

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8605 HOUSE JUDICIARY

Representative Mulder
February 23, 1995
Page 3

The Ad Hoc Committee supports the proposed bill as a single package agreed to by both sides. If you have any questions pertaining to any portion of the bill, please feel free to contact us at any time.

We would also like to point out that there are more issues involving workers' compensation that we will be addressing in the future. These include group self-insurance, medical cost containment (the medical cost portion of worker's compensation payouts in Alaska have more than doubled between 1988 and 1992, from approximately \$20 million to in excess of \$50 million), review of presumption of compensability, and review of benefits including health insurance. These issues will take further research and a great deal of discussion with various groups but they must be dealt with to insure that Alaska's Workers' Compensation system adequately protects injured workers while maintaining an equitable program for employers.

We thank you for your patience in allowing the Ad Hoc Committee to prepare our agreement and we look forward to your continued support in the future.

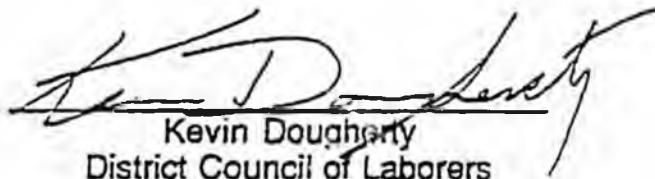
Sincerely yours,


Willem Van Hemert
CRW Engineering Group

Elaine Taylor
Taylored Restoration Services

Mary Shields
Northwest Technical Services

Eric Tolleisen
CARRS Quality Centers
Treasurer, WCCA


Kevin Dougherty
District Council of Laborers

Jeffrey Wertz
Machinist Union Local 601

Royce Rock
Carpenters Union Local 1281

David Ford
Alaska Ironworkers

cc: Senator Tim Kelly
Representative Pete Kott
Representative Brian Porter

K. Scott McEntire
6530 East 16th Avenue
Anchorage, Alaska 99504
(907) 337-8614

March 28, 1995

House Judiciary Committee
State Capital
Juneau, Alaska 99801
(907) 465-4990

Dear Representatives,

House Bill No. 237, and those who introduced it, require very serious investigation and consideration before this bill is elevated to the status of law. The Alaska Labor-Management Ad Hoc Committee on Workers' Compensation purports itself to be "a private citizen initiative group formed to fairly address concerns in regard to the Alaska Workers' Compensation system. It was through the efforts of the Ad Hoc Committee that major legislative reform was passed in 1989(1988). Those measures resulted in four years of premium reductions, with 1994 being the first year of a rate increase since 1987." (Letter from the Alaska Labor-Management Ad Hoc Committee on Workers' Compensation to the Honorable Tim Kelly, Alaska State Legislature (Feb. 16, 1994)). That this Ad Hoc Committee cannot conceive of any concerns to fairly address until there is a rate increase, speaks clearly of its alliance with employers and insurers. The Ad Hoc Committee's relationship with the Workers' Compensation Committee of Alaska is of particular concern. "The Workers' Compensation Committee of Alaska is a state-wide organization of employers dedicated to reform of the workers' compensation insurance system in Alaska...The WCCA led the effort to bring management and labor representatives to the table to work out a compromise in which both sides achieved specific goals. The result was passage by the 1988 legislature of a major reform of the workers' compensation system...The WCCA maintains a lobbyist in Juneau to monitor legislation which may potentially impact workers' compensation insurance costs. Small working committees are created from time to time within the organization to address specific issues such as proposed regulations, corrective legislation requirements and reform of the business classification and rating system."(Jeff Day, Alaska's Workers' Compensation Laws (Corporate Communication Strategies, ed., The Workers' Compensation Committee of Alaska 1990)). After reviewing the Ad Hoc Committee's proposed legislation in House Bill No. 237 and ever mindful of the major legislative reforms it claims responsibility for in 1989 (1988), it is inescapably clear that the Committee represents the WCCA and not injured employees

In April of 1994, Josh Fink, legislative assistant to Senator Tim Kelly, provided me with a copy of the Ad Hoc Committee's February 16, 1994 letter to Senator Kelly. Mr. Fink also informed me that a bill that did not come from the Ad Hoc Committee would have little chance of being considered by the legislature. I then contacted a representative of each "side" of the committee. I spoke with Willem Van Hemert of CRW Engineering Group And Kevin Dougherty of the District Council of Laborers and asked each of them to advise me of the next committee meeting so that I might attend. I never heard from either one of them again. It is important to note who the other committee members are. On the employer side there is Elaine Taylor, Taylored Restoration

Services; Mary Shields, Northwest Technical Services, President, WCCA; and Eric Tollefsen, CARRS Quality Centers, Treasurer, WCCA. Clearly the WCCA has a strong voice on the committee. What is not clear, however, is for whom they speak. They sound a lot like the insurance industry in that their script is more fictional than fact. They write what appears to be a believable story as long as the reader is ignorant on the topic. If the Judicial Committee does not have a clear understanding of all aspects of Alaska's seriously flawed workers' compensation statutes and administration codes, it must educate itself with unbiased, substantiated facts. Members of the Labor and Commerce Committee have already shown their ignorance by passing this bill unanimously. Perhaps the Judiciary Committee could take the time to read the bill and ponder the implications instead of just sounding out the words.

In addition to Kevin Dougherty, the employee side of the committee is represented by Jeffrey Wertz, Machinist Union Local 601; Royce Rock, Carpenters Union Local 1281; and Matt Groske, Alaska Ironworker. It is presumptuous to assume that unions represent all employees in the state. It is just as presumptuous to assume they represent all injured employees. When unions are making major concessions with regard to the benefit packages of their general membership to meet market (employer) demands, it is not particularly hard to deduce how little consideration is given to injured employee's benefits where injured employees make up only a minor portion of the general membership. After all, you have to become an employee before you can become an injured employee. Those injured employees who can never go back to their former jobs are *fired*. They lose all of their health benefits, as does the rest of their family. Even those who may have been in a union are not going to find much that a union can do for them when they can no longer ply their trade.

Where does an injured employee find representation? On the Alaska Workers' Compensation Board? No, the board consists of the commissioner of labor, representatives of industry, and representatives of labor. No experience, expertise or injury required. The Division of Workers' Compensation? This is little more than an under budgeted, under staffed retirement home for former insurance adjusters where a future assistant attorney general can do an internship before moving up to represent the State of Alaska against its injured employees. This is the place where the phrase *the board shall* means...if the board wants to or can afford to, it might, provided, when, notwithstanding...What about private attorneys? They are awarded fees based on a percentage of the compensation in dispute, provided they prevail before the board. Unfortunately, for each individual section of the Alaska Workers' Compensation Act, the meaning of the word *compensation* has to be argued all the way to the Alaska Supreme Court. Despite the court's expressed displeasure in numerous cases, neither the legislature, the board, nor the Ad Hoc committee have addressed this very costly situation. When this is combined with the fact that the Ad Hoc committee has been extremely successful in eliminating benefits to such an extent that few remain worth pursuing, an attorney representing an injured employee becomes very selective in who he chooses to represent. Even when an injured employee's attorney prevails, it is not unusual for the attorney to spend more time and effort justifying his fees to the board than was spent securing benefits for the injured employee. Since there is no continuity in the board's membership or decisions, an attorney's reluctance to enter into a card game with an unknown dealer and unsure rules is unfortunate for the injured employee, but understandable. There are some judges, however, who might even consider this to be *unfair*.

If the House Judiciary Committee cannot find enough wrong with House Bill No. 237 on its own, I would suggest that it consider the following questions and be sure of its answers.

(1) If the legislature finds that "many workers in the state are only seasonally employed in the construction, tourism, fishing, and education industries" does Sec. 7. AS 23.30.220(a)(6) determine gross weekly earnings fairly in light of this? Since many members of the legislature may find themselves caught somewhere between seasonal and temporary employment, maybe a poll could be conducted in house (so to speak), to see how fairly they think they would be treated should they trip over the Capital steps as they rush to meet a role call.

(2) Does the legislature really want to find that "benefits for permanent total disability can last for a substantial period into the future and serve a different purpose than benefits for temporary partial or temporary total disability?" Should anyone ask, I hope the legislature is prepared to explain what this different purpose is. In addition, the existing statutes do not recognize permanent partial impairment as a disability, yet like permanent total disability, it too can last for a substantial period into the future. Does it also serve a different purpose?

(3) Does the answer to question (2) above somehow explain Sec. 7. AS 23.30.220. (a) (10). Remember, AS 23.30.180 only defines permanent total disability and the compensation to be paid for it. A review of Larson or the CJS (ask a legislative attorney) explains that all injured employees are naturally born malingerers and must be paid only 80 percent of their spendable weekly wage to ensure that they do not get too comfortable and neglect their rehabilitation. Permanent total disability is no excuse! With \$10,000 worth of job modification devices and training anyone can earn 60 percent of their former wages so that their former employer will not have to keep paying them compensation. However, if this approach fails, this permanent total disability could last for a substantial period into the future (and cost a lot of money). Since these benefits serve a different purpose than other benefits (remember (2) above), it is certainly justified to enact legislation that requires the board to reduce, in the interest of fairness, "the gross weekly earnings of a permanently totally disabled employee by considering the nature of the employee's work, work history, and resulting disability." Remember, if "compensation calculated under this paragraph may not exceed the employee's gross weekly earnings at the time of injury" as determined "under (1) - (7) of this subsection" they obviously can only go down! Apparently there is no need to consider the A.D.A. (Americans with Disabilities Act) either. After all, it is just another one of those unfunded mandates like the E.P.A.

