

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

6962 HOUSE JUDICIARY

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summoned, most citizens' reactions range from "displeased" to "resigned." After experiencing jury selection and courtroom procedures, however, most said they found their day or two of service interesting, and many volunteer to come back.

Washington Post, May, 1979

TRIAL HALTS IF BABY'S HUNGRY

When Mary Hoving's baby gets hungry, the longest trial in Ventura County history halts once more.

Mrs. Hoving, twenty-seven, is a juror in the medical malpractice trial. She is also the mother of a two-and-a-half-month-old girl named Laura who was born prematurely and who, under doctor's orders, must be breastfed.

"I try to feed her before I go in the morning," Mrs. Hoving explained Wednesday. "She's eating every two or three hours. When she gets hungry, the baby-sitter calls the court, the judge calls a recess, and I leave to feed her."

Of Judge Ben Ruffner and her fellow jurors, Mrs. Hoving said: "They've been more than understanding. We just all want to get it over with."

The eleven-month-long trial resumed Tuesday with final arguments.

Mrs. Hoving said that when the trial started last March, she didn't know she was pregnant. Her baby was due December 9, but arrived three weeks early.

The judge stopped the trial and waited until she was able to return to court.

Laura was premature and had a heart murmur, Mrs. Hoving said, so she was told by her pediatrician to breastfeed the baby.

Ruffner then moved the trial ten miles from Oxnard to this small community where Mrs. Hoving lives. The court even hired the babysitter who looks after Laura while Mrs. Hoving sits in the courtroom three miles from her home.

Detroit Free Press, February, 1979

LETTER, 1980

To date I have heard nothing more since I filled out the form for trial juror. On one spot on the form it asked a question something like "Is adequate child care available?" I checked NO! (Not adequate enough for me, anyway.)

I thought you would be interested in what I finally wrote at the bottom... "It would be very difficult for me to leave my two children at this time. It would be an emotional stress and hardship on them, particularly on my three year old. I do not leave my daughter for any long period of time (i.e., a whole day or over-night) and I need to be home when my son arrives home from kindergarten.

Please note that I am not trying to shirk my duties as an American citizen. I will be happy to serve when my children are older. I appreciate your consideration on this matter."

FOLLOW-UP POSTCARD STATED SHE NEVER DID HEAR FROM THE COURT.

JURY DUTY

In February of this year I received a call for jury duty. Jasmine, who is our youngest, had just turned one and still nursed frequently. I wrote a two-page letter to the judge explaining that I was breastfeeding, and that I had never left her for more than a few hours and felt the separation would be difficult for both of us.

I just took it for granted that I would be excused. Imagine my devastation when I received a letter less than a week later saying I would NOT be excused!

Well! The judge just didn't realize who he was up against. I called my Area Coordinator of Leaders who gave me verbal support and sent me information on mother-baby separation.

My appointment with the judge was on a Thursday morning and my husband, Jasmine, and I appeared in his office.

He gave us his reasons for not excusing me—the main one seemed to be his opinion that at one year Jasmine was old enough to be separated from me.

I then gave him my reasons for not wanting to be separated. I told him I felt I only had two options: either to be excused, or bring Jasmine to court with me. I then presented him with a supportive letter and two newspaper articles where the judge gave special consideration to mothers and babies, and also five pages of research on mother-baby separation. After reading Marian's letter and glancing at the research, he said he could see we were sincere and on that basis, I could be excused.

I left the courthouse ten pounds of anxiety lighter, and so very thankful to LLL for helping me. Our family had been in turmoil for two weeks (we have two older children, Nathan, three, and Sara, six, who were also affected by this), but now it was over. I felt very intimidated by this, but wanted to press for the excusal because I hope the next time he considers calling a mother with a baby to court he remembers me, and it will be easier for that mom.

However, I could not have done this without the resources of LLL at my disposal. I will never be able to measure how grateful I am to LLL for support and encouragement and feel prouder than ever to be affiliated with this great organization.

LA LECHE LEAGUE NEWS, July-August, 1980

NURSING MOTHER TAKES ON COURT OVER JURY DUTY SUMMONS

Evelyn Bowers is a farm wife, a member of the Church of Jesus Christ of Latter-day Saints, mother of seven children and is wanted by U.S. District Court in Tacoma.

The court wants her to report for jury duty. In fact, court personnel insist on it.

They wanted her to do so since last April, but Mrs. Bowers says certain factors keep preventing her from complying with the court's summons.

"I'm nursing our new baby, and they want me to appear November 15," she said. "I don't feel I can do it. They will not accept my other reasons for not appearing....they say they are not sufficient for dismissal from jury duty.

"I was told in no uncertain terms by a woman in that office that you do not ignore a subpoena from the U.S. District Court. She also wanted to know how long I would be nursing the baby because they did not want me to bring him with me."

Mrs. Bowers contends she is not ignoring the subpoena. She is only trying to get excused from jury duty for cause, adding that she had never ignored any summons from the court, starting in April when she received a registered letter notifying her that she had been selected for jury duty for the court.

Mrs. Bowers said she wrote the court that she considered it an honor to be selected, but she was unable to do so, explaining she was pregnant and requesting them to contact her later.

They did. A subpoena to appear for jury duty was received by Mrs. Bowers in July that directed her to report October 6.

"My baby was due, according to my doctor, about September 30," Mrs. Bowers recalled, "and when I informed them by phone of this, a woman in the office told me that being pregnant was not a good enough reason to be dismissed."

Mrs. Bowers admits she was getting frustrated and a little angry by this time because "there were other things preventing me from going just then.

"For one thing, I have children who would need babysitters in my absence because my husband works nights. Also, the doctor did not want me to travel and insisted that I be within 30 minutes of a hospital at all times.

"When I told this to the woman at the court's office, she replied, 'That is your problem.' My doctor sent them a letter saying I was pregnant, and I received a registered letter deferring me until November 15, which would be six weeks after the baby's due date of September 30."

The baby boy, Lance, was born September 19, just 20 minutes after labor started, Mrs. Bowers said. When she returned home from the hospital she wrote a letter to the clerk of the court reporting her conversation with the woman in the clerk's office and explaining why she felt she should be excused.

"I wrote that my husband farms 40 acres and is renting 400 more, we have 150

head of stock, seven children, one that I am nursing, and that my husband is working nights," she said. "I honestly feel that my priorities right now are with my family and, in addition to that, we only have one car and he needs that to get to work. Also, if I drove up there I would have to leave here at 4 a.m. and would be returning home after dark and I am not a good driver after dark."

It was after this attempt to communicate with the court by letter that Mrs. Bowers received the phone call from the court asking how long she would be nursing the baby.

C. Joyce Jew of the clerk's office told The Daily Chronicle that "anyone subpoenaed by the court has to appear." She declined to explain the procedure for being excused from jury duty.

Asked why someone living so far away from Tacoma as Mrs. Bowers was being summoned, she replied, "People can be subpoenaed from anywhere in the United States."

Mrs. Bowers found out from the Lewis County courthouse that only Federal Judge Jack Tanner could excuse her from jury duty so she asked for his address.

Later, she received a call from Bruce Rifkin, the clerk of the Jury Selection Office for U.S. District Court in Tacoma.

He insisted that Mrs. Bowers appear as ordered on November 15 and observed that "you have to understand our problems," Mrs. Bowers said.

Rifkin again asked her how long she intended to nurse her baby, and when she replied, "For about two years," she was informed that she would be receiving a summons in the mail to appear as previously instructed.

She received such a letter in late October.

"Let there be no doubt about it," Mrs. Bowers said, "I am not trying to dodge my public duty. I would love to serve if I could, but I get this feeling that I am on trial, too, and I don't understand the attitude of the jury selection people up there.

"My duty to my children and the obligation I have to my husband and home have been fully explained to them. I have been informed that I will be arrested if I don't appear, but we will just have to wait and see. I'm going to call their bluff. I hope I'm not arrested.

"Frankly, I don't feel that the attorneys involved would select me anyway if they knew I had to appear under duress. Also, it is just a little ridiculous to force me to serve on a jury when I would have to leave from time to time to nurse the baby," she said.

As it now stands, Mrs. Bowers has two choices — unless Judge Tanner excuses her, and there is no indication that he is aware of the situation.

She can ignore the summons to appear and face possible arrest, or she can go to Tacoma on the appointed date and help administer justice.

As of Tuesday, she had no transportation to Tacoma. It appears almost certain that she will not show up to answer the summons.

The Daily Chronicle, November, 1982

NURSING MOM GETS REPRIEVE FROM SERVICE ON FEDERAL JURY

A nursing mother who's been unsuccessfully attempting to get excused from jury duty at U.S. District Court in Tacoma won a temporary reprieve Friday when she was informed she didn't have to report today as earlier scheduled.

"I feel a little sanity coming back now," Evelyn Bowers of Winlock said when she found out Monday's appearance was called off.

D. R. Kimzey, assistant chief deputy of U.S. District Court, told The Associated Press that jurors were not being called Monday.

He said Mrs. Bowers' case was being taken under advisement and that she would be informed by letter whether she will eventually have to appear for jury duty.

Mrs. Bowers the mother of seven children, has made repeated attempts to get excused from jury duty because of the hardship it would impose on her and her family.

She says she would have to take her newborn son, whom she is nursing, with her to court. She would also have to pull her older children out of school to watch the youngsters. A friend would have to help with driving her to the court, 75 miles north of Winlock.

Mrs. Bowers also helps her husband operate their 440-acre farm and, to add to the difficulties, her husband works at night and must spend a couple hours commuting to his job each day—driving the family's only vehicle.

"I would love to serve (on the jury)...but my first obligation is to my family," she said.

The Winlock mother could face the possibility of arrest if she defied the summons to appear for jury duty. "I don't really want to be arrested," she said. "I don't need that. If I have to," she said, "I will go up there even though it will be hard for me to do.

"But the first chance I get, I am going to talk to the judge. I'm taking my baby, too."

Kimzey told The Associated Press the general rule on jury duty allowed only people in certain occupations, such as doctors and nurses to be permanently dismissed by the court staff. The judge can dismiss whomever he or she wishes.

Kimzey said he was not aware that Mrs. Bowers had been called for November 15, but that the jurors were not required to report that day anyway.

The Daily Chronicle, November, 1982

LETTER FROM MOTHER WHO RECEIVED EXEMPTION FROM JURY DUTY, October, 1980

Recently, I was in contact with you about my having to serve jury duty even though I was, (and am still) nursing my twenty-two-month-old son. I'm sorry I haven't contacted you sooner about the outcome.

You sent me a lot of valuable information dealing with mother/baby separation generally as well as the physical problems inherent in separation of a breastfeeding couple. I was well armed and prepared to fight for my rights when the whole ordeal suddenly ended. I spoke with my lawyer, whose secretary contacted the secretary of the judge involved to arrange an appointment with him for me. The judge's secretary was to contact me the next day to set up a time. As it turned out, the judge himself called me, and asked me if we could settle the matter over the phone (he did not recall me from the time I had spoken with him before). I took a deep breath and told him I was still nursing my baby, at which point he interrupted me, asked me the date of my scheduled appearance and said, "Well, we'll just go ahead and excuse you."

I was flabbergasted and told him so, but he didn't pursue the matter. So, I thanked him, and that was that.

I'm not good at confrontations, so I'm very glad the matter was settled so uneventfully for me. I was, however, prepared to do anything I had to to retain my right to stay with my child, breastfeeding or not.

My advice to anyone in similar circumstances would be to gather as much literature on the subject as possible, contact the person in charge of jurors by telephone or mail first, and if that fails, see him/her in person. I had planned to have my son and my husband along with me. In the case of a very stubborn official, it might help to have a La Leche League Leader along as well.

BREASTFEEDING MOTHER ON A GRAND JURY

A mother contacted LLLI who is currently on a Grand Jury, and will be for another year. She was called when she was pregnant, asked for a deferral and was refused. She has to drive about 100 miles for a two-day session every two weeks. She has a baby who is five months old. She began jury duty when the baby was about two months old. However, the jury is most attentive to their needs. She is encouraged to bring the baby with her. They take two-hour lunch breaks and will break any other time as needed. Her mother lives nearby so the mom and baby stay there. She hasn't taken the baby to court yet that I know of, but that is her choice. The judge is very open to the baby being there. The court's refusal to allow her a deferral from jury duty may seem like a "loss" but their very good understanding and acceptance of the baby's needs is a "gain." She is fortunate to have the frequent contact with grandma as a consistent mother substitute.

