

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6326 SENATE JUDICIARY

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In (7)(D), the premiums receivable from a controlled or controlling person can be allowed as an asset when a financial evaluation shows the person is solvent and able to pay. This financial evaluation can be called by the director and would be based on a review of books and records of the person.

Paragraph (8) is the same as Paragraph (7) of the existing law.

Paragraph (9) is the same as Paragraph (8) of the existing law.

Current law allows as an asset, amounts receivable by an assuming insurer when a solvent ceding insurer withholds funds under a reinsurance treaty. Paragraph (10), which is similar to Paragraph (9) of the existing law, has been amended to require the amount allowed as an asset not to exceed the amounts recorded as a liability by the assuming insurer for unpaid losses and reserves under the reinsurance treaty. This subsection requires that, when a ceding insurer withholds funds under a reinsurance treaty to guarantee the payment of amounts due, the assuming reinsurer may report these amounts withheld as an asset when they also have reported the payable as a liability. Any excess withheld over the liability may not be reported as an asset by the assuming insurer.

Paragraph (11) is the same as Paragraph (10) of the existing law.

Paragraph (12) defines the EDP equipment that is allowable as an asset. The asset can only be electronic data processing and related equipment and operating software that is a data processing, record keeping, or accounting system. The system must cost \$50,000 or more and the cost must be depreciated fully (periodically charged to expense) over ten calendar years or less. The current law allows a system of \$25,000 or more in cost, but the proposed law has increased this to \$50,000 to ensure only true data processing systems are allowed as assets. The ten-year period for depreciation has not changed.

Paragraph (13) has been added to allow as an asset, receivables which arise from income tax allocations between organizations. These assets must stem from a tax allocation agreement which meets IRS regulations, describes the method of allocation, and sets a reasonable time for settling the balances receivable after filing of the tax return. The receivable must be due from a solvent organization that is not in default on its obligations and must meet all other requirements for admitted assets. The receivable must also have a related liability established by other organizations participating in the agreement. This Paragraph defines the requirements which must be met before a receivable based on a tax allocation can be allowed as an asset.

Paragraph (14) has been added to allow as an asset the effect of the excess of assets over liabilities on conversion to U.S. currency when the items are reported in foreign currencies. By way of explanation, if each of the asset and liability items is reported in foreign currency, this entry would convert the net total to U.S. dollars. If each individual line item is converted to U.S. dollars,

the resultant gain or loss in foreign exchange rates is recorded on the statement of operations.

Paragraph (15) is added to allow as an asset only the unsecured receivable from a solvent affiliate that is not more than six months past due and where a related liability has been reported by the affiliates. This ensures that the receivable is recognized as a payable by the affiliate and payment will be made within six months.

Paragraph (16) allows as an asset, a receivable from a wholly or partially uninsured accident and health plan. This would arise from a self-insurance plan of the insurer.

Paragraph (17) is substantially similar to Paragraph (12) of the existing law, but revises the process that requires the approval of the director as necessary for the reporting of assets not specifically listed in this chapter of statutes. It is replaced with an allowance for those assets included in the annual statement form and consistent with instructions published by the NAIC (as approved by the director).

Paragraph (18) is the same as Paragraph (13) of the existing law.

Section 23. AS 21.18.030. Assets Not Allowed
Page 21, line 28 to page 23, line 13.

Subsections (a)(1)-(3) remain the same as the current law.

Subsection (a)(4) is amended to specifically exclude from assets tangible personal property, including but not limited to that listed in the current law. It is also amended to remove the broad exception that allows property permitted under AS 21.21 (Investments) but retains the exemption in 21.21.270 regarding acquisitions of property through the foreclosure of chattel mortgages. These amendments add a broad definition of the types of property that cannot be held and limits the exceptions included in AS 21.21.

Subsection (a)(5) remains the same as the current law.

Subsection (a)(6) excludes bonds and notes which are secured by mortgages or deeds or trust which are in default.

Subsection (a)(7) is added to exclude the payments of Alternative Minimum Tax or other tax refunds receivable from U.S. or state taxing authorities which are in dispute. This eliminates the recording as an asset of long-term tax receivables in dispute and noncollectible.

Subsection (a)(8) is added to exclude the amount of committed commissions where the present value of future commissions is paid in advance to agents.

Subsection (a)(9) is added to exclude as assets the forwarding of commissions and fees before the earning of these amounts by agents. These subsections exclude what would be a prepayment amount to agents that would be highly uncollectible for the payment of liabilities.

Subsection (a)(10) excludes unsecured loans from outside sources since these are unknown collection risks.

Subsection (b) requires that all assets which are not allowed because of doubtful value or character be deducted from the gross assets unless the director permits a reserve (liability) instead. This section requires a full reporting of assets held and deducting assets with questionable value to determine an insurer's ability to meet its contractual obligations.

Section 24. AS 21.18.060(a). Unearned Premium Reserve
Page 23, lines 14-18 .

This subsection has been amended only to reflect editorial changes. No change in the existing law or intent has been undertaken.

Section 25. AS 21.18.060(b). Unearned Premium Reserve
Page 23, line 19 to page 24, line 16.

This subsection has been amended only to reflect editorial changes. No change in the existing law or intent has been undertaken.

Section 26. AS 21.18.073. Unearned Premium Reserve for Title Insurance
Page 24, line 17 to page 25, line 28.

This section is added to require reserves in addition to those required to pay losses for Title insurance. This is to take the form of a guaranty fund or unearned premium reserve and such funds cannot be used for general purposes. Investment of these funds is allowed and interest can be included in the insurer's general income. This reserve shall be calculated for: (1) policies issued after January 1, 1991 as 10% of premiums written in the calendar year which will be reduced by 5% for each of the next 20 years; and (2) policies issued before January 1, 1991 as \$.30 per \$1,000 face amount of all policies issued in the last ten years. No additional reserve of this type is required for policies issued more than ten years ago. This ensures sufficient assets to pay claims.

Section 26. AS 21.18.075. Bail Bond Reserve

Page 25, line 29 to page 26, line 7.

The director may require a reserve for bail bonds or other single premium bonds that are without an expiration date and furnished in judicial proceedings in the amount of 25% of total consideration charged for those bonds outstanding. This ensures sufficient reserves to pay claims and is in place of the unearned premium reserve required by AS 21.13.050.

Section 27. AS 21.18.120. Valuation of Bonds

Page 26, lines 8-27.

This section, in general, sets out the valuation of bonds that are allowed to be purchased and how they are to be recorded. It is amended to require the bonds be issued by a solvent entity and requires amortization of bond premium or discount.

Section 28. AS 21.18.900. Definitions

Page 26, line 28 to page 27, line 22.

A new section has been added to define terms used in AS 21.18.

INVESTMENTS.

(Sections 29-50)

The investment of an insurer's assets in appropriate and safe investments is important for continuing solvency. These sections extensively expand on the kind, quality, and amounts of investments allowed to be made by an insurer of its assets. The types of equities and investments have changed significantly in the last twenty years and the amendments bring recognition of these new investments and the rules for an insurer desiring to invest its assets in them.

Section 29. AS 21.21.020(c). Eligible Investments

Page 27, lines 23-26.

Changes simplify the language and delete the grandfathering necessary for the 1966 major redrafting of this chapter but which now, after 22 years, is not required.

Section 30. AS 21.21.030(c). General Qualifications

Page 27, line 27 to page 28, line 7.

Editorial changes in this Section accommodate changes made in Section 27.

CORRECTION

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

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Editorial changes in this Section accommodate changes made in Section 27.

Section 31. AS 21.21.030(d)-(e). General Qualifications
Page 28, line 8-18.

These modifications close a loophole in the law. Insurers can acquire otherwise ineligible assets by accepting these assets as payment under a contract of reinsurance. The new section requires the prior written approval of the director concerning a reinsurance contract being purchased substantially with ineligible assets. Should such a transaction have occurred without the prior approval of the director, the director is given a range of options for dealing with either the ineligible assets or the contract of reinsurance.

Section 32. AS 21.21.050. Diversification of Investments
Page 28, line 19 to page 30, line 29.

These changes exempt a new class of securities from the general prohibition of lending based upon the credit of or investing in any one person or category of risk more than five percent of an insurer's assets. The new category is the general obligation of a state of the United States of America not insolvent and whose securities are not then in default. These securities are judged to be a safe and prudent investments with the change allowing larger investments by Alaskan insurers in the securities of the State of Alaska.

An investment limitation designed to add to the safety and soundness of Alaska's domestic insurance industry is increased. Current law requires a dollar figure equal to a domestic insurer's minimum required capital to be invested in specified assets having a minimum of associated risk. The changes modify the minimum dollar amount to the higher of the previously specified minimum capital or one-half of the insurer's reported capital as shown on its most recent statement of financial condition filed with the director. The specified "minimum risk" assets are modified to require bank deposits to be fully insured or collateralized, and real estate mortgage loans are eliminated as a "minimum risk" asset.

Finally, the director is given the authority to consent to an insurer investing more than ten percent of its assets in common stocks which is the same authority granted the director in Subsections (5) and (7) which deal with corporate obligations and miscellaneous assets.

Section 33. AS 21.21.080. State, County, Municipal and School Obligations
Page 31, lines 1-13.

The amendments to this section require that more conservative investment choices be made by insurers in respect to investment in the obligations of the political subdivisions of a state or province. They eliminate, as an eligible investment, the obligations secured by a pledge or assignment of specific revenues of a political subdivision. This parallels the recent tightening done

by the federal government with respect to tax exemption for the interest from industrial revenue bonds. Bonds which are payable only from a specific revenue source may carry the patina of safety associated with the political subdivision by whom they are issued but, in fact, are not required to be paid should the source of revenue fall, as would be the case, with a subdivision's general obligation bond. Revenue bonds of states and provinces and political subdivisions thereof continue as eligible investments under this chapter.

These changes further require that for obligations of states and political subdivisions to be eligible for investment, the associated state or province be:

- (1) solvent;
- (2) have the power to levy taxes for prompt payment; and
- (3) not be in default on its obligations.

Section 34. AS 21.21.130. Inter-American Development Bank
Page 31, lines 14-20.

This change adds the African and Asian Development Banks to the eligible list of development banks into which investments can be placed. Provisions regarding solvency and nondefault status are also added for eligibility. This section is contained in SB 353 by Senator Kelly which is in the House Labor and Commerce Committee.

Section 35. AS 21.21.140(a). Corporate Bond and Debentures
Page 31, line 21 to page 32, line 9.

Amendments to this section are to enhance the clarity of the language. The intent of the existing law is not altered.

Section 36. AS 21.21.140(b). Corporate Bond and Debentures
Page 32, lines 10-21.

Amendments to this section are to enhance the clarity of the language. The intent of the existing law is not altered.

Section 37. AS 21.21.140(c). Corporate Bond and Debentures
Page 32, line 22 to page 33, line 4.

Amendments to this section are to enhance the clarity of the language. The intent of the existing law is not altered.

Section 38. AS 21.21.140(d). Corporate Bond and Debentures
Page 33, lines 5-8.

Amendments to this section are to enhance the clarity of the language. The intent of the existing law is not altered.

Section 39. AS 21.21.150. Preferred or Guaranteed Stocks
Page 33, line 9 to page 34, line 1.

The changes to this section tighten up the eligible preferred or guaranteed stock investments by adding a nondefault requirement. Changes for the purpose of clarification are made with respect to the final year measurement of dividends during the immediate preceding two fiscal years.

Section 40. AS 21.21.160. Common Stocks
Page 34, lines 2-17.

This change tightens up the eligible common stock requirement by adding a nondefault requirement.

Section 41. AS 21.21.170(a). Insurance Stocks
Page 34, lines 18-22.

This change tightens up the eligible insurance stock requirement by adding a nondefault requirement.

Section 42. AS 21.21.190. Equipment Trust Certificates
Page 34, line 23 to page 35, line 1.

These changes are editorial only.

Section 43. AS 21.21.245. Pooled Investments
Page 35, lines 2-16.

Prior statute language was written before the advent of mutual funds, investment trusts, unit investment trusts and similar popular investment vehicles. This new section provides a statutory method for allowing and controlling a domestic insurer's use of these investment mechanisms by establishing a category titled "Pooled Investments" into which investment will be authorized by an insurer only if the pooled investment appears on a list of eligible pooled investment entities to be maintained by the director. This approach is similar to the treatment used to manage pooled investments by credit union regulators and makes use of definitions established under the Investment Company Act of 1940 and the Internal Revenue Code of 1986.

It may be argued that any "pooled investment" that contains eligible securities should also be eligible for investment by insurers. This, however, is an extremely dangerous assumption which is best illustrated by example.

U S. Government Securities are generally held to be the standard for a safe and sound conservative investment. Most U.S. government mutual funds also allow use of options and interest rate future's contracts which can either be highly speculative or income protecting ledger depending on their use. Thus, depending on the ranking of priorities in the pooled investment's investment objectives, the experience of the fund manager and other intent language in the registration documents, a pooled investment can on the surface appear to be conservative while, in practice, it is managed in a manner which puts the pooled investment at the opposite end of the safety and soundness spectrum, a result which would frustrate the legislative intent of this title.

Insurers should be allowed the use of pooled investment techniques because they lower risk through diversification and provide another source of professional funds management. This section's approach provides that opportunity with a mechanism to avoid the risk of speculation and which "piggybacks" on the work of other regulators. Other changes dealing with how insurers will be measured with reference to adherence to the investment diversification and concentration prohibitions of this chapter and a method for treating currently held pooled investments after adoption of this section are also included.

Section 44. AS 21.21.250(c). Miscellaneous Investments

Page 35. lines 17-22.

A new subsection is added that permits an insurer to invest in obligations of the life and disability guarantee fund when established.