It is to be hoped that these questions will raise a little curiosity and thoughtful discussion. Perhaps the House Judiciary Committee will even be moved to review a few of the Legislative Affairs Agency's reports prepared for each legislative session that examine court decisions and opinions of the Attorney General construing Alaska statutes. It is interesting how the Ad Hoc committee has taken virtually every supreme court decision that granted an injured employee a benefit and managed to write and have enacted legislation that specifically precludes the benefit. Yet the Legislative Counsel, in its review of the same decisions, found them to be reasonable and did not even recommend legislative review.

Considering that workers' compensation acts are examples of some of the earliest tort reform, it would be wise to examine their history with great scrutiny. The constitutionally guaranteed right of an injured employee to file a civil tort action against an employer was taken away as a legitimate exercise of the police power of the state in exchange for guaranteed benefits. Have the uncertainty and cost of litigation been reduced, though, and are commensurate benefits being provided? In Alaska, reducing the employer's cost for workers' compensation insurance has become the sole criteria for reducing the benefits to injured employees. As the cost of medical care continues to escalate an injured employee's benefits will eventually disappear altogether. As they stand right now, even a good lawyer would find it hard to prove that Alaska's workers' compensation statutes serve a legitimate purpose. Benefits, however, are not the only things disappearing. The tort reform is vanishing along with it. Sec. 8. As 23.30.250 was evidently drafted by the Ad Hoc committee out of recognition that existing tort reform manifest in the workers' compensation act may have gone too far in barring tortious acts by employees from recovery by employers. Then there is that little problem with trying to suck blood from a turnip. Being limited to taking only 20 percent off the top of future benefit payments to recover past overpayments just does not make sense when you are doing your damndest to ensure that you do not *have* any future payments. So while they were at it, the Ad Hoc committee decided to add paragraph (b) to enable employers to get a superior court judgment for the whole amount by using the existing Sec. 23.30.170, despite the fact that this section's sole purpose was to redress default by the employer in the payment of compensation already awarded by the board. Then, to make it even better, the Ad Hoc committee also made it mandatory for the board to order the employee to pay the employer's attorney fees and costs incurred in securing this judgment. They just forgot to also make it mandatory on behalf of the employee against the employer. This tort reform act seems to be becoming ever more tortuous (according to my grammar checker "This word may be confused with torturous").

When you take the worker, and the compensation, and the tort reform out of the Workers' Compensation Act the performance suffers. When the curtain rises, the audience will gaze upon a stage filled with actors whose only lines are hollow excuses and they will wonder who the producer was, and it will have been you.

Sincerely,

K. Scott McEntire

cc:	House Judiciary Committee	(907) 465-4990	
	Brian Porter, Chair	(907) 465-4930	FAX (907) 465-3834
	Joe Green, Vice Chair	(907) 465-4931	FAX (907) 465-4316
	Con Bunde	(907) 465-4843	FAX (907) 465-3871
	Cynthia Toohey	(907) 465-4919	FAX (907) 465-2137
	Al Vezey	(907) 465-3719	FAX (907) 465-3258
	Bettye Davis	(907) 465-3875	FAX (907) 465-458
	David Finkelstein	(907) 465-2435	FAX (907) 465-2294

WinFax PRO Cover Page

**I'm sending
this report
because
I have to get it
off my chest!**



Phone (907) 337-8614, Fax (907) 337-8614

To: Brian Porter

Fax Number: -1-907-465-3834

From: K. Scott McEntire

Pages: 5

Date: 3/30/95

9-LS0778\C.6 ✓
Cramer
3/29/95

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE VEZEY

TO: HB 237

1 Page 1, line 7, after ";":

2 Insert "repealing the limitation on the hours a person may be employed in a mine;
3 making a related technical amendment to avoid changing the penalties for failing to
4 make payments into an employee benefit fund;"

5 Page 3, after line 5:

6 Insert new bill sections to read:

7 **** Sec. 3.** AS 23.10.045(b) is amended to read:

8 (b) Each violation of this section is a separate offense and a person found
9 guilty of a violation is punishable under (c) - (d) of this section [IN ACCORDANCE
10 WITH THE SCHEDULE OF PUNISHMENT SET OUT IN AS 23.10.415].

11 *** Sec. 4.** AS 23.10.045 is amended by adding new subsections to read:

12 (c) A person who, whether as principal or agent, violates this section is guilty
13 of a misdemeanor and upon a first conviction is punishable by a fine of not less than
14 \$100 nor more than \$500 or by imprisonment in a jail for not less than 60 days, nor
15 more than six months, or by both.

16 (d) Upon a second conviction for a violation of this section, the punishment
17 is imprisonment in a jail for not less than 60 days, nor more than one year. A
18 "second conviction" under this section means a conviction for a violation of this
19 section that was committed within two years after a previous conviction for a
20 violation of this section. Other convictions are first convictions."

21 Renumber the following bill sections accordingly.

22 Page 8, after line 24:

9-LS0778\C.6

- 1 Insert a new bill section to read:
- 2 "* Sec. 13. AS 23.10.405, 23.10.410, and 23.10.415 are repealed."

- 3 Renumber the following bill sections accordingly.



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501
(907) 258-4040 • FAX (907) 276-7185

March 30, 1995

Anne Carpeneti
House Judiciary Committee
State Capitol. Room 118
Juneau, Alaska 99801

HAND DELIVERED

Dear Ms. Carpeneti,

Attached are copies of our position paper on HB 237, section 9, immunity for safety inspections. I have provided copies for each committee member and the Judiciary secretary. Please distribute these papers in Judiciary committee packets on HB 237, which I understand is the fourth bill under consideration April 1st.

Thank you.

A handwritten signature in cursive script that reads "Debra C. Gravo".

Debra C. Gravo
Executive Director
dch/encl.



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501
(907) 258-4040 • FAX (907) 276-7185

TO: Representative Porter, Chairman
Representative Green, Vice-Chairman
Representative Bunde
Representative Toohey
Representative Vezey
Representative B. Davis
Representative Finkelstein

Members of House Judiciary Committee

FROM: Debra C. Gravo, Executive Director
Alaska Action Trust/Alaska Academy of Trial Lawyers

DATE: March 30, 1995

RE: HB 237, section 9: immunity for safety inspections

On behalf of Alaskan trial lawyers, I wish to express our strong opposition to section 9 of HB 237.

In 1989, the Alaska Supreme Court announced its ruling in Van Biene v. Era Helicopters, Inc., 779 P.2d 315 (Alaska 1989). It held that those negligently (unreasonably) performing safety inspections could be liable if their negligent conduct was a legal cause of someone else's injury. This ruling was no surprise to the insurance industry. Illinois has had this rule of law for approximately 30 years, Alabama for over 20 years and Georgia for about 20 years. The rule is codified in the Restatement (Second) of Torts, at Section 323, and has been well established in the United States for the better part of a century.

It should be noted that an injured worker can never sue his employer or co-employees. That has been the law in Alaska for over thirty years. See AS 23.30.055. Van Biene is the only reported case in Alaska where this kind of a claim has been made against a defendant. There appear to be very few cases of this type that have been brought in the past.

There is no hard evidence before the legislature that safety inspections are not being performed, or that those performing them are being sued. The end of the "deep-pocket" theory with the passage of Proposition II in 1988 (effective March 5, 1989) means that a safety inspector could never be responsible for much of plaintiff's damages unless the faulty inspection was the main reason for plaintiff's injury.

Under current law, the public policy of Alaska is in line with that of other states. Those of us who engage in activities, whether we are driving our vehicles or acting in our professions, are encouraged to do so reasonably. If our unreasonable conduct is the legal cause of injury, then we may be held accountable in damages for the consequences of that unreasonable conduct. This rule is broadly applicable to all of us, appropriately encourages reasonable and responsible conduct, and discourages the indifferent performances of important professional services such as safety inspections.

Under current law, we are all equal before the law. The legislature, in evaluating HB 237, section 9, is being asked to carve out a special exception for the insurance industry. This largely foreign industry is no more entitled to this sort of special treatment than anyone else. Section 9 of HB 237 would leave injured workers without a meaningful remedy against safety inspectors on those rare occasions where negligence causes serious injury. If a shoddy inspection relied upon by an employer caused injury to a worker, the worker and his or her family would be left with nothing more than the meager benefits allowed under the workers' compensation system. Those unreasonably performing the safety inspection would be taken off the hook by this new law that encourages a disregard for the important professional functions relied upon by workers and employers around the state. Section 9 of HB 237 is bad public policy, and should be deleted from the bill.

