

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

8672

5805 HOUSE JUDICIARY

*[Handwritten signature]*

1 drug abusers, and tobacco users. The committee shall assist the  
2 commissioner of health and social services and the coordinator in  
3 formulating a comprehensive plan for prevention of alcoholism, [AND]  
4 drug abuse, and tobacco use and for treatment of alcoholics, intoxi-  
5 cated persons, [AND] drug abusers, and tobacco users.

6 (b) In exercising its coordinating functions, the committee  
7 shall assure that the appropriate state agencies

8 (1) provide all necessary medical, social, treatment, and  
9 educational services for alcoholics, intoxicated persons, [AND] drug  
10 abusers, and tobacco users and for the prevention of alcoholism, [AND]  
11 drug abuse, and tobacco use without unnecessary duplication of ser-  
12 vices;

13 (2) cooperate in the use of facilities and in the treatment  
14 of alcoholics, intoxicated persons, [AND] drug abusers, and tobacco  
15 users;

16 (3) adopt approaches for the prevention of alcoholism [AND]  
17 drug abuse, and tobacco use, and the treatment of alcoholics, intoxi-  
18 cated persons, [AND] drug abusers, and tobacco users consistent with  
19 the policy of AS 47.37.010 - 47.37.270.

20 \* Sec. 8. AS 47.37.120 is amended to read:

21 Sec. 47.37.120. PROGRAM COORDINATOR. The coordinator shall  
22 carry out the development and implementation of a comprehensive pro-  
23 gram dealing with the prevention and treatment of, and research on,  
24 problems of alcoholism, [AND] drug abuse, and tobacco use as they  
25 affect the state.  
26  
27  
28  
29

HB

419

# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 15, 1990

FURTHER REFERRALS:

Date of Committee Action: 3-26-90

The JUDICIARY Committee considered:

HB 419

HOUSF BILL NO. 419

CRIME STATISTICS RELATING TO MINORS

"An Act relating to the recording and collection of statistics relating to minors."

### RECOMMENDATIONS:

- [ ] be replaced with CSHB 419 (HESS) [] the same title  
[ ] have 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):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

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

- [ ] fiscal note(s) \_\_\_\_\_  
[X] zero fiscal note(s) Pub. Safety 3-15-90  
[X] zero fn/analysis 2 HESS 3-15-90

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not  
Pass  
No Rec  
Amend

[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
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[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]

	Do Not Pass	No Rec	Amend

[Signature]  
Chairman's Signature

POSITION PAPER  
House Bill 419

"An Act relating to the recording and collection of statistics relating to minors."

The purpose of this legislation is to help assure that city and municipal jails, rural lock-ups, and adult correctional facilities collect data on admission of minors sufficient to meet the requirements of the Juvenile Justice and Delinquency Prevention Act of 1984. In order to maintain eligibility for Federal Formula Grant Funds under PL93-415 Alaska must annually report the number of children detained in adult facilities and the reason and circumstances for the detention of a minor to an adult jail. The information to be recorded at each admission is specified and limited to the information required by federal law. The bill protects the confidentiality of these records and exempts them from public disclosure.

HB419 authorizes the Department of Health and Social Services to require state and local law enforcement agencies to use a standardized form to record each admission.

The Department of Health and Social Services is currently hampered in its effort to collect the annual data required for federal reporting. There are ninety-five (95) identified city or municipal adult jails, rural lock-ups, and adult correctional facilities which might under some circumstances admit a minor. Over half of those facilities either do not maintain any record when a juvenile is admitted or do not record sufficient data to determine the nature and circumstance of juvenile admissions. Without adequate data, the department is unable to clearly assess Alaska's level of compliance with federal law requiring removal of children from adult jail and lock-ups. Further, the department cannot adequately analyze the factors contributing to non-compliance and develop successful strategies to end the practice of confining children in adult jails.

It is proposed that HB419 be amended as follows: "(b) For the purpose of collecting statistics, the department shall establish and require state and local agencies which operate a jail or similar adult facility to use a standardized form to record and report each admission of a minor. The record shall include the name of the minor admitted, the minor's age and date of birth, the specific offense for which the minor was admitted, the date and time admitted, the date and time released, the sex of the minor, the ethnic origin of the minor, and other information required by federal law. Except for the notation of the date

CS House Bill 419 (HESS)

In the Legislature of the State of Alaska

Sixteenth Legislature - Second Session

A Bill

For an Act entitled: "An Act relating to the recording and collection  
of statistics relating to minors."

Be it enacted by the Legislature of the State of Alaska:

\* Section 1. AS 47.10.160 is amended by adding a new subsection to  
read:

(b) For the purpose of collecting statistics, the department shall establish and require state and local agencies, which operate a jail or other detention facility, to use a standardized form to keep a record and report each admission of a minor. The record shall be limited to the name of the minor admitted, the minor's date of birth, the specific offense for which the minor was admitted, the date and time admitted, the date and time released, the sex of the minor, the ethnic origin of the minor, and other information required by federal law. Except for the notation of the date and time of the minor's release, the record shall be prepared at the time of the minor's admission. Information and records obtained under this subsection are confidential and are not public records. They may be disclosed only for the purpose of compiling statistics and in a manner that does not reveal the identity of the minor.



# **CORRECTION**

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

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House Bill 419

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and time of the minor's release, the record shall be prepared at the time of the minor's admission. Information and records obtained under this subsection are confidential and are not public records. They may be disclosed only for the purpose of compiling statistics and to carry out the requirements of federal law.

RECOMMENDED: *Russ Webb*  
Russ Webb, Director  
Division of Family and  
Youth Services

DATE: *3/10/90*

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

DATE: *3/10/90*

CS House Bill 419 (HESS)

In the Legislature of the State of Alaska

Sixteenth Legislature - Second Session

A Bill

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Be it enacted by the Legislature of the State of Alaska:

\* Section 1. AS 47.10.160 is amended by adding a new subsection to  
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(b) For the purpose of collecting statistics, the department shall establish and require state and local agencies, which operate a jail or other detention facility, to use a standardized form to keep a record and report each admission of a minor. The record shall be limited to the name of the minor admitted, the minor's date of birth, the specific offense for which the minor was admitted, the date and time admitted, the date and time released, the sex of the minor, the ethnic origin of the minor, and other information required by federal law. Except for the notation of the date and time of the minor's release, the record shall be prepared at the time of the minor's admission. Information and records obtained under this subsection are confidential and are not public records. They may be disclosed only for the purpose of compiling statistics and in a manner that does not reveal the identity of the minor.



## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: DH & SS  
 Title: An act relating to the recording and collection of statistics relating to minors and BRU: Purchased Services and Youth Services  
 Sponsor: Judiciary Committee Components: Preventative Services and Probation Services  
 Requestor: \_\_\_\_\_

**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-
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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	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

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

This bill has no fiscal impact on the Department of Health and Social Services in FY 90. The bill will require the promulgation of regulation by the Department. That requirement was anticipated by the Department and resources have been identified from federal formula grant receipts that the Department is already required by the federal government to allocate to jail monitoring and removal efforts.

Prepared by: Russ Webb, Director Phone: 465-3170  
 Division: Family and Youth Services Date: 2/15/90

Approved by Commissioner: Myra M. Johnson Date: 2/15/90  
 Agency: Department of Health and Social Services

**Distribution (by preparer):**

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Public Safety  
 Title: Recording and collection of  
crime statistics relating to minors BRU: \_\_\_\_\_  
 Sponsor: House Judiciary Component: \_\_\_\_\_  
 Requestor: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
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)

Passage of this legislation is not expected to have any fiscal impact on the Department of Public Safety.

*M.A.*  
1/24/90

Prepared by: Capt. C. Roger McCoy, Special Assistant Phone: 465-4322  
 Division: Office of the Commissioner Date: 1/24/90

Approved by Commissioner: Arthur English Date: 1-24-90  
 Agency: Department of Public Safety Page 1 of 1

Original sponsor(s): Judiciary Committee

1 IN THE HOUSE BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 419 (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 the recording and collection of  
7 statistics relating to minors."

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

9 \* Section 1. AS 47.10.160 is amended by adding a new subsection to  
10 read:

11 (b) For the purpose of collecting statistics, the department  
12 shall establish and require state and local agencies that operate a  
13 jail or other detention facility to use a standardized form to keep a  
14 record and report the admission of a minor. The record shall be  
15 limited to the name of the minor admitted, the minor's date of birth,  
16 the specific offense for which the minor was admitted, the date and  
17 time admitted, the date and time released, the sex of the minor, the  
18 ethnic origin of the minor, and other information required by federal  
19 law. Except for the notation of the date and time of the minor's  
20 release, the record shall be prepared at the time of the minor's  
21 admission. Information and records obtained under this subsection are  
22 confidential and are not public records. They may be disclosed only  
23 for the purpose of compiling statistics and in a manner that does not  
24 reveal the identity of the minor.

BY THE JUDICIARY COMMITTEE

1 IN THE HOUSE

2

HOUSE BILL NO. 419

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 the recording and collection of

7

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

9

\* Section 1. AS 47.10.160 is amended by adding a new subsection to

10 read:

11

(b) For the purpose of collecting statistics, the department

12

shall establish and require state and local law enforcement agencies

13

to use a standardized form to keep a record of each minor admitted to

14

a jail or juvenile detention facility. The record shall be limited to

15

the name of the minor admitted, the minor's date of birth, the reason

16

for the minor's admission, the date admitted, the date released, the

17

sex of the minor admitted, the ethnic origin of the minor admitted,

18

and other information required by federal law. Except for the nota-

19

tion of the date of the minor's release, the record shall be prepared

20

at the time of the minor's admission. Information and records obtain-

21

ed under this subsection are confidential and are not public records.

22

They may be disclosed only for the purpose of compiling statistics and

23

in a manner that does not reveal the identity of the minor.

HB

429

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 429 (Judiciary)

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 uninsured and underinsured motor  
7 vehicle insurance."

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

9 \* Section 1. AS 21.89.020(c) is amended to read:

10 (c) An insurance company offering automobile liability insurance  
11 in this state for bodily injury or death shall, initially and at each  
12 renewal, offer coverage prescribed in AS 28.20.440 and 28.20.445 or  
13 AS 28.22 [, WITH LIMITS EQUAL TO AT LEAST THE LIMIT PURCHASED VOLUN-  
14 TARILY TO COVER THE INSURED PERSON'S LIABILITY FOR BODILY INJURY OR  
15 DEATH,] for the protection of the persons insured under the policy who  
16 are legally entitled to recover damages for bodily injury or death  
17 from owners or operators of uninsured or underinsured motor vehicles.  
18 The limit written may not be less than the limit in AS 28.20.440.  
19 Coverage required to be offered under this section shall include the  
20 following options:

21 (1) policy limits equal to the limits voluntarily purchased  
22 to cover the liability of the person insured for bodily injury or  
23 death;

24 (2) policy limits in the following amounts when these  
25 limits are greater than those offered under (1) of this subsection:

26 (A) \$100,000 because of bodily injury to or death of  
27 one person in one accident, and, subject to the same limit for  
28 one person, \$300,000 because of bodily injury to or death of two  
29 or more persons in one accident;

1                   (B) \$300,000 because of bodily injury to or death of  
2 one person in one accident, and, subject to the same limit for  
3 one person, \$500,000 because of bodily injury to or death of two  
4 or more persons in one accident;

5                   (C) \$500,000 because of bodily injury to or death of  
6 one person in one accident, and, subject to the same limit for  
7 one person, \$500,000 because of bodily injury to or death of two  
8 or more persons in one accident;

9                   (D) \$500,000 because of bodily injury to or death of  
10 one person in one accident, and, subject to the same limit for  
11 one person, \$1,000,000 because of bodily injury to or death of  
12 two or more persons in one accident;

13                   (E) \$1,000,000 because of bodily injury to or death of  
14 one person in one accident, and, subject to the same limit for  
15 one person, \$2,000,000 because of bodily injury to or death of  
16 two or more persons in one accident;

17                   (3) other policy limits at the option of the insurer.

18 \* Sec. 2. AS 21.89.020 is amended by adding a new subsection to read:

19                   (h) Optional coverage selected by a named insured or applicant  
20 under (c) of this section applies to each insured under the insurance  
21 policy.

22 \* Sec. 3. AS 28.20.445(a) is repealed and reenacted to read:

23                   (a) The maximum liability of the insurance carrier under the  
24 uninsured and underinsured motorists coverage required to be offered  
25 under AS 28.20.440 shall be the lesser of

26                   (1) the difference between the amount of the covered per-  
27 son's damages for bodily injury and property damage and the amount  
28 paid to the covered person by or for a person who is or may be held  
29 legally liable for the damages; and

1 (2) the applicable limit of liability of the uninsured and  
2 underinsured motorist coverage.

3 \* Sec. 4. AS 28.20.445(b) is repealed and reenacted to read:

4 (b) An amount payable under the uninsured and underinsured  
5 motorist coverage shall be excess to an amount payable under automo-  
6 bile bodily injury, death, or medical payments coverage, or as  
7 workers' compensation benefits and may not duplicate amounts paid or  
8 payable under valid and collectible automobile bodily injury, death,  
9 or medical payments coverage, or as workers' compensation benefits.

10 \* Sec. 5. AS 28.20.445(c) is repealed and reenacted to read:

11 (c) If a person is entitled to uninsured or underinsured motor-  
12 ists coverage under more than one coverage when two or more vehicles  
13 are insured under one policy, the maximum amount payable may not  
14 exceed the highest limit of any one coverage under the policy. If a  
15 person is entitled to uninsured or underinsured motorist coverage  
16 under more than one policy providing motor vehicle liability coverage,  
17 payments will be made in the following order of priority, subject to  
18 the limit of liability of each applicable policy or coverage:

19 (1) a policy or coverage covering a motor vehicle occupied  
20 by the injured person or a policy or coverage covering a pedestrian as  
21 a named insured;

22 (2) a policy or coverage covering a motor vehicle occupied  
23 by the injured person as an insured other than as a named insured;

24 (3) a policy or coverage not covering a motor vehicle  
25 occupied by the injured person but covering the injured person as a  
26 named insured;

27 (4) a policy or coverage not covering a motor vehicle  
28 occupied by the injured person but covering the injured person as an  
29 insured other than as a named insured;

1 (5) a policy or coverage covering, as excess, umbrella, or  
2 similar insurance, a motor vehicle occupied by the injured person or a  
3 policy or coverage covering, as excess, umbrella, or similar insur-  
4 ance, a pedestrian as a named insured;

5 (6) a policy or coverage covering, as excess, umbrella, or  
6 similar insurance, a motor vehicle occupied by the injured person or a  
7 policy or coverage covering, as excess, umbrella, or similar insur-  
8 ance, a pedestrian as an insured other than as a named insured;

9 (7) a policy or coverage not covering a motor vehicle  
10 occupied by the injured person but covering, as excess, umbrella, or  
11 similar insurance, the injured person as a named insured;

12 (8) a policy or coverage not covering a motor vehicle  
13 occupied by the injured person but covering, as excess, umbrella, or  
14 similar insurance, the injured person as an insured other than as a  
15 named insured.

