

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6934 HOUSE JUDICIARY

personnel, players will purchase only the number of cards they can keep track of, there are statutory limits on prizes and number of games etc. - the profit margin is low and the competition is high. As a result, gaming activity had been kept at a minimum, confined to a few major bingo halls in urban areas and local community centers in rural Alaska, and the non-gaming public remained largely unaware of charitable gaming activity in the state.

In the 1980's, two things occurred that significantly changed the profile of charitable gaming in Alaska. The first was when pulltabs, authorized by regulations adopted in 1982, began to make up an ever increasing portion of charitable gaming proceeds. The second was the decline in state revenues in the late 1980's which served to 'up the ante' in that charitable organizations were hard pressed to obtain the funding needed to conduct their programs. For many of these organizations charitable gaming became the primary source of revenue. Because of the complexity of the gaming law and reporting requirements, many had hired "operators" to run their permits for them. However, under the law "operators" were not recognized and therefore, could not be regulated.

By 1987, regulation of charitable gaming in Alaska was in a state of chaos. The Department of Revenue, the agency responsible for regulating charitable gaming in the state, failed to get a handle on the situation by implementing new regulations or effectively working with the legislature to adopt the statutory changes that were necessary to accomplish meaningful control.

Finally, in 1987 the House Labor and Commerce Committee, working with the Department, introduced HB 299, the Alaska Charitable Gaming Reform Act, which was adopted by a near unanimous vote in 1988. HB 299 established strict licensing requirements for operators, including bonding, insurance, and criminal background checks, streamlined reporting requirements, set up an audit trail to track pulltab sales in the state, and generally provided for more accountability by the gaming industry across the board.

In the fall of 1988 and throughout 1989, before regulations implementing the Reform Act went into effect, organizations greatly increased the practice of placing their permits with "third party vendors" in retail sales outlets such as bars, restaurants and

convenience stores. The most common arrangement was for a permittee to place pulltabs purchased under their license in a local bar or grocery store where they were sold to the general public. When permittees first started using vendors in the mid 1980's, it was not unusual for a business to sell the pulltabs free of charge. That practice quickly fell by the wayside, however, and vendors today are routinely charging charities forty percent or more of the adjusted gross in order to sell their pulltabs.

In early 1989 the Governor ordered responsibility for the regulation of charitable gaming to be transferred from the Department of Revenue to the Department of Commerce. The temporary chaos that resulted from the switch, coupled with the heightened competition between charitable organizations and the phenomenal profits to be made by private retail outlets through the sale of pulltabs, caused the use of vendors to proliferate across the state.

However, since "vendors" are not permitted under law, they cannot be effectively regulated and are not subject to action by the Department. Because vendors work without regulation and without licenses, they offer a competitive edge impossible for a licensed operator or an organization that runs their own game to meet.

More importantly, vendors sell only pulltabs, which are not subject to the checks and balances inherent in bingo games. State law prohibits bingo from being played where alcohol is served. No such restrictions apply to pulltabs. Pulltabs can and are being sold where alcohol is served. They require little overhead and virtually no capital investment. The average payout on pulltabs is very high which creates a strong incentive to gamble. Finally, the Gaming Reform Act required an operator to make a minimum payback to permittees or face loss of licensure. This minimum was established as a floor, not a ceiling, and was based on a combined pulltab/bingo operation where the profit margin is significantly lower than with straight pulltabs. However, some say this minimum has become the "industry norm" even though it is clearly too low for a pulltab game.

One of the thorniest problems with vendors is that even though they routinely take half or better of the profits generated through pulltab sales, charities still make much more than they would if they ran

their own games or contracted with a licensed operator who combines pulltabs and bingo games.

CHANGES IN FEDERAL GAMING LAWS

To further complicate the picture, several significant changes in federal law have greatly impacted charitable gaming operations. The first was implementation of a federal income tax on pulltab sales under IRS code section 511, a part of the 1986 federal tax reform act. The second was a lifting of the federal ban on advertising or conducting gaming activity over the airways (T.V., radio etc.) through the Charitable Gaming Advertising Clarification Act of 1988.

Under the changes in the tax code, income derived from pulltab sales may be subject to the unrelated business income tax (UBIT). Considerable controversy and confusion exists as to whether and in what circumstances the tax applies. Chairman Donley has requested a written determination from the IRS which will be distributed to Committee members upon receipt.

The Advertising Clarification act of 1988 lifted the FCC ban on use of the airways for gaming promotion, effective May 8, 1990 unless state law provides otherwise. Because advertising on the airways had always been a moot question under the federal ban, Alaska had no laws concerning the issue. The House Labor and Commerce Committee was concerned that charitable organizations would be at risk because of the lack of rules and regulations governing use of the airways for advertising. Because of this, the Committee introduced HB 587, a measure that simply extended the federal ban until the legislature adopts statutes governing the use of the airways. HB 587 gives the state and our non-profit organizations time to decide whether we want gaming activities to expand onto T.V. and radio and if so, under what circumstances. HB 587 was adopted by the legislature and signed into law on May 8, 1990.

Finally, persons involved in gambling whose compensation is based on a "percentage of the take" are subject to a federal excise tax on wagering. In addition, sales agents are required to file with the IRS and pay a filing fee. Few of the agents in Alaska who are selling

pulltabs on behalf of charitable organizations are currently in compliance with the federal gambling tax.

PUBLIC POLICY ISSUES

VENDORS

State law specifically allows two classes of people to conduct gaming activities: permitted organizations and their employees and licensed operators and their employees. Since all other gaming activity is prohibited by law except that which is specifically authorized, it is the position of the chairman of the committee that sponsored the Reform Act, legislative legal services, and a 1987 Attorney General's opinion that sale of pulltabs by any other entity (vendors) is in violation of the law.

Since the proliferation of vendor sales was allowed to occur by the Department of Revenue, the Department of Commerce inherited the problem when responsibility to regulate gaming in the state was transferred to them in the summer of 1989. In the fall of 1989, the Department of Commerce, after reviewing the law and the vendor issue, agreed that vendors were not provided for under the law and attempted to issue emergency regulation prohibiting their activities. Lt. Governor MacAlpine refused to sign the regulations, reasoning that an "emergency" did not exist in that the activities had been going on for some time and that issuing emergency regulations would circumvent the public process.

The department then went to public hearings on proposed regulations that would have prohibited vendors after May 15, 1990. In doing so, the department said they were allowing enough time for the legislature to again consider the question of vendors and decide if they wanted to make any changes in law that would permit their continued existence.

The legislature considered the vendor issue in numerous measures but no final action was taken and the law was not amended. Since

adjournment, the department, with an apparent change of heart, has expressed reluctance to change the "status quo" and has steadfastly refused to enforce the law. Instead they have indicated their decision to seek another Attorney General opinion as to whether they can authorize vendors through regulation.

As a result, we have millions of dollars of pulltab sales occurring in the state each month through agents that are not authorized by law. Charities are at the mercy of these unlicensed operators and vendors and their activities cannot be effectively policed since there is no statutory authority for them to occur in the first place.

This is an untenable situation for all parties concerned. Currently licensed operators are threatening to file a writ of mandamus to force the state to enforce the law. That option is also open to the legislature. An individual legislator can file as a private person or the Legislative Council can be petitioned to file on behalf of the legislature. Short of that it is likely that nothing will be done and the legislature will be left to deal with the question during the next session.

ALCOHOL AND GAMING

State law (AS 04.11.370) requires the Alcohol Beverage Control Board to suspend or revoke a liquor license if illegal gambling activities occur on the licensed premises. The Board can and should notify license holders that their licenses may be endangered if they are acting as vendors for pulltab sales. However, since the Board knows that pulltab sales are legal in the state and that the Department certainly knows that license holders are selling pulltabs on licensed premises, they will take no action until they are informed that such activity is illegal.

A similar situation exists for licensees who may be in violation of federal filing requirements under the excise tax discussed above. Without such filings, their activities are illegal but until the Board is officially informed by the IRS of that fact, they will take no action.

Again, an option exists for the legislature to inform the Board of their position that sales of pulltabs in a licensed establishment by

an entity other than a permittee or a licensed operator is in violation of the law.

WHERE DO WE GO FROM HERE

Following is a listing of the issues that should be addressed by the next legislature:

* **Policy Issues** - The high profile sale of pulltabs in retail outlets in the last few years has completely changed the scope and nature of charitable gaming in Alaska and has raised a major public policy question of whether the state should encourage gambling and if not, what changes in law are necessary to take a more neutral posture:

1. Should the payout on pulltabs be limited by law so as to discourage gambling?
2. Should we limit the availability of pulltabs by limiting locations where they can be sold and the entities that can sell them?
3. Should we require that bingo games pay for themselves and disallow the practice of using bingo as a "loss leader" to encourage people to play pulltabs?
4. Should we sever the connection between gaming and alcohol by prohibiting all gaming activities where alcohol is sold or consumed?

* **Vendors** - Should we license vendors and allow permitted organizations to use them? If so, the following questions should be addressed:

1. Should vendors be a licensed to work directly with permittees or only as an agent/s of a licensed operator?
2. If vendors are independent agents, should they be subject to the same, lesser, or more restrictions than are currently placed on operators (bonding, insurance, background checks etc.)?
3. Should we limit the number of vendors and/or the number of locations an operator or a permittee may use.?

4. Should we limit the amount a vendor can charge a permittee/operator for selling pulltabs? If so, what is a reasonable limit?

PAST LEGISLATION

The measures discussed below were part of the legislatures' response to the issues raised in the the last several years about charitable gaming in Alaska. These measures were introduced during the last legislative session and will have to be reintroduced if they are to be considered by the 1991 legislature.

CHARITABLE GAMING AND GAMBLING LEGISLATION

(1989-1990)

HB 261/SB 274 - Alaska-Soviet Ice Classic (By Foster/Duncan) - Authorizes Camai, Inc. and the City of Diomedes to operate an Alaska-Soviet Ice Classic (a game of chance where a prize of money is awarded for the closest guess of the time the ice moves in a body of water or watercourse). HB 261 passed into law in 1989 (76 SLA 89).

HB 323 - Big Lake Ice Classic (By Menard) - Authorizes the Houston Junior-Senior High School Booster Club and the Big Lake Chamber of Commerce to jointly or individually operate a Big Lake Ice Classic. HB 323 passed into law in 1990.

HB 587 - Prohibiting use of electronic media for gaming - (By the House Labor and Commerce Committee) - Prohibits advertising or conducting gaming activities through the electronic media such as television or radio. Such broadcasts have previously been banned under federal prohibitions that was repealed in May of 1990. HB 587 passed into law. (See discussion above under "Changes in Federal Law".

HB 29/SB279- Parimutuel Racing/Alaska Racing

Commission (By Larson/Szymanski) - Allows parimutuel betting on horse racing in Alaska. Can only be authorized after a "local option" vote where over 50 percent of the local voters authorize this kind of gambling activity. HB 29 is currently in the Senate Judiciary Committee, chaired by Senator Jan Faiks. SB 279 did not pass.

HB 512/SB 501 - Retail sales of pulltab (By Boucher/Senate Finance Committee) - Authorizes sales agents or "third party vendors" to sell pulltabs for charitable organizations in retail outlets such as bars, restaurants, package and convenience grocery stores. Neither HB 512 nor SB 501 passed the legislature..

HB 521/SB 484 - Permittees working together (By Boyer/Senate Finance Committee) - Authorizes permittees to work together to conduct gaming activities without having to become an operator. Neither HB 521 nor SB 484 passed the legislature.

HB 524 - Revocation of operator's licenses (By Taylor) - Raises the minimum payback a licensed operator must give a permittee. HB 524 did not pass.

HR 7/SR 11- Gaming regulations (By Donley/Rodey) - Asks the Department of Revenue to delay implementation of 1988 proposed charitable gaming regulations because they were not stringent enough in protecting charities from unlicensed and unregulated sales agents. This bill is moot since the regulations have since been redrafted and responsibility for regulating charitable gaming has been transferred from the Department of Revenue to the Department of Commerce and Economic Development. Neither measure passed.