*Break - Full
Need Amendment -
2/ top of section 19
should include
provision to
protect on to
provision by*

HB237

1/ Rates filings for workers' comp can't have a higher rate when the only basis for the higher rate is wages paid;

2/ Rate filings for workers' comp may be files if there is reasonable bethod of recognizing different wage rates;

3/ A person covered by worker's comp may not sue a design professional responsible for the project except

1/ If professional specifically assumed responsibility for safety;

2/ Professional exercises control of project;

3/ Professional prepared plans with negligence, recklessness, or intentional misconduct;

4/ Redrafts section on rules for out of state recipients to add workers with concurrent contracts and permanent total disability recipients to the provision that the benefits can only be based on in state wages;

5/ Eliminates the reduction of benefits after 5 and 8 years to surviving spouses (keeps provision that all benefits stop a 10 years from death);

6/ Redrafts AS 23.30.220(a) (Determination of spendable weekly wage); it adopts a method for reducing wage rates for other than weekly wages to a weekly basis; gives the board discretion to adjust weekly earnings calculations for permanent totally disabled people for fairness;

7/ Expands sections setting out fraudulent or misleading conduct, although the penalties are the same;

8/ Provides immunity from civil liability for safety inspectors of employers; it excepts intentional misconduct from immunity.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 130 (STA)

Revision Date: _____
 Title: Regulation Adoption Procedures and Review

 Sponsor: Representative Kelly
 Requestor: _____

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

COMPONENT SERIAL NO. 1233

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
-----------------------------	----------	----------	----------	----------	----------	----------

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

FUND SOURCE (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/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 95) cost: \$ _____

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2521
 Date: 3-30-95
 Date: 3/30/95

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 130 (STA)

Revision Date: _____
Title: Regulation Adoption Procedures and Review

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

Sponsor: Representative Kelly
Requestor: Representative Kelly

COMPONENT SERIAL NO. _____ #354

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

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

Prepared by: Joan Brown, Administrative Officer
Division: Insurance
Approved by Commissioner: William L. Hensley
Agency: Commerce and Economic Development

Phone: 465-2597
Date: 3/30/95
Date: 3/30/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 130 (STA)

Revision Date: _____
 Title: Regulation Adoption Procedures and Review
 Sponsor: Representative Kelly
 Requestor: Representative Kelly

Department: Commerce and Economic Development
 BRU: Insurance
 Component: Operations
 COMPONENT SERIAL NO. #354

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

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

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

Prepared by:	Joan Brown, Administrative Officer <i>J. Brown</i>	Phone: 465-2597
Division:	Insurance	Date: 3/30/95
Approved by Commissioner:	William L. Hensley <i>W. Hensley</i>	Date: 3/30/95
Agency:	Commerce and Economic Development	

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

AMENDMENT # 2

OFFERED IN THE HOUSE
TO: HB 237

BY REPRESENTATIVE MULDER

- 1 Page 8, lines 20 - 21:
- 2 Delete "does not continue through an entire calendar year"
- 3 Insert "is not intended to continue through an entire calendar year, but recurs on an
- 4 annual basis"

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 237

- 1 Page 3, line 19, after "occurred;":
- 2 Insert "or"

Sponsor Statement House Bill 237

For the past 13 years, the Ad Hoc Committee on Workers' Compensation, a private citizen initiative group with representatives from both management and labor associations from around the state, has been working to find solutions to the concerns surrounding Alaska's Workers' Compensation system. Through their efforts the Ad Hoc Committee has been very instrumental in getting several pieces of major workers' compensation reform passed by the legislature.

In October of 1993, the Ad Hoc Committee began meeting regularly and came up with the framework of what is now House Bill 237. The Ad Hoc Committee addressed six specific problem areas in Alaska's workers' compensation laws and came up with solutions agreeable to both labor and management. The six issues dealt with by the Ad Hoc Committee and now House Bill 237 are: death benefit revision, immunity for workplace safety inspections (also known as Van Biene), design professional construction site liability limit, contractor premium adjustable rate, determination of spendable weekly wages (also known as Gilmore), and workers' compensation fraud. Attached to this sponsor statement is a letter from the Ad Hoc Committee giving a break down of these six issues.

It is my hope that the effort put forth by this group will be recognized for its importance and House Bill 237 will be accepted without change.

HOUSE COMMITTEE REPORT

3/17/95

(7)

Date Referred: March 6, 1995

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 3-15-95

The LABOR AND COMMERCE Committee considered:

HB 237

HOUSE BILL NO. 237

WORKERS' COMPENSATION AMENDMENTS

"An Act relating to workers' compensation insurance rate filings; to second independent medical evaluations for workers' compensation claims; to immunity for third-party design professionals from civil actions by recipients of workers' compensation benefits; to workers' compensation death benefits; to computation of workers' compensation benefits; to penalties for fraudulent acts related to workers' compensation; to immunity for employer workplace safety inspections related to workers' compensation insurance; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

3) zero fiscal note(s) Commerce zero fiscal note(s) _____
Labour; Admin

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i> Rokeberg	✓			
<i>[Signature]</i> Kott	✓			
<i>[Signature]</i> MASEK			✓	
<i>[Signature]</i> Kubina			✓	
<i>[Signature]</i> Elton			✓	
<i>[Signature]</i> Porter	✓			
	(3)		(3)	

CHAIR'S SIGNATURE *[Signature]*
 Kott

FISCAL NOTE

NO. _____
 Bill Version: HB 237
 (H) Publish Date: 3/17/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: Workers' Compensation
Amendments
 Sponsor: Representative Mulder
 Requestor: House Labor & Commerce

Department Affected: Labor
 BRU: Workers' Compensation
 Componer: Workers' Compensation
 COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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						
---------	--	--	--	--	--	--

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING:

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact \$ None

ANALYSIS: (Attach a separate page if necessary) Two sections of HB237 would fiscally impact the Workers' Compensation Division. Section 4, AS 23.30.095 (k) "...board may require that a second independent medical evaluation (SHALL) be conducted..." Having the board determine when an IME is necessary would reduce current work load of the adjudication unit. However, the workload reduction of Section 4 would be offset by Section 8, AS23.30.250 (b) "If the board after a hearing, finds that a person has obtained..." This section requires additional hearings that would be complex in nature and require an increase in staff time. The combined effect of these two sections of HB 237 is a zero fiscal impact for the Division.

Prepared by: Paul Grossl, Director Phone: 465-2790
 Division: Workers' Compensation Date: 3/10/95

Approved by Commissioner: Tom Cashen, Commissioner
 Agency: Department of Labor Date: 3/10/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

COMMITTEE COPY

FISCAL NOTE

No. 1
 Bill Version: HR 237
 (H) Publish Date: 3/17/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to workers' compensation insurance rate filings to second independent medical evaluations..."
 Sponsor: Mulder
 Requestor: (H) L&C

Department Affected: Administration
 BRU: Risk Management
 Component: Risk Management
 COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 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						
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 any current year (FY 95) cost: \$-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Division of Risk Management.

Prepared by: J. Brad Thompson, Director
 Division: Risk Management

Phone: 465-5723
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/13/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

COMMITTEE COPY For further distribution information, call the Governor's Legislative Office

ALASKA

LABOR-MANAGEMENT AD HOC COMMITTEE ON WORKERS' COMPENSATION

February 23, 1995

The Honorable Eldon Mulder
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Mulder:

The Alaska Labor-Management Ad Hoc Committee on Workers' Compensation is in its thirteenth year of service as a private citizen initiative group formed to fairly address concerns in regard to the Alaska Workers' Compensation system. It was through the efforts of the Ad Hoc Committee that major legislative reform was passed in 1989. Those measures resulted in four years of premium reductions, with 1994 being the first year of a rate increase since 1987.

The Ad Hoc Committee has been meeting regularly since October, 1993 in an attempt to work through some major issues related to workers' compensation. We have recently reached a resolution on several key items that form the basis of our proposed 1995 legislation. Our proposed legislation has had a preliminary review by the Division of Workers' Compensation. The proposed bill contains the following elements:

- **Death Benefit Revision** - The current death benefit has a 10-year cap and also calls for the reduction of benefits at the 5- and 8-year time frame. Although the 10-year cap is still retained to control the cost of claims, it was suggested that the reduction intervals could create hardships for a surviving spouse with small children. It has been estimated that the elimination of the 5- and 8-year reductions will result in an average premium increase of 0.6%.
- **Van Blene** - This portion of the bill provides immunity for insurance carriers, trade associations and other persons providing worksite safety inspections. These inspections are often voluntary and are conducted in the interest of promoting safety in the workplace. Without this immunity, many of the workplace safety inspections will be curtailed to the disadvantage of both employees and employers.

Post-It™ brand fax transmittal memo 7671		# of pages	11
To: Eldon Mulder		From:	William Mulder Hensel
Co.		Co.	
Dept.		Phone #	907-3050
Fax # 465-3518		Fax #	

- **Design Professional Construction Site Liability Limit** - Design professionals (i.e. architects, engineers and land surveyors) have limited involvement at the construction site with their main function being periodic observation for conformance to design requirements. While the role of design professionals is clearly defined in contract language, there have been a number of instances in which design professionals have been drawn into lawsuits based simply on their presence at the site.

The proposed statute still allows the injured employee of the contractor to bring suit against the design professional based on negligent plans and specifications. However, the statute prevents the more general charge of professional negligence through failing to detect potentially dangerous conditions during observation of construction. The recognition and correction of such conditions is the sole responsibility of the construction contractor who has control of the work.

Fourteen other states provide a similar immunity, with eight states utilizing nearly identical language.

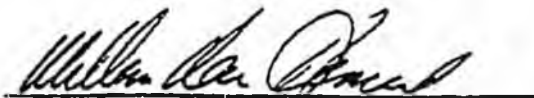
- **Contractor Premium Adjustment Rate** - The construction industry has long sought a more equitable method of distributing the cost of workers' compensation premiums. With the large variance in pay scale, higher paying employers pay a larger cost for workers' compensation although some costs related to injuries are fixed regardless of wage (e.g. medical, vocational rehabilitation). To bring about a more equitable system, twelve states have adopted regulations establishing a premium adjustment program for the contracting classifications. The process is handled administratively by the rate setting authority.
- **Determination of Spendable Weekly Wages** - A recent Supreme Court decision in the Gilmore case has resulted in confusion regarding the calculation of compensation benefits. The proposed legislation provides a fair, efficient and predictable method of calculating compensation benefits. The methods developed are patterned after model language suggested by the court in the Gilmore ruling. The legislation recognizes the importance of establishing a fair approximation that does not rely on various open-ended determinations that cause uncertainty and increases litigation for both the injured worker and their employers.
- **Fraud** - The revised section broadens the definition of misrepresentation and gives the Board the authority to order reimbursement of monies fraudulently obtained.