16 \* Sec. 6. AS 28.22.221 is repealed and reenacted to read:

17 Sec. 28.22.221. POLICY COVERAGE AND PRIORITIES. If a person is  
18 entitled to uninsured or underinsured motorists coverage under more  
19 than one coverage when two or more vehicles are insured under one  
20 policy, the maximum amount payable may not exceed the highest limit of  
21 any one coverage under the policy. If a person is entitled to unin-  
22 sured or underinsured motorist coverage under more than one policy  
23 providing motor vehicle liability coverage, payments will be made in  
24 the following order of priority, subject to the limit of liability of  
25 each applicable policy or coverage:

26 (1) a policy or coverage covering a motor vehicle occupied  
27 by the injured person or a policy or coverage covering a pedestrian as  
28 a named insured;

29 (2) a policy or coverage covering a motor vehicle occupied

1 by the injured person as an insured other than as a named insured;

2 (3) a policy or coverage not covering a motor vehicle  
3 occupied by the injured person but covering the injured person as a  
4 named insured;

5 (4) a policy or coverage not covering a motor vehicle  
6 occupied by the injured person but covering the injured person as an  
7 insured other than as a named insured;

8 (5) a policy or coverage covering, as excess, umbrella, or  
9 similar insurance, a motor vehicle occupied by the injured person or a  
10 policy or coverage covering, as excess, umbrella, or similar insur-  
11 ance, a pedestrian as a named insured;

12 (6) a policy or coverage covering, as excess, umbrella, or  
13 similar insurance, a motor vehicle occupied by the injured person or a  
14 policy or coverage covering, as excess, umbrella, or similar insur-  
15 ance, a pedestrian as an insured other than as a named insured;

16 (7) a policy or coverage not covering a motor vehicle  
17 occupied by the injured person but covering, as excess, umbrella, or  
18 similar insurance, the injured person as a named insured;

19 (8) a policy or coverage not covering a motor vehicle  
20 occupied by the injured person but covering, as excess, umbrella, or  
21 similar insurance, the injured person as an insured other than as a  
22 named insured.

23 \* Sec. 7. APPLICABILITY. This Act applies to contracts of insurance  
24 entered into on or after the effective date of this Act.

Section 21.36.\_\_\_\_. SUBROGATION RECOVERIES. An insurer on a first party claim and its insured shall share in any recovery from a third party on a pro rata basis as follows:

(1) An insurer may make no deduction for subrogation expenses unless an outside attorney or other outside expert witnesses have been retained, and any deduction may be no more than a pro rata share of the insurer's costs for subrogation less any attorney fees and costs recovered. Any recovery of prejudgment interest or postjudgment interest shall be shared pro rata.

(2) An insured may deduct a pro rata share of the insured's expenses for an outside attorney or other expert witnesses, less any attorney fees and costs recovered, from the insurer's share of any recovery. Any recovery of prejudgment interest or postjudgment interest shall be shared pro rata.

(3) If an insured separately pursues only its own interest, the insured shall bear its own expenses and the insurer may retain any subrogation recovery the insurer secures.

# BEST'S INSURANCE MANAGEMENT REPORTS

Property-Casualty  
Release No. 4  
February 5, 1990



A.M. Best Company  
Dickinson, N.J. 08853  
201-439-3200

Financial News | Washington Review | Perspectives | **On-Line Reports**

8

## Average Auto Premiums By State—1988

The average annual cost to insure a private passenger automobile in the United States increased 6.3% to \$517.71 in 1988, according to this report by A.M. Best Company. As was the case in 1987, Massachusetts leads the nation with the highest average premiums at \$834.76, a \$179.04 increase from 1987's average premiums. New Jersey, once again, had the second highest average premiums at \$733.66, an increase of 15.6%—9.3 points higher than the average increase nationwide.

The state with the lowest average annual premiums, Alabama, had average premiums of \$278.33. However, this figure is grossly underreported because one of the state's leading writers, Champion Insurance Co., did not file an annual statutory statement with the A.M. Best Company for 1988 and was later declared insolvent by the Louisiana Department of Insurance. The average premiums for Louisiana also are underreported for the same reason. In both states, Champion Insurance wrote 5% of the total private passenger auto premiums.

Setting Alabama and Louisiana aside, Iowa had the lowest average premiums at \$292.51. It is probably the only state in the Union where there is still at least a possibility of insuring a car for under \$300 per year. However, another 14.4% increase like 1988's will certainly break new ground for the Hawkeye state. The next four states with the lowest average premiums, South Dakota (\$324.90), Tennessee (\$338.46), North Dakota (\$343.85) and Idaho (\$356.95), con-

sistently have been ranked as the states with the lowest average premiums.

Apart from Massachusetts and New Jersey, the five states with the highest average auto premiums were Nevada (\$691.05), California (\$673.18), Pennsylvania (\$620.33), Arkansas (\$613.58) and Washington, DC. (\$606.39). Among these five states, Arkansas had the highest annual percentage increase at 24.1%. California drivers, who voted in November 1988 to roll back rates by 20% with Proposition 103, experienc-

ed an 8% increase from 1987 to 1988.

In 1987 four states had average premiums above the \$600 level, during 1988 there were eight in this range, with Massachusetts and New Jersey in the \$800 and \$700 ranges, respectively. The largest concentration of states (21) grouped in the \$400 range.

During 1988, there were 34 states with average automobile premiums below the national average (\$517.71), compared with 30 states below the national average in 1987. These results

### About This Information

The annual A.M. Best Company report on average private passenger auto premiums by state, which has been published since 1982, has again been expanded to provide more information. This year's report also includes a five year summary of the number of insurers writing auto insurance in each state.

To arrive at the average auto premiums by state, we divide private passenger auto direct premiums written for each state by the number of each state's registered vehicles, as reported by the Federal Highway Administration. Premiums for 1988 have been available since May from Best's Data Base Service, Experience By State. By Line, however, auto registration figures are not available until December.

Results of this study can be distorted by several factors. The Federal Highway Administration's figures include commercial pas-

senger vehicles (taxi), but do not report pickup trucks, a popular form of private passenger transportation in the western and southern states.

Also skewing the averages is the unknown number of registered, but not insured, vehicles. Several states still do not mandate coverage, and others have varying degrees of registered, but illegally operated uninsured cars. Also affecting the averages are different states' requirements for minimum limits of coverage. Other factors that affect rates include territory, type of vehicle, and the age of driver.

It should be noted that each year the A.M. Best Company and the Federal Highway Administration both adjust figures published in prior reports to ensure that the best currently available information is reported. These adjustments could change rankings reported in prior years' reports.



demonstrate a growing trend that the annual growth rates among the 10 states with the highest average premiums are increasing at a rate faster

than that of the rest of the nation. In fact, five of the top 10 states with the highest premium averages also were among the top 10 states with the

highest growth rates as well.

From 1987 to 1988, average auto premiums increased by more than the national average (6.3%) in 19 states—seven fewer states than during 1987. However, the national average growth rate for 1988 was 3.4 points lower than the 10.3% reported in 1987. Nine states reported average growth rates of 10% or more during 1988: Massachusetts (27.3%), Arkansas (24.1%), Maine (19.4%), New Jersey (15.6%), Nevada (15.2%), Iowa (14.4%), Vermont (11.5%), South Dakota (10.1%) and Rhode Island (10.1%). Montana and Michigan reported increases of less than 1%, while three states reported small declines—Indiana (2.1%), Alaska (2.2%) and West Virginia (2.7%).

During 1988, net premiums written by U.S. property/casualty insurers for private passenger automobile insurance reached \$69.6 billion, an increase of 8.2% over 1987. The insurance industry experienced a \$4.2 billion underwriting loss (before dividends)—which was not entirely offset by slightly more than \$4 billion of investment income earned on private passenger auto premiums.

Recently released (BIMR Review and Preview, Jan. 2, 1990) estimates for 1989's private passenger results portend even darker shadows for insurers and consumers alike. Net premiums written for the private passenger auto lines grew by 6.6% in 1989. Unfortunately, the combined ratio rose 1.6 points to 108.2 and underwriting losses were up to \$6.2 billion, a \$1.4 billion (29%) increase from 1988.

With premium growth declining for the past two years and underwriting losses increasing substantially during the same period, it is easy to understand how many insurers are attempting to abandon the line. However, the A.M. Best Company study indicates otherwise. Additionally, with losses mounting it also is easy to recognize why there has been a growing number of insolvent insurers during the past two years which primarily wrote auto lines.

From 1987 to 1988, the number of insurers writing private passenger auto actually increased from 1,121 to

### Growth of Average Auto Premiums —Five Years, by State—

87/88 Growth Rank	State	87/88 Percent Growth	86/87 Percent Growth	85/86 Percent Growth	84/85 Percent Growth	83/84 Percent Growth	82/88 Percent Growth
1	Massachusetts	27.30	19.03	6.55	6.55	17.14	119.59
2	Arkansas	24.13	13.36	10.58	12.16	13.58	134.98
3	Maine	19.37	9.54	12.19	14.57	9.53	73.79
4	New Jersey	15.55	3.20	4.04	2.54	3.55	60.93
5	Nevada	15.17	9.20	10.17	19.04	3.01	19.75
6	Iowa	14.43	4.73	13.55	-6.55	3.47	27.70
7	Vermont	11.51	11.37	17.16	6.71	12.46	72.94
8	South Dakota	10.11	15.37	10.61	3.32	2.30	61.53
9	Rhode Island	10.07	15.19	17.41	15.88	7.74	100.75
10	Colorado	9.08	-2.06	17.13	14.33	9.47	65.32
11	Pennsylvania	9.02	11.11	10.12	11.05	8.58	73.29
12	North Carolina	8.63	13.10	14.76	10.49	19.39	111.28
13	Delaware	8.29	14.45	14.58	16.35	6.48	96.16
14	California	7.98	9.72	12.32	13.93	13.28	37.93
15	Connecticut	7.72	11.59	12.99	10.59	11.00	33.22
16	Virginia	7.51	14.38	17.43	15.64	4.58	55.13
17	Ohio	7.35	7.34	17.05	7.21	9.82	66.53
18	Mississippi	6.91	13.38	9.68	3.18	4.24	66.73
19	Florida	6.60	11.14	13.19	13.27	4.47	75.20
	<b>NAT'L. AVERAGE</b>	<b>6.30</b>	<b>10.28</b>	<b>13.38</b>	<b>10.97</b>	<b>8.96</b>	<b>73.52</b>
20	Washington	5.82	9.23	12.04	11.24	7.55	61.73
21	Arizona	5.81	9.35	17.52	10.54	8.39	92.51
22	New Mexico	5.75	9.89	2.64	13.03	31.99	31.19
23	Georgia	5.45	11.58	21.01	21.50	6.37	106.59
24	Kentucky	5.43	10.87	14.77	19.97	11.11	90.33
25	Nebraska	5.38	7.50	12.48	6.97	4.51	49.42
26	North Dakota	4.76	6.87	10.45	14.43	-1.37	42.55
27	Wash. D.C.	4.58	25.20	20.21	13.61	12.30	129.69
28	Texas	4.36	11.24	11.03	3.03	3.49	59.43
29	Wyoming	4.21	-0.83	13.14	9.42	1.38	36.04
30	Hawaii	4.05	16.87	8.62	19.46	-3.14	51.15
31	Idaho	3.27	0.39	14.60	17.07	3.18	54.03
32	New York	3.11	11.30	7.62	7.02	7.49	56.40
33	Tennessee	3.07	12.27	12.00	10.74	9.65	71.42
34	Kansas	2.91	6.94	10.46	9.21	1.57	42.33
35	Wisconsin	2.90	9.80	20.69	10.32	13.84	33.40
36	Minnesota	2.87	9.47	31.01	-2.57	11.77	64.44
37	Missouri	2.79	14.22	13.86	14.18	6.42	79.75
38	Oklahoma	2.56	17.56	7.70	2.91	14.22	76.81
39	South Carolina	2.30	11.50	12.75	9.16	9.09	72.03
40	Oregon	2.16	9.77	13.25	14.03	1.46	52.85
41	Illinois	2.02	4.93	17.55	13.85	1.31	53.63
42	New Hampshire	1.44	12.31	45.07	3.36	4.65	36.93
43	Maryland	1.23	17.92	19.55	13.13	4.35	59.13
44	Utah	1.21	3.59	20.25	16.09	7.12	73.75
45	Montana	0.16	3.65	3.50	14.59	26.59	50.56
46	Michigan	0.01	5.86	18.69	12.70	9.35	65.90
47	Indiana	-2.27	17.26	21.07	10.39	1.82	32.36
48	Alaska	-2.15	-2.25	1.18	33.11	12.33	52.74
49	West Virginia	-2.65	11.62	6.59	3.03	12.83	43.34
50	Louisiana	-7.42	2.30	15.28	10.30	4.11	33.16
51	Alabama	-9.27	10.16	6.34	16.30	11.92	46.02

1987/88 and 1988/89 growth rates are based on 1986 premiums of \$1,000.00. The 1982/88 growth rates are based on 1982 premiums of \$1,000.00. The 1982/88 growth rates are based on 1982 premiums of \$1,000.00. The 1982/88 growth rates are based on 1982 premiums of \$1,000.00.

1,142, for a net growth of 21—although a number of these were subsidiaries of groups. During the six-year period from 1982-1988, the number of insurers writing private passenger auto increased by 104 companies.

Texas once again may be the land of opportunity, at least for auto insurers, as 19 additional insurers began offering policies to residents of the Lone Star state last year. Texas now has 422 insurers offering auto policies, the most of any state in the nation. There are only 98 insurers—the fewest of any state—offering auto policies in Hawaii.

In 1988, Mississippi experienced the highest number (16) of insurers that stopped offering private passenger auto policies, followed closely by Louisiana (15). Massachusetts lost 12 insurers in 1988 and New Jersey lost just three.

The public's anger and frustration over increasing rates has led to legislative battles, initiatives and the appointment of consumer watchdogs in many states. In New Jersey, the newly-elected governor was swept into office on the strength of his promise of a 20% rate rollback and further insurance reforms. Insurance rates are so high in New Jersey that the governor recently said there are between 300,000 and 400,000 uninsured vehicles on the state's highways.

Certainly, insurers are faced with a dilemma that holds little prospect for a pragmatic solution. Consumers are holding the industry responsible for the escalating repair, medical and litigation costs and no longer accepting the practice of passing along these price hikes. Fortunately, there are some insurers that have taken a leadership role and accepted the industry's charge to implement more effective cost containment measures and communicate the progress of these efforts to their policyholders. But not until the entire industry gets behind an effort to educate consumers will insurers have a chance to turn the corner toward a reasonable return on their investment.