Section 45. AS 21.21.270(b). Chattel Mortgages

Page 35. lines 23-29.

The change provided in this section pertains to an insurer's chattel mortgages and requires that appraisers hired to value an insurer's interest in a property must be independent of the insurer.

Section 46. AS 21.21.270(c). Chattel Mortgages

Page 35. lines 23-29.

The changes provided in this section pertains to an insurer's chattel mortgages and enhances an insurer's ability to place liens on personal property for the improvement of that insurer's collection efforts even when that lien is a property interest in what otherwise may be an ineligible investment.

Section 47. AS 21.21.280. Real Estate
Page 36, line 9 to page 39, line 25.

The first change in this section dealing with insurer-owned real estate clarifies how the maximum allowable investment will be measured.

Other changes enhance and clarify an insurer's authority to own real estate in excess of that which was previously allowed. Ownership of excess space for rent to others is newly authorized if such space is reasonably anticipated to be required for future expansion or in order to have a building that will be an economic unit. A provision is also made for insurers, under certain conditions, to hold real estate for the production of income with the prior approval of the director and only up to a maximum limit of five percent of the insurer's assets.

Section 48. AS 21.21.310(a). Failure to Dispose of Real Estate, Property or Securities
Page 39, line 26 to page 40, line 2.

This change, made for the purposes of clarification, specifies that assets required to be disposed of may not be allowed as an "admitted" asset for the purpose of determining an insurer's financial solvency.

Section 49. AS 21.21.350. Investment Transactions with Affiliated or Controlling Persons
Page 40, line 3 to page 41, line 11.

This new section provides for prudent rules for insurers to deal with investment transactions with affiliated or controlling persons. Before purchasing or selling an otherwise permissible investment issued by, due from or through the use of a broker who is an affiliated or controlling person or purchasing or selling either to or from same, an insurer must first disclose the facts and circumstances of the relationship fully to its board of directors. Once the insurer's board has the facts, they then are required to specifically authorize the transaction. Investments or loans are required to be at current market transfer prices or at commercially reasonable rates with the board being required to make that determination. Exceptions are provided for the board to rely on independent third party experts and to ignore transactions where the financial interest is nominal.

Section 49. AS 21.21.355. Certain Deposits Not Prohibited
Page 41, lines 12-21.

This addition clarifies that nothing in this chapter prohibits an insurer from making a deposit of its securities for the purposes of protecting the interests of its policyholders, or where it is necessary to secure permission to transact

business or as collateral for the securing of any bond for the business of the insurer. These purposes generally are designed to protect the interests of the insurance consuming public and this change is an attempt to avoid inadvertently frustrating that objective.

Section 49. AS 21.21.360. Options and Futures Contracts

Page 41, line 22 to page 45, line 10.

Over the last decade, the U.S. financial markets have developed organized options and future contract markets. Proper use of these financial instruments when undertaken under a policy of hedging, as approved by an insurer's board of directors and prudently executed, can be an important part of reducing an insurer's overall investment risk. Reduction of investment risk increases the safety and soundness of insurers and, thus, protects Alaska's insurance consuming public. There currently exists no mechanism under Alaska's Insurance Law which provides our domestic insurers with the opportunity to utilize options and future contracts.

This new section specifies that options and future contracts may be entered into by a domestic insurer if done under a policy of hedging an insurer's risk from market fluctuations approved by both the insurer's board of directors and the director.

With regard to valuation and accounting on the insurer's financial statements, this new section closely follows the model rule adopted by the National Association of Insurance Commissioners, Securities Valuation Office. Put options, call options, other stock options, stock purchase warrants and financial future contracts are all treated in some detail. Conservative valuation requirements, specified accounting treatments and consistency requirements are intended to mandate prudence.

Section 50. AS 21.21.600. Definitions

Page 45, line 11 to page 47, line 18.

This definitional section is highly expanded to clarify the technical terms utilized in AS 21.21. When possible, we have specified that certain definitions are to be consistently applied between this and other chapters of this title. An attempt has been made to rely on regulatory structures supervised by the federal government or the National Association of Insurance Commissioners where those regulatory structures have become the standards for the insurance industry and closely parallel the regulatory intent of this title.

SURPLUS LINES INSURANCE.**(Section 51)**

This section recognizes mutual protection and indemnity associations as nonadmitted insurers that may be classified as eligible surplus lines insurers. The financial requirements for an insurer to be included on the "white list" of eligible surplus lines insurers have been increased. The capital and surplus requirements are increased as well as the amount of assets required to be trusted in the United States by alien insurers.

Section 51. AS 21.34.04(c). Eligible Surplus Lines Insurers Required
Page 47, line 19 to page 49, line 17.

The changes in this section generally are for the purpose of strengthening the financial requirements for a nonadmitted insurer to be declared an eligible insurer for the purposes of the lawful underwriting of surplus lines insurance under AS21.34. The policyholder surplus requirement for foreign insurers is increased to \$6,000,000 at 12/31/90, \$10,000,000 at 12/31/91, \$12,500,000 at 12/31/92, and \$15,000,000 at 12/31/93. The policyholder surplus requirements for alien insurers is the same as those above for foreign insurers. The amount of trusted assets required in the United States for an alien stock or mutual insurer has been increased from \$1,500,000 to \$2,500,000. Additionally, the policyholder surplus requirement for an "insurance exchange" domiciled in another state has been increased from \$15,000,000 to \$50,000,000.

TRADE PRACTICES AND FRAUDS.**(Section 52)**

This section provides for civil immunity for a person that provides information to law enforcement officials, the NAIC, the Division of Insurance, or other states' insurance regulators pertaining to fraudulent insurance acts.

Section 52. AS 21.36.430. Immunity for Reports on Fraud
Page 49, lines 18-29.

This new section provides for civil immunity for any person reporting information covering suggested, anticipated, or completed fraudulent acts as long as the reporting does not entail reckless, willful, or intentional misconduct.

TITLE INSURANCE COMPANIES. (Sections 53-57)

The amendments found in these sections are to provide for the same treatment of title insurers as for other types of insurers in financial reporting and examination by the director. (The amendments mirror those found in Sections 5, and 17-19 of this Act which pertains to insurers other than title insurers.)

Section 53. AS 21.66.080. Annual Statement
Page 50, lines 1-20.

Amendments to this section prescribe that title insurers file the required annual financial statement in the format consistent with that adopted by the NAIC and approved by the director. The director may require that the annual financial statement be filed via electronic media. These amendments place the title insurers on the same financial reporting basis as other types of insurers noted in Section 17 of this Act.

Section 54. AS 21.66.080(b). Annual Statement
Page 50, lines 21-23.

This Section requires Title insurers to file their annual financial statements with NAIC. This amendment is the same required of other types of insurers in Section 18 of this Act.

Section 55. AS 21.66.085. Quarterly Statement
Page 50, line 24 to page 51, line 4.

This new subsection allows the director to require that title insurers file quarterly financial statements on the same basis as for other types of insurers noted in Section 19 of this Act.

Section 56. AS 21.66.090(b). Application for Certificate of Authority
Page 51, lines 5-11.

Amendment to this subsection clarifies that title insurers are responsible to pay the examination costs associated with the director's examination of any title plant associated with a title insurer.

Section 57. AS 21.66.130. Expenses of Examination
Page 51. lines 12-15.

The repeal and reenactment of this section provides for the payment of examination expenses associated with the director's examination of any title insurer on the same basis as that used for other types of insurers as revised in Section 5 of this Act.

ORGANIZATION AND CORPORATE PROCEDURES. (Section 58)

This amendment is editorial in nature. It replaces extensive verbiage relating to the description of financial impairment of an Alaska insurer with the term "impaired" which has now been defined by the Act in AS 21.90.900 (Section 81).

Section 58. AS 21.69.530 (a). Impairment of Capital or Assets
Page 51. lines 16-25.

Amendment to this section is editorial in nature. The full description for what impairment of an insurer means is removed and replaced by the term "impaired" which is defined in AS 21.90.900 (see Section 81) but also applies to this chapter.

REHABILITATION AND LIQUIDATION. (Sections 59-80)

Although extensive amendment is proposed, the basic intent of the existing law (AS 21.78) in regard to conducting the affairs of a financially impaired or insolvent insurer is unchanged. The procedures, requirements, and guidelines have been expanded and clarified so that the affairs of a financially troubled insurer can be conducted in an orderly and equitable manner without undue litigation.

Section 59. AS 21.78.020. Commencement of Delinquency Proceedings
Page 51. line 26 to page 53. line 12.

Although substantial amendment to this section has been undertaken, the basic intent remains unchanged. This section is clarified to clearly indicate that the director is the only person that may commence what amounts to a bankruptcy proceeding (rehabilitation or liquidation) for a domestic insurer. Additionally, this section provides that the director be the court appointed receiver and describes the jurisdiction of the court in these proceedings.

Section 60. AS 21.78.030. Injunctions and Orders
Page 53, line 13 to page 54, line 14.

The intent of this amended section remains the same in allowing the director to seek, without bond, orders or injunctions to prevent hypothecation, waste, dissipation or other inappropriate transfer of assets of a bankrupt insurer. Amendment to this section further describes those situations in which these types of court orders may be sought.

Section 61. AS 21.78.040. Grounds for Rehabilitation
Page 54, line 15 to page 55, line 5.

In addition to the 10 grounds on which the director may seek an order of rehabilitation under AS 21.78, four new grounds are added by the amendments to this section. The new grounds are as follows:

1. an insurer fails to remove an officer found, after hearing, to be dishonest or untrustworthy;
2. if the insurer fails to make available records of its transactions for examination;
3. if an insurer has within four years willfully violated its charter or bylaws, any Alaska insurance law, or any valid order from the director; and
4. if an insurer has failed to file any required financial statement or report.

Because the grounds for liquidation found in AS 21.78.050 include, by reference to AS 21.78.040, the same grounds as are available for rehabilitation, the above new grounds are also established for commencing a liquidation proceeding.

Section 62. AS 21.78.040(b). Grounds for Rehabilitation
Page 55, lines 6-25.

In addition to the new grounds described in the last Section, additional grounds are added relating to criminal activities impacting the insurer. These are: on which the director may seek an order of rehabilitation under AS 21.78, four new grounds are added by the amendments to this section. The new grounds are as follows:

1. the occurrence of fraud which endangers the insurer's assets;
2. control of an insurer is by a person found, after hearing, to be untrustworthy; and,

3. if an officer has refused to be examined under oath concerning an examination of the insurer.

Because the grounds for liquidation found in AS 21.78.050 include, by reference to AS 21.78.040, the same grounds as are available for rehabilitation, the above new grounds are also established for commencing a liquidation proceeding.

Section 63. AS 21.78.090. Order of Rehabilitation
Page 55, line 26 to page 56, line 25.

Amendment to this section adds new subsections pertaining to an order of rehabilitation and its effect. An order of rehabilitation stops any legal proceeding against an insurer for 90 days and puts on hold any statute of limitation time limit for a legal action which an insurer might take for 60 days. This section now makes it clear that any guarantee association may intervene in a rehabilitation proceeding if the association is required to act the result of the entry of an order of rehabilitation. The receiver is required to provide periodic accountings to the court of the condition of the insurer in rehabilitation.

Section 64. AS 21.78.100. Order of Liquidation. Domestic Insurers
Page 56, line 26 to page 59, line 6.

New subsections pertaining to an order of liquidation and its effect are added to the section. Liquidation orders are required to call for specified periodic accountings to the court of the affairs of an insurer being liquidated. Orders of liquidation are required to contain provisions for the termination or continuation in force of all insurance contracts of the insurer according to the guidelines now set forth in this section. This section also contains the effects that an order of liquidation has on legal proceedings similar to those found pertaining to orders of rehabilitation. Also, this section now provides for any guarantee associations to intervene in a liquidation proceeding if the association is required to act as the result of the entry of an order of liquidation.

Section 65. AS 21.78.130. Conduct of Delinquency Proceedings Against Domestic and Alien Insurers.
Page 59, line 1 to page 60, line 23.

The new subsections added to this section augment the powers and authority of the receiver in a rehabilitation or liquidation. The receiver is allowed to pursue on behalf of the insurer all legal remedies from any person due to tortuous acts, breach of contract, or breach of fiduciary obligation.

If the receiver finds that reorganization, consolidation, merger, conversion or other transformation of an impaired or insolvent insurer is appropriate, the receiver is required to develop a plan for the appropriate action and submit the plan to the court for approval, disapproval or modification. A plan of this nature may include a moratorium on nonforfeiture benefits under contracts insured by an impaired or insolvent life insurer.

If an insolvent insurer's estate does not possess sufficient cash or other liquid assets to cover the costs of rehabilitation or liquidation, funds may be advanced by the Division of Insurance for that purpose. However, these funds are required to be repaid out of the first available money and take priority over all other claims against the estate.

The receiver is granted the authority to conduct examinations in conjunction with a delinquency proceeding with the same ability to subpoena, examine under oath, and review records as the director has in the examination of any insurer. The receiver is also granted the power to move records of the insurer to any location that would facilitate the rehabilitation or liquidation and to provide reasonable access to those records necessary to any guarantee association to carry out its lawful duties.

The receiver may also intervene in similar proceedings in other jurisdictions and act as a receiver or trustee in another jurisdiction if an appointment is offered. The receiver may enter into agreements with a receiver or other insurance regulatory official of another state which relates to a delinquency proceeding affecting an insurer that is or has conducted business in both states.

Section 66. AS 21.78.170. Form of Claim
Page 60. line 24 to page 61. line 2.

This section contains the provisions pertaining to claims filed against the estate of an insolvent insurer. Subsection (c) has been amended to require the receiver to notify a claimant if the claim has been denied in part or in whole in writing by first class mail. The claimant must raise any objection with this determination within 60 days of when the notice was mailed or is barred from any objection.

