

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5767 HOUSE JUDICIARY

171

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: DFYS
 Title: An Act relating to civil liability and uninsured losses related to foster children BRU: Purchased Services
 Sponsor: _____ Components: Foster Care
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		50,000	50,000	50,000	50,000	50,000
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		50,000	50,000	50,000	50,000	50,000

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		50,000	50,000	50,000	50,000	50,000
FEDERAL FUNDS						
OTHER						
TOTAL		50,000	50,000	50,000	50,000	50,000

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) The Department cannot accurately estimate the cost should this bill become law. There will be an increase in claims, the degree of which cannot be determined at this point. Claims could be as low as \$5,000 or as high as \$105,000 or more.

Prepared by: Yvonne M. Chase, Director Phone: 465-3170
 Division: Family and Youth Services Date: 2/18/89

Approved by Commissioner: Myra M. Morrison, Commissioner Date: 3/8/89
 Agency: Department of Health & Social Services

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 178
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
Title: An Act relating to civil liability BRU: Insurance
and uninsured property losses related to foster children
Sponsor: HESS Committee Components: Operations
Requester: _____

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
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Bill does not impact the division.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance

Phone: 465-2597
Date: 2-22-89

Approved by Commissioner: Larry Mercurieff
Agency: Department of Commerce & Economic Development

Phone: _____
Date: 4/27/89

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Health and Social Services
 Title: An Act Relating to Civil Liability for Purchased Services
and uninsured loss related to foster children
 Sponsor: HESS Committee Components: Foster Care
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	50.0	50.0	50.0	50.0	50.0	50.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	50.0	50.0	50.0	50.0	50.0	50.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	50.0	50.0	50.0	50.0	50.0	50.0
FEDERAL FUNDS						
OTHER						
TOTAL	50.0	50.0	50.0	50.0	50.0	50.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) The Department cannot accurately estimate the cost should this bill become law. There will be an increase in the degree of which cannot be determined at this point. Claims could be as low as \$5,000 or as high as \$105,000 or more.

Prepared by: Russ Webb Phone: 465-3170
 Division: Family and Youth Services Date: 1/15/90
 Approved by Commissioner: Myra Munson Date: Jan 15, 1990
 Agency: Health and Social Services

Distribution (by preparer):

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

FISCAL NOTE

CC

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to indemnity of
foster parents. BRU: Risk Management
 Sponsor: HESS Components: _____
 Requestor: Labor and Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	900.0	900.0	900.0	900.0	900.0	900.0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	900.0	900.0	900.0	900.0	900.0	900.0

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

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	900.0	900.0	900.0	900.0	900.0	900.0
TOTAL	900.0	900.0	900.0	900.0	900.0	900.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This fiscal note is very difficult to estimate since the possible loss exposures are "open ended" on over 800 foster homes plus 35 residential facilities and past claims experience detail is lacking. The attached explains the reasoning used in arriving at the fiscal note estimate.

Prepared by: Donald J. Hitchcock *[Signature]* Phone: 465-2180
 Division: Risk Management Date: 3-23-90
 Approved by Commissioner: Frank S. Baxter *[Signature]* Date: 3-23-90
 Agency: Department of Administration

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

Continuation of Fiscal Note Analysis for CSHB 178 (HESS)

This bill provides for the protection of foster parents against loss or damage to tangible property-owned by the foster parent if the loss is not covered by insurance. The protection provided is excess of \$100.00 (\$100.00 deductible) per incident, without limitation, and is "all risk," covering fire, theft, vandalism, or any other type of damage allegedly caused by the foster child. Tangible property includes dwellings, money, jewelry, electrical appliances, furniture, plants, automobiles, etc.--any real or personal property-owned or in the custody of the foster parent.

This committee substitute further expands the fiscal impacts estimated for the previous bill version by extending the indemnification commitment to all "out-of-home care providers."

The bill also repeals the statute which provided civil immunity for the acts of the minors in a foster, receiving or detention home. Given the new indemnification commitment, the state may be held responsible to pay for damages if no insurance protection is available.

Also, with loss of immunity the State and the foster parent may be exposed to subrogation action on behalf of the insurance companies. In other words, the State may have to reimburse insurance companies who have paid for damages caused by the foster child. Such losses may include a burned home, stolen jewelry or any type of public liability caused by the child.

We have no actual loss statistics in order to project the State's estimated loss costs, however, we are advised that there are currently approximately 3,000 positions for foster care children in foster homes or residential care facilities, we have estimated average loss of \$300 per foster child. Our projections are based on the increased indemnification commitment as well as an escalated responsibility for third party claims.

Since all Risk Management funding is collected through Reimbursable Services Agreement (RSAs) from the agencies, this request would be added to the Department of Health and Social Services insurance RSA billing from the Division of Risk Management.

FISCAL NOTE

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REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act relating to civil liability and uninsured property losses related to foster children BRU: Insurance
 Sponsor: HESS Committee Components: Operations
 Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) No fiscal impact in FY 90.

The bill does not impact the division.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
 Division: Insurance Date: 2/2/90
 Approved by Commissioner: Larry Merculieff Date: 5/2
 Agency: Department of Commerce & Economic Development

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



Alaska Foster Parents Association

P. O. BOX 140651 • ANCHORAGE, ALASKA 99508



POSITION PAPER K 178 LIABILITY OF FOSTER PARENTS

Alaska Foster Parent Association supports this legislation which would address civil liability and uninsured property losses of foster parents. The importance of this legislation is far reaching and will positively impact the entire foster care system.

Limiting the liability of foster parents is a national priority whose time has come. Fear of liability has severely limited the recruitment and retention of foster homes. Valuable foster parents have been lost when they realize that they could be liable for acts or omissions and are possibly jeopardizing their income and property by volunteering to be foster parents. It is difficult to recruit foster homes when they have no liability protection or liability insurance.

We do want recognition that foster parents may make mistakes, but do not want to exempt foster parents from negligent acts. Therefore, we suggest deletion of the word negligent on line 16.

Reimbursement to foster parents for loss or damage is important, especially when foster parents are reimbursed only for cost of care. Since many of the children and youth are emotionally damaged, they "act out" their anger, hurt, and frustrations in many ways, including damage. This is not intentional misconduct, but a normal reaction to the rage found in abused and neglected youngsters. We suggest deletion of the word "intentional" on line 27.

At some time, the \$100.00 limit needs to be addressed and defined. Does this \$100.00 limit refer to each incident or to an accumulation over a set time frame? Some youth create damage or loss that clearly exceeds this \$100.00 limit, while others are regularly destructive. Each incident may be relatively minor but could amount to several hundred dollars per month.

We feel an additional section needs to be added to this bill to provide for coverage of costs to the foster parents for medical attention or psychological intervention needed to correct problems caused by a foster child in state custody. This might be for medical attention for a foster youth assaulting a foster parent or their children. Or it might be therapy and/or medical treatment if a foster youth physically or sexually abuses a member of the foster family. Although these occasions are not common, the damage is disastrous and a real financial burden to foster parents.

Miriam Sumner
President

Frank H. Wasmer
Vice President

POSITION PAPER

HOUSE BILL NO. 178

For an Act entitled: "An Act relating to civil liability and uninsured property losses related to foster children".

Section 1 of this bill provides foster parents, state employees, and representatives of the state with immunity from liability for acts or omissions of a foster child placed in care of the foster parent. The bill also provides immunity from liability for negligent acts or omissions of the foster parents, state employees, or representatives of the state that result in harm to a child placed in a foster parent's care under AS 47.

Section 1 would relieve foster parents, state employees, and representatives of the state of virtually all liability for their own acts or omissions, except those which were intentional or grossly negligent. The Department supports this section of the proposed legislation.

Section 2 mandates the Department to reimburse a licensed foster parent for lost or damage exceeding \$100 on uninsured tangible property that was harmed by the intentional misconduct of a foster child in the foster home.

The ability of foster parents to obtain and afford insurance and to collect because of loss damage to property is erratic at best, creating a hardship. Should a foster parent's natural child destroy property, the insurance company will pay. If foster children destroy property, foster parents are finding it more difficult, if not impossible, to collect damages. Should they be able to collect for damages, the foster parents can expect their insurance rates to increase.

Additionally, the issue of potential property losses by foster parents has been problematic to the Department because of the costs involved and as a factor increasing the difficulty of recruiting and retaining foster parents. Foster parents generally have been told by their insurance companies that they are not protected from loss or damage to their property caused intentionally by a foster child in their care. The Department of Administration, Division of Risk Management has verbally advised the Department of Health and Social Services that this may be incorrect, but to date it has not been tested through litigation, and there is no definitive answer.

In the absence of a definitive answer to this problem, and in the face of refusal of private insurers to cover such claims, the Department has chosen to reimburse foster parents for their documented losses upon request. Though the Department has been under no legal obligation to reimburse foster parents for such losses and has received advice against the practice, a policy

Position Paper
House Bill No. 178
Page 2

decision was made to continue doing so in order to facilitate retention of qualified foster parents. However, there is no statutory basis or dedicated funding for making such reimbursements. Currently, reimbursement for foster parent losses is made from funds budgeted to meet the needs of children in foster care. Use of these funds to cover foster parent losses causes several problems, including:

1. decreased money available to meet the needs of children in care;
2. several limitations on the amount of funds available to cover losses; and
3. inequity in reimbursement because, although these funds are used for dual purposes, they must be allocated between regions based on child foster care placements and needs of children rather than on the basis of unpredictable foster parent losses, with the result that losses in one region may not be covered because of insufficient funds, while losses in another region are reimbursed.

This mechanism has been functionally unsatisfactory and potentially insufficient to deal with even a single large universal property loss (such as destruction of a foster family home by an intentionally set fire). Fortunately, recent losses have been relatively small when compared to potential loss. However, the Department cannot estimate the cost, should this bill become law. There will be an increase in claims, the degree of which cannot be determined at this point.

While not intentional, Section 2 of the bill, in fact, creates an adversarial relationship between foster child and foster parent, if the only way a foster parent can collect for damages is by proving the child's intentional misconduct contributed to the loss of or damage to the property. This places the foster parent in the position of proving the foster child's behavior was deliberate. In some cases it will be the foster child's word against the word of the foster parent. It is not necessary nor desirable to place foster children and foster parents into an adversarial relationship. In addition, recovery by foster parents for damages to their property will be limited. Eliminating the requirement

Position Paper
House Bill No. 178
Page 3

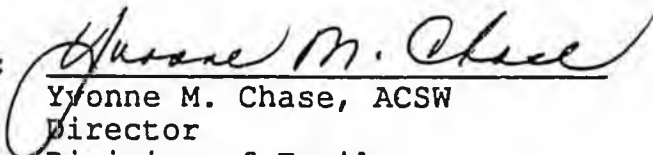
that the damage was intentional will allow the foster parent to claim for accidental damages.

The Department recommends that additional funds be budgeted specifically to reimburse foster parents for their losses, with administration of these funds and determinations on reimbursement to be made by the Division of Risk Management commensurate with accepted insurance practice.

DEPARTMENT POSITION

The Department supports Section 1 of HB 178, which would extend immunity protection to state employees, representatives of the state, and foster parents. However, because the delicate relationship between those being cared for and those caring for children in out-of-home placement would deteriorate or be destroyed with the necessity of proving intentional damage to property, the Department recommends that Section 2 be deleted from HB 178 and that funding be appropriated to pay for damages based on accepted insurance practice. Administration of these funds and determination of reimbursement is most appropriate in the Division of Risk Management, Department of Administration.

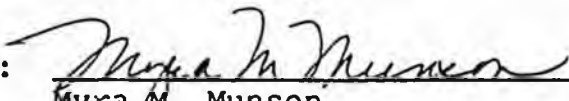
RECOMMENDED:


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

DATE:

3/8/89

APPROVED:


Myra M. Munson
Commissioner
Department of Health
and Social Services

DATE:

3/8/89

Handwritten notes:
Hoyden/
Larkin



SITKA BAR ASSOCIATION

March 10, 1989

Handwritten notes:
HJVP
B...
In...

Representative Peter Goll,
Chairperson
Judiciary Committee
Box V (Mail Stop 3100)
Juneau, AK 99835

Re: House Bill 178; Civil Liability to Foster Children

Dear Representative Goll:

The Sitka Bar Association opposes the passage of House Bill 178.

We are not aware of any valid justification for this proposed bill such as, possibly, a claim that so many claims are being made on behalf of injured foster care children that a burden is being placed upon the state's budget, or an assertion that without such a protective law it would be difficult to convince persons to be foster care parents.

There may or may not be a shortage of foster care parents. If there is such a shortage, we do not believe a reason therefore is possible liability to the foster care child.

Even if there were such a justification, the question would become whether the victim (foster child) should bear the entire risk of damage/injury/loss or whether that risk should be covered by the foster parent having insurance or be spread throughout Alaska society, at an increased cost of state government, by way of the state's paying the insurance premium (whether self insured or not) for foster care parent coverage. The Sitka Bar Association would support the latter approach of spreading the risk rather than having the loss fall upon the defenseless victim.

We wish to point out that natural parents are, as they should be, liable to their children if they negligently injure their children. We do not see the logic in imposing a lesser standard of care upon foster care parents or upon upon the State of Alaska which has taken custody of and responsibility for foster children.

The "right" of the state to intrude into people's lives, even for the quite valid reason of protecting and providing for children in need of care not being supplies by their parents, carries with it a concomitant responsibility to act in a reasonable and non negligent manner towards those for whom it

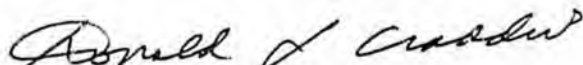
is assumed such custody and control.

With respect to foster children, the state is, in effect, saying to the real parents that the state is stepping into the shoes of those parents and is going to do the job that they are not doing. By stepping into the shoes of the parents the state thereby acquires not only the rights but the responsibilities of the natural parent towards the child.

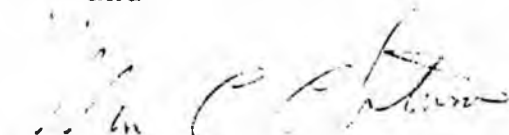
We also urge non passage of this bill if it intends to insulate the State of Alaska from liability to foster care parents or to other children in the foster home should the state negligently fail to properly advise prospective foster care parents of problems the foster care child has which are indicative of potential harm to others in the foster home.