### Number of Companies Writing in State

State	1988	1987	1982	Net Change	
				88/87	88/82
Alabama	272	284	301	(2)	(29)
Alaska	125	124	132	1	(7)
Arizona	302	299	291	3	(1)
Arkansas	241	251	254	(10)	(23)
California	372	374	359	(2)	(13)
Colorado	290	303	307	(13)	(17)
Connecticut	212	216	212	(4)	(2)
Delaware	182	187	186	(5)	(14)
Wash. D.C.	162	166	173	(4)	(11)
Florida	364	373	348	(9)	(16)
Georgia	348	339	315	9	(33)
Hawaii	98	105	105	(7)	(7)
Idaho	208	211	233	(3)	(25)
Illinois	381	382	374	(1)	(7)
Indiana	365	354	348	11	(17)
Iowa	278	290	295	(12)	(17)
Kansas	270	276	267	(6)	(3)
Kentucky	280	285	288	(5)	(8)
Louisiana	303	318	309	(15)	(6)
Maine	187	185	183	2	(4)
Maryland	257	264	237	(7)	(20)
Massachusetts	157	169	181	(12)	(24)
Michigan	323	337	273	(14)	(50)
Minnesota	262	285	265	(2)	(3)
Mississippi	253	269	259	(16)	(6)
Missouri	320	324	320	(4)	(0)
Montana	181	189	203	(8)	(22)
Nebraska	251	253	255	(2)	(4)
Nevada	206	207	220	(1)	(14)
New Hampshire	168	164	177	(4)	(9)
New Jersey	211	214	229	(3)	(18)
New Mexico	242	246	254	(4)	(12)
New York	260	259	279	1	(19)
North Carolina	217	217	225	0	(8)
North Dakota	203	210	213	(7)	(10)
Ohio	342	347	324	(5)	(18)
Oklahoma	274	286	287	(12)	(13)
Oregon	247	257	256	(10)	(9)
Pennsylvania	287	285	273	2	(14)
Rhode Island	180	177	183	3	(3)
South Carolina	178	184	209	(6)	(31)
South Dakota	203	209	222	(6)	(19)
Tennessee	310	316	297	(6)	(13)
Texas	422	403	385	(9)	(37)
Utah	211	220	230	(9)	(19)
Vermont	172	170	173	2	(6)
Virginia	294	285	269	9	(25)
Washington	262	274	265	(12)	(3)
West Virginia	190	199	191	(9)	(1)
Wisconsin	298	311	286	(13)	(12)
Wyoming	165	176	182	(11)	(17)
<b>NATIONAL TOTAL</b>	<b>1,142</b>	<b>1,121</b>	<b>1,038</b>	<b>21</b>	<b>104</b>



# HOUSE COMMITTEE REPORT

(7)

Date Referred: January 19, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 2/8/90

The LABOR & COMMERCE Committee considered:

HB 429

HOUSE BILL NO. 429

SUBROGATION OF INSURANCE CLAIMS

"An Act relating to subrogation provisions in insurance policies and to uninsured and underinsured motor vehicle insurance."

**RECOMMENDATIONS:**

- be replaced with CS HB 429 (LHC)  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 \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_
- zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

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

Do Not Pass    No Rec    Amend

David Ouler  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
\_\_\_\_\_  
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SIGNING	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		X	
<u>[Signature]</u>		✓	
<u>[Signature]</u>		X	
_____			
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_____			
_____			
_____			

David Ouler  
Chairman's Signature

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: Regarding subrogation rights in insurance policies . . . . .  
 Sponsor: House Labor & Commerce  
 Requestor: House Labor & Commerce

Agency Affected: Commerce & Economic Dev.  
 BRU: Insurance  
 Components: \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

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

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

Prepared by: James J. Jordan, Acting Director Phone: 465-2515  
 Division: Insurance Date: 1/30/90

Approved by Commissioner: Larry Mercurieff Date: 1/30/90  
 Agency: Department of Commerce & Economic Development

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

HB429

LAW OFFICES

*Mestas & Schneider, P.C.*DENNIS M. MESTAS  
MICHAEL J. SCHNEIDER800 "N" STREET, SUITE 20F  
ANCHORAGE, ALASKA 99501-3298ARPA CODE 907  
277-4861

January 30, 1990

VIA FAX AND MAILRepresentative Dave Donley  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811Re: House Bill #429: "An Act Relating to Subrogation Provisions  
and Insurance Policies and To Uninsured and Underinsured  
Motor Vehicle Insurance"

Dear Representative Donley:

While in Juneau on the 29th of January, 1990, I received a copy of  
HB #429 in what I am lead to believe is its most recent form. I  
would recommend the following changes in this bill:Section 3 [An Amendment of A.S. 28.20.445(c)]: The word  
"liability" should be stricken (after the word "vehicle" and before  
the word "insurance" in the first full sentence. The first full  
sentence should be followed by a sentence that says, in substance:"Underinsured motorist coverage shall be triggered by an  
allegation of damages in excess of available motor  
vehicle liability insurance coverage."Identical changes should be made to Section 4 (Amending  
A.S. 28.22.221).Getting rid of the word "liability" may not be terribly important.  
I'm concerned about an ambiguity that may be created by differences  
between "motor vehicle liability insurance" versus "uninsured" or  
"underinsured" motorist coverage provided on these policies. In  
other words, I don't want someone to argue that, because an insured  
is not entitled to UM or UIM coverage under their "motor vehicle  
liability insurance," these provisions do not apply. If "motor  
vehicle liability insurance" is so broadly defined in Titles 21 and  
28 as to make this a non-problem, please disregard.

Representative Dave Donley  
Page Two  
January 30, 1990

A problem of a more substantive nature is raised by the additional language that I propose. The bill is intended to address the problem that exists where someone with a million dollars in damages is hit by a person who has \$50,000 in liability coverage and where the injured person only has \$50,000 in UIM coverage. Under most current policies, coverage is not triggered because the injured person's UIM limits do not exceed the liability limits of the opposing party.

I'm simply afraid that this bill is not worded clearly enough to address that problem. The wording that I suggest triggers coverage upon the allegation of damages in excess of available liability insurance. It is important to note that the additional language that I propose does not impose liability on the carrier. It simply triggers coverage. If the insured and the insurance company cannot agree, then an arbitration can be set. It is very important, in my opinion, that this trigger of coverage be made by a mere allegation of excess damages. Otherwise, people would have to wait until the resolution of underlying liability disputes before the carrier would be given fair notice that a possible claim is out there. This would make resolution of these claims more expensive, more drawn out, and less certain. If the insurance company has a problem (a potential UIM claim), it should be given early and reasonable opportunity to evaluate that claim in the face of all available information. Thus, an allegation of damages in excess of available liability limits should be the trigger of UIM coverage.

Thanks for your consideration.

Sincerely yours,

MESTAS & SCHNEIDER, P.C.



Michael J. Schneider

kc

cc: Kent Dawson (via fax)

# MEMORANDUM

# State of Alaska

TO: Don Koch  
Acting Deputy Director

DATE: February 3, 1990

FILE NO.:

TELEPHONE NO.:

FROM: Stan Garlington  
Insurance Market Analyst

SUBJECT: CS for House Bill  
No. 429 (LC)  
Limitation on  
Subrogation Rights

The purpose of this memorandum is to provide an analytical framework of the respective interests of insureds, insurers, and attorneys in the subrogation process, and to propose a course of action to clarify the law in Alaska on this subject.

Black's Law Dictionary defines subrogation as "the substitution of one person in the place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies or securities . . . ."

Although insurance companies generally have the right to step into the shoes of the party whom they compensate and sue any party whom the compensated party could have sued, the concept of subrogation rights is generic and applies far more broadly.

Subrogation is available in first party claims in which an insurer pays a person asserting the right to payment under his or her own coverage. It may also apply to a third party claim in which any person has asserted a claim against another person. Such subrogation claims often fall into the category of contractual liability or contribution actions. It is possible that both the insured and insurer will have an interest in the subrogation recovery in both cases. Although most of us are familiar with the first party deductibles for physical damage coverage on our motor vehicle policy or property damage to the dwelling or contents on our homeowner policy, liability deductibles are quite common, as our self-insured retentions or co-insuring arrangements in which an insurer pays only a portion of the insured's liabilities to a third party.

Subrogation efforts may stand alone or be combined with other claims. An insurer may pursue a claim for monies it has paid (that is the extent of his legal right), but include in its subrogation demand the policyholder's deductible. The insured, with or without an attorney, may demand payment for the physical damage paid by its insurer along with its claim for the deductible, loss of use of the vehicle such as a car rental bill, and a bodily injury claim. Thirdly, each may pursue its own claims individually.

The Division of Insurance addressed the handling of deductibles for first party motor vehicle claims and first party property claims in the Unfair Claims Settlement Acts or Practices Regulation (3 AAC 26.010-.300). The division set as a minimum standard that the insurer include the first party's deductible, if any, in a subrogation demand unless the first party requests that it not be included or unless the deductible had been otherwise recovered by the first party claimant. The division allowed that no deduction for expense may be made from any deductible recovered unless an outside attorney or other outside expert witnesses were retained, and any reduction for them could be no more than a pro rata share of their costs, less any attorney fees and costs recovered (such as Rule 82). The division also sought to resolve the issue of both pre-judgment and post-judgment interest by advising that the interest would be shared pro rata.

In regulating the actions of insurance companies, the division did not reach the issue of proportioning a recovery made by an insured with or without an attorney. That issue has been raised by the proposed Section 21.42.285 - Limitation on Subrogation Rights.

Subrogation, as Michael J. Schneider points out in the Alaska Bar Rag, has always been viewed as an equitable concept. Before addressing the automobile medical payments coverage which troubled Mr. Schneider, I would like to consider the more straight forward situation dealing with motor vehicle physical damage first party claims. Although most of us carry policies which provide both liability coverage and physical damage coverage, many physical damage only policies are issued. Vehicle coverage may be purchased at the time a vehicle is purchased. The coverage only relates to coverage to the automobile. To put such an insurer in the position of receiving no subrogation benefits until its policyholder had been fully compensated for all losses (including, for example, extensive bodily injury claims) and all attorney fees and costs in securing the physical damage and the bodily injury settlement had been paid would be tantamount to denying subrogation as a right to such an insurer.

As long as the responsible third party has sufficient insurance coverage to pay the insured, the insurer, and the attorney, no problems arise. When the third party's ability to pay is limited, equity becomes a much more vexing issue.

The simplest approach is to continue the concept of pro rata net recovery. Disputes are unavoidable, especially in the bodily injury situation, over what the respective interests are. Most accidents do not involve clear liability, nor is the concept of general damages (such as pain and suffering) measurable. Honest minds can and do differ on both issues. However, resolving such a dispute is no different than trying to determine when an insured has been fully compensated for the loss, including costs and attorney fees incurred by the insured and relating to the loss.

Sometimes the issue may be resolved by the underlying litigation itself. Unless the third party's liability policy has limited Civil Rule 82 coverage, the parties or a court will determine what the value of the case was in order to arrive at a proper computation of Civil Rule 82. Were such ~~as~~ not the case, it would appear to me that, should the parties disagree, that the matter would be appropriate for arbitration.

The issue of subrogation and medical payments coverage can create a worst case scenario. The potential exists for an insured who is paid the necessary premium for first party medical payments coverage under an automobile policy to be severely injured. A \$100,000 medical payment limit in a severe accident may soon be exhausted. If the other party has low limits and a policyholder must reimburse on a dollar for dollar basis, the injured will clearly not be fully compensated. A partial solution would make underinsured motorists/uninsured coverage reduced only by amounts paid by a valid and collectible automobile medical payments insurance only to the extent that such payments would be duplicative. The medical bills would be paid only once, but the full underinsured/uninsured motorists coverage would be available above the medical payments coverage if needed.

I do not believe it appropriate for a medical payments insurer to recover monies that are not related to medical bills. They should also share on a pro rata basis the costs of recovery.

I have reviewed the January 2, 1990 memorandum from Ted Lehrbach and Bob Sims regarding the legislative inquiry about State Farms' medical endorsement 602588. Although the filing letter suggests State Farms' intent was to "allow" the insured to be paid under both the medical payment's coverage and other sources when payment under both is required to provide the insured enough funds to pay all reasonable and necessary medical expenses, the language of the endorsement is, at best, inarticulate. It refers to "paid damages for bodily injury," not paid damages for medical expenses for bodily injury.

In order to avoid any confusion, I would recommend that language be added to the bill which makes clear that medical payments coverage is not to be duplicative of uninsured motorists coverage. That will avoid fights that the medical expenses were paid under the uninsured or underinsured motorists coverage and, therefore, are not owed under medical payments coverage, and also allow that if the medical expenses are paid under medical payments coverage, the uninsured motorists coverage would be available to its full extent for other damages.

The result would be that an insured would receive the maximum coverage.

RECOMMENDATIONS

I recommend that a new section (c) be added to AS 28.20.445 reading as follows:

Amounts payable under the uninsured motorists and underinsured motorists coverage shall not pay again amounts paid or payable under valid and collectible automobile payments insurance.

I recommend that the expense issues of subrogated claims be handled on a pro rata basis. Including such a provision in AS 21.42 would arguably have it apply only to admitted insurers. Including it within AS 21.36, Trade Practices and Frauds, seems more appropriate. Although it may fall within AS 21.36.125, Unfair Claims Settlement Practices, it may be more appropriate to be included as a separate section because it addresses issues not included in any NAIC model with which I am familiar. At any rate, I would propose the following language:

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Section 21.36.\_\_\_\_. SUBROGATION RECOVERIES. An insurer on a first party claim and its insured shall share in any recovery from a third party on a pro rata basis as follows:

(1) An insurer may make no deduction for subrogation expenses unless an outside attorney or other outside expert witnesses have been retained, and any deduction may be no more than a pro rata share of the insurer's costs for subrogation less any attorney fees and costs recovered. Any recovery of prejudgment interest or postjudgment interest shall be shared pro rata.

(2) An insured may deduct a pro rata share of the insured's expenses for an outside attorney or other expert witnesses, less any attorney fees and costs recovered, from the insurer's share of any recovery. Any recovery of prejudgment interest or postjudgment interest shall be shared pro rata.

(3) If an insured separately pursues only its own interest, the insured shall bear its own expenses and the insurer may retain any subrogation recovery the insurer secures.

HB 429

3 AAC 26.080 +  
090(A)(3)

3 AAC 26.080 ALASKA ADMINISTRATIVE CODE 3 AAC 26.080

of a properly executed statement of claim, proof of loss, or other acceptable evidence of loss, the first-party claimant shall be advised in writing of the acceptance or denial of the claim;

(2) shall, within 30 working days after receipt of a properly executed statement of claim, proof of loss, or other acceptable evidence of loss, pay those portions of the claim not in dispute;

(3) may not fail to settle first-party claims on the basis that responsibility for payment must be assumed by others, except as may be expressly provided by provisions of the insurance policy, insurance contract, or other coverage document.

(b) A person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a third-party claim may not make any statement that indicates that the rights of a third-party claimant may be impaired if a form, compromise, release, or similar document is not completed within a given period of time, unless the statement is given for the purpose of notifying the third-party claimant of an applicable statute of limitation.

(c) Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a claim may not continue negotiations for settlement of the claim directly with any claimant who is neither an attorney nor represented by an attorney to a time when the claimant's rights might be affected by a statute of limitation, coverage provision, or other time limit, unless written notice is given to the claimant clearly stating the time limit that might be expiring and its effect upon the claim; such a written notice shall be given at least 60 calendar days before the date on which the time limit might expire.

(d) Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a claim shall pay a judgment or settlement of the claim (including advances, partial settlements, or similar payments) with a negotiable check payable in cash to the payee upon presentation to a bank located in Alaska. If the check is not drawn upon a bank having a physical location in Alaska, it must be payable in cash upon presentation to at least one bank having a physical location in Alaska. (Eff. 05/06/89, Register 110)

Authority: AS 21.06.090  
AS 21.36.125  
AS 21.36.350  
AS 21.89.030

**3 AAC 26.080. ADDITIONAL STANDARDS FOR PROMPT, FAIR, AND EQUITABLE SETTLEMENTS OF MOTOR VEHICLE CLAIMS.** (a) Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a first-party motor vehicle claim must:

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(1) apply one of the following settlement methods if coverage provides for the adjustment of a motor vehicle total loss on the basis of actual cash value or replacement with a vehicle of like kind and quality:

(A) offer a comparable and available replacement motor vehicle, with all applicable taxes, license fees, destination or delivery charges, and other fees incident to transfer of ownership of the motor vehicle paid, at no cost to the first-party claimant other than the deductible amount, if any, as stated in the coverage; the offer of a replacement motor vehicle shall be made in writing if rejected by the first-party claimant; or

(B) make a cash settlement based upon the actual cost to purchase a comparable motor vehicle, including all applicable taxes, license fees, destination or delivery charges, and other fees incident to transfer of ownership, less the deductible amount, if any, as stated in the coverage; the cost shall be determined by:

(i) the cost of a comparable motor vehicle in the local market area to the claimant, if that motor vehicle is available in that area; or

(ii) the average of two or more cost quotations obtained for a comparable motor vehicle from two or more qualified dealers located within the local market area, if a comparable motor vehicle is not available in that area; or

(iii) a basis that is allowable under the coverage but deviates from the rules set out in (i) and (ii) of this subparagraph, if the deviation is supported by documentation in the claim file which gives the particulars of the condition of the motor vehicles involved; any deduction from the cost of a comparable motor vehicle, including deduction for salvage value, must be a fair and appropriate amount; the basis for the deduction shall be fully explained to the claimant;

(2) provide to a first-party claimant a reasonable written explanation of the valuation of damages to the motor vehicle;

(3) include the first-party claimant's deductible, if any, in a subrogation demand unless the first-party claimant requests that it not be included or unless the deductible has been otherwise recovered by the first-party claimant; no deduction for expense may be made from any deductible recovered unless an outside attorney or other outside expert witnesses have been retained and any deduction is no more than a pro rata share of their cost less any attorney fees and costs recovered; any recovery of prejudgement or postjudgement interest shall be shared pro rata.