SB 146 - Gaming Devices on State Ferries (By Szymanski) - Authorizes the Alaska State Ferry system to conduct gaming aboard state ferries with a percentage of the proceeds being dedicated to operating costs of the ferry system. SB 146 did not pass.

SB 168 - Gambling enterprises by Municipalities (By Fahrenkamp) Also called the "historical gambling" bill, SB 168 authorizes municipalities largely dependent on tourism that have a past of "historical gambling", to conduct card, dice and roulette-type games after adopting a municipal ordinance ratified by a majority of the local voters. SB 169 did not pass.

SB 176 - Auctions and raffles for bison harvest permits
(By Frank) Authorizes the Department of Fish and Game to permit a qualified organization to raffle off one bison harvest permit per year with a percentage of the proceeds earmarked for the Fish and Game Fund. **Passed into law in 1989 (30 SLA 89).**

SB 263 - Video Gaming Devices (By Pourchot) - Sponsor substitute for SB 263 creates the Alaska Gaming Commission and authorizes regulation of video gaming devices operated in premises licensed to serve alcohol. **SB 263 did not pass.**

SB 311 - Establishing the Alaska Gaming Commission (By Zharoff) - Establishes a five member commission, appointed by the Governor and confirmed by the Legislature, to regulate gaming in the state. **SB 311 did not pass.**

SB 429 - Surety fund and bonding for operators (By the Governor) Creates a surety fund that operators and other licensees pay into to protect charities in cases of insolvency or fraud. Would make it easier to become a licensed operator by reducing bonding costs. **SB 429 did not pass.**

SR 17 - Forms of charitable gaming (By Fischer) Asks the Department of Commerce and Economic Development to expand the types of gaming permitted organizations are allowed to conduct. **SR 17 did not pass.**

FISCAL NOTE

STATE OF ALASKA
LEGISLATIVE SESSION

BILL NO. CSHB 168

Revision Date: 5/15/91
 Title: An Act relating to charitable gaming, and providing for an effective date
 Sponsor: Reps. Choquette, Zawacki
 Requestor: House Judiciary

Department Affected: Commerce & Economic Dev.
 BRU: Occupational Licensing
 Component: Administration

COMPONENT SERIAL NO.

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	203.0	203.0	203.0	203.0	203.0	203.0
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	54.0	54.0	54.0	54.0	54.0	54.0
SUPPLIES	4.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	44.0	7.0	7.0	7.0	7.0	7.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	315.0	276.0	276.0	276.0	276.0	276.0

CAPITAL						
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REVENUE	625.0	656.2	662.4	668.6	674.8	681.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	315.0	276.0	276.0	276.0	276.0	276.0
FEDERAL FUNDS						
OTHER						
TOTAL	315.0	276.0	276.0	276.0	276.0	276.0

POSITIONS:

FULL-TIME	4	4	4	4	4	4
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: John N. Hansen, Jr., Gaming Program Manager Phone: 465-2581
 Division: Occupational Licensing Date: 5/15/91
 Approved by Commissioner: Glenn A. Olds *[Signature]*
 Agency: Department of Commerce & Economic Development Date: 5/15/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE ATTACHMENT - CSHB 168

EXPENDITURES AND REVENUES

This program was transferred from the Department of Revenue to the Department of Commerce and Economic Development effective July 1, 1989 through Executive Order #74. The total number of employees who transferred with the program was five: one auditor and one investigator located in Anchorage, one auditor, one tax examiner and one clerk typist located in Juneau. Since that time, the following new positions have been filled: a Gaming Program Manager located in Juneau, one investigator located in Fairbanks, a Chief of Gaming Compliance located in Anchorage, and a Licensing Examiner located in Juneau.

The bill would authorize the licensing and regulating of pull-tab vendors, authorize sales of pull-tabs from one distributor to another distributor, require the permittee and operator provide notification prior to changing the location(s) of gaming activities, amending the powers of the department to suspend or revoke permits or licenses, place restrictions on who may participate as a player of pull-tabs, authorize the department to issue orders prohibiting violations, provisions relating to making false statements in license and permit applications, amend the current prize awards limitation, specify when the pull-tab tax must be collected and who may distribute pull-tabs.

Charitable gaming activity in the state has rapidly grown beyond the capacity of the current staff especially in the area of audits and investigations. Presently, the gaming program has only two investigators and is woefully inadequate given the number of permittees and the geographical size of the state. While the two auditors may conduct desk audits at their workstations and obtain documentation by way of correspondence, the number of audits that can be accomplished during the year is limited by the number of permittees, operators, and distributors. We are, therefore, submitting a fiscal note requesting funding for an additional investigator and auditor. Also contained in the fiscal note is a request for funding of a licensing examiner and a records and licensing supervisor to oversee the licensing staff. Given the number of permittees, and the number that would use vendor locations, an additional licensing examiner is necessary if the vendor endorsements are to be issued in a timely manner.

The \$315.0 required includes \$10.0 in travel, to fund the cost of widespread travel to various communities throughout the state, as well as \$44.0 to purchase the necessary workstations, computers and software. The required \$7.0 for equipment for FY 93 through FY 97 represents computer upgrades and programming. This is based on the assumption that charitable gaming will steadily continue to increase as more and more charitable organizations search for other sources of revenue.

With the additional auditor and investigator positions, we estimate that \$75.0 in additional revenue based on the 1% net proceeds fee will be generated in addition to \$500,000 generated by the \$100 vendor endorsement fee. We estimate that 5,000 such vendor endorsements will be applied for. Additionally, with the amount of travel that will be required to effectively administer this program, the auditors and investigators can also use the opportunity to educate the licensees and to help them strive toward voluntary compliance.

**FISCAL NOTE ATTACHMENT
CSHB 168**

OPERATING EXPENDITURES

<u>Position</u>	<u>Range</u>	<u>Cost</u>	<u>Subtotal</u>
<u>Personal Services:</u>			
Investigator III	18	\$56.4	
Auditor III	18	\$56.4	
Records and Licensing Supervisor	16	\$50.0	
Occupational Licensing Examiner I	12	\$40.2	
			\$203.0
<u>Travel:</u>			
Investigator		\$ 5.0	
Auditor III		\$ 5.0	
			\$ 10.0
<u>Contractual:</u>			
Lease Space		\$20.0	
Printing and Postage		\$24.0	
Communications		\$ 5.0	
Contract Services		\$ 5.0	
			\$ 54.0
<u>Supplies:</u>			
Investigator III		\$ 1.0	
Auditor III		\$ 1.0	
Records and Licensing Supervisor		\$ 1.0	
Occupational Licensing Examiner I		\$ 1.0	
			\$ 4.0
<u>Equipment:</u>			
Investigator III		\$10.0	
Auditor III		\$10.0	
Records and Licensing Supervisor		\$10.0	
Occupational Licensing Examiner I		\$10.0	
Printer		\$ 4.0	
			\$ 44.0
TOTAL COST			\$315.0

Lease Space is for locating the Gaming staff into their own office space. Currently located in Occupational Licensing on the 9th floor of the State Office Building in 450 sq. ft., this space is inadequate for current needs and, with the increased personnel, new space is a requirement.

The majority of the printing and postage cost is for the vendor endorsement license, pull-tab I.D. stamps, and forms.

Equipment represents the cost for a workstation and computer.

REQUEST FOR NEW HIRE

POSITION TITLE: Investigator III
RANGE/STEP: 18a
SERVICE: Classified
TYPE OF POSITION: PFT
STAFF MONTHS: 12 Months

TYPE OF EXPENDITURE:

PERSONAL SERVICES:

SALARY: \$40.5
BENEFITS \$15.9

TOTAL PERSONAL SERVICES: \$56.4

TRAVEL: \$ 5.0
COMMODITIES: \$ 1.0
EQUIPMENT: \$10.0

TOTAL COST \$71.9

FUNDING SOURCE:

GENERAL FUND \$71.9

POSITION DUTIES:

- o Conduct investigations of permit or license violations and complaints.
- o Conduct inspections of premises, observe gaming activity to ensure compliance with statutes and regulations.
- o Issue Notices of Violations when appropriate and necessary.
- o Educate the participants with regard to statutes and regulations.
- o Assist the participants by providing the correct forms, and answering inquiries.
- o Occasionally assist the auditor(s) in gathering information/documentation.

IMPACT TO DIVISION/PROGRAM IF POSITION IS NOT FILLED:

Because of the numerous number of permittees and licensees, the expanse of the state, and the limited funding for travel purposes, many complaints and/or allegations could not be investigated.

REQUEST FOR NEW HIRE

POSITION TITLE: Auditor III
RANGE/STEP: 18a
SERVICE: Classified
TYPE OF POSITION: PFT
STAFF MONTHS: 12 Months

TYPE OF EXPENDITURE:

PERSONAL SERVICES:

SALARY: \$40.5
BENEFITS \$15.9

TOTAL PERSONAL SERVICES: \$56.4

TRAVEL: \$ 5.0
COMMODITIES: \$ 1.0
EQUIPMENT: \$10.0

TOTAL COST \$71.9

FUNDING SOURCE:

GENERAL FUND \$71.9

POSITION DUTIES:

- o Plan, organize and complete audits of permittees, operators and distributors.
- o Provide technical assistance to permittees, operators and distributors.
- o Provide information to inquiring persons regarding statutes and regulations.
- o Assist the investigator(s) when necessary.

IMPACT TO DIVISION/PROGRAM IF POSITION IS NOT FILLED:

Because of the numerous number of permittees and licensees, the expanse of the state, and the limited funding for travel purposes, many audits could not be done, thus, reducing the 1% net proceeds fee due the state.

REQUEST FOR NEW HIRE

POSITION TITLE: Records and Licensing Supervisor
RANGE/STEP: 16a
SERVICE: Classified
TYPE OF POSITION: PFT
STAFF MONTHS: 12 Months

TYPE OF EXPENDITURE:

PERSONAL SERVICES:

SALARY: \$35.5
BENEFITS \$14.5

TOTAL PERSONAL SERVICES: \$50.0

COMMODITIES: \$ 1.0
EQUIPMENT: \$10.0

TOTAL COST \$61.1

FUNDING SOURCE:

GENERAL FUND \$61.1

POSITION DUTIES:

- o Review the operator and distributor license applications, issue licenses for same as well as review the operator quarterly and annual reports, the pull-tab manufacturer and distributor monthly reports.
- o Supervise and monitor the licensing of permittees, operators and distributors.
- o Direct and guide procedures for actual issuance of permits and licenses and computer entry of same. Responsible for the overall recording and establishment of the licensing record and maintenance of these records.
- o Provide information technical assistance to the public and organizations regarding application of statutes, regulations and policies.
- o Responsible for form control and review of public handouts and applications to ensure proper format and content.

IMPACT TO DIVISION/PROGRAM IF POSITION IS NOT FILLED:

Responsibility for the day-to-day operations will be shouldered by the Gaming Program Manager.

REQUEST FOR NEW HIRE

POSITION TITLE: Occupational Licensing Examiner I
RANGE/STEP: 12
SERVICE: Classified
TYPE OF POSITION: PFT
STAFF MONTHS: 12 Months

TYPE OF EXPENDITURE:

PERSONAL SERVICES:

SALARY: \$27.8
BENEFITS: \$12.4

TOTAL PERSONAL SERVICES: \$40.2

SUPPLIES: \$ 1.0
EQUIPMENT: \$10.0

TOTAL COST \$51.2

FUNDING SOURCE:

GENERAL FUND \$51.2

POSITION DUTIES:

- o The review of permit applications, vendor endorsement applications, quarterly and annual financial statements.
- o Update and maintain computerized licensing and financial records as well as the licensing files.
- o Provide information and technical assistance to the public and organizations regarding application of statutes and regulations.

