ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
8320 SENATE JUDICIARY

On the estate planning side, the primary asset of many small businessmen is the S-corporation stock of their business. The tax laws governing S-corporations prohibit many types of estate planning trusts from acting as S-corporation shareholders. Thus, the businessmen must accept certain limitations on estate planning if they also want corporate liability protection and the avoidance of double taxation. Even where businesses could organize as S-corporations, the partnership-type conduit tax treatment available to LLC's provide significant advantages in the allocation of tax attributes among investors, the ability to create tax basis by loans to the company and in areas of the passive loss and at-risk tax limitations.

The LLC is also useful to major corporations participating in joint ventures. Most large corporations create corporate subsidiaries which in turn form a partnership or joint venture. That way, profits and losses are allocated in the partnership among the two subsidiary corporations and the subsidiary corporations are able to transfer income to the parent corporations by way of dividends subject to the wholly owned subsidiary deduction. This, however, creates an extra legal entity and additional accounting complications both operationally and for the consolidated tax return.

We urge your support of this important piece of legislation.

3512:XXAH

LIMITED LIABILITY COMPANIES BIBLIOGRAPHY

By: Robert L. Manley

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2. R. Keatinge, L. Ribstein, S. Hamill, M. Gravelle, and S. Connaughton, The Limited Liability Company, a Study of the Emerging Entity, 47 Business Lawyer 375 (1992). An 85-page article covering most of the relevant tax and non-tax issues.

3. Special Study, Limited Liability Company (LLC) Can Be Preferred Choice of Entity (RIA/Federal Tax Coordinator, August, 1992). A 10-page article covering basic entity choice issues including a good checklist of federal tax consequences to consider in making a choice of entity.

4. F. Wirtz and K. Harris, The Emerging Use of the Limited Liability Company, 1992 Taxes 337 (1992). A 20-page article covering basic classification issues, entity comparison and the conversion of existing entities into limited liability companies.

5. C. Price, Tax Aspects of Limited Liability Companies, 1992 Journal of Accountancy 48 (1992). A brief summary of limited liability company issues.

6. R. Platner, Limited Liability Companies Are Increasingly Popular, 20 Taxation for Lawyers 225 (1992).

HUGHES THORSNESS
GANTZ POWELL & BRUNDIN
ATTORNEYS AT LAW
509 WEST THIRD AVENUE
ANCHORAGE, AK 99501
(907) 274-7522

Snell & Wilmer
LAW OFFICES

One Arizona Center
Phoenix, Arizona 85004-0001
(602) 382-6000
Fax: (602) 382-6070

PHOENIX, ARIZONA
TUCSON, ARIZONA
IRVINE, CALIFORNIA
SALT LAKE CITY, UTAH

Matthew B. Feeney (602) 382-6239

March 21, 1994

VIA FACSIMILE

Mr. Robert Manley
509 West Third Avenue
Anchorage, Alaska 99501

Dear Bob:

I enjoyed talking to you this morning regarding Arizona's experience with its limited liability company statute. I understand that the Alaska legislature is considering adopting limited liability company legislation and that elements of the banking industry have expressed concern about the liability and signing authorization aspects of the legislation as they relate to banking activities.

As we discussed, I am not aware of any banks in Arizona that have had difficulties with these issues. I noted that our firm represents banks and that we provided educational seminars to these clients when the legislation was passed. We advised the banks that, from a liability perspective, they should assume that an LLC is analogous to a closely-held corporation. If the bank does not feel comfortable lending to a closely-held corporation on the basis of the corporation's assets, the bank will usually require security or personal guarantees. The same result applies in the case of an LLC.

With respect to signing authorization, I understand that the Alaska legislation is based on the ABA Prototype Act, which specifically provides that a manager in a manager-managed LLC has the authority to bind the LLC, and that a member in a member-managed LLC has the authority to bind the LLC. A bank can review the publicly-filed Articles of Organization to determine whether the LLC is manager-managed or member-managed, the same way that a bank will review the publicly-filed Articles of Incorporation in the case of a corporation. The diligence then required in confirming that the party signing has appropriate authority is the same diligence that is required in determining whether a corporate officer has the requisite authority, e.g., a review of LLC/corporate records and the receipt of appropriate certificates.

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In short, LLC signing authorization does not present any unique problems.

More important than the foregoing two issues, in my judgment, is the fact that over 35 states have adopted LLC legislation and the remaining states have legislation pending. The legislation has proven to be workable in the states in which it has been adopted. A Uniform Limited Liability Company Act is also in the process of being drafted. In short, LLC's are here to stay. States that choose not to adopt LLC legislation may find themselves at a competitive disadvantage in the area of capital formation.

Please feel free to call me at (602) 382-6239 if you have any questions or comments.

Very truly yours,

SNELL & WILMER

Matthew P. Feeney

Matthew P. Feeney

MPF:mo
cc: Danielle Lopez

HOLLAND & HART
ATTORNEYS AT LAW

DENVER
DENVER TECH CENTER
COLORADO SPRINGS
ASPEN
BILLINGS
BOISE
CHEYENNE
JACKSON
WASHINGTON, D.C.

SUITE 2900
555 SEVENTEENTH STREET
DENVER, COLORADO 80202-3979
MAILING ADDRESS
P.O. BOX 8749
DENVER, COLORADO 80201-8749

TELEPHONE (303) 295-8000
FACSIMILE (303) 295-8261
TWX 910-931-0568

ROBERT R. KEATINGE
OF COUNSEL
(303) 295-8595

March 21, 1994

By Fax 907/465-3334

Danielle Lopez
Office of Rep. Brian Porter
House of Representatives
Alaska State Legislature
Alaska State Capitol
Juneau, AK 99801-1182

Re: Alaska Limited Liability Company Act

Dear Ms. Lopez:

I spoke this morning with Robert Manley regarding the Alaska Limited Liability Company Act, which I understand is based on the ABA Prototype Act. From my discussion with him, I understand that there is some question with regard to the operation of LLCs. In my experience, there have not been any problems with respect to the operation of limited liability companies (LLCs).

By way of background, I am a member of the committee that drafted the Prototype, chair of an American Bar Association (ABA) Subcommittee on LLCs, the ABA Liaison to the National Conference of Commissioners on Uniform State Laws drafting committee drafting a Uniform Limited Liability Company Act and co-author of *Ribstein and Keatinge on Limited Liability Companies*, a two-volume treatise on the subject. This is not to indicate that I am particularly wise, but rather to support the fact that I spend I fair amount of time discussing the development of LLCs around the country with others working in this area. With the exception of the change of some documents to reflect the new type of organization, the development of LLCs has not caused a change in the manner of conducting commercial or real estate transactions. Now that more than thirty-six states have LLC legislation, use of LLCs is becoming more regularized and lenders and title insurance companies have developed ways of dealing with LLCs.

The Prototype Limited Liability Company Acts is based primarily on the Revised Uniform Limited Partnership Act. As such, many of the authority issues are exactly the same as those for a limited partnership. We did not include the identification of a specific member or manager in the articles of organization for the same reasons that no person other than the organizer is identified in the articles of incorporation under most corporation acts. As in all transactions with any type of business organization, the lender

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will need to satisfy itself with the authority of person executing documents, whether it is an officer of a corporation, a general partner in a general or limited partnership or a member of a member-managed LLC or a manager of a manager-managed LLC. Once lenders and others have focused on this similarity, they seem to have no trouble dealing with LLCs.

I think that the "newness" of LLCs will not cause a problem for lenders and others dealing with the entity. If you have any questions in this regard, please contact me.

Sincerely yours,

Robert R. Keatinge

encl.

Coopers &Lybrand

certified public accountants

550 West Seventh Avenue
Suite 600
Anchorage, Alaska 99501-3558

telephone (907) 274-3602

facsimile (907) 272-6614

March 21, 1994

Senator Tim Kelly
Alaska State Legislature
State Capitol Building
Juneau, Alaska 98801

Dear Senator Kelly:

We are in support of SB 347 providing for the formation, registration and regulation of limited liability companies (LLC). We feel that the LLC offers business owners the desirable benefit of protection from personal liability for the debts of the business. The LLC also allows for a great deal of flexibility in making day-to-day business decisions such as business structuring and acquisitions, financing techniques, distributing earnings to members, providing compensation and fringe benefits, managing cash flow, and estate planning.

In addition, the more states that recognize limited liability companies, the more useful this type of entity is to business operations with interstate activities. It is our understanding that, at the current time, 37 states have adopted limited liability company legislation.

We ask that you support this legislation.

Sincerely,

John A. Letourneau
Tax Director

:mmb

Coopers &Lybrand

certified public accountants

550 West Seventh Avenue
Suite 600
Anchorage, Alaska 99501-3558

telephone (907) 274-3602
facsimile (907) 272-6614

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Sincerely,

Christy K. Morse
Tax Manager

:mmb

HARTIG, RHODES, NORMAN, MAHONEY & EDWARDS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
717 K STREET
ANCHORAGE, ALASKA 99501-3307
TELEPHONE: (907) 276-1292
TELECOPIER: (907) 277-4366

ROBERT L. HARTIG (1920-1980)

PETER B. BRAUTIGAM
G. KENT EDWARDS
ROBERT B. FLINT
LAWRENCE L. HARTIG
LINDA J. HIEMER
CHRISTINE FOOTE HYATT
SUZANNE K. ISHII-REGAN
ROBERT J. MAHONEY
JOHN K. NORMAN
DOUGLAS C. PERKINS
JAMES D. RHODES
L. ANDREW ROBINSON
BONNIE J. STRATTON
MICHAEL O. WHITE

PALMER OFFICE
L. ANDREW ROBINSON
808 S. BAILEY STREET
SUITE 101
PALMER, ALASKA 99645
TELEPHONE: (907) 745-5031
TELECOPIER: (907) 745-6067

RECIPROCAL RELATIONSHIP
GRUENING & SPITZFADEN
217 SECOND STREET, SUITE 204
JUNEAU, ALASKA 99801
TELEPHONE: (907) 586-8110

REPLY TO:
Anchorage

March 21, 1994

Senator Tim Kelly
Chairman
Senate Labor & Commerce
State Capital, Room 101
Juneau, AK 99801-1182

Re: House Bill 420

Dear Senator Kelly:

This letter is sent in regard to the Sponsor Substitute for Senate Bill 347 which deals with a new form of business entity, limited liability companies. I am very much in favor of this bill. Having a limited liability business entity would provide Alaskan business investors with partnership tax treatment along with corporate-type limited liability.

Sincerely,

HARTIG, RHODES, NORMAN,
MAHONEY & EDWARDS

By: Peter B. Brautigam

PBB/kp

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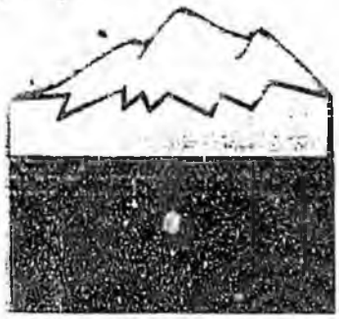

ALASKA SOCIETY OF CPA'S
341 W TUDOR #105
ANCHORAGE, AK 99503
(907)562-4334
800-478-4334
FAX (907)562-4025

FEB 25 RECD

February 22, 1994

Senate Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: Limited Liability Company Bill

Dear Sirs:

On February 17, 1994 the Board of the Alaska Society of Certified Public Accountants unanimously voted to endorse the introduction of legislation allowing businesses to form and operate as a Limited Liability Company in the State of Alaska.

The membership of the Alaska Society of Certified Public Accountants is State wide. The Board is representative of the membership.

In order for the State to continue to grow through new commerce, it is important that there is flexibility in the type of entity a business can form. The State should be able to offer the same type of entities as any other state offers (right now there over 30 States that allow Limited Liability Companies).

We look forward to the passage of this law in a swift and expedient manner. Businesses that want to operate as a Limited Liability Company may not wait for the legislature, and will seek an operating "home" in some other state.

Very truly yours,

William D. Arnold
President

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 22, 1994

SUBJECT: Sectional summary of SB 347 (Work Order No. 8-LS1419\J)

TO: Senator Tim Kelly
Chair, Senate Labor and Commerce Committee
Attn: Josh

JB

FROM: Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Contains a new chapter on limited liability companies.

Sec. 10.50.010 states that a limited liability company ("company") may be organized for any lawful purpose.

Sec. 10.50.015 requires a company to comply with other applicable laws.

Sec. 10.50.020 requires a company name to contain certain words or abbreviations. Allows the name to use the name of a city, borough, or village but not to contain certain words or to otherwise imply the company is a municipality. Prohibits a person from adopting a name containing "limited liability company" unless the person is organized under this chapter or is registered as a foreign limited liability company under this chapter.

Sec. 10.50.025 requires a company name to be distinguishable on the records of the Department of Commerce and Economic Development ("department") from certain other names.

Sec. 10.50.030 authorizes certain persons to reserve a company name.

- SECTIONAL ANALYSIS -

Sec. 10.50.035 establishes the procedure for reserving a company name.

Sec. 10.50.040 authorizes the holder of a reserved name to transfer the name to another person. Establishes how the transfer is accomplished.

Sec. 10.50.045 requires a company to maintain in this state a registered office and a registered agent for the service of process.

Sec. 10.50.050 establishes how a company may change its registered office or agent and how an agent may change the agent's address.

Sec. 10.50.055 establishes when a change of a registered office, a registered agent or the address of a registered agent becomes effective.

Sec. 10.50.060 authorizes a registered agent to resign. Indicates how the agent may resign and when the resignation becomes effective.

Sec. 10.50.065 appoints the commissioner of the department under certain circumstances as the agent of a company for the service of process, notice, or demand. Establishes how a person may serve the commissioner. Directs the commissioner to keep a record of documents served on the commissioner. States that this section does not affect the right to serve process, notice, or demand on a company in another manner permitted by law.

Sec. 10.50.070 authorizes one or more persons to organize a company. Establishes the procedure for organization.

Sec. 10.50.075 identifies what the articles of organization must contain, which includes certain information about any election to continue the company until a certain date or event.

Sec. 10.50.080 determines when a company's organization is effective. Provides that the company's existence terminates if its articles are nonconforming and not cured within the specified time.

Sec. 10.50.085 states that a company's existence continues until specified date or event, except under certain circumstances, if the company has made an election to continue until the certain date or event and the election is stated in the articles of organization. Prohibits revocation of an election unless certain specified persons revoke the election. Allows an election to expressly limit the membership terminations that can cause dissolution.