Thank you for your committee's consideration of our comments and concerns against the passage of House Bill 178.

Very truly yours,



Donald L. Craddick, Secretary,
Sitka Bar Association
and



Warren Christianson, President
Sitka Bar Association

DLC/kb

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES



P.O. BOX V, JUNEAU 99811
(907) 465-3759

STATEMENT ON HB 178
by the
HOUSE HESS COMMITTEE

House Bill 178 "tort liability related to foster care", was introduced as one of a package of measures proposed or supported by the House HESS Committee, as a result of the Committee's interim comprehensive review of the state's child protection and foster care systems. This bill responds to testimony presented at hearings in the fall of 1988 regarding the effectiveness of the state's foster care system.

HB 178 is similar to HB 258 which was heard by the House HESS Committee in the last legislature. It incorporates several suggested amendments to that bill. This measure is designed primarily to aid in the recruitment and retention of foster parents.

Section one relieves foster parents, state employees and representatives of the state of most civil liability associated with the care of foster children, except civil damages resulting from gross negligence or reckless or intentional misconduct.

Section two guarantees that property damages in excess of \$100 dollars caused intentionally by a foster child will be covered by the state, if there is otherwise no insurance coverage for such losses. The state may continue to cover losses up to \$100.

Legislative Audit continues to support a better management information system for DFYS. Ending the need for maintaining both an antiquated automated payments system and a manual information system would allow overburdened line staff to devote more time to actual social work. The need for timely, accurate, pertinent information is absolutely critical to the effective management of a division as large, complex, and geographically dispersed as DFYS.

Recommendation No. 3

DFYS should develop standardized foster care procedures and encourage compliance through improved training and supervisory review. In addition, DFYS should continue working toward improved relations with foster parents in order to sustain a more viable foster care program.

Foster care costs have increased by more than two-thirds in the last three years to over \$6.3 million in FY 86. Over the last five years, foster care expenditures have almost doubled while there has been little growth in residential care expenditures making foster care even more important to DFYS' service delivery system. The increasing use of foster care has also resulted in more difficult children being placed in the care of foster parents.

Our current review revealed several areas in foster care which would benefit from increased DFYS commitment:

1. Licensing activities are not in compliance with DFYS procedures due to lack of timeliness.
2. Complaints are not classified and investigated consistently and often are not adequately documented.
3. Augmented rates for specialized foster care are not being equitably administered.
4. Training provided varies across the state and is rarely documented in foster parent files.
5. Foster parents are not fully informed about liability and loss which may result from foster care.
6. Relations between DFYS and foster parents are often less than cooperative.

Many of these deficiencies were identified in a 1983 Legislative Audit report. Management should review the situation in each area and act according to DFYS priorities.

Foster parent orientation classes prior to licensing, while others use a home visit and an informal review of the regulations as orientation for foster parents.

During FY 86, DFYS contracted with the Alaska Foster Parent Association to provide statewide ongoing training. The contract required DFYS to jointly participate in implementation, however, DFYS did little to facilitate the successful completion of this contract. The training that was provided was geographically limited and of questionable value to some of the purported beneficiaries.

Foster parents who want training have been obtaining it through their local foster parent associations, college classes, and training sponsored by DFYS. In recent years, DFYS has been considering the possibility of requiring a certain amount of training to receive and maintain a foster care license. Those foster parents receiving augmented rates under the Youth Services program are currently required to have a certain amount of training. In our review of foster home license files across the state, we found only Southcentral Youth Services files to reflect a record of training received.

Increased DFYS commitment to foster parent training would not only promote better relations between foster parents and DFYS, but would also provide DFYS with a more qualified pool of foster parents. A multi-media self-study program such as that being developed by Southcentral Youth Services may be a cost-effective method for providing statewide training. Maintaining a record of training received in each foster home file would make it easier for those making placements to match the child's needs with the qualifications of the foster home.

Foster Parent Liability

Liability is currently an extremely volatile issue for foster parents. In 1981, DFYS made efforts to define areas of responsibility for various types of liability or losses resulting from foster care. The Foster Parents' Handbook tells foster parents that they are protected by the State against legal actions for accidental injury to the child and against suit for damages caused to third parties by the child.

In an effort to address foster parents' current concerns over liability, DFYS has contacted the Attorney General's Office and the Division of Risk Management. Discussions with Risk Management confirm that in the absence of gross negligence, foster parents will be protected by the State

for both injury to the child and to third parties. However, this assurance is not echoed in a recent memo from the Attorney General's Office which concludes:

foster parents will generally be shielded from liability for injury to a child where they have attempted, in good faith, to conduct themselves reasonably. There is no insurance protecting a foster parent from the negligence of a child. And, except for the possible protection of AS 34.50.10, there is no protection against suit by third persons against foster parents because of negligent conduct of a child.

The foster care regulations make clear that this liability insurance "will not cover matters for which foster parents are normally expected to have insurance, such as fire insurance for their home." The implication that foster parents' insurance will cover their loss if the foster child burns their home is true only if the act was accidental. As DFYS discovered in their 1981 efforts, deliberate acts by foster children are generally not covered by homeowner's insurance policies.

We recommend that DFYS, in conjunction with the Attorney General and the Division of Risk Management, develop some cohesive guidelines in the area of foster parent liability with regard to third party damages. Once determined, this information should be included in the Foster Parents' Handbook, as should some warning of the limitations of common homeowner's insurance. Foster parents need this information in order to make informed choices in accepting and rejecting placements.

Relations With Foster Parents

In our 1983 audit we noted that DFYS neglected to maintain a cooperative relationship with the foster parent community. In a March 1986 letter to the president of the Alaska Foster Parent Association (AFPA), the director of DFYS states "It would be less than candid of me to not admit that there has been a history of conflict and resentment between AFPA and the division."

The training contract for fiscal year 1986 was a disappointment for both parties. This contract emphasized "joint" responsibility for both DFYS and AFPA, but neither was satisfied with the other's performance. The quality and quantity of training which resulted would likely have increased if DFYS and AFPA had been more cooperative in implementing the terms of the contract.

HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES
STANDING COMMITTEE
May 5, 1987
3:00 p.m.

MEMBERS PRESENT.

Rep. Niilo Koponen, Co-Chair
Rep. Johnny Ellis, Co-Chair
Rep. Max Gruenberg
Rep. Alyce Hanley
Rep. Bill Hudson
Rep. Randy Phillips

COMMITTEE CALENDAR

- SSHB 50 -- "An Act relating to access to criminal records by the Department of Education."
HB 241 -- "An Act providing for independent investigation of complaints against foster parents."
HB 242 -- "An Act relating to the training of foster parents."
HB 258 -- "An Act relating to the civil liability of, and liability insurance for, foster parents."
HB 201 -- "An Act relating to hazardous painting certification; and providing for an effective date." (was not heard)

WITNESS REGISTER

Miriam Sumner
AK Foster Parent Assoc.
P.O. Box 140651
Anchorage, AK 99508
Position: Favored HB 258, HB 241 and HB 242.

John Sauve
Alaska State Troopers
269-5511
Position: Favored SSHB 50.

Randall Burns
Dept. of Health and Social Services
P.O. Box H
Juneau, AK 99811
465-3030
Position: Had suggestions for HB 258.

Don Hitchcock
Dept. of Administration
P.O. Box C
Juneau, AK 99811
465-2180
Position: Gave information on HB 258.

Steve McPhetres
AK Council of School Administrators
326 Fourth Street, #24
Juneau, AK 99801
586-9702
Position: Favored SSHB 50.

Elaine Hopson
Juneau School District
10014 Crazy Horse Dr
Juneau, AK 99801
586-2303
Position: Favored SSHB 50.

Yvonne Chase
DFYS
P.O. H05
Juneau, AK 99811
465-3170
Position: Had suggestions for HB 241 and HB 242.

Rep. Jim Zawacki
P.O. Box V
Juneau, AK 99811
465-2719
Position: Favored SSHB 50.

PREVIOUS ACTION

HB 50:	Date	Page	Action
	01/16/87 (H)		Profile released
	01/19/87 (H)	28	Read the first time with referral(s)
	01/19/87 (H)	28	HESS, Judiciary
	04/15/87 (H)	853	Sponsor Substitute Introduced
	04/15/87 (H)	853	HESS, Judiciary
	04/23/87 (H)	959	Cosponsor added: Furnace

HB 241:	Date	Page	Action
	04/03/87 (H)	727	Read the first time with referral(s)
	04/03/87 (H)	727	HESS, Finance

HB 242:	Date		Page	Action
	04/03/87	(H)	727	Read the first time with referral(s)
	04/03/87	(H)	727	HESS, Finance
HB 258:	Date		Page	Action
	04/08/87	(H)	776	Read the first time with referral(s)
	04/08/87	(H)	776	HESS, Judiciary

Previous committee consideration and testimony on HB 258 was held and heard on April 23, 1987.

ACTION NARRATIVE
TAPE ONE SIDE ONE
NUMBER 000

The meeting of the House Health, Education and Social Services Committee was called to order at 3:10 p.m. by Rep. Ellis. Members present were Representatives Koponen, Ellis, Hanley, Hudson, Gruenberg, and Phillips.

Rep. Ellis announces that HB 205 will be heard Thursday, May 7. He further announces that the new draft of HB 201 is not ready yet and the bill will be heard when it is.

Rep. Ellis brings HB 258, HB 241 and HB 242 before the committee and asks Miriam Sumner to testify via teleconference.

Number 030

Ms. Sumner states that she has testified on HB 258 previously but she adds that the issue of liability insurance has become a national issue and there will be legislation proposed on a national level as well as in other states.

In regards to HB 241, Ms. Sumner supports the bill. She states that the Alaska Foster Parent Association in no way condones abuse or neglect, but they do believe in the right to a fair and unbiased investigation and hearing. Ms. Sumner claims that the present situation leads to a conflict of interest when the foster parent advocate also becomes the investigator. HB 241 leaves room for negotiation with the Dept. of Health and Social Services and how the system would be set up.

Number 069

Rep. Phillips asks about the differences between the April 23rd fiscal note and the May 4th fiscal note from the Department. He will ask Department representatives later.

Number 078

Rep. Hanley asks if there is adequate protection for foster parents in regard to child abuse and neglect. Ms. Sumner replies that a foster parent becomes the focus of the neighborhood and at times children hope that if they make allegations against a home they will be able to get out. The original parents may also make allegations out of anger. Also the regulations may be interpreted in different ways. She believes that if unbiased investigators would interpret the regulations in the same way, the number of allegations would decrease. She states that there are other people in the Department who do not license the foster home who could do the investigation so additional people would not have to be added.

Rep. Koponen (taking over for Rep. Ellis) asks Randall Burns and Don Hitchcock to testify.

Number 127

Mr. Burns states that in order to retain and maintain good foster parents, there needs to be a resolution to the problem that is addressed in HB 258, however the Department has problems with HB 258. Section 1 of the bill is fine. He recommends that the title of section 2 be changed to Uninsured Property Loss. The new language would basically say that the state would reimburse a licensed foster parent for the loss or damage to tangible property of value exceeding \$100 that is owned or under control of the foster parent and which results in the intentional misconduct of a child that is in state custody. The reason for this is the costs involved in the current bill. Mr. Burns declares that the Department currently has no authority to reimburse foster parents for losses so they are using money from the foster care line. However, the Department never knows what the amount will be and a large loss will place the Department at a disadvantage. With the proposed language, Risk Management would help pay the losses and help to assure the foster parents of being covered.

Number 184

Rep. Koponen asks if this will be covered by Risk Management. Mr. Burns replies in the affirmative.

Number 187

Mr. Hitchcock states that the fiscal note for the original bill was \$450,000 based on the broadness of HB 258 itself. He has no background as to how much money has been paid in

the past for the losses. The \$450,000 would cover the loss of one foster home per year out of \$800,000 plus associated costs.

Number 221

Rep. Phillips asks Ms. Sumner what she thinks of the proposed language by the Department. Ms. Sumner asks why the arbitrary number of \$100 deductible. Most of the damages are small but on a regular basis. The \$100 would cut down on the costs to the state but might not be fair to the foster parents. She is also concerned with the "intentional misconduct" phrase. Foster children do damage out of anger and frustration, but not intentionally. She comments that when the state takes custody of a child, the state becomes the parent and parents are responsible for their children.

Number 272

Mr. Burns notes that the legislature can decide to cover all the losses, but it would be very expensive. Mr. Hitchcock explains that an alternative would be that the state pays the \$100 deductible. This means that the state would be paying only for losses not covered by insurance. The fiscal note for this alternative would be \$290,000. If the state does not pay the \$100 deductible, then the fiscal note would be \$150,000. Mr. Hitchcock agrees with Ms. Sumner that most of the claims are small, but the state must be prepared to lose a home.

Number 321

Rep. Phillips asks if the state could provide insurance for over the \$100 deductible and the parents have the option to get insurance for the first \$100. Mr. Hitchcock replies that it would be difficult to price and would be expensive.

Number 339

Rep. Gruenberg states that the second section of HB 258 has many ramifications. He suggests that HB 258 be separated into two bills, and the second section is the more complicated. He would like to change the first section. The title would be changed to "An Act relating to the civil liability of foster parents." The phrase "withstanding other provisions of law." Section 1 would simply say "A foster parent is not liable for civil damages as a result of acts or omissions by a minor placed in the care of a foster parent under AS 47." He will have to think about the rest of section one. Rep. Koponen comments that HB 258 may be referred to subcommittee. He also points out that the Department still needs authorization to reimburse.

Rep. Koponen asks Ms. Yvonne Chase to testify on HB 241.

Number 417

Ms. Chase explains that the difference in the two fiscal notes mentioned by Rep. Phillips is due to an error in the first note in the calculation of personnel services. The employees were not upped a range. Ms. Chase states that the Department is supportive of the concept and agrees that a bias can occur if a person who licenses a home also investigates a complaint against it. However, she is concerned about not allowing people who train and recruit to also investigate because of the difficulty of implementation. Ms. Chase believes that this would be best handled by administrative policy or regulation. She also proposes to require only people who license a foster home not to investigate, so more staff would be available to investigate. Also the final outcome of the complaint would be signed off by a regional manager.

