971; am § 6 ch 136 SLA 1974; am § 1 ch 153 SLA 1978; am § 1 ch 89 SLA 1981; am § 1 ch 34 SLA 1985; am § 1 ch 65 SLA 1986)

Revisor's notes. — Formerly AS 14.40.759. Renumbered in 1982.

Effect of amendments. — The 1985 amendment added the second sentence of the section.

The 1986 amendment inserted "student financial aid" in the first sentence and substituted "\$5,500" for "\$6,000" in three places in the section.

Sec. 14.43.115. Graduate loans. The student financial aid committee may make a loan, not to exceed \$6,500 in any one school year, to a graduate student who is eligible under AS 14.43.125 and is pursuing an advanced degree. The committee may make a loan for a summer term, even if the total loan for the school year exceeds the \$6,500 maximum, if the loan for the summer term is counted against the \$6,500 maximum for the following school year. (§ 1 ch 98 SLA 1971; am § 7 ch 136 SLA 1974; am § 2 ch 89 SLA 1981; am § 2 ch 34 SLA 1985; am § 2 ch 65 SLA 1986)

Revisor's notes. — Formerly AS 14.40.761. Renumbered in 1982.

Effect of amendments. — The 1985 amendment added the second sentence.

The 1986 amendment inserted "student financial aid" in the first sentence and substituted "\$6,500" for "\$7,000" in three places in the section.

Sec. 14.43.120. Conditions of loans. (a) Proceeds from scholarship loans may only be used for books, tuition and required fees, and for room and board.

(b) Scholarship loans may only be used to attend a

(1) career education program that has been approved by the commission before July 1, 1986, or has been operating for at least two years before the borrower attends; or

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(2) a college or university that

(A) has been approved by the commission before July 1, 1986, or has been operating for at least two years before the borrower attends;

(B) is accredited by a national or regional accreditation association recognized by the Council on Postsecondary Accreditation or is approved by the commission; and

(C) if the loans are federally insured, is approved by the United States Secretary of Education.

(c) To maintain a loan the student must continue to be enrolled as a full-time student in good standing in a career education program, college or university designated under (b) of this section. The commission shall adopt regulations defining "good standing" for purposes of this subsection.

(d) Scholarship loans may not be made to a student

(1) for more than five years of undergraduate study;

(2) for more than five years of graduate study;

(3) for more than a total of eight years of undergraduate and graduate study;

(4) to attend an institution, other than a nonprofit institution, if the total amount of scholarship loans made to students to attend that institution exceeds \$100,000 and the default rate on those loans exceeds the program default rate by more than 150 percent as defined by regulation.

(e) Loans are interest bearing while a student is enrolled under (c) of this section or is receiving a deferment of payments under (k) of this section; however, a student is entitled to have a portion of the interest paid in accordance with (l) of this section.

(f) Interest on a loan given under AS 14.43.090 — 14.43.160 is at the rate of eight percent a year unless the loan is in default. Interest on a loan that is in default is 10 percent a year for the period the loan is in default.

(g) Repayment of the principal and interest on the loan begins no later than one year after the borrower's studies are terminated. The loan shall provide for repayment of the total amount owed in periodic installments in not more than 10 years from the commencement of repayment, except as provided in (k) and (m) of this section. If the commission and the borrower agree to a different repayment schedule, the borrower shall repay the loan in accordance with the agreement. A borrower may make payments earlier than required by this subsection.

(h) Security may not be required for a loan; however, provision shall be made for payment of all fees and costs incurred in collection of the amount owed on the loan if it becomes delinquent or in default.

(i) If a loan is in default, the commission shall notify the borrower that repayment of the remaining balance is accelerated and due by sending the borrower a notice by registered or certified mail. The

permanent fund dividend of a borrower may be taken under AS 43.23.065(b)(4) to satisfy the balance due on the defaulted loan.

(j) *[Repealed, § 19 ch 92 SLA 1987.]*

(k) Periodic installments of principal shall be deferred, but interest shall accrue and be paid unless the student is eligible for interest payment benefits under (l) of this section during any of the following:

(1) return to student status as provided in (c) of this section;

(2) serving an initial period of up to six years on active duty as a member of the armed forces of the United States;

(3) serving, for up to three years, as a full-time volunteer under the Peace Corps Act;

(4) serving, for up to three years, as a full-time volunteer under the Domestic Volunteer Service Act of 1973;

(5) for a one-time period up to 12 months in which the borrower is seeking and unable to find employment in the United States; or

(6) if the borrower becomes 50 percent or more disabled as certified by competent medical authority.

(l) The state shall pay the interest on that portion of a loan that is not federally insured during

(1) the period in which the borrower is a full-time student;

(2) deferments under (k) of this section.

(m) In case of hardship, the committee may extend repayment of a loan for an additional period of up to five years in increments no longer than 12 months each.

(n) *[Repealed, § 11 ch 89 SLA 1981.]*

(o) *[Repealed, § 19 ch 92 SLA 1987.]*

(p) For purposes of this section, a person qualifies as a resident if the person is physically present in the state with the intent to remain permanently in the state or, if not physically present in the state, the person intends to return to the state and is absent due to military service.

(q) For the purposes of this section a loan is in default if a loan payment is 120 or more days past due.

(r) The rate of interest, time of payment of an installment of principal or interest, or other terms of a scholarship loan may be modified if required to establish or maintain tax-exempt status under 26 U.S.C. 103 (Internal Revenue Code of 1986), as amended, for the interest on bonds issued by the Alaska Student Loan Corporation. (§ 1 ch 98 SLA 1971; am § 4 ch 156 SLA 1972; am § 6 ch 78 SLA 1974; am § 8 ch 136 SLA 1974; am §§ 1 — 4 ch 99 SLA 1977; am §§ 3 — 8 ch 87 SLA 1979; am §§ 3 — 9, 11 ch 89 SLA 1981; am §§ 2 — 4 ch 158 SLA 1984; am § 3 ch 34 SLA 1985; am §§ 3, 4 ch 65 SLA 1986; am §§ 5 — 9, 19 ch 92 SLA 1987)

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Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
NR	BARD	[REDACTED], Arnold L.	168072	180.00	08/25/88	0.00
NR	BARD	[REDACTED] James	120015	225.00	11/25/88	69.00
NR	BARD			405.00		69.00
NR	BTHL	[REDACTED] Edward	68631	180.00	12/23/88	45.00
NR	BTHL	[REDACTED] Carl G.	66285	90.00	10/13/88	90.00
NR	BTHL	[REDACTED] Joseph	132690	135.00	12/23/88	0.00
NR	BTHL	[REDACTED] Dale	126336	45.00	10/13/88	0.00
NR	BTHL	[REDACTED] Golga	108441	225.00	12/23/88	0.00
NR	BTHL	[REDACTED] Charles	98802	225.00	12/23/88	0.00
NR	BTHL	[REDACTED] John Jr.	128073	45.00	12/23/88	0.00
NR	BTHL	[REDACTED] Preston	69441	44.00	10/13/88	1.00
NR	BTHL	[REDACTED] James	143619	225.00	12/23/88	0.00
NR	BTHL	[REDACTED] Joseph	141060	45.00	12/23/88	189.00
NR	BTHL	[REDACTED] Edwin	117795	45.00	12/23/88	213.00
NR	BTHL	[REDACTED] Leonty	128079	180.00	12/23/88	16.50
NR	BTHL			1484.00		554.50
NR	FRBK	[REDACTED] Gerald	140340	0.00	11/28/88	45.00
NR	FRBK	[REDACTED] Allen	127500	135.00	10/31/88	45.00
NR	FRBK	[REDACTED] Bill	24417	0.00	08/25/88	-7.50
NR	FRBK	[REDACTED] Charles	148806	0.00	08/25/88	0.00
NR	FRBK	[REDACTED] Terry	112332	285.00	11/25/88	0.00
NR	FRBK	[REDACTED] Raymond	127425	180.00	11/25/88	0.00
NR	FRBK	[REDACTED] Orville	133683	744.09	10/13/88	-264.09
NR	FRBK	[REDACTED] Dennis	143427	90.00	08/24/88	0.00
NR	FRBK	[REDACTED] John	132612	283.50	11/25/88	26.00
NR	FRBK	[REDACTED] Guy	153411	225.00	10/13/88	0.00
NR	FRBK	[REDACTED] Jerry A.	127659	0.00	11/28/88	-605.00
NR	FRBK	[REDACTED] Chester	88293	0.00	11/28/88	-35.00
NR	FRBK	[REDACTED] Michelle Y.	178959	100.00	11/29/88	5.00
NR	FRBK	[REDACTED] Tony	162756	105.00	10/31/88	33.00
NR	FRBK	[REDACTED] Martin	162960	225.00	11/25/88	0.00
NR	FRBK	[REDACTED] Richard	154611	157.50	11/01/88	0.00
NR	FRBK	[REDACTED] Patrick	127191	135.00	11/25/88	0.00
NR	FRBK	[REDACTED] Claude	155130	90.00	10/13/88	0.00
NR	FRBK	[REDACTED] Donald	136788	0.00	11/01/88	16.31
NR	FRBK	[REDACTED] Michelle	136833	61.31	11/01/88	0.00
NR	FRBK	[REDACTED] Blane	68898	280.50	10/12/88	0.00
NR	FRBK	[REDACTED] Jesse	1773	135.00	10/13/88	0.00
NR	FRBK	[REDACTED] Eric J.	169905	93.00	11/01/88	0.00
NR	FRBK	[REDACTED] William	104349	135.00	11/01/88	-90.00
NR	FRBK	[REDACTED] Samuel	143424	360.00	11/01/88	42.00
NR	FRBK	[REDACTED] Jack	131364	270.00	11/25/88	0.00
NR	FRBK	[REDACTED] Clinton	121926	180.00	11/25/88	45.00
NR	FRBK	[REDACTED] Donald	101688	50.00	10/12/88	109.50
NR	FRBK	[REDACTED] William	40929	100.00	10/13/88	40.00
NR	FRBK	[REDACTED] Leroy	129954	528.00	10/13/88	0.00

Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
NR	FRBK	[REDACTED] Vickie S.	133410	0.00	11/28/88	-555.00
NR	FRBK	[REDACTED] John	148812	135.00	10/13/88	0.00
NR	FRBK	[REDACTED] Howard	139581	135.00	11/25/88	13.50
NR	FRBK	[REDACTED] Darlene	160563	193.50	11/25/88	45.00
NR	FRBK	[REDACTED] Roger Eric	112815	14.00	11/25/88	222.50
NR	FRBK	[REDACTED] Lazaro	137751	45.00	11/25/88	142.50
NR	FRBK	[REDACTED] Selena	167577	115.00	10/31/88	24.50
NR	FRBK	[REDACTED] Gerald	93966	30.00	08/25/88	0.00
NR	FRBK	[REDACTED] Larry	165168	90.00	10/13/88	0.00
NR	FRBK	[REDACTED] Michael T.	166338	90.00	10/13/88	25.50
NR	FRBK	[REDACTED] Willard	147378	90.00	11/01/88	95.00
NR	FRBK	[REDACTED] Allen	158652	0.00	08/25/88	0.00
NR	FRBK	[REDACTED] Merle	132510	180.00	11/01/88	70.50
NR	FRBK	[REDACTED] Linda S.	173967	0.00	11/28/88	45.00
NR	FRBK	[REDACTED] Robert	162755	67.50	10/13/88	45.00
NR	FRBK	[REDACTED] Robert	162753	45.00	11/01/88	112.50
NR	FRBK	[REDACTED] Russell	69468	150.00	11/01/88	63.00
NR	FRBK	[REDACTED] Ron	117798	200.00	11/25/88	104.50
NR	FRBK	[REDACTED] Frank	119541	181.50	08/25/88	0.00
NR	FRBK	[REDACTED] Floyd	135633	156.00	10/13/88	0.00
NR	FRBK	[REDACTED] William	142731	45.00	10/13/88	190.50
NR	FRBK	[REDACTED] Mark	116052	180.00	10/13/88	0.00
NR	FRBK	[REDACTED] Michael	157305	404.00	12/07/88	0.00
NR	FRBK	[REDACTED] Wayne	157824	200.00	11/01/88	25.00
NR	FRBK	[REDACTED] John	157821	180.00	11/01/88	0.00
NR	FRBK	[REDACTED] Brenda	136083	100.00	11/25/88	148.50
NR	FRBK	[REDACTED] Larry	161115	150.00	11/01/88	55.50
NR	FRBK	[REDACTED] Christine L.	159309	0.00	10/13/88	110.00
NR	FRBK	[REDACTED] Paul L.	128082	175.00	10/13/88	39.50
NR	FRBK	[REDACTED] William T.	158619	407.00	11/28/88	1.50
NR	FRBK	[REDACTED] Brandon	131217	0.00	11/28/88	89.00
NR	FRBK	[REDACTED] Juan	170799	0.00	11/28/88	-135.00
NR	FRBK	[REDACTED] Walter	76623	230.00	11/25/88	48.50
NR	FRBK	[REDACTED] Tanara	153951	0.00	11/28/88	45.00
NR	FRBK	[REDACTED] Thomas	125913	180.00	10/31/88	0.00
NR	FRBK	[REDACTED] Raymond	27759	0.00	10/25/88	312.00
NR	FRBK	[REDACTED] Chad	137175	100.00	10/13/88	80.00
NR	FRBK	[REDACTED] Melvin	34785	200.00	11/01/88	-20.00
NR	FRBK	[REDACTED] Arnold	157833	90.00	11/01/88	0.00
NR	FRBK	[REDACTED] Wesley	130950	151.00	10/31/88	45.00
NR	FRBK	[REDACTED] Gary F.	83943	180.00	11/01/88	10.50
NR	FRBK	[REDACTED] Ronald	64596	0.00	11/28/88	-265.00
NR	FRBK	[REDACTED] John	167076	405.00	08/24/88	-315.00
NR	FRBK	[REDACTED] John	94779	0.00	08/25/88	7.50
NR	FRBK	[REDACTED] Beverly	132447	162.50	08/25/88	0.00
NR	FRBK	[REDACTED] Robert D.	143901	0.00	11/28/88	0.00
NR	FRBK	[REDACTED] Jonathan	45933	0.00	11/28/88	16.50
NR	FRBK	[REDACTED] Alan D.	158241	0.00	11/28/88	-420.00
NR	FRBK	[REDACTED] Edward	126378	40.00	10/13/88	140.00
NR	FRBK	[REDACTED] Jacqueline	142005	90.00	11/25/88	178.50
NR	FRBK	[REDACTED] Gene	164202	189.50	10/31/88	45.00
NR	FRBK	[REDACTED] James	125256	90.00	11/01/88	110.50

Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
NR	FRBK			10814.40		402.72
NR	KOTZ	[REDACTED] George	129687	225.00	12/23/88	0.00
NR	KOTZ	[REDACTED] Chris	146259	225.00	12/23/88	0.00
NR	KOTZ	[REDACTED] Kenneth	144939	270.00	11/01/88	0.00
NR	KOTZ	[REDACTED] Michael	174135	225.00	12/23/88	0.00
NR	KOTZ	[REDACTED] Thomas Sr.	176517	90.00	12/23/88	0.00
NR	KOTZ	[REDACTED] Ricky C.	150615	240.00	10/13/88	0.00
NR	KOTZ	[REDACTED] John	101148	90.00	12/23/88	135.00
NR	KOTZ			1365.00		135.00
NR	NOME	[REDACTED] Robert	62601	45.00	10/13/88	45.00
NR	NOME	[REDACTED] Shirlene	82467	225.00	11/25/88	0.00
NR	NOME	[REDACTED] Patty	141099	241.50	12/23/88	21.00
NR	NOME	[REDACTED] George I. Jr.	156279	0.00	11/25/88	0.00
NR	NOME	[REDACTED] Robert	33387	0.00	11/25/88	460.50
NR	NOME	[REDACTED] Larry	41559	180.00	11/25/88	13.50
NR	NOME	[REDACTED] Thomas	146256	0.00	11/01/88	-90.00
NR	NOME	[REDACTED] Thomas	144942	326.00	11/01/88	0.00
NR	NOME	[REDACTED] Joel L.	74877	0.00	11/25/88	400.00
NR	NOME	[REDACTED] John	124626	225.00	11/25/88	0.00
NR	NOME	[REDACTED] Warren	23631	45.00	12/23/88	10.00
NR	NOME	[REDACTED] Wayne	50370	540.00	08/26/88	-450.00
NR	NOME	[REDACTED] Margaret	130335	0.00	11/25/88	111.00
NR	NOME	[REDACTED] Dennis	114363	225.00	11/25/88	0.00
NR	NOME	[REDACTED] Karen	87477	135.00	10/13/88	0.00
NR	NOME	[REDACTED] Scott	141141	180.00	11/25/88	180.00
NR	NOME			2367.50		701.00
NR				16435.90		1862.22
SC	ANCH	[REDACTED] Jeffrey	136173	180.00	08/30/88	0.50
SC	ANCH	[REDACTED] Robert Michael	177159	109.00	11/29/88	2.00
SC	ANCH	[REDACTED] Raymond C.	117369	135.00	12/01/88	45.00
SC	ANCH	[REDACTED] Fannie	128604	135.00	08/30/88	135.00
SC	ANCH	[REDACTED] Samuel J.	145995	90.00	08/30/88	0.00
SC	ANCH	[REDACTED] Crystal	175923	90.00	11/29/88	61.50
SC	ANCH	[REDACTED] Robert	141726	175.00	12/01/88	0.00
SC	ANCH	[REDACTED] Pamela O.	148557		09/02/88	0.00
SC	ANCH	[REDACTED] Ear S.	133113	90.00	11/29/88	537.00
SC	ANCH	[REDACTED] William E.	148188	-25.05	09/13/88	0.00
SC	ANCH	[REDACTED] Richard	139353	19.50	08/30/88	0.00

Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
SC	ANCH	[REDACTED] Anthony	130059	190.00	11/29/88	205.00
SC	ANCH	[REDACTED] Gust	127395	45.00	08/30/88	0.00
SC	ANCH	[REDACTED] Bienvenido	101571	180.00	12/01/88	34.50
SC	ANCH	[REDACTED] Jim	136233	180.00	08/30/88	22.00
SC	ANCH	[REDACTED] Beth	175578	90.00	12/01/88	0.00
SC	ANCH	[REDACTED] Michael R.	144486		09/02/88	0.00
SC	ANCH	[REDACTED] Richard	108327	135.00	09/01/88	0.00
SC	ANCH	[REDACTED] Sandra	157746	135.00	12/01/88	172.50
SC	ANCH	[REDACTED] Allen K.	21984		09/02/88	0.00
SC	ANCH	[REDACTED] George A.	92256	40.00	11/29/88	392.00
SC	ANCH	[REDACTED] James L.	145107	180.00	12/01/88	0.00
SC	ANCH	[REDACTED] Larry	177195	109.50	11/29/88	18.00
SC	ANCH	[REDACTED] John	91125	90.00	09/29/88	49.50
SC	ANCH	[REDACTED] Ron	174153	90.00	11/29/88	0.00
SC	ANCH	[REDACTED] Shannon	168549	135.00	09/28/88	0.00
SC	ANCH	[REDACTED] John	141852	60.00	08/30/88	138.00
SC	ANCH	[REDACTED] Sean	133140	180.00	10/27/88	0.00
SC	ANCH	[REDACTED] Eric J.	123930	135.00	09/29/88	45.00
SC	ANCH	[REDACTED] Jeff	150015	100.00	08/30/88	123.50
SC	ANCH	[REDACTED] Jeffrey	128847	180.00	09/29/88	84.00
SC	ANCH	[REDACTED] Aaron	161205	135.00	09/29/88	0.00
SC	ANCH	[REDACTED] Jose L.	63660	114.50	08/30/88	0.00
SC	ANCH	[REDACTED] Denise	93912	180.00	12/01/88	1.50
SC	ANCH	[REDACTED] Robert E.	77562	70.00	08/30/88	227.50
SC	ANCH	[REDACTED] Leonard W.	1623		09/02/88	0.00
SC	ANCH	[REDACTED] William	165858	81.00	11/29/88	0.00
SC	ANCH	[REDACTED] Robert	105504	180.00	11/29/88	0.00
SC	ANCH	[REDACTED] Jerrell	134454	135.00	09/28/88	0.00
SC	ANCH	[REDACTED] Tammy	161937	135.00	12/01/88	16.50
SC	ANCH	[REDACTED] Robert Martin	132513	80.00	11/29/88	10.00
SC	ANCH	[REDACTED] Stacy L.	127752	90.00	08/30/88	-22.69
SC	ANCH	[REDACTED] James A.	161643		09/02/88	0.00
SC	ANCH	[REDACTED] Sherwyn Miles	128097	200.00	11/29/88	169.00
SC	ANCH	[REDACTED] Ronald	77416	45.00	12/01/88	10.50
SC	ANCH	[REDACTED] Rose	155931	45.00	08/30/88	0.00
SC	ANCH	[REDACTED] Linda L.	136149	708.19	08/30/88	10.31
SC	ANCH	[REDACTED] Andrew R.	113424	114.00	08/30/88	0.00
SC	ANCH	[REDACTED] Gerald	108906	90.00	08/30/88	135.00
SC	ANCH	[REDACTED] Robert R.	148146	90.00	08/30/88	0.00
SC	ANCH	[REDACTED] John F.	120429	90.00	09/29/88	57.00
SC	ANCH	[REDACTED] Todd R.	184095	20.00	11/29/88	0.00
SC	ANCH	[REDACTED] Peter	2277		09/02/88	0.00
SC	ANCH	[REDACTED] Valton	140139	180.00	12/01/88	84.00
SC	ANCH	[REDACTED] Peter A.	129780		09/02/88	0.00
SC	ANCH	[REDACTED] Deborah K.	168555	135.00	12/01/88	0.00
SC	ANCH	[REDACTED] Deborah L.	140970	135.00	12/01/88	49.50
SC	ANCH	[REDACTED] Troy	44466	45.00	12/01/88	9.00
SC	ANCH	[REDACTED] Thomas W.	101886		09/02/88	0.00
SC	ANCH	[REDACTED] Linda E.	140616	20.00	08/30/88	175.00
SC	ANCH	[REDACTED] Richard D.	67311	50.00	12/01/88	0.00
SC	ANCH	[REDACTED] Randy	118059	180.00	12/01/88	45.00
SC	ANCH	[REDACTED] James	174879	45.00	11/29/88	7.50
SC	ANCH	[REDACTED] Trenea K.	154116	75.00	08/30/88	150.00
SC	ANCH	[REDACTED] Paul	112026	75.00	12/01/88	0.00

Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
SC	ANCH	[REDACTED] Patrick J.	171834		09/02/88	0.00
SC	ANCH	[REDACTED] Christopher P.	162864	225.00	11/29/88	12.00
SC	ANCH	[REDACTED] Tyrnil	128142	45.00	08/30/88	42.00
SC	ANCH	[REDACTED] Tom	58236	270.00	12/01/88	37.00
SC	ANCH	[REDACTED] Tammy	126075	270.00	11/29/88	45.00
SC	ANCH	[REDACTED] Garland Darrel	123666	225.00	09/29/88	0.00
SC	ANCH	[REDACTED] Terry	122841	202.00	08/30/88	-18.50
SC	ANCH	[REDACTED] John C.	148470	135.00	09/29/88	0.00
SC	ANCH	[REDACTED] Connie L.	151083	50.00	08/30/88	355.00
SC	ANCH	[REDACTED] Steven C.	132402	180.00	11/29/88	-0.50
SC	ANCH	[REDACTED] Roscoe L.	2922		09/02/88	0.00
SC	ANCH	[REDACTED] Michael T.	167301	135.00	11/29/88	55.50
SC	ANCH	[REDACTED] Daniel	24732	90.00	08/30/88	0.00
SC	ANCH	[REDACTED] Albert	155196	90.00	11/29/88	43.50
SC	ANCH	[REDACTED] Dennis H.	162867	100.00	12/01/88	105.50
SC	ANCH	[REDACTED] Betty	160044	90.00	12/01/88	0.00
SC	ANCH	[REDACTED] Ronda	127344	225.00	12/01/88	315.00
SC	ANCH	[REDACTED] Byong Hak	115251	135.00	11/29/88	301.50
SC	ANCH	[REDACTED] Gale	153645	135.00	09/29/88	0.00
SC	ANCH	[REDACTED] John W.	135234	192.00	11/29/88	0.00
SC	ANCH	[REDACTED] James	125313	45.00	08/31/88	0.00
SC	ANCH	[REDACTED] Lane T.	169695	90.00	11/29/88	127.50
SC	ANCH	[REDACTED] Walter	139545	65.00	11/29/88	145.00
SC	ANCH	[REDACTED] Michael	139509	180.00	12/02/88	0.00
SC	ANCH	[REDACTED] Cesar	163632	135.00	12/02/88	0.00
SC	ANCH	[REDACTED] Louis	115530	45.00	08/31/88	42.20
SC	ANCH	[REDACTED] Edna F.	152157	45.00	09/29/88	315.00
SC	ANCH	[REDACTED] Gerald	19494	135.00	09/29/88	1.50
SC	ANCH	[REDACTED] Mohammad	159240	225.00	11/29/88	45.00
SC	ANCH	[REDACTED] Deborah A.	137256	10.00	12/02/88	385.50
SC	ANCH	[REDACTED] Dennis	145755	225.00	12/02/88	112.50
SC	ANCH	[REDACTED] Kirk	178173	45.00	12/02/88	88.50
SC	ANCH	[REDACTED] Darlene (Shockly	154119	180.00	08/31/88	0.00
SC	ANCH	[REDACTED] Terry	167766	90.00	08/31/88	45.00
SC	ANCH	[REDACTED] Forrest	157602	135.00	11/29/88	123.00
SC	ANCH	[REDACTED] Simon	49764	135.00	11/29/88	0.00
SC	ANCH	[REDACTED] Vincent W.	119367	225.00	12/02/88	-0.50
SC	ANCH	[REDACTED] Bradley	145122	180.00	11/29/88	0.00
SC	ANCH	[REDACTED] Kathy	156261	45.00	08/31/88	90.00
SC	ANCH	[REDACTED] Yvonne	174150	45.00	08/31/88	0.00
SC	ANCH	[REDACTED] Charles	166617	225.00	01/12/89	0.00
SC	ANCH	[REDACTED] Lamar	73953	135.00	11/29/88	0.00
SC	ANCH	[REDACTED] Christopher	127761	90.00	12/02/88	135.00
SC	ANCH	[REDACTED] Carmen	174762	94.00	11/29/88	50.00
SC	ANCH	[REDACTED] George E.	126388	4580.00	12/02/88	-4455.00
SC	ANCH	[REDACTED] Kimberly	161883	200.00	10/37/88	103.50
SC	ANCH	[REDACTED] Daniel C.	120423	135.00	11/29/88	90.00
SC	ANCH	[REDACTED] Carlos A.	130125	135.00	08/31/88	135.00
SC	ANCH	[REDACTED] Charles	136689	312.00	12/02/88	45.00
SC	ANCH	[REDACTED] Elikisone	148422	180.00	11/29/88	10.50
SC	ANCH	[REDACTED] Eddie	141348	360.00	11/29/88	0.00
SC	ANCH	[REDACTED] Nelson	172092	90.00	11/29/88	13.50
SC	ANCH	[REDACTED] Daryl	113898	135.00	12/02/88	0.00
SC	ANCH	[REDACTED] Brian	155937	135.00	10/27/88	0.00

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SC	ANCH	[REDACTED] Kenneth C.	71163	45.00	08/31/88	120.00
SC	ANCH	[REDACTED] Susan P.	159969	185.00	12/02/88	85.00
SC	ANCH	[REDACTED] Steven	170187	135.00	12/02/88	16.50
SC	ANCH	[REDACTED] Dedrick	133437	90.00	12/02/88	90.00
SC	ANCH	[REDACTED] Darrell R.	42423	180.00	12/02/88	45.00
SC	ANCH	[REDACTED] Jeffrey	166356	45.00	10/27/88	100.50
SC	ANCH	[REDACTED] Brad	174597	49.50	09/29/88	10.50
SC	ANCH	[REDACTED] Russell D.	114384	45.00	08/31/88	225.00
SC	ANCH	[REDACTED] Linda	162297	135.00	11/29/88	90.00
SC	ANCH	[REDACTED] Philip	126843	180.00	09/29/88	0.00
SC	ANCH	[REDACTED] Mavis	167013	90.00	12/02/88	55.50
SC	ANCH	[REDACTED] Ivan	139065	135.00	09/29/88	25.50
SC	ANCH	[REDACTED] Sabrina	145866	135.00	12/02/88	45.00
SC	ANCH	[REDACTED] Charles W. Jr.	60402	200.00	12/02/88	349.50
SC	ANCH	[REDACTED] David	147240	225.00	09/29/88	45.00
SC	ANCH	[REDACTED] Lynwood J.	149943	231.00	12/02/88	30.00
SC	ANCH	[REDACTED] Brian	158106	120.00	09/29/88	0.00
SC	ANCH	[REDACTED] Arthur	138111	760.00	12/02/88	-20.50
SC	ANCH	[REDACTED] Gary Richard	118536	90.00	11/29/88	118.50
SC	ANCH	[REDACTED] Gus A.	174888	0.00	09/02/88	45.00
SC	ANCH	[REDACTED] Calvin	110286	180.00	12/02/88	0.00
SC	ANCH	[REDACTED] Randy	147798	135.00	09/29/88	0.00
SC	ANCH	[REDACTED] Sally Jo	135030	30.00	11/29/88	-4.50
SC	ANCH	[REDACTED] Dean	50043	90.00	08/31/88	-10.50
SC	ANCH	[REDACTED] Kevin	181032	102.00	11/29/88	0.00
SC	ANCH	[REDACTED] Fei	45729	180.00	11/29/88	0.00
SC	ANCH	[REDACTED] Jason A.	136113	180.00	11/29/88	0.00
SC	ANCH	[REDACTED] Timothy	148449	10.00	08/31/88	230.00
SC	ANCH	[REDACTED] Norman	37413	135.00	12/02/88	0.00
SC	ANCH	[REDACTED] Denali Beth	143448	106.50	08/31/88	45.00
SC	ANCH	[REDACTED] Ted	167748	90.00	08/31/88	0.00
SC	ANCH	[REDACTED] Mark M.	151350	225.00	12/02/88	45.00
SC	ANCH	[REDACTED] Rebecca	120138	135.00	11/29/88	180.00
SC	ANCH	[REDACTED] Ethan D.	160560		09/02/88	0.00
SC	ANCH	[REDACTED] Dennis	155037	360.00	12/02/88	-16.50
SC	ANCH	[REDACTED] Nancy	124959	180.00	12/02/88	0.00
SC	ANCH	[REDACTED] Bryson	151911	180.00	12/02/88	0.00
SC	ANCH	[REDACTED] Charlotte	177549	45.00	12/02/88	0.00
SC	ANCH	[REDACTED] Robert	163725	60.00	12/02/88	0.00
SC	ANCH	[REDACTED] Donald	136908	90.00	09/29/88	45.00
SC	ANCH	[REDACTED] Tony	167754	108.00	08/31/88	0.00
SC	ANCH	[REDACTED] Kerry	59976	90.00	09/29/88	45.00
SC	ANCH	[REDACTED] Sandy	139644	135.00	09/29/88	35.00
SC	ANCH	[REDACTED] Thomas C.	49524		09/02/88	0.00
SC	ANCH	[REDACTED] Sheila E.	140748	225.00	12/02/88	0.00
SC	ANCH	[REDACTED] Michael A.	116415	135.00	09/29/88	0.00
SC	ANCH			25057.64		4209.82
SC	KENI	[REDACTED] Clarence	158577	66.00	08/23/88	0.00
SC	KENI	[REDACTED] Perry	147786	270.00	12/22/88	0.00
SC	KENI	[REDACTED] Michael	70188	315.00	11/29/88	0.00