(b) Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a third-party motor vehicle claim:

(1) shall provide a third-party claimant a reasonable written explanation of the valuation of damages to a motor vehicle which is the basis of any settlement offer;

(2) may not recommend that a third-party claimant make a claim under the claimant's own coverage in order to delay or avoid paying a claim where liability and damages are reasonably clear.

(c) A claimant may not be required to travel unreasonably either to inspect a replacement motor vehicle, obtain a repair estimate, or have the motor vehicle repaired at a specific facility.

(d) Any estimate or appraisal of the cost of repair of a motor vehicle must be in a fair and appropriate amount that the claimant may reasonably be expected to be charged for repairs at one or more conveniently located repair facilities.

(e) If the amount claimed as damage to the motor vehicle is reduced on the basis of betterment or depreciation, the person adjusting or settling the claim shall itemize each deduction and explain the basis for each reduction in writing to the claimant.

(f) If a person adjusting or settling a claim elects to have repaired a claimant's motor vehicle and chooses a specific facility for the repairs, that person shall guarantee the repairs and cause the damaged motor vehicle to be restored to its condition before the loss, at no additional cost to the claimant, and cause the repairs to be completed within a reasonable time.

(g) If the claimant's motor vehicle is determined to be economically unrepairable and, therefore, a total loss, the person adjusting or settling the claim may not reduce the salvage value of the vehicle by charges for cleaning. (Eff. 05/06/89, Register 110).

Authority: AS 21.06.090  
AS 21.36.125  
AS 21.36.350

**3 AAC 26.090. ADDITIONAL STANDARDS FOR PROMPT, FAIR, AND EQUITABLE SETTLEMENTS OF PROPERTY CLAIMS.** (a) Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a first-party property claim shall:

(1) apply one of the following settlement methods if coverage provides for the adjustment of a claimant's property loss on the basis of actual cash value or replacement with other property of like kind and quality:

(A) offer specific comparable and available replacement property, with all applicable taxes, charges, and other fees incident to the transfer of ownership of the property at no cost to the claimant other than the deductible amount, if any, as stated in the

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coverage; the offer of replacement property shall be in writing if rejected by the first-party claimant; or

(B) make a cash settlement based upon the actual cost of comparable property, including all applicable taxes, charges and other fees incident to transfer of ownership, less the deductible amount, if any, as stated in the coverage; the cost shall be determined by:

(i) the cost of comparable property in the local market area to the claimant, if such property is available in that area; or

(ii) the average of two or more cost quotations obtained for comparable property from two or more qualified dealers, suppliers or contractors located within the local market area, if comparable property is not available in that area; or

(iii) settle a loss on a basis that deviates from the rules set out in (i) and (ii) of this subparagraph, if the deviation is supported by documentation in the claim file which gives the particulars of the condition of the property involved; the valuation, including salvage value of the property lost, if any, must be in an adequate and appropriate amount; the basis for settlement shall be fully explained to the claimant;

(2) provide to a first-party claimant a reasonable written explanation of the valuation of the damages to the property;

(3) include the first-party claimant's deductible, if any, in a subrogation demand unless the first-party claimant requests that it not be included or unless the deductible has been otherwise recovered by the first-party claimant; no deduction for expense may be made from any deductible recovered unless an outside attorney or other outside expert witnesses have been retained and deduction may be for no more than a pro rata share of their cost less attorney fees and costs recovered; any recovery of prejudgment or postjudgment interest shall be shared pro rata.

(b) Any person transacting the business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a third-party property claim:

(1) shall provide to a third-party claimant a reasonable written explanation of the valuation of damages to property which is the basis of any settlement offer;

(2) may not recommend that a third-party claimant make a claim under the claimant's own coverage in order to delay or avoid paying a claim where liability and damages are reasonably clear.

(c) Any person settling or adjusting a property claim may not require a claimant to travel unreasonably either to inspect replacement property, obtain a repair estimate, or have the property repaired at a specific facility.

(d) Any estimate of the costs of the repair of the property must be a fair and appropriate amount for which the damage can be reasonably

expected to be repaired at one or more conveniently located repair facilities, dealers, or contractors.

(e) Any person who reduces the amount claimed as damage to property on the basis of betterment or depreciation shall itemize each deduction. The basis for the reduction shall be documented in the claim file.

(f) If a person adjusting or settling a claim elects to have repaired a claimant's property and chooses a specific repair facility, dealer, or contractor, that person shall guarantee the repairs and cause the damaged property to be restored to its condition before the loss, at no additional cost to the claimant, and cause the repairs to be completed within a reasonable period of time. (Eff. 05/06/89, Register 110).

Authority: AS 21.06.090  
AS 21.36.125  
AS 21.36.350

**3 AAC 26.100. ADDITIONAL STANDARDS FOR PROMPT, FAIR, AND EQUITABLE SETTLEMENTS OF WORKERS COMPENSATION CLAIMS.** Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a workers' compensation claim:

(1) may not require a claimant to travel unreasonably for medical care, rehabilitation services, or any other purpose;

(2) shall provide necessary claim forms, written instructions, and assistance that is reasonable so that any claimant not represented by an attorney is able to comply with the law and reasonable claims handling requirements;

(3) shall promptly make all payments or denials of payments as required by statute or regulation. (Eff. 05/06/89, Register 110)

Authority: AS 21.06.090  
AS 21.36.125  
AS 21.36.350

**3 AAC 26.110. STANDARDS FOR PROMPT, FAIR, AND EQUITABLE SETTLEMENTS OF DISABILITY CLAIMS.** (a) If a disability insurance policy or a subscriber contract provides for payment of a claim on the basis of services provided by a medical care provider using a usual, customary and reasonable, or prevailing charge basis, a person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a claim must:

(1) maintain or use a statistically credible profile of medical care providers' charges on which to base payment of claims, which is updated at least every six months and contains charges for services performed not more than one year before the date of the most recent

profile; the profile must contain charges for each geographical area in which a claimant might receive treatment; if the profile does not contain a statistically credible data base for a particular medical care service in a certain geographical area, the insurer may include in the profile a sufficient number of charges for that service from another geographical area so that a reliable basis is established; however, the final basis for payment shall be adjusted to reflect the general cost differences between the geographical area where the service was performed and the other geographical areas used in establishing the statistically credible profile; the adjustment may be based on the Consumer Price Index, the medical care component of the Consumer Price Index, or another reasonable basis stated in writing; the written explanation provided to a claimant must include a complete explanation of these adjustments;

(2) provide to the claimant, in writing, a complete explanation of the basis of payments and document the explanation in the claim file; if the basis for payment is less than the actual charge made by the medical care provider, the explanation to the claimant must state with specificity the reason for the amount not paid.

(b) This section does not apply to workers' compensation claims. (Eff. 05/06/89, Register 110)

Authority: AS 21.06.090  
 AS 21.36.125  
 AS 21.36.350

**3 AAC 26.300. DEFINITIONS.** In this chapter,

(1) "claim" means notice that an event, act or omission has occurred which may result in injury or damage for which an insured may be legally obligated to pay;

(2) "claimant" means a first-party claimant, a third-party claimant, or both, and includes the claimant's legal representative and includes a member of the claimant's immediate family if authorized by the claimant;

(3) "Consumer Price Index" means the data published annually in the Detailed Report by the United States Department of Labor, Bureau of Labor Statistics;

(4) "destination or delivery charges" means the charges for shipping a motor vehicle to a primary residence of the claimant or to where the motor vehicle is primarily operated;

(5) "first-party claimant" means a person asserting a right to payment under his or her own coverage;

(6) "frequency as to indicate a general business practice" means violation of any one standard committed on one or more percent of claims handled within a 12-month period, or the repeated violation of a single standard without reasonable explanation;

(7) "local market area" means the geographical area, in the closest proximity to the claimant's residence, in which two or more qualified dealers are located;

(8) "outside attorney" means an attorney who is in private practice and not an employee of a person transacting a business of insurance under AS 21;

(9) "person" means an individual, corporation, association, partnership, or other legal entity;

(10) "third-party claimant" means any person asserting a claim against any other person;

(11) "usual, customary, and reasonable, or prevailing charge basis" means that payment basis for a disability insurance claim where the reasonable and prevailing charge for a medical care procedure, service, or supply item is determined by the lowest of the following amounts:

(A) the billed amount of the medical care provider's actual charges;

(B) the charge usually made by that provider for performing that procedure; or

(C) the customary charge based on a profile of charges made for the same medical procedure, service, or supply item in the same geographical area by other providers that have performed the same procedure or service or have provided the same supply item;

(12) "working days" means all calendar days except Saturdays, Sundays, all official federal holidays, and all official Alaska holidays. (Eff. 05/06/89, Register 110)

Authority: AS 21.06.090  
AS 21.36.125  
AS 21.36.350

### CHAPTER 31. MISCELLANEOUS

Section  
50. Insurer fees  
60. Miscellaneous fees

**3 AAC 31.050. INSURER FEES.** The following fees are established for insurers:

- (1) application for a certificate of authority, including a solicitation permit and issuance of the certificate, if issued, a one-time fee of \$1,000;
- (2) annual continuation of a certificate of authority, \$500;
- (3) amendment to a certificate of authority, \$100;
- (4) amendment to the articles of incorporation, \$100;
- (5) revised bylaws or amendments to bylaws, \$100;
- (6) filing an annual statement, \$100;

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# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



September 28, 1989

Jim Jordan, Acting Director  
Division of Insurance - DCED  
3601 C Street, Suite 722  
Anchorage, Alaska 99503

Dear Mr. Jordan:

I'm writing to request that the Division of Insurance implement regulations mandating that insurers offer under and uninsured motorist coverage in at least the same amounts as their insureds' highest policy limits, including umbrella policies.

As you know from speaking with Ginger Baim from my office last week, currently there are no insurers selling automobile insurance in Alaska that offer such coverage. While the law requires that they offer under and uninsured motorist coverage, the statute is silent on the question of policy limits.

Many Alaskans share my concern that they are able to provide maximum coverage to an injured party when they are at fault in an accident but are unable to procure such coverage for themselves if they are involved in an accident where an under or uninsured driver is at fault.

Please contact my office at 561-7629 upon receipt of this letter and confirm whether you will pursue this request in regulations.

Sincerely,

A handwritten signature in cursive script that reads "Dave Donley".

Representative Dave Donley, Chair  
House Labor and Commerce Committee

PS: The House Labor and Commerce Committee will be considering legislation dealing with other automobile insurance issues and may include this request in statute if the Division chooses not to pursue it by regulation. My first choice however, is to implement the mandate by regulations so that Alaskans can immediately benefit from this policy.

dd/gb

STATE OF ALASKA

STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

7th FLOOR FRONTIER BLDG.  
3601 C STREET, SUITE 740  
ANCHORAGE, ALASKA 99503-5934  
PHONE: (907) 562-3626

**DIVISION OF INSURANCE**

October 17, 1989

Ⓡ  
10/31/89

Honorable Dave Donley, Chair  
House Labor and Commerce Committee  
Alaska State Legislature  
House of Representatives  
P. O. Box V  
Juneau, AK 99811

Dear Representative Donley:

RE: Under and Uninsured Motorist Coverage

This letter is to memorialize the telephone conversation I had with your staff person, Ginger Bains.

The Division of Insurance will not pursue the proposal outlined in your letter to me dated September 28, 1989. The reason for not pursuing your proposal is due to lack of statutory authority. I have conferred with Assistant Attorney General, Linda O'Bannon, to confirm the lack of direct jurisdiction in extending AS 21.89.020(c) to umbrella or excess policies.

The problem with authority rests with being able to classify an umbrella or excess policy as being an "automobile insurance policy". No definition of an automobile insurance policy exists other than in AS 21.36.310(3). (AS 21.12 does not include a specific definition and the various definitions contained are not mutually exclusive.) Umbrella or excess policies most often contain coverage for a variety of risks not associated with the operation of an automobile (eg. risks associated with a home, personal libel and slander risks). If an umbrella or excess policy only provided coverage for risks associated with automobile usage, an argument could be made that such a contract could be defined as being an automobile policy and therefore AS 21.89.020(c) would apply and the corresponding limits would have to be offered for under and uninsured motorist coverage.

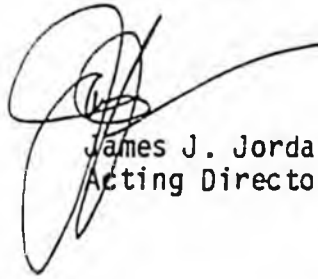
I had staff do some checking as to availability of the coverage in question. State Farm offers such coverage to policyholders meeting certain underwriting criteria (see attached memorandum). Other carriers also offer coverage on a basis similar to State Farm and staff is doing further research in that respect.

One possible downside risk to legislatively mandating that under and uninsured be offered to the policy limits provided by an umbrella policy is that admitted insurers may stop offering umbrella or excess contracts. In such an event, this coverage would possibly still be offered but only by non-regulated, surplus lines, non-admitted insurers. Such insurers are not subject to AS 21.89.020.

Some other states do have programs defined by law which may meet with your concerns. Oregon has a "PIP" (personal insurance program), which may be a viable option. I invited Ginger to contact my staff directly to get the details of such plans.

Let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to be 'JJ', with a long horizontal stroke extending to the right.

James J. Jordan  
Acting Director

JJ/sh  
2364

# MEMORANDUM

# State of Alaska

TO: Jim Jordan  
Director  
Division of Insurance

DATE: October 2, 1989

FILE NO.:

THRU: Don Koch  
Chief of Market Surveillance

TELEPHONE NO.: (907) 465-2577

SUBJECT: Personal Liability  
Umbrella Policy

FROM: Bob Sims  
Insurance Market Analyst II  
Division of Insurance  
Department of Commerce  
and Economic Development.

Underwriting guidelines for the State Farm Policy include:

1. All auto must be insured in the voluntary market and have underlying UM/UIM coverage.
2. All other liability policies State Farm will cover must be insured with State Farm. (If you have a rental unit State Farm declines to cover you must show proof of underlying insurance up to a certain level)
3. You must be a preferred risk.

Just because you have a teenager in the household does not precluded you from being eligible for this coverage. You will just have to pay more to cover the additional risk involved.

If you want me to send you a copy of the State Farm policy and pertinent endorsements just let me know.