IMPACT TO DIVISION/PROGRAM IF POSITION IS NOT FILLED:

Responsibility for the above-listed duties would be shouldered by the current staff.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 168

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: SEE ATTACHED BRU: Occupational Licensing
 Component: Administration

Sponsor: Rep. Choquette
 Requestor: Rep. Choquette **COMPONENT SERIAL NO.**

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	203.0	203.0	203.0	203.0	203.0	203.0
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	44.0	25.0	25.0	25.0	25.0	25.0
SUPPLIES	4.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	40.0	5.0	5.0	5.0	5.0	5.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	301.0	245.0	245.0	245.0	245.0	245.0

CAPITAL						
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REVENUE	325.0	350.0	350.0	350.0	350.0	350.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	301.0	245.0	245.0	245.0	245.0	245.0
FEDERAL FUNDS						
OTHER						
TOTAL	301.0	245.0	245.0	245.0	245.0	245.0

POSITIONS:

FULL-TIME	4	4	4	4	4	4
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared By: Ann Boudreaux, Director Phone: 465-2581
 Division: Occupational Licensing Date: 3/1/91
 Approved by Commissioner: Glenn A. Olds *[Signature]* Spec. Asst II
 Agency: Department of Commerce & Economic Development Date: 3/1/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE ATTACHMENT

HB 168

TITLE:

An Act licensing and regulating pull-tab vendors; authorizing sales of pull-tabs between pull-tab distributors; requiring the giving of notice if a charitable gaming activity location changes; amending the powers of the Department of Commerce and Economic Development to revoke and suspend charitable gaming permits and licenses; restricting the ability of owners, managers, or employees of vendors and persons holding charitable gaming permits or licenses to purchase certain pull-tabs; authorizing the Department of Commerce and Economic Development to prohibit violations of the charitable gaming laws; relating to false statement in charitable gaming license and permit application; relating to maximum annual prize awards; relating to the collection of the pull-tab tax; and providing for an effective date.

FISCAL NOTE ATTACHMENT - HB 168

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The bill would authorize the licensing and regulating of pull-tab vendors, authorize sales of pull-tabs from one distributor to another distributor, require the permittee and operator provide notification prior to changing the location(s) of gaming activities, amending the powers of the department to suspend or revoke permits or licenses, place restrictions on who may participate as a player of pull-tabs, authorize the department to issue orders prohibiting violations, provisions relating to making false statements in license and permit applications, amend the current prize awards limitation, specify when the pull-tab tax must be collected and who may distribute pull-tabs.

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With the additional auditor and investigator positions, we estimate that \$75.0 in additional revenue based on the 1% net proceeds fee will be generated in addition to \$250,000 generated by the \$50 vendor endorsement fee. We estimate that 5,000 such vendor endorsements will be applied for. Additionally, with the amount of travel that will be required to effectively administer this program, the auditors and investigators can also use the opportunity to educate the licensees and to help them strive toward voluntary compliance.

FISCAL NOTE ATTACHMENT
HB 168

OPERATING EXPENDITURES

<u>Position</u>	<u>Range</u>	<u>Cost</u>	<u>Subtotal</u>
<u>Personal Services:</u>			
Investigator III	18	\$56.4	
Auditor III	18	\$56.4	
Records and Licensing Supervisor	16	\$50.0	
Occupational Licensing Examiner I	12	\$40.2	
			\$203.0
<u>Travel:</u>			
Investigator		\$ 5.0	
Auditor III		\$ 5.0	
			\$ 10.0
<u>Contractual:</u>			
Lease Space		\$ 20.0	
Printing and Postage		\$ 24.0	
			\$ 44.0
<u>Supplies:</u>			
Investigator III		\$ 1.0	
Auditor III		\$ 1.0	
Records and Licensing Supervisor		\$ 1.0	
Occupational Licensing Examiner I		\$ 1.0	
			\$ 4.0
<u>Equipment:</u>			
Investigator III		\$10.0	
Auditor III		\$10.0	
Records and Licensing Supervisor		\$10.0	
Occupational Licensing Examiner I		\$10.0	
			\$ 40.0
TOTAL COST			\$301.0

Lease Space is for locating the Gaming staff into their own office space. Currently located in Occupational Licensing on the 9th floor of the State Office Building in 450 sq. ft., this space is inadequate for current needs and, with the increased personnel, new space is a requirement.

The majority of the printing and postage cost is for the vendor endorsement license.

Equipment represents the cost for a workstation and computer.

REQUEST FOR NEW HIRE

POSITION TITLE: Investigator III
RANGE/STEP: 18a
SERVICE: Classified
TYPE OF POSITION: PFT
STAFF MONTHS: 12 Months

TYPE OF EXPENDITURE:

PERSONAL SERVICES:

SALARY: \$40.5
BENEFITS \$15.9

TOTAL PERSONAL SERVICES: \$56.4

TRAVEL: \$ 5.0
COMMODITIES: \$ 1.0
EQUIPMENT: \$10.0

TOTAL COST \$71.9

FUNDING SOURCE:

GENERAL FUND \$71.9

POSITION DUTIES:

- o Conduct investigations of permit or license violations and complaints.
- o Conduct inspections of premises, observe gaming activity to ensure compliance with statutes and regulations.
- o Issue Notices of Violations when appropriate and necessary.
- o Educate the participants with regard to statutes and regulations.
- o Assist the participants by providing the correct forms, and answering inquiries.
- o Occasionally assist the auditor(s) in gathering information/documentation.

IMPACT TO DIVISION/PROGRAM IF POSITION IS NOT FILLED:

Because of the numerous number of permittees and licensees, the expanse of the state, and the limited funding for travel purposes, many complaints and/or allegations could not be investigated.

REQUEST FOR NEW HIRE

POSITION TITLE: Auditor III
RANGE/STEP: 18a
SERVICE: Classified
TYPE OF POSITION: PFT
STAFF MONTHS: 12 Months

TYPE OF EXPENDITURE:

PERSONAL SERVICES:

SALARY: \$40.5
BENEFITS \$15.9

TOTAL PERSONAL SERVICES: \$56.4

TRAVEL: \$ 5.0
COMMODITIES: \$ 1.0
EQUIPMENT: \$10.0

TOTAL COST \$71.9

FUNDING SOURCE:

GENERAL FUND \$71.9

POSITION DUTIES:

- o Plan, organize and complete audits of permittees, operators and distributors.
- o Provide technical assistance to permittees, operators and distributors.
- o Provide information to inquiring persons regarding statutes and regulations.
- o Assist the investigator(s) when necessary.

IMPACT TO DIVISION/PROGRAM IF POSITION IS NOT FILLED:

Because of the numerous number of permittees and licensees, the expanse of the state, and the limited funding for travel purposes, many audits could not be done, thus, reducing the 1% net proceeds fee due the state.

REQUEST FOR NEW HIRE

POSITION TITLE: Records and Licensing Supervisor
RANGE/STEP: 16a
SERVICE: Classified
TYPE OF POSITION: PFT
STAFF MONTHS: 12 Months

TYPE OF EXPENDITURE:

PERSONAL SERVICES:

SALARY: \$35.5
BENEFITS \$14.5

TOTAL PERSONAL SERVICES: \$50.0

COMMODITIES: \$ 1.0
EQUIPMENT: \$10.0

TOTAL COST \$61.1

FUNDING SOURCE:

GENERAL FUND \$61.1

POSITION DUTIES:

- o Review the operator and distributor license applications, issue licenses for same as well as review the operator quarterly and annual reports, the pull-tab manufacturer and distributor monthly reports.
- o Supervise and monitor the licensing of permittees, operators and distributors.
- o Direct and guide procedures for actual issuance of permits and licenses and computer entry of same. Responsible for the overall recording and establishment of the licensing record and maintenance of these records.
- o Provide information technical assistance to the public and organizations regarding application of statutes, regulations and policies.
- o Responsible for form control and review of public handouts and applications to ensure proper format and content.

IMPACT TO DIVISION/PROGRAM IF POSITION IS NOT FILLED:

Responsibility for the day-to-day operations will be shouldered by the Gaming Program Manager.

REQUEST FOR NEW HIRE

POSITION TITLE: Occupational Licensing Examiner I
RANGE/STEP: 12
SERVICE: Classified
TYPE OF POSITION: PFT
STAFF MONTHS: 12 Months

TYPE OF EXPENDITURE:

PERSONAL SERVICES:

SALARY: \$27.8
BENEFITS: \$12.4

TOTAL PERSONAL SERVICES: \$40.2

SUPPLIES: \$ 1.0
EQUIPMENT: \$10.0

TOTAL COST \$51.2

FUNDING SOURCE:

GENERAL FUND \$51.2

POSITION DUTIES:

- o The review of permit applications, vendor endorsement applications, quarterly and annual financial statements.
- o Update and maintain computerized licensing and financial records as well as the licensing files.
- o Provide information and technical assistance to the public and organizations regarding application of statutes and regulations.

IMPACT TO DIVISION/PROGRAM IF POSITION IS NOT FILLED:

Responsibility for the above-listed duties would be shouldered by the current staff.

CALENDAR YEAR 1989

OPERATOR	GROSS RECEIPTS	PRIZES AWARDED	ADJUSTED GROSS INCOME	EXPENSES	OPERATOR FEE	NET PROCEEDS	# OF PERMITEES	BINGO	10 RAFFLES (CARDS)	11 PHU TABS	12 FISH DERBY	13
JOE NYQUIST	587607.80	465820254	1217870.26	611970.29	413184.42	192715.56	1					
JOHN BOWFIELD	1761047	1310592	450455	312308	70160	61987	3					
JAY ANNISON JR	4574822	3561415	1013407	61364854	11217510	25763336	10					
EDWARD DILLEY	952166267	737097146	215068501	144567150	36521663	33979768	25		✓	✓		
BOB THOMAS	7084200	3854898	3229302	2081496	558074	559732	10					
PETE KRAEMER	553727850	4603457	88382250	76657357	*	11744893	12	✓	✓	✓		
SUE GRIFFIN	16960378	13667221	3293157	2141782	332607	818768	27	✓	✓	✓		
DWIGHT MCBRIDE	2631174	2030929	600245	296006	214201	90336	5			✓		
STEVE COOPER	42466150	31982051	104684099	7634821	2949278	1013273	1			✓		
RUTH SHANNON	677195	527758	149436	98560	25461	22415	2			✓		
KEN DOLE	16500	20500	<9500>	100213	*	54875	1				✓	
SHIZLIE RUEBEL	243443	1003250	4506450	2699627	*	1606824	1			✓		

*-OPERATOR FEE NOT SEPARATED OUT FROM OTHER EXPENSES

METRO

THURSDAY

SECTION **D** March 21, 1991

Pull-tab law revision dismays charities

By **MATT KOHLMAN**
The Associated Press

JUNEAU — The latest revision of the state's pull-tab lottery regulations will do little to ease the hardship faced by charitable groups that depend on lottery income, the groups' representatives said Wednesday.

Under the revised regulations, bars, restaurants, grocery stores and other third-party vendors can sell pull-tab lottery tickets as long

as they receive no compensation. An emergency regulation passed in mid-January says the vendors can only rent space to charitable groups licensed to sell pull-tabs.

The revision allows the vendors to donate their space and time, said Assistant Attorney General Gary Amendola. "We'll find out how benevolent retail organizations want to be," he said.

In a news release on the change, Gov. Wally Hickel said he has

always opposed gambling. He added, however, that "as long as the state permits the sale of pull-tabs, the state also should ensure that all the profits from their sales reach the charities."

But Roger Cunningham, co-chairman of the Coalition for Non-Profit Gaming, said the ruling basically provides no change.

"This latest round of interpretations is not a large help to non-profits," he said. "Walter Hickel

did not become a millionaire by giving his services away for free, and that's precisely what he's asking merchants to do here."

The revision is a "non-story," said former Attorney General Ed Boyko, the coalition's attorney.

"The bottom line is they haven't fixed anything," Boyko said. "The problem is pressing, the charities are going broke and nobody cares."

"Who's going to donate? It's a grandstanding routine to make the

people believe the governor cares about the plight of the charities."