Number 519

Rep. Gruenberg asks why four more investigators are needed. Ms. Chase replies that in Southeast the positions would be half-time, part in Juneau and part in Ketchikan. Rep. Gruenberg states that he does not think all the positions are justified. Ms. Chase responds that the people would be doing more than just investigating.

Number 571

Rep. Hanley states that the concerns of the foster parents need to be addressed or we will be faced with no foster parents. Ms. Chase agrees and reiterates that while the Department opposes the specific bill, it agrees with the intent.

Number 609

Ms. Sumner comments that she has a concern with just changing agency policy, because the policy then depends on who is in the driver's seat. She also points out that except for one area of the state, the same person does licensing, training and recruitment, so it would not matter if training and recruitment were taken out. She suggests that a person in a regional office or in a neighboring office could do the investigation.

Number 657

Rep. Gruenberg suggests that the language in the current HB 241 be struck and replaced with the language proposed by the Department so the bill would read "A complaint filed

with the department concerning a foster parent may be investigated only by a person who has not licensed the foster home against which a specific complaint is filed." This would be done without additional cost and the fiscal note would be zero. Rep. Gruenberg asks if Ms. Chase would support such a bill. Ms. Chase replies in the affirmative. Rep. Gruenberg asks if Ms. Sumner would support it. Ms. Sumner responds in the affirmative if the investigation was signed off by the regional manager. Ms. Chase suggests that that could be done in regulation.

TAPE ONE SIDE TWO
NUMBER 000

Rep. Gruenberg moves that the language mentioned above be adopted in place of the original bill, that a zero fiscal note be submitted by the Department, and that a Letter of Intent be included regarding the regional manager. Seeing no objections, Rep. Koponen so orders. Rep. Koponen states that the bill will be taken up tomorrow when the committee substitute, fiscal note, and Letter of Intent are prepared.

Rep. Koponen brings HB 242 before the committee.

Number 023

Ms. Chase testifies that the Department supports HB 242 and the included fiscal note is the same as was initially given to the Senate for their SB 169. With the changes in SB 169, the fiscal note for that bill is now zero. The Senate CS gives additional time for compliance for the initial training. This appears in section 3 of CS SB 169. Ms. Chase continues that the specific number of hours of training was also excluded and left up to the Department.

Number 059

Rep. Hanley moves that the language in the CS for SB 169 be adopted in a CS for HB 242. Seeing no objections, Rep. Koponen so orders. The committee will approve the CS tomorrow when it is prepared.

Number 075

Rep. Ellis (who has rejoined the committee) reports that the House Finance Committee passed out HB 157 as proposed by the HESS Committee.

Rep. Ellis brings SSHB 50 before the committee and asks Rep. Zawacki to make his presentation. (Pause for a witness to be called on the teleconference.)

Number 119

Rep. Zawacki states that the purpose of SSHB 50 is to allow the Department of Education to be an interested party in checking the backgrounds of people wanting teaching and administrative positions in Alaska's schools. Only five school districts have any procedure for checking criminal records of new applicants. New applicants would be required by DOE to be fingerprinted. SSHB 50 would mainstream the process and would protect the school children. Rep. Zawacki lists the following organizations which support SSHB 50: Juneau School District, AK Council of School Administrators, State Board of Education, Dept. of Education, NEA-Alaska, Association of Alaska School Boards, and the Cordova Chamber of Commerce. Rep. Zawacki further mentions that Public Safety supports SSHB 50 and has submitted a fiscal note for about \$18,000.

Number 169

Rep. Hanley asks if the fingerprints would be done on application for certification rather than application for employment. Rep. Zawacki replies that is correct. He clarifies that the expense would be incurred by Public Safety, not the applicants. Rep. Hanley asks who does the actual background check. Rep. Zawacki responds that either the federal government or the State Troopers would do that.

Rep. Ellis asks Mr. John Sauve to testify via teleconference.

Number 204

Mr. Sauve explains the fingerprinting and background check process.

Number 216

Rep. Koponen asks what other classes of public employees are checked. Mr. Sauve replies that those involved in the criminal justice system are checked, such as attorneys, bus drivers, etc.

Rep. Ellis asks Mr. Steve McPhetres to testify.

Number 237

Mr. McPhetres supports SSHB 50 because it helps all school districts to hire professional teachers and administrators in a coordinated and efficient manner.

Number 258

Rep. Hanley asks Mr. Sauve who will actually take the fingerprints. Mr. Sauve replies that the school district could hire the local police, a private security company or someone on staff.

Rep. Ellis asks Elaine Hopson to testify.

Number 292

Ms. Hopson explains that Juneau has contracted with a private company and requires the applicant to pay \$25 for the fingerprinting. She states that teachers are the conduit to tell authorities of child abuse. She supports SSHB 50 for taking good fingerprints is difficult and time consuming. Ms. Hopson also points out that currently sex offenders can go to the 50 school districts who do not require fingerprinting. SSHB 50 provides for an equitable way to check all applicants.

Number 378

Rep. Koponen comments that he hopes the school district will also use background checks on those that handle the finances.

Number 386

Rep. Hanley expresses surprise in the support for fingerprinting which was not evident several years ago. People saw it as an infringement on their rights. She is pleased with the support

Number 408

Rep. Hudson asks if there is a similar provision for day care centers. Mr. Sauve says that any one with supervision over a minor would be covered by SSHB 50.

Number 437

Rep. Hudson moves that SSHB 50 be passed out of committee with individual recommendations. Seeing no objections, Rep. Ellis so orders.

Rep. Ellis notes for the record that Rep. Donley was excused today and that HB 201 will be heard tomorrow.

Number 453

Rep. Ellis adjourns the meeting at 4:25 p.m.

HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES
STANDING COMMITTEE
April 23, 1987
8:30 a.m.

MEMBERS PRESENT

Rep. Nillo Koponen, Co-Chair
Rep. Johnny Ellis, Co-Chair
Rep. Dave Donley
Rep. Max Gruenberg
Rep. Alyce Hanley
Rep. Bill Hudson
Rep. Randy Phillips

COMMITTEE CALENDAR

- HB 248 -- "An Act relating to adult basic education."
HB 242 -- "An Act relating to the training of foster
parents."
HB 258 -- "An Act relating to the civil liability of, and
liability insurance for, foster parents."
HB 241 -- "An Act providing for independent investigation
of complaints against foster parents."
HB 260 -- "An Act establishing an excise tax on the sale of
smokeless tobacco; and providing for an
effective date."

WITNESS REGISTER

Mr. Royce Weller
Dept. of Revenue
P.O. Box S
Juneau, AK 99811
465-2300
Position: Favored HB 260.

Kathy Spurgeon
Rt. 2 Box 102
Ketchikan, AK 99901
225-2057
Position: Favored HB 258.

Deborah Williams
American Lung Association of Alaska
P.O. Box 103056
Anchorage, AK 99510
276-5864
Position: Favored HB 260.

Miriam Sumner
AK Foster Parents Association
P.O. Box 140651
Anchorage, AK 99508
745-7797
Position: Favored HB 258.

Hal Post
AK Council on Smoking or Health
4715 Melvin
Anchorage, AK
563-7484
Position: Favored HB 260.

Rodman Wilson
Municipality of Anchorage
825 "L" Street
Anchorage, AK 99501
343-6724
Position: Favored HB 260.

)
Greg Ray
American Lung Association
406 W. Fireweed
Anchorage, AK 99503
277-8696
Position: Favored HB 260.

Anne Morris
American Lung Association
2841 DeBarr, #23
Anchorage, AK
264-1600
Position: Favored HB 260.

Candy Schlif
Alaska Native Health Association
Box 7-741
Anchorage, AK
257-1119
Position: Favored HB 260.

David Jones
Alaska Native Health Association
Box 7-741
Anchorage, AK
257-1119
Position: Favored HB 260.

Deborah Williams
American Lung Association
605 Barrow, #2
Anchorage, AK 99501
276-5864
Position: Favored HB 260.

Neal Cooper
200 W. 34th, #822
Anchorage, AK 99503
562-0063
Position: Opposed HB 260.

Bonnie Rapoport
1020 Barnette
Fairbanks, AK 99701
456-4003
Position: Favored HB 260.

Jolanda Cook
1305 21st
Fairbanks, AK 99701
452-1575

Myra Munson
Dept. of Health and Social Services
P.O. Box H01
Juneau, AK 99811
465-3030
Position: Testified on HB 258.

Lydia Jones
Rep. Martin's Office
P.O. Box V
Juneau, AK 99811
465-3783
Position: Favored HB 258.

PREVIOUS ACTION

HB 248:	Date	Page	Action
	04/06/87 (H)	746	Read the first time with referral(s)
	04/06/87 (H)	746	HESS, Finance

HB 258:	Date		Page	Action
	04/08/87	(H)	776	Read the first time with referral(s)
	04/08/87	(H)	776	HESS, Judiciary
HB 241:	Date		Page	Action
	04/03/87	(H)	727	Read the first time with referral(s)
	04/03/87	(H)	727	HESS, Finance
HB 242:	Date		Page	Action
	04/03/87	(H)	727	Read the first time with referral(s)
	04/03/87	(H)	727	HESS, Finance
HB 260:	Date		Page	Action
	04/08/87	(H)	777	Read the first time with referral(s)
	04/08/87	(K)	777	HESS, Finance
	04/15/87	(H)	868	Cosponsor added: Navar...

ACTION NARRATIVE
TAPE ONE SIDE ONE
NUMBER 000

The meeting of the House Health, Education and Social Services was called to order at 8:35 a.m. Members present were Representatives Ellis, Hudson, Phillips, Hanley, and Donley.

Rep. Ellis announces that there is a memo in front of the members that is from himself and Rep. Koponen to the chair of the House Finance Committee regarding bills that were in the House HESS Committee and are now in Finance. The memo will be sent this afternoon.

Rep. Ellis also announces that there is a proposed committee bill on the subject of optometry. Unless there are objections, it will be introduced tomorrow as a committee bill.

Rep. Ellis further states the resumes of Jack Chenowith and Vince Speranza are before the committee and if there are any objections please let staff know by April 30. Rep. Phillips states that he would like to have committee time to review the resumes and nominations.

Rep. Ellis notes that HB 204 will be before the committee tomorrow.

Rep. Ellis brings HB 260 before the committee.

Number 059

Rep. Ellis comments that he introduced HB 260 because of the social problem of children using smokeless tobacco throughout the state. He was also cognizant of the fiscal problems facing the state and HB 260 has a positive fiscal note of approximately \$500,000. The intent would be to have the money go into health promotion programs.

Rep. Ellis notes that the committee substitute has two changes from the original bill. The CS adds pipe tobacco and cigars to be taxed, and prohibits the tax on military bases which complies with existing federal and state laws.

Rep. Ellis asks Candy Schlif to testify via teleconference.

Number 108

Ms. Schlif says that the Alaska Native Health Services favors HB 260. She states that the use of smokeless tobacco is increasing about 11% each year since 1974. A national survey showed that 16% of the males between 12 and 25 years of age have used some form of smokeless tobacco. A survey that was done in Alaska in 1986 shows that as nearly as many high school females are using smokeless tobacco products as school age males. Between 25%-33% of high school students are using smokeless tobacco. Using smokeless tobacco is also common with very young children. The length of period that the children were using smokeless tobacco ranged from 1.3 years for 3 year olds to 7.9 years for 18 year old females. The use of smokeless tobacco in Alaska is higher than in other states.

Ms. Schlif also reports that 43% of the females and 45% of the males had tried smokeless tobacco products, and many knew the health risks involved. She supports the provision in HB 260 that has the money intended for health promotion.

Ms. Schlif suggests that there be a campaign to inform store workers of the penalty of selling tobacco to minors.

Number 189

Rep. Phillips asks if there is an age limit to which smokeless tobacco products can be sold over the counter.

Ms. Schlif responds that a person must be 16 years of age. Rep. Phillips comments that he does not see how HB 260 will help deter people from buying smokeless tobacco. Ms. Schlif answers that by increasing the cost with the excise tax, it would deter children. Also the funds from the tax could be used to help educate the children. Rep. Phillips states that he thinks it is an enforcement problem rather than a tax collection problem. Rep. Ellis reiterates that

people under 16 years old are most sensitive to price changes and can be deterred.

Number 221

Rep. Hudson asks if smokeless tobacco is habit forming like cigarettes. Ms. Schlif responds, "Yes."

Rep. Ellis asks Mr. David Jones to testify via teleconference.

Number 227

Mr. Jones favors HB 260 because the use of smokeless tobacco is alarmingly high in Alaska. Evidence shows that smokeless tobacco can cause cancer in humans especially in the mouth. Also users of smokeless tobacco can be more susceptible to tumors in the upper digestive track. There are carcinogens in smokeless tobacco. Smokeless tobacco can also cause other mouth diseases, which can lead to cancer later on. Affect on teeth by use of smokeless tobacco are unconfirmed. Mr. Jones urges that the tax money be directed to the Department of Health and Social Services.

Rep. Ellis asks Dr. Anne Morris to testify via teleconference.

Number 304

Dr. Morris supports the proposed changes to HB 260 that would add pipe tobacco and cigars to the bill. Pipe and cigar smokers have higher death rates than nonusers though not as high as cigarette smokers. Pipe and cigar smoke have many of the same harmful chemicals as cigarette smoke, and are potentially carcinogenic. Dr. Morris comments that the public perception is that pipes, cigars and smokeless tobacco are safe substitutes to cigarettes and suggests that their use will increase as the ban on cigarettes increases.

Number 358

Rep. Ellis notes from the record that Rep. Koponen has joined the committee.

Rep. Ellis asks Mr. Hal Post to testify via teleconference.

Number 364

Mr. Post supports HB 260 because an excise tax will be a deterrent. He suggests that the amount of the tax be increased to \$0.015 per 0.1 ounce or 18 cents per package so that the state tax per package will be higher than

cigarettes. Mr. Post notes that since there is no federal tax on smokeless tobacco like there is on cigarettes, the smokeless tobacco tax needs to be higher to adequately discourage its use.

Mr. Post supports the proposed committee substitute that would add pipe tobacco and cigars to be taxed. He also supports the reporting requirement, and believes that all Alaskans should know about the use of tobacco in Alaska.