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN • SPENARD  
SEAT A

HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDDLETOWN • WINDEMERE

3111 "C" STREET, SUITE 450  
ANCHORAGE, ALASKA 99503  
(907) 561-7629



CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBER

STATE AFFAIRS COMMITTEE

HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

HOUSING AND BANKING SUBCOMMITTEE

FINANCE BUDGET SUBCOMMITTEE  
DEPT. OF COMMERCE AND  
ECONOMIC DEVELOPMENT

May 24, 1989

Steven D. Devries  
3504 Iowa  
Anchorage, Alaska 99517

Dear Steven:

Representative Brown has asked that I reply to your letter to her regarding laws governing automobile insurance, particularly as it applies to under and uninsured motorist coverage.

Your letter speaks to the current statutory prohibition against "stacking" of policies so that in the case of underinsured motorist coverage the compensation to an injured party by their own insurer is reduced by the amount received from the party who injured them, up to the limit of the underinsured coverage.

I've had a bill drafted to remove this statutory prohibition and therefore permit policies to be "stacked". In addition, the draft would require insurers to offer consumers under and uninsured motorist coverage up to the limits of their base policy, as opposed to current practice where virtually all insurers offer coverage only up to the limits mandated under Alaska's mandatory insurance law.

I considered offering this draft bill as an amendment to HB 44, an act reestablishing the mandatory automobile insurance law that sunsetted on January 1, 1989. However, the press of adjournment business was such that the amendment may have delayed action on HB 44 and I decided instead to pursue it as a separate bill next year.

In the meantime, you should be aware that your letter did a lot to educate other legislators about the unfair situation created by current law and will help a great deal in seeing that we can correct the problem next year.

Thanks for writing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dave Donley".

Representative Dave Donley

cc: Representative Brown

**Kay Brown**

Alaska State Legislature  
House of Representatives

MEMORANDUM

TO: Rep. Dave Donley

FROM: Rep. Kay Brown *Kay*

DATE: April 29, 1989

RE: HB 44. and Maximum Liability  
of Carrier ( AS 28.22.110)

I want to bring to your attention the attached letter from Steven DeVries in which he outlines what he feels is an inequitable provision in current statute regarding liability of the insurance carrier. Although Mr. DeVries is not a constituent of mine, I feel that his concern merits attention. I would really appreciate your help in drafting a response, when you have the time.

I note that HB 44 contains the same language as AS 28.22.110, Maximum Liability of Carrier, although it repeals other provisions of AS 28.22. Is it your opinion that the existing language does not provide an unfair shield to insurers?

Thank you for your help.

Steven D. Devries  
3504 Iowa  
Anchorage, Alaska 99517

January 26, 1989

Representative Kay Brown  
Alaska State Legislature  
P.O. Box V (MS3100)  
Juneau, Alaska 99811

Dear Representative Brown:

On December 17, 1988, my neighbor's child, Deborah Lyons, was killed in a car accident in Anchorage. Deborah was 17 years old at the time of her death. The driver of the vehicle who struck her was an individual with a long history of serious driving offenses including DWI and Reckless Driving. Apparently, this driver was under the influence of cocaine and was driving at speeds in excess of 70mph when he ran a red light killing Deborah.

As required by state law, this driver was carrying SR22 insurance. The vehicle Deborah was driving was also insured. Her family had in effect a standard policy which provided for uninsured/underinsured motorist coverage.

In dealing with the Lyons' insurer, Allstate, it has come to my attention that a horrendous situation exists regarding an insurer's ability to escape liability from

coverage under an underinsured motorist policy. Specifically, the provisions of AS 28.22.110 provide:

The Maximum Liability of Carrier.

(a) The maximum liability of the insured's carrier under the uninsured and underinsured motorist coverage required under this chapter shall be the difference between the coverage limit of liability and the amount paid to the insured by or on behalf of the uninsured and underinsured motorist.

(b) Amounts payable under the uninsured motorist and underinsured motorist coverage required to be offered under this chapter shall be reduced by

(1) amounts paid or to be paid under any worker's compensation loss;

(2) amounts paid or payable under any valid and collectible automobile medical payments insurance or bodily injury or death liability insurance; and

(3) amounts paid by or on behalf of the uninsured or underinsured motorist.

Clearly this statute provides a windfall to insurers. Specifically, an insured purchases a policy for uninsured or underinsured motorist coverage anticipating that this policy will provide protection in the event another driver has inadequate coverage to meet all of the damages resulting from an accident. This result is clearly not obtained where the statute insulates an insurer from its primary obligation under such a coverage policy.


The windfall of which I am speaking is best illustrated under the facts that occurred in this case. Specifically, the driver of the vehicle which struck Deborah Lyons had an SR22 policy in effect which provided for \$50,000 liability limitation for death or injury. The Lyons underinsurance coverage provided for a limitation of

liability in the amount of \$25,000. Thus, pursuant to the terms of AS 28.22.110, it appears that the insurer is merely obligated to look to the wrongful driver's insurer for coverage. No liability will exist on the Lyons' policy because in this case the amounts otherwise available are required to be reduced by the amounts payable under the wrongful driver's SR22 policy.

As stated above, it is reasonable to attempt to protect the citizens of this state by requiring insurers provide uninsured and underinsured motorist coverage. However, this policy is clearly undermined where an insurer can escape liability by permitting an off-set. The permissibility of such an off-set generally runs counter to basic principals of law permitting an insured to be entitled to their coverage as a collateral source without permitting an insurer to escape liability by seeking to off-set. Clearly, the inequities inherent in permitting an insurer to obtain premiums for an underinsured motorist coverage on one hand and then to escape liability for that same coverage policy on the other, obviously defies logic and the clear public policy underlying the Legislature's decision to require insurers to provide such coverage.

I sincerely hope you will investigate this matter and seek to repeal this obviously inequitable, unconscionable and unfair shield granted to insurers.

Sincerely,

  
STEVEN D. DeVRIES

SDD:dld:  
SDDPER

STATE OF ALASKA  
THE LEGISLATURE

POUCH - STATE CAPITOL  
BUILDING - ALASKA 995  
907 465 4500

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 2, 1989

SUBJECT: Limits on subrogation in insurance policies;  
Work Order No. 6-1677

TO: Representative Dave Donley  
Chair, House Labor & Commerce Committee

FROM: Pamela Finley *PF*  
Assistant Revisor of Statutes

Enclosed is the draft bill concerning limitations on subrogation under insurance policies. As you requested, it covers all types of insurance. I have not discussed this with the Division of Insurance; given the potentially far reaching implications of the bill, you may want to do so, or authorize us to do so. I am especially concerned about the possibility of insurers using "coverage" limitations to avoid the intent of the section.

Please let me know if I can be of further assistance in this matter.

PF:lmb  
L8/006

Enclosure

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



October 16, 1989

To: Mike Ford, Counsel  
Legislative Legal Services

From: Representative Dave Donley, Chair D  
House Labor and Commerce Committee

Re: Bill Drafting request

I am writing to request a bill draft, for introduction by the House Labor and Commerce Committee, that would prohibit subrogation of an insurance claim until an injured party has been fully compensated for costs incurred, including legal fees.

Attached is a copy of an article from the Alaska Bar Rag outlining a recent action by a major insurer in Alaska that would require subrogation of claims even when it would deny an injured party adequate compensation. In a previous bill draft you have prepared for me (Work Order 6-1394A dated 5/4/89) deal with a similar issue as it affects automobile insurance and the prohibition against "stacking" policies. This request is for a bill draft that will extend those same principles to all insurance claims.

Please contact me or Ginger Baim at 561-7629 if you have any questions or need additional information.

cc: Jim Jordan, Division of Insurance  
Michael J. Schneider

Enclosure

dd/gb

Go to Dept I  
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draft



# TORT LAW

## Insurance carriers gut medical pay coverage

Michael J. Schneider

### I. SCOPE.

This article will explain why many of you who believe you have medical payments coverage under your automobile insurance policy, or represent clients who believe they have such coverage in place, may end up whittling in the wind under the right (wrong) set of circumstances.

In particular, my concern is with State Farm's automobile policy. I am unaware to what extent other carriers have changed their medical pay coverage.

### II. ENDORSEMENT NO. 6025BB.

If you or any of your clients have an autopolicy with State Farm Insurance Company, you may soon be blessed with a copy of Amendatory Endorsement No. 6025BB (subrogation with a vengeance).

This endorsement purports to reduce the medical payments coverage by One Dollar for each One Dollar received by plaintiff from a liable third-party defendant. Does it make any difference to State Farm that, in many scenarios, their insured would be left with absolutely nothing, or grossly undercompensated, or with virtually no medical payments benefits in exchange for the premium that was paid? Apparently not. Here is an example. Assume that a person insured by State Farm, and with medical payments coverage limits of One Hundred Thousand Dollars (\$100,000), is struck, while operating their insured vehicle, by a judgment-proof defendant. Assume that the defendant has a liability policy with a \$100,000 liability limit. Assume that the plaintiff is rendered permanently disabled in some manner or other. Under State Farm's endorsement, there would be no medical payments coverage. It can be expected that the defendant's insurance carrier would promptly tender its liability limits. None of this money would go to do anything but pay medical expenses (and possibly attorney's fees and costs). State Farm, despite charging and retaining a premium for medical payments coverage, would be completely absolved from making any payments to its insured. Why would a "Good Neighbor" like State Farm do this?

What follows is pure speculation. It is my recollection that State Farm medical payment coverage did not survive against third-party recoveries until the last few years. The original thinking was apparently that medical payments coverage was provided automatically to those people injured inside an insured vehicle and without regard to fault. Little litigation and few disputes arose surrounding this coverage and, presumably, the premium charged by State Farm and other carriers was adequate to secure what were in

essence, health-care-coverage benefits. A plaintiff that recovered against a third party for the injury would not have to pay the insurance carrier back, even if their recovery included (as it usually did) sums associated with the cost of medical care.

Like a lot of "Good Neighbors," State Farm probably decided that it could squeeze a few more dollars out of its insureds and do little or no work and spend little or no money in the process. It would simply add a policy provision that provided State Farm with a right of subrogation against any third-party recovery. State Farm policies have contained such a provision for a few years at least.

The trouble with subrogation is that it is an equitable and imperfect right. The general rule as to those insureds who have been fully compensated, has been expressed by our supreme court in *Cooper v. Argonaut Insurance Companies*, 556 P.2d 523, 327 (AK 1976). Our supreme court joined a majority of other courts that reasoned that it was unfair and would unjustly enrich the carrier to leave the entire burden of litigation to an injured claimant, and that a party claiming subrogation should, at a minimum, suffer a pro rata reduction in the subrogation claim by the amount of fees and costs paid by the plaintiff to generate the fund out of which the subrogation interest was satisfied. Stated simply, in a case where a plaintiff pays a one-third contingency fee to his or her attorney, the case settles with no costs expended, and the subrogated interest of a medical care provider equals Nine Thousand Dollars (\$9,000.00), that provider would receive Six Thousand Dollars (\$6,000.00) at the time of settlement. If the plaintiff had to pay a third to generate the fund, why shouldn't the carrier pay a third to benefit from the plaintiff's efforts?

Subrogation has always been viewed as an equitable concept, even if subrogation provisions are contained within a formal contract. Therefore, it has long been the rule in most states that the right to subrogation does not even arise until the injured party is fully compensated:

"Although the court is persuaded that Allstate was not a volunteer in making the medical payments to plaintiffs, the court is nevertheless persuaded that Allstate's subrogation claim is invalid. It is undisputed that payment of the State Farm liability policy's limits to Mr. and Mrs. Greenland will not provide them with sufficient funds to compensate them fully for the injuries they have sustained, and this court is persuaded by various decisions from other states holding that public policy bars subrogation against a source of funds which otherwise would be available to insufficiently compensated parties. . . .  
"Understanding Insurance  
REPAIR, 2d Ed. 271 (1987), and  
Medical Insurance, 2d Ed. 271 (1987)."

all these equitable considerations entirely too tedious to deal with. State Farm's response is Endorsement No. 6025BB. This may place State Farm in the position of being able to argue a "coverage" question instead of a "subrogation" question.

### III. ATTACKS AND CAUSES OF ACTION RELATED TO AMENDATORY ENDORSEMENT NO. 6025BB.

Take a look at A.S. 21.36.235 and 260. These sections apply to policies entered into or renewed on or after August 28, 1987. These sections require that notice of a reduction in coverage must be mailed to the insured twenty (20) days before expiration of a personal insurance policy, or forty-five (45) days before expiration of a business or commercial policy, and that the mailing must be by first class mail and the insurer must obtain a certificate of mailing from the U.S. Postal Service. Is mailing of a copy of the endorsement enough where its terms may not adequately communicate the manner in which coverage has been reduced? Even if your client received, read, and understood the endorsement, does the insurance carrier have the required certificate of mailing from the U.S. Postal Service? May this failure to give notice, coupled with the reasonable expectations doctrine (see various cases collected at 6 West's Alaska Digest, Second Edition, Insurance, Key Number 146.3(1)), provide a defense to the onerous provisions of this endorsement?

The insurance agent or broker may provide the best target for recovery where an insured has been surprised and disadvantaged by this endorsement or some similar endorsement. It is my opinion that most insurance agents and brokers do not appreciate the extent to which this endorsement guts coverage otherwise obtainable under the MPC policy. It is also my opinion that few brokers or agents have described the possible impact of this endorsement to their customers. The argument can easily be made that it is exactly this sort of professional knowledge and advice that agents and brokers have a duty to provide to their insureds, and that the failure to provide such advice is negligent. This is particularly so in face of the fact that a number of other competing insurance carriers do not impose these sorts of restrictions on their medical payments coverage.

For those of you who have not yet suffered a loss, the best remedy may simply be to vote with your feet and secure coverage from a carrier without a subrogation provision in its MPC coverage, or who at a minimum, is willing to live with the

equitable limitations imposed upon the subrogation process.

### IV. INSURANCE REFORM.

The legislature began considering insurance reform last session. Insurance reform is likely to be an important issue in sessions to come. It might be a good idea to express your concern about insurance practices like this to members of the legislature and to suggest that mandatory medical payments coverage be made a part of Alaska's mandatory insurance law. Endorsements such as referred to above could be legislatively voided.

### V. POTENTIAL BAD-FAITH CLAIMS.

The afore-said endorsement applies where "the injured person has been paid damages" (emphasis added) of any kind by the defendant. Medical payments coverage is usually paid out before third-party cases are resolved. This is particularly true in major injury cases where there is an adequate source of recovery for plaintiff's injuries. Where liability is strong, where medical expenses are significant, but where no settlement has yet been made, will the carrier have the courage to deny or slow pay medical payments benefits on the theory that there is "no coverage," or that coverage will be reduced if it stalls the process pending plaintiff's receipt of money from the defendant? Is it an act of bad faith (recently confirmed by our supreme court to be a tort and the possible subject of a punitive-damage award; see *State Farm Fire and Casualty Co. v. Nicholson*, Opinion No. 3465, July 22, 1989) to refuse to promptly honor a medical claim pending resolution of a third-party action? Will the carrier be found to have shirked its corporate foot without medical payments coverage to handle the hospital bills? Time will tell.

### VI. SUMMARY AND CONCLUSION.

If your client is damaged because of a restrictive medical payments endorsement like the one discussed in this article, consider attacking the endorsement under the reasonable expectations doctrine and statutory notice provisions. Consider causes of action against the agent/broker for negligent failure to advise of the reduction in coverage and consider bad-faith and punitive-damage claims against the carrier, should the carrier refuse to provide medical payments pending the outcome of underlying third-party litigation. If you haven't suffered a loss, consider securing coverage from a company that does not impose such a restrictive endorsement upon medical payments benefits.