That plight started in December when Attorney General Charlie Cole banned the sale of pull-tabs in unlicensed outlets.

State law requires operators to have licenses, but the law was not enforced until this year. There were only 25 licensed operators in the state at the beginning of the

Please see Page D-3, **PULL-TABS**

Delay sought in Exxon deal

Lawmakers want review time

By **BRIAN S. AKRE**
The Associated Press

JUNEAU — Alaska legislators late Wednesday said they will ask a federal judge to postpone plans to consider the plea bargain of criminal charges against Exxon Corp. for the Prince William Sound oil spill.

The lawmakers said the plea bargain should not be signed before the legislature has a chance to review it as part of the recent settlement of the spill litigation.

Judge H. Russel Holland is scheduled to consider the case Friday in U.S. District



■ **SPILL STUDIES:** House Democrats pounded on Bush administration officials Wednesday about their refusal to release Exxon oil spill damage studies. **D-5**

began hearings on the settlement Tuesday and has 43 days left to endorse or reject it. House leaders complained that completing the criminal





KAY LEVINE

TROUBLESHOOTER

□ **READER SEEKS BAND MUSIC:** I was wondering if you know of any high school bands in Anchorage that sell tapes of their music. I love band music. Also, would you know where I can get some of those things you put on your shoes for walking on ice? Also, does anyone deal with antiques? I have some things I'd like to have appraised. Thanks. — D.R., Metlakatla

✓ So far as I could discover, local high school bands don't sell tapes of their music, but there may still be a way for you to purchase such a recording. As a sideline, a fellow named Bob Amos sometimes tapes the high school bands, usually for the participants. He said he might be able to provide what you want. You can write him at P.O. Box 230831, Anchorage 99523.

A number of stores sell ice grippers; Fred Meyer and Pay'N Save are two. If outlets near you don't carry the grippers, maybe a store will order them specially.

Certainly, there are antique dealers and firms specializing in appraisals. Anchorage has a few of each. The selection appears limited in Juneau, but you still should be able to find someone who can help you. Just look in the appropriate sections of the Yellow Pages.

□ **POSTAL INSPECTORS SPEED UP:** Troubleshooter frequently fumbles when readers ask why someone doesn't stop phony telemarketers. The answer seems to be that the bad guys are better motivated, something I hate to tell people. I was therefore heartened when the Alliance Against Fraud in Telemarketing reported recently that postal inspectors have begun using a federal statute passed in 1988 to quickly stop illegal operations and freeze their assets. The law authorizes



PULL-TABS: Charities irked

Continued from Page D-1

year, according to the state Division of Occupational Licensing, which oversees charitable gaming.

Regulations say licensed operators must pay charities at least 15 percent of adjusted gross sales after prizes are paid to pull-tab buyers. Third-party vendors faced no such requirements and made separate arrangements with individual charities.

Critics said the vendors increasingly charged charities for selling pull-tabs and made charities bid for space.

The ban and subsequent emergency modification sought to end that practice, state officials said. It should provide charities with a greater share of the proceeds, Amendola said.

But Cunningham said there was no evidence of widespread abuse. He said charities have lost an important money-producing outlet under the regulation.

"One hundred percent of nothing is nothing," he said.

POT: DEC officer arrested in Dutch Harbor

Continued from Page D-1

as far as speaking to us."

Moderate earthquake shakes Southcentral

The Associated Press

PALMER — A moderate earthquake measuring around 5 on the Richter scale struck Wednesday night about 40 miles northeast of Talkeetna, the Tsunami Warning Center reported.

There were no reports of damage from the quake, which occurred at about 8:05 p.m., said Tom Sokolowski, chief of the center.

The center measured the quake at a preliminary 5.1, while the Alaska Earthquake Information Center in Fairbanks said it was closer to 5.3.

He said the temblor was felt in Anchorage, Palmer, Wasilla, Knik and Talkeetna.

The quake's epicenter was about 110 miles north of Anchorage and about 13 miles south of Hurricane.

Charlotte Rowe of the Alaska Earthquake Information Center said Wednesday that a second earthquake, measuring 2.6, was centered about 50 miles west of the first one. She said the second didn't seem to be an aftershock of the first quake.

SPILL: Lawmakers want time

Continued from Page D-1

gotiated on the civil claims had a plea bargain not been possible on the criminal charges, the lawmakers said. With the plea bargain approved, there is no motivation for Exxon to negotiate further on the civil settlement should the legislature object to even minor points,

Grussendorf said.

Exxon spokesman Les Rogers in Houston declined to comment.

The tanker Exxon Valdez ran aground on a reef two years ago next Sunday, spewing nearly 11 million gallons of oil. The accident killed thousands of marine birds, fish and mammals.

be recovered by the DEC. Adrienne Stewart, acting personnel director for the

made a lot of enemies in his new job. Dutch Harbor is dominated by the fishing in-

HB

169

HOUSE COMMITTEE REPORT

(7)
Date Referred: February 25, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-5-91

The JUDICIARY Committee considered:

HB 169

HOUSE BILL NO. 169

SEARCH WARRANTS BY FACSIMILE MACHINE

"An Act relating to the issuance of a search warrant by facsimile machine."

RECOMMENDATIONS:
be replaced with CSHB 169 (JUD) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note public safety, court system

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Donald Dingle</i>					
<i>Mark Stanley</i>					
<i>James Martin</i>					
<i>Michael Miller</i>					
<i>Kerrin Paul Darnell</i>	<input checked="" type="checkbox"/>				
<i>Mark Stanley</i>					

Donald Dingle
CHAIRMAN'S SIGNATURE

BILL NO: HB 169

DATE: 3/5/91

TITLE: An act relating to the issuance of a search warrant by facsimile machine.

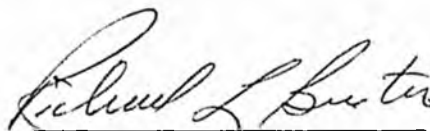
CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF
PUBLIC SAFETY

Existing law allows a judicial officer to issue a search warrant based on testimony received via phone. HB 169 amends AS 12.35.015 to make it clear that a search warrant issued by a judicial officer may be transmitted by facsimile machine ("fax") to the applicant.

The Department of Public Safety supports HB 169, which merely recognizes what has been occurring in some rural communities.

The Department recommends that proposed AS 12.35.015 be amended to make it clear that the application for a warrant could be faxed from the applicant to the judge, as well as authorizing the judge to fax the completed warrant to the applicant.



Richard L. Burton
Commissioner

RECEIVED
MARCH 11 1991
COMMUNICATIONS SECTION

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. CSHB 93 (HES)

Revision Date: 03/20/91 Department Affected: Alaska Court System
 Title: An Act eliminating a requirement that the BRU: Trial Courts
court consider the findings...of a neutral mediator...child custody Components: _____
 Sponsor: By the Judiciary Committee by request
 Requestor: Judiciary COMPONENT SERIAL NO.

000 000	000 768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 03/20/91

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 03/20/91
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029


Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

March 8, 1991

SUBJECT: HB 169's Effect on Court Rules

TO: Representative Dave Donley
Chair, House Judiciary Committee
Attn: Laurie Otto

FROM: David R. Dierdorff 
Revisor of Statutes

You have asked whether the provisions of HB 169, relating to the use of facsimile machines (FAX) in connection with search warrants, amends a court rule. It is my opinion that it does not.

Under the state constitution, the supreme court is given the power to "make and promulgate rules governing practice and procedure in civil and criminal cases in all courts." Sec. 15, Art. IV, Alaska Constitution. The same provision grants the legislature the right, by supermajority, to change these rules.

The supreme court has adopted Rule of Criminal Procedure 38.1(b), which provides:

(b) The provisions of AS 12.35.012 shall govern the issuance of search warrants by telephone.

The growth of the use of FAX machines, which are a form of telephonic communication, led the court system to request a bill making amendments to AS 12.35.012 that would allow the use of FAX-transmitted affidavits in connection with applications for search warrants, and also authorize the issuance of search warrants by FAX machines. That bill is HB 169.

Given the language of Rule 38.1(b), and the fact that the amendments to AS 12.35.015 merely modify telephonic procedures to keep up with changing technology, it is my opinion that the bill does not have the effect of changing a court rule. Presumably, the court system could have achieved their goal by amending their rules to expressly provide that "telephone" includes "facsimile," but the amendments to AS 12.35.015, incorporated by reference within Rule 38.1, will provide better notice

Representative Dave Donley
March 8, 1991
Page 2

to law enforcement personnel and the judiciary of the proper use of this technology. The amendment in bill section 1 to AS 12.35.010 does not alter my opinion, because that amendment is only a conforming amendment.

In short, HB 169 does not amend a court rule, it amends a statute that the court system has, by rule, deferred to.

DRD:pl
91-137.plm

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 25, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-5-91

The JUDICIARY Committee considered:

HB 169

HOUSE BILL NO. 169

SEARCH WARRANTS BY FACSIMILE MACHINE

"An Act relating to the issuance of a search warrant by facsimile machine."

RECOMMENDATIONS:

be replaced with _____ the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

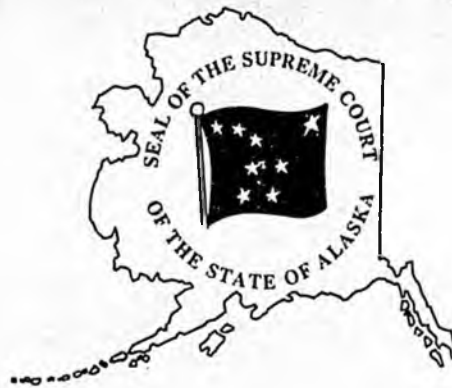
fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Wendell Sawyer</i>					
<i>Miss Gandy</i>					
<i>Carrie Martin</i>					
<i>Michael Miller</i>					
<i>Kevin Paul Durrell</i>					
<i>Mark Harley</i>					

CHAIRMAN'S SIGNATURE



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

March 3, 1991

The Honorable Dave Donley
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

Thank you for scheduling House Bill 169, relating to the issuance of a search warrant by facsimile machine.

At the present time, AS 12.35.015 provides that search warrants may be issued upon sworn oral testimony communicated by telephone. A common example involves a trooper in a remote community without a judicial officer who must call a court in another community in order to apply for a search warrant.

Unfortunately, this statute was adopted before the common availability of facsimile machines. As a result, it requires the applicant to prepare a "duplicate original search warrant" and read it verbatim to the judicial officer at the distant location. The judicial officer enters what is read on an original search warrant. If the judicial officer makes changes in the course of the hearing, the applicant is directed to modify the duplicate original. The judicial officer then signs the original warrant, indicates the exact time of signing, and orally authorizes the applicant to sign the judicial officer's name and enter the same time on the duplicate original.

A search warrant is a minimum of four pages long. Frequently, additional pages will be added in order to list the specific property for which the applicant is searching. Reading this document is time consuming, prone to error, and often unnecessary given the technological changes that have taken place since the original statute was drafted.

The Honorable Dave Donley
March 3, 1991
Page 2

To remedy this situation, HB 169 provides that the judicial officer may simply transmit the original search warrant by facsimile machine to the applicant. The facsimile warrant then serves as an original. Time will be saved by all involved in the process, and the accuracy of the final product will be improved.

Thank you for your courtesy. Please feel free to contact me if you have any questions or comments.

Very truly yours,



C. S. Christensen III
Staff Counsel

CSC:bh

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

SEARCH WARRANT NO. _____

TO: Any Peace Officer

Sworn testimony having been given by _____

An affidavit having been sworn to before me by _____

Following my finding on the record that there is probable cause to believe that 1) the presentation of the applicant's affidavit or testimony personally before a judicial officer would result in delay in obtaining a search warrant and in executing the search; and 2) the delay might result in loss or destruction of the evidence subject to seizure, recorded sworn testimony was given by telephone by _____

I find probable cause to believe that

on the person of _____

on the premises known as _____

_____ at _____, Alaska,
there is now being concealed property, namely:

SEARCH WARRANT NO. _____

and that such property (see AS 12.35.020)

- 1. is evidence of the particular crime(s) of _____
- 2. tends to show that _____
committed the particular crime(s) of _____
- 3. is stolen or embezzled property.
- 4. was used as a means of committing a crime.
- 5. is in the possession of a person who intends to use it as a means of committing a crime.
- 6. is one of the above types of property and is in the possession of _____, to whom _____ delivered it to conceal it.
- 7. is evidence of health and safety violations.

