

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8338 SENATE JUDICIARY



ALASKA COUNCIL ON

PREVENTION

OF ALCOHOL AND DRUG ABUSE, INC.

Founded 1967

February 15, 1994

Representative Cynthia Toohey
House of Representatives
State Capitol, Room 104
Juneau, AK 99801-1182

Dear Representative Toohey,

Thank you for informing me about C.S. House Bill 299 draft dated February 11, 1994. The data you are about to read comes from the Robert Wood Johnson Foundation report dated October 1993. Prepared by the Institute for Health Policy, Brandeis University entitled *Substance Abuse the Nations Number One Health Problem, Key Indicators for Policy*. I am in support of this bill for the following reasons:

- Adolescent is a period of experimentation with substance use and teenagers are particularly at risk for being involved with alcohol and drug related vehicle injuries.
- Traffic crashes remain the single greatest cause of death among American youth and young adults and almost half of all traffic fatalities are alcohol-related.
- Diverse efforts under way in communities across the country including prompt license suspension, sobriety police checks, zero tolerance for underage drivers and public education have had an impact on alcohol impaired driving decline.
- The public supports stringent sanctions against driving while intoxicated and according to a national poll would like to see tougher enforcement of drinking age laws (64%) automatic license suspension for the first offense (89%) and automatic confiscation of plates for the second offense (89%).



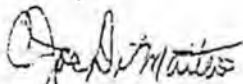
Representative Tooley
February 15, 1994
Page two

- Alcohol in any quantity is a risk factor for young drivers and nearly 40% of 16 to 19 year old drivers in alcohol involved fatal crashes had a B.A.C. level under 0.10%.
- Early use is related to later problems. By the eighth grade 70% of adolescents have consumed alcohol.

The above statistics show that any intervention we create as a community for young people will save many lives. Tougher laws and higher prices on alcohol and tobacco have proven to be effective deterrents for substance use and abuse among young people.

I wish you success in getting House Bill 299 approved. If there is anything that I can do to help, please feel free to call me.

Sincerely,



Joseph DiMatteo
Executive Director

/JDM

Alaska Association Chiefs of Police



February 15, 1994

Representative Cynthia Toohey
Room 104
State Capital Building
Juneau, Alaska, 99801-1182

Dear Representative Toohey:

On behalf of the Alaska Association of Chiefs of Police I would like to offer our support for CSHB 299 (work draft of 2/11/94).

The number of teenagers killed while drinking and driving is an endless and ever increasing tragedy in today's society. In Alaska, where the illegal use of drugs and alcohol by minors is significantly higher than other parts of the country, the number of dysfunctional teens seems to be growing at an alarming rate.

The standard law enforcement approach of arrest and incarceration for possession or consumption has not solved or reduced this growing problem. (In the case of teens under the age of eighteen (18) it is simply a ride home with a later court appearance.) Education and counseling, along with innovative incentives is the only hope for reducing this behavior. Revocation of a minor's drivers license for any illegal possession or consumption, regardless of whether a vehicle was involved, is an extremely innovative approach to a very old problem. Because driving is such a cherished past time with most young people, the threat of losing this privilege may be the catalyst needed for some to finally "just say no".

If we can be of any assistance in the passage of this bill please let me know.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Ronald L. Otte". The signature is fluid and cursive.

Ronald L. Otte
President

RLO/lp



Alaskans For Drug-Free Youth

Statewide Headquarters

2417 Tongass, Suite #114, Ketchikan, Alaska 99901
 Phone: 907-247-2273, 1-800-478-2273, fax 907-247-2232

February 15, 1994

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The Honorable Cynthia Toohey
 State Capitol
 Juneau, AK 99801-1182

Dear Representative Toohey:

Thank you for sending us the latest draft of HB 299. Our organization fully supports the "Use It - Lose It" administrative revocation of minors' permits and licenses. We believe this will be a very cost effective tool for law enforcement and more importantly, will provide our young people with a reason not to drink and use other drugs.

If there is one thing teenagers have in common, it is that they are all anxious to have a drivers license. The threat of losing it should make them think twice about taking a drink.

We are also interested in incorporating a .00 BAC for those under 21 years old. If it is possible to amend this bill to include that provision, we would appreciate it. We will continue to advocate for it in any case.

Thank you for being responsive to our suggestions for changes to your bill. If there is anything else we can do to help, please let us know. Lynda Adams will be back in the office next week and will be happy to answer any questions you may have.

Sincerely,

Cheri Davis
 Cheri Davis,
 Development Director

ALASKA PEACE OFFICERS ASSOCIATION

State APOA Office • P O Box 240106 • Anchorage, Alaska 99524-0106 • (907) 277-051



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February 23, 1994

MAR 2 1994

Representative Cynthia Toohey
State Capitol
Juneau, AK 99801-1182

Dear Representative Toohey,

The Alaska Peace Officers Association supports HB 299. We feel that drinking and driving under the influence of drugs or alcohol continues to be a matter of grave concern to the citizens of Alaska. People have come to understand and realize the high price we pay for such excesses. Finally, attitudes toward underage drinking and driving are becoming more critical. It is no longer a "rite of passage" for a young person to consume alcohol.

We agree with the intent of this legislation--to thwart underage drinking by limiting their privilege to drive if they possess or consume alcohol. The loss of this privilege will act as a strong deterrent to such acts.

Sincerely,

Michael A. Grimes
Statewide President
Alaska Peace Officers Association

SCOTT & WESLEY GERRISH
MEMORIAL

M A D D

ANCHORAGE, ALASKA
CHAPTER

MAILING ADDRESS:
130 W. International Airport Rd., Suite 2
Anchorage AK 99518

(907) 258-MADD

BUSINESS ADDRESS
130 W. International Airport Rd., Suite 2
Anchorage AK 99518

March 3, 1994

Rep. Toohy
State Capitol
Rm #104
Juneau, AK 99801-1182

RE: "Bill #299 - Use It - Lose It"

Dear Representative Toohy:

The Anchorage Chapter of Mothers Against Drunk Driving supports the legislation to establish immediate license revocation for those juveniles who use controlled substances or consume alcohol.

Administrative license revocation has proven effective in reducing Driving Under the Influence offenses. It is constitutional, the U. S. Supreme Court, in "Mackey vs. Montrom: 2612, 2620-21 (1979), has recognized that suspension of a drivers license prior to an administrative hearing is not a violation of due process so long as provisions are made for a swift post-suspension hearing.

MADD notes that an overloaded court system too often delays the judicial response to juvenile consumption or possession of a controlled substance. While awaiting their court date, many continue their actions with sometimes fatal results. On Labor Day, 1986, three (3) young people in Worcester County, Massachusetts, were killed by a 19-year old drunk driver who had been allowed to keep his license, even though he had more than .10% on a breath test a few days before. MADD chapters in Massachusetts united to help write a tough drunk driving bill in Massachusetts which became effective the following year.

The NHTSA, 1993 report on Drinking, Driving and other Drugs states that more than 43% of all 16- to -20 year-old deaths result from motor vehicle crashes. About half of these fatalities were alcohol-related crashes. Estimates are that 2,314 teenagers 16-20 years old died in alcohol related crashes in 1992.

2417 Tongass Ave. #114
Ketchikan, AK 99901
April 5, 1994

Representative Cynthia Toohy
Alaska State Legislature
State Capitol, Room 104
Juneau, AK 99801-1182

Dear Representative Toohy:

I am writing this letter on behalf of Alaskans For Drug-Free Youth, the Ketchikan Mayor's Task Force on Substance Abuse, and on behalf of the Governor's Advisory Board on Alcoholism and Drug Abuse in support of passage of HB299, Revocation of Drivers License of Minor for Alcohol/Drugs. All three of these entities are concerned about the impact alcohol and other drug use is having on the youth of Alaska. All three groups support this legislation as an effective tool to curb adolescent drug/alcohol use.

Administrative drivers license revocation has proven an effective tool in reducing underage drunken driving and other related offenses in states that have enacted similar legislation. The other important feature of this legislation has also been reported effective in states such as Arizona, Minnesota, North Carolina, Oregon, Utah, Wisconsin and the District of Columbia--that is the adoption of zero-tolerance laws for youth. These states consider teenagers legally impaired after the first drink, regardless of the actual alcohol level in their blood.

Administrative License Revocation has proven effective because drivers who are arrested and have their licenses revoked are less likely to drink and drive again, and more importantly, administrative license revocation discourages teens from driving while impaired because they worry about losing their drivers license. The risk for drivers under 21 is greater at low alcohol impairment levels than for older drivers. Studies also show that zero tolerance laws leading to the loss of a driver's license can reduce total alcohol-related fatalities. A zero tolerance law also complements existing State laws prohibiting alcohol sales and service to youth.

House Bill 299 will reduce the cost of impaired driving, has definite health and safety benefits of lower BAC levels for minors, and conveys a reinforcing statement that prevention works. Please support passage of HB 299.

Sincerely,


Lynda Adams

HB

302

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO : CSHB 302 (STA)

Revision Date: _____
 Title: Workers' Compensation for
Recreational Activities
 Sponsor: Representative Navarre
 Requestor: Senate Judiciary

Department Affected: Labor
 BRU: Workers' Compensation
 Component: Workers' Compensation

COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MF/TIA						
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: \$ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Paul B. Arnoldt, Director *Paul B. Arnoldt* Phone: 465-2790
 Division: Workers' Compensation Date: 4/1/94

Approved by Commissioner: Charles W. Mahler *Charles W. Mahler*
 Agency: Department of Labor Date: 4/1/94

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MIKE NAVARRE

REPRESENTATIVE

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SPONSOR STATEMENT

April 19, 1994

TO: Senator Robin Taylor, Chairman, Senate Judiciary Committee

FROM: Representative Mike Navarre

SUBJECT: House Bill 302, An Act excluding certain sports officials and certain recreational activities from workers' compensation coverage.

.....

House Bill 302 offers a solution to recreational sponsorship by saying that as long as the participation is voluntary and not a condition of employment then no workers' compensation liability extends to the employer/sponsor.

Recent interpretations of law have placed generous Alaskan employers in jeopardy concerning team sponsorships. Recreational activities funded by an employer, according to court interpretation, implies liability for injury that occurs while the employee is participating in an optional recreational activity. For example, an employer supplies uniforms, umpiring fees, field rental fees or other team related items, the courts have treated that involvement as an employer-sanctioned activity. The result has been that many employers are reluctant to increase their risk and legal exposure for a recreational activity and are less likely to support recreational leagues throughout Alaska.

House Bill 302 passed the House Labor & Commerce Committee on February 24th with four do pass recommendations.

House Bill 302 passed the House State Affairs Committee on March 24th with four do pass recommendations.

House Bill 302 was waived from House Finance Committee on March 25th, because there is no financial impact to the State.

House Bill 302 passed the House on March 29th 38-0.

Thank you for your consideration.

APPENDIX—Continued

Villages' subsistence life styles would be minimally affected by the Cascaden disposal. There was a reasonable basis for the decision by DNR to hold the land disposal at Cascaden. The decision was not unreasonable, arbitrary, or an abuse of discretion. The Decision of the DNR is hereby affirmed.

DATED at Fairbanks, Alaska, this 24 day of May, 1990.

/s/ Richard D. Savell
RICHARD D. SAVELL
Superior Court Judge



Judi J. LeSuer-Johnson, Appellant.

v.

ROLLINS-BURDICK HUNTER OF
ALASKA and National Union Fire
Insurance Co., Appellees.

No. 3681.

Supreme Court of Alaska.

April 12, 1991.

Employee who was injured while playing softball on employer-sanctioned team at employer-provided field sought workers' compensation benefits. The Workers' Compensation Board awarded benefits and the Superior Court reversed and remanded. On remand, the Board denied benefits and appeal was taken. The Superior Court, Third Judicial District, Anchorage, Ralph Stemp, J., affirmed and employee appealed. The Supreme Court held that employee was entitled to benefits.

Reversed and remanded.

