

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7119 HOUSE LABOR & COMMERCE

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 258

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev.  
 Title: An Act relating to automobile BRU: Insurance  
liability insurance Component: Operations  
 Sponsor: Senate Labor & Commerce  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

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

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

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Don Koch, Chief of Market Surveillance Phone: 465-2577  
 Division: Insurance Date: 1/26/91  
 Approved by Commissioner: Glenn A. Olds *Glenn A. Olds* Unit Comm.  
 Agency: Department of Commerce & Economic Development Date: 4-26-91

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

# Alaska State Legislature

3111 C Street, Suite 150  
Anchorage, Alaska 99503  
(907) 561-2038  
FAX: (907) 561-4194



During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4993  
FAX: (907) 463-5352

Senator Drue Pearce  
District G

TO: All Senators

FROM: Senator Drue Pearce

A handwritten signature in cursive script that reads "Drue Pearce".

DATE: May 8, 1991

RE: Senate Bill 258 - Automobile Liability Insurance

This legislation allows high risk drivers an option when purchasing uninsured/underinsured motorist coverage.

Present statute limits high risk drivers to a single coverage amount of \$1,000,000 per individual/\$2,000,000 per accident. This legislation would allow those drivers coverage options equal to their policy liability coverage amount. These reduced coverage amounts open the market to Alaska based insurers who currently cannot afford to offer the \$1,000,000/\$2,000,000 coverage.

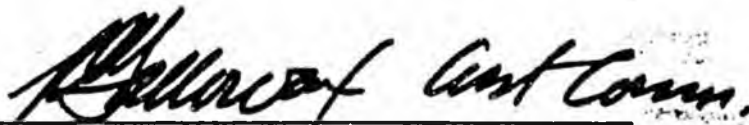
I urge your support for this legislation.

SB 258: "An Act relating to automobile liability insurance."

This department is in favor of this legislation.

In 1990, language was added to AS 21.89.020(c) to require the offer of limits for uninsured/underinsured motorists coverage limits in excess of those voluntarily purchased for liability coverage.

This legislation provides that such an offer need not be made to a person who must file a proof of financial responsibility under AS 28.20.



Glenn A. Olds, Commissioner

Date: 4-29-91



Alaska Independent  
Insurance Agents & Brokers, Inc.

May 3, 1991

Senator Drue Pearce  
Room 510, Capitol  
P.O. Box V  
Juneau, AK 99811

Re: SB 258

Dear Senator,

Thank you in advance for your support of SB 258 which will solve some difficulties in the current uninsured/underinsured automobile insurance area. Last year a change took place in the law which requires insurance companies to offer very high optional limits for this coverage to all insured motorists at each renewal of the policy.

Specialty companies which offer auto insurance to high risk drivers do not have available these high limits that are now required to be offered. This leaves only the assigned risk market available for these drivers, which can provide the coverage but at a much higher premium. These types of risks are referred to as "SR 22" accounts.

SB 258 will exempt SR 22 drivers from this section of the law and continue to allow the companies to offer competitively priced insurance on these risks.

The AIIAB appreciates your support of this bill which will serve to reduce insurance costs for high risks drivers in Alaska without reducing the minimum public liability limits required of these drivers by law.

Sincerely,

Phillip J. Dressen  
President

PJD/ss



## Alaska Independent Insurance Agents & Brokers

April 19, 1991

### Senate Bill 258

Last session the law governing the uninsured and underinsured motorist coverage was revised. The revised statute mandates an offer of up to one million per individual, two million per accident for this coverage. This offer must be made to every insured at every renewal of the policy. This offer also must be made regardless of the regular liability limit purchased by the insured.

Due to the nature of the SR-22 driver it is the practice of the market place to offer only the state mandated liability limits. This keeps the risk manageable and the coverage can be sold at a reasonable price. These companies do not have the higher uninsured/underinsured motorist limits available even though the revised statute requires them to be offered. If not revised it is likely these companies will not continue to offer coverage to the high risk driver which would then make the assigned risk pool the only source of coverage. Rates in the pool are consistently much higher than these carriers charge and many of these consumers could not afford the higher premiums.

Sincerely

David L. Stratton  
Vice President



Alaska Independent  
Insurance Agents & Brokers, Inc.

May 3, 1991

Senator Drue Pearce  
Room 510, Capitol  
P.O. Box V  
Juneau, AK 99811

Re: SB 258

Dear Senator,

Thank you in advance for your support of SB 258 which will solve some difficulties in the current uninsured/underinsured automobile insurance area. Last year a change took place in the law which requires insurance companies to offer very high optional limits for this coverage to all insured motorists at each renewal of the policy.

Specialty companies which offer auto insurance to high risk drivers do not have available these high limits that are now required to be offered. This leaves only the assigned risk market available for these drivers, which can provide the coverage but at a much higher premium. These types of risks are referred to as "SR 22" accounts.

SB 258 will exempt SR 22 drivers from this section of the law and continue to allow the companies to offer competitively priced insurance on these risks.

The AIIAB appreciates your support of this bill which will serve to reduce insurance costs for high risks drivers in Alaska without reducing the minimum public liability limits required of these drivers by law.

Sincerely,

Phillip J. Dressen  
President

PJD/ss

# Huycke General Agency

2904 Boniface Parkway  
Anchorage, Alaska 99504



FAX 907-338-7234

May 6, 1991

907-338-0491

Honorable Representative David Finkelstein, Chairman, Labor & Commerce Committee  
P.O. Box V  
Juneau, Alaska 99811

Re: SB 258

Dear Representative Finkelstein:

I certainly support the introduction of this bill. But I most strongly recommend an additional change: either limit the entire subsection (c) to personal policies only, or conversely, exempt commercial policies. This change will reinstate the original intent of HB 429 (see Rep. Barnes letter of 3-31-90 - copy attached).

Please allow me to explain. There are only four companies voluntarily underwriting the following classes of commercial automobile active in this State: truckers, waste disposal, dump and transit mix trucks, logging trucks, and public autos (taxicabs, limousines, and the following types of buses - urban, airport, intercity, charter, sightseeing and social service agency).

The prime reason for this very limited participation is these classes are very difficult to underwrite. These types of vehicles are on the road all day (and often all night) long. They are subject to a high frequency of minor claims (taxicabs seem to be in accidents everywhere and dump trucks are constantly breaking windshields with rocks). They are also subject to infrequent catastrophic claims (the Katmai bus that rolled down a hillside with 23 people in it last summer; the dump truck that hit the Texaco gas station at Tudor and Lake Otis two summers ago).

These classes require very specialized underwriting. Coverages and premiums have to be specially tailored to their exposures. High Underinsured/Uninsured Motorists limits are completely impractical and pose a serious threat to the four voluntary markets. Withdrawal of any one or more of the four will only serve to heavily repopulate the involuntary market - the Assigned Risk Plan.

Besides, most of the drivers for these classes have collateral coverage for accidents arising out of their employment - worker's compensation and/or accident and health provided by their employer.

Sure would appreciate this amendment. Thank you, and

Very truly yours,

Peter C. Huycke

PCH:jsh



OFFICIAL BUSINESS

# Alaska State Legislature

House of Representatives

REPRESENTATIVE  
**RAMONA L. BARNES**  
DISTRICT 14

ANCHORAGE  
2230 PARSON  
ANCHORAGE, ALASKA 99504  
(907) 337-7737  
(907) 561-2036  
BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3438

March 31, 1990

Mr. Peter Huycke  
Huycke General Agency  
2900 Boniface Parkway, Suite 200  
Anchorage, AK 99504

Dear Mr. Huycke:

Thank you for your letters regarding HB 429, SB 309, SB 212 and SB 273.

HB 429 - I am still trying to get a clear definition of the subrogation section and the reason for its inclusion in the bill.

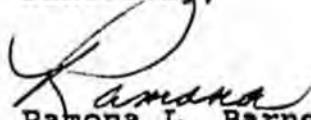
I have been advised by the Labor & Commerce Committee that the stacking provision is to be mandated for personal policies only, not commercial policies. The addition of this section was precipitated by a serious accident a year or so ago wherein the parents of an injured child were unable to collect full payment of medical bills.

This bill is currently in the Judiciary Committee, and we can be almost certain there will be substantive changes in content before it is calendared in the House of Representatives.

SB 309, SB 212, SB 273 - None of these bills have been voted on by the Senate as of this date. They are still in the committee process. When they are forwarded to the House for review I will be more able to respond to your concerns. I see you have also contacted your Senators so they are aware of your views on these bills.

If I can assist you with other concerns, please contact my office.

Sincerely,

  
Ramona L. Barnes  
Representative

RLB/er

57625

RECEIVED

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FISCAL NOTE

No. 1

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL

Bill Version: SB 262

(S) Publish Date: 5/10/91

Revision Date: \_\_\_\_\_  
Title: "An Act relating to coverage of certain executive... under... minimum wage..."  
Sponsor: Senate Labor & Commerce  
Requestor: Senate Labor & Commerce

Department Affected: Labor  
BRU: Labor Standards & Safety  
Component: \_\_\_\_\_  
Wage & Hour  
COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

FUNDING: (Thousands of Dollars)

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

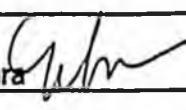
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)	Changes in <u>CS SB 262 (40)</u> have no fiscal impact. This fiscal note is appropriate. <u>5-8-91</u> <u>RAM</u> date Comte Aide (initial)
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Prepared by: Bob Libbey, Director Phone: 264-2452  
Division: Labor Standards & Safety Date: 5/2/91

Approved by Commissioner: Nancy Bear Usery   
Agency: Department of Labor Date: 5/2/91

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

# Alaska State Legislature

3111 C Street, Suite 150  
Anchorage, Alaska 99503  
(907) 561-2038

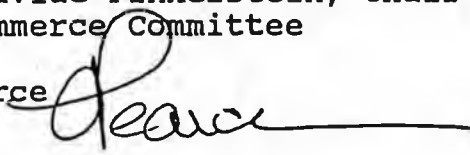


During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4993

**Senator Drue Pearce**  
District G

## MEMORANDUM

TO: Representative Davide Finkelstein, Chair  
House Labor & Commerce Committee

FROM: Senator Drue Pearce 

DATE: May 16, 1991

RE: CSSB 262 (L&C), Relating to altering administrative  
employees overtime wages

CSSB 262 would make our Alaska Statutes consistent with federal regulations regarding overtime wages for management employees. The bill was introduced at the request of hotel and restaurant owners and operators. It comes as a result of a compromise worked out between employees and management, therefore organized labor has adopted a neutral policy toward the legislation.