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 463-3892



October 16, 1989

Jim Jordan, Acting Director  
Division of Insurance - DCEO  
3601 C Street, Suite 722  
Anchorage, Alaska 99503

Dear Mr. Jordan:

As per your conversation with my staff, attached is an article in the Alaska Bar Rag regarding subrogation of insurance claims. Attached also is a copy of a bill drafting request for your information.

Please comment on the following:

1. Does State Farm's endorsement, as described in this article, constitute a reduction in coverage that requires notification under AS 21.36.235-260?
2. If so, did State Farm conform to notification requirements? Are they in the process of doing so? Will the Division require them to do so?
3. Is it appropriate to prohibit the subrogation of claims unless the injured party has been adequately compensated, including legal fees? What are the pros and cons of such a prohibition as far as the industry is concerned?
4. Does the Division anticipate a problem potential bad faith claims, as outlined in paragraph "V" of the attached article, should such endorsements become more common?

I look forward to your response. Please contact me or Ginger Baim at 561-7629 if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Dave Donley".

Representative Dave Donley, Chair  
House Labor and Commerce Committee

cc: Mike Schneider

Enclosure

cd/gb

Draft # 1

WORK DRAFT

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6-1394A  
Ford  
5/4/89

1 IN THE HOUSE

BY DONLEY

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HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to uninsured and underinsured motor vehicle insurance."

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

\* Section 1. AS 21.89.020(c) is amended to read:

(c) An insurance company offering automobile liability insurance, or offering an excess policy of insurance that extends coverage for automobile liability, in this state for bodily injury or death shall offer coverage prescribed in AS 28.20.440 and 28.20.445, with limits equal to at least the limit purchased voluntarily to cover the insured person's liability for bodily injury or death, for the protection of the persons insured under the policy who are legally entitled to recover damages for bodily injury or death from owners or operators of uninsured or underinsured motor vehicles. The limit written may not be less than the limit in AS 28.20.440.

\* Sec. 2. AS 28.20.445(c) is amended to read:

(c) If an insured is entitled to uninsured or underinsured motorists coverage under more than one policy of motor vehicle liability insurance, or under more than one coverage if two or more vehicles are insured under one policy, [THE MAXIMUM AMOUNT] an insured may recover under each policy or coverage [MAY NOT EXCEED THE HIGHEST LIMIT OF ANY ONE POLICY OR COVERAGE]. When multiple policies or coverages apply, payment may be made in the following order of priority, subject to the limit of liability for each applicable policy or coverage:

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- (1) a policy or coverage covering a motor vehicle occupied by the injured person at the time of the accident;
- (2) a policy or coverage covering a motor vehicle that came into direct contact with the insured while a pedestrian; and
- (3) a policy or coverage covering a motor vehicle not involved in the accident under which the injured person is an insured or a named insured.

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Finley  
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IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to subrogation provisions in insurance policies."

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

\* Section 1. AS 21.42 is amended by adding a new section to read:

Sec. 21.42.285. LIMITATION ON SUBROGATION RIGHTS. Notwithstanding any other provision of law, an insurance policy must provide that the insurer is not subrogated to the rights of the insured until the insured has been fully compensated for the loss, including costs and attorney fees incurred by the insured and related to the loss.

\* Sec. 2. APPLICABILITY. The provisions of AS 21.42.285, added by sec. 1 of this Act, apply to contracts of insurance entered into after the effective date of this Act.

H B

4 3 2

# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 16, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/4/90

The JUDICIARY Committee considered:

HB 432

HOUSE BILL NO. 432

PROHIBITION OF FINFISH FARMING

"An Act prohibiting finfish farming; and providing for an effective date."

**RECOMMENDATIONS:**

- be replaced with CS HB 432 (RES)  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 \_\_\_\_\_
- zero fiscal note \_\_\_\_\_
- zero with analysis \_\_\_\_\_

- fiscal note(s) \_\_\_\_\_
- zero fiscal note(s) F+G
- zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

Peter Jones

W. F. Grunberg

Cliff Davidson

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**SIGNING:**

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Mike Miller</u>		—	
<u>Terry Masten</u>		—	
<u>Phyllis Ellis</u>		✓	
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Peter Jones W. F. Grunberg

Chairman's Signature

300/A-7+6

Original sponsor(s): REP. CRUSSELDORF, Ulmer, Goll, Davidson, Navarre,  
Mills, Judson, Taylor, C. Davis, Jacks, Rubin, MacLean, Swackhammer

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 432 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act prohibiting finfish farming; and providing  
7 for an effective date."

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

9 \* Section 1. FINDINGS. Based on a legislative examination of the  
10 potential effects of allowing finfish farming in the state on the common  
11 property resources and on the overall economic well-being of the state; the  
12 number of serious concerns associated with finfish farming and the need for  
13 study of finfish farming that has caused the legislature to enact two  
14 moratoriums on finfish farming and establish a nonlegislative task force to  
15 study the issue and to report its findings and recommendations to the  
16 legislature; a review of the final report of the Alaska Finfish Farming  
17 Task Force which notes several possible benefits and some serious risks of  
18 finfish farming; the need for the legislature to take action before the  
19 current moratorium on finfish farming expires on July 1, 1990; the recom-  
20 mendation of the task force that the legislature not extend the moratorium,  
21 but make a final determination to either allow or prohibit finfish farming;  
22 and the testimony and evidence received; the legislature finds that

23 (1) the state has the healthiest stocks of wild salmon and other  
24 wild finfish in the world and benefits from thriving commercial, sport, and  
25 subsistence fisheries for these fish and a growing tourism industry related  
26 to sport fishing;

27 (2) the people, economy, and environment of the state are depen-  
28 dent in large measure upon the continued health of the state's wild finfish  
29 resources;

1 (3) serious risks are posed by commercial finfish farming,  
2 including the spread of disease among wild fish by farmed fish, genetic  
3 intermingling of wild fish stocks with genetically manipulated farmed fish,  
4 degradation of water quality near finfish farms, and land use conflicts  
5 over the siting of commercial finfish farms;

6 (4) the state has invested significantly in marketing efforts to  
7 promote Alaskan finfish as wild and natural fish products, and this invest-  
8 ment in developing the reputation of Alaskan finfish would be lost by  
9 allowing commercially farmed finfish to be produced and marketed from  
10 Alaska;

11 (5) the cost to the state to regulate the commercial finfish  
12 farming industry would be high;

13 (6) few jobs would be generated by a commercial finfish farming  
14 industry in the state;

15 (7) the state is responsible for ensuring the protection and  
16 wise use of the renewable natural resources of Alaska and providing a  
17 framework for a sound economy;

18 (8) a long-term decision must be made regarding the future of  
19 commercial finfish farming in the state;

20 (9) avoiding harm to the state's wild finfish, land, and water  
21 resources must take precedence over the development of a new speculative  
22 and potentially harmful commercial finfish farming industry;

23 (10) the best interests of the state are served by prohibiting  
24 commercial finfish farming.

25 \* Sec. 2. AS 16.40 is amended by adding a new section to read:

26 Sec. 16.40.210. FINFISH FARMING PROHIBITED. (a) A person may  
27 not grow or cultivate finfish in captivity or under positive control  
28 for commercial purposes.

29 (b) This section does not restrict

1           (1) the fishery rehabilitation, enhancement, or development  
2 activities of the department;

3           (2) the ability of a nonprofit corporation that holds a  
4 salmon hatchery permit under AS 16.10.400 to sell salmon returning  
5 from the natural water of the state, as authorized under AS 16.10.450,  
6 or surplus salmon eggs, as authorized under AS 16.10.420 and 16.10.-  
7 450;

8           (3) rearing and sale of ornamental finfish for aquariums or  
9 ornamental ponds provided that the fish are not reared in or released  
10 into water of the state.

11           (c) In this section "ornamental finfish" means fish commonly  
12 known as "tropical fish," "aquarium fish," or "goldfish," that are  
13 imported, cultured, or sold in the state customarily for viewing in  
14 aquaria or for raising in artificial systems, and not customarily used  
15 for sport fishing or human consumption purposes.

16 \* Sec. 3. This Act takes effect July 1, 1990.  
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FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Fish and Game  
 Title: Prohibition of finfish farming BRU: FRED  
 Sponsor: Elison et al., Grossenorf, et. al Components: \_\_\_\_\_  
 Requestor: Steve Cowder

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
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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)

FY 90  
See attachments.

Prepared by: [Signature]  
 Division: ADFG, FRED Division

Phone: 465-4160  
 Date: 1/30/90

Approved by Commissioner: [Signature]  
 Agency: ADFG

Date: Feb 8 1989

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

## Bill Analysis --

## Background/Legislative Intent

In 1987, the Alaska State Legislature passed SB 297 placing a one year moratorium on finfish farming. The following year HCS SSSB 514 was passed, authorizing the farming of shellfish and aquatic plants, extending the moratorium on finfish farming until July 1, 1990, and establishing the five-member Alaska Finfish Farming Task Force. The shellfish farming program is currently being implemented. HCSSSB 514 also contained a provision for inland farms in closed waters. The Board of Fisheries however, denied a proposal to make surplus coho eggs available to an interior-based applicant proposing to operate a recycle hatchery. In doing so, the Board of Fisheries asserted that public policy questions pertaining to brood stock acquisition and the privatization of a public resource were questions that should be addressed by the legislature, rather than set by precedent by the Board.

Although the task force was authorized in 1988, it was not funded until last spring. The members were appointed by Governor Cowper and began work last July. The task force recently issued its report and recommended that prior to the end of the moratorium on July 1, 1990, the legislature take statutory action to expressly allow or prohibit finfish farming. SB 397 would prohibit finfish farming by not allowing a person "to grow or cultivate finfish in captivity or under positive control for commercial purposes." As drafted, the state and PNP hatcheries would remain unaffected.

## Amendments Proposed

On Page 2, lines 1-5, the third finding asserts that serious disease and genetic risks are posed to wild stocks. As the FRED Division has stated on the record, in legislative hearings and to the task force, if a properly managed, regulated, and funded pathology and genetics program were in place, similar to that run by the FRED division for current public and private non profit hatcheries, then commercial farming of finfish would not pose a serious risk to the health and genetic integrity of wild stocks.

Sale of finfish under a scientific or educational permit is not allowed currently. Accordingly on Page 3, Section 2, the department recommends deleting item 3.

With regard to Section 2, item 4, the department recommends extending the sentence. After the word "ponds", insert: "provided these fish are not reared or released into waters of the state."

# Alaska State Legislature

## Senate Resources Committee

Senator Bettye Fahrenkamp, Chairman

Senator Jay Kerttula, Vice Chairman  
Senator Dick Eliason  
Senator Steve Frank  
Senator Rick Halford  
Senator Atliis Sturqilewski  
Senator Fred Zharoff



PO. Box V  
Juneau, Alaska 99811  
(907) 465-4907

### M E M O R A N D U M

TO: All Legislators  
FROM: Senator Bettye Fahrenkamp  
DATE: March 30, 1990  
RE: Finfish farming

RECEIVED  
MAR 31 1990

If your mail is like my mail, many of you may have been the recipient of a letter writing campaign from commercial fishermen in opposition to finfish farming. I am convinced that their comments do not reflect the opinion of most Alaskans.

In a survey of voters in my district on a variety of issues, the respondents told a markedly different story on finfish farming.

133 respondents

100 favorable  
12 unfavorable  
61 no opinion

I have attached typical comments in favor. The responses are in my office if you would like to review them.

## Typical Comments in Favor of Fish Farming

"Most governments go to great lengths to foster an 'infant industry', rather than try to strangle it in the crib! We need jobs!"

"Too long delayed. We are way behind in one of best potentials the state has. Both finfish and seaweed (nori) culture. Please break this loose and let development begin and don't let agencies set up constrictive controls. There's a big difference between regulation and strangulation."

"The fish farming moratorium should end. When Alaska's economy is so bad and fish farming a viable option for improving that economy, restricting the activity because of the greed of a select group of fishermen is a travesty. On fish farming, Alaska is way behind the times and again will miss out on a great opportunity."

"Let it develop with good environmental safeguards."

"Allow the farming with inspection of stocks/fry by Fish & Game to check for contamination/disease."

"I favor fish farming with adequate safeguards and controls to ensure safety and product quality."

"With proper precautionary measures and controls there should be few of the dangers to natural stock. It appears to be another effort by fishermen to keep out market competition."

"Finfish farming must be permitted. Why deny Alaska a valuable industry? If we don't develop this industry others will, leaving us cut out of the world salmon market."

"I'm all for mariculture. Politically, commercial fishing in this state has become a nightmare."

"Commercial fishing interests have had their way too long---Let's get on with it!"

"Worth investigation. Should not be outrightly banned simply to protect fishermen, but if there is a possibility of disease then it's questionable. Someone in FBX is doing it and I understand his system is completely closed. No chance of escape to contaminate wild stocks. He should not be restricted in any manner regarding how (or if) he can produce fish."

# Alaska Aquaculture Association

*① Aquaculture  
bill file H 15432  
in H Jud*

TO: All Legislators  
FROM: Rodger Painter  
DATE: March 19, 1990  
RE: How not to Diversify the Alaska Economy

There's been a great deal of discussion about how to diversify Alaska's economy over the past several years. While Alaskans seem as divided as ever over just how to accomplish this goal, there's at least one clear example of how to stifle entrepreneurial initiatives and ignore real opportunities.

A proposal to ban finfish farming has gained a good head of political steam and threatens to roll over sound public policy. A decision to even prohibit freshwater tank farming of char and trout simply can't be supported by fact, logic or common sense. While the legislature is supposed to make political decisions, Alaska's inevitable economic future under declining North Slope revenues should give you pause to think about snuffing out opportunities to diversify our economy.

The debate over aquatic farming is a sad commentary on the legislature's commitment to economic diversification. The emotional debate over the pros and cons of the net pen rearing of salmon makes the entire issue of aquatic farming too hot to handle. So, no one is willing to listen to the facts about upland finfish farming.

Land-based finfish farming is the oldest form of aquaculture, and a tremendous body of research and knowledge exists about its biological and environmental effects. All that's really required to weigh the issues involved in uplands farming, though, is a good dose of common sense.

Take, for example, the biological impacts of upland farms on wild stocks. Fish raised in tanks simply cannot escape into the wild, eliminating the threat of genetic alteration. The record of our salmon hatchery program in preventing disease transmission to wild stocks also testifies to our ability to control the spread of pathogens from land-based systems.

Finfish Farming  
Page Two

Or, how about pollution? The Environmental Protection Agency regards upland finfish farms as point source pollution discharges and as such requires the screening of effluent. Antibiotics? Our present hatchery program safely utilizes antibiotics, and the Food and Drug Administration imposes quarantine periods to prevent fish with residual antibiotics from reaching the marketplace.

Upland finfish farming even eliminates any concern about undermining the markets of the Alaska seafood industry since the freshwater species end up in entirely different markets. Coho salmon can be grown to pan size in freshwater farms, but these products compete with farm-raised trout.

Some commercial fishermen suggest the concept of fish farming would violate the spirit of Alaska's constitutionally guarantee of common property fish and game resources, but the average fish farm will require only a small number of fish in the initial phases. The farmer will pay for the initial broodstock, and all future generations of those fish will be subject to the Fisheries Business Tax. Consequently, the farmer might pay the state for 200 fish, then pay taxes on the many thousands that will come in future generations. This seems like adequate compensation when the same fish caught by a commercial fisherman would net the state taxes only on 200 fish.