1. Workers' Compensation Ⓒ664

Employee who was injured while playing softball on employer-sanctioned team at

field rented by league to which employer paid money for ball field rental was entitled to workers' compensation benefits. AS 23.30.265(2).

2. Workers' Compensation Ⓒ664

Portion of workers' compensation statute defining "arising out of and in the course of employment" with regard to employer-sanctioned activities at employer-provided facilities is not limited to remote job sites as statute is written. AS 23.30.265(2).

Chancy Croft, Anchorage, for appellant.

Patricia L. Zobel, Deirdre D. Ford, Staley, DeLisio, Cook & Sherry, Anchorage, for appellees.

Before MATTHEWS, C.J., and
RABINOWITZ, BURKE, COMPTON and
MOORE, JJ.

OPINION

PER CURLAM.

[1] Appellant Judi LeSuer-Johnson (LeSuer) was injured on June 4, 1986, while playing softball at an Anchorage ballpark for the Rollins-Burdick Hunter (RBH) team against an "insurance league" opponent. The injury occurred after work hours, on a field rented by the insurance league. LeSuer, an employee of RBH, filed a claim for workers' compensation, alleging that the injury arose out of and in the course of her employment. An Alaska statute enacted in 1982 defines "arising out of and in the course of employment" to include

employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at the employer-provided facilities; but excludes activities of

a personal nature away from employer-provided facilities.

AS 23.30.265(2).

LeSuer's argument that her injury arose out of and in the course of her employment is based on her employer's connection to the softball team. RBH provided balls, bats, T-shirts and caps for the team members. It paid \$250 to the league's organizers who rented the ballfield and purchased bases. RBH encouraged its employees to either play on the team or attend the game as spectators. In her job interview LeSuer was asked if she played softball and if she would like to play on the company team. She stated that joining the team was voluntary, but she personally felt pressured to play by co-employees who wanted to be sure that RBH had enough players to field the team each week.

The Workers' Compensation Board found for LeSuer. The board concluded that participation on the softball team was both employer-sanctioned and that it occurred at an employer-provided facility:

We find RBH gave support and encouragement for their employees to participate on the team. By paying the league fee, providing part of the uniform, providing bats and balls and permitting employees to perform activities such as picking up the T-shirts and hats as part of their work duties RBH sanctioned the activity....

Next we consider whether the injury occurred at an employer-provided facility. Defendants argued that the injury was not on Employer's premises. However, the legislature chose to use the term "facility" and not premises. We find this terminology distinction is important. Thus the injury does not have to occur on an employer's property to be compensable.

The term "provide" is defined in *Webster* at 1144 as "to make available, supply, afford; furnish with...." We find that paying the league fee RBH made available to its employees a field on which to play softball. We conclude that

the softball game was at an employer-provided facility.

RBH appealed the board's decision to the superior court. The court held that where, as here, a remote job site was not involved, a four-part test rather than the two-part test set out in the statute was appropriate. The court stated:

The criteria analyzed in *Larson*, 1A *The Law of Workman's Compensation* § 22.24(a)-(f), for determining whether an injury on a company team is compensable are the appropriate factors to weigh in deciding this case. They are primarily the time and place of the recreation, the degree of the employer initiative and encouragement, the financial support and equipment furnished, and the benefit to the employer.

The court remanded this case to the board for an analysis using these factors. On remand, the board found in favor of RBH with one member dissenting.

LeSuer then appealed to the superior court, which affirmed the board's decision on remand. LeSuer now appeals this decision.

[2] In our view, the first decision of the board was correct. That portion of AS 23.30.265(2) which pertains to employer-sanctioned activities at employer-provided facilities is not limited to remote job sites as the statute is written. If the legislature had intended such a limitation it could have easily been expressed. The board's conclusions that playing for the RBH softball team was employer-sanctioned and that the injury occurred at an employer-provided facility are supported by substantial evidence.

For the above reasons, the decision of the superior court is REVERSED and this case is REMANDED to reinstate the first decision of the board.



HB

313

Alaska State Legislature
House of Representatives

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Representative Pete Kott

SPONSOR STATEMENT
CS FOR HOUSE BILL NO. 313(JUD)

In criminal cases, when a person is convicted of a crime and there are circumstances in mitigation of punishment, or when justice would be promoted, the court has the option of suspending imposition of sentence. When this occurs, no sentence is imposed. Instead, the defendant is placed on probation for a period of time, subject to reasonable conditions. If the defendant does not comply with the conditions of probation, the Court has the option of revoking probation and imposing sentence. If probation conditions are satisfied, sentence is never imposed and at the end of the probationary period the underlying judgment is vacated.

Under existing law, the probationary period available to a court when suspending imposition of sentence can not exceed the amount of time the defendant could be sentenced to jail. For example, Class A misdemeanors carry a potential of up to a year in jail. Accordingly, suspended imposition of sentences in cases involving class A misdemeanors could involve probationary periods of up to a year. This limitation of probationary periods is reasonable in almost all classes of offenses.

The crime of disorderly conduct, however, poses a problem. This is because it carries a potential jail term of only 10 days. What this means is that the court, when suspending imposition of sentence, is limited to a probationary period of but 10 days, which is meaningless. Disorderly Conduct is a Class B misdemeanor. Other Class B misdemeanors carry a potential jail term of but 90 days, which means that probation when imposition of sentence is suspended is limited to only 90 days. Depending on the circumstances, even 90 days may not be sufficient.

Disorderly Conduct and other Class B misdemeanors are very minor offenses, often involving youthful, first-time offenders. These offenders are the very people for whom the suspended imposition of sentence statute was intended. It therefore is desirable to have suspended imposition of sentence available in Disorderly Conduct



and other Class B misdemeanor cases. However, it also is desirable to permit the court to impose a reasonable period of probation. Ten days in Disorderly Conduct cases is just not long enough to have any meaningful effect on rehabilitation or for monitoring the defendant's behavior. Similarly, 90 days probation in other Class B misdemeanor cases, depending on circumstances, may be too short a period.

CS HB 313(JUD) cures this problem by permitting probation of up to one year when suspending imposition of sentence in all Class B misdemeanor cases, including Disorderly Conduct cases. This period is not mandatory. Sentencing judges retain the discretion to impose a shorter period where warranted. However, CS HB 313 (JUD) grants sentencing judges the flexibility of imposing probation of up to a year when suspending imposition of sentence in Class B misdemeanor cases if they deem it advisable. No other substantive changes are intended in the law.

This bill, as discussed above, affects only the permissible probationary period when suspending imposition of sentence in Class B misdemeanor cases. Class B misdemeanors are the least serious criminal offenses in the State of Alaska. A non-exhaustive sample of Class B misdemeanors includes the following: Theft in the Fourth Degree (AS 11.46.150); Criminal Trespass in the Second Degree (AS 11.46.330); Disregard of a Highway Obstruction (AS 11.46.460); Criminal Mischief in the Fourth Degree (AS 11.46.486); Impersonating a Public Servant (AS 11.56.830); Disorderly Conduct (AS 11.61.110); Harassment (AS 11.61.120); Obstruction of Highway (AS 11.61.150); Misconduct Involving Weapons in the Fifth Degree (AS 11.61.220); and, Misconduct Involving Controlled Substance in the Sixth Degree (AS 11.71.060). As indicated, this list is not exhaustive.

Alaska State Legislature
House of Representatives

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Representative Pete Kott

SECTIONAL ANALYSIS
CS HB 313(JUD)

Section 1:

This section of CS HB 313(JUD) amends AS 12.55.085(a) to permit judicial officers to suspend imposition of sentence in criminal cases for the maximum period of time that incarceration could be ordered or for a period of one year, whichever is greater. Before this change, criminal defendants could receive suspended imposition of sentences only up to the maximum period of time they could be sentenced to imprisonment.

Section 2:

This section is an amendment conforming AS 12.55.085(c) to the change made in Section 1 of this bill, thus permitting the Court to revoke probation and impose sentence during the entire period of probation ordered concomitantly with a suspended imposition of sentence.

Section 3:

This section makes it clear that the above discussed amendments apply only to crimes committed on or after the effective date of the Act.



FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 313 (Jud)

Revision Date: _____ Dept. Allocated: Administration
 Title: "An Act relating to suspended imposition of BRU: Public Defender Agency
criminal sentences . . ." Component: Public Defender Agency
 Sponsor: Rep. Kott
 Requestor: (H) Jud COMPONENT SERIAL NO. 1631

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of current year (FY94) cost: none

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: Jonh Salemi, Public Defender Phone: 264-4400
 Division: Public Defender Agency Date: _____
 Approved by Commissioner: Nancy Bear Usery Date: 2/10/94
 Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 313 (Jud)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to suspended imposition of BRU: Office of Public Advocacy
criminal sentences" Component: Office of Public Advocacy
 Sponsor: Rep. Kott
 Requestor: (H) Jud COMPONENT SERIAL NO. 43

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of current year (FY94) cost: none

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: Brant McGee, Director Phone: 274-1684
 Division: Office of Public Advocacy Date: _____
 Approved by Commissioner: Nancy Bear Usher Date: 2/10/94
 Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS HB 313(JUD)

Revision Date: 02/02/94 Dept. Affected: Alaska Court System
 Title: An Act relating to suspended imposition of BRU: Trial Courts
criminal sentences... Components: _____
 Sponsor: Rep. Kott
 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/Man						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/INITIA						
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 *CSC* Phone: 261-8228
 Agency: Alaska Court System Date: 02/02/94

Approved by: Arthur H. Snowden, II, Administrative Director *AHS*
 Agency: Alaska Court System Date: 02/02/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

WORK DRAFT
BILL NO. CSHB 313 ()
Dated 1/28/94

Revision Date: January 31 1994
Title: "An Act relating to suspended imposition of criminal sentences..."
Sponsor: Representative Kott
Requestor: Representative Kott

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

This bill involves sentencing provisions and therefore will not have a fiscal impact on the Department of Law.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: January 31, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Date: January 31, 1994

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STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE
BILL NO.

CSHB313 Workdraft
8-LS 1174-K

Revision Date: 2/1/94 Dept. Affected: Corrections
 Title: SIS for Disorderly Conduct BRU: Statewide Operations
 Sponsor: Rep. Kott Component: All Regional Probation Offices
 Requestor: Rep. Kott COMPONENT SERIAL NO. 710, 723, 727

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS:	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUNDING:

(Thousands of Dollars)

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/MHTLA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY94) impact: \$ 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)

Probation Officers do not supervise misdemeanants. Any change in length of SIS for a misdemeanor would have no impact on the department's regional probation offices.

Prepared By: Diane Schenker, Special Assistant Phone: 465-3315/561-4426
 Division: Office of the Commissioner Date: 2/1/94
 Approved by Commissioner: J. Frank Prewitt, Jr. Date: 2/1/94
 Agency: Department of Corrections

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHB 313(JUD)

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An act relating to suspension of imposition BRU: Alaska State Troopers
of criminal sentences Component: Detachments
 Sponsor: Representative Kott
 Requestor: H. JUD COMPONENT SERIAL NO. 799

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

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

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
 No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: (907) 269-5691
 Division: Alaska State Troopers Date: 01/31/94
 Approved by Commissioner: *Richard L. Burton* Date: 01/31/94
 Agency: Richard L. Burton, Dept. of Public Safety

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HB

315



Rogers Cablesystems of
Alaska, Inc.
P.O. Box 873107
Wasilla, Alaska
99687-3107

Tel: (907) 373-2288
Fax: (907) 376-8888

January 20, 1994

Representative Brian Porter
House of Representatives
State Capitol
Room 122
Juneau, Ak. 99801-1182

Dear Mr. Porter:

I am taking this opportunity to extend Rogers Cablesystems support of House Bill 315.

I commend you and Mr. Larson on your effort to clarify and amend the law in regards to Theft Of Subscription Cable Service. Theft of cable service has become a much too common problem. In our industry's effort to combat this problem, it has become a large expense in the operation of a cable company through the development and installation of security procedures such as scrambling devices and placement of set top converters. Cable theft has not only made it more expensive for our customers, it has greatly detracted from our ability to make cable service more compatible with our customer's home video equipment.