YOU ARE HEREBY COMMANDED to search the person or premises named for the property specified, serving this warrant, and if the property be found there, to seize it, holding it secure pending further order of the court, leaving a copy of this warrant, and all supporting affidavits, and a receipt of property taken. You shall also prepare a written inventory of any property seized as a result of the search pursuant to or in conjunction with the warrant. You shall make the inventory in the presence of the applicant for the warrant and the person from whose possession or premises the property is taken, if they are present, or in the presence of at least one credible person other than the warrant applicant or person from whose possession or premises said property is taken. You shall sign the inventory and return it and the warrant within 10 days after this date to any judge as required by law.

YOU SHALL SERVE THIS WARRANT:

- between the hours of 7:00 a.m. and 10:00 p.m.
- between the hours of _____ and _____.
- at any time of the day or night.

SEARCH WARRANT NO. _____

RECEIPT AND INVENTORY OF PROPERTY SEIZED
(Continued)

RETURN

I received the attached search warrant on _____, 19____, and have executed it as follows:

On _____, 19____, at _____ (a.m.)(p.m.), I searched (the person)(the premises) described in the warrant, and I left a copy of the warrant (with)(at) _____.
(person warrant was left with or place warrant was left)

The above inventory of property taken pursuant to the warrant was made in the presence of _____ and of _____.

I swear that this inventory is a true and detailed account of all property taken by me on the authority of this warrant.

Name and Title

Signed and sworn to before me on _____, 19____,

(SEAL)

Judge

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 169

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the issuance of BRU: Trial Courts
search warrant by facsimile machine Components: _____
 Sponsor: By Judiciary Committee by request
 Requestor: Judiciary COMPONENT SERIAL NO.

000 000	000 768
-----------	-----------

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

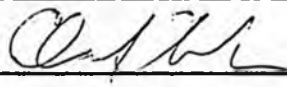
POSITIONS:

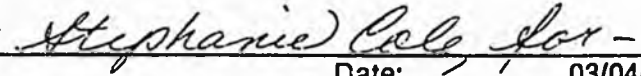
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 03/04/91

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 03/04/91
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

BILL NO: HB 169

DATE: 3/5/91

TITLE: An act relating to the
issuance of a search warrant
by facsimile machine.

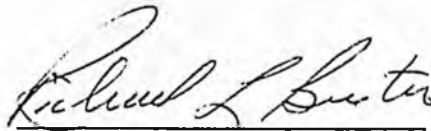
CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF
PUBLIC SAFETY

Existing law allows a judicial officer to issue a search warrant based on testimony received via phone. HB 169 amends AS 12.35.015 to make it clear that a search warrant issued by a judicial officer may be transmitted by facsimile machine ("fax") to the applicant.

The Department of Public Safety supports HB 169, which merely recognizes what has been occurring in some rural communities.

The Department recommends that proposed AS 12.35.015 be amended to make it clear that the application for a warrant could be faxed from the applicant to the judge, as well as authorizing the judge to fax the completed warrant to the applicant.



Richard L. Burton
Commissioner

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HB

171



American Tort Reform Association

1212 New York Avenue, N.W. • Suite 515 • Washington, D.C. 20005 • (202) 682-1163

April 4, 1992

Honorable Gene Kubina
Chairman
House State Affairs Committee
Alaska House of Representatives
State Capitol
P.O. Box V
Juneau, AK 99811

Dear Chairman Kubina:

The American Tort Reform Association opposes HB 171, which would eradicate the right to privacy and increase cost and delay in the legal system. Twenty-eight states have rejected this trial lawyer legislation. This bill would increase the number of lawsuits filed, strip our judicial branch of its discretion in deciding issues of law, and invade the privacy of both plaintiffs and defendants.

The use of protective orders is already limited by Alaska Rules of Civil Procedure 24, 26(c), 26(f), 29, 30(d), and 37(a)(2). There is nothing in the Alaska Code that allows concealment of public hazards. Additionally, many state and federal laws exist primarily to inform the public of public hazards, be they product, environmental or financial. Many Federal acts and agencies also regulate products, substances and professional groups; the FDA, CPSC and OSHA to name a few. The functions of these important consumer safety agencies can never be replaced by the minuscule amount of public safety information that comes through the court system. Courts exist to resolve disputes, not act as regulatory or administrative agencies.

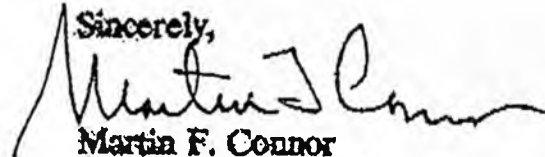
HB 171 would be a triple threat to control of the litigation explosion in this country. It would at once allow a party to a lawsuit to act as the judge in determining the application of the Alaska Civil Code sections referred to above, it would discourage settlement of lawsuits by removing the incentive of confidentiality, and it would create additional litigation by worsening the existing practice of selling information produced in cases, which produces new lawsuits. HB 171 will not guarantee a dissemination of worthwhile safety information to the public, but it will guarantee higher litigation costs for everyone by increasing the duration and complexity of lawsuits.

Finally, HB 171 is against public policy because it would immediately penalize anyone named in or contributing information to a lawsuit by taking away the right to privacy without any proof of guilt and regardless of the outcome. For the individual this could mean that

a non-party testifying in a lawsuit could be subject to public scrutiny. For a company, trade secrets and other important corporate information could be published at any time. Again, both plaintiffs and defendants (and their counsel) would be hurt by this. The public has nothing to gain from HB 171, but everything to lose in terms of its right of privacy.

For these reasons the American Tort Reform Association (ATRA) urges that HB 171 be held in your committee. You should know that ATRA is a broad based coalition made up of 375 member organizations; including non-profits, professional societies, trade associations, large corporations, and small businesses. A copy of our membership list is attached for your consideration.

Sincerely,



Martin F. Connor
President

American Tort Reform Association

January 21, 1992

Page 1

Aetna
Academy of Model Aeronautics
Acme Exterminating Corporation
Adams and Reece
Alabama Civil Justice
Reform Committee
Alabama Hospital Association
Albemarle Women's Clinic
Alexander & Alexander Services, Inc.
Alliance of American Insurers
American Academy of Orthopaedic
Surgeons
American Academy of Otolaryngology
American Academy of Pediatrics
American Association for Counseling
and Development
American Association of
Neurological Surgeons
American Association of Blood Banks
American Association of Engineering
Societies
American Association of Nurserymen
American Bus Association
American Camping Association, Inc.
American Centennial Insurance
Company
American College of Obstetricians
and Gynecologists
American College of Osteopathic
Surgeons
American College of Physicians
American College of Radiology
American College of Surgeons
American Consulting Engineers
Council
American Council of Independent
Laboratories
American Feed Industry Association
American Hardware Manufacturers
Association
American Home Lighting Institute
American Home Products Corporation
American Hospital Association
American Institute of Architects
American Institute of Certified
Planners
American Institute of Certified
Public Accountants
American Insurance Association
American Legislative
Exchange Council
American Machine Tool
Distributor's Association

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American Medical Association
American Nurses Association
American Optometric Association
American Orthotic and
Prosthetic Association
American Osteopathic Association
American Physical Society
American Red Cross
American Shooting Sports Coalition
American Society for Healthcare
Risk Management
American Society for Surgery
of the Hand
American Society of
Colon and Rectal Surgeons
American Society of
Mechanical Engineers
American Urological Association
American Waterworks Association
Artex Insurance Agency, Inc.
Associated Specialty
Contractors, Inc.
Associated Wire Rope Fabricators
Association for Advancement
of Anesthesia
Association for California
Tort Reform
Association of Commerce and
Industry of New Mexico
Association of Soil & Foundation
Engineers
Augusta Properties
Automobile Importers of
America, Inc.
BSK & Associates
Bayard, Handelman & Murdoch
Beer Institute
Bethlehem Steel Corporation
Blood Center for SE Louisiana
Blood Center of SE Wisconsin, Inc.
Boeing Company
Boy Scouts of America
Builders Hardware Manufacturers
Association
Business & Institutional Furniture
Manufacturers Association
CH2M Hill
CHAIS
COPIC Trust
Casting Industry Supply Association
Centel Corporation
Center for the Study of
Drug Development

American Tort Reform Association

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Central Blood Bank, Pittsburgh PA
Century Surety Company
Chemical Manufacturers Association
Citizens Coalition for Tort Reform
(Alaska)
Citizens Initiative for Equity
in the Legal System (OR)
Citizens on Uniform
Reasonable Torts (WY)
City of New York Law Department
Civil Justice Coalition (MN)
Clorox Company
Coalition for Availability and
Affordability of Insurance (NV)
Coalition of Americans
to Protect Sports
Congress of Neurological
Surgeons
Conning & Company
Continental Insurance
Cooper Industries
Council of Community Blood
Centers
Council of State Chambers
of Commerce
Court Security Systems, Inc.
Covington & Burling
Creative Settlements, Inc.
Credi-Care
Crosby Group, Inc.
Crum & Forster Insurance Company
Cuyahoga Chemical Company
Damon Raika & Company, Inc.
Dana Corporation
DeLeuw, Cather & Company
Deere & Company
Design Professionals Insurance
Company
Doctors' Company
Dow Chemical Company
Eagle Crusher Company
Eaton Corporation
Echelon Skating Center, Inc.
Edward B. O'Reilly & Associates Inc.
Elevator World
Eli Lilly and Company
Elite Mushroom Company
Emerson Electric Company
Enserch Corporation
Environmental Compliance Services
Environmental Resources Management
Equipment Manufacturers Institute
Erdman, Anthony, Associates

American Tort Reform Association

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Page 4

Exchange Mutual Insurance Company
Exxon Company, U.S.A.
FOJP Service Corporation
Federation of Advocates
for Insurance Reforms (NJ)
Fluor Corporation
Foth & Van Dyke & Associates
G & W Electric Company
GEICO
Gannett Fleming
Garvon, Inc.
Gas Appliance Manufacturers
Association
Gehris, Heroy & Associates
General Aviation Manufacturers
Association
General Electric Company
Golden Rule Insurance Company
Golder Associates
Gordon Cologne & Associates
Great American Insurance Companies
Great Plains Ventures, Inc.
Greater North Dakota Association
Gypsum Association
H.A. Just Waterproofing
Hallen Construction Company
Hanover Insurance Companies
Hartford Insurance Group
Haskell Chemical Company, Inc.
Hawaii Insurance Council
Hawaii Product Liability
Task Force
Health Care Insurance Company
Hensley-Schmidt, Inc.
Housemaster of America
Humana, Inc.
Idaho Liability
Reform Coalition
Illinois Product Liability Project
Independant Gas Company
Indiana Forum for Fair
Liability Laws
Institute of Electrical and
Electronics Engineers
International Association of
Shopping Centers
International Insurance
Services, Ltd.
International Staple, Nail
and Tool Association
Iowa Alliance for Liability Reform
James L. Cromwell, M.D., Inc.
Jervis B. Webb Company