Section 67. AS 21.78.170. Form of Claim
Page 61. lines 3-9.

If the receiver receives an objection, the amendments to subsection (d) provide that the receiver request the court to conduct a hearing on the matter if the receiver does not change the original determination after such objection is made.

Section 68. AS 21.78.170. Form of Claim
Page 61, line 10 to page 62, line 1.

New subsections (e) through (h) have been added to provide further guidelines for claims made against an insurer in liquidation. A claim does not have to be considered or allowed if not all the required supporting documentation is provided or if the prescribed (and court ordered) claim form is not used. The receiver may at any time request that additional information be provided by any claimant and may take testimony under oath to obtain supplementary information. A judgement or an order against an insured or an insurer entered after the date of a liquidation order or a judgement or an order entered at any time by default or collusion need not be considered as support of evidence of liability or amount of damages in connection with a claim. A claim by any guarantee association against the estate of an insurer in liquidation must be in a form and contain support agreed to by the receiver and the guarantee association.

Section 69. AS 21.78.180(d). Priority of Certain Claims
Page 62, lines 2-15.

This section is amended to clarify certain circumstance involving claimants whose claims against the estate of an insurer in liquidation are secured. Amendment to subsection (d) provides the methodology for arriving at the value of the security and allows for the entire claim to be allowed if the security is surrendered to the receiver.

Section 70. AS 21.78.180(e). Priority of Certain Claims
Page 62, line 16 to page 63, line 1.

A new subsection (e) has been added to allow in certain circumstances for a person other than the secured creditor to file a claim with the estate of an insolvent insurer. That other person must be the person that provided the security via some undertaking and the secured creditor has failed to file and prove a claim. In such a circumstance, that person may file a claim in lieu of the secured creditor. However, the secured creditor will get any distributions from the estate of the insolvent insurer and the other person that made the claim will only be entitled to a portion of the distribution if the distribution and the amount paid on the undertaking exceed the entire amount of the secured creditor's claim. Any such excess must be held in trust by the secured creditor for the benefit of the other person who made the claim.

Section 71. AS 21.78.200(a). "Uniform insurers liquidation act."
Page 63, lines 2-5.

This is an editorial change to amend internal cross references. No substantive change.

Section 72. AS 21.78.250. Fraudulent Transfers Before Petition
Page 63. line 6 to page 64. line 26.

Currently AS 21.78.250 gives a broad outline as to how transfers of property made by or on behalf of an insurer before an order of rehabilitation or liquidation are treated when the transfer was accomplished with the intent to gain a preference or a greater percentage of the insurer's assets in a delinquency proceeding. In essence, the receiver may avoid or reverse these transactions unless the insurer received fair value for the asset transferred. This broad outline is repealed and replaced with a more detailed description of the acceptable transfers and unacceptable transactions which may be voided. The essential intent of current AS 21.78.250 is retained.

The reenacted AS 21.78.250 pertains to transfers occurring prior to a petition for rehabilitation or liquidation. This new section specifically recognizes transactions involving reinsurance contracts.

Section 73. AS 21.78.251. Fraudulent Transfer After Petition.
Page 64. line 27 to page 66. line 11.

New section AS 21.78.251 pertains to transfers and transactions occurring after a delinquency proceeding has been undertaken but before an order of rehabilitation or liquidation has been entered or before the receiver takes possession of the insurer's property.

Section 73. AS 21.78.252. Voidable Preferences and Liens.
Page 66. line 12 to page 71. line 16.

New section AS 21.78.252 provides the detailed guidelines for the voiding or reversing improper transfers of property. This section maintains the personal liability of any person, (including insurer employees, officers, or shareholders), acting on behalf of an insurer that knowingly participates in giving of a preference who knows or has a reasonable cause to believe that an insurer is or is about to become insolvent.

Section 73. AS 21.78.253. Claims of Holders of Void or Voidable Rights
Page 71. line 17 to page 72. line 5.

New section AS 21.78.253 outlines how claims of person who received a preference are to be treated. In general such claims are to be disallowed and not allowed to participate in any distribution of the insolvent insurers estate. However, a claim by such a creditor will be allowed as an "excused late claim" only if the transfer which provided for the preference is reversed.

Section 74. AS 21.78.260. Priority of Distribution
Page 72, line 6 to page 74, line 10.

The current law governing liquidations does not provide for a statutory priority for distribution of an insolvent insurer's estate. By interpretation, the administrative expenses to liquidate an insurer receive priority treatment. Currently, AS 21.78.260 provides a priority for wages owed employees up to \$500. The new version of AS 21.78.260 provides for a specific priority for the distribution of an insolvent insurer's estate. Additionally, a methodology is defined that calls for all claims in each class to be paid or sufficient funds set aside before any claims in the next lower priority class are paid. The order of distribution is as follows:

1. Class 1. The expenses and costs administration for the rehabilitation or liquidation;
2. Class 2. Wages for employees for up to two months pay but principal officers and directors are not allowed to benefit by this priority;
3. Class 3. All claims for losses incurred under insurance policies including third party liability claims and claims of any guarantee association;
4. Class 4. Claims for unearned premiums under nonaccessible insurance policies, other premiums refunds, and claims of general creditors including claims made by ceding or assessing reinsurers under contracts of reinsurance;
5. Class 5. Claims of federal, state, or local government other than claims made under Class 3;
6. Class 6. Claims filed late or any other claims other than those claims under Class 7 or Class 8;
7. Class 7. Surplus notes, contribution notes, or similar obligations, and premium refunds under assessable insurance policies; and
8. Class 8. Claims of shareholders or other owners in their capacity as shareholders or owners.

Section 75. AS 21.78.270. Setoffs and Counterclaims
Page 74, lines 11-29.

This section clarifies the requirement that mutual debts or credits between the impaired or insolvent insurer and any other person be netted out with a resultant single amount either paid to the insurer or paid by it.

Section 76. AS 21.78.271. Recovery of Premiums Owed

Page 75. lines 1-20.

This new section requires that any person, including licensed agents and brokers, responsible for the payment of premium to an insurer pay to the receiver the amount of premium due for the entire term of the policy at the time of the declaration of insolvency. The amounts are to include commissions. The director may impose a monetary penalty of up to \$1,000 for each violation of this section and may also suspend or revoke the agent's or broker's license.

Section 76. AS 21.78.272. Reinsurers Liability

Page 75. lines 21-28.

This new subsection pertains to a reinsurer's obligations to the estate of an insolvent or impaired insurer. Payments under a contract of reinsurance due an insurer in delinquency may not be reduced as a result of the rehabilitation or liquidation proceeding. Unless the reinsurance contract specifically provides for payment to a person other than the impaired or insolvent insurer, a payment to a person other than the impaired or insolvent insurer does not reduce the reinsurer's obligation to that insurer.

Section 77. AS 21.78.280. Special Claims.

Page 75. line 29 to page 76. line 25.

Currently AS 21.78.280 contains provisions pertaining to both contingent and unliquidated claims, and third party liability claims. This one section has now been divided into two separate sections with AS 21.78.280 pertaining to contingent and unliquidated claims and AS 21.78.281 pertaining to third party claims.

AS 21.78.280 provides that a contingent and unliquidated claim will be allowed to participate in a distribution of an insolvent insurer's estate only if, either the claim becomes absolute before the last day allowed for the filing of claims or a surplus of funds remains after all other claims are paid.

Section 78. AS 21.78.281. Special Provisions for Third-Party Claims.

Page 76. line 26 to page 78. line 14.

New section AS 21.78.281 provides the special guidelines for third party claims. It provides for either the third party or the insured of the insurer in liquidation to file a claim against the insolvent insurer's estate. The receiver is required to make recommendations to the court in regard to the allowance of a third party claim based on the receiver's consideration of the probable outcome of the pending action against the insured. If several third party claims against one insured are made which exceeds the policy limits, each

claim will be proportionately reduced so that the total paid does not exceed the policy limits. No separate third party claim is allowed if covered by any guarantee association.

Section 79. AS 21.78.290. Notice to Creditors and Others
Page 78, line 15 to page 79, line 14.

This section has been repealed and reenacted to provide for a more detailed outline of how the receiver is to provide notice to potential claimants and other persons affected by the liquidation of an insolvent insurer. Notice is required to be made by several different media.

The notice must be given by the receiver as soon as is possible after the entry of the order of liquidation and must specify the amount of time allowed for the filing of claims. The time allowed for the filing of claims must be at least six months after the date of the liquidation order is entered.

Section 80. AS 21.78.291. Duties of Agents
Page 79, line 15 to page 80, line 15.

This new section requires that each appointed, licensed agent of an insurer in liquidation provide written notice to each policyholder issued coverage through the agent of the liquidation order. This notice must be accomplished within 15 days from the date the agent receives notice under AS 21.78.290. The written notice must include the name and address of the agent, identification of the policy affected, and the nature of how the policy is affected such as termination under AS 21.78.100. The receiver may waive the notice required by this section if other appropriate notice has been given to policyholders.

Section 80. AS 21.78.292. Filing of Claims
Page 80, line 16 to page 81, line 20.

This new section requires that proof of a claim must be filed in the form required by AS 21.78.170. This section also provides for the guidelines under which late filed claims may participate in the distribution of the estate of the insolvent insurer.

Section 80. AS 21.78.293. Receiver's Recommendation to the Court
Page 81, line 21 to page 81, line 10.

This new section requires the receiver to report to the court the nature of each claim made to include the name and address of the claimant and amount of claim recommended. The court may approve, disapprove, or modify the report on the claims made. However, if the court takes no action on a report

within 60 days of the date of reporting, the claims will be considered to be allowed in the amount reported. In no event, will a claim under a policy of insurance be allowed in an amount in excess of the applicable policy limits. This report or reports as accepted by the court provide for the detail of the claims which will participate in the orderly distribution of the assets of an insolvent insurer.

Section 80. AS 21.78.294. Distribution of Assets

Page 82, lines 11-18.

This new section requires the receiver to accomplish the final distribution of funds to claimants under the court's supervision. The distribution plan must recognize the statutory priorities and provide for a reasonable balance of expediency with the protection of unliquidated and undetermined claims including third party claims.

Section 80. AS 21.78.295. Unclaimed and Withheld Money

Page 82, line 19 to page 83, line 11.

This new section provides that any unclaimed funds subject to distribution under a liquidation proceeding remaining when the court is going to end the receivership will inure to the state without going through any further proceedings.

Section 80. AS 21.78.296. Termination of Proceedings

Page 83, lines 12-20.

This new section provides for the receiver to apply to the court for discharge from the rehabilitation or liquidation proceedings when all claims have been performed. The court may grant the discharge and issue other orders it deems appropriate. It is anticipated that such orders will include an order dissolving the corporate existence of an insolvent and liquidated insurer.

This section allows any other person to apply to the court any time for an order discharging a delinquency proceeding. However, if the application is denied, the applicant is required to pay the costs incurred by the receiver in resisting the application.

Section 80. AS 21.78.297. Reopening Liquidation

Page 83, lines 21-27.

For good cause including the discovery of additional assets, the director or any other person may petition the court to reopen a previously closed liquidation. If sufficiently justified, the court must reopen the liquidation.

Section 80. AS 21.78.298. Disposition of Records During and After Termination of Liquidation.

Page 83, line 28 to page 84, line 4.

This new section allows the director to recommend to the court and the court to order which records of a liquidated insurer should be retained and which should be destroyed.

OTHER. (Sections 81-89)

Section 81. AS 21.90.900. Definitions for Title

Page 84, lines 5-24.

This section is amended to provide definitions for the terms "impaired", "impairment", "insolvent", "insolvency", and "policyholder surplus". These terms are used in several chapters of Title 21.

Section 82. Repealer

Page 84, lines 25-26.

Sections repealed are:

AS 21.09.080(b). This repeal requires domestic insurers to maintain the currently required capital and surplus amounts.

AS 21.09.080(c). This repeal requires domestic insurers to maintain the currently required capital and surplus amounts.

AS 21.21.020(b). This repeal deletes the grandfathering necessary for the 1966 major redrafting of this chapter but which now, after 22 years, is not required.

AS 21.21.270(d). Moved to definition section AS 21.21.600(6).

AS 21.78.330(1). Definition of "ancillary state" removed.

Section 83. Change of Civil Rule 62(a)

Page 84, line 27 to page 85, line 1.

Section 84. Change of Civil Rule 65(c)

Page 85, lines 2-6.

Section 85. Change of Civil Rule 41

Page 85, lines 7-11.

Section 86. Change of Civil Rule 19
Page 85. lines 12-14.

Section 87. Effective date for Section 18 (should read 20)
Page 85. lines 15-17.

This section delays the effective application of the changes affecting reinsurance credit allowed a domestic ceding insurer.

Section 88. Effective date for certain applications of Section 43
Page 85. lines 18-24.

This section deals with the application of Section 43 dealing with the "pooled investments" list.

Section 89. Effective date of Act
Page 85. line 25.

The Act takes effect immediately.



SB 212

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 10, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to insurer solvency. This bill makes numerous changes in the Alaska insurance code (AS 21) designed to strengthen the ability of the State of Alaska to protect the insurance consumer from insolvent or impaired insurance companies.

The insurance industry is the only financial industry that is primarily regulated by the states and not the federal government. If Alaska's public is to be protected, this very large responsibility must be carried out by the state's insurance regulator, the division of insurance in the Department of Commerce and Economic Development (DCED). At present, Alaska operates under an insurance code adopted in 1966, with few major changes since that time. Two successive audits have reported that in previous years the division of insurance has failed to adequately examine insurance companies licensed to do business in Alaska. In September 1988, the commissioner of DCED reported to me that the industry has exceeded the statutory ability of the state to regulate it. This bill will be a substantial step in remedying this situation by up-dating our insurance code. Most of the proposals are based on model legislation adopted by the National Association of Insurance Commissioners.