Alaska is the only state which requires management employees to spend at least 80% of their time in administrative functions before being exempted from overtime pay requirements. Currently most states match federal regulations which only require 60% of time spent on management duties.

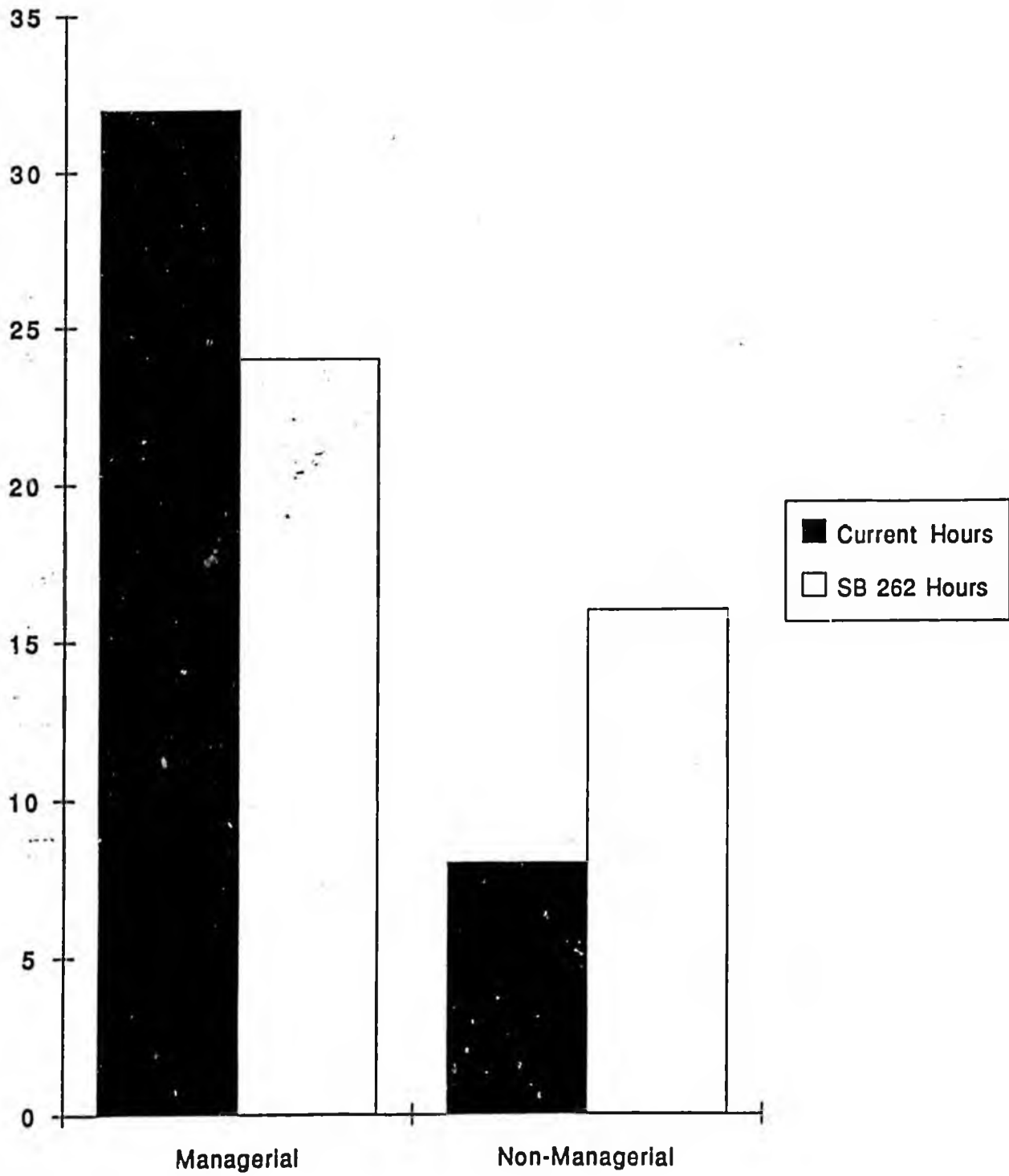
In the Labor & Commerce Committee an extra safeguard was made for low income management to ensure that their income was not further diluted by an inability to collect overtime. In order to qualify under the new percentages of this legislation, a management employee must make two times minimum wage.

These requirements have a great impact on the hotel/restaurant industry, where most management employees also "work the line". It is very difficult, if not impossible to meet this hourly requirement. Consequently, many employers and management employees are working in violation of the current law.

Passing this legislation will alleviate these discrepancies. I urge your individual support.

Thank you.

## SB 262 MANAGERIAL HOUR COMPARISON





*Alaska Cabaret, Hotel,  
Restaurant & Retailers Association*

Alaska Chamber of Restaurant and Retailers Association  
 1000 - 10th Avenue, Anchorage, Alaska 99501  
 Phone: (907) 552-1100 • Fax: (907) 552-1101

May 06, 1991

Alaska Senate Labor & Commerce Committee  
 Senator Drue Pearce, Chairman  
 Senator Virginia Collins, Vice-Chairman  
 Senator Dick Eliason  
 Senator Rick Halford  
 Senator Jay Keritula

Dear Committee Members:

The Alaska Cabaret, Hotel, Restaurant and Retailers Association supports the intent of Senate Bill 262 and urges that this proposed legislation be enacted.

Thank you for your consideration of our position.

Yours truly,

*Carol Wilson*

Carol Wilson  
 Executive Director

MEMORANDUM

TO: Rep. David Finkelstein, House Labor & Commerce  
Committee

FROM: Parry Grover (907) 257-5341

DATE: May 16, 1991

RE: Testimony in Support of CSSB 262

Good afternoon, my name is Parry Grover. I am a partner in the law firm of Davis Wright Tremaine, Anchorage. I wish to testify in support of CSSB 262. Although I will testify today specifically at the request of my client, Westmark Hotels, Inc., I also am testifying on behalf of many Alaska retail and service businesses, large and small, that are affected by the Alaska Wage & Hour Act.

CSSB 262 should be enacted into law because it will eliminate what appears to be an unintended inconsistency that now exists between the Alaska Wage & Hour Act and the federal Fair Labor Standards Act, and more importantly, because it will remove what we believe is an impractical, needlessly stringent limitation on managerial work in Alaska retail and service businesses.

Under the Alaska Wage & Hour Act, executive and managerial employees can work more than 8 hours per day or 40 hours per week without their employer incurring overtime pay liability. There is an important limitation, however. Those employees may not

spend more than 20 percent of their workweek performing the same duties as their subordinates. If they do, they lose their overtime exemption. This 20 percent limitation applies to all industries in Alaska. See, 8 AAC 15.910(1)(F) & (7)(E).

Federal law is different. Under the Fair Labor Standards Act, executive and managerial employees in the retail and service industries can work up to 40 percent of their workweeks in a non-executive or non-managerial capacity without losing their overtime exemptions. (The federal limitation is 20 percent in other industries.) Several years ago Congress amended 29 U.S. Code § 213(a)(1) to read as follows:

[A]n employee of a retail or service establishment shall not be excluded from the [overtime compensation exemption for executive and administrative employees] because of the number of hours in his workweek which he devotes to activities not directly and closely related to the performance of executive and administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities . . . (emphasis added)

The Alaska Wage & Hour Act presently lacks a 40 percent limitation for executives and managers in the retail and service industries. CSSB 262 will remedy that.

Why is the 40 percent limitation needed. There are several reasons:

First, Congress recognized that executive and managerial work in the service and retail industries is usually different than in other industries. Retail and service industry managers may be called upon to answer customer complaints, to occasionally wait on customers, to help take inventories, etc. The lines of demarcation between what is managerial and what is non-managerial work are often less clear in retail and service businesses than in other types of work.

Second, the 40 percent limitation is badly needed in Alaska because of the extremely seasonal nature of many of this state's retail and service businesses. Most Alaska hotels, for example, are busy during the summer months, but are often virtually vacant during the winter months. Hotel managers have large summer staffs which perform the hotels' non-exempt work. During the winter, however, the hotels' workforce shrinks and the manager may be called on to do some non-exempt work because there is no one else available to do it. The 40 percent limitation is needed to accommodate these seasonal swings.

Third, the 40 percent limitation is necessary for many small and medium size retail businesses. Consider, for example, the needs of a grocery store in Glennallen, Sterling or Wrangell.

The manager almost certainly will have to wait on customers on occasion, to help take inventory and perform other non-exempt work. The store cannot afford to hire other people to perform these intermittent but necessary tasks. The present 20 percent limitation is unrealistic and makes many of our state's retail concerns unwitting violators of the Wage & Hour Act. CSSB 262 will remedy that problem.

CSSB will not leave managerial employees without legal protection. First, those employees must qualify as executive or managerial employees because of the work they actually perform the majority of the time. Merely labelling them executives or managers will not suffice. CSSB 262 will not change that.