HB

392

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. HB 392

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to nonprobate trans- BRU: Trial Courts
fers and multiple-person accounts Components: _____
 Sponsor: Ulmer
 Requestor: Labor & Commerce COMPONENT SERIAL NO. 000 | 000 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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						
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REVENUE						
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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

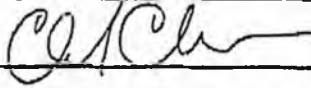
POSITIONS:

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: 01/22/92

Approved by: Arthur H. Snowden, II, Administrative Director  87
 Agency: Alaska Court System Date: 01/22/92

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

HB 392 - Nonprobate Transfers and Multiple-person Accounts

Sectional Analysis

Section 1.

Article 1. Sec. 13.33.101, Nonprobate transfers on death: Declares that a provision for a nonprobate transfer on death in certain instruments is nontestamentary.

Article 2. Clarifies the law of joint tenancy and tenancy in common for deposit accounts, with or without the right of survivorship, and declares that pay-on-death (POD) clauses in the contracts that establish deposit accounts are non-testamentary.

Sec. 13.33.201, Definitions: Definition of terms, including "POD designation" for Article 2.

Sec. 13.33.202, Limitation on scope: Article 2 does not apply to an account established for a partnership, joint venture or organizations formed for business purposes, to certain unincorporated association, charitable, or civic organization accounts; Article 2 does not apply to fiduciary or trust accounts in which the relationship is established outside the terms of the account.

Sec. 13.33.203, Types of account: Allows single or multiple party accounts; accounts existing before or after January 1, 1994, are governed by Article 2 (AS 13.33.201 - 13.33.227).

Sec. 13.33.204, Forms: Lists the contents of the simple, check-off form to be used to designate the type of account and beneficiaries.

Sec. 13.33.205, Designation of agent: Allows an agent to be designated whose authority survives disability and incapacity of a party. Authority of an agent terminates on the death of the sole or last surviving party.

Sec. 13.33.206, Applicability: Defines the applicability of the provisions of AS.13.33.211-13.33.216.

Sec. 13.33.211, Ownership during lifetime: Defines ownership rights during the lifetime of the parties. In single party accounts, the account holder has all power over funds while alive; at death the POD beneficiary takes them. In multiple-party accounts, the account belongs to the parties in proportion to their net contributions.

Sec. 13.33.212, Rights at death: Defines the rights of surviving parties in multiple-party accounts; outlines rights of payment from multiple-party accounts with and without a POD designation.

Sec. 13.33.213, Alteration of rights: Rights at death are determined by the type of account at the death of the party; type of account may be altered by written notice to the financial institution. A right of survivorship or a POD designation may not be altered by will.

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

February 10, 1992

TO: Rep. David Finkelstein, Chair
House Labor and Commerce Committee

FROM: Rep. Fran Ulmer

Re: Questions regarding HB 392, non-probate transfers on death

Attached is a list of questions and answers which address the basic issues relating to HB 392, non-probate transfers on death. I prepared this summary for those of my constituents who may not be familiar with probate law. Incorporated within the summary (#10) is the answer to Rep. Taylor's question regarding protection of the rights of a spouse and other legal heirs.

Briefly, HB 392 makes no changes to current protections for legal heirs. AS 13.11.070 - AS 13.11.100 protects the interest of the surviving spouse; no change is made to those protections. A POD transfer is not effective against the estate to the extent necessary to pay a surviving spouse and children the amounts allowed under law, such as the homestead allowance and the family allowances.

HB 392 provides a further protection in the proposed AS 13.33.226 in that, if a financial institution receives written notice from the surviving spouse or a legal representative of the estate that payment should not be made under the terms of the POD contract and the institution pays the POD beneficiary in spite of written notice, the institution is potentially liable.

Although there is no way for the law to prevent a person from naming someone other than the legal spouse as the POD beneficiary, protections in law appear to be adequate to protect the interests of the legal heirs. POD clauses have been in use for multiple-party accounts without any apparent problems of the type suggested by Rep. Taylor. The benefit accruing to the majority of beneficiaries from being able to avoid the expense and delay of probate outweighs the risk posed by the rare person who deliberately sets out to circumvent the rights of the legal heirs.

I hope this information is helpful.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

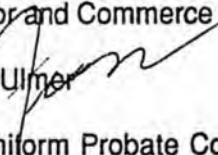


REPRESENTATIVE FRAN ULMER

MEMORANDUM

January 21, 1992

TO: Rep. David Finkelstein, Chair
House Labor and Commerce Committee

FROM: Rep. Fran Ulmer 

RE: HB 392, Uniform Probate Code amendments

HB 392 makes amendments to Article VI of the Uniform Probate Code which simplify transfers of property on death to avoid probate. This legislation was modeled after legislation provided by the Joint Editorial Board for Uniform Probate Code which is comprised of representatives from the Uniform Law Commissioners, the American Bar Association, the American College of Trust and Estate Counsel, and the State Courts and Law School Liaisons.

In brief, the bill does the following:

1. Article VI clarifies the law of joint tenancy and tenancy in common for deposit accounts, with or without the right of survivorship, and declares that pay-on-death (POD) clauses in the contracts that establish deposit accounts are non-testamentary. Funds will be paid to the beneficiary named in the POD clause even though the clause does not meet the requirements for a will. Money is paid without passing through the estate of the decedent. The expense and delay of probate is thereby avoided.

-In single party accounts, the account holder has all power over the funds while alive. At death, the POD beneficiary takes them. In a multiple-party situation, there are options but, in all options, the multiple parties have power over the fund during their lives. If there is any POD beneficiary, his or her rights begin upon the death of the last party to the account.

-Code revisions provide an easy to use statutory form that allows selection of any option with a simple check-off for the type of account and thus definitively establish their intent.

-The revisions treat all agency powers as durable powers, surviving the incapacity of the account holder, unless there is specific language limiting them (agency powers are only implied in the original Article VI) and eliminates any ambiguity regarding these accounts.

-Financial institutions may deal with parties, agents and POD beneficiaries according to the terms of the contract, and may take representations of rights to funds in deposit accounts on their face.



2. Article VI also provides for transfer-on-death (TOD) investment securities. The transfers, like POD deposit accounts, are nontestamentary thus making a whole new echelon of property which can be kept out of the probate estate. A TOD clause, naming a beneficiary, registered in the appropriate place for the type of security, accomplishes distribution. If the last owner (in the case of multiple owners) of a security dies, then the ownership of the security transfers to the named beneficiary without probate. TOD designation may be made only by a sole owner or multiple owners with right of survivorship. Securities held by tenants in common cannot be registered with a TOD designation (in order to preclude fractional ownership rights). A securities issuer, like a financial institution, is subject to the contract and is entitled to deal with parties on the face of any representations made. No issuer is forced to register TOD designations.

-Certificated securities: TOD terms and the name of the beneficiary on the certificate are adequate for transfer.

-Uncertificated securities: TOD designation must be on the records of the issuing entity.

-Security Accounts: Brokerage customers can register TOD beneficiaries on their accounts for nontestamentary disposition at death.

I believe there will be a positive response from the consumer, as well as the legal and financial communities, to the provisions of HB 392. These revisions both simplify and clarify the law.

Sec. 13.33.214, Accounts and transfers nontestamentary: Except as otherwise provided, transfers under AS 13.33.212 are not testamentary.

Sec. 13.33.215, Rights of creditors: If other assets of the estate are insufficient, a payment resulting from a right of survivorship or a POD designation may not take place until all claims against the estate are satisfied.

Sec. 13.33.216, Community property and tenancy by the entireties: Community property deposited in an account does not alter community rights in the property.

Sec. 13.33.221, Authority of financial institution: Authorizes financial institutions to enter into a contract of deposit for multiple party accounts and may provide for a POD designation.

Sec. 13.33.222, Payment on multiple-party account: Authorizes financial institutions to pay sums on deposit in multiple-party accounts to one or more of the parties, or to personal representatives, heirs or devisees of the last surviving party upon proof of death, unless the account is without right of survivorship.

Sec. 13.33.223, Payment on POD designation: Allows financial institutions to pay sums on account with a POD designation to one or more of the parties, beneficiaries, personal representatives or heirs.

Sec. 13.33.224, Payment to designated agent: Allows a financial institution to make payment, on request, to an agent under an agency designation for an account.

Sec. 13.33.225, Payment to minor: Allows financial institutions to make payment to a minor who is designated a beneficiary.

Sec. 13.33.226, Discharge: Payment made in accordance with the type of account discharges the financial institution from all claims for amounts so paid, unless notified in writing to the effect that payment should not be permitted.

Sec. 13.33.227, Setoff: If a party is indebted to a financial institution, the institution has a right to setoff against the portion of the account to which the party is beneficially entitled.

Article 3, Uniform Transfer-on-Death Security Registration Act

Sec. 13.33.301, Definitions: Defines terms used in Article 3.

Sec. 13.33.302, Registration in beneficiary form; sole or joint tenancy ownership: Only persons demonstrating sole ownership of a security, or persons showing multiple ownership with right of survivorship rather than as tenants in common, may obtain registration in beneficiary form.

Sec. 13.33.303, Registration in beneficiary form; applicable law: Allows a security to be registered in beneficiary form if it is authorized by this or a similar

TOD statute in the appropriate state; a registration governed by a law in which TOD legislation is not in force is nevertheless valid and authorized as a matter of contract law.

Sec. 13.33.304, Origination of registration in beneficiary form: A security is registered in beneficiary form when the registration designates a beneficiary.

Sec. 13.33.305, Form of registration in beneficiary form: Registration in beneficiary form may be shown by the words "transfer on death" or "TOD," or by the words "pay on death" or "POD."

Sec. 13.33.306, Effect of registration in beneficiary form: Designation of a TOD beneficiary has no effect on ownership until the owner's death; may be cancelled or changed at any time.

Sec. 13.33.307, Ownership on death of owner: Upon the owner(s)'s death, securities registered in beneficiary form pass to the beneficiary. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole, or last of multiple, owner.

Sec. 13.33.308, Protection of registering entity: A registering entity is not required to register securities in beneficiary form but, if it does offer such registration, it agrees that the registration will be implemented; the registering entity shall receive the protections granted under AS 13.33.301-310.

Sec. 13.33.309, Nontestamentary transfer on death: A transfer resulting from a registration in beneficiary form is effective by reason of the contract regarding registration and is not testamentary.

Sec. 13.33.310, Terms, conditions, and forms for registration: A registering entity may establish the terms and conditions under which it will register securities in beneficiary form; includes illustrations of registrations in beneficiary form.

Section 2. Definition. Provides a revised definition of "trust" because AS 13.31 is repealed and AS 13.33 does not contain a definition of "trust account."

Section 3. Sec. 13.16.260, Bond amount; security; procedure; reduction. Outlines procedures to be used if a bond is required.

Section 4. Repeals AS 13.31, relating to nonprobate transfers.

Section 5. Transition provisions: Describes the dates on which this act applies to the various circumstances relevant to the provisions of the bill.

Section 6. Effective date: Takes effect January 1, 1994.

HB 392 - Non-Probate Transfers

Questions and Answers

1. Q: What is the purpose of HB 392?

A: The purpose of HB 392 is to simplify the transfer of property when the owner dies and thus avoid the delay and expense of probate court. HB 392 affects deposit accounts in banks and other financial institutions, and securities and security accounts. Transfer of deposit accounts and securities is affected by the law of "joint tenancy" and "tenancy in common."

2. Q: What is the law of joint tenancy and tenancy in common?

A: A "joint tenant" has a right of survivorship which means that, when one of the owners of an account dies, the surviving owners of the account inherit the dead person's share. "Tenancy in common" means that when one of the owners of an account dies, the deceased person's heirs inherit the decedent's share.

3. Q: How does HB 392 clarify the law of joint tenancy and tenancy in common for deposit accounts?

A: Current law presumes a right of survivorship in multiple-party accounts unless there is "clear and convincing evidence of a different intention when the account was created." HB 392 provides a simple, easy to use form that allows a definitive selection of any type of account, with or without POD designation, and with or without the right of survivorship.