The Ad Hoc Committee supports the proposed bill as a single package agreed to by both sides. If you have any questions pertaining to any portion of the bill, please feel free to contact us at any time.

We would also like to point out that there are more issues involving workers' compensation that we will be addressing in the future. These include group self-insurance, medical cost containment (the medical cost portion of worker's compensation payouts in Alaska have more than doubled between 1988 and 1992, from approximately \$20 million to in excess of \$50 million), review of presumption of compensability, and review of benefits including health insurance. These issues will take further research and a great deal of discussion with various groups but they must be dealt with to insure that Alaska's Workers' Compensation system adequately protects injured workers while maintaining an equitable program for employers.

We thank you for your patience in allowing the Ad Hoc Committee to prepare our agreement and we look forward to your continued support in the future.

Sincerely yours,



Willem Van Hemert
CRW Engineering Group

Elaine Taylor
Taylcred Restoration Services

Mary Shields
Northwest Technical Services

Eric Tollefsen
CARRS Quality Centers
Treasurer, WCCA



Kevin Dougherty
District Council of Laborers

Jeffrey Wertz
Machinist Union Local 601

Royce Rock
Carpenters Union Local 1281

David Ford
Alaska Ironworkers

cc: Senator Tim Kelly
Representative Pete Kott
Representative Brian Porter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

A BILL

FOR AN ACT ENTITLED

"An Act related to workers' compensation; and providing for a effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

*Sec. 1. PURPOSE. SEE ATTACHED LEGISLATIVE INTENT FOR GILMORE. OTHER WILL
BE PROVIDED IF DEEMED NECESSARY.

*Sec. 2 AS 23.30 is amended by adding a new section to read:

AS 23.30.016 ACTION AGAINST THIRD PERSON - IMMUNITY FOR DESIGN PROFESSIONALS AND EMPLOYEES. (a) If on account of disability or death for which compensation is payable under this chapter, the person entitled to the compensation may not seek damages against a design professional who is a third person and who has been retained to perform professional services on a construction project, or any employee of a design professional who is assisting or representing the design professional in the performance of professional services on the site of the construction project, unless responsibility for safety practices is specifically assumed by contract, the provisions of which were mutually negotiated, or the design professional actually exercised control over the portion of the premises where the worker was injured.

(b) The immunity provided by this section does not apply to the negligent preparation of design plans and specifications.

(c) For the purposes of this section, "design professional" means an architect, professional engineer, or land surveyor, who is licensed or authorized by law to practice such profession, or any corporation licensed or authorized by law to practice such profession in the State of Alaska.

WST
KD

1 •Sec. 3 AS 23.30 is amended by adding a new section to read:

2 AS 23.30.036 PREMIUM RATES FOR CONSTRUCTION INDUSTRY. (a) With respect to
3 each classification of risk in the construction industry, the rating organization described in State
4 Statutes shall file with the Director of Insurance a method of computing premiums that does not
5 impose a higher insurance premium solely because of an employer's higher rate of wages paid.

6 (b) The Director shall accept a filing under subsection (1) that includes a reasonable
7 method of recognizing differences in rates of pay. This method must use a credit scale with the
8 starting point set at the Alaska average weekly wage as reported by the department.

9 (c) The rating organization shall file a revenue neutral plan for a new and renewed
10 policies by January 1, 1996 for prompt and orderly transition to a method of computing that is in
11 compliance with the requirements of this section.

12
13 •Sec. 4 AS 23.30.215 is amended to read:

14 AS 23.30.215 COMPENSATION FOR DEATH (a) If the injury causes death, the
15 compensation is known as a death benefit and is payable in the following amounts to or for the
16 benefit of the following persons:

17 (1) reasonable and necessary funeral expenses not exceeding \$2,500;

18 (2) if there is a widow or widower or a child or children of the deceased, the
19 following percentages of the spendable weekly wages of the deceased:

20 (A) 80 percent for the widow or widower with no children;

21 (B) 40 percent for the widow or widower with one child and 40 percent for the
22 child;

23 (C) 25 percent for the widow or widower with two or more children and 55 percent
24 divided equally among the children;

25 (D) 80 percent for an only child when there is no widow or widower;

26 (E) 80 percent, divided equally, if there are two or more children and no widow or
27 widower;

1 (3) if the widow or widower remarried, the widow or widower is entitled to be paid
2 in one sum an amount equal to the compensation to which the widow or widower would
3 otherwise be entitled in the tow years commencing on the date of remarriage as full and
4 final settlement of all sums due the widow or widower;

5 (4) if there is no widow or widower or child or children, then for the support of
6 father, mother, grandchildren, brothers and sisters, if dependent upon the deceased at
7 the time of injury, 42 percent of the spendable weekly wage of the deceased to such
8 beneficiaries share and share alike, not to exceed \$20,000 in the aggregate.

9 (b) In computing death benefits, the spendable weekly wage of the deceased shall be
10 computed under AS 23.30.220 and shall be paid in accordance with AS 23.30.155 and subject
11 to the weekly maximum limitation in the aggregate as provided in AS 23.20.175, but the total
12 weekly compensation may not be less than \$75 for a widow or widower no less than \$25 weekly
13 for a child or \$50 for children.

14 (c) All questions of dependency shall be determined as of the time of the injury, or
15 death.

16 (d) Compensation under this chapter to aliens not residents, or about to become
17 nonresidents, of the United States or Canada is the same in amount as provided for residents,
18 except that dependents in a foreign country are limited to widow or widower and child or
19 children, or if there is no widow or widower and child or children, to surviving father or mother
20 whom the employee has supported, either wholly or in part, for a period of one year before the
21 date of injury. The board, at its option, or upon the application of the insurance carrier, may
22 commute all future installments of compensation to be paid to an alien dependent who is not a
23 resident of the United States or Canada by paying or causing to be paid to the alien dependent
24 one-half of the commuted amount of the future installments of compensation as determined by
25 the board.

26 (e) Death benefits payable to a widow or widower in accordance with (a) of this section
27 shall abate as that person ceases to be entitled and does not inure to persons subject to

1 continued entitlement. In the event a child ceases to be entitled, that child's share shall inure to
2 the benefit of the surviving spouse. [subject to adjustment as provided in (f) of this section.]

3 (f) Except as provided in (g) of this section, the death benefit payable to a widow or
4 widower shall

5 [(1) FIVE YEARS FOLLOWING DATE OF DEATH OF THE DECEASED
6 EMPLOYEE BE REDUCED TO 66 2/3 PERCENT OF THE BENEFIT BEING THEN PAID;

7 (2) EIGHT YEARS FOLLOWING DATE OF DEATH OF THE DECEASED
8 EMPLOYEE BE REDUCED TO 50 PERCENT OF THE BENEFIT BEING THEN PAID;

9 (3)] Terminate 10 years following death of the deceased employee.

10 (g) the provisions of (f) of this section do not apply to a widow or widower who at the time
11 of death of the deceased worker is permanently and totally disabled. The death benefits
12 payable to a widow or widower are not subject to reduction under (f) of this section after the
13 widow or widower has attained the age of 52 years.

14 (h) In the event a deceased worker is survived by children of a former marriage not living
15 with the surviving widow or widower, then those children shall receive the amount being paid
16 under a decree of child support; the difference between this amount and the maximum benefit
17 payable under this section shall be distributed pro rata to the remainder of those entitled.

18 (i) In the event the total amount of all benefits computed under (a)(2) of this section
19 exceeds the maximum benefit provided in AS 23.30.175, the maximum benefit under AS
20 23.20.175 shall be prorated among entitled survivors.

21
22 *Sec. 5 AS 23.30.220(a) is replaced and reenacted to read:

23 AS 23.30(220) DETERMINATION OF SPENDABLE WEEKLY WAGES (a) The spendable
24 weekly wage of an injured employee at the time of an injury is the basis for computing
25 compensation. It is the employee's gross weekly earnings minus payroll tax deductions. The
26 gross weekly earnings shall be calculated as follows:

1 (1) If at the time of injury the wages are fixed by the week, the amount so fixed
2 shall be gross weekly earnings.

3 (2) If at the time of injury the wages are fixed by the month, the gross weekly
4 earnings shall be monthly wage so fixed multiplied by twelve and divided by fifty-two.

5 (3) If at the time of injury the wages are fixed by the year, the gross weekly
6 earnings shall be the yearly wage so fixed divided by fifty-two.

7 (4)(a) If at the time of injury the wages are fixed by the day, hour, or by the output of
8 the employee, the gross weekly earnings shall be the wage most favorable to the
9 employee computed by dividing by thirteen the wages (not including overtime or
10 premium pay) of said employee earned in the employ of the employer in the first, second,
11 third, or fourth period of thirteen consecutive calendar weeks in the fifty-two weeks
12 immediately preceding the injury.

13 (b) If at the time of injury the employee has been in the employ of the employer
14 less than thirteen calendar weeks immediately preceding the injury, his average weekly
15 wage shall be computed under the foregoing paragraph, taking the wages (not including
16 overtime or premium pay) for such purpose to be the amount he would have earned had
17 he been so employed by the employer the full thirteen calendar weeks immediately
18 preceding the injury and has worked, when work was available to other employees in a
19 similar occupation.

20 (5) If at the time of injury the wage has not been fixed or can not be ascertained,
21 the wage for the purpose of calculating compensation shall be taken to be the usual wage
22 for similar services where such services are rendered by paid employees.