Sec. 10.50.090 establishes that articles of organization that are file-stamped and marked with the filing date are conclusive evidence that the company is organized.

Sec. 10.50.100 authorizes a company to amend its articles at any time and indicates the procedure for doing so.

Sec. 10.50.105 authorizes a company to restate its articles and establishes the procedure for doing so.

Sec. 10.50.110 declares that the members of a company manage the company, unless an operating agreement names a manager for the company or the chapter provides otherwise. Declares that if an operating agreement authorizes a manager for the company, the manager has the exclusive power to manage the company to the extent of the authorization.

Sec. 10.50.115 requires over one-half of the members to approve before a manager is appointed, removed, or replaced, unless an operating agreement provides otherwise.

Sec. 10.50.120 allows a manager to be other than an individual or a company member, unless a company operating agreement provides otherwise.

Sec. 10.50.125 establishes how long a manager holds office.

Sec. 10.50.130 declares that a member who is not a manager of a company that is managed by a manager does not have a fiduciary duty of a manager to the company or to other members when acting solely as a member, unless an operating agreement provides otherwise.

Sec. 10.50.140 requires the members and the managers to account to the company and hold as trustee for the company certain identified benefits obtained without the described consent, unless an operating agreement provides otherwise.

Sec. 10.50.145 establishes what authorization is required for company affairs, depending on whether the company is managed by its members or by managers.

Sec. 10.50.155 indicates that a person may become a company member if the person acquires a company interest in certain ways.

Sec. 10.50.160 establishes when a person's admission to membership in the company is effective.

Sec. 10.50.165 establishes the conditions for an assignee of a company interest to become a company member.

Sec. 10.50.170 establishes the rights, powers, and liabilities of an assignee who becomes a member.

Sec. 10.50.180 establishes that when an assignee of a member's entire membership interest becomes a member with respect to the assignor's entire interest, the assigning member ceases to be a member, unless otherwise provided in an operating agreement.

Sec. 10.50.185 states that a person's company membership terminates if the person withdraws voluntarily from the company. Authorizes a member to voluntarily terminate a company membership at any time, unless an operating agreement provides otherwise.

Sec. 10.50.190 establishes that, if a company has a definite term or undertaking, the voluntary withdrawal of a member before the end of the term or the accomplishment of the undertaking is a breach of the operating agreement, unless the operating agreement provides otherwise.

Sec. 10.50.195 establishes that a company can recover damages from a member who withdraws wrongfully. Authorizes the company to offset the damages against a distribution owed to the member and to pursue other remedies against the member.

Sec. 10.50.205 states that, except as otherwise provided in an operating agreement for the removal of a member, a person's company membership terminates if the person assigns all of the membership interest and if a majority of the members who have not assigned their interests authorize the removal of the member.

Sec. 10.50.210 states that a person's company membership terminates if the member dies or is declared incompetent by a court, unless otherwise provided in an operating agreement.

Sec. 10.50.215 states that the company membership held by a trust or trustee terminates when the trust terminates and that a company membership held by an estate terminates when the estate's entire company interest is distributed by the estate, unless otherwise provided in writing in an operating agreement or by the written consent of all of the members.

Sec. 10.50.220 states that the company membership of a member that is a separate limited liability company terminates when the member dissolves and begins to wind up, unless otherwise provided in writing in an operating agreement or by the consent of all members. Also states that the membership of a corporate member terminates when the corporation is dissolved and 90 days elapse without reinstatement, unless otherwise provided in writing in an operating agreement or by the consent of all members.

Sec. 10.50.225 identifies other events that terminate a company membership.

Sec. 10.50.240 provides that secs. 10.50.185 - 10.50.225(a)-(b) don't apply to the termination of a membership unless the member is also a company manager, if an election has been made to continue the company until a certain date or event.

Sec. 10.50.250 states that a company member is an agent of the company for the purpose of conducting the company's affairs, except under certain circumstances, including where the articles name a manager for the company. If a manager is named, the manager is an agent of the company for the purpose of conducting its affairs, except in certain circumstances. Establishes when a member's or manager's act binds the company.

Sec. 10.50.255 states that an admission or representation by a company member about the company is evidence against the company, except in certain circumstances, including where the articles name a manager for the company. If a manager is named, an admission or representation by a manager is evidence against the company under certain circumstances, and the admission or representation by a member acting solely as a member is not evidence against the company.

Sec. 10.50.260 indicates when a company is charged with the knowledge of or a notice given to a member or manager.

Sec. 10.50.265 states that a company member is not liable, solely by reason of being a member, for a company liability.

Sec. 10.50.275 authorizes a company to issue company interests for property, services, or a promissory note or other obligation to contribute property or services.

Sec. 10.50.280 states that a member's promise to contribute property or services to the company is enforceable only if the promises is in a writing signed by the member. Makes the promise enforceable even if the member is unable to perform because of death, disability, or other reason, unless otherwise provided by an operating agreement. Requires a company member who has not made the required contribution of property or services to contribute cash equal to the shortfall. States that an assignor of a company interest remains liable for a contribution even if the assignee becomes a member with respect to the assigned interest, unless otherwise provided in an operating agreement.

Sec. 10.50.285 prohibits the compromise of a company member's obligation to make a contribution, unless otherwise provided in an operating agreement.

Sec. 10.50.300 declares that, unless otherwise provided in writing in an operating agreement, members are to be repaid their contributions to capital and share equally in the assets of the company after liabilities are satisfied.

Sec. 10.50.305 requires interim distributions to members to be made according to an operating agreement, if an operating agreement provides for the distributions. The operating agreement may authorize different interim distributions for different classes of members.

Sec. 10.50.310 requires interim distributions to members to be equal, unless an operating agreement provides for the distribution.

Sec. 10.50.315 indicates at what times a company member is entitled to an interim distribution.

Sec. 10.50.320 directs a company to distribute to a terminated member any distribution that the member was entitled to receive before the termination, except where the member is removed or the termination does not cause dissolution. In addition, directs the company to distribute to the terminating member the amount of the member's company interest. Establishes the amount of the interest if a company operating agreement does not establish the amount or how to calculate the amount. If an election has been made to continue the company until a certain date or event, the distribution provisions don't apply unless the member is also a company manager.

Sec. 10.50.325 prohibits a member from demanding and receiving a distribution in other than cash, unless otherwise provided in an operating agreement. Prohibits a company from compelling a company member to accept assets in a form other than cash under certain circumstances.

Sec. 10.50.330 states that a company member entitled to receive a distribution becomes a creditor of the company and is entitled to all available creditor remedies.

Sec. 10.50.350 states that property transferred to or otherwise acquired by a company is the property of the company and not of the members individually. States that a company may acquire, hold, and convey property in the name of the company. States that when the company acquires an interest in real property the company holds the title and not the members individually.

Sec. 10.50.355 indicates how a company's property may be transferred, depending on whose name the property is held in and whether the company has a manager.

Sec. 10.50.360 authorizes a company to recover its transferred property if the company proves certain facts, unless certain circumstances exist.

Sec. 10.50.365 authorizes, under certain circumstances, the transfer, free of company or member claims, of company property held in the name of a person other than the company.

Sec. 10.50.370 states that a company interest is personal property.

Sec. 10.50.375 authorizes the assignment of a company interest. States that an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor is entitled. States that an assignment does not dissolve the company or entitle the assignee to participate in the management and affairs of the company, to become a member, or to exercise member rights. The assignor continues to be a member unless the assignee becomes a member with respect to the interest. Allows a written operating agreement to vary the terms of the section. States that certain activities of a member do not amount to assignments and do not terminate the membership or the rights and powers of the member, unless otherwise provided in an operating agreement.

Sec. 10.50.380 authorizes a court to charge a member's company interest for payment of a judgment creditor against the member. Indicates the effect of the charge.

Sec. 10.50.385 states that in the case of a member's death or incompetency the member's legal representative has the rights of an assignee of the member's company interest.

Sec. 10.50.390 states that if a member (not an individual) terminates or is dissolved, the member's legal representative or successor has the rights of an assignee of the member's interest.

Sec. 10.50.400 identifies the events that dissolve a company and require winding up of its affairs.

Sec. 10.50.405 authorizes the superior court to order a company's dissolution under certain circumstances.

Sec. 10.50.410 indicates who may wind up a company's affairs, unless otherwise provided in an operating agreement.

Sec. 10.50.415 identifies the acts that a person winding up a company's affairs may perform.

Sec. 10.50.420 establishes when, how, and under what circumstances a member or manager can bind a company that is dissolved and winding up its affairs.

Sec. 10.50.425 establishes the manner and priority for the distribution of a company's assets upon its winding up.

Sec. 10.50.430 allows a company to file articles of dissolution with the department after it dissolves. Describes what the articles must state.

Sec. 10.50.435 establishes how a company after its dissolution may dispose of the known claims against it. Declares under what conditions a known claim against the company is barred.

Sec. 10.50.440 establishes how a company after its dissolution may dispose of unknown claims against it. Declares that unknown claims are barred unless the claimant takes certain action within three years after the later of certain events. Authorizes the claimant to enforce a claim against the company's undistributed assets or against company members under certain circumstances; limits a member's total liability.

Sec. 10.50.500 authorizes a company to merge or consolidate with or into a domesti or foreign limited liability company, subject to the law applicable to the other company and unless otherwise provided in an operating agreement.

Sec. 10.50.505 authorizes the rights of, or interests in, a party to a merger or consolidation to be exchanged for or converted into cash, property, obligations, rights or other interests of, or interests in, the surviving or resulting company.

Sec. 10.50.510 establishes what member or other approval is required before a company may approve a proposed merger or consolidation. Authorizes a party to a merger or consolidation to abandon the merger or consolidation as provided in the merger or consolidation agreement.

Sec. 10.50.515 requires the company surviving or resulting from a merger or consolidation under this chapter to file articles of merger or consolidation with the department. The articles must be signed by each company that is a party to the merger or consolidation.

Sec. 10.50.520 describes what the articles of merger or consolidation must state.

Sec. 10.50.525 requires articles of merger or consolidation to be signed by a company that is a party to the merger or consolidation.

Sec. 10.50.530 states that articles of merger or consolidation constitute articles of dissolution for a company that is not the surviving or resulting company in a merger or consolidation.

Sec. 10.50.535 indicates when a merger or consolidation takes effect.

Sec. 10.50.540 states that a merger or consolidation agreement may amend a company's operating agreement or adopt a new operating agreement for the company, if the company is the surviving or resulting company in a merger or consolidation. Authorizes an approved merger or consolidation agreement to provide

that a company's operating agreement will be the operating agreement of the company that is the surviving or resulting company. States when an amendment to an operating agreement or the adoption of a new operating agreement under this section is effective. States that this section does not limit the accomplishment of a merger or other matter covered by the section by other means allowed under an operating agreement, another agreement, or another law.

Sec. 10.50.545 describes the general effects of merger or consolidation. These include the termination of companies that are not the surviving or resulting companies and the transfer of the applicable rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties of the participating companies to the surviving or resulting company.

Sec. 10.50.550 describes the effects of merger or consolidation on the property of the participating companies.

Sec. 10.50.555 describes the effect of merger or consolidation on the liabilities of the participating companies.

Sec. 10.50.560 declares that creditor rights and liens on the property of a company that is a party to a merger or consolidation are not impaired by the merger or consolidation.

Sec. 10.50.565 states that upon a merger or consolidation a company's interests that are to be converted or exchanged into other property under the merger or consolidation agreement are converted as provided by the merger or consolidation agreement. States that the former holders of interests so converted have the rights provided in the merger or consolidation agreement or otherwise provided by law.

Sec. 10.50.590 defines "limited liability company" for secs. 10.50.500 - 10.50.590.

Sec. 10.50.600 states that, subject to this state's constitution, a foreign company's organization, internal affairs, and the liability and authority of its managers and members are governed by the law of the jurisdiction where the company is organized. Prohibits the department from denying registration to a foreign company because of differences between the law of this state and the jurisdiction where the foreign company is organized.

Sec. 10.50.605 requires a foreign company to register with the department before conducting affairs in this state. The foreign company is required to deliver an application for registration to the department.

Sec. 10.50.610 requires the registration application to be signed by a person who is authorized to sign by the law of the jurisdiction where the company was organized.

Sec. 10.50.615 describes what the registration application must state.

Sec. 10.50.620 prohibits the department from filing the registration of a foreign company unless the company name satisfies certain requirements.

Sec. 10.50.625 authorizes a foreign company to amend its registration by filing articles of amendment with the department.

Sec. 10.50.630 establishes what the articles of amendment must state. Authorizes the amendment of the application in any way as long as the amended application only contains provisions that are otherwise allowed by this chapter to be contained in an application for registration at the time of the amendment.

Sec. 10.50.635 requires a foreign company to maintain an agent in this state for the service of process. Indicates which persons qualify to be an agent.

Sec. 10.50.640 establishes the procedure for changing a foreign company's registered agent or the agent's address.

Sec. 10.50.645 provides guidelines for when the change of registered agent or agent address for a foreign company becomes effective.

Sec. 10.50.650 describes how a registered agent of a foreign company may resign as the registered agent. Requires the department to mail a copy of the resignation to the company. Indicates when the resignation becomes effective.

Sec. 10.50.655 authorizes a foreign company to cancel its registration by filing an application for cancellation with the department.

Sec. 10.50.660 describes what an application for cancellation must state.

Sec. 10.50.665 describes the form, manner, and execution of an application for cancellation of the registration of a foreign company.

Sec. 10.50.670 states that the cancellation of a registration does not terminate the authority of the department to accept service of process on the foreign company with respect to causes of action arising out of the company's conduct of affairs in this state.

Sec. 10.50.675 prohibits an unregistered foreign company conducting affairs in this state from maintaining a action or other proceeding in a court of this state until it has registered. States that the failure to register does not impair the validity of the company's contracts or acts, affect the rights of another party to a company contract

to maintain an action or other proceeding on the contract, or prevent the company from defending an action or other proceeding in a court of this state.

Sec. 10.50.680 states that a foreign company that conducts affairs in the state without being registered appoints the department as its agent for service of process with respect to a cause of action arising out of conducting affairs in this state.

Sec. 10.50.685 provides for service on the commissioner in the manner provided under sec. 10.50.065(b) and under certain circumstances. Requires the commissioner to keep a record of the processes, notices, and demands served on the commissioner. States that this section does not affect the right to make service in another manner permitted by law.