The bill addresses six main points.

1. The bill strengthens the capital and surplus required of insurers who do business in Alaska so that insolvency, or the inability to pay claims, will be avoided. Also, capital and surplus requirements at present apply differently to domestic and out-of-state insurers. Domestic

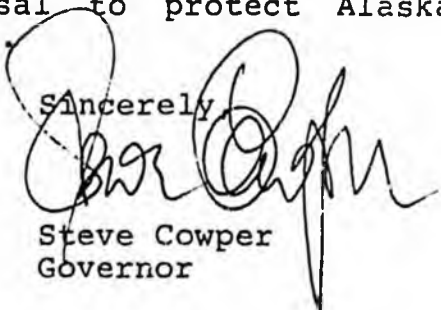
insurers have had to increase their requirements while out-of-state firms doing business here have not. This legislation would require out-of-state or alien insurers to maintain the same capital and surplus as domestic insurers.

2. The federal Tax Reform Act of 1986 has an impact on the insurance industry. Because that Act requires that claims and loss reserves be discounted to present value, the companies have been using arrangements termed "reinsurance" to put their statutory financial reporting on the same basis as their federal income tax reporting. Adequate reinsurance by insurance companies is important to the security of Alaskan policyholders. This proposal provides for a clear, workable definition of "reinsurance" and strengthens the ability of the division of insurance to determine whether adequate reinsurance or some other financial arrangement exists.
3. The bill modernizes Alaska's requirements on investments that may be made by insurance companies so that the state can be assured that a company's capital will not be lost in weak or fraudulent investments.
4. These additional requirements to ensure the financial stability of insurance companies will be effective only if the division of insurance has the regulatory tools to examine the affairs of these companies. This bill strengthens company reporting requirements so that the division will be alerted to potential problems. It also provides clear authority for companies to pay directly examiners hired by the state, and to compensate the state for its examination costs. This will make it possible to examine more companies more often.
5. The bill extends immunity for civil liability to division of insurance personnel, including the director, for carrying out their duties, so that they will not be deterred by the possibility of such suits. It also provides immunity for persons who provide information to the division, such as insurance regulators in other states. A number of state regulators have been sued over the exchange of information with other states. The bill ensures an exchange of needed information between the states.

6. Recent experience with insurance insolvencies in Alaska has demonstrated the inadequacies of our delinquency proceeding statutes. For example, at present our statutes do not provide for clear priorities among claims made on a company subjected to a delinquency proceeding. The bill proposes a new statute for such proceedings, based on a National Association of Insurance Commissioners model.

The division of insurance will provide a more detailed description of this proposal to protect Alaskans from insurance company insolvency.

Sincerely,



Steve Cowper
Governor

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSB 212 (LAC)
PUBLISH DATE: 3/5/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
Title: An Act relating to insurer solvency BRU: Insurance

Sponsor: Rules Committee by request Components: Operations
Requester: XXXXXX of Governor

EXPENDITURES / REVENUES : (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
Division: Insurance Date: 3-6-89

Approved by Commissioner: Larry Mercurieff Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 3/6/89

Distribution (by preparer):

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

Changes in CSB 212 (LAC)
have no fiscal impact. This
fiscal note is appropriate.
Projections of no fiscal impact
would continue through 1996

page 1 of 1

3482D/030689a

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 212
PUBLISH DATE: 3/9/89

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
Title: An Act relating to insurer solvency BRU: Insurance

Sponsor: Rules Committee by request Components: Operations
Requester: XXXXXXX of Governor

EXPENDITURES / REVENUES : (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of dollars)

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

POSITIONS:

FULLTIME	0	0	0	0	0	0
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Joan Brown, Administrative Off. Phone: 465-2597
Division: Insurance Date: 3-6-89

Approved by Commissioner: Larry Merculiero Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 3/6/89

Distribution (by preparer):

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

page ____ of ____

3482D/030689a

S B

225

Original sponsor: Duncan

*JD "municipal" on
page 2*

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 225 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to access to criminal records; and
7 providing for an effective date."

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

9 * Section 1. AS 12.62.035(a) is amended to read:

10 (a) Notwithstanding any other provision of law, an interested
11 person [AS DEFINED IN (e) OF THIS SECTION] may request from the De-
12 partment of Public Safety [COMMISSION] records of all felony con-
13 victions, and all convictions involving contributing to the delin-
14 quency of a minor, misconduct involving a controlled substance, or
15 [AND ANY] sex crimes, of a person who holds or applies for a position
16 as an employee of a school district or regional educational attendance
17 area, or a position in which the person has or would have supervisory
18 or disciplinary power over a minor. The Department of Public Safety
19 [COMMISSION] shall disclose [AUTHORIZE THE DISCLOSURE OF] the informa-
20 tion to the requesting interested person and shall provide a copy of
21 the information to the person who is the subject of the request.

22 * Sec. 2. AS 12.62.035(e) is amended to read:

23 (e) As used in this section

24 (1) "contributing to the delinquency of a minor" means a
25 conviction for a violation or attempted violations of AS 11.51.-
26 130(a)(1), (3), or (5); former AS 11.40.130; or the laws of another
27 jurisdiction if the offense would have been a crime in this state
28 under AS 11.51.130(a)(1), (3), or (5) or former AS 11.40.130 if com-
29 mitted in the state;

1 (2) "interested person" means a ^{or municipal} state agency, school dis-
2 trict, regional educational attendance area, ^A corporation, company,
3 partnership, firm, association, organization, business trust, or
4 society, as well as a natural person, that employs or solicits the
5 employment of a person to serve with or without compensation in a
6 position at a public school, or in which the person has or would have
7 supervisory or disciplinary power over a minor;

8 (3) "misconduct involving a controlled substance" means a
9 conviction for a violation or attempted violation of AS 11.71.010 -
10 11.71.070, former AS 17.10.010, or former AS 17.12.010; or the laws of
11 another jurisdiction if the offense would have been a crime in this
12 state under one of the sections listed in this paragraph if committed
13 in the state;

14 (4) "sex crime" means a conviction for a violation or
15 attempted violation of AS 11.41.410 - 11.41.470, AS 11.61.110(a)(7),
16 or AS 11.66.100 - 11.66.130; former AS 11.15.120, 11.15.134, or 11.-
17 15.160; former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 -
18 11.40.420; or the laws of another jurisdiction if the offense would
19 have been a crime in this state under one of the sections listed in
20 this paragraph if committed in the state.

21 * Sec. 3. AS 12.62.035 is amended by adding a new subsection to read:

22 (f) The Department of Education shall request and receive re-
23 cords under (a) of this section for a person seeking initial certi-
24 fication under AS 14.20.020.

25 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).
26
27
28
29

Effect of amendments. — The 1985 amendment substituted "under AS 12.30" for ", including the right to arrest the de-
fendant as provided in AS 12.30.020" and "by law" for "therein."

Chapter 62. Criminal Justice Information Systems Security and Privacy.

Section

- 35. Access to certain crime information
- 70. Definitions

Sec. 12.62.035. Access to certain crime information. (a) Notwithstanding any other provision of law, an interested person as defined in (e) of this section may request from the commission records of all convictions involving contributing to the delinquency of a minor and any sex crimes of a person who holds or applies for a position in which the person has or would have supervisory or disciplinary power over a minor. The commission shall authorize the disclosure of the information to the requesting interested person and shall provide a copy of the information to the person who is the subject of the request.

(b) A request for records under (a) of this section shall include within it the fingerprints of the person who is the subject of the request and any other data specified in regulations adopted by the commission. The request shall be on a form approved by the commission, and the commission may charge a fee to be paid by the requesting interested person for the actual cost of processing the request. The commission shall destroy an application within six months after the requested information is sent to the requesting interested person and the person who is the subject of the request.

(c) The commission shall adopt regulations to implement the provisions of this section.

(d) If an individual is denied employment as a result of the disclosure of inaccurate or incomplete records under this section, an action may be brought against the state. No other action may be brought against the state, or an agency or employee of the state, as a result of disclosing or failing to disclose criminal justice information.

(e) As used in this section

(1) "contributing to the delinquency of a minor" means a conviction for a violation or attempted violations of AS 11.51.130(a)(1), (3), or (5); former AS 11.40.130; or the laws of another jurisdiction if the offense would have been a crime in this state under AS 11.51.130(a)(1), (3), or (5) or former AS 11.40.130 if committed in the state;

(2) "interested person" means a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person, that employs or solicits the employment of a person to serve with or without compensation in a position in which the person has or would have supervisory or disciplinary power over a minor;

(3) "sex crime" means a conviction for a violation or attempted violation of AS 11.41.410 — 11.41.470, AS 11.61.110(a)(7), or AS 11.66.100 — 11.66.130; former AS 11.15.120, 11.15.134, or 11.15.160; former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 — 11.40.420; or the laws of another jurisdiction if the offense would have been a crime in this state under one of the sections listed in this paragraph if committed in the state. (§ 2 ch 66 SLA 1983; am § 44 ch 6 SLA 1984)

Editor's notes. — This section is set out above to correct a typographical error in the main pamphlet.

Sec. 12.62.070. Definitions. In this chapter

(1) "commission" means the Governor's Commission on the Administration of Justice established under AS 44.19.110 — 44.19.122;

(2) "criminal justice information" means information concerning an individual in a criminal justice information system and indexed under the individual's name, or retrievable by reference to the individual by name or otherwise and which is collected or stored in a criminal justice information system;

(3) "criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations related to the system funded in whole or in part by the Law Enforcement Assistance Administration, for the collection, processing, or dissemination of criminal justice information;

(4) "intelligence information" means information concerning the background, activities or associations of an individual or group collected or obtained by a law-enforcement agency for preventive, precautionary or general investigative purposes not directly connected with the investigation of a specific crime which has been committed nor with the apprehension of a specific person in connection with the commission of a particular crime;

(5) "interstate systems" means agreements, arrangements and systems for the interstate transmission and exchange of criminal justice information, but does not include record keeping systems in the state maintained or controlled by a state or local agency, or a group of agencies, even if the agency receives information through, or otherwise participates in, systems for the interstate exchange of criminal justice information;

(6) "law enforcement" means any activity relating to crime prevention, control or reduction or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control or reduce crime or to apprehend criminals, activities of criminal prosecution, courts, public defender, corrections, probation or parole authorities;

(7) "law enforcement agency" means a public agency which performs as one of its principal functions activities pertaining to law

enforcement and includes the child support enforcement agency created by AS 47.23. (§ 1 ch 161 SLA 1972; am § 4 ch 38 SLA 1976; am § 31 ch 126 SLA 1977)

Revisor's notes. — Reorganized in 1984 to alphabetize the defined terms. out above to correct a minor error in the main pamphlet.

Editor's notes. — This section is set

Chapter 65. Coroner's and Medical Examiners.

Section	Section
20. Coroner's power to order examinations and inquests	40. Inquiry into cause of death

Sec. 12.65.020. Coroner's power to order examinations and inquests. (a) When a person dies unattended by a physician, or when no physician is prepared to execute the certificate of death prescribed by AS 18.50 (Vital Statistics Act), the coroner assigned to serve the place where the death occurs may, by written order, direct a medical examiner to view the remains of the deceased person and to perform the post mortem examination, including an autopsy, necessary to make a proper determination of the cause of death and to execute the prescribed death certificate. When the medical examiner has completed the examination, the examiner shall, without delay, submit a report of the findings and conclusions to the coroner.

(b) The coroner may order an inquest under this chapter if the findings and conclusions of the medical examiner, together with other information available to the coroner, warrant the inquest. Otherwise the coroner shall enter an order dispensing with the inquest and shall record the certificate of death as prescribed by law. (§ 10.02 ch 34 SLA 1962; am § 3 ch 24 SLA 1966; am § 1 ch 107 SLA 1982; am § 1 ch 26 SLA 1988)

Effect of amendments. — The 1988 amendment designated the formerly undesignated first two sentences as subsection (a) and the formerly undesignated last two sentences as subsection (b), and substituted "AS 18.50 (Vital Statistics Act)" for "the Vital Statistics Act" in the first sentence in subsection (a), "When the medical examiner has completed" for "Upon the completion of" in the second sentence in subsection (a), and "may" for "shall" in the first sentence in subsection (b).

Sec. 12.65.040. Inquiry into cause of death. (a) When informed that a person has been killed by another or has died under circumstances that afford a reasonable ground to suspect that the death is the result of a crime or suicide, the coroner may inquire under AS 12.65.050 — 12.65.090 into the cause and manner of death.

(b) In deciding whether to conduct an inquest, the coroner shall make a preliminary examination or direct a peace officer to conduct the examination and report findings. On the basis of the preliminary

(2) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;

(3) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;

(4) "cannabis" has the meaning ascribed to it in AS 11.71.900(10), (11), and (14);

(5) "conduct" means an act or omission and its accompanying mental state;

(6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

(7) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;

(8) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining property or services on credit;

(9) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;

(10) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(11) "dangerous instrument" means any deadly weapon or anything which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(12) "deadly force" means force which the person uses with the intent of causing, or uses under circumstances which the person knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

(13) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(14) "deception" means to knowingly

(A) create or confirm another's false impression which the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression which the defendant previously has created or confirmed;

Resolution of the Alaska Municipal League

Resolution No. 89-55

**A RESOLUTION RECOMMENDING ADOPTION OF AN ACT
RELATING TO GOVERNMENT LIABILITY FOR DAMAGE OR INJURY
RESULTING FROM HAZARDOUS RECREATIONAL ACTIVITIES**

WHEREAS, the Alaska Municipal League urges the State to exercise its responsibility to provide a broad spectrum of recreation opportunities for all Alaskans, and

WHEREAS, certain common recreational activities have an inherent risk of injury, which under current state statutes limits the State and its local governments in their ability to provide recreational opportunities to Alaska's citizens, and

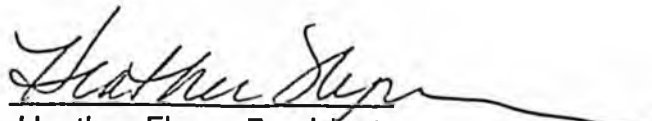
WHEREAS, municipalities are having to reduce or close recreational services because liability insurance is either unavailable or too expensive, and

WHEREAS, voluntary organizations help provide communities with a broad spectrum of recreational activities not being offered by the public sector, and establishing a cooperative relationship under the local government would enable them to provide programs they might not otherwise be able to provide, and

WHEREAS, the President's Commission on Americans Outdoors has recommended that the standard of care for which an organization or government should be responsible in providing recreational opportunity be shifted from "mere negligence" to "gross negligence";

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Alaska State Legislature to adopt an act relating to government liability for damage or injury resulting from hazardous recreational activities.