23 (6) In employment which is exclusively seasonal or temporary, the gross weekly
24 earnings shall be taken to be one-fiftieth of the total wages which the employee has
25 earned from all employment during the calendar year immediately preceding the injury.

1 (7) When the employee is working under concurrent contracts with two or more
2 employers and the defendant employer has knowledge of such employment prior to the
3 injury, his wages from all such employers shall be considered as if earned from the
4 employer liable for compensation.

5 (8) current AS 23.30.220(a)(3)

6 (9) current AS 23.20.220(a)(4)

7 (10) if any claim for benefits under section .180 of this chapter were wages
8 calculated under subsection (a)(1)-(7) above do not fairly reflect the employee's earnings
9 during the period of disability, the board shall determine gross weekly earnings by
10 considering the nature of employee's work, work history, and resulting disability, but
11 gross weekly earnings so calculated may not exceed the employee's gross weekly
12 earnings at the time of injury.

13
14 *Sec. 6 AS 23.30.250 is repealed and reenacted to read:

15 AS 23.30.250 REMEDIES FOR FRAUDULENT OR MISLEADING ACTS (a) Any person,
16 insurer or employer who (1) knowingly makes a false or misleading statement, representation or
17 submission, (2) knowingly assists, abets, solicits, or conspires in the making of any false or
18 misleading statement, representation, or submission affecting the payment, coverage, or other
19 benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive
20 leasing practices for the purpose of evading full payment of insurance premiums; or (4) employs
21 or contracts persons or firms to coerce or encourage individuals to file fraudulent compensation
22 claims shall be civilly liable to any party adversely affected by such conduct, shall be guilty of
23 theft by deception as defined in AS 11.46.180 and is punishable as provided by AS 11.46.120-
24 150.

25 (b) After hearing and upon a finding that a person has obtained any payment of
26 compensation, medical treatment, or other benefit under this Chapter by willingly making a false
7 of misleading statement or representation for the purpose of obtaining that benefit, the Board

1 shall order that person to make full reimbursement of the cost of all such benefits obtained.
2 Upon entry of an order authorized under this subsection, the Board shall also order that person
3 to pay all reasonable costs and attorneys' fees incurred by the employer and its insurer in
4 obtaining an order under this section and in defending any claim made for such benefits under
5 this chapter. Orders requiring reimbursement of compensation and payment of costs and
6 attorney's fees under this section may be enforced as under Sec. 170(b) of this chapter.

7
8 *Sec. 7 AS 23.30 is amended by adding a new section to read:

9 AS 23.30.263 IMMUNITY FROM CIVIL LIABILITY FOR WORKPLACE SAFETY
10 INSPECTIONS. An employer's safety inspector is not liable for civil damages for injury to an
11 employee of that employer resulting from an act or omission in performing or failing to perform a
12 loss control service, a workplace safety inspection, or a safety advisory service provided in
13 connection with an employer's workers' compensation insurance coverage, unless the act or
14 failure to act constitutes intentional misconduct. In this section "safety inspector" means a
15 carrier and an employee or agent of the carrier, a trade association of which the employer is a
16 member, or a person providing adjusting or inspection services to an employer who is a member
17 of an association established under AS 21.76.010 or an employer who is self-insured under AS
18 23.30.090.

19
20 *Sec. 8 AS 23.30.265 is amended by adding:

21 (35) "Seasonal" employment is work which does not continue through an entire
22 calendar year.

23 (36) "Temporary" employment is work which is not permanent, will end upon
24 completion of the task, job or contract and will end within six months from the date of
25 injury.

Legislative intent.

It is the purpose of this amendment to redefine the calculation of compensation benefits to comply with the decision of the Alaska Supreme Court in *Gilmore v. Alaska Timber Exchange*, S. Ct. No. S-4765 (October 14, 1994). The legislature recognizes, as the Alaska Supreme Court stated in *Gilmore*, that efficiency in the method of calculating compensation benefits does not require unfairness and that "(a) quick, efficient, and predictable scheme for determining a worker's gross weekly earnings could be formulated without denying workers ... benefits commensurate with their actual losses. Many jurisdictions avoid the need for an alternative open-ended determination of actual future earning capacity by focusing narrowly on wages at the time of injury and converting, by formula or formulas, the worker's rate of pay into a weekly wage." *Gilmore* at 15. It is therefore the intent of this legislation to fix a fair approximation of the employee's probable future earning capacity throughout the period of disability without the need for alternative, open-ended determinations of actual future earning capacity under AS 23.30.185 and .200 in an effort to avoid uncertainty and litigation for injured workers and their employers. The legislature also recognizes that many Alaskan workers are only seasonally employed in the construction, tourism, fishing and education industries and that many Alaskans choose a subsistence lifestyle and are only occasional, sporadic and part-time, temporary members of the labor market. The statute is designed to achieve fairness to those full-time permanent members of the work force and fairness to those employers who hire the temporary or seasonal workers who are soon injured and probably would not have continued full time permanent employment given the nature of their work and work history.

The legislature further declares, however, that because benefits under AS 23.30.180 can last for a substantially longer period of time into the future and therefore serves a different purpose than temporary benefits under AS 23.30.185 and .200, an alternative open-ended determination of actual future earnings should be available for those cases where wages cannot be fairly calculated under AS 23.30.220(a)(1)-(7).

HB

242

CS FOR HOUSE BILL NO. 242(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the establishment, modification, and enforcement of support
2 orders and the determination of parentage in situations involving more than one
3 state; amending Alaska Rules of Civil Procedure 79 and (82) and providing for
4 an effective date."

WJW *Can't require payment of fees*

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

6 * Section 1. AS 25.25 is amended by adding new sections to read:

25.25

7 **ARTICLE 1. GENERAL PROVISIONS.**

This CS doesn't change title of article

8 Sec. 25.25.101. DEFINITIONS. In this chapter,

- 9 (1) "child" means an individual, whether over or under the age of
- 10 majority, who is or is alleged to be owed a duty of support by the individual's parent
- 11 or who is or is alleged to be the beneficiary of a support order directed to the parent;
- 12 (2) "child support order" means a support order for a child, including
- 13 a child who has attained the age of majority under the law of the issuing state;
- 14 (3) "duty of support" means an obligation imposed or imposable by law

1 to provide support for a child, spouse, or former spouse, including an unsatisfied
2 obligation to provide support;

3 (4) "home state" means the state in which a child lived with a parent
4 or a person acting as a parent for at least six consecutive months immediately
5 preceding the time of filing of a complaint or comparable pleading for support and, if
6 a child is less than six months old, the state in which the child lived from birth with
7 a parent or person acting as a parent; a period of temporary absence of a parent or
8 person acting as a parent is counted as part of the six-month or other period;

9 (5) "income" includes earnings or other periodic entitlements to money
10 from any source and any other property subject to withholding for support under the
11 law of this state;

12 (6) "income withholding order" means an order or other legal process
13 directed to an obligor, an obligor's employer, an obligor's future employer, or another
14 person, political subdivision, or department of the state, under AS 25.27 to withhold
15 support from the income of the obligor under AS 25.27;

16 (7) "initiating state" means a state in which a proceeding under this
17 chapter or a law substantially similar to this chapter, the former provisions of this
18 chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform
19 Reciprocal Enforcement of Support Act is filed for forwarding to a responding state;

20 (8) "initiating tribunal" means the authorized tribunal in an initiating
21 state;

22 (9) "issuing state" means the state in which a tribunal issues a support
23 order or renders a judgment determining parentage;

24 (10) "issuing tribunal" means the tribunal that issues a support order
25 or renders a judgment determining parentage;

26 (11) "law" includes decisional and statutory law and rules and
27 regulations having the force of law;

28 (12) "obligee" means

29 (A) an individual to whom a duty of support is or is alleged to
30 be owed or in whose favor a support order has been issued or a judgment
31 determining parentage has been rendered;

1 (B) a state or political subdivision to which the rights under a
2 duty of support or support order have been assigned or that has independent
3 claims based on financial assistance provided to an individual obligee; or

4 (C) an individual seeking a judgment determining parentage of
5 the individual's child;

6 (13) "obligor" means an individual or the estate of a decedent who

7 (A) owes or is alleged to owe a duty of support;

8 (B) is alleged but has not been adjudicated to be a parent of a
9 child; or

10 (C) is liable under a support order;

11 (14) "register" means to file a support order or judgment determining
12 parentage with a registering tribunal;

13 (15) "registering tribunal" means the tribunal in which a support order
14 or judgment determining parentage is registered;

15 (16) "responding state" means a state to which a proceeding is
16 forwarded under this chapter or a law substantially similar to this chapter, the former
17 provisions of this chapter, the Uniform Reciprocal Enforcement of Support Act, or the
18 Revised Uniform Reciprocal Enforcement of Support Act;

19 (17) "responding tribunal" means the authorized tribunal in a
20 responding state;

21 (18) "spousal support order" means a support order for a spouse or
22 former spouse of the obligor;

23 (19) "state" means a state of the United States, the District of
24 Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession
25 subject to the jurisdiction of the United States; the term "state" includes a foreign
26 jurisdiction that has established procedures for issuance and enforcement of support
27 orders that are substantially similar to the procedures under this chapter;

28 (20) "support enforcement agency" means a public official or agency
29 authorized to seek

30 (A) enforcement of support orders or laws relating to the duty
31 of support;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

- (B) establishment or modification of child support orders;
- (C) determination of parentage; or
- (D) the location of obligors or their assets;

(21) "support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, that provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney fees, and other relief;

(22) "tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

Sec. 25.25.102. TRIBUNALS OF THIS STATE. The superior court and the child support enforcement agency are the tribunals of this state.