Sec. 10.50.690 states that a foreign company conducting affairs in this state without registration is liable to the department for certain fees and penalties.

Sec. 10.50.700 states that a foreign company that conducts affairs in this state without registration is subject to a civil penalty and authorizes the attorney general to recover the penalty.

Sec. 10.50.710 authorizes a court, under certain circumstances, to issue an injunction against a foreign company conducting affairs in the state in violation of this chapter. Indicates how long the injunction may continue.

Sec. 10.50.715 states that a member or manager of a foreign company is not liable for the debts and obligations of the company solely because the company conducts affairs in this state without registration.

Sec. 10.50.720 lists the transactions that do not constitute conducting affairs for a foreign company in this state.

Sec. 10.50.730 authorizes a court action to be brought by or against the company in the name of the company.

Sec. 10.50.735 prohibits a person from bringing a court action on behalf of a company in the name of the company unless the requirements of the section are met. Sets out these requirements.

Sec. 10.50.740 prohibits a company from asserting the lack of authority of a company member or manager to bring court action on behalf of a company as a defense to the action or as a basis for bringing a subsequent action on the same cause of action.

Sec. 10.50.800 declares that, unless an operating agreement provides otherwise, a company member or manager is not liable to the company or the company members

for damages or other relief for an act or a failure to act on behalf of the company unless the act or failure to act amounts to gross negligence or wilful misconduct. Provides that an operating agreement may limit or eliminate the personal liability of a company member or manager for breaches of duty under secs. 10.50.130 - 10.50.140 or subsec. (a).

Sec. 10.50.805 authorizes a company to use an operating agreement to authorize the company to indemnify a company member or manager for judgments, settlements, penalties, fines, or expenses incurred by the person under certain circumstances.

Sec. 10.50.810 states that a company member is not a proper party to a proceeding by or against the company just for being a member, except in certain circumstances.

Sec. 10.50.820 states that a company operating agreement may authorize a company to issue a certificate as evidence of a company interest and to authorize and provide for the assignment or transfer of the interest represented by the certificate.

Sec. 10.50.830 establishes how a document is to be delivered to or filed with the department.

Sec. 10.50.840 establishes the department's procedure and criteria for filing documents. Prohibits the department from filing a document if the section's requirements are not met.

Sec. 10.50.850 establishes who is to sign documents filed with the department and how the documents are to be signed. Authorizes a person to sign as an attorney-in-fact.

Sec. 10.50.855 establishes a procedure for obtaining a court order to direct the department to file certain documents.

Sec. 10.50.860 directs the department to charge fees for filing and other services it provides under the chapter.

Sec. 10.50.870 requires a company, unless otherwise provided in writing in an operating agreement, to maintain certain described records at its principal place of business.

Sec. 10.50.875 authorizes a company member to inspect and copy the company's records under certain conditions.

Sec. 10.50.880 requires certain persons to disclose to a member under certain circumstances true and full information of all matters that affect the members of a company.

Sec. 10.50.890 states that a company's failure to maintain a required record or information does not make a member or manager liable for the company's obligations.

Sec. 10.50.900 authorizes the department to adopt regulations to implement the chapter, in addition to any regulations the department is required to adopt under this chapter.

Sec. 10.50.910 authorizes a company organized and existing under this chapter to conduct its affairs and exercise the powers granted by this chapter in another jurisdiction, subject to the laws of that jurisdiction.

Sec. 10.50.920 declares the chapter's support of the principle of freedom of contract and enforceability of operating agreements States that the rule that statutes in derogation of the common law are to be strictly construed does not apply to the chapter.

Sec. 10.50.990 defines terms for the new chapter.

Sec. 10.50.995 gives the new chapter a short title.

Section 2. Amends the for-profit corporations code to prevent that code from prohibiting a limited liability company from using "limited" in its name.

Section 3. Describes how a section of the new chapter amends the Alaska Rules of Civil Procedure.

Section 4. Makes the Act effective January 1, 1995.

If I may be of further assistance, please advise.

TLB:lmb
94-096.lmb

FISCAL NOTE

STATE OF ALASKA **BILL NO.** CSSB 347 (L&C)

1994 LEGISLATIVE SESSION

Revision Date:

Dept. Affected: Revenue

Title: Limited Liability Companies

BRU: Revenue Operations

Component: Income and Excise Audit

Sponsor: (S) JUD

Requestor: (S) L&C

COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & ST ICTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE: General	(5.5 - 2,975.0)	(22.0-11,900.0)	(33.0-17,850.0)	(44.0-23,800.0)	(55.0-29,750.0)	(66.0-35,700.0)

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: $ 0.0

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared by: Larry E. Meyers Phone: 465-2320

Division: Income and Excise Audit Division Date: April 7, 1994

Approved by Commissioner: Darrel J. Rexwinkel Date: April 7, 1994

Agency: Department of Revenue

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Overview

Limited liability companies (LLC) are hybrid entities possessing corporate and partnership attributes. Under existing Alaska law, corporations pay an income tax while partnerships do not. This legislation does not address how the LLCs will be taxed for state purposes. Of 36 states which have enacted LLC legislation, the vast majority have adopted federal Internal Revenue Code (IRC) provisions which classify LLCs as partnerships. Without a further clarification in this bill, Alaska would similarly follow with partnership classification pursuant to AS 43.20.021 which incorporates IRC provisions by reference, including definitions of corporations and partnerships.

If LLCs are determined to be partnerships they will join another group of tax return filers, namely subchapter S corporations that generally do not pay tax at the corporation level. Instead, the income is passed through to the recipient level which are often times individuals. It is anticipated that numerous existing corporations will migrate toward becoming LLCs and that new business ventures will initially register as LLCs to escape liability for state corporation net income tax.

The impact of LLCs on state revenues in the other 36 states that have enacted similar legislation remains unclear. LLCs are relatively recent entities (they have become an available form of business organization in a majority of states only within the past year), and states have developed little specific experience within the past year. Those states that have projected revenues to remain neutral or increase are relying on individual income taxes and fees from increased business filings. Alaska has no similar tax base. Other states have projected losses on an annual basis including California ($50 million), New York ($70 million) and Minnesota ($2 million).

All but two of the states that have enacted LLC legislation have a state individual income tax which insures that taxes are not avoided by choosing LLC status. The two states, Florida and Texas, which like Alaska, have no individual income tax have classified LLCs as corporations for tax purposes. This follows the similar trend seen with subchapter S corporations where states with no individual income tax have closed the tax loophole.

Operating Costs

Department of Revenue does not anticipate that this bill will affect its operating budget. The status of the corporation, whether a regular corporation or LLC, will not affect their corporation tax filing requirement with the Department. Although LLCs will not incur a corporaion net income tax, they will be required to file returns.

Revenue

Over the past 3 years, Department of Commerce and Economic Development has experienced an average of 1100 new corporations registered each year.

For calendar year 1992 tax filing period, Department of Revenue received 3000 corporation net income tax returns indicating a tax liabilit, owed. Total revenue collected from the returns amounted to $32,455,000 or an overall average of $10,818 per taxpayer. Of the returns filed. 1800 had a tax liability of less than $500 per return. This group averaged $100 per corporation in tax liability.

If 10% (or 110) of new corporations registered as LLCs, the potential loss in tax revenue would be a range of from $11,000 (110 X $100) to $1,189,980 (110 X $10,818) per year. Subsequent years would experience the cumulative effect of corporations registered as LLCs in prior years.

Although it is not known how many corporations will register as LLCs, Department of Revenue estimates that between 10% and 50% of corporations may be affected. Following are tables which reflect impact on revenue under low and high range scenarios.

Effect of Filers From:	Fiscal Year Revenue Impact (10% of Corporations Register as LLC)					
	FY 95*	FY 96	FY 97	FY 98	FY99	FY 00
FY 95	(5.5 - 595.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)
FY 96		(11.0 - 1,190.0)	(11.0 - 1,190 0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)
FY 97			(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)
FY 98				(11.0 - 1,190.0)	(11.0 - 1,190.0)	(11.0 - 1,190.0)
FY 99					(11.0 - 1,190.0)	(11.0 - 1,190.0)
FY 00						(11.0 - 1,190.0)
Total	**(5.5 - 595.0)**	**(22.0 - 2,380.0)**	**(33.0 - 3,570.0)**	**(44.0 - 4,760.0)**	**(55.0 - 5,950.0)**	**(66.0 - 7,140.0)**

Effect of Filers From:	Fiscal Year Revenue Impact (50% of Corporations Register as LLC)					
	FY 95*	FY 96	FY 97	FY 98	FY99	FY 00
FY 95	(27.5 - 2,975.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)
FY 96		(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)
FY 97			(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)
FY 98				(55.0 5,950.0)	(55.0 - 5,950.0)	(55.0 - 5,950.0)
FY 99					(55.0 - 5,950.0)	(55.0 - 5,950.0)
FY 00						(55.0 - 5,950.0)
Total	**(27.5 - 2,975.0)**	**(110.0 - 11,900.0)**	**(165.0 - 17,850.0)**	**(220.0 - 23,800.0)**	**(275.0 - 29,750.0)**	**(330.0 - 35,700.0)**

* Since this bill doesn't become effective until January 1, 1995, Department of Revenue will only receive half of a year's revenue (from estimated payments through June 30, 1995) for FY 95.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 347

Revision Date:
Title: An Act relating to limited liability companies

Sponsor: Senate Judiciary
Requestor: Senate Labor & Commerce

Department Affected: Commerce and Economic Development
BRU: Banking, Securities and Corporations
Component:

COMPONENT SERIAL NO. 1233

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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 EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0
FUND SOURCE						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: $ 0

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations
Phone: 465-2521
Date:

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development
Date: 3-16-94

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- FISCAL NOTES -

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 347

Revision Date:
Dept. Affected: Alaska Court System
Title: An Act relating to limited liability companies
BRU: Trial Courts
Components:
Sponsor: Judiciary
Requestor:
COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) cost: $ None

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

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
Agency: Alaska Court System Date: 03/21/94

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System Date: 03/21/94

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SB
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MEMORANDUM STATE OF ALASKA

DATE: March 23, 1994

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

FROM: Barbara Brink, Deputy Public Defender
Public Defender Agency

SUBJECT: SB 349 - "An Act Amending Alaska Rule of Criminal Procedure 6(r) Relating to Admissibility of Hearsay Evidence by Peace Officers Before the Grand Jury"

The Alaska Public Defender Agency is opposed to passage of SB 349 as it interferes with the constitutional right of the citizens of Alaska to a fair and reliable grand jury.

The Alaska Constitution, Article 1, Section 8 guarantees the right to grand jury. It provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused. In that case the prosecution shall be by information. The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment. The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.

The purpose of this constitutional provision is to serve as a safety check for the citizens of Alaska. The grand jury exists to control abuses by the government and to protect the interests of the accused. The grand jury protects the innocent from unjust prosecution and provides due process of law. People with power, whether they be prosecutors, police or judges, cannot force someone to suffer all the serious consequences of a felony trial unless there has been a fair determination by a group of citizens that there is enough evidence. This group of citizens, the grand jury, can only make such a determination by examining the evidence, listening to what the witnesses have to say, and deciding whether or not they want to believe the witnesses. Critical to the decision of what to believe is assessing a witness' demeanor on the witness stand.

In a trial, jurors are told to consider:

> the witness' attitude, behavior and appearance on the stand and the way the witness testifies;
>
> the witness' intelligence;
>
> the witness' opportunity and ability to see or hear the things about which the witness testifies;
>
> the accuracy of the witness' memory;
>
> any motive of the witness not to tell the truth;
>
> any interest that the witness has in the outcome of the case;
>
> any bias of the witness;
>
> any opinion or reputation evidence about the witness' truthfulness;
>
> any prior criminal convictions of the witness relating to honesty or veracity; and
>
> the consistency of the witness' testimony and whether it is supported or contradicted by other evidence.

Many of these considerations can only be accomplished by physically requiring the presence of the witness on the stand. A grand jury cannot make a fair and reliable determination of the credibility of a witness without seeing the witness.

It is also important to remember why hearsay evidence is usually excluded--because it is unreliable. Like the child's game of "telephone", information is distorted even unintentionally when received second- or third-hand.

Some exceptions for allowing hearsay testimony have been developed, for example, for lab personnel who have conducted objective tests. When hardship or distance prevents personal presence, witnesses may testify by telephone. However, this bill, which basically eliminates the possibility of the grand jury being able to assess the credibility of police officer witnesses, and allowing for possible distortions of information is unnecessarily broad and guts the grand jury function. Such a legislative determination prevents the grand jury from doing its constitutionally mandated job, and is unfair to the citizens of Alaska.

BKB:sh

MEMORANDUM

DATE: 3-24-94

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

FROM: John Salemi, Director, Alaska Public Defender Agency

RE: Position Paper\SB350: "An Act Relating to A Defendant's Violation of Conditions of Release"

This bill is premised on the assumption that the procedure for returning defendants to custody who have violated conditions of release is unwieldy and too time consuming.

In fact, with 24-hour magistrates, and daily arraignments in both district and superior court, most urban areas in the state can process these alleged violations in the context of a court proceeding within hours of the reported violation. In the rural areas of Alaska, law enforcement typically contact magistrates directly in order to obtain warrants of arrest for bail violations. This can even occur by telephone with a fax order issued based on said telephonic communications.

While it is desirable to enact statutory provisions which enhance public safety, a balance must be achieved in terms of insuring due process guarantees, especially if the result is a loss of liberty. The present system permits a detached, objective assessment of alleged violation by a court officer.

Under current law, it is not difficult for the police to obtain a warrant to arrest based on violations of conditions of release. The hearing which follows typically is scheduled within 24 hours of arrest, and in many cases, sooner.

Furthermore, nothing in present law or procedure prevents an officer from contacting the alleged violator and taking other appropriate action. For example, if someone is violating a domestic violence order, that person can be immediately arrested and charged with a separate offense based on that violation. In some cases these "violations" are more on the order of misunderstandings between individuals which can be successfully mediated by a peace officer.

Finally, it should be pointed out that in some cases individuals use the power of the police and courts to manipulate situations. It is not unheard of for an individual to falsely report an alleged violation in order to attempt to have someone arrested and jailed. The present system interposes some safeguards which minimize such manipulations.