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SC	KENI	[REDACTED] Suetta	139329	260.00	12/22/88	10.00
SC	KENI	[REDACTED] John	160935	180.00	11/29/88	0.00
SC	KENI	[REDACTED] Billy	146118	270.00	12/22/88	0.00
SC	KENI	[REDACTED] Edwin Jr.	55677	400.00	11/29/88	5.00
SC	KENI	[REDACTED] Howard	135855	225.00	09/23/88	0.00
SC	KENI	[REDACTED] Duff	72498	360.00	12/22/88	0.00
SC	KENI	[REDACTED] Loren	124818	180.00	11/29/88	0.00
SC	KENI	[REDACTED] Martin	136653	405.00	11/29/88	69.00
SC	KENI	[REDACTED] Mark	17298	298.00	12/22/88	2.00
SC	KENI	[REDACTED] Nathan P.	144432	270.00	12/22/88	0.00
SC	KENI	[REDACTED] Paul	111393	0.00	08/23/88	135.00
SC	KENI	[REDACTED] Robert	144627	585.00	12/22/88	0.00
SC	KENI	[REDACTED] Victor S.	115932	90.00	11/29/88	40.50
SC	KENI	[REDACTED] Scott	162366	270.00	12/22/88	12.00
SC	KENI	[REDACTED] Aaron	139056	691.00	11/29/88	0.00
SC	KENI	[REDACTED] Dwayne	139800	27.00	08/23/88	0.00
SC	KENI	[REDACTED] Raymond	147393	270.00	12/22/88	0.00
SC	KENI	[REDACTED] David	158109	180.00	12/22/88	148.50
SC	KENI	[REDACTED] Leonard B.	168285	180.00	12/22/88	90.00
SC	KENI	[REDACTED] Sidney Bruce	25758	135.00	12/22/88	28.50
SC	KENI	[REDACTED] David	148191	225.00	11/29/88	180.00
SC	KENI	[REDACTED] Paul	140880	90.00	09/23/88	90.00
SC	KENI	[REDACTED] Pamela	120378	45.00	09/23/88	270.00
SC	KENI	[REDACTED] Kelly	164106	270.00	12/22/88	12.00
SC	KENI	[REDACTED] Ronald	139827	25.00	11/29/88	0.00
SC	KENI	[REDACTED] Brian J.	169827	45.00	09/23/88	0.00
SC	KENI	[REDACTED] Robert	131838	225.00	09/23/88	0.00
SC	KENI	[REDACTED] Alfred J.	159060	135.00	09/23/88	0.00
SC	KENI	[REDACTED] Hugh F.	135918	315.00	11/29/88	135.00
SC	KENI	[REDACTED] David	162939	225.00	12/22/88	0.00
SC	KENI			7527.00		1227.50
SC	KODK	[REDACTED] Arthur	15924	45.00	12/22/88	225.00
SC	KODK	[REDACTED] Carl M.	164631	130.00	09/23/88	21.00
SC	KODK	[REDACTED] Dante	156642	40.00	08/23/88	105.00
SC	KODK	[REDACTED] Timothy	49632	279.00	11/29/88	0.00
SC	KODK	[REDACTED] Joseph	84732	630.00	11/30/88	0.00
SC	KODK	[REDACTED] Barbara	163323	270.00	12/22/88	0.00
SC	KODK	[REDACTED] Scott	162234	415.00	12/22/88	-16.00
SC	KODK	[REDACTED] Norman	154494	205.00	11/29/88	105.00
SC	KODK	[REDACTED] Alfred	159363	775.00	11/29/88	-100.00
SC	KODK	[REDACTED] Forrestt	167181	100.00	11/29/88	26.50
SC	KODK	[REDACTED] Richard	101451	225.00	11/29/88	0.00
SC	KODK	[REDACTED] Wenceslao	154497	225.00	11/29/88	0.00
SC	KODK	[REDACTED] Juli	150364	400.00	08/23/88	-55.00
SC	KODK	[REDACTED] George	169017	180.00	11/30/88	0.00
SC	KODK	[REDACTED] Raymond	125622	198.00	11/29/88	90.00
SC	KODK	[REDACTED] Eric	139257	100.00	09/23/88	350.00
SC	KODK	[REDACTED] Michael	162945	45.00	11/29/88	0.00
SC	KODK	[REDACTED] Rick	158370	225.00	11/30/88	0.00
SC	KODK	[REDACTED] Decilio L.	169923	230.00	12/22/88	45.00

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SC	KODK	[REDACTED] RoseAnn	101568	339.00	11/29/88	0.00
SC	KODK	[REDACTED] Joseph	165033	90.50	11/29/88	9.00
SC	KODK	[REDACTED] Peter	124866	150.00	11/30/88	100.00
SC	KODK	[REDACTED] Anthony	180507	168.00	12/22/88	34.50
SC	KODK	[REDACTED] Jeff	171327	366.00	11/29/88	0.00
SC	KODK	[REDACTED] Jacob	53736	225.00	12/22/88	107.50
SC	KODK	[REDACTED] Joseph	165792	185.00	11/29/88	40.00
SC	KODK	[REDACTED] Sean	73707	185.00	11/29/88	125.00
				6433.50		1213.00
SC	PLMR	[REDACTED] John	114747	413.64	12/22/88	36.36
SC	PLMR	[REDACTED] Julie	162246	45.00	08/23/88	0.00
SC	PLMR	[REDACTED] John	167292	225.00	12/22/88	0.00
SC	PLMR	[REDACTED] Arthur	18183	826.93	12/22/88	-0.43
SC	PLMR	[REDACTED] Gordon	145653	145.00	11/30/88	35.00
SC	PLMR	[REDACTED] Dale	142644	1026.93	11/30/88	-936.93
SC	PLMR	[REDACTED] Aaron	121689	33.00	12/22/88	0.00
SC	PLMR	[REDACTED] Justin	143703	45.00	11/30/88	90.00
SC	PLMR	[REDACTED] Lor an	125454	270.00	12/22/88	0.00
SC	PLMR	[REDACTED] Robert	166332	350.00	12/22/88	0.00
SC	PLMR	[REDACTED] Tim	134355	45.00	08/23/88	0.00
SC	PLMR	[REDACTED] Tracy	137091	5.00	11/30/88	0.00
SC	PLMR	[REDACTED] Terry	134064	135.00	11/30/88	0.00
SC	PLMR	[REDACTED] Douglas	144330	135.00	12/22/88	90.00
SC	PLMR	[REDACTED] Ronnie	151203	225.00	12/22/88	0.00
SC	PLMR	[REDACTED] Era L.	175524	6.00	11/30/88	0.00
SC	PLMR	[REDACTED] James	27057	283.50	12/22/88	0.00
SC	PLMR	[REDACTED] Patrick	142482	90.00	11/30/88	10.00
SC	PLMR	[REDACTED] Lars S.	186702	88.50	12/22/88	0.00
SC	PLMR	[REDACTED] Sean	002	0.00	11/30/88	240.00
SC	PLMR	[REDACTED] Mike	178176	90.00	12/22/88	0.00
SC	PLMR	[REDACTED] Martin	142695	250.00	12/22/88	20.00
SC	PLMR	[REDACTED] Brian	82842	90.00	11/30/88	0.00
SC	PLMR	[REDACTED] James	165114	50.00	11/30/88	40.00
SC	PLMR	[REDACTED] Michael	90774	45.00	11/30/88	0.00
SC	PLMR	[REDACTED] Thomas	142674	270.00	12/22/88	0.00
SC	PLMR	[REDACTED] Kenneth	75483	45.00	08/23/88	0.00
SC	PLMR	[REDACTED] Ted	140232	225.00	12/22/88	0.00
SC	PLMR	[REDACTED] Terry	130893	135.00	11/30/88	0.00
SC	PLMR	[REDACTED] Pat	134358	45.00	08/23/88	0.00
SC	PLMR	[REDACTED] Richard F.	175533	90.00	12/22/88	0.00
SC	PLMR	[REDACTED] Mark	122595	270.00	12/22/88	26.50
SC	PLMR	[REDACTED] Danny Lee	147402	410.00	11/30/88	0.00
SC	PLMR	[REDACTED] Gordon	162243	194.00	12/22/88	-9.50
SC	PLMR	[REDACTED] Jim	124446	225.00	12/22/88	0.00
SC	PLMR	[REDACTED] Larry	180525	45.00	11/30/88	0.00
SC	PLMR	[REDACTED] Larry	143781	180.00	08/23/88	0.00
SC	PLMR	[REDACTED] John	142662	45.00	11/30/88	54.00
SC	PLMR	[REDACTED] Sean	142512	45.00	11/30/88	0.00
SC	PLMR	[REDACTED] Otto	125187	225.00	12/22/88	0.00
SC	PLMR	[REDACTED] Patrick	137112	285.00	12/22/88	-1.50