Secondly, CSSB 262 incorporates two protective provisions requested by Commissioner Usera and the Alaska Department of Labor. The bill was modified to provide that the overtime exemption will apply only "so long as the employee earns at least twice the minimum wage per hour for the first 40 hours of employment each week." That provision assures Alaskan retail and service business managers will not be underpaid.

The other protective provision concerns the placement of the amendment. CSSB will amend Alaska Statutes section 23.10.060 rather than section 055 because inclusion of the amendment in section 060 will require employers to comply with other

provisions of the Wage & Hour Act. One such provision is section 23.10.100. That section will require employers who avail themselves of this exemption to keep records of "the hours worked each day and each workweek by each employee." This requirement will aid the Department of Law substantially in assuring compliance with the state's overtime compensation laws.

CSSB 262 should not impact organized labor because it is limited to executive and administrative employees whom unions traditionally do not represent. Under section 2(3) of the National Labor Relations Act, supervisors are not considered "employees" for collective bargaining purposes. CSSB 262 will not affect the overtime compensation received by union-represented employees in Alaska. The bill is directed exclusively at executives and managers in retail and service businesses.

CSSB 262 is a good bill and deserves your support. Alaska retail and service businesses are not asking for special consideration. They only want to be treated the same as other retail and service businesses are treated under federal law -- no better and certainly no worse. Right now they are treated worse. CSSB 262 will remedy that.

Thank you for this opportunity to testify. If you have any questions for me, I can be reached by telephone at 257-5341.



May 16, 1991

Representative David Finkelstein  
Chairman  
Labor & Commerce Committee

RE: CSSB 262

Dear David:

This memorandum is to indicate my support of passage of the above legislation. This piece of legislation provides for the service and retail industry to be in conformity with federal legislation and allows the service and retail industry the flexibility of staffing during the off seasons without imposing a financial hardship on the businesses.

A predominate of small retail and service businesses exist in Alaska where supervisors must perform a variety of tasks depending upon the season which are both supervisory and non-supervisory. The passage of this legislation would assist in allowing some flexibility in staffing and scheduling.


I have met with labor leaders and discussed this issue and they have indicated that they have no objections to the passage of this legislation.

I do not believe that we are asking for any special consideration but only to be treated equally as other service or retail establishments throughout the United States are treated.

Thank you for your consideration. CSSB 262 is a good bill and deserves your support.

Best regards,

WESTMARK HOTELS, INC.

  
Al Parrish  
President

tkw

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FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 273

Revision Date: \_\_\_\_\_

Department Affected: Commerce & Econ. Dev.

Title: Relating to the establishment of  
a peer review committee . . . .

BRU: Occupational Licensing

Component: Administration

Sponsor: Senator Uehling

Requestor: House Labor & Commerce

COMPONENT SERIAL NO. 

0	3	5	6
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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
REVENUE FUND RESOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER						
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: None

ANALYSIS (Attach a separate page if necessary.)

SB 273 authorizes the Board of Chiropractic Examiners to utilize a peer review committee to review certain types of complaints. The department anticipates the administrative costs to be minimal; and that any administrative cost will be offset by an application fee to utilize the peer review process.

Prepared By: Jennifer Strickler, Administrative Officer Phone: 465-2144

Division: Occupational Licensing Date: 4/22/92

Approved by Commissioner: Glenn A. Olds *Glenn A. Olds*

Agency: Department of Commerce & Economic Development Date: 4-22-92

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

Page 1 of 1

SS/dg11948D/042392b

(Rev. 12/91)

## SB 273 Summary Letter

Four issues arose during discussions with members of the Senate and House Health, Education and Social Services Committees and Labor and Commerce Committees:

- \* Why is this bill necessary?;
- \* Doesn't the Board of Chiropractic Examiners already have the authority outlined in this bill?;
- \* Will this bill have a large fiscal note?;
- \* Does the bill's provision for reviewing costs and fees violate State and Federal anti-trust laws?

The Board of Chiropractic Examiners has the authority to determine if chiropractors are practicing within the scope of their practice as defined by Alaska statutes. The board also has the authority to determine whether chiropractors have the appropriate education per Alaska statutes to practice in the state. The board has the authority to discipline chiropractors per these issues.

However, if a patient wants to complain about the appropriateness or cost of treatment by a chiropractor practicing within the scope of his or her practice, that individual's only recourse is the courts. The board does not have current statutory authority to review these types of complaints.

This bill would provide another avenue for a patient who has such a complaint.

The bill would establish under the umbrella of the board a peer review committee to review complaints regarding the appropriateness and cost of treatment by a chiropractor within the scope of his or her practice and make a non-binding recommendation regarding that treatment to the board.

We met with the Department of Commerce to discuss the fiscal note on this bill and they have indicated they will provide a zero fiscal note because the filing fee required for each complaint will cover the costs involved. The peer review committee will not travel to meet on complaints. The chiropractor who is the target of a complaint will be responsible for mailing the files on the complaining patient to the

peer review committee. Each member will review the file, make his or her recommendations to the chairman, the chairman will then summarize the recommendations and present them to the board. The costs of this process will be minimal and will be covered by the filing fee.

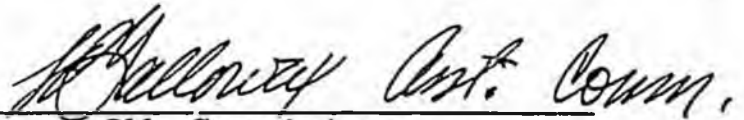
The language regarding "fees charged, or costs for services rendered" does not present federal or state anti-trust problems because the peer review committee's recommendations to the board are not binding.

SB 273: "An Act relating to the establishment of a Peer Review Committee by the Board of Chiropractic Examiners."

The department supports SB 273 because it affords the public the right to have grievances aired without the expense and time required by the court system. It further assures the responding chiropractor, against whom a complaint was lodged, that (s)he will be reviewed by those with the appropriate background.

There is a lack in the legislation to compel the respondent to honor the request. To facilitate cases being reviewed by a committee, it is suggested that there be a provision that the responding chiropractor be responsible for mailing the case records to each of the peer review committee members.

Finally, to eliminate nuisance complaints and to reduce some of the costs in administering such a program, it is suggested that a nominal fee of \$50.00 be required in filing a complaint. This fee would be used to cover the cost of long distance calls and return mailing costs by the members of the committee.



Glenn A. Olds, Commissioner

Date: 5-6-91



# COMMUNITY CHIROPRACTIC CLINIC

550 EAST TUDOR ROAD  
ANCHORAGE, ALASKA 99503  
TELEPHONE (907) 582-5366



May 6, 1991

Mr. Cliff Groh  
The Office of Rep. David Finkelstein  
State Capitol Building  
Juneau, Alaska 99811

Ref: HB 293  
Chiropractic Peer Review

Dear Mr. Groh:

Thanks for taking the time to meet with me the other day. Your suggestions and comments were right on target, and your insight has been most appreciated and helpful.

To follow up, I would like to cover a few areas of possible questions regarding this peer review bill. Firstly, the need has arisen for the Board of Examiners to provide information regarding the appropriateness of chiropractic services that they are currently unable to provide. The Board has statutory authority to discipline, or to determine if care is within the scope of chiropractic practice, but not to determine if accepted care is reasonable or appropriately applied. This would essentially be one more service the Board could provide.

Secondly, we feel that there would be no fiscal impact to the State. The way we envision that the mechanism would work would be that the review would be conducted by mail, with a copy of the complete file provided to each peer review member. Each of the reviewing doctors would then provide a report to the chairman, who would author a summary report to the parties involved and to the Board. The members of the committee would not have to meet, thereby avoiding the costs of travel and per diem. Postage would be defrayed by an application fee as determined by the Board.

And thirdly, there is a question regarding fee review and anti-trust constraints. This is a real concern. The Board (and others) are being asked with increasing frequency to determine UCR (usual, customary and reasonable) fees. In fact, the Workers' Compensation Board currently mandates UCR's. Whether we like it or not, fee review is coming and the mechanism needs to be in place. The Board is the perfect place to do that as it is under the purview and scrutiny of the State. We feel that fee review under any other authority would have a greater tendency for bias and should be left to the Board.

Again, thank you for your time and consideration. I thoroughly enjoyed my visit to Juneau, and look forward to visiting again. If I can provide any additional information, please do not hesitate to contact me at your convenience.

Warmest personal regards,



David J. Mulholland, D.C.  
Peer Review Chairman  
Alaska Chiropractic Society

DJM:dr

S B

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## Alaska Action Trust

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

March 24, 1992

Representative David Finkelstein  
House of Representatives  
P.O. Box: V  
Juneau, Alaska 99811

*David*

Dear Representative Finkelstein,

SB 285, civil liability immunity for hospitals for nonemployees has moved from the Senate to the House. The bill's first House referral is HESS. The Alaska trial lawyers oppose SB 285 and enclosed is our written position on the bill.

As you know this issue is not new. This is the third year that special interests have attempted to pass a special immunity bill which would invalidate the Alaska Supreme Court's decision in Jackson v. Power, 743 P.2d 1376 (Alaska 1987). What the Alaska Supreme Court specifically held in Jackson was that the hospital, having assumed the duty to staff an emergency room, should not be allowed to avoid legal responsibility to patients injured there as the result of doctor negligence by claiming that its emergency room doctors were "independent contractors".

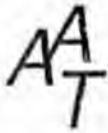
There are three other immunity bills the Alaska trial lawyers oppose as well: HB 464, civil liability immunity for volunteers; HB 479, civil liability immunity for equine activities; and HB 491, civil liability immunity for ski area operators. I have enclosed initial response papers on HB 464 and 479. Also enclosed is a letter from Dennis Mestas analyzing HB 491.

As always, our members welcome the opportunity to respond to any questions generated by these pieces of legislation or others.