It is through the passage of legislation such as House Bill 315 and the efforts of officials such as yourself, that will send a clear message to the public that theft of cable service is a crime and that it will not be tolerated. It will also provide us, along with the cooperation of local law enforcement, the ability to successfully prosecute those individuals who would persist in engaging in this criminal behavior.

I thank you for your efforts and extend an open invitation to call on me to assist in any way I can. Please feel free to contact me at 373-5026.

Sincerely,


Kevin Sheridan
General Manager

ALASKAN CABLE NETWORK INC

Representative Brian Porter
State Capital
Juneau, AK 99801-1182

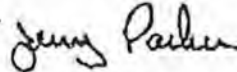
January 20, 1994

Dear Representative Porter;

As the District Manager of the second largest Cable operator in Alaska, please let it be known that I, on behalf of Alaskan Cable Network, fully support your House Bill No 315, concerning the sections that provide for criminal action being taken against a person or persons stealing subscription cable service.

If I can be of further assistance, please let me know.

Sincerely,



Jerry Parker
District Manager

PRIME CABLE

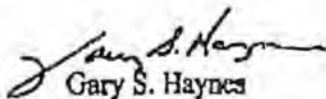
February 4, 1994

The Honorable Brian Porter
Alaska State Legislature
State Capital Building
Juneau, Alaska 99801-1182

Dear Representative Porter:

Prime Cable of Alaska would like to inform you that we are in full support of HB 315 relating to the unauthorized use of or unauthorized interference with transmission and delivery of subscription cable services; and amending the definition of the offense of theft of services and the penalties for its violation. Prime believes that the Bill in its current form will do much to control the dissemination and trafficking of these electronic theft devices and combat the scoundrels who are unfairly reaping financial gain at the expense of everyone from the producer to the local distributor of this copyrighted programming. The work that you and your staff have done on this legislation is greatly appreciated by not only the employees here but also by the many honest subscribers who have called us to complain about the unfairness of their subsidy of this type of criminal behavior. Thanks again for your help.

Sincerely,



Gary S. Haynes
Vice President of Operations



ALASKA CABLE TELEVISION ASSOCIATION

Received

JAN 11 1994

PORTER

January 6, 1994

The Honorable Briar Porter
Alaska State Legislature
State Capitol Bldg.
Juneau, AK 99801-1182

Dear Representative Porter:

On behalf of the entire membership of the Alaska Cable Television Association ("ACTA"), I would like to thank you for your efforts in helping us prepare stronger "Theft of Service" legislation.

Theft of Service within the cable television industry has become annually, a \$4.7 billion dollar monster! As you know, Alaska is not immune from this problem. Cable television operators from throughout the state desperately seek stronger criminal and civil penalties for this high-tech thievery. We can no longer allow honest, paying subscribers to continue to subsidize these illegal activities.

It's important to note that there are many examples of unauthorized access to cable television services. The most common, of course, is the distribution of illegal converter boxes to descramble secured signals. Gary Haynes of Prime Cable has described these activities in great detail. But there are other security devices, such as decoding filters, which are also distributed illegally.

These devices, normally connected to the customer's service drop at the telephone pole or utility pedestal, either "decode" a scrambled signal, or prevent the reception of a channel or block of channels (a "negative" trap). Once tampered with, the outcome is the same with stolen services and lost revenue. Cable operators spend a considerable amount of time monitoring the theft of these filters. Generally, if the device is defeated, the integrity of the physical connection is weakened causing interference to other customer service drops, and contributes to signal leakage putting the cable system at serious risk with potential interference among the aeronautical frequencies. Stolen and/or illegal "decoding" devices are usually installed inside the home, making it virtually impossible to detect.

The ACTA stands by ready to provide you, your staff and the appropriate legislative committees with other examples of illegal equipment used to gain access to secured cable television signals. The ACTA strongly supports this legislation as we estimate that annual theft of cable television service in Alaska exceeds \$1,000,000 based on a conservative rate of 2.5% of service revenues. A more accurate definition of this type of service theft along with stiffer criminal penalties will create a deterrent to those considering the purchase of illegal equipment. Hopefully this would keep the rate of theft from growing and would also

Representative Brian Porter
- Page 2 -

follow through on the intent of the statute as originally created allowing for the aggressive pursuit of the distributors of such illegal burglary devices.

Please do not hesitate to call on us if we may provide you or staff with any additional information. The ACTA looks forward to working with you on the passage of this important piece of legislation.

Sincerely,

ALASKA CABLE TELEVISION ASSOCIATION



Michael W. Roberge
President

cc: Eric Musser
Daniella Loper
Mary Hughes, Hughs, Thorsness, Gantz, Powell & Brunden
Gary Haynes, Prime Cable
Kent Dawson, Dawson & Associates

PRIME CABLE

March 8, 1993

The Honorable Representative Brian Porter
State Capitol, Room 122
Juneau, Alaska 99801-1182

RE: Alaska Theft of Service Statutes

Dear Representative Porter:

Prime Cable of Alaska would like to bring to your attention a problem that is plaguing cable operators in this state as well as nationally "Theft of Cable Service". Especially hard hit are those systems like Anchorage that employ addressable technology for signal security. This problem promises to escalate in that new federal rules may require most cable systems to provide addressable technology to all subscribers in the near future to allow universal access to all programming tiers and pay-per-view services.

The problem presents itself in Alaska as imported or locally modified decoder boxes. Unfortunately in Alaska, state statute does not have the same "possession and sales/distribution" prohibition found in the federal statute. State law only prohibits the use of such devices to circumvent the cable companies securities measures. Please consider the following scenario:

An ex-employee who is familiar with our system, customer base and security practices imports descramblers from out of state at a cost of approximately \$150.00 each and re-sales these to our current subscribers at \$395.00 each. He persuades the subscriber to down grade service to the lowest possible package of broadcast basic but the subscriber actually gets not only all available expanded basic and premium channels but also an average of 22 titles per week of pay-per-view movies. The ex-employee sells 30 converter boxes for a tax free net profit to himself of \$7,350.00 and the cable company loses approximately \$872.00 a month in lost revenue without regard to the loss from the 22 titles of pay-per-view movies. Frustrated legal subscribers hear of this activity and contact the local cable company upset because they honestly pay for the service and have heard of others getting it virtually for free. Naturally the cable company contacts federal authorities to see what they can do about the situation.

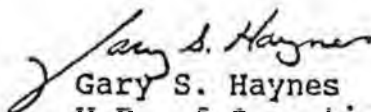
Representative Porter
March 8, 1993
Page -2-

Federal law prohibits this type of activity but, as you can see from the enclosed correspondence we received from the local FBI office, we would have to wait for this person to sell over 100 boxes before we could get any federal assistance. The next step is the local Municipal police and District Attorney who are very cooperative but inform us that even if we are able to get a search warrant and find many of these boxes in the residence of the ex-employee ready for delivery, we cannot prosecute for possession or confiscate the equipment but could only prosecute him if we physically saw him using one of the boxes. You can now see what the problem is. The state statute must match federal "possession and re-sale" language before it can be used to stop local distribution of these types of illegal descramblers or decoders.

Unfortunately, not only is the above scenario true in Anchorage, but there are several rings comprised of ex-employees, after hours establishments, drug dealers and even some unscrupulous small businessmen. This situation has been corrected in many other states such as Virginia and California by ensuring that the local laws closely match the possession language and penalties of the federal law.

Our attorney has reviewed the state statute and offers the attached additions to A.S. 11.46 that are specific to theft of cable service and will not only give the cable companies protection from this type of illegal activity but also will give local authorities the means to stop it. The Alaska Peace Officers Association suggested that we contact you to ask if you would be willing to introduce this before the Alaska House of Representatives. If this were to occur, they would consider it for endorsement. Please feel free to contact me at your convenience if you are interested and wish to discuss this further. I may be contacted in Anchorage at 786-9326. Prime Cable wishes to thank you in advance for your consideration.

Sincerely,


Gary S. Haynes
V.P. of Operations

GSH:jb

cc: Kent Dawson

Attachments: 1. Proposed Addition to A.S. 46
2. U.S. Department of Justice Letter to Prime
3. Fact Sheet from National Cable Television Assoc.



February 28, 1994

Mr. Eric Musser
Representative Brian Porter's Office
Alaska State Legislature
Juneau, AK 99801-1182

VIA FACSIMILE (907) 465-3834

Dear Eric:

As a follow up to our telephone conversation last week, I am enclosing some information from the NCTA's Office of Cable Signal Theft.

Specifically, the information relates to a comprehensive industry survey taken in 1992, the results of which have been summarized. As you will see, the methodology is applied against cable television systems according to size. If one were apply the survey factors to Alaska, estimated theft would surely exceed \$1,000,000.00. I am contacting our member systems to obtain data on homes passed, basic subscribers and average rates.

I have also received a copy of Larry Buzzell's letter. We have had the opportunity to butt heads with Larry in the past. While I'm surprised that he has taken an interest in this bill, I suspect it may be part of his overall strategy to whip up interest in cable television again, so that he can champion his cause for rate regulation as SB 213, extending the APUC sunset, proceeds through the legislature.

Eric, call me if there's anything you need.

Sincerely,

ALASKA CABLEVISION, INC.



Michael W. Roberge

Enclosures

1992 Theft of Service Survey Results

The National Cable Television Association's Office of Cable Signal Theft has reported the results from the 1992 survey of revenue lost to cable television operators due to cable signal theft. The survey was distributed in January 1992 to 2,685 systems. A total of 771 systems reported statistical data (29% response rate) based on 1991 year-end data.

The systems responding represent 27 million homes passed and 16 million subscribers. For analytical purposes, systems were categorized into four groups: under 10,000 subscribers; 10,000-19,999; 20,000-49,999; and 50,000 or more subscribers.¹

Based on the data provided, the percentage of theft of basic service ranged from 5.81%-14.61% illegal basic service and the percentage of theft of premium service ranged from 6.33%-14.76%. Projecting the larger percentages into the cable universe as a whole in each system-size category produces estimates of over 9.4 million illegal basic and 6.4 million illegal premium users.

Using conservative monthly average rates (\$17.85 basic and \$10.28 premium), the piracy loss translates into over \$4.7 billion in unrealized revenue annually, or almost 24% of gross industry revenue in 1991.

Overall, average percentages of theft are 11.21% of basic service and 11.52% of premium service. This is the first time that estimated premium theft percentages have been greater than basic theft percentages.

¹ It should be noted that responses to the theft of service survey from large systems (50,000 or more subscribers) represented a larger portion of total responses than large systems represent in the total industry. However, the potential overrepresentation by large systems in the survey results was mitigated by grouping the results into four categories according to system size. The number of households where theft could potentially occur is a conservative figure; in the Nielsen database not all headends report the number of homes passed.