Reg	Dist	Name	Obscis #	YTD Paid:	LastActv	Balance Due
SE	KETN	[REDACTED] Ed	154896	135.00	09/23/88	-24.00
SE	KETN	[REDACTED] Brett	12111	360.00	08/19/88	-90.00
SE	KETN	[REDACTED] Tommy A.	11199	225.00	12/22/88	135.00
SE	KETN	[REDACTED] William	92436	270.00	12/22/88	0.00
SE	KETN	[REDACTED] Edwin	159621	185.00	12/22/88	40.00
				-----		-----
SE	KETN			6880.00		1483.00
				-----		-----
SE	SITK	[REDACTED] Stecher	151704	180.00	11/23/88	0.00
SE	SITK	[REDACTED] Gary R.	171012	45.00	08/19/88	0.00
SE	SITK	[REDACTED] Kathryn A.	171009	45.00	08/19/88	0.00
SE	SITK	[REDACTED] Carl R.	177192	135.00	11/03/88	0.00
SE	SITK	[REDACTED] Jeffrey	57591	135.00	10/31/88	0.00
SE	SITK	[REDACTED] Tom S.	120999	90.00	12/22/88	0.00
SE	SITK	[REDACTED] Theodore	164685	135.00	09/28/88	45.00
SE	SITK	[REDACTED] Bart L.	164265	135.00	10/31/88	45.00
SE	SITK	[REDACTED] Terri	117720	90.00	10/31/88	90.00
SE	SITK	[REDACTED] Richard	12108	180.00	09/28/88	0.00
SE	SITK	[REDACTED] Randall	158769	180.00	11/23/88	0.00
SE	SITK	[REDACTED] Lauren	151701	45.00	10/31/88	0.00
SE	SITK	[REDACTED] David C., Jr.	147318	180.00	12/22/88	45.00
SE	SITK	[REDACTED] Kenda	117051	225.00	10/31/88	90.00
SE	SITK	[REDACTED] James Craig	86814	90.00	11/23/88	0.00
SE	SITK	[REDACTED] Lane B.	169857	270.00	12/22/88	0.00
SE	SITK	[REDACTED] Elizabeth	153972	135.00	12/22/88	0.00
SE	SITK	[REDACTED] John	119220	225.00	12/22/88	0.00
SE	SITK	[REDACTED] Ron	144024	225.00	11/23/88	0.00
SE	SITK	[REDACTED] Mitchell	147474	360.00	10/31/88	135.00
SE	SITK	[REDACTED] Eric	164268	45.00	12/22/88	0.00
				-----		-----
SE	SITK			3150.00		450.00
				-----		-----
				-----		-----
SE				16995.50		4031.00
				-----		-----
				=====		=====
				82683.54		12691.54
				=====		=====

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: "An Act repealing the authority of  
the Alaska Court System to impose."  
Sponsor: Senator Adams  
Requestor: \_\_\_\_\_

Agency Affected: Department of Corrections  
BRU: Statewide Operations  
Components: Northern Region Probation  
Southcentral Region Probation  
Southeast Region Probation

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	-126.2	-126.2	0	0	0	0
----------------	--------	--------	---	---	---	---

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	62.0	62.0				
FEDERAL FUNDS						
OTHER	-62.0	-62.0				
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

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

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

This legislation will not result in additional operating costs, but the funding sources for FY89 and FY90 must be changed from program receipts to general fund.

Prepared by: Susan F. Knighton, Director Phone: 465-3376  
Division: Administrative Services Date: 1-27-89

Approved by Commissioner: S. Humphrey-Barnett Date: 1-27-89  
Agency: Department of Corrections

**Distribution (by preparer):**

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

\*\*\*\*\*  
 \* DELIVER TO: LTDCJOA \*  
 \* ORIGINAL \*  
 \* SENT: 23/03/89 TIME: 13:17 \*  
 \* FROM: LTDCNON \*  
 \* SUBJECT: HJUD:PL#1;HB-151,3-23 \*  
 \* PRINT DATE 23/03/89 TIME: 13:17 \*  
 \*\*\*\*\*

T/C NO: 89-03-011

DATE: MARCH 23, 1989  
 SPONSOR: HOUSE JUDICIARY  
 SUBJECT: HB 151-REPEAL PROBATION FEE AUTHORIZATION  
 MODERATOR: ROXANNE BARRON  
 SITE: NONE

PARTICIPANT LIST

\*\*\*\*\*  
 TESTIFIED

①  
 ②

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. JAMES GOULD/PUBLIC DEFENDER			
2. STEVE KORENEK/PROBATION OFFICE			
3.			
4.			
5.			

\*\*\*\*\*  
 OBSERVED

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. TAMM MORGAN/PROBATION OFFICE			
2.			
3.			
4.			
5.			

\*\*\*\*\*

TESTIFIED:  
 UNOBS:  
 OBSERVED:  
 TOTAL:

START TIME:

END TIME

# **CORRECTION**

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

\*\*\*\*\*  
 \* DELIVER TO: LIOCJOA \*  
 \* \* \* \* \*  
 \* ORIGINAL \*  
 \* SENT: 2/20/89 11:20 13 17 \*  
 \* FROM: LIOCJOA \*  
 \* TO: LIOCJOA \*  
 \* PRINT DATE: 2/20/89 11:20 13 17 \*  
 \*\*\*\*\*

TRF NO: 39-03 01  
 DATE: MARCH 23 1989  
 SPONSOR: HOUSE JUDICIARY  
 SUBJECT: HR 111-REPEAL PROBATION FEE AUTHORIZATION  
 MODERATOR: ROXANNE BARRON  
 TITLE: NONE

PARTICIPANT LIST

\*\*\*\*\*  
 TESTIFIED

	NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
②	1. JAMES GOULD/PUBLIC DEFENDER			
①	2. STEVE KORENEK/PROBATION OFFICE			
	3.			
	4.			
	5.			

\*\*\*\*\*  
 OBSERVED

	NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
	1. TAMI MORGAN/PROBATION OFFICE			
	2.			
	3.			
	4.			
	5.			

\*\*\*\*\*

TESTIFIED:  
 UNABLE:  
 OBSERVED:  
 TOTAL:

START TIME:

END TIME:

HB

165

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 10, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/15/89

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 165

HOUSE BILL NO. 165 [DISTRIBUTION OF PROPERTY]

"An Act relating to the disposition of property, including anatomical parts of the body; and providing for an effective date."

RECOMMENDS:

- replacing with CSHB 165 (HESS)  the same title
- the 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
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: \_\_\_\_\_
- zero fiscal notes(s) published: \_\_\_\_\_

SIGNING DO PASS:

J. Ellis  
W. Thurman  
W. Umare  
W. ...  
W. ...

SIGNING OTHER THAN DO PASS:

(Do Not Pass, No Recommendation, Amend)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

J. Ellis  
 Chairman's signature

# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 15, 1989

FURTHER REFERRALS:

Date of Committee Action: 4/13/89

The JUDICIARY Committee considered:

HB 165

HOUSE BILL NO. 165

[DISTRIBUTION OF PROPERTY]

"An Act relating to the disposition of property, including anatomical parts of the body; and providing for an effective date."