Sincerely,

*Debra C. Gravo*

Debra C. Gravo  
Executive Director  
dch/encl.



## Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510  
Office: 510 L Street, Suite 101 • Anchorage  
(907) 258-4040

### SB 285: IMMUNITY OF HOSPITALS

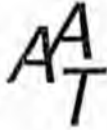
This bill is a giant step backwards. A decision by the Alaska Supreme Court several years ago found that hospitals may be liable for the negligence of the physicians who work in the hospital's emergency room. That was a decision very much in line with the legal trend in most states in the country. When persons are traumatically injured and rushed to the emergency room of a hospital, they are relying on the care provided by that hospital in obtaining treatment for their injuries. Most individuals do not arrive at a hospital emergency room and individually select the emergency room physician. Quite to the contrary, hospital emergency rooms are almost always staffed with physicians who are on rotation and have a contract with the hospital to provide that care. This is the reason that our Supreme Court has found it appropriate to hold the hospital liable for the negligence of any emergency room physician. Since the hospitals select the emergency room physicians, it is appropriate for the hospital to be responsible for the physician's negligence. If the hospitals are liable for the emergency room physicians' negligence, then the hospitals will be more careful in selecting which physicians they use in those emergency rooms.

The same reasoning holds true for any other "contract" personnel whom the hospital hires. For example, a nurse may be earning an hourly contract amount for providing services to the hospital. Who would argue with the concept that a hospital should be liable for the negligence of any nurse who is administering to a patient? Yet the hospital would not be responsible for the nurse's negligence under a "contract" employment arrangement if this legislation becomes law in Alaska.

One of the main reasons a negligently injured patient sues a hospital is because the physician who negligently injured that patient has no insurance coverage. Many of the physicians who work in hospitals do not carry any kind of malpractice insurance at all. If the hospitals could ensure that every physician would carry adequate malpractice insurance coverage, then it would rarely be necessary to sue the hospital for the negligence of a physician who is working there. However, very few Alaskan hospitals require that all physicians working there carry malpractice insurance coverage.

This legislation is bad public policy. It relieves the hospitals from liability which they should face up to for the negligence of those people who work in the hospital. This state's policy should be to provide recourse to the victims of medical malpractice negligence, not to limit the recourse of innocent victims. This is

the third year that special interests have attempted to pass this special immunity bill. It has been met with little enthusiasm in the legislature because it is bad public policy. It should receive the same treatment this year.



## *Alaska Action Trust*

P.O. Box 102323 • Anchorage, Alaska 99510  
Office: 510 L Street, Suite 104 • Anchorage  
(907) 258-4010

### Initial Response to HB 464

This bill should not proceed forward. It is another attempt to grant immunity from liability to another segment of our society. While it is laudable to try and encourage people to volunteer their time for a governmental or hospital entity, there is no reason to grant these people immunity from liability for their negligent acts. For example, this bill would grant immunity to any volunteers at any hospital in the State of Alaska. This would include student nurses, candy strippers, and anyone who obtains college credit or other benefits from their volunteer work yet does not receive actual compensation. The public would not benefit from a law which requires a paid nurse to meet an adequate standard of care but would permit the student nurse working alongside her to act negligently. This would send the wrong message to the hospitals in the State of Alaska. We must insist upon an adequate standard of care in the provision of medical services. This bill would relax that requirement.

This bill would also apply to other volunteers who should not be immune from liability. For example, consider a police explorer or reserve police officer who is negligent in the performance of their duty. There is no public policy reason why that individual should be immune from liability while the police officer working alongside them is not. Any time a grant of immunity is made, it relaxes the government entity's requirement of meeting a reasonable standard of care. It allows the governmental entity to act unreasonably without having to compensate those who are injured.

S B

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(7)  
Date Referred: April 8, 1992

FURTHER REFERRALS:

Date of Committee Action: 4/16/92

The LABOR AND COMMERCE Committee considered:

SB 313

SENATE BILL NO. 313

INSURANCE FOR PHENYLKETONURIA (PKU)

"An Act relating to insurance coverage for the treatment of phenylketonuria."

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)

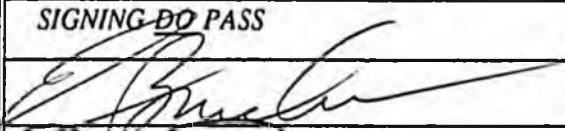
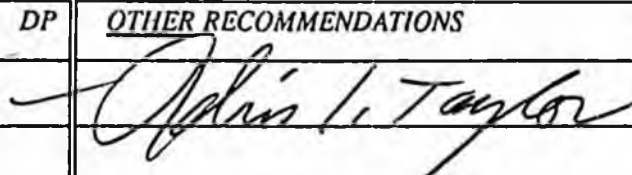
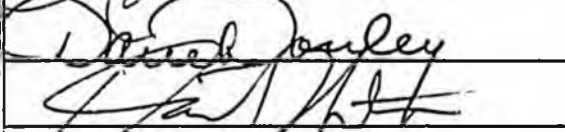
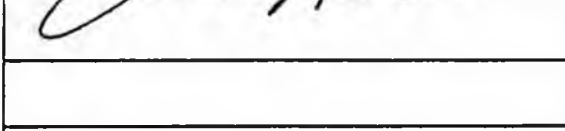
APPROVES PREVIOUS: (Dept/Date)

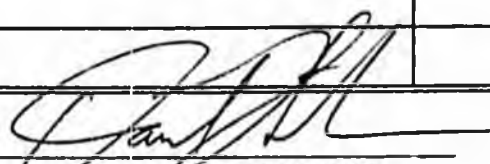
fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) HESS; ADMIN; DLED; UNIV.

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
				X	
					
					

  
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 313

Revision Date: 2/4/92 Department Affected: Commerce & Econ. Dev.

Title: An Act relating to insurance cover- BRU: Insurance

age for treatment of phenylketonuria Component: Operations

Sponsor: Senator Sturqulewski

Requestor: \_\_\_\_\_

COMPONENT SERIAL NO.

0	3	5	4
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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	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						
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.)

Prepared By: Don Koch, Chief of Market Surveillance Phone: 465-2577

Division: Insurance Date: 2/4/92

Approved by Commissioner: Glenn A. Olds

Agency: Department of Commerce & Economic Development Date: 2-3-92

FISCAL NOTE

BILL NO. SB 313

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: An Act relating to insurance coverage for the treatment of phenylketonuria.

Department Affected: All State  
BRU: All State

Sponsor: Sturgulewski  
Requestor: Senate HESS Committee

Component: \_\_\_\_\_  
COMPONENT SERIAL NO. \_\_\_\_\_

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
----------------------	---	---	---	---	---	---

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: None

ANALYSIS: (attach a separate page if necessary.)

Despite the expansion of coverage under this bill, the occurrence of phenylketonuria (PKU) in newborns is so small, the application of an insurance rate increase would be impossible to quantify.

Prepared By: Gary Bader *Gary M. Bader*  
Division: Retirement and Benefits

Phone: 465-4470  
Date: January 30, 1992

Approved by Commissioner: Nancy Bear Usea *Nancy Bear Usea*  
Agency: Department of Administration

Date: 1/30/92

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

# FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. Senate Bill No. 313

Revision Date: \_\_\_\_\_ Dept. Affected Health & Social Services  
 Title: Insurance coverage for the treatment BRU: State Health Services  
of phenylketonuria Component: Maternal, Child & Family Health  
 Sponsor: Sturgulewski  
 Requestor: HES COMPONENT SERIAL NO. 0-60-40602-290

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL						
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REVENUE						
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**FUNDING:**

(Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: none

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

No fiscal impact

Prepared by: Peter M. Nakamura, MD, MPH

Division: Public Health

Phone: (907) 465-3090

Date: 1/23/92

Approved by Commissioner: Theodore Mala, MD, MPH

Agency: Department of Health and Social Services

Date: 1/24/92

Distribution (by preparer):

Legislative Finance

OMB

Legislative Sponsor

Impacted Agency(ies)

Requestor

# Alaska State Legislature

3111 C STREET, SUITE 550  
ANCHORAGE, ALASKA 99503  
(907) 561-7615

SENATOR  
ARLISS STURGULEWSKI

While in Juneau  
STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
(907) 465-3818

## Senate

MEMORANDUM

April 8, 1992

TO: Representative David Finkelstein  
House Labor and Commerce Committee

FROM: Senate Arliss Sturgulewski *AS*  
Senate District F

RE: Hearing request for SB 313 "An Act relating to  
insurance coverage for the treatment of phenylketonuria."

I respectfully request an early hearing for SB 313 which is in the House Labor and Commerce Committee.

I have enclosed a sponsor statement and packet of information on SB 313 for Labor and Commerce members. The bill has three zero Fiscal Notes from the Departments of Health and Social Services, Administration, and Commerce and Economic Development. If you have any questions regarding this legislation, please contact me or Betty Hargrave on my staff.

Thank you for your consideration of this request.

Enclosures

*Thanks for scheduling  
on the 16<sup>th</sup>!  
Arliss*

# Alaska State Legislature



3111 C STREET, SUITE 550  
ANCHORAGE, ALASKA 99503  
(907) 561-7615

While in Juneau  
STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
(907) 465-3818

SENATOR  
ARLISS STURGULEWSKI  
3/11/92

Senate

## Sponsor Statement on:

SB 313 "An Act relating to insurance coverage for the treatment of phenylketonuria."

Senate Bill 313 would amend state law by adding a new section to AS 21.42 requiring insurers and hospital or medical service corporations that offer individual or group disability insurance to provide coverage for treatment of phenylketonuria(PKU).

PKU is a rare inherited metabolic disorder. Babies born with PKU are unable to process proteins, such as milk, and so in order to remain healthy, they must maintain a strict diet and are placed on a mineral and vitamin enriched formula. If this is not done, then the build up of proteins causes severe brain damage and mental retardation. This bill would require insurance companies to cover the cost of PKU formula.