Cable Piracy Fact Sheet

- ❑ Based on NCTA's cable piracy survey conducted in 1992, the industry loses an estimated \$4,700,000,000 in unrealized revenue annually.
- ❑ FCC and FBI field offices have requested the development of joint industry/government efforts to identify purchasers of pirate devices for turn-in and conversion purposes. The coordination between law enforcement and victimized cable systems across the country has heightened the awareness of the crime.
- ❑ It is illegal to own or be in possession of a descrambler in 31 states.
- ❑ The FCC has stated publicly that "... It's important that the FCC work closely with agencies like Department of Justice to catch people who are selling the electronics which allows this pirating...and that some effort needs to be made by the cable industry to beat piracy..." *San Diego Union*, April 8, 1990
- ❑ OCST works closely with the Department of Justice, the F.B.I., U.S. Customs, U.S. Attorneys, state and local prosecutors and law enforcement agencies to investigate and assist in prosecuting criminal violations.
- ❑ Piracy affects the picture quality of the system by weakening the signal. In some systems poor picture quality is the reason for service calls and other system maintenance which increases system costs and puts pressure on cable rates.
- ❑ Most of the equipment used by cable pirates is not built to system specifications, thus radio signals used to transmit cable television can leak into frequencies reserved for aeronautical and emergency communications, producing potential safety problems.
- ❑ It is estimated that each illegal decoder sold to a consumer costs the cable industry in lost revenue over its useful life expectancy approximately \$3,108.
- ❑ Over the last three years, OCST has been involved in cases resulting in the seizure of over 400,000 devices and cessation of sales totaling in excess of one million units. When incorporated into OCST's Economic Impact Formula, these figures total over \$4.1 billion or just over 19% of the cable industry's 1992 gross revenue.
- ❑ The aforementioned statistics do not incorporate unauthorized reception of pay-per-view programming. Engineering analysis of pirate product seized by law enforcement agencies in 1992 (over 250,000 devices) substantiates that 75% of the units were capable of circumventing addressable technology and allow the illegal reception of pay-per-view services.
- ❑ Sentences in federal and state theft of service cases have ranged from probation to 16 years in prison. Fines and restitution have ranged from several hundred dollars to \$1.3 million. Civil judgments have run as high as \$3.2 million. Actual awards collected have only been a small percentage of these amounts.
- ❑ OCST is currently supporting several criminal theft of service cases across the country, in addition to numerous state, local, and civil cases, potentially representing sales and distribution of hundreds of thousand of descramblers/decoders.
- ❑ In 1992 over 1300 theft of service cases were prosecuted nationwide on federal, state, and local levels.

For more information contact the Office of Cable Signal Theft at (202)775-3684.

Cable Industry Lost Revenue Due to Cable Signal Theft 1992

System Size	Basic	Premium	Total
50,000 or More			
Potential for Theft (households) ²	30,531,809	19,065,843	—
Theft Percentage ³	14.07%	13.21%	—
Estimated Thefts (households)	4,295,826	2,518,598	6,814,424
20,000-49,999			
Potential for Theft (households)	20,221,763	13,665,868	—
Theft Percentage	14.61%	14.33%	—
Estimated Thefts (households)	2,954,400	1,958,319	4,912,719
10,000-19,999			
Potential for Theft (households)	10,967,836	7,858,176	—
Theft Percentage	10.37%	14.76%	—
Estimated Thefts (households)	1,136,328	1,159,867	2,296,195
9,999 or Less			
Potential for Theft (households)	18,044,331	12,848,893	—
Theft Percentage	5.81%	8.33%	—
Estimated Thefts (households)	1,048,376	813,335	1,861,711
Total Estimated Thefts	9,434,930	6,450,119	15,885,049
Rates⁴	\$17.95	\$10.28	—
Average Number of Pay Services⁵	—	3.4	—
Lost Revenue Per Month	\$169,356,994	\$225,444,559	\$394,801,553
Lost Revenue Per Year	\$2,032,283,928	\$2,705,334,708	\$4,737,618,636

² A.C. Nielsen Co., (Cable On-Line Data Exchange) Database. Data as of October 31, 1992.

³ Derived from NCTA Office of Cable Signal Theft 1992 Theft of Service Survey.

⁴ Paul Kagan Associates, Inc., *Cable TV Financial Databook*, June 1992. Data as of December 31, 1991.

⁵ Derived from Paul Kagan Associates, Inc., *Census of Cable and Pay TV*. Data as of December 31, 1990.

Average Lost Revenue For Each Illegal Decoder

To demonstrate potential revenue loss to the cable industry every time a single illegal decoder is sold in the consumer marketplace, OCST developed the following formula on the request of federal authorities to assist the courts in calculating the actual damages of victimized cable television companies:

$$\begin{aligned} & \left[(\text{Average pay rate/month}^1 \times \text{average number of pay services in each cable system}^2) \right] \\ & \quad \times (12 \text{ months}) \times (7 \text{ years}^3) \\ & = \text{average lost revenue for each decoder.} \end{aligned}$$

Thus, based upon OCST's evaluation, each illegal decoder sold to a consumer costs the cable industry approximately \$3,108 over the decoder's seven year useful life expectancy.

¹The average pay rate per month is \$10.28. Source: *Paul Kagan Cable TV Financial Databook*, June 1992.

²The average number of pay services per cable system is 3.6. This figure is derived from Paul Kagan Associates, Inc., *Census of Cable and Pay TV*. Data as of December 31, 1991.

³This figure represents the average useful life of a decoder. This figure was established by NCTA's Office of Science and Technology. Estimate is a conservative one since the Office of Science and Technology indicates that advances in decoder technology are resulting in more durable devices.

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

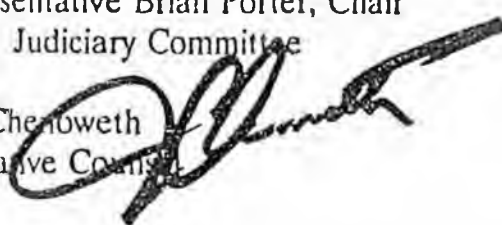
MEMORANDUM

February 4, 1994

SUBJECT: CSHB 315 (JUD) -- Sectional analysis (Work Order No. 8-LS1200\O)

TO: Representative Brian Porter, Chair
House Judiciary Committee

FROM: Jack Chenoweth
Legislative Council



CSHB 315 (JUD) amends four sections of the chapter of the state criminal code defining offenses against property--theft offenses--to address theft of subscription cable services.

Essential to an understanding of the bill is an appreciation drawn in its section 3, defining "theft of services." To the definition of "theft of services" is added one additional offense--the taking of services provided by a subscription cable system without authorization of the system. The offense may involve any one of several acts. In bill section 3, proposed AS 11.46.200(a)(4)(A) generally speaks to action taken knowingly in order to obtain unauthorized interception, connection, receipt, or use of a program or other service provided by the subscription cable system, while proposed AS 11.46.200(a)(4)(B) generally prohibits the knowing unauthorized manufacture, distribution, sale, and like acts designed to decode, descramble, or intercept a nonstandard signal carried by the subscription cable system. The distinction essentially is drawn between illicit activity to obtain and use a service without authorization--(a)(4)(A)--and activity intended to capture a financial profit from the sale or distribution of the illicit obtaining or use of the service--(a)(4)(B).

Bill section 1: The bill section amends the definition of the crime of theft in the second degree--a class C felony--to add theft of subscription cable services under AS 11.46.200(a)(4)(B), the activity intended to capture a financial profit from the sale or distribution of the illicit obtaining or use of the service.

Bill section 2: The bill section amends the definition of the crime of theft in the third degree--a class A misdemeanor--to add theft of subscription cable services under

Representative Brian Porter
February 4, 1994
Page 2

AS 11.46.200(a)(4)(A), the illicit activity to obtain and use a service without authorization of the subscription cable service.

Bill section 4, proposing a new subsection to AS 11.46.200, sets out definitions of terms used in the earlier sections.

JBC:pl
94-103.plm

Alaska State Legislature

Representative Brian S. Porter

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SPONSOR STATEMENT HB 315 - Theft of Cable Service

If you are paying for Cable Service, your money is not only used by the local cable company to fund its operation but is also passed on to the people who run the satellites, the programming distributors and the people who produce that programming. If someone is using equipment designed to circumvent paying for these services then they are not only stealing from each and every one of the companies involved in bringing cable programming to your home, they are stealing from you.

The Alaska Cable Television Association estimates that annual theft of cable television service in Alaska exceeds \$1,000,000 based on a conservative rate of 2.5% of service revenues. HB 315 provides a more accurate definition of cable service theft along with criminal penalties which should act as a better deterrent to anyone considering the purchase and use of illegal devices.

Recently published demographic information lists our State as third in population in front of only Vermont and Wyoming. We are, though, the most difficult state in which to provide cable service as we have our small population spread over such a big expanse and have no adjacent population centers. Without a reasonable level of volume, cable service just won't pencil out in a given area and consequently will not be offered. This is one of the reasons why this legislation, to assure, as much as possible, that everyone who receives this service pays for the service, is so important in Alaska. Additionally, there is indication that our illegal interception problem may already be twice as bad as the national average.

This legislation fills a gap in law that now makes enforcement virtually impossible.

I would appreciate your favorable consideration of this important legislation.

FISCAL NOTE

BILL NO. CSHB 315 (JUD)

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: February 3, 1994
Title: "...unauthorized use...unauthorized interference with transmission...cable services..."
Sponsor: Representative Porter
Requestor: Representative Porter

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MH/IA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672
Division: Administrative Services Division Date: February 3, 1994
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law Date: February 3, 1994

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 315 (JUD)

ANALYSIS CONTINUATION:

The committee substitute makes some changes in technical terms to clarify the means by which cable theft occurs and that would be prohibited by the bill. Otherwise the bill and its impact remains as described in our earlier analysis, which is repeated below.

Some of this bill is already addressed by existing law, but this bill would also make it a theft offense to buy or possess a "black box" that receives or descrambles coded cable services, or to sell, or to manufacture such devices. It is hard to predict a fiscal impact, but there is likely to be little or none because the current level of cable theft cases is relatively small.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 315 (Jud)

Revision Date: _____ Dept. Affected: Administration
 Title: *An Act relating to the unauthorized use of or BFL: Office of Public Advocacy
unauthorized interference with transmission and deliver... Component: Office of Public Advocacy
 Sponsor: Rep. Porter
 Requestor: (H) Fin COMPONENT SERIAL NO. 43

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

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

Estimate of current year (FY94) cost: none

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: Brant McGee, Public Advocate Phone: 274-1684
 Division: Office of Public Advocacy Date: _____
 Approved by Commissioner: Nancy Bear Usela Date: 2/4/94
 Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 315 (Jud)

Revision Date: _____	Dept. Affected: <u>Administration</u>
Title: <u>"An Act referring to unauthorized use</u>	BRU: <u>Public Defender Agency</u>
<u>of cable service . . . "</u>	Component: <u>Public Defender Agency</u>
Sponsor: <u>Rep. Porter</u>	
Requestor: <u>(H) Fin</u>	COMPONENT SERIAL NO. <u>1631</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

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

Estimate of current year (FY94) cost: none

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: <u>John Salemi, Director</u>	Phone: <u>264-4400</u>
Division: <u>Public Defender Agency</u>	Date: _____
Approved by Commissioner: <u>Nancy Bear User</u>	Date: <u>2/4/94</u>
Agency: <u>Administration</u>	

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HB

316

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 316

Revision Date: January 18, 1994
Title: "An Act adopting the Uniform Statutory Rule
Against Perpetuities..."
Sponsor: Representative Moses
Requestor: Representative Moses

Department Affected: Department of Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard T. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: January 18, 1994
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law Date: January 18, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 316

ANALYSIS CONTINUATION:

This bill adopts a uniform rule against perpetuities in accordance with a model act proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL). This bill deals with estate laws governing private parties and will not have a fiscal impact on the Department of Law.

Alaska State Legislature

Representative Carl E. Moses

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SPONSOR SUMMARY

HOUSE BILL 316

HB 316 is the bill to simplify and improve Alaska's statutory rule against perpetuities. This state law deals with issues relating to inheritance of property, and identifying persons who may eventually have an interest in that property. Like the English common-law rule from which this law is derived, it is designed to prevent unreasonably long-lasting restrictions on the disposability of property. The law does not permit perpetual nonvested property interests.

The desirability of enacting HB 316 centers upon two main criteria: One, to simplify administration of estates and trusts, and two, to reduce perpetuity litigation.

The old common-law rule has validating and invalidating sides. The validating side is performing well, and is retained in this bill. The invalidating side is the difficult one which has led to overly harsh interpretations in identifying persons with potential future interest in property.

An example of a nonvested future interest is this: I could, by deed, give my son an interest for life in specific real estate, and give the remainder to his children alive at the time he dies. In other words, my son would have the right to use the property or receive income from it during his life, but could not sell it; his children would then receive full title upon his death, and they would have the right to dispose of it. That remainder interest cannot vest until my son dies, because, until his death, it cannot be determined how many children he will have and how many will be alive when he dies. The remainder interests will vest when he dies and his life estate terminates.