4. Q: How does HB 392 add to non-probate transfer provisions in current law?

- A: (1) HB 392 clarifies current law by clearly allowing POD clauses for single party accounts as well as multiple-party accounts.
(2) HB 392 provides for an account with an "agency" designation. An agent acts for the principal or account holder and can make deposits or withdrawals.
(3) HB 392 adds "transfer on death" (TOD) provisions for investment securities.

5. Q: Why is the inclusion of "agency" powers an improvement to current law?

A: HB 392 treats all agency powers as "durable" powers which survive the incapacity of the account holder unless there is specific language limiting them. HB 392 eliminates any ambiguity regarding agency powers.

6. Q: HB 392 allows pay-on-death clauses in deposit accounts to be "non-testamentary." What does "non-testamentary" mean?

A: "Non-testamentary" means that the the funds in the account may be paid to the beneficiary named in the pay-on-death clause even though the clause does not meet the formal

TOD statute in the appropriate state; a registration governed by a law in which TOD legislation is not in force is nevertheless valid and authorized as a matter of contract law.

Sec. 13.33.304, Origination of registration in beneficiary form: A security is registered in beneficiary form when the registration designates a beneficiary.

Sec. 13.33.305, Form of registration in beneficiary form: Registration in beneficiary form may be shown by the words "transfer on death" or "TOD," or by the words "pay on death" or "POD."

Sec. 13.33.306, Effect of registration in beneficiary form: Designation of a TOD beneficiary has no effect on ownership until the owner's death; may be cancelled or changed at any time.

Sec. 13.33.307, Ownership on death of owner: Upon the owner(s)'s death, securities registered in beneficiary form pass to the beneficiary. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole, or last of multiple, owner.

Sec. 13.33.308, Protection of registering entity: A registering entity is not required to register securities in beneficiary form but, if it does offer such registration, it agrees that the registration will be implemented; the registering entity shall receive the protections granted under AS 13.33.301-310.

Sec. 13.33.309, Nontestamentary transfer on death: A transfer resulting from a registration in beneficiary form is effective by reason of the contract regarding registration and is not testamentary.

Sec. 13.33.310, Terms, conditions, and forms for registration: A registering entity may establish the terms and conditions under which it will register securities in beneficiary form; includes illustrations of registrations in beneficiary form.

Section 2. Definition. Provides a revised definition of "trust" because AS 13.31 is repealed and AS 13.33 does not contain a definition of "trust account."

Section 3. Sec. 13.16.260, Bond amount; security; procedure; reduction. Outlines procedures to be used if a bond is required.

Section 4. Repeals AS 13.31, relating to nonprobate transfers.

Section 5. Transition provisions: Describes the dates on which this act applies to the various circumstances relevant to the provisions of the bill.

Section 6. Effective date: Takes effect January 1, 1994.

requirements for a will. The money is paid out without going through the estate (going through probate court) of the deceased account holder.

7. Q: How do POD clauses work for deposit accounts?

A: Single-party accounts: The account holder controls the funds while alive; the POD beneficiary takes them when the account holder dies.

Multiple-party accounts: There are several options available under HB 392:

- (a) The parties may have a right of survivorship and designate a POD beneficiary who receives ownership when the last surviving party to the account dies.
- (b) The parties may have a right of survivorship and not bother with any POD beneficiary so that ownership passes to the surviving parties.
- (c) The parties can have an account without any right of survivorship. If this is the case, the decedent's share falls into the estate.

8. Q: How does HB 392 affect banks and other financial institutions offering deposit accounts?

A: HB 392 does not change the law or have any new effect on banks and other financial institutions except that, in addition to being authorized to provide POD clauses on multiple-party deposit accounts, financial institutions may also include POD clauses on single-party accounts as well. However, HB 392 does not require banks to provide POD accounts. If a bank does offer POD accounts, it may deal with parties, agents, and POD beneficiaries according to the terms of the POD statutes and the bank's contract which sets out the type of account, names the beneficiaries, etc.

9. Q: What protections are in place for creditors should the decedent's estate be insufficient to pay all claims against it?

A: No change is made to current protections for creditors. The bill states that if the estate is not sufficient to pay claims against it, a transfer is not effective against the estate and the person to whom the funds are transferred (POD beneficiary) is liable to the extent of the decedent's share of the account and to the extent necessary to pay the claims. The creditor may bring suit to recover monies due.

10. Q: What protections are available to legal heirs, such as a spouse, should an account holder name a third party as POD beneficiary?

A: No change is made to current protections for legal heirs. A POD transfer under HB 392 is not effective against an estate to the extent necessary to pay a surviving spouse and children the amounts allowed under law (e.g. homestead allowance, etc.). However, there is nothing in the law which prevents a person from attempting to give his or her property to whomever he/she wishes, either as an outright cash gift or by naming someone as a joint tenant in the ownership of property. Thus, although legal heirs may bring suit to enforce their legal rights against a POD beneficiary, there is no effective way to prevent this situation from arising.

11. Q: How do "transfer on death" (TOD) clauses work for investment securities?

A: A TOD clause has the same function for securities that a POD clause has for a deposit account; the ownership of the security transfers to the named beneficiary without going through probate.

12. Q: Can a TOD designation be made for all securities?

A: No. Securities held by tenants in common cannot be registered with a TOD designation in order to prevent fractional ownership rights. A TOD designation may be made only by a sole owner or multiple owners with right of survivorship.

13. Q: How can a TOD designation be made?

A: **Certificated securities:** TOD terms and the name of the beneficiary are listed on the certificate.

Uncertificated securities: TOD designations must be on the records of the issuing entity.

Security Accounts: TOD beneficiaries may be registered on the account.

14. Q: How does HB 392 affect a securities issuer?

A: No issuer is forced to register TOD designations. However, if an issuer does register TOD designations, he may set the rules for accepting them and is entitled to deal with parties on the face of any representations made. There is no obligation to look beyond such representations to guarantee their authenticity.

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March 2, 1992

Representative Dave Donley
Chairman, House Judiciary Committee
House of Representative
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

RE: HB 392: Revising Article
VI, Uniform Probate Code.

Dear Representative Donley,

Representative Fran Ulmer's office has suggested that I write to you about the reasons for the preference for a surviving spouse described in the second sentence of proposed 13.33.212. The preference surfaces only in the case of a multiple party account on which three or more individuals are named as joint depositors and two of the persons named are married to one another. A typical situation would be one in which a husband and wife account was turned into a three or more party account by the addition of one or more children to the arrangement. The usual understanding regarding such an account would be that it was to be the parents' account, but that the children named could help with account business if the parents became unable to do for themselves, and the surviving children would take when both parents had passed.

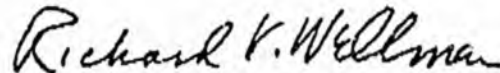
In the version of UPC Article VI presently in your statute, the comparable section divides the beneficial ownership of a deceased equally among two or more survivors. In the case of the husband's death in the case just supposed, whatever part of the account balance at his death attributable to his net contributions would be split between his widow and the one or more children who were also parties. When we considered revisions of the uniform law, we received a number of suggestions that the surviving spouse should be preferred over other survivors in the case supposed. Under modern intestacy laws, the

spouse inherits all or most of a decedent spouse's intestate property to the exclusion of other heirs. That model and the fact that spouses sharing a joint account reflecting the savings of a marital partnership almost universally intend and assume that the account balance will be wholly owned by the survivor of them when one dies, lead us to insert the spousal preference sentence. In short, the sentence aligns the law of joint accounts to what most depositors intend or would prefer.

If you are persuaded that the commissioners were wrong on this point, the removal of the second sentence of the section would leave Alaska law on the point unchanged and would enable the many more important improvements proposed by the Bill to move forward.

Please call or write if I can be of any further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Richard V. Wellman".

Richard V. Wellman
Executive Director



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March 2, 1992

Mr. Art Peterson
P.O. Box 20444
Juneau, Alaska 99802

Dear Mr. Peterson

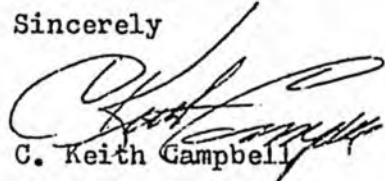
The State Legislative Committee of AARP would like to go on record in support of HB 392. In its present form, the proposed legislation meets the goals as set forth in AARP policy guidelines.

The act relating to nonprobate transfer and multiple person accounts simplifies the probate process at death and therefore meets the AARP goals.

We will have a member of our organization monitor the progress of HB 392. Thank you for bringing this piece of legislation to our attention.

c.c. slc
cctf
Myriam Marquez

Sincerely


C. Keith Campbell

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Hon. David Finkelstein, Chair
House Labor and Commerce Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: HB 392, Uniform Probate Code, art. VI
(non-probate transfers)

Dear Rep. Finkelstein:

This letter is a follow-up to my January 28, 1992 letter to you. That letter, setting out seven points of explanation, addressed a question that arose at your committee's January 23, 1992 hearing on this bill. I would like to add a general observation in support of HE 392.

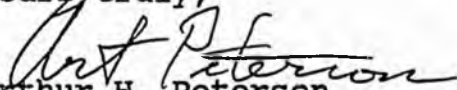
The bill does two beneficial things for Alaska law:

1. It updates part of Alaska's Uniform Probate Code, in line with the national recommendations of the National Conference of Commissioners on Uniform State Laws.
2. It provides an option, for deposit accounts and for investment securities, for people to use to help assure that their intended beneficiaries receive the intended property without the expense and delay of the probate courts.

In achieving the second feature, the bill creates no new concept, but relies on existing law. Although a person bent on disinheriting his wife and rewarding his sweetheart could apply this law toward that end (the illustration for the January question), present law already provides a variety of means for accomplishing that end, as explained in my January 28 letter. This bill, however, alone and in combination with existing law, includes a number of protections for surviving spouses.

To deny the benefits of this bill to the overwhelming majority of Alaska's population simply because someone might use its options in an undesirable way would indeed be to allow the tail to wag the dog. I urge your committee's favorable action.

Yours truly,


Arthur H. Peterson
Uniform Law Comr. for Ak.

cc: Rep. Fran Ulmer

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January 28, 1992

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Hon. David Finkelstein, Chair
House Labor and Commerce Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: HB 392, Uniform Probate Code, art. VI
(non-probate transfers)

Dear Rep. Finkelstein:

At your committee's hearing on this bill last Thursday, January 23, a question arose regarding the protection of creditors and spouses in the case of a person who dies after opening a deposit account with a "pay on death" (POD) clause in the account agreement. Specifically, the example was given of a married man who names his extramarital sweetheart as the POD beneficiary; upon his death, she withdraws the money from the account.

After reviewing the bill and current law again, and after talking with Professor Richard Wellman, Executive Director of the Joint Editorial Board for the Uniform Probate Code, I offer the following:

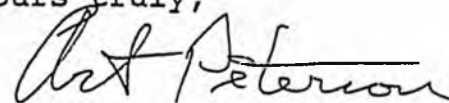
1. The bill's proposed AS 13.33.214 refers to the current law's provisions on the elective share of a surviving spouse (AS 13.11.070 -- 13.11.100), and thus protects that interest. If the sweetheart grabs the money and leaves town, she is still liable to the estate and thus to the spouse. Nevertheless, if she gets away with it, her situation is not really any different from the present one. Nothing in the law prevents a person from giving his property to his sweetheart, as an outright cash gift or by naming her as a joint tenant in the ownership of some property. There are some relationships against which the law just does not protect.

2. Current Alaska law, in AS 13.31 (enacted in 1972), provides for POD clauses for multiple-party accounts. That law does not appear to have caused any problem for unfortunate spouses and creditors. This bill merely extends the benefits of the POD arrangement (avoiding the expense and delay of probate) to single-party accounts.
3. A POD beneficiary is, in some respects, like a joint tenant in the ownership of property. A "joint tenant" has a "right of survivorship," meaning that, upon the death of one of the owners, the survivors own the dead person's share. Joint tenancy with a right of survivorship is an ancient concept in Anglo-American law. It was not created by the Uniform Probate Code.
4. The bill's proposed AS 13.33.215 provides protections to creditors and others in the case of assets outside the POD account being insufficient.
 - Subsection (a) says that a transfer resulting from a right of survivorship or POD designation is not effective against the estate in such a situation.
 - Subsection (b) makes the surviving party or beneficiary who has already been paid liable to the estate to the extent necessary to discharge any claims and allowances.
 - The one-year time limit for starting a proceeding for a claim or allowance facilitates wrapping up the estate, and is consistent with existing statutory limits for filing claims (e.g., AS 13.16.460's four-month limit).
5. The bill's proposed AS 13.33.226 provides further protection. If the financial institution has received written notice from a party, from the personal representative of the estate, or from the surviving spouse that payment under the terms of the account agreement should not be made, and the institution pays anyway, it is potentially liable.