MEMORANDUM STATE OF ALASKA

DATE: March 24, 1994

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

FROM: Barbara Brink, Deputy Public Defender BBS
Public Defender Agency

SUBJECT: SB 351 - "An Act Amending Alaska Rule of Evidence 404, Relating to the Admissibility of Certain Character Evidence in Court Proceedings"

This bill proposes three very specific changes to the rules about what evidence is admissible at trial. First, in a violent crime where the accused asserts s/he was acting in self-defense and that the victim was the first aggressor, evidence of any past history of violence of the accused may be offered. Second, in a prosecution with a minor victim, evidence of other acts by the accused toward any child in the last ten years may be offered. Third, in a prosecution for sexual assault where the defense is consent, evidence of other sexual assaults by the accused are admissible.

This bill is opposed by the Public Defender Agency. Opening trials too broadly to other claims of bad acts risks depriving the citizens of Alaska of the constitutionally required presumption of innocence and due process of law. Additionally these changes would result in delay, expense and time-consuming mini-trials as each time such evidence is offered a separate hearing outside the presence of the jury will need to be held. Finally, this bill does nothing to accomplish its stated goals of reducing evidence about and trauma to a victim.

1. Due Process

The current rules of evidence guard against convicting innocent people. Guilty verdicts are based upon evidence that proves a person committed the specific crime with which they are charged. Verdicts are not based upon evidence that the person is a "bad" person, has acted badly in the past, or has been accused of acting badly in the past. This bill proposes to change that. This bill will make it easier to convict people based upon their past history, as opposed to whether or not they are actually guilty.

An example better illustrates this. After a hard day at the capitol, a legislator retires to the Baranof for a well-earned chance to relax. A drunk constituent, unhappy with some pending legislative matter, verbally and then physically attacks. The legislator is required to use force

to defend himself. Unfortunately the drunk is severely injured by broken glass which he claims was wielded by the legislator. Unable to get a clear picture of the melee, the prosecutor charges assault. At trial, the jury is not told to decide the case solely based upon the testimony of people who were there, but is also permitted to consider two incidents from the past. A former girlfriend claims that years ago in an argument she was slapped by the accused. Even though he vigorously denies the incident and there is absolutely no physical evidence to corroborate it, the jury is permitted to hear that claim. Secondly, years ago the legislator had been forced to shoot at an intruder who had broken into his home. Even though no charges had been filed and the shooting was deemed "justifiable" by the police at the time, the jury is permitted to hear all the gruesome details. The jury, understandably affected by these allegations of violence in the past, wrongly convicts.

2. Separate Hearings

Before admitting evidence that is not directly relevant to the charge at hand, the court must hold a hearing to determine if the proffered evidence has any relevant purpose and if the evidence's probative value outweighs any prejudicial impact it may have on the jury. This is a particularly critical question under this bill which allows any evidence of these prior claims to be used--no matter how old, how unsubstantiated, how unlikely, or even how untrue. Such hearings will require the presentation of the evidence in total in order for the judge to be able to decide if the information is cumulative, irrelevant, distracting, prejudicial, confusing or misleading. This hearing will be time-consuming but necessary.

3. Purpose

Section 1 of the bill finds that victims are often "put on trial" in the course of criminal proceedings. This bill changes nothing about evidence of the victim, and in fact does not even address that issue. That issue is already covered by Alaska's Rape Shield Law (A.S. 12.45.045) which provides in most cases that evidence of a complaining witness' previous sexual conduct may not be admitted at trial. Therefore, it is impossible to understand why this bill is made "necessary" by concerns of putting the victim on trial .

Section 1 of the bill also finds that emotional trauma can be suffered by victims in the criminal justice system that "can in some cases be nearly as traumatic as the crime itself". This bill does nothing for the trauma of victims. This bill only makes it easier to convict people of crimes based upon past history, suspicion, innuendo, and speculation. This bill makes it easier to convict people who are not guilty of the crime with which they are charged. It is impossible to understand how convicting an innocent person would lessen the victim's trauma.

Instead of honoring the presumption of innocence and the requirement that a person be proven guilty beyond a reasonable doubt, this bill advocates justice based upon character assassination, "where there's smoke, there's fire," and the suspicion that "if he did something bad before, he probably did it again." This is not justice, and does not serve any of the citizens of Alaska, be they accused or victims.

BKB:sh

MEMORANDUM STATE OF ALASKA

DATE: March 21, 1994

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

FROM: John Salemi, Director
Public Defender Agency

SUBJECT: SB 353 - "An Act Amending Alaska Rule of Criminal Procedures 24(d) Relating to Peremptory Challenges of Jurors

Introduction

The Alaska Public Defender Agency is opposed to passage of SB 353. The current system of providing for ten defense peremptory challenges and six prosecution peremptory challenges has been reviewed exhaustively by the state judiciary. This very proposal was rejected by the Alaska Criminal Rules Committee in 1987.

The reasons for rejection of this proposal are both practical and philosophical. It is interesting that even judges and former prosecutors favor maintaining the present system. (This is not to say that there is no support for this legislative proposal).

This proposal has been promoted as a way of saving time and money in jury selection and a means to "level the playing field". Careful consideration of this issue will demonstrate that neither objective is achieved by changing the system of peremptory challenges in criminal cases.

Argument

The system of permitting more defense peremptory challenges than prosecution challenges is based on the fact that most individuals who are called in for jury service already have an established bias favoring prosecution and conviction. Individual citizens are increasingly sensitized to the issues of violence and crime in their communities. They feel threatened and vulnerable. The perception of the vast majority of citizens who are called for jury service in criminal cases can be summed up thusly: The defendant probably wouldn't be in court if he/she hadn't done something wrong. In fact, this is a common response made by prospective jurors during the course of jury selection. This of course cuts severely against

the presumption of innocence and the obligation that the prosecution prove the case beyond a reasonable doubt through competent evidence. Put another way, many citizens who are called as prospective jurors presume criminal defendants guilty.

The peremptory challenge, when used by defense attorneys, often is merely a shortcut for challenging jurors who have established that they are not sufficiently objective to sit on a criminal case. The defense lawyer can either ask a long series of questions calculated to expose that lack of objectivity--a very time-consuming process--or can elect to use a peremptory challenge. Choosing the later method for excusal is much less time consuming. For those who suggest that reducing the number of peremptory challenges will save time, it should be noted that the most time-consuming portion of jury selection occurs when the first twelve jurors are questioned by prosecution and defense. This process occurs before the peremptory challenge mechanism comes into play. It is during this process that attorneys begin to identify those who will be challenged by preemption. If the number of challenges are reduced for the defense, the examination of the first twelve jurors will be even more time consuming, because fewer people will be removed through the peremptory challenge mechanism.

Rather than elaborate on these points I am attaching letters from Peter Michalski, Superior Court Judge (and former head of the Office of Special Prosecutions and Appeals) and Jeffrey Feldman, who fairly summarizes the position of the Criminal Rules Committee at the time the proposal was considered for court rule change. These balanced monographs will provide you the perspective you need to make a decision regarding this issue.

JBS:sh
Attachments

JBS:sh

Memorandum

Alaska Court System

TO: William T. Cotton
Court Rules Attorney

Court Rules Attorney

DATE : October 8, 1986

FROM: Peter A. Michalski
Superior Court Judge

SUBJECT: Reducing peremptory challenges in felony cases

In response to your memorandum of 29 August 1986, received in this office 9 September 1986, let me reiterate my oral commencs to you generally disfavoring the reduction in peremptory challenges and specifically opposing the use of five peremptory challenges for each party as proposed by the court.

As you are aware the selection of juries varies in practice from court to court probably as much as from district to district. The stated reasons for changing the number of peremptory challenges are to save time, money, and maintain "representativeness". It is my impression that more education of courts and counsel would accomplish these goals just as effectively and leave the procedural apparatus that presently exists and its beneficent effects.

Time and money are limited resources and if wasted draw on the political strength of the court system within society. Without belittling the real importance of being responsible caretakers of the financial assets of the community and political assets of the court system, it is also important to preserve the treasure of our system: the jury trial. It is very difficult to balance these kinds of factors upon an objective scale and find precisely how such change will operate on these relative values.

The present 6-10 balance for peremptory challenges is rooted in tradition and the same goal stated for the changed number, i.e., obtaining a fair jury. Presently, the defendant is given a greater number of challenges because of the belief -- founded upon experience -- that in spite of the presumption of innocence, people still know the meaning of the saying "where there's smoke, there's fire", and most of our community is not at all sympathetic toward defendants. Given the very large amount of publicity about the harm of drugs to society, and the serious lasting harm caused by sexual assault (to both adult and child victims), more and more of our panel members are subject to "cause" challenges. Removing jurors who recognize they cannot be fair is one thing. It satisfies society that it is

providing a fair trial. It is also important to provide parties with that feeling. A defendant who feels "wrong" about a panel member should have substantial opportunity to simply challenge the juror without stating any reason, or trying to show that a panel member's "impartiality might reasonably be questioned." It may be trying to grasp a "will-o-the-wisp" to try to satisfy all defendants that they are not being railroaded, yet it seems to me the availability of 10 challenges is a good beginning to such an effort at trial. A sense of fairness is often as important as actual fairness.

The normal procedure for the exercise of challenges is to alternate them 1-2-1, etc. Thus, I do not understand your statement that the "procedure" would not change. The present procedure provides the state with the first and last challenge, if all are utilized. With 5 and 5, there would have to be modifications. This "advantage" of the last challenge is the protection against getting the obvious ringer who is not subject to challenge for cause. This is important to the government -- and the society it is instituted to protect -- because of the high burden of obtaining a unanimous verdict in criminal matters.

Just a brief comment on the proposed change to Cr. Rule 24(c): Judging whether a person's impartiality might reasonably be questioned may be substantially more difficult than determining bias as currently defined. And, if anybody whose impartiality <u>might</u> be questioned is excused, might we not be using even more, rather than fewer panel members?

PAM/dn

GILMORE & FELDMAN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2095

JAMES D GILMORE
JEFFREY M. FELDMAN
SUSAN E. STEWART
STUART A. OLLANIK

TELEPHONE
(907) 279-4508

September 8, 1986

The Honorable Jay A. Rabinowitz
Chief Justice
Alaska Supreme Court
604Barnette Street
Room 418
Fairbanks, Alaska 99701

Re: Proposed Reduction in
Peremptory Jury Challenges

Dear Chief Justice:

I am writing to you in my capacity as Chairman of the Standing Committee on Criminal Rules. I know that the Court Rules Attorney, William T. Cotton, has already forwarded to you the committee's view on the proposal to reduce the number of peremptory jury challenges in criminal cases. Because all of the members of the Criminal Rules Committee have strong views concerning this proposal and because the view that the existing rule on peremptory challenges should not be changed was unanimously held by all members of the committee, I felt that some additional comment and explanation was appropriate.

The committee gave careful consideration to the proposal to reduce the number of peremptory disqualifications. Each of the arguments in support of the reduction was explored during the course of a review and discussion that lasted a considerable period of time. As I am sure you can appreciate, a committee such as ours, which is comprised of judges, prosecutors, and defense lawyers, is often times fragmented in its view of particular rule changes. Each of us brings a perspective and, perhaps, a bias that shapes our views of issues that we are required to consider. During the course of my tenure as chairman of this committee, I cannot recall any other instance in which the views of the members of the committee were so uniformly held. The fact that all members of the committee, regardless of their perspective in the criminal justice system, were united in the view that the existing peremptory disqualification rule should not be challenged has significance in and of itself.

The justifications expressed for reducing the number of peremptory disqualifications are the perceived reduction in jury

selection time, cost savings, and prevention of skewing of jury panels. The Criminal Rules Committee was strongly of the view that none of these supposed justifications has validity sufficient to merit changing the existing rule.

Most members of the committee believe that reduction of peremptory disqualifications will actually increase jury selection time, not decrease it. Judges on the committee commented that it was their experience that the early phases of jury selection sometimes consume time, but as the initial panel of jurors is questioned and the early rounds of peremptory disqualifications are exercised, the later rounds tend to go very quickly. The conclusion expressed, and I think everyone on the committee agreed with it, was that by and large, in most cases, the last four or five peremptory disqualifications are exercised rather quickly. By that point in the proceedings, counsel have been through their array of questions with a large number of jurors, the panel has already heard the questions a significant number of times, and most attorneys are sensitive about boring the prospective jurors to tears by unduly delaying the selection process. Thus, in most cases eliminating the last several peremptory challenges will not save substantial time.

Moreover, defense attorneys observed that if peremptory disqualifications were reduced, it is predictable that defense lawyers will likely take more time questioning individual jurors to attempt to develop a better and fuller record for exercising challenges for cause. Often times counsel identify a juror who is perceived to suffer some latent bias, but counsel will make the tactical decision to exclude that juror by simple exercise of peremptory disqualification rather than extensive voir dire aimed at exploring the perceived bias. If the number of peremptory disqualifications is reduced substantially, as is the proposal, counsel will have no alternative but to attempt to develop the challenges for cause in as much detail as possible. The proposed alteration in the standard for challenges for cause is not perceived as being likely to speed up this process much, nor result in any significant increase in the number of actual jurors who are successfully challenged for impartiality.

The predicted consequence is that trial judges will have to spend more time questioning more jurors aimed at establishing challenges for cause and it is also predictable that when those challenges are rejected, the appellate courts will be saddled with a larger number of appeals in which jury qualification and challenge issues are raised and litigated. If the belief is that

reducing the number of peremptory disqualifications from ten to five will save the system substantial time, the rules committee strongly disagrees with the belief. The trial judges and the attorneys on the committee were in uniform agreement that the place where savings and time can be best accomplished is in reasonable controls set by trial judges on the length and scope of voir dire questioning. All members of the committee believe that avoiding an unduly protracted jury selection process is best addressed in that fashion, rather than in reducing the number of peremptory disqualifications.

The committee has no additional information to present on the view that reducing the number of peremptory disqualifications will result in a savings of money by allowing for smaller jury pools. It is apparent, however, that the proposal would only reduce the size of the jury pools by six prospective jurors and the committee questions whether the cost of summoning those six extra jurors is of overriding significance. Moreover, one of the trial judges on the committee commented that it was his experience that the court system almost always summons more jurors for a panel than is really required and, as a result, extra jurors are always left over. If that is the case, it seems that the cost savings could be better achieved by closer monitoring by the jury clerk of the actual numbers of jurors that are required, rather than by arbitrarily limiting the number of peremptory disqualifications.