Alaska's current statutory language has not been updated since

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SPONSOR STATEMENT

1983, when a first step to improve the common-law rule was taken. To date, twenty other states have adopted HB 316's recommended new language of the National Conference of Commissioners on Uniform State Laws. Uniformity of the rule among the states is attractive because the great mobility of American society generates a range of legal complexities in this area. Potential beneficiaries are often living in states other than the ones in which trusts and estates are created, and affected property can be located in many states.

The key element of HB 316 is the "90-year" modification and simplification of the "wait-and-see" approach to vesting a future interest in property -- the chief reform of the common-law rule. See page 1, lines 10 and 11 of the bill. Alaska has already changed from the common-law's "what-might-happen" approach. Not only was the common-law rule difficult to understand and apply, it was unfair. If there was a possibility that an interest would not vest within a "life-in-being plus 21 years," then the grant to that whole class of grantees (e.g., my son's children) would be held invalid.

The time period stipulated in the new language, to "wait-and-see" if the future interest vests, is 90 years from its creation. Specifying the number of years to wait and see whether a future interest vests -- i.e., to see what actually happens -- will avoid the administrative costs of tracing survivors, will avoid Alaska's difficulty in determining the "casual relationship" between some "life in being" and the vesting or nonvesting of the interest, and will eliminate wasteful litigation.

The bill applies the same approach to powers of appointment. For example, I could grant to my son a life estate with the remainder to go to whomever he designates in his will. His right to name the taker of that future interest is a power of appointment.

The existing language is repealed by Section 2 of the bill, an effective date of January 1, 1996 is provided by Section 3, and the bill carries a zero fiscal note from the Department of Law. It is supported by the Attorney General, the Alaska Uniform Law Commission, and the American Association of Retired Persons.

WHY STATES SHOULD ADOPT THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES

The idea of reforming the common law rule against perpetuities has been percolating since the late 1940s. Various reform measures were advanced during this early period, but none was able to attract more than four or five enactments. At long last, the reform process has produced a statutory reform measure that does make uniform perpetuity reform possible. The Uniform Statutory Rule Against Perpetuities has quickly become far and away the most widely adopted perpetuity-reform measure in the country and the only realistic hope for uniform perpetuity reform.

Uniformity in this area is especially desirable. The desirability of uniformity stems mainly from the high degree of mobility in American society. Many clients, for example, retire to states other than the one in which they were domiciled during their employment years. Many other clients own land in states other than the state of their domicile. Many trusts confer a power of appointment upon the settlor's children or grandchildren who might be domiciled in different states when they exercise their powers. These and other sometimes unplanned for post-execution events can give rise to increased conflict-of-laws litigation and the potential applicability of the perpetuity law of any state in the union.

As discussed more fully in the *Questions and Answers* component of this packet, the merits of the USRAP are that it:

- fine tunes the rule against perpetuities so that it reaches only its real target, that of placing an outer time limit on long-term or perpetual trusts while validating reasonable trusts;
- extends the benefits of a perpetuity savings clause to trust clients whose lawyers neglected to put one in;
- is simple to administer;
- requires no new learning of the bar; and
- nearly eliminates perpetuity litigation.

Because of the desirability of uniformity in this area and because the USRAP method of reform is superior to other methods so far devised, enactment of the USRAP should not be restricted to states that have not yet enacted a perpetuity-reform measure. Several of the enacting states had previously adopted one of the earlier perpetuity-reform measures, which they repealed incident to enactment of the USRAP.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

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FAX: (907) ~~465-5205~~ 465-6735

February 11, 1994

Hon. Carl Moses, Chair
House Rules Committee
Alaska House of Representatives
Room 204, State Capitol
Juneau, AK 99801-1182

Dear Representative Moses:

At the request of your legislative aide, we have reviewed HB 316, an Act adopting the Uniform Statutory Rule Against Perpetuities. We find no legal or constitutional difficulties with the bill.

We believe that the bill makes important improvements in Alaska law for conformity with other states that have adopted the Uniform Act.

If you need further information, please let me know.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: *Deborah E. Behr*
Deborah E. Behr
Assistant Attorney General

DEB:cl

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
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MEMORANDUM

DATE: April 22, 1994

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

FROM: Rep. Carl E. Moses, Chairman *CEM*
House Rules Committee

SUBJ: HB 316 - Uniform Rule Against Perpetuities

I have received a copy of a letter from Law Professor Jesse Dukeminier of UCLA opposing HB 316. Your assistant Kevin Sullivan has indicated the receipt of one as well.

Attached are four letters from legal scholars, all thoroughly knowledgeable with perpetuity law, attesting to the fact that Prof. Dukeminier stands alone, and has consistently stood alone, in his opposition to contemporary amendments to the Uniform Statutory Rule Against Perpetuities. In addition, there is a letter from the American Association of Retired Persons, whose legal committee has previously researched the merits of Prof. Dukeminier's position. AARP has rejected his arguments roundly, and holds to its support of HB 316.

I urge your review of these letters, and the dismissal of Prof. Dukeminier's arguments against HB 316. His particular interpretations have been routinely put aside in favor of upgrading uniform state law regarding perpetuities. I further respectfully request a hearing in your committee as soon as possible.

Please contact Tim Benintendi of my staff if you have any

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**REBUTTAL LETTER BY
REPRESENTATIVE
MOSES**

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• OLIGANEK • LEVELOCK • NAKNEK
• PORT MOLLER • SAND POINT
• UNALASKA • UNGA

questions at all on this matter, as we wish to respond promptly and completely.

c: Mr. Art Peterson,
Alaska Uniform Law Commissioner

CEM/tb/m13



JESSE DUKEMINIER
MAXWELL PROFESSOR OF LAW
Phone (310) 825-1538
Fax (310) 206-6489

SCHOOL OF LAW
405 HILGARD AVENUE
LOS ANGELES, CALIFORNIA 90024-1476

March 18, 1994

Senator Robin Taylor
Chair, Senate Judiciary Committee
State Capitol
Juneau, AK 99801-1182

Dear Senator Taylor:

It has come to my attention that a bill adopting the Uniform Statutory Rule Against Perpetuities has been introduced in the Alaska legislature (House Bill 316). I do not know its present status, but you should be aware of the tax perils this will create for Alaska lawyers.

USRAP has proven extremely controversial, faulted by numerous critics on policy grounds, but perhaps its most important consequence for lawyers is the threat of malpractice liability USRAP brings in drafting trusts under the federal generation-skipping transfer tax. USRAP provides for alternative perpetuities periods: (1) the common law perpetuities period of lives in being plus 21 years, or (2) 90 years. In order to prevent the extension of trusts exempt from GST tax, Treasury has taken the position that the drafter must choose one, and only one, of the perpetuities periods to govern a GST tax-exempt trust. If the drafter attempts to obtain whichever period turns out to be longer, GST tax exemption will be denied. If the drafter violates the Rule against Perpetuities in an USRAP jurisdiction, making it uncertain whether the interest will vest within the common law perpetuities period or the 90-year wait-and-see period, exemption from GST tax will be denied. Treasury Prop. Reg. § 26.2601-1(b)(1)(v)(B)(2) (1992).

The GST tax is imposed at the highest rate of the estate tax, which is 55 percent. If Alaska were to adopt USRAP, and a donee of a power of appointment in a pre-1986 tax-exempt trust were to exercise the power in a manner violating the Rule against Perpetuities, the tax exemption would be lost and 55 of the trust corpus would be payable to Uncle Sam. Presumably, a lawyer who drafted the donee's will would be liable in malpractice for that amount.

This peril does not exist under present Alaska law, which provides for wait-and-see for the common law perpetuities period only. It is the enactment of an alternative period of 90 years that brings on this danger. I have written a note about this tax trap for a book I am writing which I enclose. It explains the tax dangers of USRAP more thoroughly.

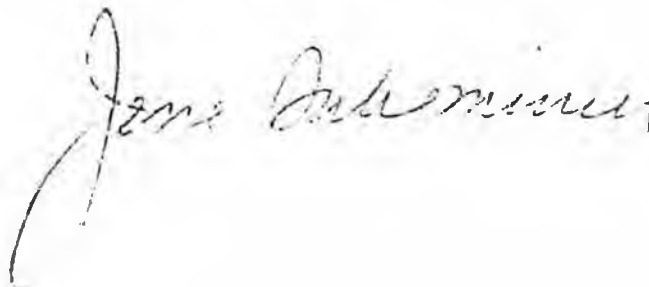
LETTER IN OPPOSITION TO
ADOPTION OF USRAP

Senator Robin Taylor - 2

March 18, 1994

Alaska Statutes § 34.27.010 (1986), adopting wait-and-see for the common law perpetuities period, is a perfectly workable statute. It has proven so in the several other states that have adopted a similar statute. It would, in my judgment, be a great mistake to repeal it and slip lawyers into the tax trap of USRAP.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jane Dukemin". The signature is written in dark ink and is positioned to the right of the typed name "Jane Dukemin".

JD:mrk

Enclosure

THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES:
AN OPPORTUNITY FOR IMPROVING ALASKA PERPETUITY LAW

Lawrence W. Waggoner
1989

Noted for its harsh consequences, the common-law Rule Against Perpetuities (common-law Rule) provides that a contingent future interest is invalid if it is not certain to vest within a life in being plus 21 years.

In 1983, Alaska joined a growing number of states that modified the common-law Rule by adopting the wait-and-see approach. Briefly, wait-and-see alleviates the harsh aspects of the common-law Rule by allowing an otherwise invalid nonvested property interest a maximum period of time to vest.

Under the common-law Rule, the actual time of vesting is immaterial; the only thing that counts under the common-law Rule is what possibly might happen. The common-law Rule invalidates a nonvested property interest if, at the time the interest is created, there is any possibility -- no matter how remote -- that the interest might not vest (or terminate) within the period of a life in being plus 21 years. Under wait-and-see, such an interest is not invalidated on that basis alone, but is given a second chance: The interest becomes invalid only if it actually fails to vest (or terminate) within a given period of time, also measured by a life in being plus 21 years; this given period of time is called the maximum allowable vesting period.

The Alaska statute (copy attached) was a second-generation wait-and-see statute, having been copied from a 1960 Kentucky statute. This type of statute was preceded by a statute in Pennsylvania in 1948 that adopted wait-and-see. The Pennsylvania statute -- the first-generation wait-and-see statute -- was heavily criticized on the ground that it did not identify the people who were to be used as the measuring lives to mark off the maximum allowable vesting period. The Kentucky-type statute, later enacted in Alaska and a small number of other states, was drafted in response to the criticism of the Pennsylvania statute. The Alaska statute expressly restricts the measuring lives to those having "a causal relationship to the vesting or failure of the interest."

After the Alaska statute was enacted, much further thought and refinement have gone into the wait-and-see idea. On further reflection, the causal-relationship method of determining the measuring lives has been shown to be ambiguous and uncertain in application. The Drafting Committee of the Uniform Act considered the causal-relationship approach, but rejected it

because it was too hard to understand. During the course of the Committee's deliberations, one of the Advisors to the Committee, a nationally prominent estate-planning attorney, was asked whether he thought he could apply that causal-relationship approach to an actual case. His reply was swift and telling: "Heavens no," he said.

The Uniform Act takes a different tack in marking off the maximum period for vesting -- it adopts a flat period of 90 years. The rationale for the 90-year period is as follows.

The first step in the analysis is to recognize that wait-and-see operates, in effect, as a perpetuity saving clause. A perpetuity saving clause is a privately established version of wait-and-see, for such a clause also grants a nonvested property interest a period of time during which it can validly vest (or terminate). The period of time typically granted by a perpetuity saving clause is measured by the lifetime of the last surviving member of a group comprised of the grantor's descendants living when the nonvested property interest was created, plus 21 years. (In most cases, it may also be noted that the grantor's descendants living when the nonvested property interest was created would be among the "causal-relationship" measuring lives under the Alaska statute.)