Adopted this 18th day of November 1988 in Fairbanks, Alaska.


Heather Flynn, President

ATTEST:


Scott A. Burgess, Executive Director

Chapter 20. Teachers and School Officials.

Article

1. Teacher Certification (§§ 14.20.010 — 14.20.040)
2. Employment and Tenure (§§ 14.20.095 — 14.20.215)
3. Salary Scales (§ 14.20.220)
4. Sabbatical Leave (§§ 14.20.280 — 14.20.350)
5. Professional Teaching Practices Act (§§ 14.20.370 — 14.20.510)
6. Negotiation and Mediation (§§ 14.20.550 — 14.20.610)
7. Interstate Agreement on Qualification of Educational Personnel (§§ 14.20.620 — 14.20.650)

Article 1. Teacher Certification.

Section

10. Teacher certificate required
20. Requirements for issuance of certificate

Section

30. Causes for revocation and suspension
40. Applicability of the Administrative Procedure Act

Collateral references. — 68 Am. Jur. 2d Schools, §§ 128-143.

78 C.J.S. Schools and School Districts, §§ 154-182.

Matters proper for consideration in appointment of teachers. 94 ALR 1484.

Tests of moral character of fitness as requisite to issuance of teacher's license or certificate. 96 ALR2d 536.

Bias of members of license revocation board. 97 ALR2d 1210.

Actionability of statements imputing inefficiency or lack of qualification to public school teacher. 40 ALR3d 490.

Self-defense or defense of another as justification, in dismissal proceedings, for use or threat of use of force against student. 37 ALR4th 842.

Sec. 14.20.010. Teacher certificate required. A person may not be employed as a teacher in the public schools of the state unless that person possesses a valid teacher certificate except that a person who has made application to the department for a teacher certificate or renewal of a teacher certificate which has not been acted upon by the department may be employed as a teacher in the public schools of the state until the department has taken action on the application, but in no case may employment without a certificate last longer than three months. (§ 37-5-3 ACLA 1949; am § 9 ch 98 SLA 1966; am § 1 ch 165 SLA 1976)

Sec. 14.20.020. Requirements for issuance of certificate.

(a) The department shall issue a teacher certificate to every person who meets the requirements in (b) and (c) of this section.

(b) A person is not eligible for a teacher certificate unless that person has received at least a baccalaureate degree from an institution of higher education accredited by a recognized regional accrediting association or approved by the commissioner. However, this subsection is not applicable to

(1) persons employed in the state public school system on September 1, 1962;

(2) persons issued an emergency certificate during a situation which, in the judgment of the commissioner, requires the temporary issuance of a certificate to a person not otherwise qualified.

(c) The board may establish by regulation additional requirements for the issuance of certificates, including the fees to be charged for each certificate.

(d) The board may by regulation establish various classes of certificates.

(e) The commissioner of administration shall separately account for teacher certification fees that the department deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this section and to support the activities of the Professional Teaching Practices Commission under AS 14.20.460, 14.20.470, and 14.20.500. (§ 37-5-4 ACLA 1949; am § 1 ch 76 SLA 1962; am § 10 ch 98 SLA 1966; am §§ 13, 14 ch 32 SLA 1971; am §§ 19, 20 ch 138 SLA 1986)

Effect of amendments. — The 1986 amendment added "including the fees to be charged for each certificate" at the end of subsection (c) and added subsection (e).

Sec. 14.20.030. Causes for revocation and suspension. The commissioner or the Professional Teaching Practices Commission may revoke or suspend a certificate only for the following reasons:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner;

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

(3) substantial noncompliance with the school laws of the state or the regulations of the department; or

(4) upon a determination by the Professional Teaching Practices Commission that there has been a violation of ethical or professional standards or contractual obligations. (§ 11 ch 98 SLA 1966; am § 1 ch 9 SLA 1975; am § 1 ch 103 SLA 1976)

NOTES TO DECISIONS

Quoted in *Watts v. Seward School Bd.*,
Sup. Ct. Op. No. 380 (File No. 427), 421
P.2d 586 (1966).

CRIMES FOR WHICH CONVICTION RECORDS

MAY BE RELEASED UNDER AS 12.62.035

(Revised 1-23-89)

AS 11.41.410	Sexual Assault in the First Degree
AS 11.41.420	Sexual Assault in the Second Degree
AS 11.41.425	Sexual Assault in the Third Degree
AS 11.41.434	Sexual Abuse of a Minor in the First Degree
AS 11.41.436	Sexual Abuse of a Minor in the Second Degree
AS 11.41.438	Sexual Abuse of a Minor in the Third Degree
AS 11.41.440*	Sexual Abuse of a Minor in the Fourth Degree
AS 11.41.450	Incest
AS 11.41.455	Unlawful Exploitation of a Minor
AS 11.41.460*	Indecent Exposure
AS 11.51.130*	Contributing To The Delinquency of A Minor
AS 11.61.110(a)(7)*	Disorderly Conduct (exposure)
AS 11.66.100*	Prostitution
AS 11.66.110	Promoting Prostitution in the First Degree
AS 11.66.120	Promoting Prostitution in the Second Degree
AS 11.66.130*	Promoting Prostitution in the Third Degree
(former) AS 11.15.120	Rape
(former) AS 11.15.134	Lewd or Lascivious Acts Toward Children
(former) AS 11.15.160	Assault with Intent to Rape

*Misdemeanors

(former) AS 11.40.080*	Indecent Exposure and Exhibition
(former) AS 11.40.110	Incest
(former) AS 11.40.130*	Contributing to the Delinquency of a Child
(former) AS 11.40.200-.420*	Prostitution Related Offenses
(former) AS 11.41.430	Sexual Assault in the Third Degree

Also included are convictions for an attempt to commit any of the above crimes, and out-of-state convictions which would have been violations of one of these statutes if the offense had been committed in Alaska.

January 5, 1989

RECEIVED JAN 06 1989

Dear *Senator Duncan,*

Re: BACKGROUND CHECKS/QUALIFICATIONS OF SUBSTITUTE TEACHERS TO BE DISCUSSED WITH THE JUNEAU SCHOOL DISTRICT ON JANUARY 12, 4:30 P.M., IN THE SCHOOL DISTRICT CONFERENCE ROOM.

We are alarmed at a legal system and a school system which allowed a person who was indicted on three counts of selling cocaine to substitute teach in the classroom during November, 1988, at the Floyd Dryden Middle School.

Mr. Tony Cunningham was indicted for selling cocaine on May 9, 1988, in Ketchikan; he pleaded "no contest" on July 1, 1988; he is now serving time in the Ketchikan Correctional Center. His release agreement allowed him to be employed between his "no contest" plea on July 1, 1988, and his imprisonment on January 4, 1989. Mr. Cunningham's employment should not have involved our children. There is no guarantee to parents that Mr. Cunningham's involvement in cocaine did not extend to our children in the classroom. Our children have been the prime targets of drug dealers.

Parents want to have people of good character teaching their children, and a drug dealer does not qualify. The following questions arise:

1. Does the substitute teacher employment application form ask for criminal activity that is pending in our Alaska legal system? Does it ask for past criminal activity for which a sentence has been served? How does the school system treat each of these cases for employment?
2. Is each substitute teacher applicant interviewed? By whom?
3. Is there a background check with the Alaska State Troopers or the Juneau City Police?
4. If a person is hired to substitute teach, is there a clause to allow dismissal if a this person commits a crime during his/her employment?
5. If a child is influenced by a substitute teacher of criminal background, who is liable? How much responsibility does the school district hold for the hiring of its substitute teachers?
6. If a person has committed a drug-related activity, why not make a drug test a part of employment? Greens Creek Mining demands this of their employees for a safe work place. Is the safety of our children as important?

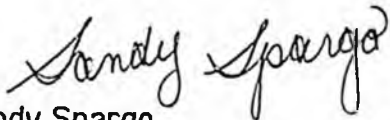
*Raymond
attend - Jan 12
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A meeting has been arranged with Dr. Bruce Johnson, Superintendent of Schools/Juneau, on January 12, 4:30 p.m., in the school district conference room at 1208 Glacier Avenue for the purpose of discussing what steps can be taken by the school district and by our legal system to prevent criminals from substitute teaching our children.

You are invited to attend this meeting. Please call me at 586-6122 in the evening to let me know if you will be attending this meeting. Your input would be very valuable to us.

Sincerely,



Sandy Spargo
ALASKANS FOR DRUG-FREE YOUTH/JUNEAU
965 Goldbelt
Juneau, Alaska 99801

Louise Howeter
JUSTICE FOR CHILDREN/JUNEAU
P.O. Box 34285
Juneau, Alaska 99803

Alaska State Legislature



SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811-3100
(907) 465-4766

COMMITTEES:
FINANCE
VICE CHAIR —
HEALTH EDUCATION
& SOCIAL SERVICES
BUDGET & AUDIT
BANKING &
ECONOMIC
DEVELOPMENT

MEMORANDUM

MARCH 21, 1989

TO: SENATOR JAN FAIKS, CHAIR
SENATE JUDICIARY COMMITTEE

FROM: SENATOR JIM DUNCAN

SUBJECT: SENATE BILL 225, RELATING TO ACCESS TO CRIMINAL RECORDS

SB 225 EXPANDS THE CRIMES WHICH CAN BE REPORTED TO SCHOOL DISTRICTS AND OTHER EMPLOYERS TO INCLUDE ALL CRIMINAL CONVICTIONS. PRESENTLY STATE LAW ONLY ALLOWS CRIMES SUCH AS CONTRIBUTING TO THE DELINQUENCY OF A MINOR AND SEX CRIMES TO BE REPORTED TO POTENTIAL EMPLOYERS. THESE CRIMES CAN BE REVEALED ONLY IF A PERSON WOULD BE HIRED IN A POSITION WITH DIRECT SUPERVISORY OR DISCIPLINARY POWER OVER A MINOR.

I FEEL IT IS APPROPRIATE THAT THE CRIMINAL RECORDS OF ALL POTENTIAL EMPLOYEES BE AVAILABLE FOR REVIEW BY SCHOOL DISTRICTS AND OTHER EMPLOYERS. THIS LEGISLATION WILL ADDRESS A PROBLEM WHICH RECENTLY BECAME AN ISSUE IN JUNEAU. THE SITUATION DEALT WITH A PERSON WHO WAS HIRED AS A SUBSTITUTE TEACHER EVEN THOUGH THAT PERSON HAD PLED NO CONTEST TO DEALING COCAINE IN KETCHIKAN. IN CHECKING ON THAT PARTICULAR ISSUE, I FOUND A LOT OF AREAS WHICH NEEDED STRENGTHENING IN THE CURRENT SYSTEM OF RECORDS CHECKING.

SB 225 WILL BROADEN THE KINDS OF EMPLOYEES FOR WHICH CRIMINAL RECORDS CAN BE REQUESTED TO INCLUDE ALL SCHOOL DISTRICT EMPLOYEES REGARDLESS OF THEIR SUPERVISORY ROLE OVER CHILDREN. I DO NOT FEEL THERE IS ANY REASON FOR US TO TAKE UNNECESSARY RISKS WHEN HIRING SCHOOL PERSONNEL.

SB 225 WILL ALSO REQUIRE THAT THE DEPARTMENT OF EDUCATION REVIEW CRIMINAL RECORDS AS A PART OF THE INITIAL TEACHER CERTIFICATION PROCESS. PRESENTLY, THE TEACHER CERTIFICATION SECTION IN THE DEPARTMENT OF EDUCATION IS RESPONSIBLE FOR REVIEWING AND CERTIFYING A TEACHER'S QUALIFICATIONS, BUT EACH SCHOOL DISTRICT MUST INDEPENDENTLY REQUEST A CHECK OF POTENTIAL TEACHERS' CRIMINAL RECORDS. THE INFORMATION I HAVE FROM THE

SENATOR JAN FAIKS
MARCH 21, 1989
PAGE 2

DEPARTMENT OF EDUCATION INDICATES THAT ONLY THE SEVEN LARGER SCHOOL DISTRICTS ROUTINELY DO RECORDS CHECKS ON TEACHERS PRIOR TO EMPLOYMENT.

SINCE IN MANY CASES TEACHERS APPLY FOR CERTIFICATION BY THE DEPARTMENT OF EDUCATION PRIOR TO APPLYING FOR A JOB AT A PARTICULAR SCHOOL DISTRICT THIS BILL ALSO WOULD REQUIRE THE DEPARTMENT OF EDUCATION A RECORDS CHECK AT THAT TIME. I BELIEVE THAT HAVING THE CRIMINAL RECORDS CHECK DONE CENTRALLY WILL ELIMINATE DUPLICATE CHECKS DONE BY SCHOOL DISTRICTS WHEN A TEACHER APPLIES AT MORE THAN ONE DISTRICT. IT WILL BE MORE EFFECTIVE, MORE EFFICIENT, AND LESS HASSLE FOR TEACHERS BECAUSE ONLY ONE RECORDS CHECK WILL BE NECESSARY.