Mr. Post suggests that all sellers of tobacco be required to hang signs telling of the prohibition of selling tobacco to minors.

Number 429

Rep. Ellis notes that Rep. Gruenberg has joined the committee.

Rep. Ellis asks Ms. Bonnie Rapoport to testify via teleconference.

Number 434

Ms. Rapoport reports that she has received a two year health education grant for development of public information and materials on the issue of smokeless tobacco. The demand for the materials has been overwhelming. Ms. Rapoport notes that many children get smokeless tobacco from other people and suggests that the money from the tax be mandated to be used specifically for prevention and education purposes. Ms. Rapoport supports HB 260.

Number 571

Rep. Ellis explains that it is unconstitutional to dedicate funds for a specific purpose. He also mentions that the other ideas that have been suggested in testimony will be incorporated in other legislation.

Number 606

Rep. Hudson asks if people who use chewing tobacco also use drugs. Ms. Rapoport replies that she knows of no statistics that shows any correlation one way or the other. Usually though, the use of one substance leads to use of other substances. Rep. Hudson comments that deterring the use of tobacco also needs to be tied to good nutrition.

Rep. Ellis asks Mr. Rodman Wilson to testify via teleconference.

Number 649

Mr. Wilson comments that one study has shown that two-thirds of the 8 and 9 year olds who use smokeless tobacco go on to use cigarettes later. Mr. Wilson notes that blood pressure is elevated in persons who use smokeless tobacco and it is addictive.

Mr. Wilson suggests that the intent language in HB 260 be stronger by saying that it is the desire of the legislature to use the tax money for health promotion and education purposes. He asks if there is any way constitutionally to funnel some of the money to communities.

Mr. Wilson summarizes by saying that he believes that the use of tobacco and marijuana should be prohibited by anyone under the age of 21, which is the law for alcohol. He also suggests that the selling of tobacco should be limited to certain types of stores or pharmacies.

Rep. Ellis asks Mr. Neal Cooper to testify via teleconference.

Number 740

Mr. Neal Cooper is representing the tobacco merchants in Anchorage.

TAPE ONE SIDE TWO
NUMBER 000

Mr. Cooper states that his merchant organization deals with a legal substance and do not knowingly sell to any minor. He notes that taxation is to raise revenue not to discourage use of a legal substance. If the committee wants to discourage the use of smokeless tobacco, he suggest that HB 260 be destroyed and another bill created that would abolish the use of smokeless tobacco in Anchorage.

Mr. Cooper agrees that the use of smokeless tobacco is abused by children and will fight to not sell it to any one under age.

Mr. Cooper states that taxation in this time of economic hardship will not do business any favors. A lot of people will purchase the product, "Outside," which will not help business at all.

Rep. Ellis asks Mr. Greg Ray to testify via teleconference.

Number 027

Mr. Ray supports HB 260. He also supports adding pipe tobacco and cigars to the bill. Mr. Ray would like the tax to be one and a half cents for the smokeless tobacco. He urges that the intent language be made stronger. Mr. Ray feels that the exempt language is confusing and should be taken out.

Rep. Ellis asks Ms. Deborah Williams to testify via teleconference.

Number 057

Ms. Williams favors HB 260 and the proposed committee substitute. She notes that every witness today testified to the health problem of tobacco in Alaska. Ms. Williams states that Alaska cannot afford the health costs associated with tobacco and the cost is a social cost. House Bill 260 is not the total answer, but it is an important first step.

Ms. Williams reiterates that increasing the price of tobacco does deter use. With cigarette taxes, a 10% increase in cost a 4% overall drop in consumption, and a 14% drop in consumption by teenagers. Ms. Williams points out that 28 states tax one or more of the alternative forms of tobacco. The bill will also indicate how much tobacco is sold in Alaska.

Ms. Williams reports that last night the Health and Human Services Coalition passed a resolution that endorsed taxing the alternative forms of tobacco. The resolution will be sent to the committee.

Rep. Ellis asks Mr. Royce Weller from the Department of Revenue to testify.

Number 124

Mr. Weller states that the Dept. of Revenue supports HB 260. Mr. Weller suggests three changes to HB 260. The first is to add language that will have the new tax levied in the same manner as the cigarette tax, AS 43.50.010 - 43.50.180. This would make it uniform. The second change is to add language that would prohibit the tax of products on military bases, which is identical to AS 43.40.090(c). The third change would be to require licensing of sellers of non-cigarette type products. The seller of cigarettes are already required to be licensed.

Number 151

Rep. Gruenberg states that those are excellent suggestions and volunteers to work on making the changes to HB 260. He suggests also that perhaps the license fees could be raised.

Number 174

Rep. Gruenberg states that there is an emergency regarding a bill by the administration that will be read across today. Usually the bill would go first to the HESS Committee. The bill says that a borough may collect tax on food stamps and vouchers under the WIC program. Rep. Gruenberg asks if it is okay to waive the HESS committee referral on this bill, and have it go directly to Finance. Rep. Phillips objects.

Number 198

Rep. Gruenberg reports that HB 248, the adult basic education bill is not necessary since the provisions in the bill are already in statute. There is a memo from the committee to the Speaker explaining why the committee will not be passing out HB 248. Rep. Gruenberg moves that the committee accept the memo and the attached letter from Steve Hole from the Dept. of Education and send them both to the Speaker. Seeing no objections, Rep. Ellis so orders.

Rep. Ellis brings HB 258 before the committee and asks Ms. Lydia Jones to testify on behalf of Rep. Martin.

Number 227

Ms. Jones states that foster parents are concerned that when a foster child causes damage to their or a neighbor's property, that the foster parents are responsible. The foster parents handbook states that liability insurance is provided to all foster families through the Division of Risk Management. The insurance is to protect the parents from any legal action. However in a 1986 audit of DFYS, a gray area was discovered in that foster parents may not always be shielded from liability in third party claims. Rep. Martin felt it was time that the foster parents are protected, and the state should share in the responsibility for the children. House Bill 258 would require the state to provide liability insurance against legal action.

Rep. Ellis asks Commissioner Munson to testify.

Number 279

Ms. Munson explains that HB 258 provides three things. First it provides protection to the foster parents from action against the foster parents for acts of the child. Secondly, it also provides protection for foster parents from harm that may come to the child as a result of negligence of the foster parents. Thirdly, it provides compensation for the foster parent for damage to their home or possessions that may result from the misconduct of the foster child.

Ms. Munson notes that the fear that a foster parent may be at risk is very wide spread. However, the Department is not aware of any instance of an action taken against the foster parent where the state has not defended the foster parent or provided the compensation.

Ms. Munson states that in regards to the protection from negligence, the Department would support adding state employees to that provision. This would shift the burden from the foster parent and from the individual who placed the child in the home to the state. However, this would not protect the person from gross negligence. Costs are attached to shifting the burden to the state.

Number 332

The Department opposes the compensation to damages to house or possessions. The state could purchase through Risk Management the home owner's policy for every foster home. There is a question as to whether the policy would cover the risk. Ms. Munson admits that foster children do cause more damage than regular children. The Department is currently trying to compensate foster parents for this kind of damage, but it is a haphazard process and is unsatisfactory. The Division of Risk Management could also act as an insurer rather than buying the policies. However, it is difficult to know how much to fund this since it is hard to know the level of claims.

Number 393

Ms. Munson admits that there are problems in each of the three areas, but some of it is a perception problem in that people feel that they are more at risk than they are comfortable with. They want statutory protection.

Rep. Ellis asks Miriam Sumner to testify via teleconference.

Number 412

Ms. Sumner states that foster parents are partially reimbursed for costs, but those costs do not cover any possible legal action that might occur, or toward damages. Ms. Sumner claims that liability insurance for foster parents is no longer available. She says that purchasing home or car insurance for foster parents is not a viable alternative because the foster child is not viewed as part of the family or as a visitor, so the claims are denied. Ms. Sumner recommends that there be statutory authority so that DFYS can reimburse foster parents. Secondly, she suggests that a line item in the budget be set specifically for this purpose.

Rep. Ellis asks Jolanda Cook to testify via teleconference.

Number 522

Ms. Cook asks if the liability insurance coverage extends only toward the state or to all foster children.

Number 550

Rep. Hudson states that he believes that HB 258 is going in the wrong direction in that the Division of Risk Management can take care of the concerns. Rep. Koponen suggests that a representative from the Division of Risk Management be present at the next hearing of the bill.

Rep. Ellis asks Kathy Spurgeon to testify via teleconference.

Number 574

Ms. Spurgeon reiterates Ms. Sumner's testimony, and she is concerned about the lack of liability insurance.

Number 594

Rep. Ellis states that HB 241 and HB 242 will be heard on Monday.

Number 611

Rep. Ellis adjourns the meeting at 10:00 a.m.

Outline of changes to CSHB 178 (HESS) in CSHB 178 (L&C)

1. Expands indemnity to all uninsured, non-punitive civil damages related to foster care of children. Sec. 2 , p. 1, line 25 page 6, line .
2. Changes coverage of the bill to out-of-home care provider which is defined to include all those out-of-home care providers of children in state custody. Throughout Def. p. 3, line 4.
3. Changes reimbursement for property damage section to require that foster parents document that the loss was caused by the child and file a report with law enforcement if the department requires. Occurs while the minor is under the care. P. 2, line 27(c).
4. Limits indemnity and reimbursement for damages caused and civil actions that arise from activities of the child during the period which the child was committed to the foster parents care. Occurs while the minor is under the care. P. 1, l. 28 and p. 2, line 29.
5. Repeals AS 34.50.020(b), existing law which provides state and out-of-home care provider immunity for property damage caused by foster children. Sec. 3, p. 3, line 12.
6. Provides that the state may seek reimbursement from out-of-home care providers when the state provides indemnification for damages caused by the out-of-home care providers' willful or intentional misconduct. P. 2, line 10 " (c)".
7. Amends insurance statutes to prohibit discrimination against out-of-home care providers in sale of home owner and home fire/accidental loss policies and prohibit writing damage caused by foster children out of the coverage such policies provide. Section 1, p. 1, line 12.
8. Gives the state the right to defend the out-of-home care provider against claims where the state must provide indemnity. P. 2, line 5(b).

STATE OF ALASKA
THE LEGISLATURE

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

Mary Van Nimwegen

HB 178

H. HESS

4/6/89

H. HESS

1/14/90

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 15, 1989

FURTHER REFERRALS: LABOR & COMMERCE
JUDICIARY

Date of Committee Action: 1/16/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 178

HOUSE BILL NO. 178 [TORT LIABILITY RELATED TO FOSTER CARE]
"An Act relating to civil liability and uninsured property losses related to foster children."

RECOMMENDS:

- replacing with CS HB 178 (HESS) the same title
- the attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the FINANCE 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:

[Signature]
[Signature]
[Signature]
John Davis
[Signature]
[Signature]

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

[Signature]
Chairman's signature

HOUSE OF REPRESENTATIVES REPORT

(7)
 Date Referred: January 12, 1998
 Date of Committee Action: 5/29/98
 FINANCE REFERRALS JUDICIARY FINANCE

The ~~FINANCE~~ COMMERCE Committee considered: HR 178
 HOUSE BILL NO. 178 TORT LIABILITY RELATED TO FOSTER CARE
 "An Act relating to civil liability and uninsured property losses related to foster children."

- RECOMMENDATIONS:
- be replaced with CS HB 178 (L+C) 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): (Dept) APPROVES PREVIOUS: (Date/Dept)
- fiscal impact Admin. fiscal note(s) _____
 - zero fiscal note Comm + Econ zero fiscal note(s) _____
 - zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS: SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Gregory</u>		X	
<u>Boyer</u>			✓
<u>Finkelstein</u>			X
<u>Boucher</u>			

David Donley
 Chairman's Signature

Continuation of Fiscal Note Analysis for CSHB 178 (HESS)

This bill provides for the protection of foster parents against loss or damage to tangible property-owned by the foster parent if the loss is not covered by insurance. The protection provided is excess of \$100.00 (\$100.00 deductible) per incident, without limitation, and is "all risk," covering fire, theft, vandalism, or any other type of damage allegedly caused by the foster child. Tangible property includes dwellings, money, jewelry, electrical appliances, furniture, plants, automobiles, etc.--any real or personal property-owned or in the custody of the foster parent.

This committee substitute further expands the fiscal impacts estimated for the previous bill version by extending the indemnification commitment to all "out-of-home care providers."

The bill also repeals the statute which provided civil immunity for the acts of the minors in a foster, receiving or detention home. Given the new indemnification commitment, the state may be held responsible to pay for damages if no insurance protection is available.

Also, with loss of immunity the State and the foster parent may be exposed to subrogation action on behalf of the insurance companies. In other words, the State may have to reimburse insurance companies who have paid for damages caused by the foster child. Such losses may include a burned home, stolen jewelry or any type of public liability caused by the child.

We have no actual loss statistics in order to project the State's estimated loss costs, however, we are advised that there are currently approximately 3,000 positions for foster care children in foster homes or residential care facilities, we have estimated average loss of \$300 per foster child. Our projections are based on the increased indemnification commitment as well as an escalated responsibility for third party claims.

Since all Risk Management funding is collected through Reimbursable Services Agreement (RSAs) from the agencies, this request would be added to the Department of Health and Social Services insurance RSA billing from the Division of Risk Management.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to indemnity of BRU: Risk Management
foster parents.
 Sponsor: HESS Components: _____
 Requestor: Labor and Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	900.0	900.0	900.0	900.0	900.0	900.0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	900.0	900.0	900.0	900.0	900.0	900.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	900.0	900.0	900.0	900.0	900.0	900.0
TOTAL	900.0	900.0	900.0	900.0	900.0	900.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This fiscal note is very difficult to estimate since the possible loss exposures are "open ended" on over 800 foster homes plus 35 residential facilities and past claims experience detail is lacking. The attached explains the reasoning used in arriving at the fiscal note estimate.

Prepared by: Donald J. Hitchcock *[Signature]* Phone: 465-2180
 Division: Risk Management Date: 3-23-90
 Approved by Commissioner: Frank S. Baxter *[Signature]* Date: 3-23-90
 Agency: Department of Administration

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: An Act relating to civil liability and uninsured property losses related to foster children BRU: Insurance
 Sponsor: HES's Committee Components: Operations
 Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) No fiscal impact in FY 90.