The second step in the analysis is to note that the youngest member of the group of the grantor's descendants typically is the one to live the longest. The Drafting Committee then set out to determine the average age of that youngest descendant. Using four hypothetical families deemed to be representative of actual families, the Committee determined that, on average, the transferor's youngest descendant in being at the transferor's death -- assuming the transferor's death to occur between ages 60 and 90, which is when 73 percent of the population die -- is about 6 years old.

The third step in the analysis was to determine the average remaining life expectancy of a 6-year-old, and then to add in the traditional 21-year period. Government statistics show that the remaining life expectancy of a 6-year-old is 69 years; with the 21-year period tacked on, this gives a period of 90 years.

Using a flat period of years, derived on this basis, has great advantages over the "causal-relationship" method of marking off the maximum allowable vesting period. It avoids the confusion and ambiguity of identifying actual measuring lives and it avoids the administrative costs of tracing those persons to see when the survivor dies. This approach also eliminates

potentially wasteful litigation at one point or another during the running of the waiting period. An example of such wasteful litigation is the recent Rhode Island case of Fleet Nat'l Bank v. Colt, 529 A.2d 122 (R.I. 1987), where litigation arose some 66 years into the term of a trust to determine who the measuring lives were under a causal-relation-type wait-and-see statute. The trust in the Colt case was upheld, but there would have been no need for the litigation under the Uniform Act (nor would the matter have been litigated if only the drafter of the trust had inserted a standard perpetuity-saving clause). (It may also be noted that legal commentators have disputed the Rhode Island court's selection of the measuring lives in the Colt case, providing further evidence of the unworkability of the causal-relationship method.)

. . . .

The Uniform Statutory Rule Against Perpetuities is a comprehensive, state-of-the-art perpetuity-reform statute that reflects the most recent thinking about the subject. The Uniform Act has been approved by the House of Delegates of the American Bar Association, on the unanimous recommendation of the Council of the A.B.A. Section of Real Property, Probate and Trust Law. It has also been unanimously endorsed by the Board of Regents of the American College of Probate Counsel, the Board of Governors of the American College of Real Estate Lawyers, and the Joint Editorial Board for the Uniform Probate Code.

As of early August 1989, the Uniform Act has been enacted in nine states -- Connecticut, Florida, Michigan, Minnesota, Montana, Nebraska, Nevada, Oregon, and South Carolina. These enactments make the Uniform Act the predominant legislative reform measure in the country, and the Act appears to be on its way toward enactment in several other states. Alaska will hopefully soon join this group of enacting states.

If so, Alaska would not be the first state that had previously adopted a "causal-relationship" type wait-and-see statute to repeal that older version and replace it with the Uniform Act. Nevada was the first state to have done that, followed by Florida. Prior to the adoption of the Uniform Act, Nevada and Florida had adopted a "causal-relationship" type wait-and-see statute similar to the current Alaska statute. By enacting the Uniform Act, Nevada and Florida corrected their earlier mistake in using that approach.

The great advantage of the Uniform Act is that it has overcome the uncertainty and awkwardness associated with the earlier statutory attempts at wait-and-see. By adopting a maximum allowable period measured by a flat period of years, the wait-and-see approach has, for the first time, been made easy to understand, apply, and administer.

Alaska Statutes

§ 34.27.010. Modification of the common law rule against perpetuities. In determining whether an interest would violate the rule against perpetuities, the period of perpetuities shall be measured by actual rather than possible events. However, the period of perpetuities shall not be measured by a life whose continuance does not have a causal relationship to the vesting or failure of the interest. An interest that would violate the rule against perpetuities as modified by this section shall be reformed, within the limits of that rule, to approximate most closely the intention of the creator of the interest.

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March 31, 1994

Hon. Robin L. Taylor, Chair
Senate Judiciary Committee
Alaska State Legislature
Room 30, State Capitol
Juneau, Alaska 99801-1182

HAND-DELIVERED

Re: HB 316, Uniform Statutory Rule Against Perpetuities

Dear Senator Taylor:

Please schedule HB 316 for a Judiciary Committee hearing soon. It presents an extremely helpful modification of the law of future interests.

Although most non-attorneys have not heard of the rule against perpetuities, and most attorneys wish that they never had, it is part of the foundation of Anglo-American jurisprudence. This bill simplifies it and makes it more fair. And it avoids a problem in Alaska's current modification of the common law rule (see AS 34.27.010).

The bill faithfully adheres to the official version of the Uniform Statutory Rule Against Perpetuities promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1986, and amended (by adding subsec. (e) of proposed AS 34.27.050) and made a part of the Uniform Probate Code by the NCCUSL in 1990. It has already been enacted in at least 20 states.

The basic purposes of this Uniform Rule are

- (1) to simplify the common law rule,
- (2) to eliminate its harshness,
- (3) to help assure that the intent of the person creating the future interest is actually implemented, and
- (4) to help assure that the beneficiaries of that intent receive their proper shares without litigation and great expense.

The Alaska Chapter of the American Association of Retired Persons supports the bill. Please see the attached November 27, 1991 letter from AARP's Legislative Committee Chair Keith Campbell to me. Also see the attached April 22, 1992 letter from prominent Juneau Attorney Doug Gregg to former House Judiciary Committee Chair Dave Donley, supporting the bill. Both letters pertain to the 17th Legislature's HB 334, which passed the House 35 to 0, but arrived in the Senate too late for action that year.

LETTER FROM ART
PETERSON
UNIFORM LAW
COMMISSIONER FOR AK

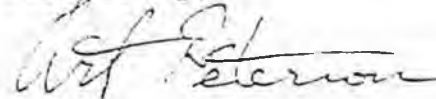
Senator Robin L. Taylor
HB 316, Perpetuities
March 31, 1994

Page 2

Also attached is a brief article written specifically for Alaska by Professor Lawrence W. Waggoner, of the University of Michigan Law School and one of the nation's leading experts in this field. He relates the new Uniform Rule to Alaska's statute and case law.

Please let me know if you would like to have additional information on this measure. I urge a "Do Pass" recommendation. Thank you.

Yours, truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

Enclosures (3)

cc w/o encs.: Representative Carl Moses

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

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

MEMORANDUM

January 25, 1994

SUBJECT: Sectional summary of HB 316 (Work Order No. 8-LS1213\A)

TO: Representative Carl Moses
Attn: Tim

FROM: *TLB*
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 the Uniform Statutory Rule Against Perpetuities.

Sec. 34.27.050(a) states that a nonvested property interest is invalid unless it satisfies either of two tests dealing with when the interest vests or terminates.

Sec. 34.27.050(b) states that a general power of appointment that is not presently exercisable is invalid unless the condition precedent to the power of appointment satisfies either of the two listed criteria.

Sec. 34.27.050(c) declares that a nongeneral power of appointment or a general testamentary power of appointment is invalid unless the power of appointment satisfies either of the two listed criteria.

Sec. 34.27.050(d) states that a particular possibility will not be considered when determining the validity of an nonvested property interest or a power of appointment under (a)(1), (b)(1), or (c)(1).

Sec. 34.17.050(e) states that, when measuring time from the creation of a trust or other property arrangement, certain language in a governing instrument is not operative to the extent specified in the subsection.

Representative Carl Moses

January 25, 1994

Page 2

Sec. 34.27.055(a) states that, except for (b) - (c), general principles of property law determine when a nonvested property interest or a power of appointment is created.

Sec. 34.27.055(b) - (c) establish two exceptions to (a) with regard to when a nonvested property interest or a power of appointment is considered to be created.

Sec. 34.27.060 requires a court under certain conditions to reform certain property dispositions in a manner that most closely approximates the transferor's plan of distribution and that is within the 90 year allowed by sec. 34.27.050(a)(2), (b)(2), or (c)(2).

Sec. 34.27.065 identifies certain transactions that are not covered by the rule stated in sec. 34.27.050.

Sec. 34.27.070(a) states that the new provisions apply prospectively to nonvested property interests or powers of appointment created after the effective date of the Act.

Sec. 34.27.070(b) authorizes a court under certain conditions to reform certain nonvested property interests or powers of appointment created before 1996 in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the limits of the rule against perpetuities applicable when the interest or power was created.

Sec. 34.27.075 states that the new statutory provisions supersede the common law rule against perpetuities.

Sec. 34.27.090 gives the new provisions a short title. Directs that the provisions be applied and construed to achieve uniformity on the subject among the states.

Section 2. Repeals the present statute on this subject.

Section 3. Makes the Act effective January 1, 1996.

If I may be of further assistance, please advise.

TLB:mi

94-015.mai

A Few Facts About The Uniform Statutory Rule Against Perpetuities

Purpose: To invalidate interests in property that are intended to belong to somebody at a future time, but for which the actual determination of ownership cannot be or will not be accomplished within a specified period of time.

Origin: Completed by the Uniform Law Commissioners in 1986, and amended in 1990 by adding Section 1(e).

Approved by: House of Delegates of American Bar Association, on unanimous recommendation of the Council of the ABA Section of Real Property, Probate and Trust Law

Board of Regents of American College of Trust and Estate Counsel (unanimous)

Board of Governors of American College of Real Estate Lawyers (unanimous)

Leading scholars, including: Gregory S. Alexander, *Cornell*; Olin L. Browder, Jr., *Michigan*; Verner F. Chaffin, *Georgia*; Mary Louise Fellows, *Minnesota*; Edward C. Halbach, Jr., *Cal-Berkeley*; Thomas L. Jones, *Alabama*; Sheldon F. Kurtz, *Iowa*; John H. Langbein, *Yale*; Allan F. Smith, *Michigan*; Robert A. Stein, *Minnesota*; and Richard V. Wellman, *Georgia*

State

Adoptions:

California	Kansas	New Jersey
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Georgia	Montana	South Carolina
Hawaii	Nebraska	West Virginia
Indiana	Nevada	

1994

Introductions:

Alaska
Mississippi

For further information regarding the Uniform Statutory Rule Against Perpetuities, please contact John McCabe or Katie Robinson at 312-915-0195, or Lawrence W. Waggoner (committee reporter) at 313-763-2586.

(2/1/94)

**THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES:
QUESTIONS AND ANSWERS**

1. *What is the "rule against perpetuities" and what is its purpose?*

Anglo-American law has traditionally and wisely prohibited people from tying up family property in trusts or other property arrangements for the duration not only of an existing generation but for numbers of future generations. The legal rule that prohibits these perpetual or unreasonably long-lasting trusts is called the "rule against perpetuities."

The common law rule against perpetuities is a complicated rule, but shorn of its complexities, it functions to impose a time limit on trusts. What is the time limit? The time limit thought appropriate is one basically geared to the duration of an existing generation (which can be an existing generation more remote than the one immediately below the person creating the trust), with an extra tack-on period of 21 years for good measure. Specifically, the rule against perpetuities measures the time limit by the period of "lives in being plus 21 years." The term "lives in being" is the law's arcane way of referring to the lifetimes of persons who were living when the trust was created.

2. *If the rule against perpetuities wisely invalidates perpetual or unreasonably long-lasting trusts, why is there a need for a Uniform Statutory Rule Against Perpetuities?*

Under the common law rule, a trust is invalid if it might exceed the lives-in-being-plus-21-years time limit. To be valid, in other words, there cannot be any possibility that the trust will exceed the time limit, even if that possibility is so remote that reasonable people would dismiss it as absurd. This is sometimes referred to as the "what-might-happen" approach.

The what-might-happen approach causes the common law rule against perpetuities to have bad as well as good effects. The good effect is that it invalidates perpetual or unreasonably long-lasting trusts. The bad effect is that it sometimes overreaches and invalidates perfectly reasonable trusts such as one that requires the donor's grandchildren to reach age 25 in order to be entitled to receive a sum of money. The common law rule, in other words, is harshly over-inclusive.

3. *What are the main purposes of the USRAP?*

The Uniform Statutory Rule Against Perpetuities (USRAP) is a remedial statute that adopts a what-does-happen approach (also called the "wait-and-see" approach). By the simple expedient of switching from a what-might-happen to a what-does-happen standard, the USRAP returns the rule against perpetuities to its original purpose of preventing perpetual or unreasonably long-lasting trusts without defeating reasonable trusts.