Enclosed is a position paper from Commissioner Mala in support of this bill. Commissioner Mala points out that the cost of the formula is far less than the cost of treatment for the permanent and long term damage caused by the lack of treatment. The Department of Health and Social Services, Division of Public Health has submitted a zero Fiscal Note.

Michael Ford, Legislative Counsel, Division of Legal Service prepared a sectional analysis of SB 313 which I have enclosed.

Also enclosed are zero Fiscal Notes from the Department of Administration, Division of Retirement and Benefits; the Department of Commerce and Economic Development, Division of Insurance; and the University of Alaska, Statewide Budget Office.

**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**

December 10, 1991

**SUBJECT:** Sectional analysis (SB 313)  
**TO:** Senator Arliss Sturgulewski  
**FROM:** Michael F. Ford *M. F.*  
Legislative Counsel

The following is a section by section analysis of SB 313:

Section 1 - Requires insurers and hospital or medical service corporations that offer individual or group disability insurance, to provide coverage for treatment of phenylketonuria. Provides that certain insurance policies are excluded from this required coverage. Allows the insurer or service corporation to impose reasonable contract limitations on the required coverage, not including a preexisting condition exclusion or higher deductible or copayment than for other conditions.

Section 2 - Technical amendment that imposes the required coverage in section 1 upon hospital or medical service corporations.

Section 3 - Applicability section that requires that coverage mandated under section 1 only applies to insurance policies and contracts entered into or renewed on or after the effective date of the Act.

MFF:LMB  
91-304.lmb

## SENATE BILL NO. 313

For an Act entitled: "An Act relating to insurance coverage for the treatment of phenylketonuria."

### Summary

This bill amends AS 21.42, The Insurance Contract, by adding a new section, AS 21.42.375, Coverage for Treatment of Phenylketonuria.

AS 21.42.375 requires an insurer, authorized under AS 21.09 or AS 21.87, to provide coverage for the formulas necessary for the treatment of phenylketonuria (PKU). This section does not apply to

1. a Medicare supplemental insurance policy;
2. long-term care insurance;
3. an insurance policy regulated under 5 USC 89 or 42 USC 135mm;
4. an insurance policy that provides services or reimbursement exclusively for optometric or vision care, dental or orthodontic care, podiatric, ambulance, mental health or chiropractic care; and
5. an insurance policy that the director has, in writing, determined should be excluded from this section.

### Discussion

PKU is a rare inherited genetic disorder occurring in approximately 1 in 11,000 live births. Testing for PKU is required during the first week of life (between 48 hours and 7 days of age) and is done with a simple heel prick. Children with PKU are unable to metabolize an essential amino acid (phenylalanine), which is found in the proteins of most foods. To remain healthy, children with PKU must maintain a strict diet and ingest a mineral and vitamin enriched formula. If the protein intake is not severely restricted, the build up of proteins causes severe brain damage and mental retardation. The use of special formulas and a controlled diet can prevent the excess of protein in the individual's body and the brain

damage can be prevented, allowing the individual an opportunity to develop normally. There is an average of one new PKU infant diagnosed yearly in the State of Alaska.

The Department's Section of Maternal, Child, and Family Health sponsors PKU genetic counseling and follow-up services (clinics) in Anchorage (one in the spring and one in the fall). Each clinic is staffed by a physician, nutritionist, social worker, and a genetics counselor. Currently, there are 12 individuals with PKU utilizing the services provided by the State's PKU clinics. Beyond the clinics, the PKU individuals are given a monthly blood test. The results of the blood tests are forwarded to the Anchorage Genetics counselor, then distributed to the PKU individual's pediatrician.

In addition to the blood tests, the diets of PKU individuals are monitored on a monthly basis. Special formula, for PKU individuals, serves the same health and life sustaining purpose that medications do for many other diseases. The cost for formula and special foods vary depending on the child's age. One case of formula costs about \$180. Depending on the child's age, they may use two to three cases of formula per month.

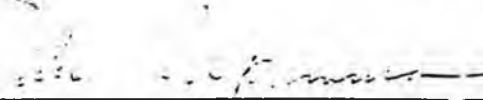
Without the special diet, the cost to the PKU individual is a lifetime as a severely mentally retarded citizen. The financial cost to the State for institutionalization could exceed a million dollars per person over a lifetime. The cost of the formula is far less than the cost of treatment for the permanent, long-term damage caused due to the lack of the special diet.

Many states require, by statute, that insurance companies cover PKU formula, one of which is the State of Washington. Many insurance companies that serve Alaska residents will not cover PKU formula without the statutory requirement. Due to the cost of the special diet to the family of a PKU individual, especially low-income families, there is the risk that the necessary precautions are not taken, thereby subjecting the PKU individual to the risk of permanent, long-term damage.

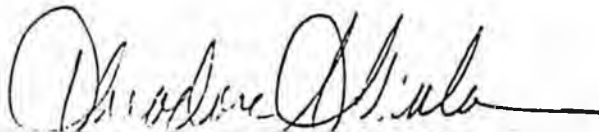
SB 313  
Page 3

Recommendation

The Department supports SB 313, which will require insurance coverage of formula necessary for the treatment of phenylketonuria.

  
Peter M. Nakamura, MD, MPH, Director  
Division of Public Health

Date: 1/27/92

  
Theodore A. Mala, MD, MPH  
Commissioner  
Department of Health and Social Services

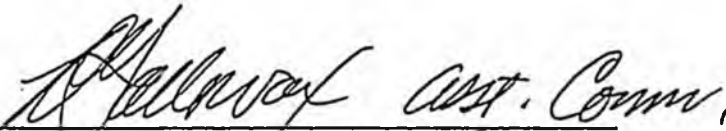
Date: 24 Jan 1992

SB 313: "An Act relating to insurance coverage for treatment of phenylketonuria."

SB 313 mandates insurance coverage for phenylketonuria. The department is neutral on this bill.

Phenylketonuria (PKU) is an affliction impacting newborn children which requires treatment with a special and expensive formula for survival. Alaska has about one case per year.

The treatment of PKU is expensive and beyond the ability of most persons to bear. Fortunately, its occurrence is sufficiently infrequent as to pose a negligible overall public cost.

  
Glenn A. Olds, Commissioner *GA*

Date: 2-3-92

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NOTE

Bill Version: SSSB 323

(S) Publish Date: 3-13-92

Effective Date: \_\_\_\_\_ Department Affected: Commerce & Economic Development

Title: An Act relating to substance abuse by certain BRU: Occupational Licensing

Groups who are affected under state law: \_\_\_\_\_ Component: Administration

Author: Sen. Sturgulewski and Pearce

Requestor: Senator Sturgulewski COMPONENT SERIAL NO. 

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

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
OPERATING						
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
FEES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
LIAB. CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

Grants: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
OTHER FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Positions:

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimated of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

SSSB 323 will allow the department to contract with public and private organizations at the request of any of the ten health care boards listed in the bill, to provide assistance and treatment to licensees who abuse alcohol, other drugs, or other substances.

Prepared By: Jennifer Strickler Phone: 465-2144

Division: Occupational Licensing Date: 02/14/92

Approved by Commissioner: Glen A. Olds

Department: Development Date: 2-14-92

Changes in SSSB 323 (Fin) have no fiscal impact. This relative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency (fiscal note is appropriate.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSSB 323

Because of the permissive language used in the bill which provide that the department "may" contract with an organization at the request of the board, new funding will not be necessary to implement the bill at the onset. Currently, the division is aware of only one licensing board committed to a substance abuse type program. As additional licensing boards become involved with similar programs, the department may require additional staff support at that time to coordinate activities between the division and the substance abuse programs.

When additional staff support becomes necessary, licensees may be asked to cover costs associated with the program through an increase in fees. The fees can be accounted for separately and the Legislature could make an appropriation from the account to fund activities of the substance abuse programs.

# Alaska State Legislature



SENATOR  
ARLISS STURGULEWSKI

3111 C STREET, SUITE 550  
ANCHORAGE, ALASKA 99503  
(907) 561-7615


While in Juneau  
STATE CAPITOL  
JUNEAU, ALASKA 99801-1102  
(907) 465-3818

Senate

MEMORANDUM

April 21, 1992

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

FROM: Senator Arliss Sturgulewski   
Senate District F

RE: Scheduling of Senate Bill 323

I would appreciate your scheduling of Senate Bill 323 "An Act relating to substance abuse by certain persons who are licensed under state law; and relating to occupational licensing fees" for a hearing before the House Labor and Commerce Committee pending referral from the House Health, Education and Social Services Committee. I have enclosed a sponsor statement, fiscal note, and backup materials.

If you have questions or would like more information regarding this legislation please contact Mary Arthur of my staff at 465-3818.

Enclosure

**SECTIONAL ANALYSIS  
SENATE BILL 323**

**SECTION 1:**

**Authorizes the Department of Commerce and Economic Development to contract with public agencies and private professional organizations to provide assistance and treatment to persons licensed by the board who abuse alcohol, other drugs, or other substances.**

The contracting would be at the request of one of the following boards:

- (1) Board of Clinical Social Work Examiners;
- (2) Board of Dental Examiners;
- (3) Board of Dispensing Opticians;
- (4) State Medical Board;
- (5) Board of Nursing;
- (6) Board of Examiners in Optometry;
- (7) Board of Pharmacy;
- (8) State Physical Therapy and Occupational Therapy Board;
- (9) Board of Psychologist and Psychological Associate Examiners; and
- (10) Board of Veterinary Examiners.