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January 21, 1992

Page 5

Johnson & Higgins
Johnson & Johnson
Juvenile Products Manufacturers
Association
Kansas Civil Law Forum
King, Hall & Associates, Inc.
Kroll, Tract
Lackawanna County Medical Society
Lawyers for Civil Justice
Lembo Research and Development
Company, Inc.
Lev Zetlin Association
Liability Task Force (LA)
Libel Defense Resource Center
Liberty Mutual Insurance Company
Lindy's Air Conditioning
& Heating, Inc.
Litton Industries, Inc.
Louisiana Dental Association
Louisiana Hospital Association
Lovell Safety Management
Company, Inc.
M. Cortese Trucking Company, Inc.
Mader Construction Corporation
Maine Liability Crisis Alliance
Marine Index Bureau, Inc.
Marsh & McLennan Worldwide
McDermott, Will & Emery
Merck & Company, Inc.
Merrill Lynch, Pierce,
Fenner & Smith, Inc.
Michigan Community Blood Center
Midland National Life Insurance
Company
Minnesota Mining & Manufacturing
Company
Mississippi Valley Regional
Blood Center
Missouri Society of
Anesthesiologists
Missourians for Civil Justice
Reform
Mobil Corporation
Monsanto Company
Montana Liability Coalition
Montana Sulphur & Chemical Company
Murray Insurance Associates
Mutual Assurance Company
National Association of
Casualty and Surety Agents
National Association of
Exposition Managers
National Association of
Independent Insurers

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National Association of
Manufacturers
National Association of
Mutual Insurance Companies
National Association of
Professional Insurance Agents
National Association of
Secondary School Principals
National Association of
Water Companies
National Association of
Wholesaler Distributors
National Capital Reciprocal
Insurance Company
National Electrical Contractors
Association
National Electrical Contractors
Association Maryland Chapter
National Electrical Manufacturers
Association
National Forest Recreation
Association
National Industrial Sand
Association
National Institute of
Municipal Law Officers
National Paint and Coating
Association
National Pest Control Association
National Professional Management
Corporation, Inc.
National Propane Gas Association
National Roofing Contractors
Association
National School Boards
Association
National Seminars and Education
Institute
National Small Business United
National Society of Professional
Engineers
National Solid Waste Management
Association
National Structured Settlement
Trade Association
National Tooling and Machining
Association
Nationwide Insurance Companies
Nevada State Medical Association
New Hampshire Coalition for
Affordable & Available Insurance
New Hampshire Medical Society
New York Blood Center

APR-22-1992 15:15 FROM ...

American Tort Reform Association

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Non-Prescription Drug
Manufacturers Association
North Dakota Task Force
on Liability Insurance
Ohio Alliance for Civil Justice
Oil Capital Electric, Inc.
Oklahoma Municipal League
Oklahomans Against Lawsuit Abuse
Olympia Trails Bus Company, Inc.
Otis Elevator Company
Outdoor Power Equipment Institute
PIE Mutual Insurance Company
Pennsylvania Civil Justice
Coalition
Pennsylvania Manufacturers
Association
Pennsylvania Medical Society
Pennsylvania Task Force on
Product Liability
Pension Company
Pfizer, Inc.
Pharmaceutical Manufacturers
Association
Philadelphia County
Medical Society
Pinole Medical Group
Powder Actuated Tools
Manufacturers Institute, Inc.
Prime-Line Marketing
Product Liability Task Force
of Mississippi, Inc.
Product Liability Task Force (MI)
Professional Lawn & Pest
Applicators
Project Civil Reform, Inc. (FL)
R.S. Eagan & Company
Reiter Construction Company, Inc.
Reliance Reinsurance Corporation
Research Solvents and
Chemicals, Inc.
Rhode Island Chamber of Commerce
Federation
Ringler Associates, Inc.
Rio Grande Valley Chamber
of Commerce
Riverside Cance Trips, Inc.
Rockwell International
Rogers Mechanical Company
Roller Skating Rink Operators
Association
SYNTEX
San Bernardino County
Transportation Flood Control

American Tort Reform Association

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Sandmeyer Steel Company
Scandia Family Fun Centers
Seagull Operating Company, Ltd.
Seamcraft, Inc.
Senco Products, Inc.
Sierra Chemical Company
Slug-A-Bug
Small Business Legislative Council
Soberay Machine & Equipment
Society of the Plastics Industry
Soltek of San Diego
South Carolina Civil
Justice Coalition
South Carolina Retail Fireworks
Association
Southeastern Pennsylvania
Transportation Authority
Specialty Advertising Association
International
Sporting Arms & Ammunition
Manufacturers Association
State Farm Insurance Companies
Stateside Associates, Inc.
Stiles & Taylor, P.A.
Stone & Webster Engineering Corp.
Suburban Cardiovascular Specialists
TAMS Consultants
TRW Inc.
Taussig Corporation
Taxpayers for Fair Responsibility
(CA)
Ten Thousand Waves, Inc.
Tennessee Association for
Civil Justice Reform
Tennessee Dental Association
Texas Civil Justice League
Texas Council of Engineering
Laboratories
Tort Reform Alliance
of Illinois (TRAIL)
Tort Reform Association of
Kentucky (TRAK)
Tort Reform Task Force (DE)
Transamerica Insurance Company
Transco Insurance Services
Travelers Companies
Triten Corporation
U.S. AIG
U.S. Business & Industrial Council
Union Carbide Corporation
United Ski Industries Association
Vermont Tort Reform Coalition
Vulcan Materials Company

STATEMENT

Mary A. Nordale
Robertson, Monagle & Eastaugh
240 Main Street, Suite 800
Juneau, Alaska 99801

My name is Mary A. Nordale and I appear today in behalf of the American Insurance Association in opposition to House Bill 171.

House Bill 171 seeks to change radically the course of trials and trial preparation and would require judges to render decisions on ultimate facts before the normal course of pretrial discovery is completed, let alone the trial itself. By prohibiting a judge from entering protective orders during the course of pretrial discovery without first examining the evidence produced and making the determination that there either is or is not evidence of a hazard and that hazard is or is not a public hazard, the probability of a fair trial is significantly diminished. In fashioning orders throughout the pretrial order, the court could not escape being influenced by his determination as to the existence of a public hazard.

Discovery is the process by which opposing parties learn the facts to be relied on for trial and the process is essential under our system of civil justice. Impairing or impeding the free flow of information will impair justice and the rights of litigants.

The costs of litigation would be increased significantly because the requirement of examination can be invoked by an "interested person." The Alaska Supreme Court has construed terms such as "interested person" very broadly so the expectation is that almost any busybody can force parties to litigation and courts to expend vast amounts of time and money in litigating, first of all, whether the "interested person" is an "interested person" and then whether or not evidence of a public hazard exists. The term "public hazard" is so broad that it could constitute anything, tangible or intangible, that might cause injury.

In the last decade or so the Alaska Supreme Court and the federal court system have sought to diminish the fiscal impact of discovery, shifting more and more of the burden of determining the probity and value of evidence to the parties. House Bill 171 would reverse that trend, forcing the courts once again to become involved in the discovery process, diverting the resources of the courts from trials and other matters of importance to the people seeking their aid. We could be forced into the situation of several states of not being able to bring civil cases to trial for five to 10 years even though we would have added 5 to 10 judges to handle the workload.

Because this type of legislation is foremost on the American Trial Lawyers Association's agenda, several states have had the opportunity to study the issues raised. Florida has enacted such legislation and is now trying to cope with the burden it has placed on the fiscal resources of that court system. Idaho and Montana have rejected the legislation because of cost.

Most of the information sought to be disclosed through legislation such as House Bill 171 is available to the public. There are data bases easily accessible through libraries, industry publications, electronic data bases, magazines and the like. Research in such sources can be time-consuming and attorneys do not like to spend time for which they are not paid. Generating clients and target defendants becomes much easier if legislation such as House Bill 171 is enacted.

Not only will the costs to the court system escalate and the demand for additional judges grow, but the costs to everyone will grow, through increased attorney fees, increased insurance premiums and, generally, the increased cost of doing business. All of these costs are, in some way, passed on to the consumer. With all of this increase in cost, no showing has been made that the consumer will benefit.

My experience as a trial lawyer compels me to advise clients that they may lose more than they gain if, as plaintiffs, they litigate claims of less than \$25,000 using attorneys. If you look at the dockets of the courts, you will see that there are hundreds of cases being pursued that involve claims of less than \$25,000, many through attorneys. Litigation simply isn't cheap, but sometimes it is necessary. Now, regardless of the subject matter of the litigation a stranger to the issues can inject himself and raise the cost beyond what ordinary litigants can afford. What a bill such as House Bill 171 will do is force people with good causes of action and good defenses to sacrifice their rights to seek resolution through the court system simply because by litigating, they can become victims of intermeddlers and of economic warfare.

There are other, fairer solutions, if a problem exists, and I would urge this committee to seek information as to what perceived problems exist for which this legislation is proposed as a solution and address those problems without closing the doors of the courtrooms of Alaska to individual litigants.

MEMO

TO: HOUSE STATE AFFAIRS COMMITTEE
CHAIRMAN - GENE KUBINA

FROM: KATHRYN KOLKHORST
RUDDY, BRADLEY & KOLKHORST
Member, Defense Bar
Representing - Lawyers For Civil Justice
Motor Vehicle Manufacturers Assn.

DATE: April 2, 1991

RE: OPPOSITION TO HOUSE BILL 171

1. This bill would interfere with the state court system and tie the hands of the judges. This bill would interfere with the existing state judicial process and end the discretion of the courts as to whether or not and to what extent to issue protective orders on any litigation before them. Matters of discovery¹ and the approval of settlement agreements² are matters which should be left to the court which is familiar with the individual case and not dictated in a blanket manner by the legislature.

Furthermore, this bill purports to change no fewer than six of the existing Alaska Rules of Civil Procedure.³

¹ Discovery is a pretrial process that requires parties to litigation to exchange information to help prepare for trial. Highly confidential information and documents - including trade secrets - are often exchanged, including information that may not be admissible at trial. At the request of one, or often both, of the parties, court may issue protective orders ensuring the confidentiality of this information by prohibiting its disclosure outside of the litigation.

² Settlement agreements are contracts between private parties often also approved by the court settling legal disputes outside of the trial process. These agreements often contain provisions which require that the parties not reveal the terms, conditions or amounts of the settlements. Often an agreement requiring confidentiality provides strong incentives for defendants to settle cases on terms favorable to the claimants.

³ Alaska Rules of Civil Procedure 24, 26(c), 26(f), 29, 30(d) and 37(a)(2).

2. This bill would cause extra work for the court system and ultimately require more state judges. It is to be expected that the fiscal note of this bill would require the costs of appointing and paying more state judges, as an important incentive for settling cases would be eliminated by this bill. If confidentiality in discovery cannot be protected, litigants will fight every document request that an opposing party makes for information that may be sensitive or confidential. Confidentiality promotes cooperation in discovery and private settlement of legal disputes outside the courtroom and without it there will be more cases that take longer time and require new judges.

This bill would essentially make the court system the clearing house for information generated in litigation between two parties. The proper agencies for discovering and addressing public health hazards are the agencies of the executive branch: the Department of Environmental Conservation, Department of Labor, and the like.

3. There are many proper purposes for confidentiality and privacy. Confidentiality plays a legitimate role in litigation as plaintiffs, defendants and witnesses will often expose very personal, sensitive information in courts. Public disclosure of this information would be an unwarranted invasion of the right to privacy. Furthermore, corporations and businesses must frequently reveal information of great commercial value, including trade secrets, in order to resolve lawsuits. This is information in which the organization has a valuable property right and enforced disclosure of this information to competitors could be an unconstitutional taking of private property.

Under existing discovery rules a court must be satisfied that there is "a good cause" to issue the protective order⁴ to prevent the potential abuse of the information. With a protective order in place during discovery, the court can require the litigants to disclose information among themselves without fear of public disclosure and without constant judicial supervision.

The right to privacy and the right to exclusive ownership of private property are fundamental rights protected by our Constitution. Both are lost when private information becomes public or a trade secret is revealed to a competitor.

4. This legislation would promote spurious lawsuits. Although the advocates of this legislation in other states argue that protective orders are used to conceal information about dangerous consumer products or harmful corporate practices, it appears, unfortunately, that the real reason behind this

⁴ Alaska Rule of Civil Procedure 26(c).

legislation is to allow plaintiff's lawyers to share or sell information gained from reading court files of other litigation, perpetuating the litigation explosion and generating additional contingency fees. When members of the plaintiff's bar package and sell information obtained from one lawsuit for use in another lawsuit, "copycat" lawsuits and other spurious lawsuits are generated, producing contingency fees for the plaintiff's bar but no public benefit.