Sec. 25.25.103. REMEDIES CUMULATIVE. Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.

* Sec. 2. AS 25.25 is amended by adding new sections to read:

ARTICLE 2. JURISDICTION. *Alaska*

Sec. 25.25.201. BASES FOR JURISDICTION OVER NONRESIDENT. In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if

(1) the individual is personally served with a citation, summons, or notice within this state;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this state;

(4) the individual resided in this state and provided prenatal expenses or support for the child;

(5) the child resides in this state as a result of the acts or directives of the individual;

done
Am

1 (6) the individual engaged in sexual intercourse in this state and the
2 child may have been conceived by that act of intercourse;

3 (7) the individual acknowledged parentage in a writing deposited with
4 the Bureau of Vital Statistics under AS 25.20.050; or

5 (8) there is another basis consistent with the constitutions of this state
6 and the United States for the exercise of personal jurisdiction.

7 Sec. 25.25.202. PROCEDURE WHEN EXERCISING JURISDICTION OVER
8 NONRESIDENT. A tribunal of this state exercising personal jurisdiction over a
9 nonresident under AS 25.25.201 may apply AS 25.25.316 to receive evidence from
10 another state and AS 25.25.318 to obtain discovery through a tribunal of another state.

11 In all other respects, AS 25.25.301 - 25.25.701 do not apply and the tribunal shall
12 apply the procedural and substantive law of this state, including the rules on choice of
13 law other than those established by this chapter.

14 Sec. 25.25.203. INITIATING AND RESPONDING TRIBUNAL OF THIS
15 STATE. Under this chapter, a tribunal of this state may serve as an initiating tribunal
16 to forward proceedings to another state and as a responding tribunal for proceedings
17 initiated in another state.

18 Sec. 25.25.204. SIMULTANEOUS PROCEEDINGS IN ANOTHER STATE.

19 (a) A tribunal of this state may exercise jurisdiction to establish a support order if the
20 complaint or comparable pleading is filed after a complaint or comparable pleading is
21 filed in another state only if

22 (1) the complaint or comparable pleading in this state is filed before
23 the expiration of the time allowed in the other state for filing a responsive pleading
24 challenging the exercise of jurisdiction by the other state;

25 (2) the contesting party timely challenges the exercise of jurisdiction
26 in the other state; and

27 (3) if relevant, this state is the home state of the child.

28 (b) A tribunal of this state may not exercise jurisdiction to establish a support
29 order if the complaint or comparable pleading is filed before a complaint or
30 comparable pleading is filed in another state if

31 (1) the complaint or comparable pleading in the other state is filed

1 before the expiration of the time allowed in this state for filing a responsive pleading
2 challenging the exercise of jurisdiction by this state;

3 (2) the contesting party timely challenges the exercise of jurisdiction
4 in this state; and

5 (3) if relevant, the other state is the home state of the child.

6 Sec. 25.25.205. CONTINUING, EXCLUSIVE JURISDICTION. (a) A
7 tribunal of this state issuing a support order consistent with the law of this state has
8 continuing, exclusive jurisdiction over a child support order

9 (1) as long as this state remains the residence of the obligor, the
10 individual obligee, or the child for whose benefit the support order is issued; or

11 (2) until each individual party has filed written consent with the tribunal
12 of this state for a tribunal of another state to modify the order and assume continuing,
13 exclusive jurisdiction.

14 (b) A tribunal of this state issuing a child support order consistent with the law
15 of this state may not exercise its continuing jurisdiction to modify the order if the
16 order has been modified by a tribunal of another state under a law substantially similar
17 to this chapter.

18 (c) If a child support order of this state is modified by a tribunal of another
19 state under a law substantially similar to this chapter, a tribunal of this state loses its
20 continuing, exclusive jurisdiction with regard to prospective enforcement of the order
21 issued in this state and may only

22 (1) enforce the order that was modified as to amounts accruing before
23 the modification;

24 (2) enforce nonmodifiable aspects of that order; and

25 (3) provide other appropriate relief for violations of that order that
26 occurred before the effective date of the modification.

27 (d) A tribunal of this state shall recognize the continuing, exclusive jurisdiction
28 of a tribunal of another state that has issued a child support order under a law
29 substantially similar to this chapter.

30 (e) A temporary support order issued ex parte or pending resolution of a
31 jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing

1 tribunal.

2 (f) A tribunal of this state issuing a support order consistent with the law of
3 this state has continuing, exclusive jurisdiction over a spousal support order throughout
4 the existence of the support obligation. A tribunal of this state may not modify a
5 spousal support order issued by a tribunal of another state having continuing, exclusive
6 jurisdiction over that order under the law of that state.

7 Sec. 25.25.206. ENFORCEMENT AND MODIFICATION OF SUPPORT
8 ORDER BY TRIBUNAL HAVING CONTINUING JURISDICTION. (a) A tribunal
9 of this state may serve as an initiating tribunal to request a tribunal of another state to
10 enforce or modify a support order issued in that state.

11 (b) A tribunal of this state having continuing, exclusive jurisdiction over a
12 support order may act as a responding tribunal to enforce or modify the order. If a
13 party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides
14 in the issuing state, in subsequent proceedings the tribunal may apply AS 25.25.316
15 to receive evidence from another state and AS 25.25.318 to obtain discovery through
16 a tribunal of another state.

17 (c) A tribunal of this state that lacks continuing, exclusive jurisdiction over a
18 spousal support order may not serve as a responding tribunal to modify a spousal
19 support order of another state.

20 Sec. 25.25.207. RECOGNITION OF CHILD SUPPORT ORDERS. (a) If a
21 proceeding is brought under this chapter, and one or more child support orders have
22 been issued in this or another state with regard to an obligor and a child, a tribunal of
23 this state shall apply the following rules in determining which order to recognize for
24 purposes of continuing, exclusive jurisdiction:

25 (1) if only one tribunal has issued a child support order, the order of
26 that tribunal shall be recognized;

27 (2) if two or more tribunals have issued child support orders for the
28 same obligor and child, and only one of the tribunals would have continuing, exclusive
29 jurisdiction under this chapter, the order of that tribunal shall be recognized;

30 (3) if two or more tribunals have issued child support orders for the
31 same obligor and child, and more than one of the tribunals would have continuing,

1 exclusive jurisdiction under this chapter, an order issued by a tribunal in the current
2 home state of the child shall be recognized but, if an order has not been issued in the
3 current home state of the child, the order most recently issued must be recognized;

4 (4) if two or more tribunals have issued child support orders for the
5 same obligor and child, and none of the tribunals would have continuing, exclusive
6 jurisdiction under this chapter, the tribunal of this state may issue a child support order
7 that shall be recognized.

8 (b) The tribunal that has issued an order recognized under (a) of this section
9 is the tribunal having continuing, exclusive jurisdiction.

10 Sec. 25.25.208. MULTIPLE CHILD SUPPORT ORDERS FOR TWO OR
11 MORE OBLIGEES. In responding to multiple registrations or complaints for
12 enforcement of two or more child support orders in effect at the same time with regard
13 to the same obligor and different individual obligees, when at least one of the orders
14 was issued by a tribunal of another state, a tribunal of this state shall enforce those
15 orders in the same manner as if the multiple orders had been issued by a tribunal of
16 this state.

17 Sec. 25.25.209. CREDIT FOR PAYMENTS. Amounts collected and credited
18 for a particular period under a support order issued by a tribunal of another state shall
19 be credited against the amounts accruing or accrued for the same period under a
20 support order issued by the tribunal of this state.

21 * Sec. 3. AS 25.25 is amended by adding new sections to read:

22 ARTICLE 3. CIVIL PROVISIONS OF GENERAL APPLICATION.

23 Sec. 25.25.301. PROCEEDINGS UNDER THIS CHAPTER. (a) Except as
24 otherwise provided in this chapter, AS 25.25.301 - 25.25.319 apply to all proceedings
25 under this chapter.

26 (b) This chapter provides for the following proceedings:

27 (1) establishment of an order for child support or spousal support under
28 AS 25.25.401;

29 (2) enforcement of a support order and income withholding order of
30 another state without registration under AS 25.25.501 - 25.25.502;

31 (3) registration of an order for child support or spousal support of

1 another state for enforcement under AS 25.25.601 - 25.25.612;

2 (4) modification of an order for child support or spousal support issued
3 by a tribunal of this state under AS 25.25.203 - 25.25.206;

4 (5) registration of an order for child support of another state for
5 modification under AS 25.25.601 - 25.25.612;

6 (6) determination of parentage under AS 25.25.701; and

7 (7) assertion of jurisdiction over nonresidents under AS 25.25.201 -
8 25.25.202.

9 (c) An individual or a support enforcement agency may commence a
10 proceeding authorized under this chapter by filing a complaint or a comparable
11 pleading in an initiating tribunal for forwarding to a responding tribunal or by filing
12 a complaint or a comparable pleading directly in a tribunal of another state that has
13 or can obtain personal jurisdiction over the respondent.

14 Sec. 25.25.302. ACTION BY MINOR PARENT. A minor parent, or a
15 guardian or other legal representative of a minor parent, may maintain a proceeding
16 on behalf of or for the benefit of the minor's child.

17 Sec. 25.25.303. APPLICATION OF LAW OF THIS STATE. Except as
18 otherwise provided by this chapter, a responding tribunal of this state shall *Law Tribunal*

19 (1) apply the procedural and substantive law, including the rules on
20 choice of law, generally applicable to similar proceedings originating in this state and
21 may exercise all powers and provide all remedies available in those proceedings; and

22 (2) determine the duty of support and the amount payable under the law
23 and support guidelines of this state.