Expert estate planning attorneys have already found a way of establishing a what-does-happen (wait-and-see) rule for trusts they draft. They routinely make trusts such as the one described in Question 2 valid. The way they do this is by inserting a so-called perpetuity savings clause into the document. A perpetuity savings clause acts as an outer time limit on the trust. The time limit is often geared to the 21-year period following the death of the survivor of a group of people (such as the client's descendants) living when the trust was created.

The USRAP is a perpetuity reform statute that, in effect, extends the benefits of a

perpetuity savings clause to citizens whose lawyers, through mistake or ignorance, neglected to put one in. The USRAP does this by adopting the wait-and-see plus deferred reformation method of perpetuity reform. This is the same approach adopted by the American Law Institute in the Restatement (Second) of Property (1983). In fact, the USRAP essentially codifies the Restatement (Second) of Property.

4. *How does the USRAP accomplish its purposes?*

The USRAP uses four principal features to accomplish its purposes:

Feature 1: Common Law Validity Preserved. The USRAP provides that a will or trust that is valid under the common law rule against perpetuities remains valid.

Feature 2: Wait and See. The USRAP's wait-and-see feature provides that a will or trust that would have been invalid under the common law rule against perpetuities is given up to 90 years to run its course.

Feature 3: Deferred Reformation. The deferred reformation feature only applies to trusts that are subject to the wait-and-see feature. For those few cases in which such a trust extends beyond 90 years, the USRAP provides for court reformation to make it valid; within the 90-year constraint, the reformation is to come as close as possible to the transferor's plan of distribution as manifested in the trust document itself. Because court reformation will so seldom become necessary, the USRAP method can be described as a "judicial hands-off" approach to perpetuity questions.

Feature 4: Non-family Oriented Transactions Exempted from Perpetuity Law. Commercial transactions are exempted from the rule against perpetuities.

5. *Why does the USRAP preserve validity under the common law rule against perpetuities rather than subject all trusts to a 90-year period?*

Preserving common law validity is a "must" feature. The mobility of society makes it necessary. Preserving validity under the common law rule against perpetuities allows a testamentary trust, drawn by a lawyer in a USRAP state in compliance with accepted common law practice, not only to be valid in the USRAP state, but also to be valid if the client dies domiciled in (or owns land covered by the trust in) a common law jurisdiction. Conversely, this feature allows a testamentary trust, drawn in compliance with accepted common law practice by a lawyer in a common law jurisdiction, to still be valid if the client dies domiciled in (or owns land covered by the trust in) a USRAP state.

Compliance with the common law rule against perpetuities confers another very attractive benefit. It insulates the trust or other property arrangement from any possible future reformation suit under the deferred reformation feature. Only interests whose validity is governed by the wait and see element are vulnerable to reformation. Reformation is never necessary—or permitted—for dispositions that are initially valid under the common law rule against perpetuities.

In estate planning practice, then, the USRAP creates every incentive to comply with the common law rule against perpetuities, through the use of a traditional perpetuity savings clause, if appropriate, or one tailored to the particular trust. Practitioners who now successfully draft for initial validity, as most do, by far, should continue with business as usual. They need not learn a new and complicated scheme of perpetuity law and they need not make any adjustment in their forms or practice.

6. *What are the advantages of using a flat period of 90 years for the wait-and-see element?*

The use of a flat period of 90 years simplifies the process of measuring the permissible vesting period for the wait-and-see element. The alternative would be to measure the period on a case-by-case basis by the controversial measuring-lives approach. The 90-year period is designed to approximate the average margin-of-safety period provided under the wait-and-see method using actual measuring lives (or by traditional perpetuity saving clauses). This margin-of-safety period is ample enough so that almost all trusts will run their course long before the 90 years expires, and that will be the end of the matter.

7. *Does the USRAP require new learning of the bar? Is the USRAP a complicated statute?*

No to both questions. Among the USRAP's great strengths are that it is not a complicated statute and that it does not require new learning on the part of the bar. Although it is true that the Official Commentary to the USRAP is quite lengthy, that fact belies the simplicity of the statute. The lengthy Commentary is not "needed" to explain the statute. The Commentary is supplied so that even lawyers and judges not familiar with the common law rule against perpetuities can understand both the common law rule and how the USRAP alters it.

A full appreciation of the point requires noticing the distinction between what lawyers must know in planning and drafting legal documents and what they must know if they actually have a perpetuity-violation case.

With respect to the planning and drafting end of the practice, lawyers need to know only one thing: *Continue to use the same traditional perpetuity-saving/termination clause, using specified lives in being plus 21 years, you used before enactment.*

The picture is entirely different for the rare lawyer or judge who has an actual or potential perpetuity-violation case. These lawyers and judges will very much appreciate the extensive Official Comments because those Comments will provide great assistance in analyzing the case. Remember that an actual or potential perpetuity-violation case will arise very infrequently under the USRAP. When such a case does arise, however, lawyers (or judges) involved in the case will find considerable guidance for its resolution in the detailed analysis contained in the Commentary accompanying the USRAP itself. In short, the detailed analysis in the Commentary accompanying the USRAP need not be part of the general learning required of lawyers in the drafting and planning of dispositive documents for their clients. The detailed analysis is supplied for the assistance in the resolution of an actual violation. Only then need that detailed analysis be consulted and, in such a case, it will prove extremely helpful.

8. *Why does the USRAP use a flat period of years to measure the permissible vesting period for the wait-and-see element?*

The traditional method of measuring the permissible vesting period under the wait-and-see method of perpetuity reform has been by reference to lives in being at the creation of the interest (the measuring lives) plus 21 years. There are, however, various difficulties and costs associated with identifying and tracing a set of actual measuring lives to see which one is the survivor and when he or she dies. In addition, it has been documented that the use of actual measuring lives plus 21 years does not produce a period of time that self-adjusts to each disposition, extending dead-hand control no further than necessary in each case; rather, the use of actual measuring lives (plus 21 years) generates a permissible vesting period whose length

almost always exceeds by some arbitrary margin the point of actual vesting in cases traditionally validated by the wait-and-see strategy. The actual-measuring-lives approach, therefore, performs a margin-of-safety function. Given this fact, and given the costs and difficulties associated with the actual-measuring-lives approach, the USRAP forgoes the use of actual measuring lives and uses instead a permissible vesting period of a flat 90 years. The expiration of a permissible vesting period measured by a flat period of years is litigation free, easy to determine, and unmistakable.

9. *How was the 90 years derived?*

The 90-year period was derived using average life expectancy tables to approximate the average period of time that would be produced by the traditional perpetuity period of a life in being plus 21 years.

10. *Does the 90-year period mesh with the federal generation-skipping transfer tax?*

Yes. Although the U.S. Treasury Department originally issued temporary regulations under the "grandfathering" provisions of the federal generation-skipping transfer tax that did not allow for the USRAP's use of a 90-year period, these regulations were issued in ignorance of the existence of the USRAP. When the USRAP's approach was called to the attention of the Treasury Department, the Department issued a letter of intent to revise the regulations to accommodate the USRAP's 90-year approach.

11. *Does the USRAP require "waiting" for 90 years in all cases?*

No. First of all, the only trusts that are subject to the 90-year period are those that fail to qualify for validity under the common law rule against perpetuities. Those trusts make up a small fraction of all trusts. With respect to that small fraction of trusts that are subject to the 90-year period, most of them by a large margin will run their course well within the allowed 90 years. Very few such trusts will still be in operation at the end of the 90-year period.

12. *Does the USRAP allow trusts to last longer than they now can under the common law rule against perpetuities? Does the USRAP extend dead hand control?*

No to both questions. The flat-period-of-years method was not used as a means of increasing permissible dead-hand control by lengthening the permissible vesting period beyond its traditional boundaries. In fact, the 90-year period falls substantially short of the absolute maximum period of time that could theoretically be achieved under the common-law rule itself, by the so-called "twelve-healthy-babies" ploy—a ploy that would average out to a period of about 115 years, which is 25 years or 27.8% longer than the 90 years allowed by the USRAP.

13. *Does the USRAP cause harm because it puts the validity of property interests in abeyance for 90 years?*

No. At one time, those who opposed the wait-and-see method of perpetuity reform argued that wait-and-see could cause harm because it puts the validity of property interests in abeyance during the permissible vesting period. During the permissible vesting period, it was argued, no one could determine whether an interest was valid or not. This argument has been shown to be

false. Keep in mind that the wait-and-see element is applied only to interests that would be invalid were it not for wait-and-see. Such interests are always *nonvested* future interests. Wait-and-see does nothing more than add an *additional* contingency, which is that the other contingencies must be resolved one way or the other *within a certain period of time*. If that period of time is easily determined, as it is under the USRAP, then the additional contingency causes no more uncertainty in the state of the title that would have been the case had the additional contingency been originally expressed in the governing instrument, as it is *would have been had the drafting attorney inserted a perpetuity savings clause*. It should also be noted that only the status of the affected *future* interest in the trust is deferred. In the interim, the other interests, such as the interests of current income beneficiaries, are carried out in the normal course without obstruction. In short, the USRAP causes no more "uncertainty" in the state of the title than routinely occurs in the vast majority of trusts that contain a perpetuity savings clause.

14. *Why is uniformity among the states important?*

Because of the high degree of mobility of American society. In the few short years since promulgation, the USRAP has become far and away the most widely adopted perpetuity reform measure in the country. If more and more states move to enactment, uniformity will ultimately become realizable, to the benefit of citizens with multi-state connections.

HB

319

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHB 319FIN

Revision Date: _____ Dept. Affected: Public Safety
 Title: Peace Officers Training Fund BRU: Alaska Police Standards Council
 Component: Alaska Police Standards Council
 Sponsor: REP. PHILLIPS
 Requestor: H. FIN COMPONENT SERIAL NO. 519

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0.	52.6	105.2	105.2	105.2	105.2
TRAVEL	0.	6.0	12.0	12.0	12.0	12.0
CONTRACTUAL	0.	115.3	535.0	580.7	580.7	580.7
SUPPLIES	0.	.4	.7	.7	.7	.7
EQUIPMENT	0.	175.0	45.7	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.	349.3	698.6	698.6	698.6	698.6
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES (1005) Revenue Code	0.	349.3	698.6	698.6	698.6	698.6

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0	349.3	698.6	698.6	698.6	698.6
1006 GF/MPTIA						
Other						
TOTAL	0.	349.3	698.6	698.6	698.6	698.6

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

FULL-TIME	0	2	2	2	2	2
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.) APSC's Basic Operating Budget provides funding for staff travel for council members and contractual services for basic police training. HB319 would supplement training for 2200 officers statewide and increase funding for training of additional peace officers.

Prepared By: Laddie Shaw Phone: 465-4378
 Division: Alaska Police Standards Council Date: 3-24-94
 Approved by Commissioner: [Signature] Date: 3-24-94
 Agency: Richard L. Burton, Dept. of Public Safety

PREPARER TO PROVIDE ALL DIS*

For further distribution

LEGISLATIVE OFFICE

Office

Page 1 of 5

The Alaska Police Standards Council is responsible by legislation (AS 18.65.230) to establish and maintain training programs for law enforcement agencies and correctional institutions. In-service training is essential to support the special requirements of peace officers throughout the state.

CSHB319 FIN establishes a training fund that would allow for a much needed continuing education and training support of the law enforcement and corrections community throughout Alaska.

Presently the Alaska Police Standards council is funded to support the basic level training of 15 officers. No additional funds are available for any in-service training from the Alaska Police Standards Council.

In-service and specialized training are being addressed in a fragmented fashion by taking advantage of training whenever and wherever it is offered.

The establishment of this fund will come about in the development of a user fee assessment, as where violators will pay for police and corrections training.

In charging a \$10 assessment on all uniformed traffic citations and court judgements, projected revenue to the fund will be \$539.3.