6. Current AS 13.16.450 provides that notice to creditors must be published once a week for three successive weeks in a newspaper of general circulation in the judicial district. The bill does not change that standard notice provision. Although it is possible that the sweetheart will beat the creditor to the money in the account, she would have to be fast, since public notice will be given.
7. The bill does not require financial institutions to provide POD accounts. They retain all current options, such as joint accounts using "or" between the names of the owners of the account (so that payment may be made to A or B or C). The bill merely provides statutory answers to questions that can arise in connection with this type of account. And it does so in the form recommended by the National Conference of Commissioners on Uniform State Laws, the body that promulgated the Uniform Probate Code itself.

Thank you for considering these comments. I hope that you find them helpful, and I urge a "Do Pass" from your committee, for HB 392.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Rep. Fran Ulmer

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Hon. David Finkelstein, Chair
House Labor & Commerce Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 392, amending Uniform Probate Code, art. VI,
nonprobate transfers

Dear Rep. Finkelstein:

As a uniform law commissioner for Alaska, I support Rep. Fran Ulmer's HB 392, proposing the revised art. VI of the Uniform Probate Code (UPC).

The bill updates a part of Alaska's UPC in line with the proposal of the National Conference of Commissioners on Uniform State Laws (NCCUSL). Since Alaska has enacted the UPC, it is important to keep it up to date and to maintain the desired uniformity among the various states.

At the risk of duplicating what Rep. Ulmer has told you about the bill, I will offer a few comments.

Current Alaska law provides for the rights of survivorship at the death of a party to a multiple-person deposit account with a "pay on death" (POD) clause in the account agreement. HB 392 does two things:

1. it improves (by reorganizing, clarifying, and simplifying) art. VI's POD provisions and adds language dealing with POD clauses in single-party accounts;
2. it adds "transfer on death" (TOD) provisions for investment securities.

The purpose of both POD and TOD clauses is to achieve the parties' intended passing of the decedent's interest, without the expense

Hon. David Finkelstein, Chair
Page Two
January 23, 1992

and delay of probate proceedings. Our current law and this bill are directed at that same purpose.

In Alaska's statute-numbering system, UPC, art. VI, currently is AS 13.31. This bill replaces AS 13.31 with AS 13.33. While the title, chapter, part, and article designations differ between our system and the Uniform Act, the section numbers are the same; for example, AS 13.33.101 is the same as UPC Section 6-101.

This bill meticulously follows the text of the official NCCUSL version. I understand from the Legislative Affairs Agency attorney who prepared the bill for Alaska introduction that the only changes are those necessitated by Alaska's style and format requirements, with a very slight rewording of sec. 6-303 (AS 13.33.303) for clarity, and the addition of definitions of "POD" and "TOD" in AS 13.33.301; no substantive change is intended.

A copy of an NCCUSL four-page synopsis of the art. VI changes is attached. The official publication of the new art. VI includes the NCCUSL's detailed section-by-section commentary. I believe that Rep. Ulmer has already furnished you a brief section-by-section description of the bill, and I will not duplicate it.

This bill reflects the continuing national effort to keep the UPC current and to improve it. HB 334, now pending in the House Judiciary Committee, proposes the Uniform Statutory Rule Against Perpetuities, and is another part of that effort. Also, I believe that the NCCUSL's revision of UPC, art. II, on wills and intestacy, will be presented to the Alaska Legislature.

For the general benefit of the people of this state, I urge your favorable action on HB 392 (as well as on those other UPC changes when they come before you).

Thank you for your consideration.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

AHP:sh

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AMENDMENTS TO UNIFORM PROBATE CODE ARTICLE VI

UNIFORM NONPROBATE TRANSFERS ON DEATH ACT

UNIFORM MULTIPLE-PERSON ACCOUNTS ACT

UNIFORM TOD SECURITY REGISTRATION ACT

INTRODUCTION

The Uniform Probate Code (UPC) was promulgated in 1969. One of its most popular features has been Article VI, which is entitled Nonprobate Transfers. Article VI clarifies the law of joint tenancy and tenancy in common for deposit accounts, with or without right of survivorship, and declares that pay-on-death (POD) clauses in the contracts that establish deposit accounts are nontestamentary. What this latter means is that such clauses allow the payment of the funds in an account to the beneficiary named in a POD clause even though the clause does not meet the formal requirements for a will. Further, the money is paid without passing through the estate of the decedent account holder. The expense and delay of probate is thereby avoided. Article VI has stimulated legislative activity well beyond the states that have adopted the whole UPC. Over half the states have adopted provisions in their law analogous to Article VI.

In 1989, significant amendments to Article VI of the UPC have been promulgated by the Uniform Law Commissioners (ULC).

The amendments offer substantial improvements to Article VI over the 1969 version. In addition to improved pay-on-death deposit accounts, the amended Article VI provides for transfer-on-death (TOD) investment securities - stocks, bonds, mutual fund shares, security accounts, and the like. Such securities can be transferred on death to named beneficiaries. The transfers, like POD deposit accounts, are nontestamentary and do not fall into the probate estate of the deceased holder of these securities. A whole new echelon of property can be kept out of the probate estate, therefore, and estate planning for the purpose of avoiding probate becomes easier.

These amendments to Article VI of the UPC are also presented as separate uniform acts that can be adopted independently, even if a state has not adopted the UPC. Three acts are actually created from these amendments to Article VI. They are the UNIFORM NON-PROBATE TRANSFERS ON DEATH ACT (UNPTODA), UNIFORM MULTIPLE-PERSON ACCOUNTS ACT (UMPACA) and the UNIFORM TOD SECURITY REGISTRATION ACT (UTODSRA). Some explanation, however, is necessary as to the

arrangement of these three acts. UNPTODA is the whole UPC Article VI, and contains both UMPACA and UTODSRA within it. UMPACA and UTODSRA are set out, separately, to allow states to pick up the act not duplicated in existing law. The ULC would encourage every state to adopt the full text of UNPTODA, but leaves options for states that have parallel law to any part of UNPTODA.

UPC ARTICLE VI, PARTS 1 AND 2,
(UNPTODA) (UMPACA)

Article VI of the UPC deals primarily with multiple-party accounts in the original 1969 version. In the 1969 UPC, a "multiple party account" was defined as "any of the following types of account: (1) joint account, (ii) a P.O.D. account, or (iii) a trust account." Original Article VI governs ownership of such accounts during life, rights of survivorship at death of a party, the effect of pay-on-death provisions, creditors' rights, and the rights and liabilities of financial institutions pertaining to such accounts.

UPC Article VI, Parts 1 and 2, also known as UMPACA governs the same topics. Original Article VI is reorganized and considerably clarified, however. It also makes the use of multiple-party accounts simpler. The definition of "multiple-party account" in UMPACA for example, is different, "an account payable on request to one or more of two or more parties, whether or not mention is made of a right of survivorship." A POD account is not, therefore, automatically a multiple-party account, as it is under original Article VI. POD becomes a disposition that can be made in

either single-party or multiple-party accounts. Under original Article VI, that was not so clear.

Under UMPACA both single-party and multiple-party accounts can have POD provisions. In a single-party account, the account holder has all power over the account funds while alive. At death, the POD beneficiary takes them. In a multiple-party situation, there are options. The parties may have a right of survivorship that precedes a POD beneficiary. They may have right of survivorship and not bother with any POD beneficiary. They also can have a multiple-party account without any right of survivorship. If a party dies when there is no right of survivorship, his or her share falls into the estate. In all cases, the multiple parties have power over the funds during their lives. If there is any POD beneficiary, his or her rights commence upon the death of the last party to the account.

Original Article VI presumed right of survivorship in a multiple-party account unless there is "clear and convincing evidence of a different intention at the time the account is created." UMPACA takes a slightly different approach. It provides an easy-to-use statutory form that allows selection of any option, from a simple single-party account to a multiple-party account with or without POD designation, and, with or without right of survivorship. By checking the form, the parties choose their type of account, definitively establishing their intent.

UMPACA explicitly provides for an account with an agency desig-

nation, something that is only implied in original Article VI. An agent is a person appointed to act for the person who opens the account. An agent acts in the place of the principal who appoints the agent and binds the principal by his or her actions. UMPACA treats all agency powers as durable powers, surviving the incapacity of the account holder, unless there is specific language limiting them. When the powers of an agent are durable, they continue when the principal (account holder) becomes incapable of exercising his or her own powers. UMPACA eliminates any ambiguity as to the applicability of Article VI to such accounts.

UMPACA puts financial institutions in much the same position that they were in under original Article VI. They may deal with parties, agents, and POD beneficiaries according to the terms of the contract, and may take representations of rights to funds in deposit accounts on their face. These are the principal features of UMPACA both as a separate act and as a part of the new Article VI of the UPC, and UNPTODA.

UPC ARTICLE VI, PART 3 (UNPTODA)
(UTODSRA)

The principal addition to new Article VI is also the subject matter of the separate UTODSRA. Prior to UTODSRA there has been no simple way to make nontestamentary dispositions of investment securities to designated beneficiaries when their owner dies. The TOD designation authorized in UTODSRA provides the simple mechanism. A TOD clause, naming a beneficiary, registered in the appropriate place vis-a-vis the particular kind of in-

vestment security accomplishes such a distribution. If the last owner (there may be multiple ownership of securities, also) of a security dies, then the ownership of the security transfers to the named beneficiary without probate.

Investment securities come in a number of different forms, and what steps become a registration is dependent upon that form. A "security" is defined in UTODSRA as "a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account." This definition should not be confused with other definitions for other purposes.

In practice there are three kinds of securities, certificated securities, uncertificated securities, and security accounts. Traditionally, stocks and bonds are represented by a certificate and appropriate transfer of the certificate transfers the security. If there is a certificate, registration means issuance of a certificate showing its ownership - if in TOD form, with the terms TOD or equivalent and the name of the beneficiary.

Some securities are traditionally uncertificated, and some, like corporate stock may be either certificated or uncertificated. Examples of commonly uncertificated securities are mutual fund shares, options contracts, and U.S. Treasury bonds. Registration with respect to these kinds of securities is accomplished by putting the TOD desig-

nation on the records of the issuing entity.

Registering TOD designations on certificates or on the books of the issuer is not a practical solution for many investors. Most investors use brokers and brokerage accounts, and never see any evidence of their ownership of securities, except in the form of brokerage statements. So it is important that the definition of "security" in UTODSRA includes "security account." This means that brokerage customers can register TOD beneficiaries on their accounts for an effective, nontestamentary disposition at death. Probably most people will use the TOD designation on their brokerage accounts as the most expeditious and efficient way to accomplish desired estate planning.

There are some other aspects of TOD registration that should be mentioned. A TOD designation may be made only by a sole owner or multiple owners with right of survivorship. Securities held by tenants in common cannot be registered with a TOD designation. This restriction is to preclude difficulty with fractional ownership rights. Like a financial institution with multiple party accounts, a securities issuer is subject to the contract and is entitled to deal with parties on the face of any representations made. There is no obligation to look beyond such representations to guarantee their authenticity. The issuer sets the rules for accepting TOD designations. No issuer is forced to register TOD designations.

CONCLUSION

These are the principal provisions of amended UPC Article VI, and the new acts, UNPTODA, UMPACA and UTODSRA, which are derived from Article VI. Adoption in the complete form as part of the UPC or in the free-standing form of UNPTODA is the most desirable. But the existence of UMPACA and UTODSRA, separately, expands options. The full benefits of POD and TOD designations cannot be achieved unless the law in every state recognizes them in the same way. Uniformity is demanded.

Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership is comprised of 300 practicing lawyers, judges, and law professors who are appointed by each of the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands to draft uniform and model state laws and work toward their enactment.

HB

394

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 14, 1992

FURTHER REFERRALS:

Date of Committee Action: 4-3-92

The JUDICIARY Committee considered:

HB 394

HOUSE BILL NO. 394

REGULATION OF NOTARIES PUBLIC

"An Act relating to notaries; and providing for an effective date."