24 Sec. 25.25.304. DUTIES OF INITIATING TRIBUNAL. Upon the filing of
25 a complaint or comparable pleading authorized by this chapter, an initiating tribunal
26 of this state shall forward three copies of the complaint or comparable pleading and
27 its accompanying documents

28 (1) to the responding tribunal or appropriate support enforcement
29 agency in the responding state; or

30 (2) if the identity of the responding tribunal is unknown, to the state
31 information agency of the responding state with a request that they be forwarded to the

1 appropriate tribunal and that receipt be acknowledged.

2 Sec. 25.25.305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.

3 (a) When a responding tribunal of this state receives a complaint or comparable
4 pleading from an initiating tribunal or directly under AS 25.25.301(c), it shall cause
5 the complaint or pleading to be filed and notify the petitioner by first class mail where
6 and when it was filed.

7 (b) A responding tribunal of this state, to the extent otherwise specifically
8 authorized by law, may do one or more of the following:

9 (1) issue or enforce a support order, modify a child support order, or
10 render a judgment to determine parentage; X

11 (2) order an obligor to comply with a support order, specifying the
12 amount and the manner of compliance;

13 (3) order income withholding;

14 (4) determine the amount of any arrearages, and specify a method of
15 payment;

16 (5) enforce orders by civil or criminal contempt, or both;

17 (6) set aside property for satisfaction of the support order;

18 (7) place liens and order execution on the obligor's property;

19 (8) order an obligor to keep the tribunal informed of the obligor's
20 current residential address, telephone number, employer, address of employment, and
21 telephone number at the place of employment;

22 (9) issue a bench warrant for an obligor who has failed after proper
23 notice to appear at a hearing ordered by the tribunal and enter the bench warrant in
24 any local and state computer systems for criminal warrants;

25 (10) order the obligor to seek appropriate employment by specified
26 methods;

27 (11) award reasonable attorney fees and other fees and costs; and

28 (12) grant any other available remedy.

29 (c) A responding tribunal of this state shall include in a support order issued
30 under this chapter, or in the documents accompanying the order, the calculations on
31 which the support order is based.

1 (d) A responding tribunal of this state may not condition the payment of a
2 support order issued under this chapter upon compliance by a party with provisions for
3 visitation.

4 (e) If a responding tribunal of this state issues an order under this chapter, the
5 tribunal shall send a copy of the order by first class mail to the petitioner and the
6 respondent and to the initiating tribunal, if any.

7 Sec. 25.25.306. INAPPROPRIATE TRIBUNAL. If a complaint or comparable
8 pleading is received by an inappropriate tribunal of this state, it shall forward the
9 complaint or pleading, and accompanying documents, to an appropriate tribunal in this
10 state or another state and notify the petitioner by first class mail where and when the
11 complaint or pleading was sent.

12 Sec. 25.25.307. DUTIES OF CHILD SUPPORT ENFORCEMENT AGENCY.

13 (a) The child support enforcement agency of this state, upon request, shall provide
14 services to a petitioner in a proceeding under this chapter.

15 (b) In providing services under this chapter to the petitioner, the child support
16 enforcement agency shall, as appropriate,

17 (1) take all steps necessary to enable an appropriate tribunal in this
18 state or another state to obtain jurisdiction over the respondent;

19 (2) request an appropriate tribunal to set a date, time, and place for a
20 hearing;

21 (3) make a reasonable effort to obtain all relevant information,
22 including information as to income and property of the parties;

23 (4) send written notice from an initiating, responding, or registering
24 tribunal to the petitioner by first class mail within two days of receipt, exclusive of
25 Saturdays, Sundays, and legal holidays;

26 (5) send a copy of a written communication from the respondent or the
27 respondent's attorney to the petitioner by first class mail within two days of receipt,
28 exclusive of Saturdays, Sundays, and legal holidays; and

29 (6) notify the petitioner if jurisdiction over the respondent cannot be
30 obtained.

31 (c) This chapter does not create or negate a relationship of attorney and client

1 or other fiduciary relationship between the child support enforcement agency or the
2 attorney for the agency and the individual being assisted by the agency.

3 Sec. 25.25.309. PRIVATE COUNSEL. An individual may employ private
4 counsel to represent the individual in proceedings authorized by this chapter.

5 Sec. 25.25.310. DUTIES OF STATE INFORMATION AND LOCATOR
6 AGENCY. The child support enforcement agency is the state information agency
7 under this chapter, and it shall

8 (1) compile and maintain a current list, including addresses, of the
9 courts in this state that have jurisdiction under this chapter and the appropriate agency
10 offices in this state and transmit a copy to the state information agency of every other
11 state;

12 (2) maintain a register of tribunals and support enforcement agencies
13 received from other states;

14 (3) forward to the appropriate tribunal in this state all documents
15 concerning a proceeding under this chapter received from an initiating tribunal or the
16 state information agency of the initiating state; and

17 (4) obtain information concerning the location of the obligor and the
18 obligor's property within this state that is not exempt from execution by such means
19 as postal verification and federal or state locator services, examination of telephone
20 directories, requests for the obligor's address from employers, and examination of
21 governmental records, including, to the extent not prohibited by other law, those
22 relating to real property, vital statistics, law enforcement, taxation, motor vehicles,
23 driver's licenses, and social security.

24 Sec. 25.25.311. PLEADINGS AND ACCOMPANYING DOCUMENTS. (a)
25 A petitioner seeking to establish or modify a support order or to determine parentage
26 in a proceeding under this chapter shall verify the complaint or comparable pleading.
27 Unless otherwise ordered under AS 25.25.312, or otherwise prohibited by law, the
28 complaint or comparable pleading or accompanying documents must provide, so far
29 as known, the name, residential address, and social security numbers of the obligor and
30 the obligee, and the name, sex, residential address, social security number, and date
31 of birth of each child for whom support is sought. The complaint or comparable

1 pleading must be accompanied by a certified copy of any support order in effect. The
2 complaint or comparable pleading may include other information that may assist in
3 locating or identifying the respondent.

4 (b) The complaint or comparable pleading must specify the relief sought. The
5 complaint or comparable pleading and accompanying documents must conform
6 substantially with the requirements imposed by the forms mandated by federal law for
7 use in cases filed by a support enforcement agency.

8 Sec. 25.25.312. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL
9 CIRCUMSTANCES. Subject to the provisions of AS 25.27.275 and upon a finding,
10 which may be made ex parte, that the health, safety, or liberty of a party or child
11 would be unreasonably put at risk by the disclosure of identifying information, or if
12 an existing order so provides, a tribunal shall order that the address of the child or
13 party or other identifying information not be disclosed in a pleading or other document
14 filed in a proceeding under this chapter.

15 Sec. 25.25.313. COSTS AND FEES. (a) Notwithstanding any other provision
16 of law, including a rule of the Alaska Supreme Court, at the time a complaint or
17 comparable pleading is filed under this chapter, a tribunal may not require the
18 petitioner to pay a filing fee or other costs.

19 (b) If an obligee prevails, a responding tribunal may assess against an obligor
20 filing fees, including fees that were waived under (a) of this section, reasonable
21 attorney fees, other costs, necessary travel expenses, and other reasonable expenses
22 incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees,
23 costs, or expenses against the obligee or the support enforcement agency of either the
24 initiating or the responding state except as required by other law or court rule.
25 Attorney fees may be taxed as costs, and may be ordered paid directly to the attorney,
26 who may enforce the order in the attorney's own name. Payment of support owed to
27 the obligee has priority over fees, costs, and expenses assessed under this subsection.

28 (c) The tribunal shall order the payment of costs and reasonable attorney fees,
29 including filing fees that were waived under (a) of this section, by a party who
30 requests a hearing under this chapter if it determines that the hearing was requested
31 primarily for delay. In a proceeding under AS 25.25.601 - 25.25.612, a hearing is

1 presumed to have been requested primarily for delay if a registered support order is
2 confirmed or enforced without change; however, the party who requested the hearing
3 may present evidence to rebut this presumption.

4 Sec. 25.25.314. LIMITED IMMUNITY OF PETITIONER. (a) Participation
5 by a petitioner in a proceeding before a responding tribunal, whether in person, by
6 private attorney, or through services provided by the support enforcement agency, does
7 not confer personal jurisdiction over the petitioner in another proceeding.

8 (b) A petitioner is not amenable to service of civil process while physically
9 present in this state to participate in a proceeding under this chapter.

10 (c) The immunity granted by this section does not extend to civil litigation
11 based on acts unrelated to a proceeding under this chapter committed by a party while
12 present in this state to participate in the proceeding.

13 Sec. 25.25.315. NONPARENTAGE AS DEFENSE. A party whose parentage
14 of a child has been previously determined under law may not plead nonparentage as
15 a defense to a proceeding under this chapter.

16 Sec. 25.25.316. SPECIAL RULES OF EVIDENCE AND PROCEDURE. (a)
17 The physical presence of the petitioner in a responding tribunal of this state is not ✕
18 required for the establishment, enforcement, or modification of a support order or the
19 rendition of a judgment determining parentage.

20 (b) A verified complaint or comparable pleading, affidavit, document
21 substantially complying with federally mandated forms, and a document incorporated
22 by reference in any of them, not excluded under the hearsay rule if given in person,
23 is admissible in evidence if given under oath by a party or witness residing in another
24 state.

25 (c) A copy of the record of child support payments certified as a true copy of
26 the original by the custodian of the record may be forwarded to a responding tribunal.
27 The copy is evidence of facts asserted in it and is admissible to show whether
28 payments were made.