All members of the committee are of the view that there are few procedural rights more integral and important to the perceived fairness of a trial than that of peremptory disqualification of jurors. While there may not be any constitutional or God given right to a certain number of peremptory disqualifications, all members of the committee feel that the existing procedure serves to strongly enhance the perceived fairness of the proceedings. The committee does not believe that the cost of summoning an extra six jurors for each felony trial can legitimately outweigh the enhancement of the perceived fairness of the proceedings and the administration of justice in these important cases.

The last argument in support of reduction of the number of peremptory disqualifications suggests that the reduction would prevent "skewing the representativeness of the jury in relation to the general population". The committee is unaware of any evidence that would suggest that such "skewing" is actually occurring. The committee would be very interested in learning

what data or information has been generated or made available that would suggest this kind of "skewing".

The committee has asked that the court hear and consider the committee's views on this important matter by allowing the committee, either collectively or through its chairman, to discuss this matter further with the court at an appropriate time. I hope that the court will consider that request as it is a sincere reflection of the committee's view that modification of the existing peremptory disqualification procedure would be an unwise policy choice. Thank you very much for considering the matters contained in this letter.

Very truly yours,

Jeffrey M. Feldman

JMF:jd

cc: William T. Cotton
Criminal Rules Committee Members

BEFORE THE SENATE JUDICIARY COMMITTEE

(Friday, March 25, 1994 -- 1:30 p.m.)

FIVE NEW LAWS TO

COMBAT VIOLENCE AGAINST ALASKA'S WOMEN AND CHILDREN

In the State of the State Address, the Governor launched a new initiative designed to combat the crimes that most threaten the safety of Alaska's women and children -- domestic violence, stalking, rape, and child abuse.

At the core of this initiative are six new bills designed to level the playing field. (While all six were filed in the House, only five were filed in the Senate because Sen. Donley has already filed a bill to extend probation, SB 24.) All told, four of the six proposals will work directly to help protect the victims of domestic violence, stalking, rape, and child abuse -- and in many cases, to prevent new crimes from actually occurring.

These four bills would:

SB 351 **Amend the Rules of Evid. so that Rape Victims Aren't Put on Trial**

SB 350 **Help to Promptly Arrest Stalkers and Wife Beaters Who Violate Bail**

SB 352 **Make DMV Info Private so that Stalkers Can't Use it to ID Victims**

SB 24 **Increase Probation to Protect Abused Kids for 10 Years -- Not Just 5**

In addition, two additional bills would serve to provide new protections for all victims of crime -- including, of course, victims of domestic violence, rape and child abuse.[1]

These two additional bills would:

SB 349 **Put More Police and Troopers on the Street by Allowing Police Hearsay Testimony in the Grand Jury**

SB 353 **Give Prosecutors and Defendants an Equal Number of Jury Challenges**

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[1] **A Two-Thirds Vote:** Three of the six proposals involve **Court Rules** changes, which, under the law, would require a two-thirds vote in each house in order to pass. The three bills which would require a two-thirds vote are **SB 351**, amending the Rules of Evidence so that rape victims aren't put on trial; **SB 349**, putting more cops on the street by allowing police hearsay in the grand jury; and **SB 353**, giving prosecutors and defendants an equal number of peremptory challenges during jury selection.

THE PROBLEM: RAPE, DOMESTIC VIOLENCE, AND CHILD ABUSE

On a per capita basis, Alaska has one of the highest rates of rape, domestic violence, child abuse and sexual abuse in the nation. Not only are these cases among the most difficult and sensitive that we prosecute, they are also among the most devastating in terms of the outrage, grief and emotional trauma they inflict on victims, families and entire communities.

The offenders in these cases are some of the most deserving of aggressive prosecution. They are cowards who prey on Alaska's most vulnerable victims: children, the elderly, and women who are incapacitated or impaired by fear, physical disability, alcohol, family relationship or other factors.

The problem of domestic and sexual violence in Alaska cuts across all boundaries of race, culture, economic status, educational background and other demographic factors. It is acute both in urban Alaska and in remote, rural areas.

THE SOLUTION:
SIX NEW LAWS TO FIGHT SEXUAL, FAMILY & DOMESTIC VIOLENCE

Alaska needs to give our police and prosecutors the tools they need to do the job. The recent passage of the Anti-Stalking law, the law permitting HIV Testing for accused sex offenders, and Speaker Barnes' Sex Offender Registration law all demonstrate that there is broad legislative support for new laws to combat violence against women and children.
Here are the six new proposals:

(1) SB 351: AMEND THE RULES OF EVIDENCE SO THAT RAPE VICTIMS AREN'T PUT ON TRIAL

The draft legislation seeks to level the playing field by amending the rules of evidence so that rape victims aren't put on trial.

Here's the problem:

It used to be more common that, in rape cases, the defendant often claimed that the rape simply didn't happen -- that no sexual contact took place. Thankfully, today, scientific advances in both the gathering and analysis of forensic evidence such as human hair, blood, semen, skin scrapings, and DNA have often made it much more difficult for accused rapists to use the "we never had sex" defense.

Among other effects, this may have contributed to the apparent increase in the number of rape cases in which the defendant -- while perhaps conceding that sexual contact did take place -- attempts to put the rape victim on trial by claiming that the woman "consented" to sex.

In cases such as this -- when the rapist claims the defense of "consent" -- the rules should permit the State to stand up for the victim, and to rebut this claim by introducing evidence of the defendant's prior sexual assaults.

The Case of Leo Hoffman

Consider, for example, the recent case of Leo Hoffman, a vicious serial rapist who was convicted of raping two women in California. He served hard time for rape in San Quentin. Then, not long after his release, he moved to Alaska and began to prey on women here.

He was charged in Alaska with kidnapping a local woman, forcibly injecting her with drugs, and repeatedly raping her in a horrifying, 12-hour ordeal. She finally escaped, donning her attacker's clothes, and fled ragged and in tears to a nearby business, where she immediately reported the rape to police.

As with many rape victims -- who are often selected by sexual predators precisely because of their vulnerability -- Hoffman's first Alaska victim was especially vulnerable due to suffering from chemical dependency. Hoffman declared that he would put the victim on trial by claiming that she had voluntarily participated in consensual sex -- a claim that could easily have been refuted by evidence of his convictions for past rapes.

Unfortunately, under current Alaska law, the jury would never learn the truth about Hoffman's prior rapes. Instead, Hoffman successfully hid behind the loophole in Alaska law that keeps prior rapes out, even where the defendant claims "consent."

Ultimately, Hoffman was convicted by a jury only of the one charge to which he had, in essence, confessed: possession of the cocaine that he was accused of injecting into his victim. Incredibly -- even after his conviction for this Class C felony -- the judge allowed Leo Hoffman out on bail, pending his appeal.

And last year, while out on bail, Leo Hoffman was again arrested, and charged with assaulting not one but two more innocent Alaska women.

To protect Alaska's women, it's long past time to close this dangerous legal loophole.

Abused Women Need Protection, Too

Similarly, in cases of domestic violence and other violent assaults -- such as cases involving a self-defense claim in which the defendant himself places the victim's character in issue -- a level playing field means that the State should also be permitted to introduce evidence of the defendant's own reputation for violence.

The attached draft proposes a pair of amendments to Evidence Rule 404 that can protect not only victims of rape, but also victims of domestic violence, in the kinds of situations described above.

Protecting Alaska's Kids from Serial Predators

The Administration has also proposed that we delete the unnecessary language in Rule 404 that has made it difficult to prosecute repeat child molesters. As it reads now, the Rule has been erroneously interpreted by some judges to indicate that the jury can learn that an accused molester has abused other children only if the court finds that it was part of a particular "common scheme or plan."

Let's say, for example, that a child molester was convicted in Seattle of sexually abusing his own foster children. Then after getting out of prison, he comes to Alaska and takes a job at a day care center, where he again abuses the children in his care.

It may seem self-evident to some that having sex with children, whether one's own kids or whether children left in Day Care, would be part of a "common scheme or plan." But the rulings of some Alaska courts suggest otherwise. They would suggest that, on facts such as those presented in this example, there is actually evidence of two different schemes -- one designed to have sex with one's own children, and one designed to have sex with other people's children.

Erroneous interpretations such as these have prevented Alaska juries from learning the true facts about accused child molesters. The language in the Rule is confusing and has placed unnecessary constraints on sex abuse cases in many Alaska courts. Therefore, the phrase "common scheme or plan" should be deleted from Rule 404(b)(2).

(2) SB 350: ARRESTING STALKERS AND WIFE BEATERS WHO THREATEN THEIR VICTIMS WHILE OUT ON BAIL

As the new anti-stalking law has proved, it's simply not enough to put laws on the books that only allow police to come in and mop up after a woman has already been victimized.

Protecting Alaska's women from stalkers and domestic violence means that police have to have the ability to act -- to intervene -- and to do so immediately.

Here's the problem:

In domestic violence cases, the accused often is released on bail. In many cases this is appropriate: often the defendant is a first-time offender, the conduct alleged is only a misdemeanor violation, and, quite obviously, the State simply doesn't have the prison space to lock up every man who is accused of domestic violence before he is even found guilty.

Nevertheless, when her attacker is out on bail, the abused woman is often at risk. Tragically, inevitably, what often happens is this:

Despite the order by the Court that he have no contact with the victim, the defendant returns to the home of the wife or girlfriend he's accused of attacking. Often it is late at night. Often, both alcohol and anger are involved.

There's a knock or a shout or a broken window. Words are exchanged. Terrified, the abused woman desperately calls 911. The police race to respond. Sirens blare. But by the time they arrive, predictably, the defendant has fled the scene. And since the police didn't see him violate bail with their own eyes, they can only make an arrest if, in the middle of the night, they are able to reach a prosecutor and a judge to issue the appropriate warrant.

This can take hours. And in the meantime, an accused criminal, angry and often drunk, remains at large. And one frightened woman will have a terrifying night as she is told, once again, that there is little that the police can do.

That's not good enough. Alaska's police need the ability to act.

The Governor's proposal would permit police to promptly arrest accused stalkers and other offenders who return to confront their victims. The draft amendment to AS 12.25.030 would authorize the warrantless arrest of persons who have violated conditions of release in domestic violence and rape cases, to the same extent that warrantless arrests are already authorized under existing Alaska law for the initial commission of these same offenses.

(3) SEN. DONLEY'S SB 24: INCREASE PROBATION TO PROTECT ABUSED KIDS FOR 10 YEARS – NOT JUST 5

Among other benefits, this simple proposal would help protect Alaska's children and others from family violence. For example, right now many convicted child abusers or molesters finish serving their prison sentences while their own young children (who are most at risk from repeat violence) are still children. Because current law limits probation to only five years, the courts only have a maximum of five years of "control" over a released felon.

Our prisons don't have enough money to lock up all these offenders forever. But by simply extending the allowable period of probation to up to 10 years for all felony offenses, we can give the courts the tool they need to "hang a hammer" over the head of released child abusers for a long, long time -- long enough for most of their kids to grow up and become safe, independent adults -- and do so without the more expensive costs of full-time incarceration. In property crimes cases, extending probation can also be revenue positive by increasing the State's ability to collect restitution.

Proposals like this have been pending in the legislature during the past several years, sponsored by Sen. Donley and others. It is supported by both prosecutors and defense lawyers, and should be acted upon this Session.

(4) SB 352: MAKE D.M.V. INFORMATION PRIVATE SO THAT STALKERS CAN'T USE IT TO I.D. VICTIMS

California passed this legislation after DMV information was used in the stalking murder of actress Rebecca Schaeffer.

Here in Alaska, a convicted murderer, Jon Woodard, used public DMV information and license plate data in 1992 to identify the names of senior employees of Chilkoot Charlie's before robbing the establishment at gunpoint. (Woodard was convicted of murder in the subsequent shooting of the Loomis Armored Car guard at Carr's).

Another would-be killer, Laverne Brooks, tried to hire an ex-con to do a contract murder on former Superior Court Judge Victor Carlson and his (Brook's) ex-wife. Brooks used public DMV information to track down his ex-wife's new address for the hit man he had hired, and to identify the color and make of the car she was driving.

As it stands now, if they know the license plate of a particular car, members of the public can obtain the name, address and telephone number of the car owner from DMV. In order to protect the public -- and in keeping with Alaska's tradition of protecting the privacy of its citizens -- the Administration's draft amendment to AS 28.05.061 would make the addresses and telephone numbers confidential.

CLOSING THE LOOPHOLES: TWO ADDITIONAL LAWS TO COMBAT ALL VIOLENT CRIME

(5) SB 349: PUT COPS BACK ON THE STREET -- PERMIT THE USE OF POLICE HEARSAY TESTIMONY BEFORE THE GRAND JURY

In Alaska's federal courts, the case agent on a particular case simply comes before the grand jury, and testifies about the full scope of what was learned during the course of an investigation. If 12 agents were involved, they don't call all 12 in before the grand jury. They just call in one case agent -- and leave the other 11 free to be out on the street fighting crime.

Not so in Alaska's state courts. Because hearsay is generally not allowed in the grand jury, the lead police or trooper investigator cannot simply testify about what he or she learned from fellow cops. They can't even tell the grand jury about what they heard over the radio --the police dispatcher has to be called off the job and into court to testify about it in person.

As the federal courts in Alaska routinely prove, this expensive and unnecessary rule does absolutely nothing to protect the constitutional rights of Alaska's citizens. All it does is pull dozens of cops and troopers off patrol every month. They cool their heels in the D.A.'s office or the courthouse, invariably spending many wasted hours simply waiting around to testify.

The language in Criminal Rule 6(r)(1), which presently prohibits virtually all hearsay testimony in the grand jury, should be amended to permit peace officers to testify as to what their fellow officers saw or heard. Even without additional police funding, this simple, constitutional rule change can reduce grand jury costs to the state -- and at the same time free up more police. Let's save money and put Alaska's police and troopers back out on the street, fighting crime.

(6) **SB 353: LEVEL THE PLAYING FIELD: GIVE PROSECUTORS AND DEFENDANTS AN EQUAL NUMBER OF JURY CHALLENGES**

During jury selection -- in all rape, domestic violence and other felony trials -- criminal defense lawyers are permitted to pre-empt ten jurors they consider unfavorable to their case, while prosecutors only are permitted to challenge six.

It's time to level the playing field. Alaska's laws should be brought in keeping with national standards -- and, at least initially, provide both sides with the same number of challenges. Acting to level the playing field in this way would not serve to deprive any defendant of the protections already afforded under Alaska law. Under the proposed Rule, Alaska's courts would continue to have the option of granting defendants additional challenges in cases where it is merited.