**SECTION 2: (Applies to all boards addressed in AS 08.01.010)**

Directs the Department to establish fee levels for occupations which approximately equal the actual cost to the Department for that occupation. Calls for the department to annually review fee levels. If the fee levels are not equal to the actual costs to the Department the Department shall calculate fee adjustments and adopt regulations to implement the adjustments. Recommendations of the effected Board will be considered prior to the increase in fee levels.

**SECTION 3:**

Releases from any liability those individuals who are involved in reporting, investigating, or hearing a complaint when that complaint relates to the abuse of alcohol, other drugs, or other substances by a licensed individual.

**SECTION 4:**

Repeals AS 08.01.065(b). Allows the Department to implement fee increases without direct approval of the effected board.

# Alaska State Legislature

SENATOR  
ARLISS STURGULEWSKI



Senate

3111 C STREET, SUITE 550  
ANCHORAGE, ALASKA 99503  
(907) 561-7615

While in Juneau  
STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
(907) 465-3818

## Sponsor Statement for SB 323

Several health care practitioners' groups have recognized the problem of health care practitioners who have become professionally impaired as a result of chemical dependency. These groups wish to find a solution that does not result in loss of licensure. Currently, if a chemically impaired practitioner voluntarily comes forward, or is reported to his or her licensing board, disciplinary action is taken.

Senate Bill 323 amends existing law to allow the Department of Commerce and Economic Development to contract with public agencies and private professional organizations to provide education, recommend treatment, and monitor recovery for certain persons licensed as medical practitioners who abuse alcohol, other drugs, or other substances.

Often a medical professional is hesitant to come forward to seek treatment for substance abuse because he or she is afraid of a possible license revocation. This legislation would provide a formal means by which intervention and monitoring can be done to meet the standards required by the licensing boards.

As this legislation progressed we became aware of a difference between the cost to the Department for regulating occupational licensing boards and the amount of funding received from licensing fees. This difference results in a shortfall in excess of \$300,000. The bill was amended to direct the Department of Commerce and Economic Development to review fee levels for occupational boards and to adopt fee levels that approximately equal the cost to the Department for regulating those boards.

SSSB 323 (L&C):

"An Act relating to substance abuse by certain persons who are licensed under state law."

This bill contains provisions encouraging early intervention and a nondisciplinary approach for handling licensed health care providers who abuse addictive substances. In addition, the bill provides immunity and indemnity for persons who act in good faith in reporting suspected abuse or who assist the board in intervention, peer review, and other activities deemed necessary to rehabilitate or discipline an impaired practitioner.

Section 1 of the bill adds a new subsection which allows specific health care licensing boards to request the department to contract with a professional association or public agency to provide assistance and treatment to persons who abuse addictive substances. The State Medical Board currently has this provision in 08.64.101 (6), and has had an agreement with the Alaska State Medical Association and its Impaired Physician's Committee since June, 1988. Thus far, it has demonstrated effectiveness.

Denial of the disease and threat of licensing discipline prevent many impaired professionals from entering treatment, thus, putting the public at risk for a greater period of time. Co-workers might be more willing to report someone they thought was abusing if the result were treatment, not punishment. With this legislation, the department could enter into contracts which reflect individual board concerns and philosophies. The contracts would include provisions for identifying, confronting, assisting into treatment, and the monitoring of recovery activities of health care professionals in substance abuse recovery.

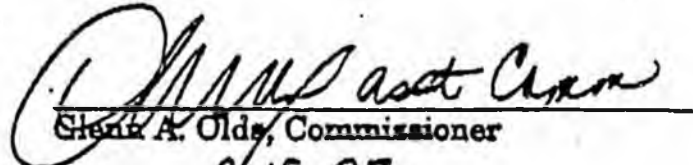
The department's Division of Occupational Licensing currently has staff members who have responsibilities in the area of investigation, education, and monitoring of professionals in recovery who have entered into disciplinary probation agreements with the boards. This problem is growing rapidly nationally and we have no reason to believe Alaska will not have a like increase in impaired practitioners. Having the ability to contract as provided in this bill might ease a strain on staff resources that we are beginning to feel.

Section 2 of the bill extends the limitation of liability protections currently in place for persons assisting the medical board to those other professionals assisting the other health care licensing boards in carrying out their duties. There is considerable fear about litigation or other retaliation for reporting a fellow practitioner. Reports made in good faith should be protected. Failure to provide this protection would preclude members of the professions from participating in the intervention and monitoring committees.

POSITION PAPER  
SSSB 323 (L&C)  
Page 2

The boards will continue to maintain the ability to discipline the chemically addicted professionals who fail to comply with terms of the optional program of treatment and monitoring among those licensed to practice. The department, not the individual boards, will be entering into the contract with the association or private care provider. The bill is permissive, not mandatory. For these reasons, the department is comfortable with the bill as written.

The department supports passage of SSSB 323 (L&C).

  
\_\_\_\_\_  
Glenn A. Olds, Commissioner  
Date: 2-18-92

S B

3 4 0

FISCAL NOTE

No. 1  
Bill Version: SB 340  
(S) Publish Date: 3-13-92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: Prohibiting discrimination for use of legal products outside of work  
Sponsor: Duncan  
Requestor: S. Judiciary

Department Affected: Administration  
BRU: Personnel/OEEO  
Component: Personnel/OEEO

COMPONENT SERIAL NO. 

		5	6
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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

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.)  
SB 340 will not require an additional appropriation for this division.

Changes in CS SB 340 (JUV) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

3/12/92 RC  
date Comte Aide (initial)

Prepared by: R. H. King, Director *Richard H. King*  
Division: Personnel/OEEO

Phone: 465-4430  
Date: 1/21/92

Approved by Commissioner: Nancy Bear Usara *Nancy Bear Usara*  
Agency: Administration

Date: 1/21/92

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

FISCAL NOTE

No. 2

BILL NO : Bill Version: SB 340

(S) Publish Date: 3-13-92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: "An Act prohibiting employers from discriminating against individuals..."  
Sponsor: Senators Duncan, Eliason, et.al.  
Requestor: Senate Judiciary

Department Affected: Labor  
BRU: Labor Standards & Safety  
Component: \_\_\_\_\_  
Wage & Hour  
COMPONENT SERIAL NO. 345

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	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
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)

Changes in CS SB 340 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

5/12/92 JK  
date Comte Aide (initial)

Prepared by: Randy Carr, Acting Director Phone : 264-2452  
Division: Labor Standards & Safety Date : 1/17/92

Approved by Commissioner: John Abshire, Acting Commissioner  
Agency: Department of Labor Date: 1/17/92

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

4-22-92

(7)  
Date Referred: March 25, 1992

HOUSE COMMITTEE REPORT  
FURTHER REFERRALS:

Labor & Commerce  
Judiciary

Date of Committee Action: 4-22-92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: CSSB 340(JUD)

CS FOR SENATE BILL NO. 340 (JUD) RIGHT TO USE LAWFUL PRODUCTS

"An Act prohibiting employers from discriminating against individuals who use legal products in a legal manner outside of work."

RECOMMENDATIONS: [ ] the same title  
be replaced with HCS CSSB 340 (HES) [ ] 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 Admin

[  ] zero fiscal note(s) Senate Labor 3/13/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>Betty Davis</i>	<input checked="" type="checkbox"/>	<i>Pat M. Kelly</i>	<input checked="" type="checkbox"/>		
<i>J. C. [Signature]</i>	<input checked="" type="checkbox"/>				
		<i>Cheri Davis</i>		<input checked="" type="checkbox"/>	
		<i>Mark [Signature]</i>			<input checked="" type="checkbox"/>

*[Signature]*  
CO-CHAIRMAN'S SIGNATURE



# Alaska State Legislature

SENATOR JIM DUNCAN

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

COMMITTEES:  
VICE CHAIR –  
FINANCE  
VICE CHAIR –  
STATE AFFAIRS  
RULES  
BUDGET & AUDIT  
ETHICS REFORM

## MEMORANDUM

TO: Representative Pat Carney and  
Representative Georgianna Lincoln  
Co- Chairs House Health, Education,  
and Social Services Committee

FROM: Senator Jim Duncan

DATE: April 6, 1992

SUBJECT: Hearing for Senate Bill 340, Prohibiting Discrimination.

I request that the Health, Education, and Social Services Committee schedule, at your earliest convenience, a hearing for Senate Bill 340, "An Act prohibiting employers from discriminating against individuals who use legal products in a legal manner outside of work."

This measure will protect employees from discrimination by an employer because of the employee's use of a lawful product in a lawful manner during nonworking hours and in places other than the premises or vehicles of the employer. In addition the terms employee and employer are defined.

Attachments:

---

*sponsor statement*

FOR IMMEDIATE RELEASE  
March 23, 1992  
Contact: Pete Carran

**STATE SENATE APPROVES EMPLOYEE RIGHTS BILL  
SPONSORED BY SENATOR JIM DUNCAN**

The State Senate today approved legislation sponsored by Senator Jim Duncan of Juneau that strengthens employee rights. Senate Bill 340 forbids Alaskan employers to discriminate based on the use of legal products in a legal manner outside the work place.

"The criteria for hiring, firing, and promotions should be based exclusively on work performance," Senator Duncan said. The use of legal products consumed on their own time in a legal fashion should not be a factor in these decisions. It is a right of privacy issue. Even though our state constitution recognizes privacy as an 'inherent right', I feel it also needs to be spelled out in the appropriate state statute." The bill includes the prohibition in Title 23 of Alaska law that deals with labor and workers' compensation.

Senator Duncan said the legislation is in response to a nationwide trend on the part of some employers to forbid the use of products, such as alcohol and tobacco, outside the work place as a condition of employment. The bill has no effect on employer's ability to establish such policies on the work place during working hours, according to Senator Duncan.

The measure contains language preventing employers from discriminating in this fashion "...with respect to compensation, terms, conditions or privileges of employment."