The bill does not impact the division.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
 Division: Insurance Date: 2/2/90
 Approved by Commissioner: Larry Merculieff Date: 5/2
 Agency: Department of Commerce & Economic Development

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

State of Alaska

HB 178

Committees

CO CHAIR, HOUSE JUDICIARY
VICE CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)

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

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

MEMORANDUM

TO: Members of the HB 178 Working Group
FROM: Max Gruenberg *MFG*
DATE: March 7, 1990
RE: Soliciting comments on proposed draft of HB 178.

I would very much appreciate it if you would review the enclosed draft of HB 178. I have identified some problems areas with the draft as written, but I think this is a good starting point from which to start discussion on the bill.

Please contact me or my staff attorney Mark Handley at 465-4968 if you have any questions or comments by 5:00 p.m. Monday, March 12.

Thank you.

6-0752D
Lauterbach
2/10/90

Original sponsor(s): HESS Committee

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 178 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liability and insurance for acts
7 or omissions of or harm to children in the custody of
8 the state; and providing for an effective date."

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

10 * Section 1. AS 21.36.090(c) is amended to read:

11 (c) A person may not make or permit arbitrary or unfair dis-
12 crimination between insureds or property having like insuring or risk
13 characteristics, in the premium or rates charged for a policy or
14 contract of property, casualty, surety, marine, wet marine or trans-
15 portation insurance, or in the dividends or other benefits payable on
16 the insurance, or in the selection of it, or in any other of the terms
17 and conditions of the insurance. Arbitrary or unfair discrimination
18 prohibited under this subsection includes consideration of the pres-
19 ence of foster children in a home as being a different risk charac-
20 teristic than the presence of natural children in a home in relation
21 to property or casualty insurance of a foster parent.

22 * Sec. 2. AS 47.35 is amended by adding new sections to read:

23 Sec. 47.35.110. INDEMNIFICATION OF FOSTER PARENTS. (a) The
24 state shall indemnify a foster parent, a state employee, and a rep-
25 resentative of the state for uninsured civil damages that are a result
26 of

- 27 (1) acts or omissions by a foster child that occur while
28 the child is under the care of the foster parent under this title; or
29 (2) negligent acts or omissions by the foster parent, state

1 employee, or representative of the state that result in harm to a
2 foster child placed in the care of the foster parent under this title
3 if the acts or omissions occur while the child is under the care of
4 the foster parent.

5 (b) This section does not apply to civil damages that are a
6 result of wilful or intentional misconduct of a foster parent, state
7 employee, or representative of the state.

8 (c) For purposes of indemnification for damages for harm to the
9 foster child caused by an act or omission of the foster parent occur-
10 ring while the foster child is in the foster parent's care under this
11 title, "intentional misconduct of a foster parent" under (b) of this
12 section includes intentionally allowing a foster child to engage in an
13 activity prohibited by the department in regulations adopted under (e)
14 of this section.

15 (d) Notwithstanding AS 09.17.080(d), the state is liable for
16 full civil damages for personal injury to a foster child under (a)(2)
17 of this section if the injury is the result of intentional misconduct
18 of the foster parent as described in (c) of this section. The state
19 may seek indemnification from the foster parent for damages it pays
20 under this subsection to the extent that the foster parent's inten-
21 tional misconduct contributed to the child's injury.

22 (e) The department shall by regulation specify activities in
23 which a foster child may not engage. The regulations must be detailed
24 in nature, specifically describing or naming the prohibited activity.

25 Sec. 47.35.120. UNINSURED PROPERTY LOSS. (a) Subject to (c) of
26 this section, the division of risk management, Department of Adminis-
27 tration, shall reimburse a licensed foster parent for the uninsured
28 loss of, or uninsured damage to, ~~tangible property under the lawful~~
29 control of a foster parent to the extent that the loss or damage

1 exceeds \$100 if the loss or damage resulted from the misconduct of a
2 child in the custody of the state who was placed in the care of the
3 foster parent under this title.

4 (b) Under the conditions described in (a) of this section and
5 subject to (c) of this section, the division of risk management may
6 reimburse a foster parent for an uninsured loss or uninsured damage
7 that does not exceed \$100.

8 (c) In order to be reimbursed under (a) or (b) of this section,
9 the foster parent shall provide evidence satisfactory to the division
10 that the loss or damage was caused by an act or omission of the child
11 that occurred while the child was in the custody of the foster parent.
12 Before reimbursing a foster parent under (a) or (b) of this section,
13 the division may also require the foster parent to report the loss or
14 damage to appropriate law enforcement authorities.

15 * Sec. 3. AS 34.50.020(b) is repealed.

16 * Sec. 4. The Department of Health and Social Services shall notify the
17 revisor of statutes and the lieutenant governor in writing when it has
18 adopted regulations under AS 47.35.110(e), enacted by sec. 2 of this Act.
19 The notice must specify the effective date of the regulations.

20 * Sec. 5. AS 47.35.110(c) and (d), enacted by sec. 2 of this Act, take
21 effect on the effective date of the regulations adopted by the Department
22 of Health and Social Services under AS 47.35.110(e), enacted by sec. 2 of
23 this Act.
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Original sponsor: Health, Education and
Social Services Committee

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 178 (HESS)

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 indemnity and uninsured property
7 losses related to foster children."

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

9 * Section 1. AS 47.35 is amended by adding new sections to read:

10 Sec. 47.35.110. INDEMNIFICATION OF FOSTER PARENTS. (a) The
11 state shall indemnify a foster parent, a state employee, and a repre-
12 sentative of the state for civil damages that are a result of

13 (1) acts or omissions by a minor placed in the care of the
14 foster parent under this title; or

15 (2) negligent acts or omissions by the foster parent, state
16 employee, or representative of the state that result in harm to a
17 minor placed in the care of the foster parent under this title.

18 (b) This section does not apply to civil damages that are a
19 result of gross negligence or reckless or intentional misconduct of a
20 foster parent, state employee, or representative of the state.

21 Sec. 47.35.120. UNINSURED PROPERTY LOSS. (a) The division of
22 risk management, Department of Administration, shall reimburse a
23 licensed foster parent for the uninsured loss of, or uninsured damage
24 to, tangible property under the lawful control of a foster parent to
25 the extent that the loss or damage exceeds \$100 if the loss or damage
26 resulted from the misconduct of a child in the custody of the state
27 who was placed in the care of the foster parent under this title.

28 (b) Under the conditions described in (a) of this section, the
29 division of risk management may reimburse a foster parent for an

1 uninsured loss or uninsured damage that does not exceed \$100.
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6-0752H
Lauterbach
1/15/90

Original sponsor(s): HESS Committee

1 IN THE HOUSE

BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 178 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to indemnity of foster parents and
7 foster parents' uninsured property losses related to
8 foster children."

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

10 * Section 1. AS 47.35 is amended by adding new sections to read:

11 Sec. 47.35.110. INDEMNIFICATION OF FOSTER PARENTS. (a) The
12 state shall indemnify a foster parent for civil damages that are a
13 result of

14 (1) acts or omissions by a minor placed in the care of the
15 foster parent under this title; or

16 (2) negligent acts or omissions by the foster parent that
17 result in harm to a minor placed in the care of the foster parent
18 under this title.

19 (b) This section does not apply to civil damages that are a
20 result of gross negligence or reckless or intentional misconduct of a
21 foster parent.

22 Sec. 47.35.120. UNINSURED PROPERTY LOSS. (a) The division of
23 risk management, Department of Administration, shall reimburse a
24 licensed foster parent for the uninsured loss of, or uninsured damage
25 to, tangible property under the lawful control of a foster parent to
26 the extent that the loss or damage exceeds \$100 per incident if the
27 loss or damage was proximately caused by the acts of a child in the
28 custody of the state who was placed in the care of the foster parent
29 under this title.

1 (b) Under the conditions described in (a) of this section, the
2 department may reimburse a foster parent for an uninsured loss or
3 uninsured damage that does not exceed \$100.
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Original sponsor(s): HESS Committee

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 178 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liability, indemnification, and
7 insurance in relation to children in the custody of
8 the state who are placed with out-of-home care pro-
9 viders."

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

11 * Section 1. AS 21.36.090(c) is amended to read:

12 (c) A person may not make or permit arbitrary or unfair dis-
13 crimination between insureds or property having like insuring or risk
14 characteristics, in the premium or rates charged for a policy or
15 contract of property, casualty, surety, marine, wet marine or trans-
16 portation insurance, or in the dividends or other benefits payable on
17 the insurance, or in the selection of it, or in any other of the terms
18 and conditions of the insurance. Arbitrary or unfair discrimination
19 prohibited under this subsection includes consideration of the pres-
20 ence in a home or other building of a minor who is in the custody of
21 the state as being a different risk characteristic than the presence
22 of a minor who is not in the custody of the state in relation to
23 property or casualty insurance of an out-of-home care provider, as
24 defined in AS 47.35.130. □

25 * Sec. 2. AS 47.35 is amended by adding new sections to read:

26 Sec. 47.35.110. INDEMNIFICATION OF OUT-OF-HOME CARE PROVIDERS.

27 (a) The state shall indemnify a minor's out-of-home care provider for
28 uninsured civil damages, other than punitive damages, that are a
29 result of

1 (1) acts or omissions by the minor that occur while the
2 minor is under the care of the out-of-home care provider; or

3 (2) negligent acts or omissions by the out-of-home care
4 provider that result in harm to the minor placed in the care of the
5 provider if the acts or omissions occur while the minor is under the
6 care of the provider.

7 (b) In order to be eligible for indemnification under (a) of
8 this section, the out-of-home care provider shall offer the state the
9 opportunity to defend the provider in the action for civil damages and
10 shall assist the state in the defense if the state accepts the oppor-
11 tunity to defend the provider.

12 (c) The state may seek to recover from the out-of-home care
13 provider for damages the state pays under (a)(2) of this section to
14 the extent that the provider's wilful or intentional misconduct con-
15 tributed to the minor's injury.

16 Sec. 47.35.120. UNINSURED PROPERTY LOSS. (a) Subject to (c) of
17 this section, the division of risk management, Department of Adminis-
18 tration, shall reimburse an out-of-home care provider for the unin-
19 sured loss of, or uninsured damage to, tangible property under the
20 lawful control of the provider to the extent that the loss or damage
21 exceeds \$100 if the loss or damage resulted from the misconduct of a
22 minor in the custody of the state who was placed in the care of the
23 provider.

24 (b) Under the conditions described in (a) of this section and
25 subject to (c) of this section, the division of risk management may
26 reimburse an out-of-home care provider for an uninsured loss or unin-
27 sured damage that does not exceed \$100.

28 (c) In order to be reimbursed under (a) or (b) of this section,
29 the out-of-home care provider shall provide evidence satisfactory to

1 the division that the loss or damage was caused by an act or omission
2 of the minor that occurred while the minor was in the custody of the
3 provider. Before reimbursing a provider under (a) or (b) of this
4 section, the division may also require the provider to report the loss
5 or damage to appropriate law enforcement authorities.

6 Sec. 47.35.130. DEFINITION. In AS 47.35.110 - 47.35.120, "out-
7 of-home care provider" and "provider" mean an agency or a person,
8 other than the minor's legal parents, with whom the minor is currently
9 placed and who is in the custody of the state under AS 47.10.-
10 080(b)(3), (c)(1), or (c)(3), 47.10.142, or 47.10.230(c), including a
11 foster parent, a relative other than a parent, a person who has peti-
12 tioned for adoption of the minor, or a residential child care facili-
13 ty.

14 * Sec. 3. AS 34.50.020(b) is repealed.
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HOUSE COMMITTEE REPORT

3/26

(7)

Date Referred: January 17, 1990

FURTHER REFERRALS

JUDICIARY

FINANCE

Date of Committee Action: 3/20/90

The LABOR & COMMERCE Committee considered:

HB 178

HOUSE BILL NO. 178

TORT LIABILITY RELATED TO FOSTER CARE

"An Act relating to civil liability and uninsured property losses related to foster children."

RECOMMENDATIONS:

- be replaced with CS HB 178 (L+C) the same title
- have 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):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact Admin. fiscal note(s) _____
- zero fiscal note Comm + Econ. zero fiscal note(s) _____
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

<u>W. Greenberg</u>	<u>Dore Donley</u>		X	
<u>Mark Boyer</u>	<u>Alan A. Leman</u>			✓
<u>Finkelstein</u>	<u>Collins</u>		X	
<u>Boucher</u>				

Dore Donley

Chairman's Signature

HOUSE COMMITTEE REPORT

1/17

(7) Date Referred: February 15, 1989 FURTHER REFERRALS: LABOR & COMMERCE JUDICIARY

Date of Committee Action: 1/16/90 added 1/17 Finance

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 178

HOUSE BILL NO. 178 [TORT LIABILITY RELATED TO FOSTER CARE] "An Act relating to civil liability and uninsured property losses related to foster children."

RECOMMENDS:

- [X] replacing with CS HB 178 (HESS) [] the same title [] a new title
[] the attached amendment(s)
[X] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[X] additional referral to the FINANCE added 1/17/90 Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [X] fiscal impact HSS
[] zero fiscal note
[] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published:
[] zero fiscal notes(s) published:

SIGNING DO PASS:

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

Handwritten signatures and names: J. Ellis ELLIS, GRUENBERG, FURNACE, C. DAVIS, BOYER, GOLL

Chairman's signature: J. Ellis

MEMORANDUM

State of Alaska

TO: The Honorable Johnny Ellis
Chairperson
House HESS

DATE March 16, 1989

FILE NO 790/10755

TELEPHONE NO 465-3170

THRU:

SUBJECT Committee Request

FROM Yvonne M. Chase, ACSW *ymc*
Director
Division of Family
and Youth Services
Department of Health
and Social Services

During the hearings in foster care week, the HESS committee requested copies of the Division's policy and procedural manual for the youth corrections section of this agency. This manual has recently been revised; the family services section's manual is in the final stages of revision and will be sent to the printer before the end of March. I would also be happy to provide the committee with copies of that manual as soon as they are available. I have attached a memo from Richard Illias, the field administrator for youth corrections, which addresses the specific question of the committee.