I WOULD APPRECIATE YOUR SCHEDULING SB 225 FOR A HEARING AS SOON AS POSSIBLE.

ATTACHMENTS

BILL NO: SB 225

DATE: April 13, 1989

TITLE: An Act relating to access to criminal records; and providing for an effective date.

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF
PUBLIC SAFETY
/
POSTAL

The Department of Public Safety supports SB 225 because it would allow the Department to report to an "interested person", as defined in AS 12.62.035(e), the existence of any criminal convictions of individuals employed or seeking employment in a position that would give the person supervisory or disciplinary power over minors. Under present law, an "interested person" can receive information about only limited types of criminal convictions. Many serious criminal convictions, including those for murder and kidnapping, cannot be reported under existing AS 12.62.035. As under existing law, it would be up to the employer to decide which criminal convictions disqualify a person from serving in a paid or unpaid position involving responsibility for minors.


Arthur English
Commissioner

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Access to Criminal Records

Agency Affected: Public Safety
BRU: DPS Administration

Sponsor: Senator Duncan
Requestor: Senate Judiciary

Component: Administrative Services

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	3.0	18.2	18.2	18.2	18.2	18.2
TRAVEL						
CONTRACTUAL		1.8	.3	.3	.3	.3
SUPPLIES						
EQUIPMENT		7.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3.0	27.0	18.5	18.5	18.5	18.5

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	3.0	27.0	18.5	18.5	18.5	18.5
FEDERAL FUNDS						
OTHER						
TOTAL	3.0	27.0	18.5	18.5	18.5	18.5

POSITIONS:

FULL-TIME						
PART-TIME	0	1	1	1	1	1
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SB 225 will substantially increase the workload of the Records and Identification Section, which operates the Alaska Automated Fingerprint Identification System (AAFIS). Because of the complexity of the research required to process criminal history record checks under AS 12.62.035, a part-time Clerk IV will be required to handle the 4,500 requests expected from the Department of Education annually.

Prepared by: M. J. Clemens
Division: Administrative Services

Phone: 465-4336
Date: 4/12/89

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: 4/12/89

Department of Public Safety
SB 225 FISCAL NOTE
(Analysis, continued - Page 2)

The Department of Education has estimated that they will submit about 4,500 requests for criminal history record checks annually in connection with the certification and recertification of school teachers in Alaska. These records checks are in addition to those requested by other interested persons under AS 12.62.035, such as the employers of day care providers. The provision of a criminal history record to a law enforcement or criminal justice agency is a relatively quick and simple process. Requests for records under AS 12.62.035 are much more time consuming and complicated to process.

The processing of a request for information under AS 12.62.035 begins with the interested party (or agency) sending a letter to Records and Identification explaining how they meet the definition of an "interested person" under the statute and requesting that records checks be performed on certain individuals. Two completed fingerprint cards, showing the interested party as the contributor, are submitted for processing.

The submitted fingerprint cards are searched in AAFIS for the existence of a fingerprint record. If a fingerprint record is identified, the Alaska Public Safety Information Network (APSIN) record for that person is then checked for the existence of a criminal history. The second fingerprint card, accompanied by a money order for \$14, is submitted by mail to the FBI Identification Division to check for an out-of-state criminal history.

Upon enactment of SB 225, if an Alaskan criminal history arrest record was verified by fingerprints, it would be reviewed to determine if a conviction resulted. If so, the interested party and the applicant would be notified of the charge and disposition by mail. Unfortunately, about 25% of arrest records in Alaska do not have disposition information. In these cases, the court records must be researched to determine the outcome of the case. This can be a very time consuming process.

If the FBI fingerprint check results in the return of a "rap sheet", it must be carefully examined. Each arrest or offense reported must be checked for disposition information. A large proportion of the arrests shown on FBI rap sheets do not indicate a disposition. In this case the records division of the contributing state must be contacted by mail for disposition information.

Because of NLETS and NCIC regulations prohibiting the use of those systems for employment and licensing purposes, all of the contacts with out-of-state agencies must be conducted by mail. If a conviction is identified both the interested party and the applicant would be notified of the findings by mail. The fingerprint cards are returned to the contributor.

During the time that present AS 12.62.035 has been in effect, less than 1% of the criminal history record checks processed have resulted in convictions being reported to the interested party. However, about 11% of the records examined pursuant to requests under AS 12.62.035 contained serious criminal violations not reportable under present language. These have included convictions for attempted murder, felony assault, and drug sales.

Department of Public Safety
SB 225 FISCAL NOTE
(Analysis, continued - Page 3)

Releasing all conviction information, as allowed by SB 225, is expected to reduce the amount of search time required to gather and report conviction information to interested parties from 151 minutes for out-of-state checks to about 30 minutes. The number of out-of-state checks found to have arrest information is about 18%. About 57% of the arrests on the FBI rap sheets do not show final disposition information. These out-of-state arrests will need to be researched to acquire the final disposition information. The information from the out-of-state agencies and the FBI rap sheet will have to be transferred to a form that will report only arrest with conviction information for mailing to the interested party and the applicant. The time required to conduct an in-state check is expected to decrease from 68 minutes to about 30 minutes. However, the number of state checks will increase considerably under the bill.

In summary, the number of out-of-state and in-state records that will require tracking, researching, and reporting will increase, but the amount of time required to conduct these tasks will decrease somewhat. Existing AAFIS staff are not able to keep up with their present workload. The primary objective of DPS's Records and Identification Section is to maintain and update criminal history record information used by police and other criminal justice agencies. While processing applicant criminal history record checks is an important function, it must take secondary priority to the Department's law enforcement mission. Without additional staff to accommodate the predicted increase in workload, the effectiveness of a criminal history records check for applicants would be diluted by substantial delays--which may reach several months.

At a minimum, an additional part-time clerk will be required to handle the increased workload expected to result from the passage of SB 225.

Position Title Clerk IV		No. of Positions	Range/Step 9A	Barg. Unit G
Time Status PPT	Staff Months 7.5	Location Anchorage		Election District 7
Type of Expenditure		Justification		
Amount		Processing criminal history record checks under AS 12.62.035 involves actions by a Clerk II, AAFIS Operator I, Clerk IV, and AAFIS Operator II.		
1	2	3		
Salary*	13.0	//////		
Benefits*	5.2	//////		
Premium Pay (Included in Above)	//////	//////		
Other	//////	//////		
Total Personal Services	//////	18.2	The additional workload connected with SB 225 will require the equivalent of a part-time position (23.5 hours/week).	
Travel			Initial furniture and equipment costs would not be needed in future years.	
Contractual	line hook up - \$1.5	1.8		
Commodities				
Equipment	Micro \$6.2 chair \$.8	7.0		
Other				
Total Cost		27.0	Due to the immediate effective date of the bill, assuming it becomes law about May 1, two months of personal services would be needed to pay unbudgeted overtime to existing staff who would have to handle requests prior to classification, recruitment, selection, and training of a new position.	
Funding Source for Total Cost		Without approval of this position, backlogs will develop; "interested persons" will not receive timely responses to their requests for criminal history records checks.		
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	27.0		
Program Receipts/GF	1005			
I-A Receipts	1007			
CIP Receipts	1061			
Other				
* Personal Services Salary and Benefits Costs are from PACS Scenario #2.				

REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
BRU DPS Administration
COMPONENT Administrative Services

Page 4 of 4
Revised Date

FY 90

FISCAL NOTE

REQUEST:

Revision Date: 4/21/89
Title: Access to Criminal Records

Agency Affected: Public Safety
BRU: DPS Administration

Sponsor: Senator Duncan
Requestor: Senate Judiciary

Component: Administrative Services

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	2.2	13.3	13.3	13.3	13.3	13.3
TRAVEL						
CONTRACTUAL		1.8	.3	.3	.3	.3
SUPPLIES						
EQUIPMENT		7.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2	22.1	13.6	13.6	13.6	13.6

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	2.2	22.1	13.6	13.6	13.6	13.6
FEDERAL FUNDS						
OTHER						
TOTAL	2.2	22.1	13.6	13.6	13.6	13.6

POSITIONS:

FULL-TIME						
PART-TIME	0	1	1	1	1	1
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Records and Identification Section operates the Alaska Automated Fingerprint Identification System (AAFIS) and maintains criminal history record information used by police and other criminal justice agencies. Because of the complexity of the research required to process criminal history record checks under AS 12.62.035, a part-time Clerk IV will be required to handle the 2,000 requests expected from the Department of Education for initial certifications each year. Existing AAFIS staff are not able to keep current with their present workload. Without additional staff to accommodate the predicted increase in workload, a criminal history records check for applicants may be delayed by several months.

(Analysis continued on attached)

Prepared by: M. J. Clemens
Division: Administrative Services

Phone: 465-4336
Date: 4/21/89

Approved by Commissioner: Y.A.H. Arthur English
Agency: Department of Public Safety

Date: 4/21/89

CORRECTION

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

FISCAL NOTE

REQUEST:

Revision Date: 4/21/89
Title: Access to Criminal Records

Agency Affected: Public Safety
BRU: DPS Administration

Sponsor: Senator Duncan
Requestor: Senate Judiciary

Component: Administrative Services

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	2.2	13.3	13.3	13.3	13.3	13.3
TRAVEL						
CONTRACTUAL		1.8	.3	.3	.3	.3
SUPPLIES						
EQUIPMENT		7.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2	22.1	13.6	13.6	13.6	13.6

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	2.2	22.1	13.6	13.6	13.6	13.6
FEDERAL FUNDS						
OTHER						
TOTAL	2.2	22.1	13.6	13.6	13.6	13.6

POSITIONS:

FULL-TIME						
PART-TIME	0	1	1	1	1	1
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Records and Identification Section operates the Alaska Automated Fingerprint Identification System (AAFIS) and maintains criminal history record information used by police and other criminal justice agencies. Because of the complexity of the research required to process criminal history record checks under AS 12.62.035, a part-time Clerk IV will be required to handle the 2,000 requests expected from the Department of Education for initial certifications each year. Existing AAFIS staff are not able to keep current with their present workload. Without additional staff to accommodate the predicted increase in workload, a criminal history records check for applicants may be delayed by several months.

(Analysis continued on attached)

Prepared by: M. J. Clemens
Division: Administrative Services

Phone: 465-4336
Date: 4/21/89

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: 4/21/89

Department of Public Safety
FISCAL NOTE - CSSB 225 (Jud) DRAFT
(Analysis, continued - Page 2 of 4)

The Department of Education has estimated that they will submit about 2,000 requests for criminal history record checks annually in connection with the initial certification of school teachers in Alaska. These records checks are in addition to those requested by other interested persons under AS 12.62.035, such as the employers of day care providers. The provision of a criminal history record to a law enforcement or criminal justice agency is a relatively quick and simple process. Requests for records under AS 12.62.035 are much more time consuming and complicated to process.

The processing of a request for information under AS 12.62.035 begins with the interested party (or agency) sending a letter to Records and Identification explaining how they meet the definition of an "interested person" under the statute and requesting that records checks be performed on certain individuals. Two completed fingerprint cards, showing the interested party as the contributor, are submitted for processing.

The submitted fingerprint cards are searched in AAFIS for the existence of a fingerprint record. If a fingerprint record is identified, the Alaska Public Safety Information Network (APSIN) record for that person is then checked for the existence of a criminal history. The second fingerprint card, accompanied by a money order for \$14, is submitted by mail to the FBI Identification Division to check for an out-of-state criminal history.

Upon enactment of CSSB 225 (Jud), if an Alaskan criminal history arrest record was verified by fingerprints, it would be reviewed to determine if a felony or applicable misdemeanor conviction resulted. If so, the interested party and the applicant would be notified of the charge and disposition by mail. Unfortunately, about 25% of arrest records in Alaska do not have disposition information. In these cases, the court records must be researched to determine the outcome of the case. This can be a very time consuming process.

If the FBI fingerprint check results in the return of a "rap sheet", it must be carefully examined. Each arrest or offense reported must be checked for disposition information. A large proportion of the arrests shown on FBI rap sheets do not indicate a disposition. In this case the records division of the contributing state must be contacted by mail for disposition information.

Because of NLETS and NCIC regulations prohibiting the use of those systems for employment and licensing purposes, all of the contacts with out-of-state agencies must be conducted by mail. If a conviction is identified both the interested party and the applicant would be notified of the findings by mail. The fingerprint cards are returned to the contributor.

During the time that present AS 12.62.035 has been in effect, less than 1% of the criminal history record checks processed have resulted in convictions being reported to the interested party. However, about 11% of the records examined pursuant to requests under AS 12.62.035 contained serious criminal violations not reportable under present language. These have included convictions for attempted murder, felony assault, and drug sales.

Department of Public Safety
 FISCAL NOTE - CSSB 225 (Jud) DRAFT
 (Analysis, continued - Page 3 of 4)

Releasing conviction information as prescribed by CSSB 225 (Jud) will change the search time required in gathering and reporting arrest with convictions information to interested parties. The following are the computations for the times required for out-of-state checks:

- 1) 18% of the people checked have FBI rap sheets with arrest information.
- 2) 57% of these out-of-state records do not have disposition information.
- 3) Of the 2,000 estimated initial certification, 360 will have FBI rap sheets.
- 4) 15% are felonies and 60% of these do not have disposition information.
- 5) Therefore, $((360 \times .15) \times .60) = 32$ people with felony records that will require extensive researching.
- 6) 39% of the charges on the FBI rap sheet are misdemeanors.
- 7) 49% of these do not have disposition information, and 12% of the 49% involve drugs, contributing to the delinquency of a minor, and sex charges.
- 8) Therefore, $((360 \times .39) \times .12 \times .49) = 8$ people that will require extensive researching.
- 9) 46% we are not able to determine if the charge on the FBI rap sheet is a felony or misdemeanor. Of these, 63% do not have disposition information.
- 10) The following applies, $((360 \times .46) \times .63) = 104$ people requiring extensive researching.