RECOMMENDATIONS:

be replaced with _____

CSHB 394 (L+C)

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) Gov. (2-14-92)

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>J. L. Ellis</i>					
<i>Pat Shanley</i>	/				
<i>Terrill Manton</i>	/				
<i>Mark Stanley</i>	/				
<i>Kevin P. O'Connell</i>	/				

Pat Shanley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____ Department Affected: Office of the Governor
 Title: "An Act relating to notaries public;..." BRU: Executive Operations
 Component: Office of the Lt. Governor
 Sponsor: _____
 Requestor: Governor COMPONENT SERIAL NO.

0	0	1	1
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	n/a	n/a	n/a	n/a	n/a	n/a
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

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

Prepared By: Michael Nizich, Director Phone: 465-3616
 Division: Division of Administrative Services Date: 12-26-91
 Approved by Commissioner: D. Max Hodel, Chief of Staff
 Agency: Office of the Governor Date: 1/2/92

State of Alaska

House Majority Leader
COMMITTEES
HOUSE JUDICIARY
HOUSE RULES
HOUSE STATE AFFAIRS
SPECIAL COMMITTEE
MILITARY AND VET. AFFAIRS
LEGISLATIVE COUNCIL



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

P.O. Box V
JUNEAU, AK 99811
(907) 465-3718
465-4968/4986
(SESSION)

3111 C STREET, SUITE 440
ANCHORAGE, AK 99503
(907) 561-7621

MEMORANDUM

TO: All Members
House Judiciary committee

FROM: Representative Max Gruenberg *Max*

DATE: March 31, 1992

RE: Support of HB 394

I would appreciate it if you would support HB 394, "An Act Relating to Notaries; and providing for an effective date."

HB 394 deals with several important notary issues: (1) it would require all notaries to use a rubber stamp instead of the embossed seal; (2) it would require notaries to keep a journal; (3) it would require the notary's expiration date to be included with the information already required on the seal. (4) it sets out, disqualifications of a notary, and requirements under AS 44.50. (5) it requires a notary to return papers to the Lieutenant Governor if a the notary dies, resigns, is disqualified, removed from office, or permanently moves from the state.

If you have any questions, please call me or Stan Robbins, my Chief of staff, at ext.4968.

Thank you for your consideration.

House Bill 394

"An Act relating to notaries; and providing for an effective date."

House Bill 394 deals with three important notary issues. First, it would require all notaries after July 1, 1992 to use a rubber inking stamp instead of the embossed seal. Secondly, HB 394 would require Alaskan notaries to keep a journal of each notarial act performed. Lastly, it would require the notary's expiration date to be included with the information already required on the seal.

Journal

(1) Currently, Alaskan notary's are not required to record any information on completed notarial acts. Alaska Statute does indirectly refer to maintaining a journal, but does not specifically require it. HB 394 would specifically require Alaskan Notaries to keep a journal for each notarial act completed.

Journals are important for two simple reasons, they deter fraud, and it protects the notary against lawsuits. HB 394 requires a notary to record specific information concerning each notarial act completed. Lawsuits are usually initiated three to five years after the notarial act has been performed. If accurate records are kept, the notary should be able to go right to the date the act was completed, and answer pertinent questions in regards to it. Currently Alaskan notaries who do not keep a journal do not have this option.

Notary Stamp

(2) HB 394 will also require notaries commissioned after July 1, of this year to purchase a rubber inking stamp instead of the familiar embossed seal. Changing from the embossed seal to the rubber inking stamp will accomplish two goals. First, it will improve the efficiency of government by eliminating the "smudging" process. Currently, each document that is submitted to the recorders office that has been notarized by an embossed seal must be "smudged." Smudging is the lengthy process of rubbing a pencil or carbon paper over the top of a seal impression in order for it to be microfilmed. Using a rubber inking stamp will eliminate this process.

Secondly, HB 394 will almost eliminate the instances which invalidate notarial acts due to illegible seal impressions, and handwriting. Many times an embosser does not crimp the paper well enough to tell who the notary was, and if the notary did not legibly write their name the act would be considered invalid. Using a rubber inking stamp will alleviate this concern.

Expiration Date

(3) Virtually every state, including Alaska, require notaries to write or type their expiration date on each notarial certificate. HB 394 would require notaries to include their expiration date along with the information already required by statute on the stamp. The main purpose of this clause is to prevent notaries from illegally using their stamp after their commission has expired.

Patty Trott
Notary Commissions Administrator
Office of the Lieutenant Governor

Sectional Analysis

Section 1. Requires the notary to include the date of notarization, the city and state where the notarization was performed; and the fact that the notarization was entered on the date of the notarization in the journal maintained by the notary under AS 44.50.095. Replaces the words "print or emboss" with the word "place" to comply with Section 10.

Section 2. Requires information supplied in Section 1 for verification's.

Section 3. Requires information supplied in Section 1 for acknowledgements.

Section 4. Adds a new subsection preventing convicted felons from being commissioned notaries.

Section 5. Allows the lieutenant governor to set notary commission fees by regulation.

Section 6. Deletes [The certificate shall be signed by the notary in the notary's own handwriting] and inserts it in section 7.

Requires the notary to keep a journal under AS 44.50.095 which is referenced in section 11. Deletes [A deposition, affidavit, oath, or affirmation shall be signed by the notary in the notary's own handwriting, and the notary shall endorse after the signature the date of expiration of the notary's commission.]

Section 7. Requires a notary to sign a notarial act if needed and also requires the notary to insert the information required by AS 09.63.030(c)(1).

Section 8. Prevents a notary from performing a notarial act under specific guidelines set forth in AS 44.50.065.

Section 9. Adds a section defining impartiality, and requires a notary to perform notarial acts in lawful transactions, unless the notary has stated a reason for refusal and recorded that reason in the journal as required by AS 44.50.095(c).

Prohibits a notary from knowingly executing a false certificate, and from endorsing or promoting a product, service, contest, or other offering if the notary's title or seal is used in the endorsement or promotional statement.

Prohibits the notary from the unauthorized practice of law as specified in AS 44.50.078 but does not prohibit a notary who is qualified in, and, if required, licensed to practice, a particular profession from giving advice relating to matters in that

professional field.

Prohibits the notary from making representations to have powers, qualifications, rights, or privileges that the office of notary does not have.

Section 10. Requires a notary to use a rubber inking stamp in compliance with AS 44.50.080(b).

Section 11. Adds a journal requirement as specified in AS 44.50.095.

Section 12. Amends AS 44.50.100 with language in regards to the seal and journal.

Section 13. Deletes [To revocation of notary commission] and adds "and in the adoption of regulations under this chapter."

Section 14. Adds a new section giving the lieutenant governor the authority to adopt regulations to carry out the purposes of AS 44.50. Requires the lieutenant governor to produce, and distribute a handbook with a summary of the provisions of AS 44.50 and any adopted regulations.

Section 15. Defines notary as notary public.

Section 16. Allows for a transition period for these changes to go into effect.

Section 17. The Act takes effect on July 1, 1992.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

February 13, 1992

SUBJECT: Provision in CSHB 394 (L&C) needing review (Work Order No. 17-LS1728\G)

TO: Representative David Finkelstein, Chair
House Labor and Commerce Committee

FROM: Theresa L. Bannister *tb*
Legislative Counsel

This memo accompanies a final version of CSHB 394 (L&C) as requested by the Labor and Commerce Committee. Please note that the change in sec. 44.50.095(c) appears to create an inconsistency with sec. 44.50.072(b). Sec. 44.50.095(c) now allows, but does not require, a notary to enter a refusal to notarize in the notary journal. Sec. 44.50.072(b), on the other hand, requires a notary to record the reason for a refusal in the journal. Since sec. 44.50.095(c) no longer requires entry in the journal, the subsection is not consistent with sec. 44.50.095(c). This inconsistency could be cured by deleting the phrase "and recorded that reason in the journal as required by AS 44.50.095(c)" (p. 3, ll. 14 - 15). This change would carry out the intent of the committee, as I understand it, to make these journal entries optional.

If I may be of further assistance, please advise.

TLB:gc
92-129.glc

Enclosure

JOHN B. COGHILL
LIEUTENANT GOVERNOR

STATE OF ALASKA

P O BOX AA

JUNEAU 99811-0111

(907) 465-3520

January 17, 1992

The Honorable David Finkelstein
House of Representatives
PO Box V
Juneau, Alaska 99811

Dear Representative Finkelstein,

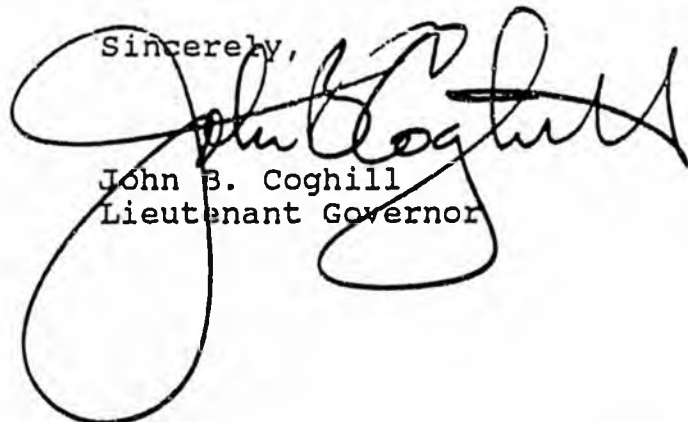
Representative Max Gruenberg has introduced House Bill 394, "An Act relating to notaries; and providing for an effective date." This has been referred to the House Labor and Commerce Committee.

House Bill 394 deals with three important notary issues. First, it would require all notaries after July 1, 1992 to use a rubber inking stamp instead of the embossed seal. Secondly, HB 394 would require Alaskan notaries to keep a journal of each notarial act performed. Lastly, it would require the notary's expiration date to be included with the information already required on the seal.

The current notarial statutes have not been changed since they were written in 1961. HB 394 offers improvements to the statutes which are designed to protect the notary.

The Lieutenant Governor's Office offers its full support of HB 394. We would greatly appreciate your quick consideration. If you have any questions in regards to the specifics of HB 394, please contact the Notary Administrator, Patty Trott in my office.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "John B. Coghill". The signature is written over the typed name and title.

John B. Coghill
Lieutenant Governor

cc: Representative Gruenberg

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

DIVISION OF MANAGEMENT

TO: Sharon Barton
Director

DATE: January 24, 1992

FILE NO: 8-300

TELEPHONE NO.: 762-2437

FROM: Linda Plumb
State Recorder

SUBJECT: HB 394

Yesterday I received a call from the Lieutenant Governor's Office requesting our support for HB 394 "An Act relating to notaries; and providing for an effective date." While most of this bill does not affect the Recorders/UCC Section, the proposed amendments to Sec. 44.50.080. SEAL.(b), would require that the notary seal be printed and in black ink that legibly reproduces under photographic methods. Current statute is not specific on this point and many of the attested documents that Recorders receive bear seals that are illegible, thus often rendering expiration dates and notary names unreadable. HB 394 would provide the statutory authority to reject documents that bear illegible notarial seals.

Unless this bill undergoes significant change before it reaches the floor vote, I request that the Department support its passage.

The only caveat I would like to bring up regarding this bill involves Sec. 44.50.185. Regulations and Handbook. and would be as an advisory note only. If a printed seal becomes a requirement under statutory directive, a portion of the notary handbook should require that the seal not encroach on any printed or signed portion of a document. Currently, no such information is given to notaries on receiving their commission and many do not realize the affect of placing the seal over signatures or on top of the certificate of acknowledgement or a portion of the document's text. After recording and microfilming, these printed seals may obliterate important elements of a document that may culminate in litigation for the parties involved.

Attachment: HB 394

cc: Meg Hayes, Assistant Director
Patty Trott, Lt. Governor's Office



Office of the City Clerk
832-5441
Incorporated November 17, 1921

City of Nenana

State of Alaska

February 18, 1992

Dave Donley, Chair
Judiciary committee
Rm 120, Capital
Juneau, AK 99811

RE: HB 394 - An Act relating to notaries

Dear Chairman Donley,

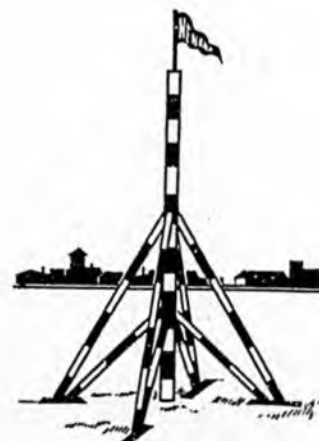
Patty Trott of Lt. Governor's Office asked me if I would write to you making comment on the referenced bill. I am happy to do so. I am a notary as well as city clerk for the City of Nenana. While, I personally feel that procedures can easily be over-regulated, I believe that the casual manner in which many notaries dispatch their duties warrants attention. I have reviewed HB 394 and find the amendments to be satisfactory and not overly burdensome.