In summary, protective orders and the confidentiality they ensure are a crucial device in our litigation system. The rules governing discovery and settlement operate as a system of checks and balances designed to ensure that both parties in litigation are treated fairly. Because the Rules of Civil Procedure give parties access to the opponent's most sensitive and confidential information, courts must have the authority to balance this intrusion with a guarantee of confidentiality. This legislation would interfere with that balance.



TORTS

By Michael Schneider

In February, 1991, the House Judiciary Committee, led by Representative Dave Donley, (D-Anchorage) introduced HB 171: "An Act Restricting Court Orders and Certain Private Agreements Relating to the Concealment of Public Hazards and Information on Public Hazards; and Amending Alaska Rules of Civil Procedure 24, 26(c), 26(f), 29, 30(d), and 37(a)(2)."

The notion is not novel. At least eight states will be considering similar legislation during the 1991 legislative session. Florida, North Carolina, and Virginia have passed secrecy/protective-order legislation in the last two years. California (San Diego Superior Court), New York, and Texas have amended their rules of court or their rules of civil procedure to prohibit secrecy/protective orders. A model "Sunshine in Litigation" act has been circulating around the country for the last couple of years and is being considered, at least as an alternative, by our legislature and the states mentioned above.

It's pretty obvious to attorneys why legislation of this type is being considered. The worse the defendant's conduct, the more widespread, the more it tends to affect (or potentially affect) a large class of people, the more it tends to be a "public hazard," and the greater the damages likely to flow from the hazard, the more likely it is that any offer of peace will be coupled with a demand for confidentiality.

The confidentiality provision

typically addresses not only the fact of settlement, but the terms of the settlement and all the materials obtained in the course of the case. Orders are often issued in furtherance of these agreements (upon a stipulation of the parties) sealing the court record and/or requiring the return or disposal of documents obtained or disclosed during the case. While we are all forced to enter these agreements to promote our clients' interests, the public interest in being able to define and recognize dangerous products or dangerous practices and the interest of future litigants in being able to prove their case without "mining the game nugget" time after time after time suffers drastically as a result of this conspiracy of silence.

HB 171 is short and to the point. It imposes upon the court a duty to "examine the materials in camera" that are subject of a motion for an order prohibiting disclosure. If the materials or information have previously been disclosed, or concern "a public hazard," then the court is commanded not to enter the requested order. An "interested person," has standing to challenge a secrecy or protective order. An "interested person" is to be construed as that term is used in AS 44.62.300, and does not include a party to the litigation or to the agreement out of which the request for secrecy flows. While this definition is fairly broad, it could be a lot broader and does not clearly include classes such as the news media. Under HB 171, private agreements on materials con-

cerning public hazards are void and may not be enforced. A public hazard is defined to be "an instrumentality that has caused injury to a person or property, and includes a device, instrument, person, procedure, or product, and a condition of a device, instrument, person, procedure, or product."

In my opinion HB 171 should be passed. Nevertheless, this bill could be a lot better than it is. The model "Sunshine in Litigation" Act of 1991 does a better job of addressing the legitimate concerns that are the subject of HB 171. Some examples follow:

1. Unlike the model act, HB 171 doesn't extend to settlement terms or the amount of a settlement.

2. The model act contains a legal presumption of openness. The burden is placed upon those demanding secrecy and confidentiality to prove the merit of their position. HB 171 does not do this.

3. The model act clearly specifies the types of information that may qualify for secret treatment. For instance, the model act recognizes that there is no interest in openness (secrecy is thus authorized) as to "private facts concerning a natural person or trade secrets or other confidential research, development, or commercially secret data."

4. "Interested person" is more broadly and less ambiguously defined than in the version of HB 171 that I reviewed.

5. The model act provides for automatic access to discovery generated in other litigation by parties with similar or identical

claims.

6. The model act contains a public-notice provision. If litigants or any other "interested person" are going to fight over secrecy, the public is given notice of the battle and an opportunity to attend.

7. The model act provides for attorney's fees to public-interest litigants where a request for secrecy is successfully opposed.

8. Under the provisions of the model act, it is extremely difficult to hide relevant information about public hazards from governmental or regulatory agencies.

The legislature has already received vigorous opposition to HB 171 from such public-spirited folks as the American Insurance Association, the Motor Vehicle Manufacturers Association, the Pharmaceutical Manufacturers Association, and Lawyers for Civil Justice (and who do you suppose this outfit represents...?).

If any of you really believe that promoting secrecy in litigation is good public policy for the state of Alaska, I would really appreciate it if you would take a moment to commit your thoughts to writing and send them to me. On the other hand, if you believe, as I do, that HB 171 (and better yet, the model act) is an idea whose time has come, I'd encourage you to get your views to the legislature immediately. As you know, this can be done with a telephone call to your local legislative information office and a request that your brief message be communicated to all members of the legislature.

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Chairman
State Affairs
Committee

Legislative Council

Transportation
Committee

April 3, 1992

Christine Johnson, Esquire
Court Rules Attorney
303 K Street
Anchorage, AK 99501

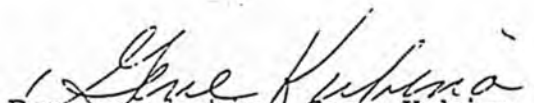
Dear Ms. Johnson,

Today the House State Affairs Committee considered HB 171: "An Act restricting court orders and certain private agreements relating to the concealment of public hazards and information on public hazards; and amending Alaska Rules of Civil Procedure 24, 26(c), 26(f), 29, 30(d), and 37(a)(2)."

HB 171 was passed out of this committee and is now in the House Judiciary Committee. We respectfully request that you consider the bill to decide whether the issue would be better addressed by court rule changes or new rules rather than by legislation. In addition, we request that you give the House Judiciary Committee your position promptly so that they may hold a hearing on HB 171 before the end of this legislative session.

I am enclosing a copy of the bill and all of the supporting documentation the committee has received. If you have any questions, please feel free to contact me. Thank you very much for your assistance in this matter.

Sincerely,


Representative Eugene Kubina, Chairman
House State Affairs Committee

— DISTRICT SIX —

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •

MALONEY & HAGGART

ATTORNEYS AT LAW

P. DENNIS MALONEY, P.C.
RICHARD G. HAGGART

405 WEST 36TH AVE., SUITE 200
ANCHORAGE, ALASKA 99503

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(907) 561-4603
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(907) 562-7888

January 27, 1992

Representative Dave Donley
Room 122, Capitol
P.O. Box V
Juneau, AK 99811

Re: HB 171

Dear Representative Donley:

This letter is to express my support for House Bill 171 introduced last session by the Alaska House Judiciary Committee.

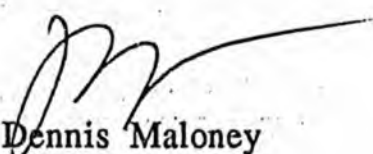
I believe that a bill which prohibits sealing court records to conceal public hazards should be a high priority. The public has a right to know of the dangers of any defective products which could result in injury. Likewise, professionals should not be able to continue practicing without having to account to the public for providing substandard services.

In the past several years, I have been involved in two cases where the sealing of court records deprived the public of its right to know. In one instance, documents proving that State Farm Insurance Company takes advantage of its own insureds by routinely denying payments under medical pay provisions were returned and suppressed by stipulation because of the protection practice problem. In the second case, documents which proved that the Chrysler Volare was manufactured with defective headrests resulting in my client receiving a broken neck in a low speed collision, were also ordered returned and the amount of the settlement was suppressed.

Please give this matter your consideration and support.

Very truly yours,

MALONEY & HAGGART


P. Dennis Maloney

PDM/drm





Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 L Street, Suite 104 • Anchorage
(907) 258-4040

-EB 6 1992

February 3, 1992

The Honorable Gene Kubina
Chair, State Affairs Committee
Alaska State House of Representatives
Alaska State Capital
Juneau, Alaska 99801

Re: HB 171 -- The Sunshine in Litigation Act

Dear Gene:

We recently received the enclosed letter from Lloyd Doggett, a Justice of the Texas Supreme Court. I thought you might be interested in reading it. Justice Doggett indicates that the Sunshine in Litigation Rule adopted in Texas has not had the effect of increasing litigation, as its critics predicted. He strongly supports our efforts to enact HB 171, and has offered whatever assistance he might provide towards that end.

Please let me know when you plan to schedule hearings on this bill. I will plan to attend them in Juneau at that time.

Very truly yours,

Russell L. Winner, Chair

cc: The Honorable Dave Donley, w/ encl.

E:\ACTIONTR\KUBINA2.LTR



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

P.O. BOX 12248 AUSTIN, TEXAS 78711

CLERK
JOHN T. ADAMS

JUSTICES
RAUL A. GONZALEZ
OSCAR H. MAUZY
EUGENE A. COOK
JACK HIGHTOWER
NATHAN L. HECHT
LLOYD DOGGETT
JOHNY CORNYN
ROBERT A. "BOB" GAMMAGE

TEL: (512) 463-1312

FAX: (512) 463-1363

EXECUTIVE ASST.
WILLIAM L. WILLIS

ADMINISTRATIVE ASST.
MARY ANN DEFTBAUGH

January 28, 1992

Debra C. Gravo
Executive Director
Alaska Action Trust
P. O. Box 102323
Anchorage, Alaska 99510

Dear Ms. Gravo:

Thank you for providing current information on Alaska's efforts. If it would be helpful in any way, I would be willing to personally discuss at length our experience and, if it should prove necessary, various alternatives to the Texas Rule that might appear to be compromises but would achieve most of the objective of the Rule.

With approximately a year and a half of experience under both the Texas Rule and the Florida statute discouraging court secrecy, there have not yet been any published appellate opinions. Our Supreme Court has received only one direct request from a media organization for documents in a pending appeal. This was denied with an order noting that the trial court had previously adopted a protective order covering the same documents and was empowered to modify its order under Rule 76a if any modification was justified. The court has at least one other case pending which involves the appropriate method for appellate review of a trial court determination on disclosability. Another appellate review issue has been considered in an unpublished opinion of an intermediate court of appeals.

Texas is the only state in the nation which has a readily accessible data base for evaluating the type and number of secrecy

requests that are being made. This results from the requirement in Rule 76a that all public notices announcing a request for closure be filed with the Clerk of the Supreme Court. From September 1, 1990 to January 23, 1992, notices were filed in 106 cases involving wide-ranging subject matter and types of documents. While the largest single category appears to be requests by defendants in products liability cases, a number have come from plaintiffs in personal injury and non-personal injury claims.

The insistence of the opponents of openness that our courts would be strangled by battles over secrecy have proven false. No doubt this is true in part because those who lack a legitimate basis for secrecy are less likely to demand it when the extensive requirements of Rule 76a must be satisfied. There have been few reported interventions by third parties seeking to oppose secrecy.

Undoubtedly our rule is not perfect and further experience may indicate the need for some improvement. However, I believe that Rule 76a is accomplishing its purpose with no significant adverse side effects on either our judiciary or our business community.

Unfortunately in our State and across the country the culture of secrecy had become so commonplace that it enveloped litigation even when any actual benefits were minimal. "Why take a chance on openness when secrecy is so readily available" became the standard mindset. Countering this growing trend, we recognized that public court records are rich with democracy's indispensable raw material: information.

Several concerns were present in our adoption of Rule 76a. First, greater access to civil judicial records promotes public health and safety. Secrets that are buried in court records preclude public recognition of dangers, accident prevention, and a reduction of injury exposure. In this sense, court secrecy can, literally, kill and maim. Attorney Generals in both Texas and New York have also emphasized the danger to the public when secrecy orders deny law enforcement agencies information necessary to their effective operation.