Function	# Cards	Seconds	Hours
Search AAFIS	2,000	540	300
APSIN Search	2,000	96	53
AK Dispo Research	55*	4,080	62
Sort and Mail	4,000	14	16
Extensive research	144**	9,060	362
Research FBI rcds	61***	1,800	31
Transfer FBI raps	205	189	11
Sort other FBI	1,795	64	32
Total processing time			867

* $(2,000 \times .11) \times .25 = 55$

** $32 + 8 + 104 = 144$

*** $(2,000 \times .18) = 360 \times .57 = 205 - 144 = 61$

Position Title Clerk IV		No. of Positions 1	Range/Step 9A	Barg. Unit G
Time Status PPT	Staff Months 5.5	Location Anchorage		Election District 7
Type of Expenditure		Justification		
1	2	3	<p>Processing criminal history record checks under AS 12.62.035 involves actions by a Clerk II, AAFIS Operator I, Clerk IV, and AAFIS Operator II.</p> <p>The additional workload connected with SB 225 will require the equivalent of a part-time position (17.0 hours/week).</p> <p>Initial furniture and equipment costs would not be needed in future years.</p> <p>Due to the immediate effective date of the bill, assuming it becomes law about May 1, two months of personal services would be needed to pay unbudgeted overtime to existing staff who would have to handle requests prior to classification, recruitment, selection, and training of a new position.</p> <p>Without approval of this position, backlogs will develop; "interested persons" will not receive timely responses to their requests for criminal history records checks.</p>	
Salary*	9.5	////////////////////		
Benefits*	3.8	////////////////////		
Premium Pay (Included in Above)	////////////////////	////////////////////		
Other	////////////////////	////////////////////		
Total Personal Services	////////////////////	13.3		
Travel				
Contractual	line hook up - \$1.5	1.8		
Commodities				
Equipment	Micro \$6.2 chair \$.8	7.0		
Other				
Total Cost		22.1		
Funding Source for Total Cost				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	22.1		
Program Receipts/GF	1005			
I-A Receipts	1007			
CIP Receipts	1061			
Other				
* Personal Services Salary and Benefits Costs are from PACS Scenario #2.				

REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
 BRU DPS Administration
 COMPONENT Administrative Services

Page 4 of 4
 Revised Date

FY 90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Access to Criminal Records
Sponsor: Duncan
Requestor: Senate Judiciary

Agency Affected: Education
BRU: Education Finance and Support Services
Components: District Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		67.7	67.7	67.7	67.7	67.7
TRAVEL		.7	.7	.7	.7	.7
CONTRACTUAL		4.0	4.0	4.0	4.0	4.0
SUPPLIES		1.5	1.5	1.5	1.5	1.5
EQUIPMENT		7.1				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	81.0	73.9	73.9	73.9	73.9

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

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

FUNDING: (Thousands of Dollars)

	PR	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
GENERAL FUND		-0-	81.0	73.9	73.9	73.9	73.9
FEDERAL FUNDS							
OTHER							
TOTAL							

POSITIONS:

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached analysis.

Prepared by: Mary Hakala
Division: Commissioner's Office

Phone: 465-2800
Date: 4/13/89

Approved by Commissioner: William G. Demmert
Agency: Education

Date: 4/13/89

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

DEPARTMENT OF EDUCATION
FISCAL NOTE ANALYSIS
4/13/89

SB 225: Access to criminal records

Personal Services

1 FT Education Associate I, Range 13A	\$37.8
1 FT Clerk Typist III, Range 8B	29.9
Subtotal	----- \$67.7

Travel

Travel reflects one trip to Anchorage to participate in the annual teacher certification workshop which provides information on the certification process and requirements to educators in the state. \$.7

Contractual

Contractual costs include telephone and postage and telefacsimile transmission costs (4.0). \$4.0

Commodities

Supplies for staff positions and functions (stationary, duplication of necessary forms or procedural materials) \$1.5

Equipment

In year one only--two word processing terminals (\$6.0), two desks, chairs and one file cabinet (1.1). \$7.1

TOTAL, year one	----- \$81.0
TOTAL, subsequent years	\$73.9

The proposed revenue source is GF/Program Receipts generated by teacher certification fees.

Position Title Education Associate I		No. of Positions 1	Range/Step 13A	Barg. Unit GGU
Time Status FT	Staff Months 12	Location Juneau		Election District
Type of Expenditure		Amount		
1	2	3		
Salary	26.5			
Benefits	11.3			
Premium Pay				
Other				
Total Personal Services		37.8		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost				
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004			
I-A Receipts	1006			
CIP Receipts	1061			
Other	Program Receipts	37.8		

Justification

The Education Associate I will handle transactions related to background criminal checks of school district personnel. Functions include tracking certification applications through steps in the background check process, monitor for clearance and follow up as necessary.

**Request For
New Position**

Agency Education
 BRU Education Finance and Support
 Component District Support
Teacher Certification Unit

Page 3 of 4
 Revised Date

FY 90

Position Title Clerk Typist III			No. of Positions 1	Range/Step 8B	Barg. Unit GGU																																				
Time Status FT	Staff Months 12		Location Juneau		Election District																																				
<table border="1"> <thead> <tr> <th colspan="2">Type of Expenditure</th> <th>Amount</th> </tr> <tr> <th>1</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>20.1</td> <td rowspan="4"></td> </tr> <tr> <td>Benefits</td> <td>9.8</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td colspan="2">Total Personal Services</td> <td></td> </tr> <tr> <td colspan="2">Travel</td> <td></td> </tr> <tr> <td colspan="2">Contractual</td> <td></td> </tr> <tr> <td colspan="2">Commodities</td> <td></td> </tr> <tr> <td colspan="2">Equipment</td> <td></td> </tr> <tr> <td colspan="2">Other</td> <td></td> </tr> <tr> <td colspan="2">Total Cost</td> <td>29.9</td> </tr> </tbody> </table>			Type of Expenditure		Amount	1	2	3	Salary	20.1		Benefits	9.8	Premium Pay		Other		Total Personal Services			Travel			Contractual			Commodities			Equipment			Other			Total Cost		29.9	Justification <p>The Clerk Typist III will be responsible for all clerical support functions related to the background check process. It is estimated that the paper flow and level of inquiry as to the state requirements will be substantial, necessitating a full time clerical position. This position will also perform data entry functions, updating data within the teacher certification computerized data base related to background checks.</p>		
Type of Expenditure		Amount																																							
1	2	3																																							
Salary	20.1																																								
Benefits	9.8																																								
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**Request For
New Position**

Agency Education
 BRU Education Finance and Support
 Component District Support
Teacher Certification Unit

Page 4 of 4
 Revised Date

FY 90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Law
 Title: "An Act relating to criminal records and providing for an effective date." BRU: Prosecution
 Sponsor: Senator Duncan Components: Criminal Justice
 Requestor: Senate Judiciary litigation

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: April 12, 1989
 Approved by Commissioner: Douglas B. Baily, Attorney General Date: April 12, 1989
 Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 225

This bill amends AS 12.65.035 to provide that employers may request state records of all criminal convictions of a person who holds or seeks employment in a position in which the person has or would have supervisory or disciplinary power over a minor. The bill also provides that records of criminal convictions may be requested for a person who holds or seeks employment for any position as an employee of a school district or regional educational attendance area.

Current law is limited to criminal records of convictions involving contributing to the delinquency of a minor and any sex crimes, and current law applies only to person who hold or seeks a position in which the person has or would have supervisory or disciplinary power over a minor.

The safekeeping and administration of criminal records are handled by the Department of Public Safety. Consequently, this bill will not have a fiscal impact on the Department of Law. Because the bill provides that the Department of Education shall request and receive records on behalf of school districts and regional educational attendance areas, there might be a fiscal impact on the Department of Education. Existing statute permits school districts and REAA's to request records directly from the Department of Public Safety.

S B

226

Senator Johne Binkley

Senate Finance Committee
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985

Finance Committee
Co-Chairman

MEMORANDUM

April 8, 1989

RECEIVED

TO: Senator Jan Faiks, Chairman
Senate Judiciary Committee

FROM: Senator Johne Binkley *Johne*

RE: SB 226, relating to misconduct involving possession of a firearm

APR 10 1989

JAN FAIKS
SENATE OFFICE

The above-referenced bill was referred to your committee on March 17. If this bill were to become law, a person who commits criminal trespass in the first or second degree while under the influence of drugs or alcohol and who has a gun on his person would be guilty of misconduct involving possession of a firearm in the first degree. That offense is a Class C felony.

First degree criminal trespass is entering and remaining in a person's home or land unlawfully. Second degree criminal trespass is entering and remaining in or upon any other premises or in a propelled vehicle unlawfully. I've attached copies of these statutes for your easy reference.

Guns and alcohol or drugs don't mix under any circumstances. But to have a person in this condition in your home or on your property without your permission or consent is a potentially dangerous and frightening experience. With this in mind, I have requested a blank committee substitute for your consideration which would remove the reference to second degree criminal trespass. That offense is currently a Class B misdemeanor and, upon reflection, I feel that SB 226 perhaps reaches too far with its inclusion of second degree criminal trespass.

I understand the bill will be heard before your committee on Tuesday, April 11. I appreciate your willingness to so quickly schedule this bill. Due to a scheduling conflict, Janice Adair of my staff will attend the meeting to answer any of the members' questions.

Original sponsors: Binkley, Faiks,
Coghill, and Jones

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 226 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to misconduct involving possession
7 of a firearm by a person who is intoxicated or under
8 the influence of drugs."

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

10 * Section 1. AS 11.61.200(a) is amended to read:

11 (a) A person commits the crime of misconduct involving weapons
12 in the first degree if the person

13 (1) knowingly possesses a firearm capable of being con-
14 cealed on one's person after having been convicted of a felony by a
15 court of this state, a court of the United States, or a court of
16 another state or territory;

17 (2) knowingly sells or transfers a firearm capable of being
18 concealed on one's person to a person who has been convicted of a
19 felony by a court of this state, a court of the United States, or a
20 court of another state or territory;

21 (3) manufactures, possesses, transports, sells, or trans-
22 fers a prohibited weapon;

23 (4) knowingly sells or transfers a firearm to another whose
24 physical or mental condition is substantially impaired as a result of
25 the introduction of an intoxicating liquor or drug into that other
26 person's body;

27 (5) removes, covers, alters, or destroys the manufacturer's
28 serial number on a firearm with intent to render the firearm untrace-
29 able; [OR]

1 (6) possesses a firearm on which the manufacturer's serial
2 number has been removed, covered, altered, or destroyed, knowing that
3 the serial number has been removed, covered, altered, or destroyed
4 with the intent of rendering the firearm untraceable; or

5 (7) violates AS 11.46.320 and, during the violation, pos-
6 sesses on the person a firearm while under the influence of an intoxi-
7 cating liquor or drug.

8 * Sec. 2. AS 11.61.210(a) is amended to read:

9 (a) A person commits the crime of misconduct involving weapons
10 in the second degree if the person

11 (1) possesses on the person a firearm while under the
12 influence of an intoxicating liquor or drug in circumstances other
13 than described in AS 11.61.200(a)(7);

14 (2) discharges a firearm from, on, or across a highway; or

15 (3) discharges a firearm with reckless disregard for a risk
16 of damage to property or a risk of physical injury to a person.

17 * Sec. 3. AS 11.61 is amended by adding a new section to read:

18 Sec. 11.61.215. INTOXICATION AS APPLICABLE TO POSSESSION OF A
19 FIREARM. For purposes of AS 11.61.200(a)(7) and 11.61.210(a), a
20 person is under the influence of an intoxicating liquor or drug when,
21 as a result of the introduction of an intoxicating liquor or drug into
22 the person's body, physical or mental abilities are impaired so that
23 the person no longer has the ability to possess a firearm with the
24 caution characteristic of a sober person of ordinary prudence under
25 the same or similar circumstances.

26 * Sec. 4. AS 11.61.210(b) is repealed.
27
28
29

Sec. 11.46.310. Burglary in the second degree. (a) A person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime in the building.

(b) Burglary in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

For cases construing former law, see notes to AS 11.46.300, analysis line 11.

Applied in *McManners v. State*, Ct. App. Op. No. 123 (File No. 5065), 650 P.2d 414 (1982); *Linn v. State*, Ct. App. Op. No. 210 (File Nos. 6163, 6198), 658 P.2d 150 (1983).

Quoted in *Kirby v. State*, Ct. App. Op. No. 117 (File No. 5738), 649 P.2d 963 (1982).

Cited in *Ozenna v. State*, Sup. Ct. Op. No. 2209 (File No. 4748), 619 P.2d 477 (1980); *Zurfluh v. State*, Sup. Ct. Op. No. 2238 (File No. 4697), 620 P.2d 690 (1980); *Kanipe v. State*, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); *Nix v. State*, Ct. App. Op. No. 008 (File No. 4879), 624 P.2d 825 (1981); *Koteles v. State*, Ct. App. Op. No. 232 (File No. 6782), 660 P.2d 1199 (1983).

Sec. 11.46.320. Criminal trespass in the first degree. (a) A person commits the crime of criminal trespass in the first degree if the person enters or remains unlawfully

- (1) on land with intent to commit a crime on the land; or
- (2) in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 12 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "land" for "real property" at the beginning of paragraph (1) in subsection (a), and substituted "the land" for "that real property" near the end of paragraph (1) in subsection (a).