Thank you for the opportunity to comment on this bill.

Sincerely,

Karen Harvey, Municipal Clerk
Notary for State of Alaska

cc: Lt. Governor Coghill
Committee Members



NENANA CITY PUBLIC SCHOOLS

P.O. BOX 00010
NENANA, ALASKA 99760
907-832-5464
FAX 907-832-5625

January 24, 1992

David Finkelstein, Chairman
Labor and Commerce Committee
Room 17 Capitol
Juneau, Ak. 99811

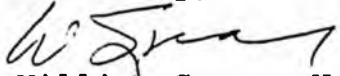
Re: House Bill No. 394

Dear Mr. Finkelstein,

I support most of the changes recommended under HB 394 especially Sec. 4 AS 44.50.060 (4) and Sec. 7 AS 44.50.095 the requirement to keep a journal of all notarized acts performed by the notary.

I disagree with the changes made to Sec. 44.50.080 (A) & (B). At \$30.00 each (Fairbanks price) for replacement stamp, the cost to notaries in the State of Alaska would be \$392,000 for the 1st year and approximately \$98,000 for each year there after. I would encourage you to look into other less costly methods of addressing the application of the expiration date.

Sincerely,



William Spear, Notary
Business Manager



A Nonprofit
Educational Organization

NATIONAL NOTARY ASSOCIATION®

8236 Remmet Ave., P.O. Box 7184, Canoga Park, CA 91304-7184
Telephone: (818) 713-4000, FAX: (818) 713-0842

MILTON G. VALERA
President

DEBORAH M. THAW
Executive Director

LINDA L. BAZAR
Vice President, Finance

CHARLES N. FAERBER
Vice President, Legislation

RAYMOND C. ROTHMAN
Founder

January 27, 1991

Honorable Max F. Gruenberg, Jr.
House of Representatives
State Capitol
Juneau, AK 99811

RE: House Bill 394, Revision of Notary Code

Dear Representative Gruenberg:

On behalf of the National Notary Association, a nonprofit educational organization serving the nation's four million Notaries Public, I applaud the recent introduction of House Bill 394, a proposal affecting notarial acts in Alaska.

Specifically, the bill requires a Notary to keep a journal of his or her notarial acts and also mandates that, upon commission expiration or leaving the state permanently, the Notary must deliver the journal to the secretary of state.

We believe keeping a journal is not only a prudent, businesslike practice, but protects the public by providing valuable documentary evidence of a notarization should memory fail or an original document becomes altered or misplaced. A journal also may preclude a baseless lawsuit by showing that a Notary did use reasonable care or that a transaction did occur as recorded. Moreover, having the document holder sign the journal gives the Notary a signature sample to compare against the signature on the document and on identification cards.

The bill additionally requires Notaries to use only seals that are black-inking stamps — a provision favored by document recorders to simplify the microfilming process.

As the nation's clearinghouse for information on Notary laws, customs and practices, we welcome your questions. Please let us know if we can be of service.

Sincerely,

Milton G. Valera
President

MGV:dab

cc: Honorable John B. Coghill
Lieutenant Governor

The Official Charter and Guiding Purposes of the National Notary Association

I

To educate Notaries about the legal, ethical and technical facets of performing a notarial act.

II

To instill in Notaries a sense of self-respect and professional pride in the important role of impartial public servant.

III

To develop and promote the highest ethical principles for Notaries.

IV

To increase public awareness and understanding of the Notary's vital function in modern society.

V

To serve as a notarial information center for Notary-regulating officials, legislators, educators and the public-at-large.

VI

To promote uniform, modern and effective notarial laws in all states through promulgation of the Model Notary Act.

VII

To provide the highest quality professional support services for Notaries.

VIII

To promote notarial procedures that deter impropriety, injustice and fraud.

IX

To facilitate the agreements and proceedings of commerce and law.

X

To preserve and cultivate appreciation for the rich heritage and tradition of the notarial office.



LEGISLATIVE REVIEW

A summary of important legislation affecting Notaries Public throughout the United States.

BILL • AUTHOR	SUMMARY	STATUS	COMMENT
ALASKA			
House Bill 394 Gruenberg	Requires Notaries to keep a journal. A Notary's stamp must use black ink. Stamp and journal must be surrendered to the secretary of state when commission expires or Notary leaves state permanently. Prohibits notarization for relatives or Notary testimonials. Includes language from the <i>Model Notary Act</i> .	<i>Model Notary Act</i> provisions added in House Labor Committee; goes to Judicial Committee next.	This important bill would immeasurably strengthen Alaska's Notary law, especially the requirement for a journal of notarial acts.
COLORADO			
Senate Bill 11 Martinez	Replaces state's current \$5,000 bond with state-run recovery fund. Prohibits notarization of blank documents.	Sent to Senate Appropriations Committee to assess fiscal impact.	Would put state in insurance business. State's "deep pockets" would invite litigation.
FLORIDA			
Senate Bill 496 Dantzer	Removes prohibition against notarizing if Notary is related by blood or marriage to one whose signature is being notarized, or if Notary has financial interest in underlying transaction. (Companion bill is HB 1365.)	Sent to Senate Judiciary Committee.	A financial interest may prompt Notary to exert undue influence or ignore irregularities.
INDIANA			
House Bill 1054 Eddy	Allows city, town and county elected officials to take acknowledgments, administer oaths, take depositions of witnesses, certify affidavits and depositions, and execute any other duty of Notaries allowed by statute.	In House Ways and Means Committee.	Will provide services to public, but officials should get same education as other Notaries.
MARYLAND			
Senate Bill 122 Committee on Judicial Proceedings	Requires a Notary to only administer an oath or notarize an acknowledgment of an individual when he or she personally appears before that Notary — but also allows telephone depositions.	In Senate Committee on Judicial Proceedings.	Allowing depositions by telephone defeats the merits of the bill's personal appearance requirement for other notarial acts.
PENNSYLVANIA			
House Bill 923 McCall	Allows a recorder of deeds to accept a document without an embossed seal, even though state law requires a Notary to use both an ink stamp and an embosser in notarizing.	Passed House, sent to Senate Committee on Local Government.	If law requires both embosser and stamp, why weaken it with an exception?
VIRGINIA			
House Bill 324 Howell	Notaries are no longer prohibited from notarizing a will that names the Notary as a fiduciary of the will.	In Senate Committee on Courts of Justice.	Still prohibits notarization if Notary is a beneficiary of the estate.

AROUND THE NATION

Investigation Reveals Unethical Behavior

MASSACHUSETTS — A Notary voluntarily resigned his commission after he became the focus of an investigation by the Board of Bar Overseers for misusing more than \$374,884 in company funds and for improperly drafting a will.

Attorney Robert O. Bullard, Jr. signed an affidavit a year ago explaining his wrongful actions, which included the "impropriety of drafting an instrument, such as a will, under which I might benefit."

Music, Candlelight And...Affidavits?

CANADA — Soft music and candlelight traditionally are associated with romantic evenings, and Canadian men soon may add notarized affidavits to that list.

A bill recently introduced in Parliament defines date rape and requires an affidavit of consent to sex, which is designed to eliminate any doubt that a woman consented to a sexual relationship with a man.

Should the measure pass, will Notaries and justices of the peace be required to remain open late at night and to make "house calls" in order to notarize the affidavits?

Notary Indicted On Fraud Charge

NEW YORK — A Long Island Notary was indicted on perjury charges after allegedly lying to a Nassau County grand jury about notarizing

affidavits filed by deceased multimillionaire Marvin Middlemark's former caretaker.

Notary Andrew Petti, Jr., who faces seven years in jail if convicted, pleaded innocent.

Charges against Petti, 35, arose after he notarized affidavits in May signed by John Randolph, the former caretaker, who told a district attorney that Middlemark's son, Martin, had paid him to change an affidavit.

In November, Petti testified before a grand jury that Randolph signed the affidavits in his presence, but prosecutors have evidence that he did not.

For the last two years, Martin has been involved in a fierce battle over the \$5 million estate of his father, inventor of the "rabbit ears" indoor television antenna, who died in 1989.

Weddings Are All In A Day's Work

MAINE — Taking acknowledgments, checking identification and performing marriages are all part of Notary Carlene Bellefleur's job.

While on her afternoon coffee break recently, Bellefleur performed a wedding ceremony for a Belgian couple. The pair had been traveling in Canada and decided to get married. They discovered, however, there is a 30-day waiting period for a marriage ceremony.

When they learned they could get married immediately in the United States, they drove to Maine.

"They got married and left," Bellefleur said.

Signature Doubted On Lease Contract

CALIFORNIA — Although the signature of a representative of the Los Coyotes Band of Mission Indians was notarized on a contract by an Escondido Notary, the man's affidavit claims he never appeared before the woman.

The Notary, Helen Marie Zarate, said she doesn't specifically remember the man because she performs so many notarizations. But, she said if her seal is on the document, then she performed the notarization correctly.

"I go strictly by the rules," Zarate said. "If I need identification from a document signer, I ask for it."

Tougher Guidelines May Be Imposed

ALASKA — Attempting to heighten the standards of Notaries by revising the state's 31-year-old Notary laws, officials are optimistic that a bill mandating a journal and other measures will pass this year.

"The laws have not been changed since 1961, they are archaic and need work," said Patricia Trott, Alaska Notary commission administrator.

Based on recommendations from the National Notary Association and Lieutenant Governor Jack Coghill, House Bill 394 proposes to make a journal mandatory, imposes disqualification and impartiality guidelines and makes a rubber inking seal compulsory.

Trott, who expects little resistance to the bill, said that Notaries are in favor of the pro-

posed change because they are concerned about liability in performing notarizations.

If the bill passes, it could become law by July 1, Trott said.

Inked Stamp Can Save Time, Trouble

MICHIGAN — After a court of appeals ruled a divorce settlement invalid because it was unsigned, a family law educator said it is prudent to get a Notary's seal on a settlement to ensure the finality of such an agreement.

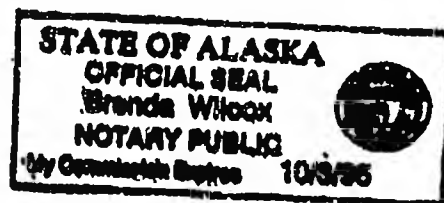
"To be safe, a Notary's signature is a good idea," said Richard S. Victor, a family law educator and past president of the State Bar's Family Law Section.

Victor's comments followed a ruling that allows a husband who agreed to a divorce settlement to renege on the deal because it was not signed before he backed out.

Increased Wages, Happier Notaries

NEW YORK — Frustrated by years of being able to charge only a quarter for performing a notarization, Notaries are relieved now that the maximum fee in the state has increased to \$2.

"Our personal policy is that to charge a quarter is so ridiculous that we don't charge anything," said Richard Clark, manager of the Tebbutt Funeral Home in Albany. "So now it is \$2. At least it sounds like a more reasonable fee."



H B

3 9 5

(7)

Date Referred: March 6, 1992

HOUSE COMMITTEE REPORT

FURTHER REFERRALS:

Date of Committee Action: 4/6/92

The JUDICIARY Committee considered:

HB 395

HOUSE BILL NO. 395

INDEMNIFICATION OF PUBLIC EMPLOYEES

"An Act requiring public employers to indemnify public employees for injuries occurring within the scope of employment."