SB 340 now moves to the State House.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE LINCOLN

TO: CSSB 340 (JUDICIARY)

Page 2, line 10, after "(c)":

Insert "This section does not apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals who perform work connected with the carrying on, by the religious entity, of its activities.

(d)"



## ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL

NATIONAL/INTERNATIONAL HEADQUARTERS  
MAILING ADDRESS: P.O. BOX 4097, WHITTIER, CA 90607-4097  
STREET ADDRESS: 731 N. BEACH BLVD., LA HABRA, CA 90631-3626  
(213) 694-4791 FAX (213) 690-6234

APR -2 REC'D

March 27, 1992

Representative Georgianna Lincoln  
State Capitol  
Juneau, AK 99811

**Re: SB 340 - " Use of Legal Products During Off Duty Time"**

Dear Representative Lincoln:

Our association, which represents a number of religious schools in Alaska, is quite concerned about the implications of the above referenced bill. I am writing to request that a "friendly amendment" be added.

Religious organizations such as churches, synagogues, and religious educational institutions are allowed by Title VII of the Civil Rights Act of 1964 to establish religious occupational qualifications for their employees. When these groups hire staff, they typically stipulate lifestyle "role model" qualifications for employment that go beyond their employment work place. This religious employment qualification exception to general employment practice was once again reaffirmed by the U.S. Supreme Court in 1987 in Bishop v. Amos. Religious organizations have the freedom to make and enforce religious lifestyle supulations. Unless this legislation is amended, these organizations face expensive litigation to once again prove this point:

I am writing you today to ask that you please amend this bill by adding the following wording which was used in a similar bill from another state:

**Section --- of this act shall not apply to a religious corporation, association, or society with respect to employees who (a) perform work connected with the carrying on of the activities of such corporation, association, or society, or (b) are employed in a school connected with such corporation, association, or society.**

Thank you for considering this request. I would appreciate hearing from you regarding your support for the amendment. Thank you.

Sincerely,

  
Burt Carney  
Coordinator for State Legislative Issues

P.S. I was the administrator of a religious school in Anchorage for 16 years. Truly this legislation is needed. Thanks for your help.

# ALASKA STATE AFL-CIO

2501 Commercial Dr.  
Anchorage, Alaska 99501  
(907) 258-6284



819 1st Ave.  
Fairbanks, Alaska 99701  
(907) 456-2030

MANO FREY  
Executive President

GARY BROOKS  
Secretary / Treasurer

FEBRUARY 11, 1992

TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE

FROM: PAT SMUTZ, BUSINESS REPRESENTATIVE *Pat*

RE: SENATE BILL 340

The Alaska State AFL-CIO has always supported the right of privacy for individuals. We have always believed that what an individual does on their own time is their own business as long as it doesn't interfere with the rights of others or doesn't present a danger to anyone.

With this in mind the Alaska State AFL-CIO would like to go on record as being in support of Senate Bill 340. Thank you for your consideration.



*letters of support*

of Dan Harris  
Vid-Ride  
e Pla

Statement by the AFL-CIO Executive Council

on

Employee Privacy

February 19, 1991

Bal Harbour, FL

Employers in increasing numbers are seeking to probe--and then to regulate--the most private aspects of their employees' lives away from work. The AFL-CIO opposes these invasions of employee privacy.

Employers continue to interrogate employees about their union sympathies, political beliefs, financial status and other personal matters.

Random drug testing policies applied without any requirement of reasonable suspicion of wrongdoing--which are inconsistent with a basic regard for worker dignity and autonomy--is now endemic in American workplaces.

To shift the blame for rising health care and compensation costs to their employees--and to further their personal agendas--employers are increasingly seeking to regulate workers' off-the-job behavior. These restrictions make use of the employer's economic leverage to prohibit workers from engaging in perfectly lawful activities. Employers go so far as to specify whether employees can smoke at home and what employees can eat or drink at their own dinner tables.

As a matter of course, employers also conduct medical exams and genetic tests to screen out employees thought to be at increased risk of developing a disease in the future. Medical screening reveals the most intimate details of employee health, including those that have no relation to job performance.

Secret employer telephone eavesdropping on employee-customer calls permitted through a little known loophole in the federal wiretap code, is yet another often-used technique that has no place in a free society.

These employer surveillance tactics undermine basic privacy and due process rights. Yet to date, there has been only limited legislative protection for these rights; the polygraph bill and the Americans with Disability Act are the most conspicuous exceptions. The AFL-CIO is committed to enhancing the dignity of working men and women and to preventing intrusions into workers' privacy. We support legislation that would go further than present law to preserve and enhance worker privacy and to outlaw management practices which intrude on those privacy interests.

###



National  
Consumers  
League  
FOUNDED 1899

515th Street NW • Suite 928-N • Washington, DC 20005 • (202) 639-8140

Linda F. Golodner, Executive Director

January 15, 1992

Dear Editor:

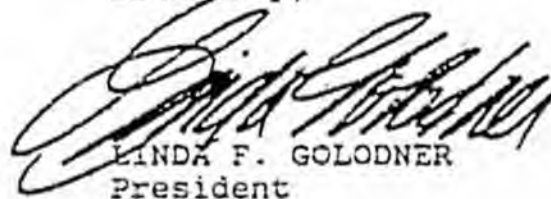
Attached are a news release and report on a special survey commissioned by The National Consumers League on vital issues of workplace privacy in Alaska. The survey is being released in Alaska by the Older Persons Action Group.

The vast majority of those polled in Alaska believe that employers and prospective employers have no business asking applicants and employees about religion, smoking habits, lifestyle, outside hobbies and activities, and other personal, off-the-job factors which have nothing to do with their ability to perform a job. They also believe an employer has no right to force an employee to change diet, stop smoking, or quit a second job. Those polled in Alaska were also opposed to credit checks on job applicants and monitoring of personal telephone calls.

In spite of their opposition to such intrusions on their personal lives, many respondents reported that they or someone they knew had had such an experience.

Because of the importance of this issue and the overwhelming reaction of people in Alaska to the questions we have put to them, we have taken the unusual step of expressing the survey results to you.

Sincerely,



LINDA F. GOLODNER  
President

LFG:jb  
Attachments

Officers: Robert R. Nathan, Honorary Chairman • Esther Peterson, Honorary President • Jack Blum, President • Ruth Jordan, Vice President • Ben Seidman, Vice President • Jane King, Secretary • Barbara Warden, Treasurer

FOR IMMEDIATE RELEASE  
January 16, 1992

CONTACT: Linda Golodner  
202-639-8140  
Vera Gazaway  
907-276-1059

WORKPLACE PRIVACY SURVEY

ALASKA FEATURED IN MAJOR PUBLIC OPINION POLL  
ON WHAT THE BOSS NEEDS TO KNOW ABOUT EMPLOYEES

WASHINGTON, D.C. ---- People in Alaska value their privacy, on the job and outside the workplace. The vast majority says that the boss has no business asking questions about the private lives, lifestyles, and off-work activities of job applicants and employees. Although most Alaskans believe employers should not ask these questions, many of those polled reported that an employer has done such things either to them or to someone they know.

Alaska was one of four states participating in the survey released today by the National Consumers League and the Older Persons Action Group in Anchorage.

The other states were Arizona, Utah, and Washington.

According to the Penn and Schoen Associates poll for the National Consumers League, Americans clearly believe:

- o Employers have no right to ask intrusive questions during job interviews.
- o It is inappropriate for employers to hire and fire an employee for personal matters unrelated to the job.
- o Employers have no right to try to change personal habits and lifestyles of employees.

Linda F. Golodner, executive director of the National Consumers League, said: "This poll confirms what we have found in many other states - that Americans believe they have a right to privacy on the job and off the job. It also shows that a significant number of employers are not respecting those rights."

In releasing the report, Vera Gazaway, executive director of the Older Persons Action Group, said: "The poll also reveals the vast majority of workers in Alaska are adamantly opposed to attempts by employers to force upon them a company-blessed lifestyle. Those 65 and over who were polled are in agreement with the rest of the state's population. As far as they are concerned, it's none of the boss's business who employees date, how much they eat, whether they smoke, take part in a political demonstration, hold a second job, drive a motorcycle, or have pending workers' compensation claims.

"As far as Alaska senior citizens and the general public are concerned, the ability to perform the job should be the sole criterion for winning and holding a job," she said.

#### I. NO RIGHT TO ASK

Overwhelmingly, those interviewed in Alaska said a prospective employer has no right to ask the following questions:

- o 88 percent, about an applicant's religion;
- o 87 percent, whether applicant lived with member of opposite sex;
- o 84 percent, if applicant had elderly parents;
- o 82 percent, whether applicant planned to have children;
- o 77 percent, if applicant smoked after work hours;
- o 59 percent, about hobbies and outside activities; and
- o 53 percent, about applicant's marital status.

#### II. NO JUSTIFICATION FOR HIRING OR FIRING

Those surveyed in Alaska were presented with nine examples of activities that employees may pursue on their own time away from work, their physical condition, and controversial opinions they may hold. Respondents were asked if they thought it was appropriate for the employer to base a decision to hire or fire on these criteria:

- o 98 percent said it was inappropriate for an employer to base hiring or firing on whether an individual dated a person of a different race.
- o 98 percent said whether an individual drives a motorcycle should not be a criterion.
- o 91 percent said participating in political demonstrations should not be a basis for hiring or firing.

- o 91 percent said it was inappropriate for employers to consider whether an employee participates in gambling at a racetrack.
- o 74 percent said holding an unusual second job should not be a consideration for employers.
- o 84 percent said being overweight should not be a consideration in hiring or firing an individual.
- o 95 percent said it was inappropriate to base hiring or firing on an individual's support for abortion.
- o 97 percent said it was inappropriate to base hiring or firing on an individual's opposition to abortion.
- o 94 percent said it was inappropriate to base hiring or firing on whether an individual smoked after work hours.