YMC:jsd

Attachments

MEMORANDUM

State of Alaska

TO: Yvonne Chase, Director
Family & Youth Services


DATE: March 13, 1989

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: Special Needs

FROM: Dick Illias 
Youth Corrections Administrator

I understand that foster parents recently raised a concern during a legislative hearing that Youth Corrections required them to provide a police report before approving a special needs request for damages or loss. That is not true.

The Youth Corrections policy and procedure manual covers this issue in the last paragraph of page 153 and in sub-paragraph #5 on page 154. If the financial loss was caused by theft or criminal mischief, the foster parent must report the incident to the local law enforcement agency. Foster parents are not required to produce a copy of the police report. The requirement to report the loss to a local law enforcement agency is contained on the instructional sheet accompanying DFYS form #06-3440, titled "Foster Parent Report of Stolen/Damaged Property or Personal Injury". The documentation is provided in a section of the foster parent report. A copy of the report form and instructions is contained in the Youth Corrections procedure manual appendix, page #5.a.1 & 2.

A request for special needs will not be denied because a foster parent is unable to document the police report number. If a foster parent documents the date, time, and police agency notified; Youth Corrections staff may accept that information as documentation or may directly request additional information from the law enforcement agency. Ordinarily we would request additional information because the police investigation report may provide evidence to determine the foster child's responsibility.

Prior to final approval of a special needs request to reimburse a foster parent for damages or loss, it must be determined if the youth in foster care was responsible for the loss or damage. The potential for the youth to directly reimburse the foster parents through restitution is also examined as an alternative to special needs approval. If the loss or damage was the result of a law violation by a foster child, a court order for restitution may be obtained. Approval of a special needs request may be delayed while this information is being gathered by Youth Correction's staff. If there is insufficient evidence to determine that a youth in foster care was

Yvonne Chase
3/13/89

Page 2

responsible for damage or loss, then the special needs request may be disapproved. Reference page 154, paragraphs #4 and #7 of the Youth Corrections procedure manual and the instructions on the Foster-Parent Report of Stolen/Damaged Property.

DI/br

Mestas & Schneider, P.C.

DLNNIS M. MESTAS
MICHAEL J. SCHNEIDER

550 "N" STREET, SUITE 202
ANCHORAGE, ALASKA 99501-3298

AREA COPY 807
877-4561

January 30, 1990

VIA FAX AND MAIL

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

Re: CS for House Bill 178: "An Act Relating to Indemnity
of Foster Parents and Foster Parents' Uninsured Property
Losses Related to Foster Children."

Dear Representative Donley:

The most recent draft of this bill (received by me on January 29, 1990), does not appear to immunize the state of Alaska or foster parents from liability to those who are injured or damaged as a result of negligent conduct. Because this bill, in its present form, does not appear to limit victims' rights, I have no objection to the present form of the bill.

Thanks for your consideration.

Sincerely yours,

MESTAS & SCHNEIDER, P.C.


Michael J. Schneider

kc

cc: Kent Dawson (via fax)

*Hayden
Lynch*



SITKA BAR ASSOCIATION

March 10, 1989

*HJD
Briefing and
In Bill file*

Representative Peter Goll,
Chairperson
Judiciary Committee
Box V (Mail Stop 3100)
Juneau, AK 99835

Re: House Bill 178; Civil Liability to Foster Children

Dear Representative Goll:

The Sitka Bar Association opposes the passage of House Bill 178.

We are not aware of any valid justification for this proposed bill such as, possibly, a claim that so many claims are being made on behalf of injured foster care children that a burden is being placed upon the state's budget or an assertion that without such a protective law it would be difficult to convince persons to be foster care parents.

There may or may not be a shortage of foster care parents. If there is such a shortage, we do not believe a reason therefore is possible liability to the foster care child.

Even if there were such a justification, the question would become whether the victim (foster child) should bear the entire risk of damage/injury/loss or whether that risk should be covered by the foster parent having insurance or be spread throughout Alaska society, at an increased cost of state government, by way of the state's paying the insurance premium (whether self insured or not) for foster care parent coverage. The Sitka Bar Association would support the latter approach of spreading the risk rather than having the loss fall upon the defenseless victim.

We wish to point out that natural parents are, as they should be, liable to their children if they negligently injure their children. We do not see the logic in imposing a lesser standard of care upon foster care parents or upon upon the State of Alaska which has taken custody of and responsibility for foster children.

The "right" of the state to intrude into people's lives, even for the quite valid reason of protecting and providing for children in need of care not being supplies by their parents, carries with it a concomitant responsibility to act in a reasonable and non negligent manner towards those for whom it

is assumed such custody and control.

With respect to foster children, the state is, in effect, saying to the real parents that the state is stepping into the shoes of those parents and is going to do the job that they are not doing. By stepping into the shoes of the parents the state thereby acquires not only the rights but the responsibilities of the natural parent towards the child.

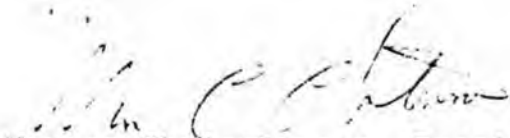
We also urge non passage of this bill if it intends to insulate the State of Alaska from liability to foster care parents or to other children in the foster home should the state negligently fail to properly advise prospective foster care parents of problems the foster care child has which are indicative of potential harm to others in the foster home.

Thank you for your committee's consideration of our comments and concerns against the passage of House Bill 178.

Very truly yours,



Donald L. Craddick, Secretary,
Sitka Bar Association
and



Warren Christianson, President
Sitka Bar Association

DLC/kb

Lin D. Coleman
1007 West 50th Avenue
Anchorage, Alaska 99514
(907) 562-3544

April 11, 1990

Representative Mark F. Gruenberg, Jr.
P. O. Box V
Juneau, Alaska 99811

Dear Mr. Gruenberg:

Following my appearance in a panel at the "Out of Home Care Conference" last week in Anchorage, with Pat O'Brien, DFYS; Theresa Landrum, DFYS; Venable Vernon, ASO-Risk Mgmt; and Tim Lynn, Atty., Anchorage; we all attended at the request of Theresa the teleconference. This teleconference was concerning HB 178, Liability of Foster Parents.

I spoke in favor of returning this legislation to committee. It was later after re-reading the legislation and the new DFYS regulations, and speaking with Alaska Foster Parent Association, President, Mr. Frank Wasmer and Mr. Mark Hanley of your office that it became aware that this regulation was seriously misrepresented to the foster parents in the audience of the conference.

I am very sorry for not having studied this issue and the regulation thoroughly before testimony before your committee. It would have been beneficial to all the foster parents in attendance to have been informed of both the legislation and the regulation. I am making it my priority to do this at this time.

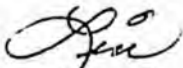
Please advise if there is any way this legislation may be re-activated for this session.

Again, I apologize for any inconvenience my lack of preparation may have caused.

Thank you for your attention on this matter.

I am most pleased with the passage from the House of HB19.
Good work.

Regards,



Lin D. Coleman
President
Alaska Foster Parent Association / Youth Services

cc: Mr. Frank Wasmer
Mr. Mark Hanley
Mr. Peter Goll



LIABILITY AND RISK MANAGEMENT
Panel Presentation

Thursday, April 5
10:15am - 12:15pm

INTRODUCTION
Theresa Tanoury
DFYS
Social worker

FOSTER PARENT
Lin Coleman
Youth Services
Anchorage

ATTORNEY
Tim Lynch
Priv. Practice
Anchorage

DFYS
Pat O'Brien
Lic Specialist
Juneau

AAG-RISK MANG.
Venable Vermont
Tort Section
Anchorage

State coverage
since regs
first
published in
1970s.

Numerous
questions &
concerns about
coverage.

Intro panel
members.

Situations or
examples of
concerns.

Licensing
investigations
that find
negligence in
hindsight.

Do I need my
own insurance?

National FP
Group
Insurance?

Sources of
help.

Lawsuits
defined (what
is typical?
atypical?).

Role in
lawsuits.

What to do
when, and what
not to do.

I'm your worst
nightmare? or
guardian
angel?

Regulations.

Good
Judgement.

Nonexposure to
risk.

Liability
Protection,
Damages and
Loss, pps 13-
14.

Role and
procedures.

Statutory
protection.

How to protect
yourself.

Handling
damage claims.

You don't need
insurance.

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Outline of changes to CS HB 178 (HESS)

1. Expands indemnity to all uninsured, non-punitive civil damages related to foster care of children.
2. Changes coverage of the bill to out-of-home care provider which is defined to include all those out-of-home care providers of children in state custody.
3. Changes reimbursement for property damage section to require that out-of-home care providers document that the loss was caused by the child and file a report with law enforcement if the department requires.
4. Limits indemnity and reimbursement for damages caused and civil actions that arise from activities of the child during the period which the child was committed to the foster parents care.
5. Repeals AS 34.50.020(b), existing law which provides state and out-of-home care provider immunity for property damage caused by foster children.
6. Provides that the state may seek reimbursement from out-of-home care providers when the state provides indemnification for damages caused by the out-of-home care providers' willful or intentional misconduct.
7. Amends insurance statutes to prohibit discrimination against out-of-home care providers in sale of home owner and home fire/accidental loss policies and prohibit writing damage caused by foster children out of the coverage such policies provide.
8. Gives the state the right to defend the out-of-home care provider against claims where the state must provide indemnity.

APRIL 5, 1990

CS HB 178 "An Act relating to civil liability and uninsured property losses related to foster children."

1. Amends insurance statutes to prohibit discrimination against foster parents in sale of home owner and home fire/accidental loss policies and prohibit writing damage caused by foster children out of the coverage such policies provide.
2. Provides indemnity to all out-of-home care providers for uninsured, non-punitive civil damages related to foster care of children.
3. Gives the state the right to defend the out-of-home care provider against claims where the state must provide indemnity.
4. Provides that the state may seek reimbursement from out-of-home care providers when the state provides indemnification for damages caused by the out-of-home care provider's willful or intentional misconduct.
5. Provides reimbursement to out-of-home care providers for uninsured property loss and damage in excess of \$100 that is caused by a foster child.
6. Requires that out-of-home care providers document that the loss or damage was caused by the child and file a report with law enforcement if the department requires.
7. Limits indemnity and reimbursement for damages caused and civil actions that arise from activities of the child during the period which the child was committed to the foster parents care.
8. Out-of-home provider is defined to include all those out-of-home care providers of children in state custody.
9. Repeals AS 34.50.202 (b), existing law which provides state and out-of-home care provider immunity for property damage caused by foster children.
10. Further referral to Finance.
11. Teleconference to Anchorage, possibly Kodiak, Valdez, Homer, and Fairbanks.

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Sec. 34.50.020. Liability for destruction of property by minors. (a) A person, municipal corporation, association, village, school district or religious or charitable organization, incorporated or unincorporated, may recover damages in a civil action in an amount not to exceed \$2,000 and court costs, from either parent or both parents or the legal guardian or person having the legal custody of an unemancipated minor under the age of 18 years, who maliciously or wilfully destroys real or personal property belonging to the person, municipal corporation, association, village, school district or religious or charitable organization.

(b) A state agency or its agents, including a person working in or responsible for the operation of a foster, receiving, or detention home, or children's institution, is not liable for the acts of unemancipated minors in its charge or custody. (§ 1 ch 98 SLA 1957; am § 1 ch 107 SLA 1967)

Chapter 55. Uniform Land Sales Practices Act.

Section	Section
04. Administration	24. Cease and desist orders
06. Fraudulent and prohibited practices	26. Revocation
08. Prohibitions on dispositions of interests in subdivisions	28. Penalties
10. Application for registration	30. Civil remedy
12. Public offering statement	32. Jurisdiction
14. Inquiry and examination	34. Interstate rendition
16. Notice of filing and registration	36. Service of process
18. Annual report	38. Uniformity of interpretation
20. General powers and duties	42. Exemptions
22. Investigations and proceedings	44. Definitions

NOTES TO DECISIONS

Basis for this chapter. — This chapter is based on the Uniform Land Sales Practices Act prepared by the National Conference of Commissioners on Uniform State Laws. *Stepanov v. Gavrilovich*, Sup. Ct. Op. No. 1823 (File No. 3236), 594 P.2d 30 (1979).

Constitutionality of 1977 amendatory act — Chapter 138, SLA 1977, entitled "An Act Relating to Land; and Providing for an Effective Date," did not violate Alaska Const., art. II, § 13 since "land" can be considered "one subject" and all of the provisions of Chapter 138 relate to this subject. *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982). Chapter 138, SLA 1977 added AS 34.55.006 and

amended AS 34.55.008, 34.55.022, 34.55.028, 34.55.030, 34.55.032, 34.55.042, and 34.55.044. — Editor's note.

1977 amendatory act not retroactive. — Chapter 138, §§ 1 — 8, SLA 1977, which added AS 34.55.006 and amended this chapter to apply to in-state subdividers, contained no express declaration of retroactivity, nor does its legislative history indicate that retrospective application was intended. *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

This chapter cannot be retrospectively applied to hold a developer liable for conduct predating its application to in-state land sales. *State v. First Nat'l Bank*, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

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HB

181

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 10, 1989

FURTHER REFERRALS:

Date of Committee Action: 4/24/89

The JUDICIARY Committee considered:

HB 181

HOUSE BILL NO. 181

[EXEMPTION OF HOME-BREW FROM AS 04]

"An Act relating to the private manufacture of an alcoholic beverage; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with CS HB 181 (Judiciary) [] the same title [X] a new title
- [] have attached amendment(s)
- [] do pass
- [] do not pass
- [] no recommendation
- [X] 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) _____
- [X] zero fiscal note(s) ABC Board 4/10/89
- [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

[Signature]
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[Signature]
Chairman's Signature

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 17, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 4/7/89

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 181

HOUSE BILL NO. 181 [EXEMPTION OF HOME-BREW FROM AS 04]
"An Act relating to the private manufacture of an alcoholic beverage; and providing for an effective date."