RECOMMENDATIONS:

be replaced with CS HB 395 (Judiciary) 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 ^{LAW} Legal Svcs 2/15/92 & ²⁻²⁷⁻⁹² Admin-Risk mgmt

zero fiscal note(s) C&RA 3-6-92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>Larry Martin</i>		<input checked="" type="checkbox"/>	
<i>Daniel Wiley</i>	<input checked="" type="checkbox"/>	<i>Mark Finley</i>		<input checked="" type="checkbox"/>	
<i>J. Ellis</i>	<input type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				

Daniel Wiley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

E NO. HB 395

Revision Date: _____ Department Affected: Department of Law
 Title: "...requiring public employers to indemnify public employees..." BRU: Legal Services
 Component: Operations
 Sponsor: Representative Donlev
 Requestor: Representative Donlev COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 18, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 18, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 395

This bill amends AS 29.20 and AS 39.90 to provide that public employers shall indemnify public employees who are sued individually for injuring others while acting within the performance and the scope of their duties, unless an injury is the result of an intentional act or willful misconduct. The bill attempts to codify existing practice; however, we believe it is unclear in certain respects and could cause confusion.

For instance, the bill does not define "scope of duties," nor does it require an employee to give prompt notice to the employer when a claim is filed. Furthermore, the bill does not address conflicts of interest or which party would ultimately be responsible for directing a defense, the employer or the employee. The bill would not prohibit an employee from agreeing to a settlement or payment of a claim without the knowledge or agreement of the employer.

The bill also does not include gross negligence as an exemption to indemnification. The state currently does not indemnify acts of gross negligence for any of its employees, and this proviso is included in all of the state's collective bargaining agreements. The bill would therefore have the effect of indemnifying acts of gross negligence for employees not covered by collective bargaining agreements, primarily appointed officials, but it would not do so for employees covered by collective bargaining agreements. These apparent inconsistencies with existing practice could have an impact if they are not clarified.

However, we have not shown a fiscal impact because we cannot determine whether there will be any, and because the department's costs to defend personal injury claims are paid from the state's Risk Management accounts.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 395

Revision Date: _____ Department Affected: Administration
 Title: An act requiring public employ- BRU: Division of Risk Management
ers to indemnify public employees Component: _____
 Sponsor: Donley
 Requestor: House Community & Reg'l Affairs COMPONENT SERIAL NO.

0	0	7	1
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) State policy presently provides protection to State employees acting within the course and scope of their duties -- with the exclusion of intentional and willful or wanton acts of misconduct. Therefore there is no effect on Risk Management budget.

Prepared By: Donald J. Hitchcock Phone: 465-2180
 Division: Risk Management Date: 2/27/92
 Approved by Commissioner: Nancy Bear Userra
 Agency: Department of Administration Date: 2/27/92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 395

Revision Date: _____
Title: Indemnification of Public Employees
Sponsor: Representative Donley
Requestor: (H) CRA

Department Affected: Community and Regional Affairs
BRU: _____
Component: _____
COMPONENT SERIAL NO.

0	0	0	0
---	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*0	*0	*0	*0	*0	*0

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	*0	*0	*0	*0	*0	*0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	*0	*0	*0	*0	*0	*0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
Section 1 of the bill applies only to municipalities and, therefore, does not have a fiscal impact on the department.
* Section 2 of the bill applies to state departments generally but it is impossible to determine the possible impact. To date, no DCRA employees have been sued "for injuries occurring during the performance and within the scope of the employee's duty."

Prepared By: _____
Division: Administrative Services Division

Phone: 465-4708
Date: _____

Approved by Commissioner: Er. Bethel
Agency: Department of Community and Regional Affairs

Date: 3-3-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

REPRESENTATIVE DAVE DONLEY

ALASKA STATE HOUSE
DISTRICT ELEVEN • SPENARD
SEAT A
HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDDTOWN • WINDEMERE

4852 NEWCASTLE WAY
ANCHORAGE, ALASKA 99503
(907) 561-8234



SPONSOR STATEMENT

HB 395 requires the state and municipalities to indemnify public employees who are sued for injuries occurring during the performance and within the scope of the employee's job. The statute would not require employers to indemnify an employee for acts of intentional or wilful misconduct or to pay an award of punitive damages.

The bill is based on the current state policy for defense and indemnification of state employees. A copy of this policy is attached, along with a memorandum from the Attorney General's Office explaining the policy reasons why indemnification of state employees is a good idea. In addition to enumerating the benefits to the employer of indemnification, the Department of Law explanation points out the "widely felt" belief "that where an employee acting in good faith injures a person within the performance and scope of employment, the employer should indemnify the employee."

HB 395 is strongly supported by the Alaska Association of Chiefs of Police, the Alaska Peace Officers Association, the Alaska State Employees Association, and the AFL-CIO.

(7)

Date Referred: January 14, 1992

FURTHER REFERRALS:

Labor & Commerce
Judiciary

Date of Committee Action: 3/4/92

The COMMUNITY AND REGIONAL AFFAIRS Committee considered:

HB 395

HOUSE BILL NO. 395

INDEMNIFICATION OF PUBLIC EMPLOYEES

"An Act requiring public employers to indemnify public employees for injuries occurring within the scope of employment."

RECOMMENDATIONS: the same title
be replaced with _____ 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 C & RA

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	

[Signature]
CHAIRMAN'S SIGNATURE

REPRESENTATIVE DAVE DONLEY

ALASKA STATE HOUSE
DISTRICT ELEVEN • SPENARD
SEAT A
HEATHER MEADOWS • NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE

4852 NEWCASTLE WAY
ANCHORAGE, ALASKA 99503
(907) 561-8234



M E M O R A N D U M

TO: Representative Jerry Mackie, Chair
House Community & Regional Affairs Committee

FROM: Representative Dave Donley **DB**

RE: HB 395 - Indemnity for Public Employees

DATE: February 14, 1992

I would greatly appreciate if HB 395 could be scheduled for a hearing at the earliest possible opportunity. The legislation requires public employers to indemnify employees who are sued for injuries occurring during the performance and within the scope of the employee's duty. An employer would not be obligated to indemnify an employee for acts of intentional or wilful misconduct.

The standards for indemnification set in HB 395 are those currently used, as a matter of policy, by the Department of Law when determining whether to indemnify public employees. By codifying existing practice, HB 395 eliminates the concerns that many public employees feel about whether their employers will support them in court if they are sued, yet does so in a way that protects public employers against paying for employee misconduct.

I introduced the bill at the request of the Alaska Association of Chiefs of Police. A copy of a letter I recently received from the Chiefs is attached. The bill is also strongly supported by the Alaska Police Officers Association.

Thank you in advance for your help and assistance in scheduling this bill for a hearing.

DD:lc

Alaska Association Chiefs of Police



Representative Dave Donley
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

February 13, 1992

Dear Representative Donley,

I would like to thank you for introducing House Bill 395, which would ensure Indemnification for public employees. You have our full support on this important piece of legislation.

In conjunction with the Alaska Peace Officers Association we have identified House Bill 395 as a top legislative priority. We believe that government employees should be defended and protected by their employer when lawsuits are filed against employees who were merely performing required work.

Government employees should be held responsible and accountable for their actions. We would never advocate that bad employees be protected, however, when employees take good faith actions at the behest of their employer, we feel that as a matter of law, employees should be indemnified. When employees are doing the work of government, within the scope of their authority and without malice, they should not be held personally liable when they are named as parties to lawsuits.

We have long been concerned about the chilling effect lawsuits have upon employees. Hopefully, House Bill 395 will become law and good employees will no longer have to be concerned that their personal assets are unfairly in jeopardy.

We would be happy to work with you in the passage of this bill. If you have any questions about our position, I can be reached at 786-8552.

Sincerely,

Duane S. Udland, President
Alaska Association of Chiefs of Police
4501 South Bragaw
Anchorage, Alaska 99507

Post-It™ brand fax transmittal memo 7671		# of pages	1
To	LALIE MITCHELL	From	DUANE UDLAND
Co.		Co.	
Dept.		Phone #	786-8552
Fax #	561-1691	Fax #	786-8638

MEMORANDUM

State of Alaska

Department of Law

TO: Brad Thompson
Division of Risk Management
Department of Administration

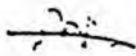
DATE: June 17, 1988

FILE NO.:

TEL. NO.: 465-3603

SUBJECT: State provided defense
of employees

RECEIVED
JUN 20 1988
DEPARTMENT OF LAW

FROM: 
Bill Mellow
Assistant Attorney General
Special Litigation-Juneau

You have requested a concise (10 lines or less) statement of the state's policy for defense and indemnification of state employees. A copy of that policy is attached but please note that this is only policy and is not legally binding except where the state has otherwise contractually bound itself.

Following is an explanation of the basis for evolution of a general belief that the state should defend and indemnify employees; There is no statutory law in Alaska requiring state defense and indemnification of employees, however, most public employees are protected by bargaining agreements which obligate the state to defend and indemnify for ordinary negligence. Additionally, common law rules developed by the courts have saddled employers with liability for negligence of employees. The common law rules are referred to as the doctrine of respondeat superior (the master answers for the servant) and require the employer to pay a third party for injuries caused by employees. The doctrine also grants common law indemnity in favor of the employer against the employee but, because many employees are judgment-proof, employers often simply absorb the expense without looking to the employee for reimbursement. Additionally, for the tactical reason that the employer needs the support of the employee in defense against the third party, there is a tactical justification for agreeing to indemnify. Finally, and strongest of all as a policy justification, it is widely felt that where an employee acting in good faith injures a person within the performance and scope of employment, the employer should indemnify the employee.

WGM:jal
Attachment

cc: Ronald W. Lorensen (w/enc.)

STATE POLICY FOR DEFENSE OF EMPLOYEES

Where the rights and obligations of employees and the state are not otherwise covered by bargaining agreements, it is the policy of the State of Alaska to provide legal defense and pay judgments against state employees sued for injuries occurring during the performance and within the scope of duty. Except where the Department of Law has specifically in writing obligated the state otherwise, the state will not defend or indemnify for acts of intentional and willful misconduct nor pay an award of punitive damages.

Alaska Association of Chiefs of Police



Alaska Peace Officers Association, Inc.



**Federal Bureau of Investigation National Academy
Associates**



**Position Statement
from The Law Enforcement Coalition
Concerning Legislative Proposals
before the
Eighteenth Alaska Legislature
February 1992**

HOUSE BILL 395
INDEMNIFICATION OF GOVERNMENT EMPLOYEES

Indemnification for public employees is our number one priority.

We believe that government must be held responsible for its actions. When someone is wrongly harmed through the actions of government, injured parties should be able to make claims as appropriate. However, we believe very strongly that government employees should be defended and protected when their actions are made in good faith.

Generally when a lawsuit is filed, employees are listed as parties to the action. In the past, employees have not been held personally liable for actions taken at the behest of their employer, unless they were clearly working outside the scope of their authority. This seems to be changing. Recent court rulings imposing personal punitive damages are placing the livelihoods of our public employees in jeopardy.

The trend where public employees are being held personally liable places employees in a position where their own personal assets are at risk. All government employees are in danger, from the highest level policy maker to the lowest level of workers where those policies are carried out. The social worker, the road maintenance supervisor, the police officer, the medic, the fire fighter, the department manager, and elected officials are all vulnerable.

We in law enforcement believe this is an undue burden upon the State's public employees. It carries great potential for the workings of government to become bogged down because employees fear that decisions they make in good faith may result in the loss of their assets.

When employees are doing the work of the government, within the scope of their authority, and without malice, they should not be held personally liable when they are named as parties to law suits.

Legislation should be passed that indemnifies public employees and frees them from the burden of working under the constant threat that the good faith judgments they make can result in the loss of their homes, their cars, or their savings.

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-8650
(907) 343-4545

TOM FINK,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

April 6, 1992

Representative Dave Donely
Chair, House Judiciary Committee
3311 C Street
Suite 450
Anchorage, Alaska 99503

Subject: CSHB 395 Relating to Defense and Indemnification of
Public Employees

Dear Representative Donely:

After reviewing the committee substitute for HB 395 dated April 5, 1992, and identified as draft no. 7-LS1682/J, the Municipality of Anchorage supports this draft committee substitute. From discussions with the Municipal Risk Management Department, Police Department and Legal Department, this committee substitute appears to be a workable compromise between the initial draft and a prior committee substitute.

This version of the bill would allow the Municipality of Anchorage flexibility to defend and indemnify its employees in appropriate circumstances, including punitive damage situations. Additionally, the substitute allows an employee a defined time period in which to assert and protect the employee's rights to defense or indemnity. The committee substitute appropriately limits the defense of those rights to declaratory actions, for enforcing the rights to defense; cross claims for enforcing rights to indemnity where the employer is named as a party, and an action brought within one year for enforcing indemnification where the employer is not named as a party. With these elements, the Municipality of Anchorage supports the bill.