A \$25 assessment on operating a motor vehicle or aircraft while intoxicated, reckless driving, refusal to submit to a chemical test, driving while license canceled, suspended or revoked, and failure to stop and give aid when a motor vehicle accident occurs, equate to a projected revenue of \$159.3.

To deal with the additional tasks necessary to implement this legislation, two full-time positions will be needed. One position is a Training Coordinator, who will be a point of contact for all information in regards to training. A Training Coordinator will provide a cost savings as training currently offered will be maximized and be more cost effective. The position will coordinate activities of training programs with all law enforcement agencies and correctional institutions throughout the state. Duties will

Department of Public Safety
CSHB 319 FIN
Page 3 of 5

also include the development and coordination of in-service, instructor and recertification training programs. Travel is required of this position to insure the training and educational needs of the law enforcement and corrections are being carried out.

The position of a Data Processing Clerk is needed to set up and maintain files of correspondence and records for the ongoing training reports submitted by the peace officer network, and assist in processing the 2200 officer certification updates, new certificates, and decertification processes.

Initial equipment cost will be in setting up computer-based interactive multimedia training, distance learning, and simulator systems.

The Alaska Police Standards Council is willing to explore options in the development and placement of satellite distance learning and teleconferencing capabilities with other state agencies. By coupling the interactive multimedia program with a participating agency satellite distance learning system it would then allow for a larger number of training sites to deliver telecourse and videotaped training material to Alaska's widely dispersed target audience.

If the Alaska Police Standards Council is to be effective in delivering programs on a statewide basis to all law enforcement agencies and corrections institutions, the satellite downlike system has the potential to deliver the best training at the most reasonable cost.

Due to the administrative conversion within the court system to allow them to collect and process the assessment fee under HB319, and change over the uniform traffic citations, there will be a reimbursable service agreement of \$10,000.00 from the Alaska Police Standards Council to the Alaska Court System. This RSA is included under contractual within the FY 96 operating costs.

Basic level training grants and in-service training will encompass the additional portion of the funds.

CSHB319 FIN will supplement the existing Police Standards budget to allow for the much needed growth of recruits in the basic level academies.

In-service training would be relevant to continuing enforcement education in areas of investigation, community relations, multi-cultural diversity, officer safety, use of force, etc. Training is also needed for recertification, i.e.: first aid, intoximeter, defensive tactics, firearms, etc.

The following is a summary of the costs that are anticipated to be incurred the first full year of operations under this legislation.

Personal Services	105.2
Travel	12.0
Contractual	220.7
Supplies	.7
Equipment	<u>360.0</u>
TOTAL	698.6

Costs not included after the first year are the equipment costs (400.0) which will be moved to contractual for basic and in-service training needs the following years.

Personal Services

Training Coordinator Range 18 Step A	
Salary	\$48,876
Benefits	<u>19,654</u>
(includes 200 hours overtime)	\$ 68,530
Data Processing Clerk II Range 9 Step A	
Salary	\$24,288
Benefits	<u>12,366</u>
	\$ 36,654
Total Personal Services	\$ 105,184

Contractual

Basic Level Training 10 Students @ 10 Weeks	\$ 53,000
In-Service/Field Training and Executive Level Training	\$ 155,700
Alaska Court System RSA	\$ 10,000
Long Distance Phone Costs	\$ 2,000
Total Contractual Costs	\$ 220,700

Supplies

Stationary, copy machine paper,
Calculator, etc. \$ 700

Equipment

Two Desks	\$ 1500	
Credenza	500	
Two Chairs	1000	
Two Side Chairs	600	
Work Station (Technical)	2500	
Work Station (Support)	2500	
Two Bookcases	400	
Four File Cabinets	2100	
Two PC Systems	7000	
PC Hookup Charge	500	
Work Table	500	
Cellular Phone	500	
Two Telephone & Installation	<u>400</u>	
	SUBTOTAL	\$ 20,000
Inter Active Video System X 10		
Large Screen TV, CD-Rom (PC)		
Software, Hardware (Set-up)	40,000	
Driving Simulators X 2	140,000	
Firearms Training System X 2	160,000	
	SUBTOTAL	<u>\$ 340,000</u>
	TOTAL	\$ 360,000

*State of Alaska
Alaska Police Standards Council
Pouch N - Juneau, Alaska 99811*

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BILL NO: SB267

DATE:

TITLE: "An Act relating to the training of law enforcement and corrections officers... creating the Alaska Police Standards Training Fund"
CONTACT: Laddie Shaw
Executive Director
Alaska Police
Standards Council
465-4378

This bill addresses the ongoing problem of fulfilling the in-service and specialized training requirements of law enforcement and corrections statewide.

SB267 would generate the funding necessary to provide Alaska law enforcement and corrections officers the level of training they need to adequately perform their roles in an ever-changing contemporary society.

SB267 would allow for sufficient staff and funding to allow the Alaska Police Standards Council to fulfill their obligation under AS 18.65.230 by making available criminal justice education and training to peace officers, and corrections, probation, and parole officers.

This bill would allow the Alaska Police Standards council to re-emphasize its mission in providing quality service to the public by maximizing the training investment in our law enforcement and corrections personnel.

The goals of the Alaska Police Standards Council is to enhance the ability of its peace officers to provide that level of service desired by the citizens of Alaska through:

- Prescribing essential training requirements and curriculum;
- Promoting advanced and executive level training;
- Implementing and enforcing prerequisite standards for the selection and retention of officers;
- Maximizing the utilization of the training fund;
- Fostering a spirit of professional and community cooperation.

Civil actions resulting from inadequate training are on the increase. The end costs of providing adequate training is negligible when compared to the cost associated with lawsuits and their resultant judgement.

In developing a user fee assessment funding system the violators pay for police and corrections training.

This bill is supported by the Alaska Police Standards Council.

State of Alaska
Alaska Police Standards Council
Pouch N - January, Alaska 99811

1
2 APSC Mission Objectives

3 To produce a highly-trained and positively motivated
4 professional, capable of meeting contemporary law enforcement
5 standards of performance.

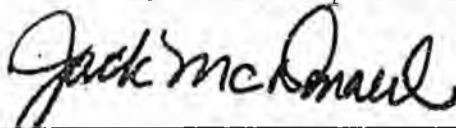
- 6 - To build on the foundation of skill and knowledge
7 acquired at the basic academy, with continued
8 education and training where the officer may
9 enhance those skills and increase proficiency in
10 all aspects of job performance.
- 11 - To cooperatively establish a career path within the
12 respective agencies, by providing qualified members
13 with advanced training and opportunities to develop
14 leadership and supervisory skills.
- 15 - To ultimately increase the overall efficiency and
16 effectiveness of the law enforcement and
17 corrections community by assuring a climate of
18 professionalism and conscientious standards of law
19 enforcement and corrections.

20 APSC Responsibilities

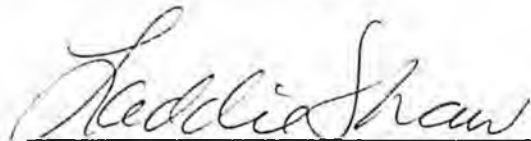
21 The Council is appointed by the Governor, to represent state and
22 municipal police and correction's administrators, individual
23 officers, and the private sector.

24 Statutory requirements:

- 25 (1) establish minimum employment, training and
26 educational standards for all full-time state,
27 municipal police, probation, parole and
28 correctional officers in Alaska;
- 29 (2) establish minimum curriculum requirements for
30 all police, probation, parole and correctional
31 officers training programs, courses and classes;
- 32 (3) consult and cooperate with all agencies concerning
the development of police, probation, parole and
correctional officers training schools and programs
of instruction;
- (4) establish and maintain police, probation, parole
and correctional officers training programs;
- (5) issue certificates evidencing satisfaction of
Council requirements.

33 

34 Jack McDonald, Chairman
35 Alaska Police Standards Council

36 

37 Laddie Shaw, Executive Director
38 Alaska Police Standards Council

1993 TOTAL VEHICLE AND TRAFFIC OFFENSES

AS 12.55.039(a) (1) includes violations under AS 18, 13 AAC, 17 AAC and comparable municipal ordinances:

53,934 - Uniform Traffic Citations Issued

** 53,934 - Total \$10 Violations = \$539,340 projected Revenue

AS 12.55.039(a) (2) includes the following:

4,618 - DWI/Refusals (Under AS 28.33.030, 28.33.031, AS 28.35.030, 28.35.032)

1,752 - All other at court suspensions, revocations, limitations (Under AS 28.15.291, AS 28.35.040, 28.35.060)

** 6,370 - Total \$25 violations = \$159,250 Projected Revenue

*** \$ 698,590 Combined Total Projected Revenue

FISCAL NOTE

Bill Version: CSHB 319 FY94
 (H) Publish Date: 3/23/94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

BILL

Revision Date: 03/23/94 Sect. Affected: Alaska Court System
 Title: An Act relating to the training of law BRU: Judicial Courts
enforcement and corrections officers... Components: _____
 Sponsor: Reps. Phillips, MacLean, Sanders, Kott
 Requestor: _____ COMPONENT SERIAL NO. 758

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

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CHANGE IN REVENUES ()

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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 Interagency RSA	See note below.					
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) costs: None

ANALYSIS: (Attach a separate page if necessary)
 See attached fiscal analysis. The Police Standards Council will transfer funds to the court system via a reimbursable services agreement to cover supply and program conversion costs.

Prepared by: C. S. Christensen III, Staff Counsel *[Signature]* Phone: 264-3228
 Agency: Alaska Court System Date: 03/23/94

Approved by: Arthur H. Snowden, II, Administrative Director *[Signature]*
 Agency: Alaska Court System Date: 03/23/94

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Alaska Court System
Fiscal Analysis
CSHB 319 (JUC)

This legislation will require revision of various court forms, traffic booklets, operating procedures and minor computer reprogramming. The fiscal impact of this legislation is detailed below.

Contractual

Postage for reprinting traffic booklet

The court system provides two version of a traffic offense booklet to all law enforcement agencies and courts in the state. Approximately 3,500 copies of the booklet are distributed at a cost of \$.75 each.

\$2,525

Contractual programming of rural court computers to facilitate the new forms and procedures.

4,300

Supplies

Supplies for reprinting traffic booklet

The traffic offense booklets contain approximately 15 duplex pages each. The court must prepare 3,500 copies of the 15 page booklet at a cost per page of \$.035.

1,938

Non-computerized courts use a DWI judgment form for certain traffic offenses, which must be revised and reprinted.

700

Estimated one-time cost ***

\$9,963

*** These costs will be funded through an RSA with the Police Standards Council.

FISCAL NOTE

No. 4

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: CSHB 319(FM)
(H) Publish Date: 3/25/94

Revision Date: February 17, 1994
Title: ... relating to the training of law enforcement and correction officers... surcharges...
Sponsor: Representative Phillips
Requestor: Representative Phillips

Department Affected: Department of Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division
Approved by Commissioner: Bruce M. Boreno, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: February 17, 1994

Date: February 17, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 319 (JUD)

ANALYSIS CONTINUATION:

This bill amends AS 12.55 to add a surcharge of \$10 to any fine or penalty assessed as a result of a violation of a vehicle or traffic offense under AS 28, except the surcharge would be \$25 if the offense was driving while intoxicated or if the offense was refusal to submit to a chemical test. The bill also amends AS 18.65 to establish the Alaska police training fund in the general fund, consisting of appropriations made by the legislature to the fund. The bill provides that the legislature may appropriate from the funds collected as surcharges; however, the bill also makes it clear that nothing in the bill creates a dedicated fund. Finally, the bill also provides that the state may initiate proceedings to collect unpaid surcharges.

It appears that about 70 percent of fines and penalties that accrue from traffic offenses are paid voluntarily, and it is anticipated that the same high ratio of surcharges would also be paid voluntarily. Because of the costs involved in attempting to collect the remaining 30 percent of unpaid surcharges, state efforts to collect the unpaid amount would not be undertaken until their value substantially exceeds the cost for collection. Consequently, there will not be a fiscal impact for the Department of Law.