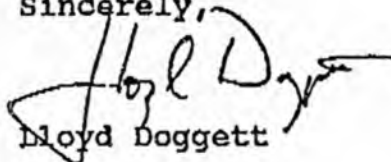
Second, access to judicial records encourages greater integrity from attorneys and their clients. If documents are made public in one case, a party is less likely to deny their existence in later

litigation. In this regard, the courts are not burdened; rather they are unburdened of the task of hearing repetitive battles over the same discovery disputes.

Third, access ensures greater integrity from the bench. An old adage tells us that "doctors bury their mistakes, but judges publish theirs." Inspection of public records provides a check upon the judiciary and the "good-ol'-boy system" that sometimes develops between judges and favored lawyers.

I commend you and your colleagues for tackling this tough issue and stand ready to provide any assistance that may be appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "Lloyd Doggett", with a stylized flourish extending to the right.

Lloyd Doggett

LD:vs

Monsanto

FRANCIS J. STOKES
Director, Policy Planning

Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Phone: (314) 694-1000

April 2, 1992

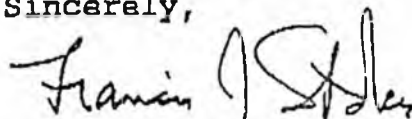
The Honorable Gene Kubina
Chairman
House State Affairs Committee

Dear Chairman Kubina:

Monsanto opposes Alaska House Bill 171 that prohibits courts from ordering non-disclosure of information concerning public hazards.

Removing this protection would harm both plaintiffs and defendants who have information that should be kept confidential. Businesses stand to lose valuable trade secrets. The public's interest in good corporate conduct is better served by government regulatory agencies and criminal prosecution -- not by the indiscriminate release of confidential information gathered in lawsuits.

Sincerely,



Francis J. Stokes

cc: Members of the House State Affairs Committee

LAW OFFICES

Richmond & Quinn

A PROFESSIONAL CORPORATION
 360 N STREET, SUITE 200
 ANCHORAGE, ALASKA 99501

CYNTHIA K. ALLEN
 MICHAEL T. KONGDAL
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 KENNETH L. RICHMOND
 LESTER K. SYKES
 RICHARD E. WELSH
 MARC G. WILHELM

TELEPHONE
 AREA CODE 907
 276-5727

FACSIMILE
 (907) 276-2953

April 8, 1992

VIA TELECOPIER

Representative Dave Donley
 House Rules Committee
 Alaska State Capitol
 Juneau, Alaska 99801-1182

Dear Representative Donley:

We are writing to urge you as a member of the House Rules Committee to oppose House Bill 171.

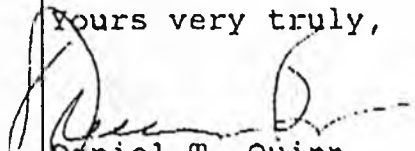
Mr. Richmond and I, as are the other attorneys of our firm, are members of the Defense Council of Alaska and Mr. Richmond is President of that organization. We have reviewed the proposed House Bill 171 and feel that it would have a major detrimental effect on the procedures of the court system during civil litigation. Whatever reform House Bill 171 is attempting to achieve, this is not the proper way to achieve it. Among other faults, the Bill in essence, will require the court to make premature factual determinations early in the litigation without having the benefit of the complete background, giving uncertainty to the whole judicial process. The Bill could force the courts to give advisory opinions.

As you may know, the Alaska Supreme Court has established a Civil Rules Committee to allow reasoned consideration of proposed changes of this sort. Additionally, the Court System employs a civil rules attorney whose function is to consider and recommend such proposals. In our view, adoption of House Bill 171 would render civil litigation even more unwieldy and expensive. At the very least, the Civil Rules Committee and the court rules attorney should have the opportunity to evaluate this Bill before the legislature adopts such a wide-ranging proposal. We are troubled by what seems to be an effort to bypass these existing evaluation mechanisms established by the judiciary and the court system, the entities most affected by the Bill.

Representative Dave Donley
April 8, 1992
Page 2

The ramifications of House Bill 171 would be far-reaching and extremely detrimental to the civil litigation process in Alaska. Therefore, we would ask your support in voting against the passage of this Bill.

Yours very truly,



Daniel T. Quinn

DTQ/shg

321099-9991L



WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 25, 1991

The Honorable Gene Kubina
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

REPLY TO: NEW ANCHORAGE
PHONE (907) 269-6100

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P.O. BOX K— STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

Re: House Bill 171

Dear Representative Kubina:

You have requested the Department of Law to provide the House State Affairs Committee with comments on the legal effects of House Bill 171. We have reviewed the bill and are concerned that, as now drafted, it may create considerable legal difficulties for the state.

House Bill 171 attempts to limit courts' abilities to enter confidentiality orders as to "public hazards." It defines a "public hazard" broadly to mean "an instrumentality that has caused injury to a person or property, and includes a device, instrument, person, procedure, or product, and a condition of a device, instrument, person procedure, or product."

The primary difficulty with the bill is with the first provision where it states broadly that "[a] court may not enter an order or judgment that has the effect of concealing a public hazard or information concerning a public hazard." This language, in conjunction with the definition of "public hazard," can have very broad ramifications. For example, in the environmental litigation area, it might have a chilling effect on the provision of information concerning the existence or effects of pollution by a confidential informant.

In the Exxon Valdez litigation, there is currently at issue a request to keep confidential the identities of respondents to a survey done of individuals affected by the oil spill. Although the state is not directly involved in this dispute, we support this request for confidentiality at the request of several of our client agencies. The survey at issue involves very personal information such as the use of alcohol and the presence of domestic friction in households. The agencies are concerned that if these

The Honorable Gene Kubina
April 25, 1991
Page 2

identities are made public, there will be a great reluctance on the part of the villagers to fully participate in state resource surveys in the future. Under the proposed bill, a court would be without authority to enter an order protecting that confidentiality.

With respect to the state's specific interest in environmental cases such as the Exxon Valdez litigation, we are concerned as to the potential impact of the bill on expert work-product. While part (b) of the proposed bill restricts itself to discoverable material, part (a) does not and could be misconstrued to require a court to order the production of attorney work product, such as expert reports. If so, it could put the state at a serious disadvantage in civil environmental prosecutions where the state bears the main brunt of the investigative work. In a worst case, it may inhibit the state or a private entity from fully investigating the effects of an oil spill or other environmental problem. The relationship of the proposed statute to Civil Rule 26(b) protections should be made more explicit.

Other problems may arise where this proposed statute conflicts with statutory or traditional notions of privacy. For example, it is unclear how the prohibition against entering an order which has the effect of concealing "information concerning a public hazard" would interact with a statutory requirement of confidentiality as to personnel records, child in need of aid proceedings, archaeological information, or exploration well data. In the Exxon Valdez litigation, the parties have filed discovery requests with the state which require disclosure of the location of archaeological sites affected by the oil spill. It is our intention to ask the court for a protective order based on federal law which restricts the public dissemination of that information. On their face both (a) and (b) of the proposed bill would prohibit the court from entering the requested order. Although such a result seems unlikely, the potential conflict could be easily avoided by the inclusion of language similar to that found in AS 09.26.120 which provides an exception to public records disclosure provisions for "records required to be kept confidential by a federal law or regulation or by state law."

In other instances there may be information, such as trade secrets relating to the composition of a chemical compound, which technically concerns a "public hazard" but whose possible deleterious effect is so outweighed by the potential commercial damage done by disclosure that no reasonable person would view disclosure as prudent. In some instances, the publication of information which concerns a "public hazard" may interfere with an ongoing law enforcement investigation or disclose confidential techniques and procedures for law enforcement investigations or

The Honorable Gene Kubina
April 25, 1991
Page 3

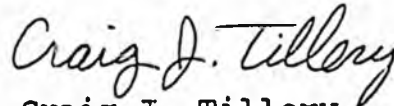
prosecutions which a court, in its discretion, would choose to protect. The bill as drafted does not allow a court to make these judgments.

In general, there are likely to be many instances where information that falls within the literal ambit of this statute should be kept confidential but, under the proposed language, a court's discretion to do so would be restricted. This committee should give careful consideration as to the full extent of the legal impacts occasioned by this broad restriction on the exercise of discretion by the court.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:



Craig J. Tillery
Assistant Attorney General

CJT: md

cc: The Honorable Dave Donley
The Honorable Rick Halford

Alaska State Legislature



House of Representatives
House Judiciary Committee
Chairman Dave Donley

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

SPONSOR STATEMENT - HB 171

SECRECY AGREEMENTS IN LAWSUITS

This bill would prohibit courts from ordering non-disclosure of information concerning "public hazards" and would render unenforceable private non-disclosure agreements executed to settle civil litigation.

"Public hazard" is very broadly defined to mean an instrumentality that has caused injury to a person or property, and includes a device, instrument, person, procedure, or product, and a condition of a device, instrument, person, procedure or product.

Product manufacturers in product liability suits, oil companies in oil spill damage suits, and professionals such as lawyers and doctors in malpractice suits, have usually insisted that court records and other information related to litigation be kept secret as part of settlement agreements.

It is in the public's best interest that information about such hazards which have caused widespread harm be available to the people.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 171

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act restricting court orders and BRU: Trial Courts
certain private agreements... public hazards Components: _____
 Sponsor: Judiciary Committee
 Requestor: State Affairs COMPONENT SERIAL NO.

000 000	000 768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	40.6	40.6	40.6	40.6	40.6	40.6
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	40.6	40.6	40.6	40.6	40.6	40.6

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	40.6	40.6	40.6	40.6	40.6	40.6
FEDERAL FUNDS						
OTHER						
TOTAL	40.6	40.6	40.6	40.6	40.6	40.6

POSITIONS:

FULL-TIME						
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 04/04/91

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 04/04/91
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska Court System
Analysis of House Bill 171

Sec. 09.25.240(b) grants a broad right to any interested person to bring an action for injunctive relief against a party to a private settlement or discovery agreement in cases involving a public hazard. Exercise of this right will increase the workload of the court system by generating new cases. In addition to the burden that additional filings have on the clerk's office, requests for injunctive relief require in-court time far more frequently than do other types of civil cases.

It has been strongly suggested that this legislation will also have the effect of increasing the number of cases that go to trial by discouraging settlement. We cannot determine if this view is correct. Should this result, the court system will need to request additional funding.

Fiscal Analysis

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge, PPT - 6 months, Anchorage (25% of active judge salary)	11,500	9,620	21,120
In-Court Clerk, PPT - 6 months, 12	13,296	6,204	<u>19,500</u>
Estimated Total Cost			<u><u>40,620</u></u>

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 171

Revision Date: _____ Department Affected: Environmental Conservation
 Title: An Act restricting court orders and certain private agreements BRU: Environmental Quality
 Component: Environmental Quality
 Sponsor: Judiciary
 Requestor: _____ COMPONENT SERIAL NO.

1	0		2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: NONE

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: James F. Hayden Phone: 789-9729
 Division: Environmental Quality Date: 4/2/91
 Approved by Commissioner: [Signature]
 Agency: Environmental Conservation Date: 4-18-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HOUSE COMMITTEE REPORT

(7)
Date Referred: April 3, 1992

FURTHER REFERRAL

Finance

Date of Committee Action: 4.15.92

The JUDICIARY Committee considered:

HB 171

HOUSE BILL NO. 171

PROHIBIT SEALING OF CERTAIN COURT RECORDS

"An Act restricting court orders and certain private agreements relating to the concealment of public hazards and information on public hazards; and amending Alaska Rules of Civil Procedure 24, 26(c), 26(f), 29, 30(d), and 37(a)(2)."

RECOMMENDATIONS:
 be replaced with CS HB 171 (JUD) the same title
 a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
 fiscal impact _____
 zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)
 fiscal note(s) CS - (4-3-92)
 zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Donch Douley</i>	X				
<i>John Elliott</i>	X	<i>Terry Marten</i>		✓	
<i>Mark Murphy</i>	✓	<i>Mark Murphy</i>	X		
		<i>Kevin P. & Pamela</i>		✓	

Donch Douley

 CHAIRMAN'S SIGNATURE