The arguments could go on and on, but there's little utility in belaboring the point. The real reason commercial fishermen want to ban finfish farming is that it represents the proverbial camel's nose under the tent. They argue that upland farmers are likely to fail and will come running back to the legislature to say the ban on net pen rearing must be lifted to make the industry economical, but they also fear the farmers may succeed and a success story will convince the legislature to undo a ban on net pen rearing.

Even if either of these scenarios are played out, they do not justify prohibiting Alaskans from taking advantage of the few opportunities available for creating sustainable, environmentally sound businesses. Does this mean we favor central planning of the Alaska economy where the state makes marketplace decisions? Even the Soviet Union has decided that doesn't work.

The attached article from the *National Fisherman* illustrates the paths Alaska now faces. The article shows how the fishing community on Vinalhaven reacted to the emotional arguments over salmon farming and flatly rejected a proposed salmon farm, while neighboring Swans Island (also a fishing community) calmly gathered the facts, debated the issue, and decided to work with the farmer. Swans Island gained 10 fulltime jobs for a population of 350.

Alaska has those same kind of choices. Unfortunately, we may lack the levelheadedness of the residents of Swans Island.

# A tale of two islands

**One Maine island community decided to try salmon farming to supplement its traditional income from fishing; the other said, "No way."**

By Nancy Griffin  
Field Editor

The craggy, convoluted coast of Maine is studded with many islands where shrinking communities of rugged individuals stubbornly cling to a year-round way of life that grows increasingly more difficult to maintain.

Two such communities are Swans Island and Vinalhaven, somewhat different in size but with many common features. Most of the year-round families on both islands have lived there for generations. Most of those families now depend solely on lobstering for their livelihood, which means they saw their incomes drop during the past year along with the price of lobster.

There's another common thing: each community was approached during the past two years by companies from off-island wishing to establish salmon farms. Here the differences begin. Vinalhaven residents resoundingly and unequivocally rejected the aquaculture idea, while Swans Island people wrestled with, studied, argued about and finally accepted the notion.

"We have to use the sea," says Bruce Colbeth of the Swans Island Fishermen's Co-op. "Not everyone wants to be a lobster fisherman, and we don't have the option of commuting 20 miles to work, or bringing raw materials to the island, putting them together and shipping them out. We either work on the island or move out."

Swans Island is 7,500 acres with 350 year-round residents. Summer residents swell the population to 800. Vinalhaven, reached by ferry from Rockland, has 1,200 year-round residents and a summer population that reaches nearly 6,000.

Town officials in Vinalhaven were approached in September 1987 by a Norwegian representing a company called Atlantic Salmon (Maine) Inc. Frank Gjerset sought a 10-year lease for 25 acres of bottom off Vinalhaven, a specific site adjacent to the White Islands area.

"The first most townspeople heard of the proposal was a sheet of paper posted around town announcing the public hearing," says Victoria Dyer, who was then Vinalhaven's town manager. "It would have been nice if a representative of the firm came in first and explained to people what they wanted to do."

Observers say this failure to approach people and win them over to the idea probably did more harm to Atlantic Salmon's cause than anything else. The proposed lease area was prime lobster and scallop bottom, heavily used by the island's fishermen. Not only did lobstermen fear loss of access to the 25-acre spot, but they worried about contamination to nearby bottom from salmon droppings, antibiotics used in the pens, chemicals used in the fish food and diseases such as those that plagued Norwegian fjord-based pens and Swedish pens more than a year ago.

Islanders also expressed concern that the Norwegian company would bring workers from off-island, and, while local fishermen would lose some of their traditional fishing territory, little of the revenue generated by Atlantic Salmon would stay on Vinalhaven.

Five hundred Vinalhaven residents flocked to the public hearing in February 1988 ready to show their opposition to the proposal. They never had the chance. The meeting ended at 2 a.m. with the company still presenting its case and townspeople asking questions.

Officials decided to continue the public hearing in April, when townspeople who had signed up as interveners could present their side. In the interim, the town held a non-binding referendum on the proposal, and voters rejected the idea, 5 to 1. Shortly before the scheduled reconvening, Atlantic Salmon withdrew its proposal.

In a letter to the Commissioner of Marine Resources, the company said its reasons for withdrawing included the emotionalism and misinformation raised by some opponents.

"There was a lot of emotionalism, but also people who attended the meeting had legitimate concerns that were not addressed," says Emily Lane, the current Vinalhaven town manager, then a selectman.

"I did a lot of research, and I still think it's a terrible idea," says Maudcann Warren of Vinalhaven. Her husband, Roger, is a sixth-generation lobsterman. "They talk about jobs, but the average is only about three to five jobs per farm. I think it's tragic to see big corporations taking the life blood of small communities," she says.

## A Different Approach

Swans Island residents watched this process with fascination. Just as the Vinalhaven saga was ending, they were approached about a salmon farming operation. The approach, however, was different.

"One man from Ellsworth came and talked first to me," says Colbeth, himself a former lobsterman who plans to return to his traps in a few years. "We were interested. But we'd just read in the papers all the bad things about aquaculture, so we did a lot of research. We kept an open mind."

Fishermen were invited to discuss the proposal presented by Mariculture Products Ltd. and decide if they wanted to investigate it further. "After all," says Colbeth. "They were the ones with the most to lose."

After three informational discussion meetings, the lobstermen told Colbeth to pursue the project. Together, they chose 465-acre Toothacher Cove, parts of which were heavily lobstered while other parts were not lobstered at all. The ones who fished in those areas were willing to give it up for the good of Swans Island.

Then in March, things went haywire, Colbeth reports. "We found handfuls of papers this thick under windshields and at the co-op — all over the island — full of bad stuff about salmon farming. After I read three or four pages, I felt sick. The president of the co-op read it and suddenly turned against the project," he says.

Colbeth, however, felt the informational packets represented propaganda. "I said, 'I've got to find out the truth.'" He drove to Canada, visited several fish farms, interviewed lobstermen in New Brunswick communities with a video camera, and viewed videos that divers took periodically of the bottom under the pens at 50 different sites.

"The first two questions I asked everyone were: What about salmon pollution? And, what about antibiotics?" says Colbeth. "I don't even know how they can call it pollution. What are they going to do, stop all the fish from going to the bathroom in the water? Fish have to excrete. Pollution is not the right word; it's just a scare tactic word."

"One farm I looked at was beside fish weirs, and it also had lobster and clam flats right next to it," says Colbeth. "Everyone I talked to was happy. A lobsterman there who was the biggest opponent of salmon farming now has 25 pens of his own. He said he was wrong."

The sea farming operations Colbeth toured were small, tidal action was strong and no buildup showed under the pens. In addition, Colbeth says the aquaculture ventures were mainly owned by small operators who were often lobstermen.

One of the damning things found in packets distributed on the island was newspaper picture of a clammer holding fistful of slime described in the caption a salmon gurry from a pen site. When Colbeth went directly to the office of the *S Croix Courier* and asked about the picture, a staffer provided him with a copy of it.

retraction that had run the following week, explaining that the slime was a form of algae, not salmon gurry.

To quell concerns about antibiotics, Colbeth investigated what was used in Canadian pens. It turned out the two antibiotics used are both U.S. Department of Agriculture approved and are commonly used in lobster pounds to prevent red tail. "No one seems to have a problem with using it in lobster pounds," Colbeth says.

Colbeth also checked out stories about disease-ridden salmon farms in Norway. He found out that the Norwegians moved the pens from the still waters of the fjords to the open ocean to solve the problem.

#### Opposition

Lee McCarthy summers on Swans Island in a camp situated down the cove from the salmon pens. She opposed the farming operation and still does. She says her opposition arises strictly from environmental concerns.

"They sidestepped every possible environmental protection that was part of the law. Those pens violate Department of Environmental Protection minimums for the depth of water under the pens," says McCarthy.

She says intense political pressure brought to bear by Mariculture Products and the state Department of Marine Resources won a three-year probationary permit from the Army Corps of Engineers for the farming venture despite demands from the Environmental Protection Agency, National Marine Fisheries Service, and Fisheries and Wildlife Service that the project be cut back by 90%.

"I quickly found out the position of state agencies is: This will introduce jobs," says McCarthy. "I understand the state is interested in the economic viability of coastal

Bruce Colbeth (standing) of Swans Island visited salmon farms in New Brunswick and talked to local lobstermen and fishermen about their reactions to the operations before he decided in favor of a farm for his community. James Acheson (sitting), from the University of Maine, supports the idea of salmon farms in the state.

communities, but we think they've jumped head first into a difficult issue with side effects people are just beginning to understand.

"Those fish are dropping 1,500-2,000 lbs. of waste products into the cove every day. Lobstering and scalloping are threatened," says McCarthy, who's read of the dangers of disease and pollution around fish farms in reports from Japan, Scotland and Norway.

"If scallops are in any danger from salmon farming, it won't be in Toothacher Cove," says Swans Island fisherman Kenneth Lemoine Jr. He's scalloped during the winter for several years. In a 15-minute tow where the pens are now, he says, you might get five scallops if you are lucky. "More likely you'd get three, or maybe one. As far as scallops go, that's waste bottom. It's just mud," he says.

"The species most likely to be affected by any pollution around salmon pens are the salmon themselves," says James Acheson, University of Maine professor of anthropology and marine studies and author of *Lobster Gangs of Maine*. Acheson toured salmon farms in Norway and Sweden last year and has read extensively on farming operations in other countries as well.

"To my knowledge, no damage is likely to occur to shellfish," he says. "If there was any pollution, shellfish would be more likely to thrive than the salmon. I see a



more serious conflict between salmon farming and industry. Industry wants the right to add some pollution to the water, and fish farms can't stand any."

In Sweden, Acheson says he saw lots of empty fish pens. Fish had been wiped out in 1988 by disease due to overstocking and fish pens placed too close together. "They just didn't have the tidal flushing to get rid of it like we [in Maine] do," he says.

Comparing other countries or even other coasts to Maine is like comparing apples and oranges, says Acheson. "We probably have the ideal environment for fish farming, and using data from other places

involves an interesting use of mis-scientific information."

Acheson believes the objections most people have to aquaculture revolve around a certain image of the state of Maine. Lobster boats are okay, a few other boats passing by are okay, but looking out at fish pens is not. It ruins the view and makes homeowners worry about property values.

#### Other Problems

If environmental issues were settled suddenly to everyone's satisfaction, salmon farms in coastal Maine still face economic risks, especially in winter. Superchill, which sometimes lowers coastal water temperatures

dramatically, can kill fish. Predators or storms can rip nets and release the salmon, or allow other predators in to destroy them.

A big difference between the experiences of Swans Island and Vinalhaven is that when Mariculture approached Swans Island, it promised to help set up any residents who wanted to get into salmon farming.

"We're using them for jobs, for expertise, for benefits such as insurance," says Colbeth. "We lose a lot of people from the island because they don't want to go lobstering. It's a hard job, and lobstering means you have to be self-employed. We can't have a year-round community without people."

"This is one of the things that can save our coastline. I think the summer people were the start of all this wild emotional speculation. People who come up for two or three weeks, maybe a month, and they don't want to look at salmon pens."

"It's very unfair to the natives who live here," says Colbeth. "I don't mind true facts; I want to hear it. But saying things that are not true is unfair to the people of the coast of Maine. They've made up some nice ones, I'll tell you."

"Fishermen hear it, and it is scary what they're saying. So the fishermen get behind them, like on Vinalhaven. We heard the same stories, but we investigated them and found out they're just not true."

New Brunswick provincial officials and biologists have been compiling a database of information during the past 10 years about the many salmon pens operating in their province.

"Initially, we took the strong position that we wanted to go relatively slow on the numbers of fish in cages; that's one reason the videos show it's clean under the pens. Tidal action is another," says Russell Henry, biologist with New Brunswick's Department of Fisheries and Aquaculture.

"Our whole objective is to carry out environmental studies to establish, from a solid data base, what are good levels. We did it more from a disease perspective," Russell explains. "It all goes together. If there are less fish, there is less stress and less potential for disease. The environmental impact will also be less."

"We can foresee pressure for increasing the numbers over the next three or four

years. We want to be able to say, 'Yes, you can,' or 'No, you can't,' based on site-specific data," he says.

### Underway

This winter, Swans Island has seven salmon pens on 18 acres, with plans to open another 11 pens in the spring. Unlike other operations — even New Brunswick's, which raft pens together — Swans Island pens each sit alone on an entire acre. No antibiotics are being used, and some of the 204,000 fish are up to 3 lbs.

When the Norwegians started farming, their pens contained between 8,000 and 9,000 fish per cubic foot of water in 3' tides. A Canadian experimental fish farm operator recommends maintaining only 1 lb. of fish per cubic foot of water to insure against disease.

"We actually have only two-thirds of a pound of fish per cubic foot of water and 10' tides," says Colbeth of the Swans Island operation. "We're not taking any chances. There is not a trace of anything under the pens. Divers go down weekly and check it out."

Four people are employed full time now, with several seasonal part-time employees. The plan is that when the operation expands to 18 pens, the farm will have 10 full-time employees.

"I don't blame Vinalhaven for what they did. If fishermen didn't favor it, I wouldn't," Colbeth says. "I understand the company that approached them was going to bring their own people in and not leave much behind. If that was the case, I don't blame them a bit. All I can say, from what I've experienced and seen and from people I've talked to, there's no problem with the bottom under pen sites."

"At the time [of the Atlantic Salmon proposal], I was caught up in the island's [Vinalhaven] position," says former town manager Dyer. "In the meantime, I've followed with interest what's happened on Swans Island, and I've eaten farmed salmon."

"Now I think it's going to be valuable to Maine. I hope the errors that have been made in other places can be avoided. Maybe people on the coast can have another resource so they don't have to depend only on lobsters for their income," Dyer says. □

# Alaska Mariculture Association

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110-120

TO: House Judiciary Committee  
FROM: Rodger Painter  
DATE: April 2, 1990  
RE: Upland Finfish Farming

The Alaska Mariculture Association (AMA) respectfully requests that you consider amending House Bill 432 to allow upland finfish farms. While there may be room for legitimate disagreements over the impacts of salmon net pen culture in marine waters, there's a great body of research and experience showing that the environmental and biological effects of upland fish farms are negligible. This conclusion was unanimously supported by the Alaska Finfish Farming Task Force.

Opponents of finfish farming have attempted to suggest that land-based farms can harm wild stocks through groundwater contamination. Often cited as an example is a report by the Washington Department of Ecology (DOE) which concluded that a 1989 fish kill in the Black River probably was caused by pollutants discharged from a land-based fish farm. What is not mentioned is that the report was thoroughly discredited by an independent group of state and federal scientists.

Attached is a critique of the DOE study by the Interagency Work Group on Fish Health, which is comprised of recognized experts in fish health issues. The review was prepared at the request of the Washington House Fisheries and Wildlife Committee. The group unanimously determined it was impossible to justify DOE's conclusions and that DOE erred in ruling out ambient river conditions as a cause of the kill.

The Alaska Department of Fish and Game should be provided with the authority to require upland farms to treat discharges to protect wild stocks on a case-by-case basis. ADFG already requires a few state hatcheries to treat wastewater discharges as a safeguard against transmission of pathogens to wild stocks. Indeed, ADFG's success in preventing disease transmission to wild stocks from hatcheries demonstrates the safety of upland fish farms.