RECOMMENDS:

- [X] replacing with CS HB 181 (HESS) [X] the same title
[] the attached amendment(s) [] a new title
[X] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [] fiscal impact
[X] zero fiscal note
[] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published:
[] zero fiscal notes(s) published:

SIGNING DO PASS:

Handwritten signatures: Mr. [unclear], W. [unclear], MARK BOYD

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

Handwritten signatures: [unclear] N/R, [unclear] N/R, J. Ellis
Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Private manufacture of an
 alcoholic beverage
 Sponsor: Rep. Gruenberg
 Requestor: House HESS Committee

Agency Affected: Department of Revenue
 BRU: Alcoholic Beverage Control
 Board
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Patrick L. Sharrock
 Patrick L. Sharrock, Director

Prepared by: _____ Phone: 277-8638
 Division: Alcoholic Beverage Control Board Date: March 1, 1989

Approved by Commissioner: Hugh Malone Date: 3/1/89
 Agency: REVENUE

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

Department of Transportation & Public Facilities



POSITION PAPER

BILL NO: SB127

APPROVED: *Mark S. Hely*

TITLE:

DATE: January 23, 1989

"An Act relating to the private manufacture of and the definition of an alcoholic beverage; and providing for an effective date."

Section 2 of CSSB127 changes the definition of alcoholic beverages in Alaska's statutes (04.21.080(b)(1)) by adding a threshold of one-half percent or more of ... by volume to the current definition. The proposed language is identical with the wording that appears in the Code of Federal Regulations, Section 1208.3. Since the language is identical, this change should ensure that Alaska continues to meet the federal requirements for establishment of a National Minimum Drinking Age in each state. Alaska must meet these requirements to avoid the withholding of federal funds for highway construction.

[§ 23394]

(e) **ILLEGALLY PRODUCED WINE.**—Notwithstanding subsection (a), any wine produced in the United States at any place other than the bonded premises provided for in this chapter shall (except as provided in section 5042 in the case of tax-free production) be subject to tax at the rate prescribed in subsection (b) at the time of production and whether or not removed for consumption or sale.

[Sec. 5041 as amended by Act of June 30, 1959, P. L. 86-75, 73 Stat. 157; Act of June 30, 1960, P. L. 86-564, 74 Stat. 290; Act of June 30, 1961, P. L. 87-72, 75 Stat. 194; Act of June 28, 1962, P. L. 87-508, 76 Stat. 114; Act of June 29, 1963, P. L. 88-52; Act of June 30, 1964, P. L. 88-348; Act of June 21, 1965, P. L. 89-44, 79 Stat. 136; Act of Oct. 26, 1974, P. L. 93-490, 88 Stat. 1466; Act of Oct. 4, 1976, P. L. 94-455, 90 Stat. 1520; Act of Nov. 10, 1988, P. L. 100-647, 102 Stat. 3342, applicable to wine removed after Dec. 31, 1988.]

[§ 23395]

Sec. 5042. Exemption from Tax. (a) **TAX-FREE PRODUCTION.**—(1) **CIDER.**—Subject to regulations prescribed by the Secretary, the noneffervescent product of the normal alcoholic fermentation of apple juice only, which is produced at a place other than a bonded wine cellar and without the use of preservative methods or materials, and which is sold or offered for sale as cider and not as wine or as a substitute for wine, shall not be subject to tax as wine nor to the provisions of subchapter F.

(2) **WINE FOR PERSONAL OR FAMILY USE.**—Subject to regulations prescribed by the Secretary—

(A) **EXEMPTION.**—Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

(B) **LIMITATION.**—The aggregate amount of wine exempt from tax under this paragraph with respect to any household shall not exceed—

(i) 200 gallons per calendar year if there are 2 or more adults in such household, or

(ii) 100 gallons per calendar year if there is only 1 adult in such household.

(C) **ADULTS.**—For purposes of this paragraph, the term "adult" means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the

§ 23394 26 U. S. C. 5041

household is situated at which wine may be sold to individuals, whichever is greater.

(3) **EXPERIMENTAL WINE.**—Subject to regulations prescribed by the Secretary, any scientific university, college of learning, or institution of scientific research may produce, receive, blend, treat, and store wine, without payment of tax, for experimental or research use but not for consumption (other than organoleptical tests) or sale, and may receive such wine spirits without payment of tax as may be necessary for such production.

[§ 23396]

(b) **CROSS REFERENCES.**—

(1) For provisions relating to exemption of tax on losses of wine (including losses by theft or authorized destruction), see section 5370.

(2) For provisions exempting from tax samples of wine, see section 5372.

(3) For provisions authorizing withdrawals of wine free of tax or without payment of tax, see section 5362.

[Sec. 5042 as amended by Act of Oct. 4, 1976, P. L. 94-455, 90 Stat. 1520; Act of Oct. 13, 1978, P. L. 95-458, 92 Stat. 1255.]

[§ 23397]

Sec. 5043. Collection of Taxes on Wines.

(a) **PERSONS LIABLE FOR PAYMENT.**—The taxes on wine provided for in this subpart shall be paid—

(1) **BONDED WINE CELLARS.**—In the case of wines removed from any bonded wine cellar, by the proprietor of such bonded wine cellar; except that—

(A) in the case of any transfer of wine in bond as authorized under the provisions of section 5362(b), the liability for payment of the tax shall become the liability of the transferee from the time of removal of the wine from the transferor's premises, and the transferor shall thereupon be relieved of such liability; and

(B) in the case of any wine withdrawn by a person other than such proprietor without payment of tax as authorized under the provisions of section 5362(c), the liability for payment of the tax shall become the liability of such person from the time of the removal of the wine from the bonded wine cellar, and such proprietor shall thereupon be relieved of such liability.

(2) **FOREIGN WINE.**—In the case of foreign wines, by the importer thereof.

(3) **OTHER WINES.**—Immediately, in the case of any wine produced, imported, received, removed, or possessed otherwise than as authorized by law, by any person

[§ 23419A]

(d) **REMOVALS FOR RESEARCH, DEVELOPMENT, OR TESTING.**—Under such conditions and regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment relating to beer or brewery operations.

[§ 23419B]

(e) **BEER FOR PERSONAL OR FAMILY USE.**—Subject to regulation prescribed by the Secretary, any adult may, without payment of tax, produce beer for personal or family use and not for sale. The aggregate amount of beer exempt from tax under this subsection with respect to any household shall not exceed—

(1) 200 gallons per calendar year if there are 2 or more adults in such household, or

(2) 100 gallons per calendar year if there is only 1 adult in such household.

For purposes of this subsection, the term "adult" means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which beer may be sold to individuals, whichever is greater.

[§ 23420]

(f) **REMOVAL AS SUPPLIES FOR CERTAIN VESSELS AND AIRCRAFT.**—

For exemption as to supplies for certain vessels and aircraft, see section 309 of the Tariff Act of 1930, as amended (19 U. S. C. 1309).

[Sec. 5053 as amended by Act of June 21, 1965, P. L. 89-44, 79 Stat. 136; Act of Jan. 12, 1971, P. L. 91-673; 84 Stat. 2056; Act of Oct. 4, 1976, P. L. 94-455, 90 Stat. 1520; Act of Oct. 13, 1978, P. L. 95-458, 92 Stat. 1255.]

[§ 23421]

Sec. 5054. Determination and Collection of Tax on Beer. (a) **TIME OF DETERMINATION.**—(1) **BEER PRODUCED IN THE UNITED STATES.**—Except as provided in paragraph (3), the tax imposed by section 5051 on beer produced in the United States shall be determined at the time it is removed for consumption or sale, and shall be paid by the brewer thereof in accordance with section 5061.

(2) **BEER IMPORTED INTO THE UNITED STATES.**—Except as provided in paragraph (4), the tax imposed by section 5051 on beer imported

into the United States shall be determined at the time of importation thereof, or, if entered for warehousing, at the time of removal from the 1st such warehouse.

(3) **ILLEGALLY PRODUCED BEER.**—The tax on any beer produced in the United States shall be due and payable immediately upon production unless—

(A) such beer is produced in a brewery qualified under the provisions of subchapter G, or

(B) such production is exempt from tax under sections 5053(a) (relating to beer for personal or family use).

(4) **UNLAWFULLY IMPORTED BEER.**—Beer smuggled or brought into the United States unlawfully shall, for purposes of this chapter, be held to be imported into the United States, and the internal revenue tax shall be due and payable at the time of such importation.

[§ 23422]

(5) **TAX ON RETURNED BEER.**—Beer which has been removed for consumption or sale and is thereafter returned to the brewery shall be subject to all provisions of this chapter relating to beer prior to removal for consumption or sale, including the tax imposed by section 5051. The tax on any such returned beer which is again removed for consumption or sale shall be determined and paid without respect to the tax which was determined at the time of prior removal of the beer for consumption or sale.

[§ 23424]

(c) **APPLICABILITY OF OTHER PROVISIONS OF LAW.**—All administrative and penal provisions of this title, insofar as applicable, shall apply to any tax imposed by section 5051.

[Sec. 5054 as amended by Act of Oct. 4, 1976, P. L. 94-455, 90 Stat. 1520; Act of Oct. 13, 1978, P. L. 95-458, 92 Stat. 1255; Act of Oct. 21, 1986, P. L. 99-509, 9100 Stat. 2586, applicable to removals during semimonthly periods ending on or after Dec. 31, 1986.]

[§ 23425]

Sec. 5055. Drawback of Tax. On the exportation of beer, brewed or produced in the United States, the brewer thereof shall be allowed a drawback equal in amount to the tax found to have been paid on such beer, to be paid on submission of such evidence, records and certificates indicating exportation, as the Secretary may by regula-

CORRECTION

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

[§ 23394]

(e) **ILLEGALLY PRODUCED WINE.**—Notwithstanding subsection (a), any wine produced in the United States at any place other than the bonded premises provided for in this chapter shall (except as provided in section 5042 in the case of tax-free production) be subject to tax at the rate prescribed in subsection (b) at the time of production and whether or not removed for consumption or sale.

[Sec. 5041 as amended by Act of June 30, 1959, P. L. 86-75, 73 Stat. 157; Act of June 30, 1960, P. L. 86-564, 74 Stat. 290; Act of June 30, 1961, P. L. 87-72, 75 Stat. 194; Act of June 23, 1962, P. L. 87-508, 76 Stat. 114; Act of June 29, 1963, P. L. 88-52; Act of June 30, 1964, P. L. 88-348; Act of June 21, 1965, P. L. 89-44, 79 Stat. 136; Act of Oct. 26, 1974, P. L. 93-490, 88 Stat. 1466; Act of Oct. 4, 1976, P. L. 94-455, 90 Stat. 1520; Act of Nov. 10, 1988, P. L. 100-647, 102 Stat. 3342, applicable to wine removed after Dec. 31, 1988.]

[§ 23395]

Sec. 5042. Exemption from Tax. (a) **TAX-FREE PRODUCTION.**—(1) **COVER.**—Subject to regulations prescribed by the Secretary, the noneffervescent product of the normal alcoholic fermentation of apple juice only, which is produced at a place other than a bonded wine cellar and without the use of preservative methods or materials, and which is sold or offered for sale as cider and not as wine or as a substitute for wine, shall not be subject to tax as wine nor to the provisions of subchapter F.

(2) **WINE FOR PERSONAL OR FAMILY USE.**—Subject to regulations prescribed by the Secretary—

(A) **EXEMPTION.**—Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

(B) **LIMITATION.**—The aggregate amount of wine exempt from tax under this paragraph with respect to any household shall not exceed—

(i) 200 gallons per calendar year if there are 2 or more adults in such household, or

(ii) 100 gallons per calendar year if there is only 1 adult in such household.

(C) **ADULTS.**—For purposes of this paragraph, the term "adult" means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the

§ 23394 26 U. S. C. 5041

household is situated at which wine may be sold to individuals, whichever is greater.

(J) **EXPERIMENTAL WINE.**—Subject to regulations prescribed by the Secretary, any scientific university, college of learning, or institution of scientific research may produce, receive, blend, treat, and store wine, without payment of tax, for experimental or research use but not for consumption (other than organoleptical tests) or sale, and may receive such wine spirits without payment of tax as may be necessary for such production.

[§ 23396]

(b) **CROSS REFERENCES.**—

(1) For provisions relating to exemption of tax on losses of wine (including losses by theft or authorized destruction), see section 5370.

(2) For provisions exempting from tax samples of wine, see section 5372.

(3) For provisions authorizing withdrawals of wine free of tax or without payment of tax, see section 5362.

[Sec. 5042 as amended by Act of Oct. 4, 1976, P. L. 94-455, 90 Stat. 1520; Act of Oct. 13, 1978, P. L. 95-458, 92 Stat. 1255.]

[§ 23397]

Sec. 5043. Collection of Taxes on Wines.

(a) **PERSONS LIABLE FOR PAYMENT.**—The taxes on wine provided for in this subpart shall be paid—

(1) **BONDED WINE CELLARS.**—In the case of wines removed from any bonded wine cellar, by the proprietor of such bonded wine cellar; except that—

(A) in the case of any transfer of wine in bond as authorized under the provisions of section 5362(b), the liability for payment of the tax shall become the liability of the transferee from the time of removal of the wine from the transferor's premises, and the transferor shall thereupon be relieved of such liability; and

(B) in the case of any wine withdrawn by a person other than such proprietor without payment of tax as authorized under the provisions of section 5362(c), the liability for payment of the tax shall become the liability of such person from the time of the removal of the wine from the bonded wine cellar, and such proprietor shall thereupon be relieved of such liability.

(2) **FOREIGN WINES.**—In the case of foreign wines, by the importer thereof.

(3) **OTHER WINES.**—Immediately, in the case of any wine produced, imported, received, removed, or possessed otherwise than as authorized by law, by any person

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brewers under common control where one or more of the brewers is not a corporation.

(3) **TOLERANCES.**—Where the Secretary finds that the revenue will not be endangered thereby, he may by regulations prescribe tolerances for barrels and fractional parts of barrels, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a barrel or a fractional part of a barrel are within the limit of the applicable tolerance prescribed.

[§ 23412]

(b) **ASSESSMENT ON MATERIALS USED IN PRODUCTION IN CASE OF FRAUD.**—Nothing contained in this subpart or subchapter G shall be construed to authorize an assessment on the quantity of materials used in producing or purchased for the purpose of producing beer, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of beer produced; but the tax on all beer shall be paid as provided in section 5054, and not otherwise; except that this subsection shall not apply to cases of fraud, and nothing in this subsection shall have the effect to change the rules of law respecting evidence in any prosecution or suit.