Taken together -- and taken in conjunction with other landmark legislation such as the sex offender registration bill, the HIV testing bill, the conspiracy bill, and the juvenile waiver bill -- these six proposals can provide the Legislature with a unique opportunity to strike a real blow against crime, as well as to protect Alaska's most vulnerable citizens.

We urge the Chairmen of the designated Committees to schedule hearings on these new bills at the earliest opportunity -- and we urge favorable consideration by the members of both Houses.

VICTIMS for Justice

March 7, 1994

The Honorable Walter J. Hickel
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Hickel,

The goal for all victims of violent crime is to eliminate victims of crime. The theme of the 1994 National Victims Rights Week is "Facing Violence Today; Fewer Victims Tomorrow". The six new laws to combat violence against Alaska'a women and children that you have introduced is putting the teeth into this goal of fewer victims. How appropriate for your crime ideals to coincide with the concerns of the whole nation. Thank you for caring. Now it is time for the legislators to pass this very important legislation we can prevent further victimization of women and children.

Sincerely,

Janice Lienhart

Janice Lienhart

619 E. Fifth Avenue • Anchorage, AK 99501 • Phone: (907) 278-0977 • Fax: (907) 258-0740

ANCHORAGE POLICE DEPARTMENT

4501 SOUTH BRAGAW STREET ♦ ANCHORAGE, ALASKA 99507
TELEPHONE (907) 786-8500

Tom Fink, Mayor

Service since 1921

March 11, 1994

To The Alaska State Legislature:

Those of us in the law enforcement community for many years have felt that the rights of victims are overlooked in our legal system. Too often, the victims are helpless not only during the crime itself, but are again victimized by loopholes that prevent aggressive prosecution. The Anchorage Police Department supports the four new laws proposed by Governor Hickel aimed at protecting women and children because many of these injustices would be corrected.

We additionally can find no argument against modifying the use of police hearsay testimony in state trials to be consistent with that allowed in federal trials. This modification should make a significant impact in lowering Anchorage Police Department overtime costs for court appearances.

The State of Alaska should also conform with national standards in both the prosecution and defense having the same number of jury challenges. The current law only reinforces the belief that the courts offer more protection to the criminal than the victim.

We feel that these six proposed laws will help to balance a system that has traditionally focused on protecting the rights of wrongdoers, rather than the innocent.

Sincerely,

Duane S. Udland

Duane S. Udland
Deputy Chief of Police

ALASKA PEACE OFFICERS ASSOCIATION

Anchorage Chapter
P. O. Box 103824
Anchorage, AK 99510
Phone_____

March 7, 1994

The Honorable Walter J. Hickel
Office of the Governor
P.O. Box 110001
Juneau, Ak. 99811-0001

Dear Governor Hickel:

On behalf of the Anchorage Chapter of Alaska Peace Officers Association I would like congratulate you for introducing the new Anti-crime initiative which will combat violence against women and children in Alaska.

The new initiative is a tool which will greatly aide police officers in preventing domestic violence and sexual assault , and will give prosecutors the necessary means to prosecute offenders to the full extent of the law.

Any anti-crime bill that will help protect our women and children will be an asset to law enforcement in the state and the Anchorage Chapter of A.P.O.A. is glad to lend our support.

Sincerely Yours,

John Charbonneau, President
(907) 277-8638

GOVERNOR HICKEL'S
BILL TO PUT POLICE BACK ON THE STREET
(SB 349 & HB 523)

This bill will put Alaska's police back on the street by amending Criminal Rule 6(r) to allow one police officer to testify at grand jury as to what their fellow officers heard, said, or did in the course of a criminal investigation. This will reduce the number of officers that are routinely tied up in court when a case is presented to a grand jury.

In Alaska's federal courts, the lead agent on a particular case simply comes before the grand jury, and testifies about the full scope of what was learned during the course of an investigation. If twelve FBI agents were involved, they don't call all twelve agents in before the grand jury. They just call in the lead agent--and leave the other eleven free to be out on the street fighting crime.

Not so in Alaska's state courts. Because hearsay is generally not allowed in the grand jury, the lead police or trooper investigator cannot simply testify about what he or she learned from fellow cops. They can't even tell the grand jury about what they heard over the radio--all of their fellow cops have to be called off the job and into court to testify about it in person.

As the federal courts in Alaska routinely prove, this expensive and unnecessary rule does absolutely nothing to protect the constitutional rights of Alaska's citizens. All it does i pull dozens of cops and troopers off patrol week in and week out. They cool their heels in the D.A.'s office or the courthouse, invariably spending many wasted hours simply waiting around to testify.

The language in Criminal Rule 6(r)(1), which presently prohibits virtually all hearsay testimony in the grand jury, should be amended to permit peace officers to testify as to what their fellow officers saw or heard. This simple, constitutional rule change can reduce grand jury costs to the State--and at the same time free up more police. Let's save money and put Alaska's police and troopers back out on the street where they belong--fighting crime.

PD file
~~Gov Exec Staff~~

Law 0033

WALTER J. HICKEL
GOVERNOR

P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

SB 349

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 1994

The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends Alaska Rule of Criminal Procedure 6(r) to allow one peace officer, such as an Alaska state trooper or police officer, to testify at grand jury as to what another peace officer heard, said, or did in the course of a criminal investigation. This will reduce the number of peace officers that must be involved and required to testify when a case is presented to a grand jury, especially when the peace officers may have only played a minor role in the investigation.

In federal courts in Alaska, the lead case agent on a particular investigation simply comes before the federal grand jury and testifies about the entire scope of what was learned during the course of an investigation. If 12 law enforcement agents were involved, the federal court rules do not require all 12 agents to personally appear and testify before the grand jury. The federal rules allow for just one case agent to appear and testify before the grand jury -- leaving the other 11 agents available on the street to fight crime.

This is not the situation in Alaska's state courts. Because hearsay evidence is generally not allowed to be presented before the grand jury in criminal cases, the lead peace officer investigating the case cannot simply testify about what that officer learned from fellow officers conducting the investigation. The lead officer cannot even testify before the grand jury about what that officer heard over police radio -- the police dispatcher who made the particular radio transmission must be called into court to testify about the statement in person. It frequently takes many work hours to prepare, and to be present, to testify.

As the federal courts in Alaska routinely prove, Alaska's hearsay rule does not provide any greater protection of the constitutional rights of Alaskans than does the federal practice. The present state court rule unnecessarily pulls dozens of peace officers off patrol every month simply to wait around to testify.

The language in Alaska Rule of Criminal Procedure 6(r), which presently prohibits virtually all hearsay testimony in the grand jury, should be amended to permit peace officers to testify as to what their fellow officers saw or heard -- for example, as to the contents of their fellow officers' official police reports. The state is presently facing a projected decline in revenue. This simple, constitutional, rule change can reduce grand jury costs to the state by allowing one officer, rather than many, to present the relevant evidence, at the same time freeing up nontestifying officers to do essential public protection duties. If this bill is enacted, we could save money and keep Alaska's police and troopers out on the street fighting crime, without affecting the quality of evidence presented to the grand jury.

I urge your favorable action on this bill.

Sincerely,

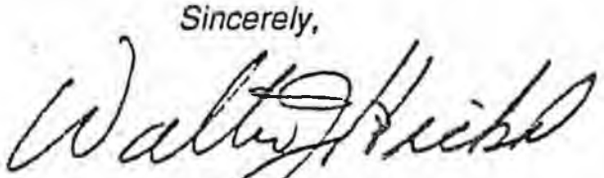
Walter J. Hickel
Governor

As the federal courts in Alaska routinely prove, Alaska's hearsay rule does not provide any greater protection of the constitutional rights of Alaskans than does the federal practice. The present state court rule unnecessarily pulls dozens of peace officers off patrol every month simply to wait around to testify.

The language in Alaska Rule of Criminal Procedure 6(r), which presently prohibits virtually all hearsay testimony in the grand jury, should be amended to permit peace officers to testify as to what their fellow officers saw or heard -- for example, as to the contents of their fellow officers' official police reports. The state is presently facing a projected decline in revenue. This simple, constitutional, rule change can reduce grand jury costs to the state by allowing one officer, rather than many, to present the relevant evidence, at the same time freeing up nontestifying officers to do essential public protection duties. If this bill is enacted, we could save money and keep Alaska's police and troopers out on the street fighting crime, without affecting the quality of evidence presented to the grand jury.

I urge your favorable action on this bill.

Sincerely,



Walter J. Hickel
Governor

GOVERNOR HICKEL'S BILL TO ARREST STALKERS AND WIFE BEATERS

(SB 350 & HB 524)

As the new anti-stalking law has proved, it's simply not enough to put laws on the books that only allow police to come in and mop up after a woman has already been victimized. Protecting Alaska's women from stalkers and domestic violence means that police have to have the ability to act--to intervene--and to do so immediately.

Here's the problem: When an attacker is out on bail, the victim is often at risk. Tragically, inevitably, what often happens is this:

Despite the order by the Court that he have no contact with the victim, the defendant returns to the home of the wife or girlfriend he's accused of attacking. Often it is late at night. Often, both alcohol and anger are involved.

There's a knock or a shout or a broken window. Words are exchanged. Terrified, the abused woman desperately calls 911. The police race to respond. Sirens blare. But by the time they arrive, predictably, the defendant has fled the scene. And since the police didn't see him violate bail with their own eyes, they can only make an arrest if, in the middle of the night, they are able to reach a prosecutor and a judge to issue the appropriate warrant.

This can take hours. And in the meantime, an accused criminal, angry and often drunk, remains at large. And one frightened woman will have a terrifying night as she is told, once again, that there is little that the police can do.

That's not good enough. Alaska's police need the ability to act.

The Governor's proposal would permit police to promptly arrest accused stalkers and other offenders who return to confront their victims. The draft amendment to AS 12.25.030 would authorize the warrantless arrest of persons who have violated conditions of release in domestic violence and rape cases, to the same extent that warrantless arrests are already authorized under existing Alaska law for the initial commission of these same offenses.

Law 0034

WALTER J. HICKEL
GOVERNOR

P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

SB 350

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 1994

The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Mr. President:

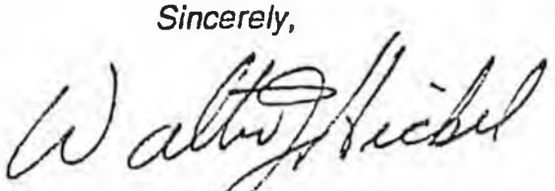
Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would allow peace officers to make warrantless arrests when they have reasonable cause to believe that a defendant is violating the conditions of release imposed by a court in certain types of cases, including stalking, assault, sexual assault, and domestic violence cases. The bill would allow peace officers to take immediate action to protect the public, rather than requiring that they contact a prosecutor and a judge before arresting the defendant.

For example, if a person accused of stalking, domestic violence, assault, or sexual assault confronts the victim while the person is released on bail, or violates another condition of release, peace officers are rarely able to protect the victim or the public in general by making an immediate arrest. Typically, the peace officer must first meet with a prosecutor, go into court to file a motion, and obtain a court order before they can act to put the defendant back in jail. Since a large percentage of these incidents occur late at night and often involve alcohol or drug use by the defendant, these situations are particularly dangerous for victims -- and challenging for peace officers, prosecutors, and judges.

The bill authorizes the warrantless arrest of defendants who have violated conditions of release imposed by the court for certain offenses to the same extent that warrantless arrests are already authorized under existing law for the initial commission of these same offenses. The bill would permit peace officers to promptly arrest accused stalkers and other offenders who confront their victims, or otherwise violate conditions of release, while on bail.

Protecting Alaskans from stalkers and domestic violence requires giving peace officers the tools to act -- to intervene -- and to do so immediately. I urge your favorable action on this bill.

Sincerely,



Walter J. Hickel
Governor

GOVERNOR HICKEL'S
BILL TO PROTECT VICTIMS OF RAPE, DOMESTIC VIOLENCE, AND CHILD ABUSE
(SB 351 & HB 525)

In far too many cases of rape, domestic violence, and child sexual abuse, Alaska's victims are often themselves "put on trial" in the course of criminal proceedings. The emotional trauma which such crime victims routinely suffer in the criminal justice system can in some cases be nearly as traumatic as the crime itself.

This legislation seeks to help solve these problems in several ways. First, it levels the playing field by amending the rules of evidence so that victims can't be "put on trial" by the accused rapist.

Defendants in rape cases used to claim that the rape simply didn't happen--that no sexual contact took place. Thankfully, today, scientific advances in both the gathering and analysis of forensic evidence such as human hair, blood, semen, skin scrapings and DNA have often made it much more difficult for accused rapists to use the "we never had sex" defense. The new defense is--while perhaps conceding that sexual contact did take place--attempting to put the rape victim on trial by claiming that the woman "consented" to sex.

In cases such as this--when the rapist claims the defense of "consent"--the rules should permit the State to stand up for the victim, and to rebut this claim by introducing evidence of the defendant's prior rapes.

Similarly, in cases of domestic violence and other violent assaults--such as cases involving a self-defense claim in which the defendant places the victim's character in issue--a level playing field means that the State to stand up for the victim, and to rebut this claim by introducing evidence of the defendant's prior rapes.

This proposed legislation also deletes the unnecessary language in Rule 404 that has made it difficult to prosecute repeat child molesters. As it reads now, the Rule has been erroneously interpreted by some judges to indicate that the jury can learn that an accused molester has abused other children only if the court finds that it was part of a very specific "common scheme or plan." This bill would fix that problem by simply eliminating this confusing phrase.

file

Juco 0035

WALTER J. HICKEL
GOVERNOR

P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

SB 351

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 1994

The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that amends Alaska Rule of Evidence 404 in several respects to help protect the victims of crimes in this state.

In far too many cases of sexual assault, domestic violence, and child sexual abuse, Alaska's victims are often themselves "put on trial" in the course of criminal proceedings. The emotional trauma that such crime victims routinely suffer in the criminal justice system can in some cases be nearly as traumatic as the crime itself.

Therefore, in order to address these problems and to better protect Alaska's citizenry, especially women and children who are frequently the victims of these crimes, we have proposed three changes to Rule of Evidence 404 which are intended to accomplish the following three goals.

The first goal is to reduce the number of times a sexual assault victim is "put on trial" by authorizing the admission into evidence of other sexual assaults or attempted sexual assaults by the defendant if the defendant claims that the victim voluntarily "consented" to the sexual activity. When a defendant argues that the victim consented, the prosecution should be permitted to stand up for the victim and rebut this claim by introducing evidence to the jury that the defendant has sexually assaulted or attempted to sexually assault other victims in the past.