**RECOMMENDATIONS:**

- [ ] be replaced with CS HB 165 (Judiciary)  the same title
- [ ] be replaced with CS HB 165 (Judiciary)  a new title
- [ ] have attached amendment(s)
- do pass
- [ ] do not pass
- [ ] no recommendation
- individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

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

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:  
(Date/Dept)

- [ ] fiscal impact \_\_\_\_\_
- [ ] zero fiscal note \_\_\_\_\_
- [ ] zero with analysis \_\_\_\_\_

- [ ] fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) Postal, now 3/14/89 CRT. 5/88 2/11/89
- [ ] zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

\_\_\_\_\_  
*Max G. ...*  
*J. ...*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING:**  
(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>Peter ...</i>		<input checked="" type="checkbox"/>	
<i>Clay ...</i>		<input checked="" type="checkbox"/>	
<i>Terry ...</i>		<input checked="" type="checkbox"/>	
<i>...</i>			
_____			
_____			
_____			
_____			

\_\_\_\_\_  
Chairman's signature

**STATE OF ALASKA 1989 LEGISLATIVE SESSION  
FISCAL NOTE**

Bill Version: HB 165  
Publish Date:

**REQUEST:**

Revision Date:  
Title: An act relating to the  
disposition of property  
Sponsor: Gruenberg  
Requestor: House HESS

Agency Affected: Alaska Court System  
ERU: Trial Courts

Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

FUNDING:		(Thousands of Dollars)				
	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Jan Strandberg*  
Jan Strandberg, General Counsel  
Division: Alaska Court System

Phone: 264-8228  
Date: 03/14/89

Approved by: *Arthur H. Snowden, II*  
Arthur H. Snowden, II, Administrative Director  
Agency: Alaska Court System

Date: 03/14/89

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

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: Uniform Transfer to Minors Act  
 Sponsor: (H) Judiciary Committee  
 Requestor: (H) HESS

Agency Affected: Health & Social Services  
 BRU: State Health Services

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

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: Elizabeth Ward, Director *E. Ward* Phone: 465-3090  
 Division: Public Health Date: 2/15/89

Approved by Commissioner: Myra M. Munson *Myra M. Munson* Date: 2/24/89  
 Agency: Department of Health and Social Services

**Distribution (by preparer):**

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

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Department of Law  
 Title: "An Act Relating to the Disposition of property, anatomical parts..." BRU: Legal Services  
 Sponsor: House Judiciary Components: Operations  
 Requestor: House HESS

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**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 14, 1989  
 Approved by Commissioner: Douglas B. Bailly, Attorney Gen. Date: March 14, 1989  
 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. HB 165

This bill amends AS 13 by adding a new chapter to be known as the Alaska Uniform Transfers to Minors Act. The Act would govern the custodianship of property held in trust for minors. The bill follows the general outline recommended by the National Conference of Commissioners on Uniform State Laws. The bill also amends AS 13.50.030(b) and AS 18.65.311(2) to provide that witness signatures, documenting gifts of all or parts of the body, are required only if the donor cannot sign a donor document. Because the bill deals with transactions between private parties, it is not expected to have a fiscal impact on the Department to Law.

NATIONAL BANK OF ALASKA  
PERSONAL TRUST FEE SCHEDULE

Living and Testamentary Trusts

Minimum Size: \$100,000  
 Minimum Fee: 1,250/year  
 Fee Schedule: 1.25% of the fair market value for  
 the first \$1,000,000, 1% thereafter

Investments: Real estate that requires management  
 will not be accepted unless we are  
 specifically authorized to employ a  
 property manager. In the case of  
 real estate sales, an extraordinary  
 fee of 1% of the gross sales price  
 will be charged.

Guardianships and Conservatorships

Minimum Size: \$100,000  
 Minimum Fee: 1,250/year  
 Fee Schedule: 1.25% of the fair market value for  
 the first \$1,000,000, 1% thereafter

Probates

Minimum Size: \$100,000 net  
 Minimum Fee: 2,500  
 Schedule: \$ 110/hour for Trust Officer  
 75/hour for Assistant Trust  
 Officer  
 50/hour for operations and  
 support staff

Private Foundations

Same as Living and Testamentary Trust

Charitable Foundations

Fees to be negotiated

Special Auditor's Fee

\$100/hour

AGENCY SERVICES FEE SCHEDULE

Minimum Size: \$100,000  
 Minimum Fee: 500/year  
 Fee Schedule: 1% of the fair market value for the  
 first \$1,000,000, 8/10 of 1% there-  
 after. For accounts invested in  
 certificates of deposit or money  
 market funds, the fee is 1/2 of 1%  
 of the fair market value.

1.25%

11/2/87  
6-0510E

COMMENTARY TO CSHB 165 (HESS)  
CONTAINING THE PROPOSED  
Alaska Uniform Transfers to Minors Act

March 1989

Division of Legal Services  
Legislative Affairs Agency  
P.O. Box Y - State Capitol  
Juneau, Alaska 99811

Preface

The Uniform Transfers to Minors Act (UTMA) revises and restates the Uniform Gifts to Minors Act (UGMA), one of the National Conference of Commissioners on Uniform State Laws most successful products, some version of which has been enacted in every American jurisdiction.

The original version of UGMA was adopted by the Conference in 1956 and closely followed a model "Act concerning Gifts of Securities to Minors" which was sponsored by the New York Stock Exchange and the Association of Stock Exchange Firms and which had been adopted in 14 states. The 1956 version of the UGMA broadened the model act to cover gifts of money as well as securities but made few other changes.

In 1956 and 1966 the Conference revised the UGMA to expand the types of financial institutions which could serve as depositories of custodial funds, to facilitate the designation of successor custodians, and to add life insurance policies and annuity contracts to the types of property (cash and securities) that could be made the subject of a gift under the UGMA.

Alaska adopted the 1966 version of the UGMA in 1967 (AS 45.-60). Many states which adopted the 1956 or 1966 version of the UGMA, have substantially revised their versions of the UGMA to expand the kinds of property that may be made the subject of a gift under the UGMA. A few states permit transfers to custodians from other sources, such as trusts and estates, as well as from lifetime gifts. Some states also permit the transferor to have an option to extend the date the custodial property may be distributed to the minor. As a result, a great deal of non-uniformity has arisen among the states. Uniformity in this area is important, for the Conference has cited the UGMA as an example of an act designed to avoid conflicts of law when the laws of more than one state may apply to a transaction or a series of transactions.

The Alaska Uniform Transfers to Minors act (AkUTMA) follows the expansive approach taken by several states and allows any kind of property, real or personal, tangible or intangible, to be made the subject of a transfer to a custodian for the benefit of a minor (sec. 13.46.990(6)). In addition, it permits such transfers not only by lifetime outright gifts

(sec. 13.46.030), but also from trusts, estates, and guardianships, whether or not specifically authorized in the governing instrument (secs. 13.46.040 and 13.46.050), and from other third parties indebted to a minor who does not have a conservator, such as parties against whom a minor has a tort claim or judgment, and depository institutions holding deposits or insurance companies issuing policies payable on death to a minor (sec. 13.46.060). For this reason, and to distinguish the enactment of this statute from the 1956 and 1966 versions of the UGMA, the title of this Act has been changed to refer to "Transfers" rather than to "Gifts," a much narrower term. Moreover, the AkUTMA permits the transferor or the minor to have an option to extend beyond the age of minority the date the custodial property may be distributed to the minor (sec. 13.46.195).

As so expanded, the AkUTMA might be considered a statutory form of trust or guardianship that may terminate between the ages of 18 and 25. Note, however, that unlike a trust, a custodianship is not a separate legal entity or taxpayer. Under sec. 13.46.100(b), the custodial property is indefeasibly vested in the minor, not the custodian, and thus any income received is attributable to and reportable by the minor, whether or not actually distributed to the minor.