### III. NO RIGHT TO FORCE A CHANGE IN LIFESTYLE

The vast majority of Americans believe that employers have no right to force employees to change their lifestyles.

Here's the level at which survey respondents in Alaska opposed employer rights in the following categories:

- o 77 percent opposed employers monitoring personal telephone conversations.
- o 86 percent opposed a prohibition of employees dating rival firm employees.
- o 81 percent opposed an employer's refusal to hire an overweight person.
- o 78 percent opposed an employer's refusal to hire a smoker.
- o 92 percent opposed an employer's requirement that an employee or job applicant change his or her diet.
- o 85 percent opposed requiring an employee to quit smoking.
- o 68 percent opposed an employer requiring an employee to quit a second job.
- o 67 percent opposed employers performing a credit check on a prospective employee.

### IV. PERSONAL EXPERIENCE

The poll also asked Alaskans if they or anyone they knew had ever been asked any of the types of questions they objected to from employers. Sixty percent said they had been asked about their marital status;

- o 45 percent, about outside hobbies and activities;
- o 21 percent about their religion;
- o 15 percent about whether or not they planned to have children;

- o 15 percent, about whether or not they smoked away from the workplace;
- o 7 percent, whether they had elderly parents; and
- o 6 percent, whether they lived with a non-family member of the opposite sex.

Seventeen percent reported personal experience with monitored personal telephone conversations:

- o 17 percent, credit checks on prospective employees;
- o 15 percent, required to quit a second job;
- o 13 percent, refused to hire an overweight person;
- o 10 percent, refused to hire a smoker;
- o 7 percent, required an employee or applicant to quit smoking;
- o 6 percent, forbid an employee or applicant from dating an employee from a rival firm; and
- o 4 percent, required an employee or applicant to change diet.

Nine percent of those polled indicated they or someone they knew had been denied a job or fired because of a weight problem;

- o 7 percent because of an unusual second job;
- o 7 percent because of participation in a political demonstration;
- o 3 percent for smoking away from the workplace;
- o 4 percent for dating a person of a different race;
- o 2 percent for driving a motorcycle;
- o 2 percent for gambling at a racetrack; and
- o 1 percent for supporting or opposing abortion.

The Penn and Schoen poll, conducted in December 1991 on behalf of the National Consumers League, was based on a random sample of 609 respondents in Alaska. The margin of error in the survey is +/- four percent.

The National Consumers League, founded in 1899, is a private, non-profit consumer advocacy organization concerned with workplace and marketplace issues.



# THE NATIONAL BLACK CAUCUS OF STATE LEGISLATORS

Senator Rags P. Groff, CO  
President

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*Region 10*

Rep. William Clay, Jr., MO  
*Region 11*

Asst. Gwen Moore, CA  
*Region 12*

EXECUTIVE DIRECTOR  
C Ayo Bryan

NBCSL GENERAL ASSEMBLY MEETING  
DECEMBER 6, 1991  
LAS VEGAS, NEVADA

## RESOLUTION ON EMPLOYEE PRIVACY

**WHEREAS:** It has come to the attention of the National Black Caucus of State Legislators that individuals have been fired from their jobs or disadvantaged in other employment and compensation decisions for smoking tobacco products in the privacy of their homes; and

**WHEREAS:** There is a growing trend in job classification notices published in daily newspapers to stipulate "smokers need not apply" and "nonsmokers only"; and

**WHEREAS:** Twenty-one state legislatures have enacted legislation protecting employee privacy; and

**WHEREAS:** The National Black Caucus of State Legislators believes in individual privacy; and

**WHEREAS:** The National Black Caucus of State Legislators believes that employment decisions should be based solely on an individual's job skills, training and performance

**THEREFORE BE IT RESOLVED:** The National Black Caucus of State Legislators supports legislation that would make it unlawful for employers to refuse to hire or to discharge any individual, or otherwise disadvantage any individual, with respect to compensation, terms, conditions or privileges of employment because the individual is a smoker or non-smoker; and

The National Black Caucus of State Legislators supports legislation that would make it unlawful for an employer to require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours, provided the individual complies with applicable laws or policies regulating smoking on the premises of the employer during working hours.

BILL: SB 340 SHORT TITLE: RIGHT TO USE LAWFUL PRODUCTS  
NAME: CSSB 340(JUD)  
TITLE: "AN ACT PROHIBITING EMPLOYERS FROM DISCRIMINATING AGAINST INDIVIDUALS WHO USE LEGAL PRODUCTS IN A LEGAL MANNER OUTSIDE OF WORK."

SPONSOR(S): SENATOR(S) DUNCAN, ELIASON, JONES, WEHLING, RODEY, SHULTZ

CURRENT STATUS: (H) HES STATUS DATE: 03/25/92  
THEN L&C, JUD, RLS

HEARING: (H) HES APR 14 08:30 AM

01/10/92	1785	(S)	PREFILE RELEASED
01/13/92	1785	(S)	READ THE FIRST TIME - REFERRAL(S)
01/13/92	1785	(S)	JUDICIARY
01/16/92	1826	(S)	COSPONSOR(S): RODEY
01/21/92	1851	(S)	COSPONSOR(S): SHULTZ
03/13/92	2383	(S)	JUD RPT CS 1DP 3NR SAME TITLE
03/17/92	2383	(S)	ZERO FNS TO SB & CS PUBLISHED (ADM, LABOR)
03/23/92	2474	(S)	RULES TO CALENDAR 3/23/92
03/23/92	2476	(S)	READ THE SECOND TIME
03/23/92	2476	(S)	JUD CS ADOPTED UNAN CONSENT
03/23/92	2476	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/23/92	2476	(S)	READ THE THIRD TIME, CSSB 340(JUD)
03/23/92	2477	(S)	PASSED Y16 N1 E3
03/23/92	2483	(S)	TRANSMITTED TO (H)
03/23/92	2483	(S)	READ THE FIRST TIME - REFERRAL(S)
03/23/92	2483	(H)	HES, L&C, JUD

*Senate Bill History/Minutes*

**INDIVIDUAL PRIVACY  
AND EMPLOYMENT RIGHTS  
IN ALASKA**

**A Survey by  
Penn + Schoen Associates, Inc.  
Conducted for the National Consumers League  
January 2, 1992**

## INTRODUCTION

Interviews were held in December 1991 with 609 residents of Alaska for the purposes of determining citizens' attitudes toward privacy, their knowledge of employment rights, and the extent to which employers have acted to limit these rights. All respondents were 18 years of age or older. The survey was commissioned by the National Consumers League.

Interviewing was done by telephone from the central telephone facilities of Penn + Schoen Associates at the headquarters in New York City. The margin of error for the entire sample is +/- 4.0%, but is higher for sub-groups.

## EXECUTIVE SUMMARY

### Summary of Key Finding

Despite the fact that the vast majority of respondents in Alaska believe that employers do not have the right to ask questions about, make job decisions based on, or take actions that infringe upon an individual's right to privacy, up to two out of ten people -- and in some cases more -- report that an employer has done such things to either them or someone they know. This finding supports the notion that while most Alaskans believe in the right of privacy in employment, a significant number of employers are not fully respecting these rights.

### Purpose and Format of Study

The purpose of the study is to determine the attitudes and knowledge of the general public concerning individual rights of privacy in employment and measure the extent to which these rights have been limited by employers. Specifically, this survey seeks to assess how the public feels

about certain actions employers might take and questions employers might ask as determinants of prospective or continued employment.

The public was first asked a general question concerning individual privacy in employment. This was followed by three series of questions.

The first set (Section I) were questions prospective employers might ask a job applicant. The second set of questions (Section II) concerned things employees might do and asked whether or not it was appropriate to deny a job to or fire someone for doing these things. The last set of questions (Section III) asked whether or not employers have the right to take certain actions against employees. For each set of questions, people were first asked whether or not employers should have the right to ask these questions or behave in this manner, and secondly, if such a question has ever been asked or such an action has ever been taken against either the respondent personally or someone the respondent knows.

At the end of the questionnaire (Section IV), respondents were asked whether or not businesses in Alaska should be allowed to refuse to hire a person who has a worker compensation claim. In addition, they were asked whether or not they worked outside the home or if they smoked. They were also asked their age, political party affiliation, income, race,

senatorial district, the job title of the head of the household, and whether or not they were registered to vote.

## SUMMARY OF FINDINGS

### Section I: Questions Posed to Job Applicants

Generally speaking, 69% of Alaskan residents say prospective employers *should not* be allowed to ask questions about the private lives of job applicants. At the same time, two out of three (67%) people report that either they or someone they know has been asked such questions by a potential employer.

As for specific questions, a majority believe employers should not have the right to ask prospective employees about their living arrangements, religion, outside activities, marital status, plans for children, age of parents, or smoking behavior.

Residents of the Northwestern district, Hispanics, and women are all more likely to believe that employers should not have the right to ask these specific questions. On the other hand, people 65 and over,

executives, high-level professionals, former smokers, and men are more likely to think employers should have this right.

Occasional smokers, people aged 25 to 34, those earning between \$20,000 and \$31,000, African-Americans, and Hispanics are more likely to report that either they or someone they know has been asked some of these specific questions.

These findings are reported in detail in Section I, beginning on page nine.

## Section II: Employee Behavior Outside of Work

The public was then asked whether or not they thought it is appropriate for employers to deny a job to or fire someone for specific activities. At least 91% say it is inappropriate for employers to deny a job to someone or fire an employee for dating a person of a different race, driving a motorcycle, participating in political demonstrations, gambling at a racetrack, supporting or opposing abortion, or smoking away from the workplace. More than four out of five (84%) think it is not appropriate to deny a job to someone or fire an employee for being overweight, and 74% say it is inappropriate to deny a job or fire someone who holds an unusual second job.