The second goal is to similarly protect Alaska's sexually abused children. Rule of Evidence 404(b) was intended to prevent sexual predators and other child abusers from manipulating juries by hiding their past crimes of this type. Unfortunately, a confusing and unnecessary phrase -- "to show a common scheme or plan" -- has

been misinterpreted by several Alaska courts to exclude evidence meant to be allowed under the rule. This bill would fix that problem by simply eliminating this confusing phrase. Evidence of other sexual assaults or sexual abuse by the defendant toward the same or another child should be admissible if those acts are similar to the offense charged, whether or not the evidence demonstrates a "common scheme or plan." This bill also specifies a 10-year time period as being not too remote for the admissibility of evidence of prior similar sexual assaults or sexual abuse offenses committed by the defendant against children.

The third goal relates to evidence of past violence on the part of the defendant. In cases of domestic violence and other violent crimes, the defendant often claims that the victim was the initial aggressor. The defendant claims, in essence, that "the victim hit me first" and that therefore the victim "had it coming." Under the existing rule of evidence, the defendant is then permitted to introduce all sorts of evidence about the victim's past reputation for violence -- and hide the fact that the defendant's own past contains an even more violent record. This bill would fix the rule by permitting the prosecution to stand up for the victim, and to rebut these claims by introducing evidence of the defendant's own past violence.

A defendant who claims that the victim was the aggressor should not be able to hide behind Rule 404 to keep a jury from learning that the defendant has an even greater reputation for violence in the community. The most common "relevant character trait of the accused" contemplated in this proposed amendment to Rule of Evidence 404(a) is the accused's reputation for violence or aggression.

The changes proposed in this bill will help level the playing field for the state in its efforts to combat crime. I urge your favorable action on this bill.

Sincerely,

Walter J. Hickel
Governor

GOVERNOR HICKEL'S
FAIR JURY SELECTION BILL
(SB 353 & HB 528)

The American Bar Association (ABA) Standard No. 15-2.6 provides that--in trials involving just one defendant (as is the case in the vast majority of Alaska trials)--the prosecution and the defense should have the same number of jury challenges.

This bill would bring Alaska into conformity with those national standards.

At present, during jury selection in all rape, domestic violence and other felony trials, criminal defense lawyers are permitted to pre-empt ten jurors they consider unfavorable to their case, while prosecutors only are permitted to challenge six. This balances the scales unfairly, tilting jury selection in favor of criminal defendants.

Governor Hickel's proposed legislation would amend Alaska Rule of Criminal Procedure 24(d) to equalize the number of peremptory challenges that prosecutors and defendants have in jury trials. This legislation can help level the playing field in criminal prosecutions, reduce the cost of criminal trials, and give the State a reasonable chance to do its job to protect the public.

Alaska's laws should be brought in keeping with national standards--and, at least initially, provide both sides with the same number of challenges. Acting to level the playing field in this way would not serve to deprive any defendant of the protections already afforded under Alaska law. Under the proposed Rule, Alaska's courts would continue to have the option of granting defendants additional challenges in cases where it is merited (such as trials involving multiple defendants).

WALTER J. HICKEL
GOVERNOR

Yellow C038

P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

SB 353

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 1994

The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to peremptory challenges of jurors in felony criminal proceedings. During jury selection for felony trials, such as for murder, sexual assault, domestic violence, or child abuse, peremptory challenges are used by both prosecutors and defense lawyers to remove potential jurors from the case in an effort to obtain a fair jury to hear the case. But current court rules allow criminal defendants to peremptorily challenge 10 jurors without stating a cause, while prosecutors are only permitted to challenge six on this basis. This difference in the court rules balances the scales unfairly, tilting jury selection in favor of criminal defendants.

This bill will amend Alaska Rule of Criminal Procedure 24(d) to give prosecutors and defendants the same number of peremptory challenges in jury trials in felony criminal cases. This bill will help level the playing field in criminal prosecutions when trying to pick a fair jury to hear a criminal case. Also, allowing both sides six peremptory challenges may reduce the cost of criminal trials by reducing the time needed for jury selection.

I urge your favorable action on this bill.

Sincerely,

Walter J. Hickel

Walter J. Hickel
Governor

SB
362

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM April 29, 1994

SUBJECT: Alaska Constitution - Article II, section 13 (Single Subject Rule)(CSSB 362(L&C))

TO: Senator Robin Taylor

FROM: Michael F. Ford mf.
Legislative Counsel

You have asked if the above-referenced bill, that contains changes to our laws on insurance, could include provisions amending various civil liability laws. It is our opinion that combining these two subjects would violate the constitutional prohibition against including more than one subject in a single bill. The purpose of the rule is to ". . . prevent the inclusion of incongruous and unrelated matter in the same bill in order to get support for it which the separate subjects might not separately command, and to guard against inadvertence, stealth, and fraud in legislation." Suber v. Alaska State Bond Committee, 414 P.2d 546 (Alaska 1966). The Alaska Supreme Court has construed this constitutional requirement and described the following standard:

> All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be part of, or germane to, one general subject. (State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982), Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985)) What constitutes one subject is broadly construed, and an act will not be set aside for failing to comply with the single subject rule "except where the violation is both substantial and plain." North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978).

Applying the above standard it is our opinion that insurance and civil liability are two distinct subject areas, and when combined do not meet the standard articulated by the Alaska Supreme Court, that each bill fall under one general idea, or general subject. Therefore to combine these subjects into one bill would violate Article II,

section 13, of the Constitution of the State of Alaska, requiring that each bill be limited to one subject.

MFF:pl
94-355.plm

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 362

Revision Date:
Title: Omnibus Insurance Reform

Sponsor: Senate Labor & Commerce Committee
Requestor:

Department Affected: Commerce and Economic Development
BRU: Insurance
Component: Operations

COMPONENT SERIAL NO. 354

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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 EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0
FUND SOURCE						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: $ 0

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance

Phone: 465-2597
Date: 3/25/94

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

3/29/94

PREPARER TO PROVIDE FISCAL NOTE For further c

LEGISLATIVE OFFICE ve Office

Rev 11/93

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Commerce & Economic Dev.	Insurance	SB 362	Labor & Commerce Committee

SHORT TITLE OF BILL
Omnibus Insurance Reform

DEPARTMENT POSITION
Support the bill

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Joan Brown	3/25/94	for JF Gilbert E Bell	3/25/94

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
None	Insurers and insurance licensees
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Unknown	Unknown

FISCAL IMPACT: [x] NONE [ ] FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

ANALYSIS OF BILL/PROGRAM EFFECTS

This legislation includes language to address new areas of insurance regulation, adopt new accreditation standards added by the National Association of Insurance Commissioners (NAIC), and make corrections to the Alaska insurance statutes for errors found during the last two years. These changes will bring the Division of Insurance's statutes up-to-date with the insurance market and allow the division to maintain its national accreditation which was granted by the NAIC in December, 1992.

The bill includes the following:

- regulation of risk retention groups and purchasing groups as allowed by federal law;
- authority to respond to catastrophic situations;

(CONTINUED NEXT PAGE)

AMENDMENTS PROPOSED

SEE ATTACHED

PLEASE ATTACH ANALYSIS

BILLANAL.FRM
JB/dgl323bs.jb

BILL ANALYSIS
SB 362

ANALYSIS OF BILL PROGRAM EFFECTS - CONTINUED

- authority to suspend the certificate of authority of an insurance company that is not renewed;

- provide for voluntary surrender of an Alaska certificate of authority by an insurer domiciled in another state;

- authority to refund or grant credits for overpayment of premium tax by an insurer due to error or misinterpretation;

- require disclosure by an insurer of material transactions of purchase or disposal of assets or reinsurance (NAIC model law and accreditation standard);

- provide requirements for licensing of U.S. branches of alien (non-U.S.) insurers to allow these insurers to use Alaska as a base of operations for business written throughout the United States (NAIC model law);

- provide authority to require continuing education for licensed insurance producers (agents/brokers);

- require that fiduciary accounts holding insurance premiums received by resident insurance producers (agents/brokers) be located in Alaska;

- provide that a single fiduciary bond can cover multiple producer office locations;

- allow the director to file civil actions for damages caused by violations of statute by Managing General Agents, Reinsurance Intermediary Brokers, and Reinsurance Intermediary Managers (amendment to NAIC model law);

- add incorporated insurers to the definition of a group of unincorporated insurers to reflect recent changes at Lloyd's of London;

- clarify when rate changes may be made to outstanding policies;

- provide that false statements made in regards to a claim may result in prosecution under Alaska law;

BILL ANALYSIS
SB 362

- allow the director to specify the format and content of rate and policy form filings to the division;

- clarify health insurance coverage of newborn and adoptive children;

- provide for updated regulation of consumer credit insurance (NAIC model law);

- provide for redomestication of insurers domiciled in Alaska and moving to another state or requesting to move their domicile from another state to Alaska;

- provide for voluntary surrender of an Alaska certificate of authority by a domestic insurer;

- provide the authority to request quarterly financial statements from all entities regulated by the Division of Insurance;

- allow insurers to pay claims by electronic funds transfer;

- provide authority to the director to specify requirements for electronic data transfer; and

- otherwise make corrections and clarify statute provisions.

INSURANCE LEGISLATION OF 1994

AN ACT RELATING TO THE LICENSING, ACCREDITATION, EXAMINATION, REGULATION, AND SOLVENCY OF PERSONS ENGAGED IN THE INSURANCE BUSINESS, INCLUDING INSURERS, NONADMITTED INSURERS, PURCHASING GROUPS, RISK RETENTION GROUPS, AND UNITED STATES BRANCHES OF NON-U.S. INSURERS; RELATING TO THE MANAGEMENT OF AND FILING OF REPORTS BY PERSONS LICENSED OR OTHERWISE DOING BUSINESS UNDER THE INSURANCE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

Sectional Analysis by the
Department of Commerce and Economic Development,
Division of Insurance

SMALL LOANS ACT, CONSUMER CREDIT INSURANCE

Sections 1 and 2 are amendments to coincide with the changes in consumer credit insurance in Sections 63 through 77.

Section 1. AS 06.20.260(a). Small Loans Act, Charges Prohibited, page 1.

Amends this section to use the term "consumer credit insurance" as defined in AS 21.57.160 (Sec. 77 of this bill).

Section 2. AS 06.20.287(a). Small Loans Act, Charges Prohibited, page 1.

Amends this section to use the term "consumer credit insurance". The term is defined in AS 21.57.160 (Sec. 77 of this bill).

DIRECTOR OF INSURANCE

Sections 3 through 12 include regulation of risk retention groups, authority to respond to a catastrophe, procedure on examination reports, procedures on applying for and not continuing a certificate of authority of an insurer, financial statements, and procedures on premium tax refunds and credit. Many of these changes are suggestions from the NAIC Accreditation Team visit in October 1992. Others are to provide authority and procedures in areas where none existed before.

Section 3. AS 21.03.010. Scope of Code, page 2.

Amends this section to explicitly extend the Scope of Code to include risk retention groups and purchasing groups as requested by the NAIC accreditation team.

Section 4. AS 21.06.080(e). General Powers, Duties, page 2.

This new subsection adds to the director's general powers and duties the ability to respond to a catastrophe.

Section 5. AS 21.06.150(g). Examination Reports, page 3.

The amendment to this subsection allows the director to close a hearing on an examination if the director finds that the closure is necessary to protect someone from unwarranted injury or is in the public interest.

Section 6. AS 21.09.110. Application for Certificate of Authority, page 3.

The amendment to this section removes the requirement that insurers applying for their Certificate of Authority (COA) submit specimen copies of their policy forms and rates with their COA application, and instead specifies that these policy forms and rates should be submitted under new sections AS 21.39.040(j) or 21.42.120(g).

Section 7. AS 21.09.110(b). Application for Certificate of Authority, page 4.

The addition of a new subsection requires that policy form and rate filings by submitted for approval under the appropriate statutes in Chapter 39 and 42 and that the filings may not be submitted with the application for certificate of authority.

Section 8. AS 21.09.130(b). Continuance, Termination, Reinstatement, and Amendment of Certificate, page 5.

The amendment to this subsection provides for a suspension of the certificate of authority instead of cancellation if the insurer fails to file the forms or pay the fee to continue the certificate of authority. This change is to prevent insurers from ending regulation by Alaska Division of Insurance when issues regarding insurance operations may still be outstanding. It provides a one year suspension period.

Section 9. AS 21.09.135. Voluntary Surrender of Certificate of Authority, page 5.

This is a new section which provides a process for an insurer to voluntarily surrender their certificate of authority from Alaska. To surrender the insurer must be in compliance with Alaska

Section 10. AS 21.09.200(f). Annual Statement, page 6.

The amendment to this subsection requires the filing of

annual financial statements with the National Association of Insurance Commissioners (NAIC) by all licensed insurers instead of just domestic insurers. Also provides that the filings must be on electronic media acceptable to the NAIC.

Section 11. AS 21.09.205(d). Quarterly Financial Statements, page 6.

This is a new subsection which requires that a licensed insurer file quarterly financial statements with the National Association of Insurance Commissioners (NAIC), on acceptable electronic media, and pay the applicable filing fee. Failure to comply will result in penalties.

Section 12. AS 21.09.210. Premium Tax, page 6.

The following new subsections discuss the procedures for obtaining a refund or credit for overpayment of premium taxes by an insurer.

Subsection (j) allows for the payment of a premium tax refund when an insurer discovers that it has made an overpayment due to an error in calculation, mistake of fact, or misinterpretation of law. It (1) limits the time in which the refund must be discovered to three years; (2) sets the minimum amount of a refund which can be requested at $250; and (3) gives the director discretion in payment of a monetary refund or a premium tax credit.

Subsection (k) was written to avoid trafficking of the premium tax credit. It prohibits the transfer or carryover of the credit in reinsurance transactions or receiverships.

Subsection (l) defines a premium tax credit.

RISK RETENTION GROUPS, MATERIAL TRANSACTIONS, AND U.S. BRANCHES OF ALIEN INSURERS

Sections 13 through 15 add regulatory authority for three different areas of insurance regulation.

(1) AS 21.09.290 allows a risk retention group to be formed as a domestic insurer in Alaska consistent with the NAIC Model Risk Retention Act.