[§ 23412A]

(c) **ILLEGALLY PRODUCED BEER.**—The production of any beer at any place in the United States shall be subject to tax at the rate prescribed in subsection (a) and such tax shall be due and payable as provided in section 5054(a)(3) unless—

(1) such beer is produced in a brewery qualified under the provisions of subchapter G, or

(2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

[Sec. 5051 as amended by Act of June 30, 1959, P. L. 86-75, 73 Stat. 157; Act of June 30, 1960, P. L. 86-564, 74 Stat. 290; Act of June 30, 1961, P. L. 87-72, 75 Stat. 194; Act of June 28, 1962, P. L. 87-508, 76 Stat. 114; Act of June 29, 1963, P. L. 88-52; Act of June 30, 1964, P. L. 88-348; Act of June 21, 1965, P. L. 89-44, 79 Stat. 136; Act of Oct. 4, 1976, P. L. 94-455, 90 Stat. 1520, effective Feb. 1, 1977; Act of Oct. 17, 1976, P. L. 94-529, 90 Stat. 2495; Act of Oct. 13, 1978, P. L. 95-458, 92 Stat. 1255.]

[§ 23413]

Sec. 5052. Definitions. (a) **BEER.**—For purposes of this chapter (except when used

§ 23412 26 U. S. C. 5052

with reference to distilling or distilling material) the term "beer" means beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

[§ 23414]

(b) **GALLON.**—For purposes of this subpart, the term "gallon" means the liquid measure containing 231 cubic inches.

[§ 23415]

(c) **REMOVED FOR CONSUMPTION OR SALE.**—Except as provided for in the case of removal of beer without payment of tax, the term "removed for consumption or sale," for the purposes of this subpart, means—

(1) **SALE OF BEER.**—The sale and transfer of possession of beer for consumption at the brewery; or

(2) **REMOVALS.**—Any removal of beer from the brewery.

[§ 23416]

(d) **BREWER.**—

For definition of brewer, see section 5052.

[Sec. 5052 as amended by Act of Jan. 12, 1971, P. L. 91-673, 84 Stat. 2056.]

[§ 23417]

Sec. 5053. Exemptions. (a) **REMOVALS FOR EXPORT.**—Beer may be removed from the brewery, without payment of tax, for export, in such containers and under such regulations, and on the giving of such notices, entries, and bonds and other security, as the Secretary may by regulations prescribe.

[§ 23418]

(b) **REMOVALS WHEN UNFIT FOR BEVERAGE USE.**—When beer has become sour or damaged, so as to be incapable of use as such, a brewer may remove the same from his brewery without payment of tax, for manufacturing purposes, under such regulations as the Secretary may prescribe.

[§ 23419]

(c) **REMOVALS FOR LABORATORY ANALYSIS.**—Beer may be removed from the brewery, without payment of tax, for laboratory analysis, subject to such limitations and under such regulations as the Secretary may prescribe.

[§ 23419A]

(d) **REMOVALS FOR RESEARCH, DEVELOPMENT, OR TESTING.**—Under such conditions and regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment relating to beer or brewery operations.

[§ 23419B]

(e) **BEER FOR PERSONAL OR FAMILY USE.**—Subject to regulation prescribed by the Secretary, any adult may, without payment of tax, produce beer for personal or family use and not for sale. The aggregate amount of beer exempt from tax under this subsection with respect to any household shall not exceed—

(1) 200 gallons per calendar year if there are 2 or more adults in such household, or

(2) 100 gallons per calendar year if there is only 1 adult in such household.

For purposes of this subsection, the term "adult" means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which beer may be sold to individuals, whichever is greater.

[§ 23420]

(f) **REMOVAL AS SUPPLIES FOR CERTAIN VESSELS AND AIRCRAFT.**—

For exemption as to supplies for certain vessels and aircraft, see section 308 of the Tariff Act of 1930, as amended (19 U. S. C. 1308).

[Sec. 5053 as amended by Act of June 21, 1965, P. L. 89-44, 79 Stat. 136; Act of Jan. 12, 1971, P. L. 91-673; 84 Stat. 2056; Act of Oct. 4, 1976, P. L. 94-455, 90 Stat. 1520; Act of Oct. 13, 1978, P. L. 95-458, 92 Stat. 1255.]

[§ 23421]

Sec. 5054. Determination and Collection of Tax on Beer. (a) **TIME OF DETERMINATION.**—(1) **BEER PRODUCED IN THE UNITED STATES.**—Except as provided in paragraph (3), the tax imposed by section 5051 on beer produced in the United States shall be determined at the time it is removed for consumption or sale, and shall be paid by the brewer thereof in accordance with section 5061.

(2) **BEER IMPORTED INTO THE UNITED STATES.**—Except as provided in paragraph (4), the tax imposed by section 5051 on beer imported

into the United States shall be determined at the time of importation thereof, or, if entered for warehousing, at the time of removal from the 1st such warehouse.

(3) **ILLEGALLY PRODUCED BEER.**—The tax on any beer produced in the United States shall be due and payable immediately upon production unless—

(A) such beer is produced in a brewery qualified under the provisions of subchapter G, or

(B) such production is exempt from tax under sections 5053(a) (relating to beer for personal or family use).

(4) **UNLAWFULLY IMPORTED BEER.**—Beer smuggled or brought into the United States unlawfully shall, for purposes of this chapter, be held to be imported into the United States, and the internal revenue tax shall be due and payable at the time of such importation.

[§ 23422]

(5) **TAX ON RETURNED BEER.**—Beer which has been removed for consumption or sale and is thereafter returned to the brewery shall be subject to all provisions of this chapter relating to beer prior to removal for consumption or sale, including the tax imposed by section 5051. The tax on any such returned beer which is again removed for consumption or sale shall be determined and paid without respect to the tax which was determined at the time of prior removal of the beer for consumption or sale.

[§ 23424]

(c) **APPLICABILITY OF OTHER PROVISIONS OF LAW.**—All administrative and penal provisions of this title, insofar as applicable, shall apply to any tax imposed by section 5051.

[Sec. 5054 as amended by Act of Oct. 4, 1976, P. L. 94-455, 90 Stat. 1520; Act of Oct. 13, 1978, P. L. 95-458, 92 Stat. 1255; Act of Oct. 21, 1986, P. L. 99-509, 9100 Stat. 2786, applicable to removals during semimonthly periods ending on or after Dec. 31, 1986.]

[§ 23425]

Sec. 5055. Drawback of Tax. On the exportation of beer, brewed or produced in the United States, the brewer thereof shall be allowed a drawback equal in amount to the tax found to have been paid on such beer, to be paid on submission of such evidence, records and certificates indicating exportation, as the Secretary may by regula-

BET

certain, or according as a question disputed between them is settled in one way or the other. *Coulter v. State*, 122 Tex.Cr.R. 9, 53 S.W.2d 477, 480.

A contract by which two or more parties agree that a sum of money, or other thing, shall be paid or delivered to one of them on the happening or not happening of an uncertain event. *Grooms v. Knox*, 25 Ala.App. 165, 142 So. 382.

In a "bet" or "wager" money belongs to the persons posting it, each of whom has a chance to win it, but, in the case of a "purse" or "premium," money belongs to the person offering it, who has no chance to win it, but is certain to lose it. *Toomey v. Penwell*, 76 Mont. 166, 245 P. 943, 945, 45 A.L.R. 993.

Bet and wager are synonymous terms. *Woodcock v. McQueen*, 11 Ind. 16; *Shumate v. Com.*, 13 Grat. (Va.) 660.

BETHLEHEM. See *Bedlam*.

BETTING BOOK. A book kept for registering bets on the result of a race as operated on race track. In a broader sense, the "betting book" is that book which enables the professional bettor to carry on his business, and to promote a race, and it includes the book, the making book and the bookmaker. *State v. Austin*, 141 La. 394, 76 So. 809, 810; *People v. Semmler*, 30 Ill. 272, 178 N.E. 100, 101.

BETRAYAL. A "betrayal," as of a professional secret on the part of a physician, signifies a wrongful disclosure in violation of the trust imposed by the patient. *Simonsen v. Swenson*, 104 Neb. 224, 177 N.W. 831, 832, 9 A.L.R. 1250.

BETROTHED. One who has exchanged promises to marry. The term may be synonymous with "intended wife." *Mace v. Grand Lodge*, A. O. U. W. of Massachusetts, 234 Mass. 299, 125 N.E. 569.

BETROTHMENT, BETROTHAL. Mutual promise of marriage; the plighting of troth; a mutual promise or contract between a man and woman competent to make it, to marry at a future time.

BETTER DESCRIBED. More fully delineated or more fully pictured or painted. *Katzin v. Kruvant*, 99 N.J.Eq. 619, 133 A. 516, 517.

BETTER EQUITY. See *Equity*.

BETTERMENT. An improvement put upon an estate which enhances its value more than mere repairs. The improvement may be either temporary or permanent. *People v. Klee*, 282 Ill. 440, 118 N.E. 754, 757.

Also applied to denote the additional value which an estate acquires in consequence of some public improvement, as laying out or widening a street, etc., *Chase v. Sloux*, City, 86 Iowa, 603, 53 N.W. 331.

BETTERMENT ACTS. Statutes which provide that a bona fide occupant of real estate making lasting improvements in good faith shall have a lien upon the estate recovered by the real owner to the extent that his improvements have increased the value of the land. Also called "occupying claimant acts." *Jones v. Hotel Co.*, 86 F. 386, 30 C.C.A. 108.

BETWEEN. A space which separates. *Hobson v. Postal Telegraph-Cable Co.*, 161 Tenn. 419, 32 S.

W.2d 1046. Strictly applicable only with reference to two things, but this may be understood as including cases in which a number of things are discriminated collectively as two wholes, or as taken in pairs, or where one thing is set off against a number of others. In re *McShane's Will*, 286 N.Y.S. 680, 682, 158 Misc. 777. Sometimes used synonymously with "among". In re *Moore's Estate*, 157 Pa.Super. 296, 43 A.2d 359.

As a measure or indication of distance, this word has the effect of excluding the two termini. *Morris & E. R. Co. v. Central R. Co.*, 31 N.J.Law, 212.

If an act is to be done "between" two certain days, it must be performed before the commencement of the latter day. In computing the time in such a case, both the days named are to be excluded. *Hodges v. Filstrup*, 94 Fla. 943, 114 So. 521, 522. But a clause in a contract of sale to the effect that the purchaser could require the vendor to repurchase between the fifth and sixth year from a certain date means during the sixth year. *Van Demark v. California Home Extension Ass'n*, 43 Cal.App. 685, 193 P. 866, 868.

In case of a devise to A. and B. "between them," these words create a tenancy in common. *Lashbrook v. Cock*, 2 Mer. 70.

Between equal equities the law must prevail. This is hardly of general application.

BEVERAGE. A liquor or liquid for drinking. *Burns'ein v. U. S.*, C.C.A.Cal., 55 F.2d 599, 603. Especially pleasant or refreshing drink, or a habitual one. *Tennant v. F. C. Whitney & Sons*, 133 Wash. 581, 234 P. 666, 670.

This term is properly used to distinguish a sale of liquors to be drunk for the pleasure of drinking, from liquors to be drunk in obedience to a physician's advice, *Falstaff Corporation v. Allen*, D.C.Mo., 273 F. 643, 645; or from a liquid which it is possible to swallow, but which is not reasonably palatable or fit for drinking, *Tennant v. F. C. Whitney & Sons*, 133 Wash. 581, 234 P. 666. Thus, it is held that pure alcohol is not a "beverage" but a violent irritant. *Chas. L. Joy & Co. v. Carlson*, 23 Idaho 445, 154 P. 640, 641.

This term sometimes has a narrower meaning signifying a drink artificially prepared. *Climax Dairy Co. v. Mulder*, 78 Colo. 407, 242 P. 666, 669. *United States v. Robason*, D.C.Kan., 38 F.Supp. 991, 992.

BEWARED. O. Eng. Expended. Before the Britons and Saxons had introduced the general use of money, they traded chiefly by exchange of wares. *Wharton*.

BEYOND A REASONABLE DOUBT. In evidence means fully satisfied, entirely convinced, satisfied to a moral certainty; *State v. Harris*, 28 S.E.2d 232, 237, 223 N.C. 697; and phrase is the equivalent of the words clear, precise and indubitable. *Ferguson Packing Co. v. Mihalic*, 99 Pa.Super. 158, 162.

An accused's guilt must be established "beyond a reasonable doubt," which means that facts proven must, by virtue of their probative force, establish guilt. *People ex rel. Schubert v. Pinder*, 9 N.Y.S.2d 311, 312, 170 Misc. 345.

BEYOND SEA. Beyond the limits of the kingdom of Great Britain and Ireland; outside the United States; out of the state.

Beyond sea, beyond the four seas, beyond the seas, and out of the realm, are synonymous. Prior to the union of the two crowns of England and Scotland, in the accession of James I., the phrases "beyond the four seas," "beyond the seas," and "out of the realm," signified out of the



6 April 1989

House Standing Committee on
Health, Education and Social Services

Re: House Bill 181 teleconference scheduled
for 7 April at 8:30am

Inasmuch as homemade beers, wines, liqueurs and cordials have been a part of our competitive exhibits for a number of years, we strongly urge passage of HB 181 to bring Alaska Statutes into compliance with Federal guidelines.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marsha M. Melton".

Marsha M. Melton
General Manager

State of Alaska

Committees

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

April 6, 1989

*Hayden
Comms to us
now*

MEMORANDUM

TO: Members of the House HESS Committee
FROM: Representative Max Gruenberg *MG*
RE: HB 181, "An Act relating to the private manufacture of an alcoholic beverage; and providing for an effective date."

In 1986 the definition of an alcoholic beverage was rewritten to encompass privately produced alcoholic beverages to eliminate a perceived loophole in local option statutes. Inadvertently, this has been interpreted to ban "homebrewing" in all areas of the state. Although it is within the ABC Board's authority to issue licenses for the private manufacture of homebrew, the Board has declined to do so.

HB 181 would exempt "homebrewing" from most provisions governing alcoholic beverages - mainly those related to licensing. Homebrewing would still be prohibited in both "damp" and "dry" local option areas; municipalities would continue to have the authority to regulate "homebrewing" and possession, consumption or sale of homebrew for persons under age 21 would be prohibited.

The bill has received no opposition, has a zero fiscal note, and is supported by the Department of Revenue.