UNIVERSITY OF WASHINGTON  
SEATTLE, WASHINGTON 98195

*College of Ocean and Fishery Sciences  
Office of the Dean, HN-15*

February 6, 1990

Representative Richard A. King  
Chair, House Fisheries and Wildlife Committee  
House of Representatives  
State of Washington  
Olympia, WA 98504

Dear Mr. King,

In December, 1989, members of the Interagency Work Group on Fish Health received copies of the following documents: (1) the Black River Fish Kill Report, (2) the Appendices to the Black River Fish Kill Report, (3) a document prepared by Washington Department of Fisheries that was mistakenly omitted from the Appendices, and (4) the Department of Ecology news release regarding the kill. Work Group members were asked to review the Report and Appendices in the manner they would normally apply to the peer review process for scientific journals. On January 8, 1990, the committee convened in Seattle to discuss the documents and to prepare a response to the House Fisheries and Wildlife Committee. A list of Work Group members who participated in the review are attached to this letter.

Work Group members concurred that Department of Ecology (DOE) and Department of Fisheries (WDF) personnel expended a considerable amount of energy in attempting to determine the cause of the fish kill; however, the members were unanimous in their opinion that the conclusions drawn from the study (Report Section 6.0) cannot be supported by the data collected (Report Section 4.0).

**Conclusion 1--"fish kill event was not caused by ambient river conditions."**

Although DOE was notified of the fish kill on August 8, 1989, and had personnel on site within hours, ambient river condition surveys were not conducted until August 17-18 (Report Table 7). This 10-11 day delay in collecting samples makes it impossible to reconstruct the conditions existant at the postulated onset of the kill (August 6-7).

The data collected in the August 17-18 survey included measurements of water temperature, dissolved oxygen (DO), percent saturation, and conductivity, but did not include measurements of river flow. Considering the season of year (summertime; period of elevated productivity), the high daytime temperatures (>19 C) and the low-gradient nature of the Black River, flow rate was a critical factor for evaluation.

DO levels of 6.7-11.8 ppm measured in surface waters contrasted sharply with the life threatening DO levels (<1.1- 2.6 ppm) measured near the bottom of the river (the portion of the water column utilized by many aquatic species, including salmonids). While it is true that fish avoid low dissolved oxygen levels whenever it is possible to do so, it is well known that avoidance may not be possible when DO levels decline over large areas as a result of nighttime aquatic plant respiration.

Given the low oxygen levels, the high water temperatures, and the absence of flow rate data, it is not possible to rule out ambient river conditions as a cause of the kill. In fact, the Report states (p. 29) that the "combination of low river velocity, high nutrient concentrations, high productivity, and stratified pools is one which can put the lower Black River at risk to conditions which induce anoxia."

#### **Conclusion 2--"the fish kill was caused by a pollutant."**

The Report states (p. 29) that "no pesticides or herbicides were found in the Black River sediment samples" and that "metals were below toxic levels." The Report further states (p.29) that the finding of a whitefish carcass near river mile 13 provided indication that "a limited summer kill was occurring", an event "which is normal."

The Appendices contain (1) correspondence from Dick Huntamer (DOE) to Steve Hunter (DOE) stating that acid/base neutral organics, volatile organics, pesticides/PCB's, organo-phosphorous pesticides and herbicides were not present in significant levels; (2) correspondence from Margaret Stinson (DOE) to Dave Halleck (DOE) stating that bioassays conducted at Biomed Research Laboratories revealed no evidence of toxicity; (3) data from Analytical Resources Incorporated indicating that while residual formaldehyde (12.74 ppm) was present in the sediment of the settling pond at Global Aqua, none was detected in water samples taken from the river. Not included in the Appendices (but provided to Work Group members) was a report from Patrick F. Chapman (WDF) stating that fish mortality patterns in the river did not support the theory of a toxic pollution spill.

In the absence of any data indicating the presence of chemicals in water, sediments, or flesh, and in the face of a statement that limited summer kills are normal on the Black River, it is impossible to justify the definitive statement made in Conclusion 2.

#### **Conclusion 3--"kill...probably occurred on August 6, 1989, and began in the vicinity of river mile 9.2."**

On August 8, 1989, WDF personnel collected fish carcasses at river mile 6.5. Based upon the degree of decomposition noted in the tissues, they speculated that the fish had been dead for 24-48 hours. That observation forms the basis for fixing the onset of the kill. Given the statement (p. 15) that "carcasses were not visible from the shore", it is possible that the kill started earlier but was not detected.

The conclusion that the kill began in the vicinity of river mile 9.2 is based upon stream and shoreline surveys conducted by WDF, DOE, and the Chehalis Indian Nation. The data presented in the report (Table 5) and in the Appendices (Attachment 7) are not sufficiently quantitative to permit evaluation of this conclusion. Therefore, lacking further documentation, the conclusion is unwarranted.

**Conclusion 4--"Black River contained elevated levels of ammonia, nitrites, nitrates and phosphorous."**

Dr. Gary Wedemeyer, a physiologist specializing in water quality factors that affect fish health, reviewed the data contained in the Report and Appendices and stated, based on his experience, that the nutrient levels in themselves did not appear to be life threatening to salmonids. He cautioned, however, that the data were difficult to interpret because nitrite levels were lumped together with nitrate levels and reported as a single value. The interpretation problem arises from the fact that nitrite is extremely toxic to fish, while nitrate is essentially non-toxic.

**Conclusion 5--"investigators were not able to find physical evidence of pollutants being actively discharged into the Black River."**

No comment.

**Conclusion 6--"Results...indicate discharge permits in this area warrant upgrading."**

The evidence presented in the Report is inconclusive. It neither supports nor refutes this statement.

Summary of Comments--The Work Group members who independently and then jointly reviewed the study unanimously concur that the evidence presented in the Report is mixed and that it does not support any particular cause for the fish kill. We recommend, therefore, that the Summary (1.0) and Conclusions (6.0) sections be re-written to reflect this fact, and that the body of the text be edited to remove unsupported and unprofessional innuendo.

Recommendations for future fish kill studies--Fish kills are reported in the State of Washington on a regular basis. Some kills arise through natural causes (e.g. poor ambient conditions, epizootics, toxic phytoplankton blooms, supersaturation), others through the activities of man (e.g. chemical spills, toxic discharges, physical disruption of habitat). In investigating fish kills, it is important (1) that data collections be initiated in a timely fashion, (2) that appropriate data be collected, (3) that studies be approached in a scientific manner, and (4) that studies be conducted in a way that will utilize the strengths of appropriate State agencies and that will draw upon the expertise of qualified professionals whose training and credentials are relevant to the investigation.

Points 1 and 2--In 1972, the Department of Ecology published a manual entitled "Guidelines for Evaluating Fish Kill Damages". Detailed in that publication are the procedures to be used when investigating a kill as well as the types of data to be collected. A number of the Guidelines were not followed in the present study, and their omission contribute to deficiencies in the Report. We recommend that DOE review and update this publication, and implement the guidelines in all future investigations.

Point 3--Members of the Work Group were troubled by the tone of the Report and by the apparent desire of the author(s) to identify a culprit. In investigations of this type it is critical that agency personnel take a dispassionate, open-minded approach to the investigation.

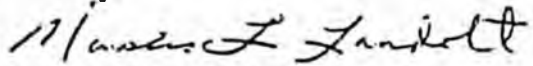
We realize that fish kills can be dramatic, disheartening events to the on-site investigator, and that they can create a storm of public outrage. However, if the investigator allows personal feelings to come into play or if he/she makes a priori assumptions regarding the cause of the kill, important points can be overlooked and critical data can be lost.

Because of the high visibility of fish kills and because of the potential damage that can result from incomplete investigation or incorrect interpretation of data, we also recommend that reports be subjected to peer review by non-agency personnel prior to publication.

Point 4--The various State agencies differ in the range of expertise that their staff may bring to the investigation of a fish kill. For example, DOE personnel are uniquely well qualified to conduct chemical analyses, but WDF and WDW personnel have the knowledge that is required to evaluate fish pathology, fish habitat requirements, hatchery operations, etc. While there was interagency co-operation in this study, increased effort should be made in the future to utilize the expertise of appropriate State agencies and to address differences of opinion that may arise regarding interpretation of data. When necessary, investigators also should make efforts to capture skills from other organizations (e.g. universities, federal laboratories).

We hope that this letter has provided the assistance you requested. If the Work Group can be of further service to your Committee or if you require additional information, please feel free to contact me.

Sincerely,

  
Marsha L. Landolt, Chairman  
Interagency Work Group on  
Fish Health Issues

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# Southeast Alaska Conservation Council

SEACC • P.O. Box 021692 • Juneau, Alaska 99802 • (907-586-6942)

## House Bill 432 Prohibiting Commercial Fish Farming

My name is Nevette Bowen. I am representing the Southeast Alaska Conservation Council which is made up of 13 member groups from Ketchikan to Yakutat plus over 1000 individual members, including a few oyster farmers.

SEACC solidly supports HB 432 which would prohibit commercial fish farming in Alaska. It is clear to us that the ecological risks and budgetary costs associated with fish farming far outweigh any potential benefits.

Water quality degradation, pollution, genetic alteration, broodstock sources and broodstock control, genetic weakening of wild stocks, spread of disease, impacts of antibiotics and other chemicals on health and the environment, predation by bears, sea lions, birds, otters, etc., land and water use conflicts and the reduced initiative to protect natural fish habitat are all environmental problems that would be created by fish farming.

Upland tank farms and trout farming are not the answer to resolving these problems. The average 200 ton tank farm that employs 3 people uses water at the same rate as the city of Eugene, Oregon and produces the same amount of waste as the cities of Petersburg & Wrangell combined. Where is that volume of water going to come from and more importantly where is it going to go?

Fish disease is commonly spread through water. The deaths of 100,000 coho fry in a Washington state river located near a

landlocked trout farm have been linked to contaminated ground water discharged from the farm. How much is it going to cost the state of Alaska to make sure we don't experience water contamination problems.

SEACC cannot support creating a new industry in Alaska that poses such threats to the environment when the state is not adequately funding regulation and monitoring of the existing hatchery and enhancement program. We concur with the recommendation of the Fin Fish Farming Task Force that the state should conduct a thorough review of fish enhancement activities to determine whether the state's disease and genetic policy is being adhered to. We think such a review would have some eye opening outcomes.

In conclusion SEACC supports passage of HB 432 and urges this committee to get the wheels rolling on a review of the state's genetics policy to see whether or not it is being strictly followed. We also support the recommendation of the Task Force and the American Fisheries Society that calls for establishing wild fishery reserves for the purposes of protecting those stocks for future use.

## A LIST OF ECOLOGICAL PROBLEMS ASSOCIATED WITH FISH FARMING

1. Degradation of water quality near marine fish farms from feed, fecal matter, chemicals and other waste products.

Pollutants discharged from a typical fish farm in Washington is equivalent to the discharge of untreated sewage from 5000 people.

2. Groundwater contamination from upland fish farm discharge. Fish diseases are commonly transmitted through water sources, not just contact.

The deaths of 100,000 cohos<sup>sm</sup> in a Washington River located near a landlocked fish farm have been linked to the seepage of water discharge from the farm.  
Seattle PI, Nov 1, 1989

3. The extensive use of antibiotics and other medication by fish farms to fight disease pose potential threats to human health and give rise to the development of resistant strains of bacteria.
4. Broodstock ownership, genetic mutations and alterations of broodstock by private businesses would threaten common property ownership of fisheries. Sources of broodstock would be a major concern.
5. Genetic intermingling of wild fish stocks with farmed fish unsuited to survival in the wild could weaken and alter wild fish runs.
6. The spread of disease among wild fish by farmed fish.

Genetics and disease problems at Norwegian fish farms are well known.

Alaska has the healthiest stocks of wild salmon and other wild fish in the world. Commercial, sport and subsistence fisheries depend on the continued health of the State's wild fish resources.

The release of diseased fish by a fish farmer located in a remote, isolated bay would be almost impossible to prevent because enforcement would be costly and not effective.

7. The potential for higher rates of disease infections in wild fish in waters near net pens.

8. Fish farms attract seals, sea lions, birds, otters, bears, and other animals in significant numbers.

There is tremendous pressure for a fish farmer to simply "eliminate" the predators rather than continue to have their profits "eaten" up. Enforcement of the Marine Mammal Protection Act, the Bald Eagle Protection Act and other wildlife conservation measures would be almost impossible due to the isolated location of many fish farms.

9. Land use conflicts over farm siting.

Fish farms are often in conflict with other land uses including: shellfish farms, residential areas, recreation, boat harbors, safe anchorages, sport fishing, subsistence, and high value fish and wildlife areas.

10. The necessary water supply for upland tank farms is enormous and could potentially cause significant use conflicts.

A 200 ton upland tank farm uses 50 cubic feet of water per second, a rate equal to the use of Eugene, Oregon.

11. The Fin Fish Farming Task Force acknowledged that these ecological threats can never be eliminated - only minimized.

Minimizing risks would mean more state regulation which would result in a substantial cost to the state. To allow fish farming would require vast amount of state money, time and personnel.

Fish farms only employ an average of 3 people per farm. Many Alaskans maintain that the risks and costs associated with fish farming do not outweigh the benefits for a few.

MISCELLANEOUS INFORMATION REGARDING THE RISKS ASSOCIATED WITH  
FISH FARMING

An October, 1989 research report submitted to Pacific Marine Fisheries Commission (PMFC) by Dr. Arthur Whitely and Annamarie Johnstone presented the following observations:

There is no medical or public health regulation on the use of antibiotics and other medications other than FDA approval of three drugs. There is no monitoring by agencies on these drugs or their persistence in marketed fish.

The amount of drugs used in fish farming is enormous. Norway used 48 metric tons of Oxytetracycline alone in 1989!

No data exists for measuring the length of time antibiotics remain in fish after they have been medicated. Fish in colder temperatures retain residues of antibiotics for longer periods of time.

Thousands of farmed Atlantic salmon have escaped from net pens in Washington State and British Columbia. Hundreds of thousands of farmed Pacific salmon have escaped from pens, especially in British Columbia. Seattle PI, March 5, 1988

In fall of 1989, an algae bloom hit Washington State fish farms causing massive fish die offs, killing up to 80% of the fish at ScanAm Fish Farms, Tilfin Inc and Olympic Sea Farms.

Seattle PI, September 9, 1989 and wire reports

Fishfarms are killing Pacific salmon smolts & fingerlings because they have proven uneconomical to raise. Only Atlantic salmon have proven economical. Testimony of Tim Kennedy at Finfish Farming Task Force meeting, September 1989.

There is a surplus of 100,000 metric tons of salmon on the world market. Supply exceeds demand by about 14%. Finfish Farming Task Force Report, 1989

# HOUSE COMMITTEE REPORT

(9)

Date Referred: January 19, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 3/14/90

The RESOURCES Committee considered:

HB 432

HOUSE BILL NO. 432

PROHIBITION OF FINFISH FARMING

"An Act prohibiting finfish farming; and providing for an effective date."

RECOMMENDATIONS:

- [X] be replaced with CS HB 432 (RES) [ ] the same title  
[ ] a new title  
[ ] have attached amendment(s)  
[X] do pass  
[ ] do not pass  
[ ] no recommendation  
[ ] individual recommendations  
[ ] additional referral to the \_\_\_\_\_ Committee

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

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

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

- [ ] fiscal note(s) \_\_\_\_\_  
[ ] zero fiscal note(s) \_\_\_\_\_  
[ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

\_\_\_\_\_  
*Cliff Davidson*  
\_\_\_\_\_  
*Jimmy*  
\_\_\_\_\_  
*Mike*  
\_\_\_\_\_  
*Bill*  
\_\_\_\_\_  
*Mike*

SIGNING:  
(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>Cliff Davidson</i>	X		
<i>Jimmy</i>		X	
_____			
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_____			

*Cliff Davidson*  
Chairman's Signature