(2) AS 21.09.300 is being added to statute to require the filing of information on material asset transactions and material changes in ceded reinsurance transactions. Ceded reinsurance is the transfer of risk from an insurer to another insurer by contract, usually resulting in the sharing of claim liability, marketing expenses, etc. Ceded reinsurance contracts are negotiated and can take many forms depending on the need for the

reinsurance. A material change in a ceded reinsurance agreement may have significant financial effects for an insurance company. The basis for this section is the NAIC Disclosure of Material Transactions Model Act which must be adopted to maintain accreditation.

(3) AS 21.09.310 provides authority and procedures for an insurer organized in a country outside of the United States to establish a U.S. branch in Alaska for operating throughout the United States. This new section establishes Alaska as a state of entry for alien insurers who seek to transact insurance in the United States through a U.S. branch by adopting the NAIC State of Entry Model Law.

Section 13. AS 21.09.290. Risk Retention Groups, page 7.

Subsection (a) sets out the requirements for being licensed as a risk retention group in this state.

Subsection (b) lists the items that must be submitted with an application for certificate of authority.

Subsection (c) requires the risk retention group to notify 30 days in advance any material change to its plan of operation and must receive the director's written approval of the change.

Subsection (d) provides definitions of terms used in this section.

AS 21.09.300. Disclosure of Material Transactions, page 8.

Subsection (a) requires disclosure of material acquisition or disposition of assets or material nonrenewal, cancellation, or revision of ceded reinsurance agreements unless the transactions have been submitted pursuant to other provisions of the statute.

Subsection (b) requires the report be filed 15 days after the end of the calendar month in which the transaction occurs.

Subsection (c) requires that a copy of the report also be filed with the National Association of Insurance Commissioners (NAIC). The subsection requires that the report be given confidential treatment by the division, the NAIC, or any other person, except sharing with insurance departments of other states, unless the insurer gives prior written consent or unless the director determines it is in the interest of policyholders, shareholders, or the public to publish the report and gives the insurer notice and an opportunity to be heard.

Subsection (d) gives the requirements for reporting transactions of material acquisition or disposition of assets.

Paragraph (d)(1) requires that only material transactions be reported and defines material.

Paragraph (d)(2) requires that asset acquisition and dispositions be reported other than the development of real property for the insurer or acquisition of material for such development.

Paragraph (d)(3) lists the information required in the disclosure notice to the division: date, manner of acquisition or disposition, description of asset, consideration given or received, purpose, manner of determining amount of consideration, gain or loss recognized or realized, names of persons involved.

Subsection (e) gives the requirements for reporting transactions of material nonrenewal, cancellation or revision of a ceded reinsurance agreement.

Paragraph (e)(1) requires that only material transactions be reported and defines material.

Paragraph (e) (2) requires that the filing must be made regardless of who initiates the transaction in certain circumstances.

Paragraph (e) (3) lists the information required in the disclosure notice to the division: effective date, description of the transaction, initiator of the transaction, purpose or reason, if applicable, the identity of the replacement reinsurer.

Subsection (f) requires that the report be made on a non-consolidated basis unless the insurer is part of a consolidated group which pools substantially all of its insurance losses. The subsection defines "substantially all".

<u>AS 21.09.310. Authorization of United States Branches of Alien Insurers, page 11.</u>

Subsection (a) states what companies to which this section applies and requires that the U.S. branch will be subject to all laws applicable to an Alaska domiciled insurance company.

Subsection (b) sets out the requirements for applying to use this state as a state of entry .

Subsection (d) allows the director to require evidence from the board of directors that the insurer will not violate Alaska law or its charter.

Subsection (e) allows the director to renew a certificate of authority for a U.S. branch if the U.S. branch meets the requirements for renewal.

Subsection (f) lists the conditions of the U.S. branch which if they existed would prohibit the director from issuing or renewing a certificate of authority.

Subsection (g) prohibits the U.S. branch insurer from transacting business outside of Alaska that is not permitted in Alaska unless such restriction would be prejudicial to the best interest of the Alaska public.

Subsection (h) requires the U.S. branch to maintain assets in a trust account in an amount no less than the U.S. branches reserves and other liabilities and minimum basic capital and surplus.

Subsection (i) lists the requirements for the written trust agreement which must exist for the U.S. branch to conduct business in the United States.

Subsection (j) states that the trust agreement shall be in the form required by the director and not be effective until approved by the director.

Subsection (k) states that the director may approve written modifications of the written trust agreement.

Subsection (l) allows the director to conduct examinations of trusteed assets and may require the trustee to file statements as to the trust fund.

Subsection (m) allows the director to withdraw approval of the trust agreement, effective in 10 days, if the requirements for the agreement do not now exist.

Subsection (n) allows that refusal or neglect of the statute requirements is cause for suspension or revocation of the certificate of authority.

Subsection (o) requires that annual and quarterly financial statements relate only to transactions within the United States and states who must sign the statement.

Subsection (p) requires that a statement of trusteed surplus be filed with the annual and quarterly financial statement and gives the requirements for that statement.

Subsection (q) allows the director to require additional information on the business of the alien insurer or its U.S. branch.

Subsection (r) requires that a report of examination of the U.S. branch include a trusteed surplus statement.

Subsection (s) adds definitions of the terms "trusteed assets" and "United States branch".

Section 14. AS 21.09.310(c). Alien insurer, page 17.

The repeal and reenactment of this subsection included in Section 13 is to add that a trust account must be in an amount not less than minimum capital and surplus nor less than the risk based capital number. This section would become effective when risk based capital legislation is adopted.

Section 15. AS 21.09.310(h). Alien insurer, page 18.

The repeal and reenactment of this subsection included in Section 13 is to add that the trusteed assets maintained may not be less than minimum capital and surplus or less than the risk based capital number. This section would become effective when risk based capital legislation is adopted.

FINANCIAL REQUIREMENTS AND FILINGS OF INSURERS

Sections 16 through 28 include corrections to requirements for recognizing reinsurance credits in financial statements, updating of sections on unearned premium and loss reserves, clarification of investment limitations, correction of language regarding tender offers and authority to hire experts, and clarification of information required in the holding company registration statement.

Section 16. AS 21.12.020(a). Reinsurance Credits, page 18.

The amendments to this subsection are to make corrections for errors made when this section was most recently adopted in 1992. The amendments require that for a US branch of a non-US reinsurer to become accredited they must be licensed in at least one state that is accredited by the National Association of Insurance Commissioners (NAIC). Accreditation is a program of the NAIC which reviews state insurance divisions to determine if they meet a set of standards considered to be the minimum necessary for effective regulation. Other amendments recognize the addition of incorporated members to group insurers (such as

Lloyd's of London) and require that the incorporated member not be engaged in any other business other than underwriting as a member of the group.

Section 17. AS 21.18.060(b). Unearned Premium Reserve For Property, Casualty, and Surety Insurance, page 22.

The amendment to this section removes the outdated method for determining unearned premium on property/casualty policies and requires a prorata determination of unearned premium at any point in time. Premium for property/casualty policies is required to be earned in the accounting records over the term of the insurance policy. This change was suggested by the NAIC accreditation team during review of Alaska insurance statute.

Section 18. AS 21.18.060(c). Unearned Premium Reserve For Property, Casualty, and Surety Insurance, page 23.

The amendment to this section clarifies that insurers must compute all reserves on a basis at least as frequent as monthly.

Section 19. AS 21.18.090. Loss Reserves for Liability Insurance and Workers' Compensation, page 23.

The amendment to this section removes the outdated method for determining loss reserves on liability and workers compensation policies and allows accounting recognition of determined and estimated losses. This change was suggested by the NAIC accreditation team during review of Alaska insurance statute.

Section 20. AS 21.21.250(a). Other Investments, page 24.

The amendment to this section is to clarify the meaning of this investment limitation called the "basket clause". This clause allows insurers to invest a small amount in investments that are not prohibited by law. No substantive change is made.

Section 21. AS 21.21.370(a). Noninvestment Grade Oblications, page 25.

The amendment to this section is a change to clarify the meaning and application of the investment limitations on medium and lower grade bonds.

Section 22. AS 21.22.010(g). Filing Statement of Tender Offer, page 25.

The amendment to this subsection is a clarification of the exemption from filing a Form A statement of notification of acquisition of a domestic insurer with the division.

Section 23. AS 21.22.030(a). Approval of Tender Offer; Hearing, page 25.

The amendment to this subsection adds to the list of conditions which, if present, allows the director to disapprove the merger of acquisition of control of an insurer. The condition added is if the acquisition is likely to be hazardous or prejudicial to the public.

Section 24. AS 21.22.030(d). Approval of Tender Offer; Hearing, page 26.

The amendment to this section is to add a new subsection to allow the director to hire experts to assist the director in reviewing a proposed acquisition of control of an insurer at the acquiring person's expense.

Section 25. AS 21.22.060(b). Registration of Insurers; Contents of Registration Statement, page 26.

The amendment to this subsection clarifies the information which must be supplied in a Form B (Holding Company) registration report. After the change all management and service contracts, cost sharing arrangements, and reinsurance agreements must be reported.

Section 26. AS 21.22.060(c). Registration of Insurers; Contents of Registration Statement, page 27.

The amendment to this subsection is to remove unnecessary language which is currently in effect in subsection (k) regarding the ability to require the filing of a registration statement by a licensed insurer.

Section 27. AS 21.22.060(d). Registration of Insurers; Contents of Registration Statement, page 27.

The amendment to this subsection is to clarify the definition of when an amount is considered not material and need not be disclosed on the holding company registration statement.

Section 28. AS 21.22.060(k). Registration of Insurers; Contents of Registration Statement, page 28.

The amendment to this subsection is to correct the subsection reference and clarify the director's authority to require filing by authorized insurers.

PRODUCER LICENSING

Sections 29 through 43 include clarification of licensing requirements, provide authority to require continuing education, require that fiduciary accounts for premium held by resident producers be in Alaska, allows a single bond to cover multiple locations, and updates language from NAIC model act on Managing General Agents and Reinsurance Intermediaries to allow the director to file civil action for damages.

Section 27. AS 21.27.010(a). License Required, page 28.

Amendment to this section is primarily editorial in nature and clarifies exceptions to general producer licensing requirements under AS 21.27.

Section 30. AS 21.27.020. Refusal to Issue License, page 28.

Amendments to this section provide for regulations to establish additional educational requirements for licensees to implement continuing education and to contract out some licensing services for increased efficiency.

Section 31. AS 21.27.025(a). Notice of Changes, page 29.

Amendments to this subsection require a licensee to report to the division a change of name or any disciplinary action taken by another jurisdiction.

Section 32. AS 21.27.060(d). Examination of Applicants, page 29.

Amendment to this subsection specifies that exemption from examination for licensure is only available to travel limited license, disability limited license for sports purposes, and retired producer licenses. Removes qualification for exemption regarding NAIC accreditation.

Section 33. AS 21.27.100(e). Appointment of Agents or General Agents, page 29.

Addition of this new subsection is primarily editorial in nature and clarifies that an appointment of a firm licensee extends to persons licensed as an individual in the firm.

Section 34. AS 21.27.130. Form and Content of Licenses, page 29.

Amendment to this section is primarily editorial in nature and clarifies the type of licensee address to be show on a license.

Section 35. AS 21.27.360(b). Fiduciary accounts, page 30.

Amendment to this subsection requires a resident licensee to maintain its fiduciary accounts in Alaska.

Section 36. AS 21.27.380(a). License Renewal, page 30.

Amendment to this subsection is primarily editorial in nature and clarifies that all license renewal documents must be received by the director on or before the renewal date.

Section 37. AS 21.27.420(c). Conditioning a license, page 30.

Adds a new subsection that provides additional licensing flexibility by allowing a license to be issued or renewed with conditions.

Section 38. AS 21.27.530. Producer Qualifications, page 31.

Amendment to this paragraph is primarily editorial in nature and clarifies that a single bond may cover multiple locations for a single licensee.

Section 39. AS 21.27.570(a)(3)(B). Controlling Insurance Producers, page 31.

Amendment to this paragraph is primarily editorial in nature and clarifies by adding punctuation suggested by the NAIC accreditation team.

Section 40. AS 21.27.620(j). Managing General Agents, page 32.

Amendment to this subsection adds language from updated NAIC Managing General Agents Act to allow the director to bring a civil action to recover damages from an MGA.

Section 41. AS 21.27.690(b). Reinsurance Intermediary Brokers, page 32.

Amendment to this subsection provides that the exemption from licensure for non-resident reinsurance intermediary brokers who are licensed in an accredited resident jurisdiction is extended to authorized insurers.

Section 42. AS 21.27.690(e). Reinsurance Intermediary Brokers, page 33.

Amendment to this subsection adds language from updated NAIC Reinsurance Intermediary Model Act to allow the director to bring a civil action to recover damages from reinsurance intermediary brokers.

Section 43. AS 21.27.760(j). Reinsurance Intermediary Managers, page 33.

Amendment to this subsection adds language from updated NAIC Reinsurance Intermediary Model Act to allow the director to bring

a civil action to recover damages from reinsurance intermediary managers.

SURPLUS LINES INSURERS

Sections 44 to 47 add to the definition of Lloyd's the inclusion of incorporated underwriters, add an alternative method to meet the requirement of notification to the insured, and correct the time period for filing fees.

Section 44. AS 21.34.040(c)(4). Incorporated Underwriters, page 34.

The amendment to this paragraph is to include incorporated underwriters as members of a group of insurers such as Lloyd's. Lloyd's recently allowed incorporated members to join the unincorporated members. The incorporated members may not be engaged in any business other than underwriting.

Section 45. AS 21.34.080(c). Evidence of Insurance, Affidavits, Duty to File, page 34.

The amendment to this subsection clearly establishes who must execute the affidavit that notice was given to the insured and when that notice must be given.

Section 46. AS 21.34.110. Surplus Lines Broker's Duty to Notify Insured, page 35.

This amendment to this section provides the surplus lines broker with an alternative method to discharge his duty to notify the insured that the company is a nonadmitted insurer not covered by the Alaska Insurance Guarantee Association Act.

Section 47. AS 21.34.190(a). Filing Fee, page 35.

The amendment to this subsection provides that the calculations for determining the filing fee should be based on the calendar year rather than quarterly.

TRADE PRACTICES

Sections 48 to 58 include correction of license types, correction of responsibilities of insurance producers, clarification when rate changes may be made, reorder of one section of the chapter, clarification application of the section, and provides that false statements made in regard to claims may result in prosecution under Alaska law.

Section 48. AS 21.36.120(d). Rebates, page 35.