Sincerely,

Scott A. Brandt-Erichsen
Assistant Municipal Attorney

cc: Anne Williams, Executive Assistant, Municipal Manager's Office
Duane Udland, Deputy Chief of Police
Harry Sjoberg, Risk Manager

Municipality
of
Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4545

TOM FINK,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

March 3, 1992

Representative Dave Donley
Chair House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Re: HB 395 Regarding Indemnification of Public Employees

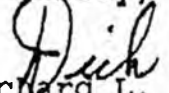
Dear Mr. Donley:

On behalf of the Municipal Attorney's Office in Anchorage and the Municipality of Anchorage, I strongly endorse HB 395.

Treatment of indemnification of municipal officers and employees, particularly indemnification for punitive damages, is an issue we face in a number of cases handled by our office. Passage of HB 395 would provide clear authorization allowing municipalities to establish and enforce consistent procedures for addressing claims where employee indemnification is at issue.

I appreciate your efforts in drafting HB, 395 and urge your continued diligence as it moves through the process. Thank you for your attention to this issue.

Sincerely,


Richard L. McVeigh,
Municipal Attorney

cc: Speaker of the House
Governor's Office

m1\lfr\donnelly\indem.sbe/rh

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

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

Mary Van Nimwegen

House Judiciary 1991-92 - HB 395

House C&RA 3/4/92

H B

3 9 6

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 14, 1992

FURTHER REFERRALS:

Finance

Date of Committee Action: 1.27.91

The JUDICIARY Committee considered:

HB 396

HOUSE BILL NO. 396

ANTI-VIOLENT CRIME ACT OF 1992

"An Act relating to violent crimes and criminal law and procedure."

RECOMMENDATIONS:

be replaced with CS HB 396 (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 Adm'n.

fiscal note(s) _____

zero fiscal note Law, Corrections, Public Safety, OLS.

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Kevin Pad... [Signature]</i>	✓	<i>J. Ellis [Signature]</i>		X	
<i>Mike Hill [Signature]</i>	✓				
<i>Terry... [Signature]</i>	X				
<i>Mark... [Signature]</i>	X				
<i>Mark... [Signature]</i>	-				
<i>Dave Donley [Signature]</i>	✓				

Dave Donley [Signature]
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 396 (JUD)

Revision Date: February 4, 1992
 Title: An Act relating to violent crimes and criminal law and procedures.
 Sponsor: House Judiciary
 Requestor: House Judiciary

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency

COMPONENT SERIAL NO.

1	6	3	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	76.7	79.0	81.4	83.8	86.3	88.9
TRAVEL	2.0	2.1	2.2	2.3	2.4	2.5
CONTRACTUAL	20.0	20.6	21.2	21.8	22.5	23.2
SUPPLIES	1.5	1.6	1.7	1.8	1.9	2.0
EQUIPMENT	2.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	102.2	103.3	106.5	109.7	113.1	116.6

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	102.2	103.3	106.5	109.7	113.1	116.6
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	102.2	103.3	106.5	109.7	113.1	116.6

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)
 See Attached.

Prepared by: John B. Salemi, Director
 Division: Public Defender Agency

Phone: 279-7541
 Date: February 4, 1992

Approved by Commissioner: Nancy Bear Usura
 Agency: Administration

Date: 2/5/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 396 (JUD)

ANALYSIS: (continued)

Many of the provisions contained in this bill are fiscally insignificant. Others, however, will have a fiscal impact on the Alaska Public Defender Agency. Additional cases, additional trials, more protracted sentencing hearings all add up to an increased work load. It should be noted that the statute of limitations provisions, for example, were introduced in this bill because police were complaining that many cases were going unprosecuted because they fell outside of the applicable statute of limitations. While neither the police nor the Department of Law have provided statistics concerning the additional cases which might be prosecuted, suffice it to say the work load is going to go up, not down.

It is difficult to project the amount of additional work which will be generated by the provisions of this bill. For that reason a very conservative approach is taken by this agency in terms of fiscal impact. It is anticipated that one additional attorney will be needed in Anchorage to absorb the work created through this bill. This lawyer would travel on an "as needed" basis to other office locations.

BUDGET ANALYSIS - CSHB 396 (JUD)

100 - Attorney III (Anchorage)	76.7
200 - Travel	2.0
300 - Contractual Office Space, Experts	20.0
400 - Supplies	1.5
500 - Equipment (One Time)	<u>2.0</u>
Total	102.2

Position Title Attorney III			No. of Positions 1	Range / Step 22A	Barg. Unit PX
Time Status PFT	Staff Months 12.0		Location EBA	Election District 92	
TYPE OF EXPENDITURE			AMOUNT		
Salary		56.0	Justification CSHB 396 (JUD) will increase the workload of the Public Defender Agency. Its provisions will 1) elevate certain criminal conduct from misdemeanor level to a felony classification, 2) elevate certain felony conduct to a higher classification of offense, thereby increasing potential penalties, 3) extend significantly the statute of limitations for many criminal acts, including doubling the period for charging crimes against persons and increasing by 15 years the statute of limitations for sex offenses against persons under 16 years of age, 4) create a more severe criminal penalty for certain homicide offenses (99 years without parole), and 5) modify certain sentencing procedures which will restrict the court's ability to reduce sentences. While it is difficult to quantify the extent to which these provisions will increase the Public Defender case/workload, a real increase will occur. The proposed budget increment (one attorney and associated expenses) represents a conservative estimate of the fiscal impact of CSHB 396 (JUD).		
Benefits		20.7			
Premium Pay					
Other					
Total Personal Services		76.7			
Travel		2.0			
Contractual		20.0			
Commodities		1.5			
Equipment		2.0			
Other					
Total Cost			102.2		
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004		102.2		
I-A Receipts	1007				
CIP Receipts	1061				
Other					

8/LE92/02127B.KP/1

Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

FY 93

Page 3 of 3
Revised Date:

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. HB 396

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to violent crimes and BRU: Trial Courts
criminal law and procedure Components: _____
 Sponsor: Judiciary
 Requestor: Judiciary COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 *CS* Phone: 264-8228
 Division: Alaska Court System Date: 01/23/92

Approved by: Arthur H. Snowden, II, Administrative Director *AS* Date: 01/23/92
 Agency: Alaska Court System

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 396 (JUD)

Revision Date: February 20, 1992 Department Affected: Department of Law
 Title: "An Act relating to crimes of assault, unlawful exploitation of a minor..." BRU: Prosecution
 Component: All
 Sponsor: House Judiciary Committee
 Requestor: House Judiciary Committee COMPONENT SERIAL NO.

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 85 through 91

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

The Department of Law's analysis has been revised in accordance with the House Judiciary Committee substitute for HB 396.

Richard I. Pegues

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 Division: Administrative Services (FAR) Date: February 20, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 20, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill./Resolution No. CSHB 396 (JUD)

Title: "An Act relating to violent crimes and criminal law and procedures."

This bill makes numerous changes to Alaska's Criminal Code involving violent crimes. A section-by-section analysis follows below.

Section 1. Title.

Section 2. This section amends AS 11.41.200(a) to include within the crime of assault in the first degree recklessly causing serious physical injury to another by repeated assaults using a dangerous instrument, even if each assault individually does not cause serious physical injury. This amendment is in response to the recent court of appeals decision in S.R.D. v. State, 817 P.2d 484 (Alaska App. 1991). It will not have an impact on the Department of Law because, where it is now necessary to prove several misdemeanors, the amendment will allow the state to prove a single class A felony, instead. This crime usually arises when a child is subjected to repeated physical abuse.

Section 3. This section amends AS 11.41.210(a) to include in the definition of the crime of assault in the second degree recklessly causing serious physical injury to another by repeated assaults, even if each assault individually does not cause serious physical injury. The result of this amendment is the same as Section 2, except that assault in the second degree is a class B felony because of the absence of a dangerous instrument.

Section 4. This section amends AS 11.41.220(a) to provide that a person, who is 18 years of age or older and who causes physical injury to a child and the injury requires medical treatment or causes physical injury on more than one occasion when the victim of the offense is under the age of 10, commits the crime of assault in the third degree. The amendment is unlikely to have a fiscal impact because of the infrequency of the offense.

Section 5. This section amends AS 11.41.410(a) to include in the crime of sexual assault in the first degree the conduct of engaging in sexual penetration with a person who is unaware that a sexual act is being committed if the offender is a health care worker, and the conduct occurs while the offender is providing professional treatment of the victim. This amendment will have little impact on the department because of the infrequency of the offense.

Section 6. This section amends AS 11.41.420(a) to include in the crime of sexual assault in the second degree the conduct of engaging in sexual contact with a person who is unaware that a

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 396 (JUD)

sexual act is being committed if the offender is a health care worker, and the conduct occurs while the offender is providing professional treatment to the victim. The amendment also adds to the offense of sexual assault in the second degree the conduct of engaging in sexual penetration with a person who is unaware that a sexual act is being committed (when the offender is not a health care provider). These changes are not expected to have a fiscal impact on the department.

Section 7. This section amends AS 11.41.425(a) to include in the crime of sexual assault in the third degree the conduct of engaging in sexual contact with a person who is unaware that a sexual act is being committed. This section is not expected to have a fiscal impact on the department.

Section 8. This section amends AS 11.41.455(a) to include within the crime of unlawful exploitation of a minor the conduct of knowingly inducing or employing a child under 18 years of age to engage in, or photographing, filming, recording, or televising a child under 18 years of age engaged in sexual masochism or sadism. This change should have no fiscal impact on the department.

Section 9. This section provides definitions for the terms "health care worker" and "sexual act."

Section 10. This section amends AS 11.61.200(a) to include within the crime of misconduct involving weapons in the first degree the act of discharging a firearm from a moving propelled vehicle. Consequently, "drive-by" shootings would become a class C felony even when no one is injured or placed in fear by the conduct. This section is not expected to have a fiscal impact on the department.

Section 11. This section amends AS 11.61.200(d) to provide that as an exception to AS 11.61.200(a)(11), a peace officer acting within the scope and authority of employment may fire a weapon from a moving vehicle. This amendment will have no fiscal impact on the department.

Section 12. This section amends AS 11.61.200 to make it an affirmative defense to a prosecution under AS 11.61.210(a)(11) that the person who discharged the firearm from a moving vehicle was engaged in a lawful hunting or fishing activity at the time. This amendment will have no fiscal impact on the department.

Section 13. This section amends AS 11.61.210(a) to include knowingly selling a firearm or defensive weapon to a person under 18 years of age within the crime of misconduct involving weapons in the second degree. This amendment will not have a fiscal impact.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 396 (JUD)

Section 14. This section amends AS 11.61.220(a) to provide that a person commits the crime of misconduct involving weapons in the third degree if the person knowingly possesses a defensive weapon within the grounds of or on a parking lot immediately adjacent to a public or private preschool, elementary, junior high, or secondary school without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer. A person 21 years of age or older is exempted from this provision. This amendment will not cause a fiscal impact.

Section 15. This section amends AS 12.10.010, the state's general statute of time limitations for criminal prosecutions, to provide that the current 5-year limitation within which an indictment must be found or an information or complaint must be instituted, shall be extended to 10 years for the following felonies:

- Manslaughter
- Criminally Negligent Homicide
- Assault in any degree
- Kidnapping and Custodial Interference
- Arson in the first degree
- Sexual Assault in any degree
- Sexual Abuse of a Minor in any degree
- Incest
- Unlawful Exploitation of a Minor
- Robbery, Extortion, or Coercion

Consequently, there will be no fiscal impact for at least 5 years. Although information that would indicate how many crimes go uncharged under the current 5-year limitation is not available, the department does not anticipate that this amendment will have a significant fiscal impact.

Section 16. This section amends AS 12.10.020 to provide that even if the general time limitation for bringing a prosecution has expired, a prosecution for a sex offense committed against a person under the age of 18 may be commenced at any time.

Section 17. This section amends AS 12.55.025(e) to clarify that a person convicted of two or more crimes, including murder in the first degree, may be sentenced to consecutive sentences in excess of the term of imprisonment for the murder conviction. This is a sentencing provision and will not have an impact on the department.

Section 18. This section amends AS 12.55.025 to provide that the preponderance of the evidence standard of proof applies to