Collateral references. — 35 Am. Jur. 2d, *Forcible Entry and Detainer*, §§ 58 — 61; 52 Am. Jur. 2d, *Malicious Mischief*, § 1 et seq.; 75 Am. Jur. 2d, *Trespass*, §§ 86 — 94.

38 C.J.S. *Forcible Entry and Detainer*, § 1 et seq.; 54 C.J.S. *Malicious Mischief*, § 1 et seq.; 87 C.J.S. *Trespass* §§ 140 — 165.

Forcible detainer or trespass, where entry was peaceable, 49 ALR 597.

Sec. 11.46.330. Criminal trespass in the second degree. (a) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully

- (1) in or upon premises; or
- (2) in a propelled vehicle.

(b) Criminal trespass in the second degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this section, see AS 12.25.030(b).

NOTES TO DECISIONS

Cited in *Moxie v. State*, Ct. App. Op. No. 248 (File No. 7192), 662 P.2d 990 (1983).

Sec. 11.46.340. Defense: emergency use of premises. In a prosecution under AS 11.46.300, 11.46.310, 11.46.320, or 11.46.330(a)(1), it is an affirmative defense that

(1) the entry, use, or occupancy of premises or use of personal property on the premises is for an emergency in the case of immediate and dire need; and

(2) as soon as a reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises, the owner's agent or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use, or occupancy and any damage to the premises or personal property, unless notice waiving necessity of the report is posted on the premises by the owner or the owner's agent. (§ 4 ch 166 SLA 1978)

Sec. 11.46.350. Definition. (a) As used in AS 11.46.300 — 11.46.350, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so;

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge; or

(3) enter or remain upon premises or in a propelled vehicle in violation of a provision in an order issued under AS 25.35.010(b) or 25.35.020.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances. (§ 4 ch 166 SLA 1978; am § 9 ch 61 SLA 1982)

(b) It is an affirmative defense to a prosecution under (a)(1) of this section that

(1) the defendant took reasonable steps to remove the substance from the highway; and

(2) no person suffered physical injury as a result of the presence of the substance on the highway.

(c) Obstruction of highways is a class B misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 281-310.

39A C.J.S., Highways, §§ 217-231.

Article 2. Weapons and Explosives.

Section	Section
200. Misconduct involving weapons in the first degree	230. Possession of burglary tools
210. Misconduct involving weapons in the second degree	240. Criminal possession of explosives
220. Misconduct involving weapons in the third degree	250. Unlawful furnishing of explosives

Collateral references. — Validity and construction of gun control laws, 28 ALR3d 845.

Sec. 11.61.200. Misconduct involving weapons in the first degree. (a) A person commits the crime of misconduct involving weapons in the first degree if the person

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or drug into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable; or

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable.

(b) It is an affirmative defense to a prosecution under (a)(1) or (2) of this section that

(1) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(2) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(3) a period of five years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the possession, sale, or transfer of the firearm.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801-5872 (National Firearms Act).

(d) The provisions of (a)(3) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(e) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb;

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) metal knuckles;

(D) switchblade or gravity knife;

(E) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(F) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(f) Misconduct involving weapons in the first degree is a class C felony. (§ 7 ch 166 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases cited in the notes below were decided under former AS 11.55.030 and 11.55.040.

Constitutionality of former statute prohibiting possession by a convict. — See *United States v. Farwell*, 11 Alaska 507, 76 F. Supp. 35 (D. Alaska 1948).

Legislative intent. — The purpose of the felon in possession statute was to prevent the concealment and use of firearms in violent crime. *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Former section included crime committed in another state. — See *United States v. Farwell*, 11 Alaska 507, 76 F. Supp. 35 (D. Alaska 1948).

The term "concealed" means that the weapon is not discernible through ordinary observation by persons coming into proximity with the person carrying it, as persons do in the ordinary and usual associations of life. *McKee v. State*, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

A weapon is concealed if it is hidden from ordinary observation. It need not be absolutely invisible to other persons. *McKee v. State*, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

Actual possession was not required under former statute. — See *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); *Gordon v. State*, Sup. Ct. Op. No. 1126 (File No. 2204), 533 P.2d 25 (1975).

A revolver need not be fully assembled or immediately capable of firing in order to qualify as a weapon. *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other

grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

And it is immaterial whether the gun is loaded and ready for immediate use. — See *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Furnishing ammunition included under former statute. — See *In re Robson*, Sup. Ct. Op. No. 1573 (File No. 3448), 575 P.2d 771 (1978).

It was necessary to show a prior conviction in order to prove one essential element of the crime of possession of a firearm by a person previously convicted of a felony. *Mead v. State*, Sup. Ct. Op. No. 502 (File No. 804), 445 P.2d 229 (1968), cert. denied, 396 U.S. 855, 90 S. Ct. 117, 24 L. Ed. 2d 104 (1969).

Conviction may be based on circumstantial evidence. — Conviction of "felon in possession" may be based on circumstantial evidence of possession. *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

It was error to refuse to give an instruction defining the term "concealed." *McKee v. State*, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

Sentence for possession by convict upheld. — See *Deveroux v. State*, Sup. Ct. Op. No. 1259 (File No. 2636), 548 P.2d 1296 (1976); *Ozenna v. State*, Sup. Ct. Op. No. 2209 (File No. 4748), 619 P.2d 477 (1980).

Applied in *McManners v. State*, Ct. App. Op. No. 123 (File No. 6065), 650 P.2d 414 (1982); *Fry v. State*, Ct. App. Op. No. 197 (File No. 6810), 655 P.2d 789 (1983).

Cited in *Kanipe v. State*, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); *Bell v. State*, Ct. App. Op. No. 216 (File No. 6707), 657 P.2d 787 (1983).

Collateral references. — 79 Am. Jur. 2d, Weapons and Firearms, §§ 7-34.
94 C.J.S., Weapons, §§ 3-23.

Sec. 11.61.210. Misconduct involving weapons in the second degree. (a) A person commits the crime of misconduct involving weapons in the second degree if the person

(1) possesses on the person a firearm while under the influence of an intoxicating liquor or drug;

(2) discharges a firearm from, on, or across a highway; or

(3) discharges a firearm with reckless disregard for a risk of damage to property or a risk of physical injury to a person.

(b) For purposes of (a)(1) of this section, a person is under the influence of an intoxicating liquor or drug when, as a result of the introduction of an intoxicating liquor or drug into the person's body, physical or mental abilities are impaired so that the person no longer has the ability to possess a firearm with the caution characteristic of a sober person of ordinary prudence under the same or similar circumstances.

(c) Misconduct involving weapons in the second degree is a class A misdemeanor. (§ 7 ch 166 SLA 1978; am §§ 21, 22 ch 102 SLA 1980)

Revisor's notes. — Subsection (b) of this section was adopted in ch. 102, SLA 1980, as subsection (c). However, the subsections have been rearranged to conform with the format of AS 11 as revised in 1978.

Effect of amendments. — The 1980 amendment rewrote paragraph (1) of sub-

section (a), and added present subsection (b).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

NOTES TO DECISIONS

Separate punishment where defendant fired at cabin and truck. — Separate punishment upon conviction of two counts of misconduct involving weapons in the second degree, and two counts of criminal mischief in the third degree, where the evidence established that defendant had fired a rifle at a cabin and a pickup truck did not violate the double jeopardy provisions of this section since there were sufficient and significant differences between the intent in the two firings. *Leonard v. State*, Ct. App. Op. No. 168 (File No. 5989), P.2d (1982).

For cases construing former statute

prohibiting careless use of firearms, see *Giles v. United States*, 10 Alaska 455, 144 F.2d 860 (9th Cir. 1944); *Burke v. United States*, 282 F.2d 763 (9th Cir. 1960).

For case construing former statute prohibiting flourishing, pointing or discharging firearm in a public place, see *Wacek v. State*, Sup. Ct. Op. No. 1108 (File No. 2166), 530 P.2d 751 (1975).

Quoted in *Zinn v. State*, Ct. App. Op. No. 189 (File No. 6230), 656 P.2d 1206 (1982).

Cited in *Dyer v. State*, Ct. App. Op. No. 268 (File No. 6133), P.2d (1983).

Collateral references. — Use of the firearm without intent to inflict injury, 5 ALR 603; 23 ALR 1554.

Death from discharge of firearms, 55 ALR 921.

Sec. 11.61.220. Misconduct involving weapons in the third degree. (a) A person commits the crime of misconduct involving weapons in the third degree if the person

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 8, 1989

SUBJECT: Draft CSSB 226 ()

TO: Senator John Binkley
ATTN: Janice Adair

FROM: Jack Chenoweth
Legislative Counsel 

The requested deletion is made.

In addition, note the title change. The deletion did not trigger that change. Rather, on re-examination, it appears that section 3 of the bill affects the legislation in a manner that is broader than what was noted in the original title. The section is applicable not only to situations in which the person bears a firearm and commits criminal trespass (which we have defined as "misconduct involving weapons in the first degree") but also is applicable in section 2 of the bill, to situations in which there is firearm possession without criminal trespass (which we have defined as "misconduct involving weapons in the second degree").

The title of the original is incorrect. Even if the committee does not accept the deletion, the title itself should be modified.

JC:lmb
K3/082

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Corrections
 Title: "An Act relating to misconduct involv. BRU: _____
poss. of firearm by person who commits crim..."
 Sponsor: Rep. Binklev, Faiks, Coqhill, Components: _____
 Requestor: & Jones

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This legislation would only reclassify offenders now being charged under existing statute. We see no change in the number of inmates or increase in sentences as a result of this bill.

Susan E. Knight

Prepared by: Susan E. Knight, Director Phone: 465-3376
 Division: Administrative Services Date: 4-11-89

Approved by Commissioner: Susan Humphrey-Barnett Date: 4-11-89
 Agency: Corrections

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: Possession of firearms while
intoxicated BRU: Alaska State Troopers
 Sponsor: Senator Binkley, et al. Component: Detachments
 Requestor: Senate Judiciary

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

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

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

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 will not have any fiscal impact on the Department of Public Safety.

JMS
4/18/89 Prepared by: Francis C. Allan
Division: Alaska State Troopers

Phone: 269-5691
Date: 04/18/89

Approved by Commissioner: *H. H. Hol* Arthur English
Agency: Department of Public Safety

Date: 04/18/89

S B

228

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 20th, 1989

The Honorable Jan Faiks
Chair, Senate Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

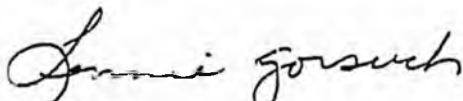
Dear Senator Faiks:

Subject: SB 228, An Act relating to civil liability of certain volunteers.

Background: The Department has an aggressive volunteer program utilizing over 60,000 hours of volunteer work each year. Volunteers are presently covered under the state's risk management program. This bill, as currently written, clarifies the liability of a person working as a volunteer. This may be an important clarification for some who are considering becoming state park volunteers. SB 228 does not limit the state's liability for personal injury to a volunteer or injury to another from a volunteer's actions.

Position: The Department supports this bill, and looks forward to working with the committee and sponsor as it progresses through the legislature.

Sincerely,



Lennie Gorsuch
Commissioner

cc bill sponsor
Bob Evans

Original sponsor: Duncan

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 228 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil liability of certain volun-
7 teers."

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

9 * Section 1. AS 09.65 is amended by adding a new section to read:

10 Sec. 09.65.098. CIVIL LIABILITY OF CERTAIN VOLUNTEERS. (a) A
11 person working as a volunteer for the state, a municipality, or a
12 nonprofit entity is not liable for civil damages occurring as a result
13 of an act or omission while acting in good faith and within the per-
14 son's functions and duties as a volunteer.

15 (b) This section does not preclude liability for civil damages
16 as a result of gross negligence, recklessness, or intentional miscon-
17 duct.

18 (c) This section does not affect

19 (1) a civil action brought by the state against a volunteer
20 to recover civil damages for injury to the state, a municipality
21 against a volunteer to recover civil damages for injury to the munic-
22 ipality, or a nonprofit entity against a volunteer to recover civil
23 damages for injury to the entity;

24 (2) the liability of the state, a municipality, or a non-
25 profit entity with respect to injury caused to a person.

26 (d) In this section,

27 (1) "municipality" has the meaning given in AS 01.10.060
28 and includes a public corporation established by a municipality;

29 (2) "nonprofit entity" means an entity

*WITHDROVE UP
ORIGINAL
VERSION
EXCEPT FOR
MUNICIPALITY
DUTIES BY STATE*

*prevents state trying to get
contribution*

1 (A) incorporated under AS 10.20; or

2 (B) exemp from taxation under 26 U.S.C. 501(c)(3)

3 (Internal Revenue Code of 1954);

4 (3) "volunteer" means a person who receives financial
5 consideration of not more than \$50 per day or \$500 a year, not includ-
6 ing room and board or reimbursement for expenses actually incurred,
7 for services performed for the state, a municipality, or a nonprofit
8 entity.

CHANGES FROM SB 228 TO PROPOSED CSSB 228

Section 1, page 1, line 19, after "volunteer":

Delete "for"

Insert "to recover civil damages for injury to"

Section 1, page 1, line 21, after "volunteer":

Delete "for"

Insert "to recover civil damages for injury to"

Section 1, page 1, line 22, after "volunteer":

Delete "for"

Insert "to recover civil damages for injury to"

This language will prevent the state, a municipality, or an entity from recovering (from a volunteer) damages paid to a third party yet will allow the state, a municipality, or an entity respectively to recover damages from a volunteer.

Original sponsor: Duncan

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 228 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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