The expansion of the AkUTMA to permit transfers of any kind of property to a custodian creates a significant problem of potential personal liability for the minor or the custodian arising from the ownership of property such as real estate, automobiles, general partnership interests, and business proprietorships. This problem did not exist under the UGMA under which custodial property was limited to bank deposits, securities, and insurance. In response, sec. 13.46.160 generally limits the claims of third parties to recourse against the custodial property, with the minor insulated against personal liability unless the minor is personally at fault. The custodian is similarly insulated unless the custodian is personally at fault or fails to disclose the custodian's custodial capacity upon entering into a contract.

Nevertheless, the AkUTMA should be used with caution with respect to property such as real estate or general partnership interests from which liabilities as well as benefits may arise. Many of the possible risks can and should be insured against, and the custodian has the power under sec. 13.46.120(a) to purchase such insurance, at least when other custodial assets are sufficient to do so. If the assets are

not sufficient, there is doubt that a custodian will act, or there are significant uninsurable risks, a transferor should consider a trust with spendthrift provisions, such as a minority trust under 26 U.S.C. 2503(c), (Internal Revenue Code) rather than a custodianship, to make a gift of such property to a minor.

Finally, the AkUTMA restates and rearranges rather than amends, the 1966 version of the UGMA. The addition of other forms of property and other forms of dispositions made adherence to the format and language of the prior act very unwieldy. In addition, the 1966 version of the UGMA closely followed the language of the earlier model act, which had already been adopted in several states, even though it did not conform to Conference style. It is hoped that this re-writing and revision of the UGMA will improve its clarity while also expanding its coverage.

Section 1. Enacts the Alaska Uniform Transfers to Minors Act as AS 13.46.

Sec. 13.46.010. SCOPE AND JURISDICTION.

This section has no counterpart in the 1966 version of the UGMA. It attempts to resolve uncertainties and conflicts-of-law questions that have frequently arisen because of the present nonuniformity of the UGMA in the various states and which may continue to arise during the transition from the UGMA to the UTMA.

The creation of a custodianship must invoke the law of a particular state because of the form of the transfer required under sec. 13.46.080(a). Subsection (a) provides that a choice of the AkUTMA is appropriate and effective if any of the nexus factors specified in subsection (a) exists at the time of the transfer. Subsection (b) makes the custodian accountable and subject to personal jurisdiction in the courts of Alaska for the duration of the custodianship, despite subsequent relocation of the parties or the property.

Subsection (c) declares that a transfer that purports to be made and is valid under a similar act of another state is governed by the law of the designated state.

Sec. 13.46.020. NOMINATION OF CUSTODIAN.

This section is new and permits a future custodian for a minor to be nominated to receive a distribution under a will or trust, or as a beneficiary of a power of appointment, or of contractual rights such as a life or endowment insurance policy, annuity contract, P.O.D. account, benefit plan, or similar future payment right. Nomination of a future custodian does not constitute a "transfer" under the AkUTMA and does not create custodial property. If it did, the nomination and beneficiary designation would have to be permanent, since a "transfer" is irrevocable and indefeasibly vests ownership of the interest in the minor under sec. 13.46.-100(b).

Instead, this section permits a revocable beneficiary designation that takes effect only when the donor dies, or when a lifetime transfer to the custodian for the minor beneficiary occurs, such as a distribution under an inter vivos trust.

However, an unrevoked nomination under this section is binding on a personal representative or trustee (see sec. 13.46.040(b)) and on insurance companies and other obligors who contract to pay in the future (see sec. 13.46.060(b)).

The person making the nomination may name contingent or successive future custodians to serve, in the order named, in the event that the person first nominated dies, or is unable, declines, or is ineligible to serve. Such a substitute future custodian is a custodian "nominated . . . under AS 13.46.020" to whom the transfer must be made under secs. 13.46.040(b) and 13.46.060(b).

Any person nominated as future custodian may decline to serve before the transfer occurs and may resign at any time after the transfer. See sec. 13.46.170.

Sec. 13.46.030. TRANSFER BY GIFT OR EXERCISE OF POWER OF APPOINTMENT.

To emphasize the different kinds of transfers that create presently effective custodianships under the AkUTMA, they are separately described in secs. 13.46.030, 13.46.040, 13.46.050, and 13.46.060. This section in part corresponds to Section 2(a) of the 1966 version of the UGMA and covers the traditional lifetime gift that was the only kind of transfer authorized by the 1966 version of the UGMA. It also covers an irrevocable exercise of a power of appointment in favor of a custodian, as distinguished from the exercise of a power in a revocable instrument that results only in the nomination of a future custodian under sec. 13.46.020.

Sec. 13.46.040. TRANSFER AUTHORIZED BY WILL OR TRUST.

This section is new and has no counterpart in the UGMA. It is based on nonuniform provisions adopted by Connecticut, Illinois, Wisconsin, and other states to validate distributions from trusts and estates to a custodian for a minor beneficiary, when the use of a custodian is expressly authorized by the governing instrument. It also covers the designation of the custodian whenever the settlor or testator fails to make a nomination, or the future custodian nominated under sec. 13.46.020 (and any alternate named) fails to qualify.

Sec. 13.46.050. OTHER TRANSFER BY FIDUCIARY.

This section is new and has no counterpart in the UGMA. It covers a new concept, already authorized by the law of some states through nonuniform amendments to the UGMA to permit custodianships to be used as guardianships or conservator substitutes, even though not specifically authorized by the person whose property is the subject of the transfer. It also permits the legal representative of the minor, such as a conservator or guardian, to transfer the minor's own property to a new or existing custodianship for the purposes of convenience or economies of administration.

A custodianship may be created under this section even though not specifically authorized by the transferor, the testator, or the settlor of the trust if three tests are satisfied. First, the fiduciary making the transfer must determine in good faith and in his fiduciary capacity that a custodianship will be in the best interests of the minor. Second, a custodianship may not be prohibited by, or inconsistent with, the terms of any governing instrument. Inconsistent terms would include, for example, a spendthrift clause in a governing trust, provisions terminating a governing trust for the minor's benefit at a time other than the time of the minor's age of majority, and provisions for mandatory distributions of income or principal at specific times or periodic intervals. Provisions for other outright distributions or bequests would not be inconsistent with the creation of a custodianship under this section. Third, the amount of property transferred, (as measured by its value) must be of such relative small amount that the lack of court supervision and the typically stricter investments standards that would apply to the conservator otherwise required will not be important. However, if the property is of significant size, transfer to a custodian may still be made if the court approves and if the other two tests are met.

The custodianship created under this section without express authority in the governing instrument will terminate upon the minor's attainment of the statutory age of majority in Alaska, i.e., at the same age a conservatorship of the minor would end. See sec. 13.46.190 and the Commentary to sec. 13.46.190.

Sec. 13.46.060. TRANSFER BY OBLIGOR.

This section is new and, like sec. 13.46.050, permits a custodianship to be established as a substitute for a conservator to receive payments due a minor from sources other than estates, trusts, and existing guardianships covered by secs. 13.46.040 and 13.46.050. For example, a tort judgment debtor of a minor, a bank holding a joint or P.O.D. account of which a minor is the surviving payee, or an insurance company holding life insurance policy or benefit plan proceeds payable to a minor may create a custodianship under this section.

Transfer is mandatory when a future custodian has been nominated under sec. 13.46.020 as a named beneficiary of an insurance policy, benefit plan, deposit account, or the like, because the original owner of the property specified a custodianship (and a future custodian) to receive the property. If that custodian (or any alternate named) is not available, if none was nominated, or none could have been nominated (as in the case of a tort judgment payable to the minor), this section is permissive and does not preclude the obligor from requiring the appointment of a conservator to receive payment; it allows the obligor to transfer property to a custodian unless the property exceeds the stated value, in which case a conservator must be appointed to receive it.

Sec. 13.46.070. RECEIPT FOR CUSTODIAL PROPERTY.

This section discharges transferors from further responsibility for custodial property delivered to and receipted for by the custodian. See also sec. 13.46.150 which protects transferors and other third parties dealing with custodians. Because a discharge or release for a donative transfer is not necessary, this section had no counterpart in the UGMA.

This section does not authorize an existing custodian, or a custodian to whom an obligor makes a transfer under sec. 13.46.060 to settle or release a claim of the minor against a third party. Only a conservator, a guardian ad litem, or other person authorized under other law to act for the minor may release such a claim.