29 (d) Copies of bills for testing for parentage, and for prenatal and postnatal
30 health care of the mother and child, furnished to the adverse party at least 10 days
31 before trial or other proceeding, are admissible in evidence to prove the amount of the

1 charges billed and that the charges were reasonable, necessary, and customary.

2 (e) Documentary evidence transmitted from another state to a tribunal of this
3 state by telephone, telecopier, or other means that do not provide an original writing
4 may not be excluded from evidence on an objection based on the means of
5 transmission.

6 (f) In a proceeding under this chapter, a tribunal of this state may permit a
7 party or witness residing in another state to be deposed or to testify by telephone,
8 audiovisual means, or other electronic means at a designated tribunal or other location
9 in that state. A tribunal of this state shall cooperate with tribunals of other states in
10 designating an appropriate location for the deposition or testimony.

11 (g) If a party called to testify at a civil hearing refuses to answer on the
12 ground that the testimony may be self-incriminating, the trier of fact may draw an
13 adverse inference from the refusal.

14 (h) A privilege against disclosure of communications between spouses does not
15 apply in a proceeding under this chapter.

16 (i) The defense of immunity based on the relationship of husband and wife or
17 parent and child does not apply in a proceeding under this chapter.

18 Sec. 25.25.317. COMMUNICATIONS BETWEEN TRIBUNALS. A tribunal
19 of this state may communicate with a tribunal of another state in writing, or by
20 telephone or other means, to obtain information concerning the laws of that state, the
21 legal effect of a judgment, decree, or order of that tribunal, and the status of a
22 proceeding in the other state. A tribunal of this state may furnish similar information
23 by similar means to a tribunal of another state.

24 Sec. 25.25.318. ASSISTANCE WITH DISCOVERY. A tribunal of this state
25 may

26 (1) request a tribunal of another state to assist in obtaining discovery;
27 and

28 (2) upon request, compel a person over whom it has jurisdiction to
29 respond to a discovery order issued by a tribunal of another state.

30 Sec. 25.25.319. RECEIPT AND DISBURSEMENT OF PAYMENTS. The
31 child support enforcement agency of this state shall disburse promptly any amounts

1 received under a support order, as directed by the order. The agency shall furnish to
2 a requesting party or tribunal of another state a certified statement by the custodian of
3 the record of the amounts and dates of all payments received.

4 ARTICLE 4. ESTABLISHMENT OF SUPPORT ORDER.

5 Sec. 25.25.401. COMPLAINT TO ESTABLISH SUPPORT ORDER. (a) If
6 a child support order entitled to recognition under this chapter has not been issued, a
7 responding tribunal of this state may issue a child support order if

8 (1) the individual seeking the order resides in another state; or

9 (2) the support enforcement agency seeking the order is located in
10 another state.

11 (b) The tribunal may issue a temporary child support order if

12 (1) the respondent has signed a verified statement acknowledging
13 parentage;

14 (2) the respondent has been determined under law to be the parent; or

15 (3) there is other clear and convincing evidence that the respondent is
16 the child's parent.

17 (c) If a spousal support order entitled to recognition under this chapter has not
18 been issued, a responding superior court of this state may issue a spousal support order
19 if

20 (1) the individual seeking the order resides in another state; or

21 (2) the support enforcement agency seeking the order is located in
22 another state.

23 (d) If, after providing an obligor with notice and opportunity to be heard, an
24 appropriate tribunal finds that the obligor owes a duty of support, the tribunal shall
25 issue a support order directed to the obligor and may issue other orders under
26 AS 25.25.305.

27 (e) Before issuing an order under (b) of this section, the child support
28 enforcement agency shall adopt regulations for issuing such an order.

29 ARTICLE 5. DIRECT ENFORCEMENT OF ORDER OF
30 ANOTHER STATE WITHOUT REGISTRATION.

31 Sec. 25.25.501. RECOGNITION OF INCOME WITHHOLDING ORDER OF

1 ANOTHER STATE. (a) An income withholding order issued in another state may
2 be sent by first class mail to the person or entity defined as the obligor's employer
3 under AS 25.27 without first filing a complaint or comparable pleading or registering
4 the order with a tribunal of this state. Upon receipt of the order, the employer shall

5 (1) treat an income withholding order issued in another state that
6 appears regular on its face as if it had been issued by a tribunal of this state;

7 (2) immediately provide a copy of the order to the obligor; and

8 (3) distribute the funds as directed in the withholding order.

9 (b) An obligor may contest the validity or enforcement of an income
10 withholding order issued in another state in the same manner as if the order had been
11 issued by a tribunal of this state. AS 25.25.604 applies to the contest. The obligor
12 shall give notice of the contest to a support enforcement agency providing services to
13 the obligee and

14 (1) to the person or agency designated to receive payments in the
15 income withholding order; or

16 (2) if a person or agency is not designated, to the obligee.

17 Sec. 25.25.502. ADMINISTRATIVE ENFORCEMENT OF ORDERS. (a) A
18 party seeking to enforce a support order or an income withholding order, or both,
19 issued by a tribunal of another state may send the documents required for registering
20 the order to the child support enforcement agency of this state.

21 (b) Upon receipt of the documents, the child support enforcement agency,
22 without initially seeking to register the order, shall consider and, if appropriate, use
23 any administrative procedure authorized by the law of this state to enforce a support
24 order or an income withholding order, or both. If the obligor does not contest
25 administrative enforcement, the order need not be registered. If the obligor contests
26 the validity or administrative enforcement of the order, the child support enforcement
27 agency shall register the order under this chapter.

28 ARTICLE 6. ENFORCEMENT AND MODIFICATION OF
29 SUPPORT ORDER AFTER REGISTRATION.

30 Sec. 25.25.601. REGISTRATION OF ORDER FOR ENFORCEMENT. A
31 support order or an income withholding order issued by a tribunal of another state may

1 be registered in this state for enforcement.

2 Sec. 25.25.602. PROCEDURE TO REGISTER ORDER FOR
3 ENFORCEMENT. (a) A support order or income withholding order of another state
4 may be registered in this state by sending the following documents and information
5 to a tribunal of this state:

6 (1) a letter of transmittal requesting registration and enforcement;

7 (2) two copies, including one certified copy, of all orders to be
8 registered, including any modification of an order;

9 (3) a sworn statement by the party seeking registration or a certified
10 statement by the custodian of the records showing the amount of any arrearage;

11 (4) the name of the obligor and, if known,

12 (A) the obligor's address and social security number;

13 (B) the name and address of the obligor's employer and any
14 other source of income of the obligor;

15 (C) a description and the location of property in this state of the
16 obligor not exempt from execution; and

17 (D) the name and address of all potential third party resources,
18 including a health insurer, that might be available to meet the requirements of
19 a medical support order; and

20 (5) the name and address of the obligee and, if applicable, the agency
21 or person to whom support payments are to be remitted.

22 (b) On receipt of a request for registration, the registering tribunal shall file
23 the order as a foreign judgment, together with one copy of the documents and
24 information, regardless of their form.

25 (c) A complaint or comparable pleading seeking a remedy that must be
26 affirmatively sought under other law of this state may be filed at the same time as the
27 request for registration or later. The pleading must specify the grounds for the remedy
28 sought.

29 Sec. 25.25.603. EFFECT OF REGISTRATION FOR ENFORCEMENT. (a)
30 A support order or income withholding order issued in another state is registered when
31 the order is filed in the registering tribunal of this state.

1 (b) A registered order issued in another state is enforceable in the same
2 manner and is subject to the same procedures as an order issued by a tribunal of this
3 state.

4 (c) Except as otherwise provided in AS 25.25.601 - 25.25.612, a tribunal of
5 this state shall recognize and enforce, but may not modify, a registered order if the
6 issuing tribunal had jurisdiction.

7 Sec. 25.25.604. CHOICE OF LAW. (a) The law of the issuing state governs
8 the nature, extent, amount, and duration of current payments and other obligations of
9 support and the payment of arrearages under the order.

10 (b) In a proceeding for arrearages, the statute of limitation under the laws of
11 this state or of the issuing state, whichever is longer, applies.

12 Sec. 25.25.605. NOTICE OF REGISTRATION OF ORDER. (a) When a
13 support order or income withholding order issued in another state is registered, the
14 registering tribunal shall notify the nonregistering party. Notice shall be given by first
15 class, certified, or registered mail or by any means of personal service authorized by
16 the law of this state. The notice must be accompanied by a copy of the registered
17 order and the documents and relevant information accompanying the order.

18 (b) The notice must inform the nonregistering party

19 (1) that a registered order is enforceable as of the date of registration
20 in the same manner as an order issued by a tribunal of this state;

21 (2) that a hearing to contest the validity or enforcement of the
22 registered order must be requested within 20 days after the date of mailing or personal
23 service of the notice;

24 (3) that failure to contest the validity or enforcement of the registered
25 order in a timely manner will result in confirmation of the order and enforcement of
26 the order and the alleged arrearages and precludes further contest of that order with
27 respect to any matter that could have been asserted; and

28 (4) of the amount of alleged arrearages.

29 (c) Upon registration of an income withholding order for enforcement, the
30 registering tribunal shall notify the obligor's employer under AS 25.27.

31 Sec. 25.25.606. PROCEDURE TO CONTEST VALIDITY OR

*Registration
& Contest
of Validity
of
Registered
Order*

1 ENFORCEMENT OF REGISTERED ORDER. (a) A nonregistering party seeking
2 to contest the validity or enforcement of a registered order in this state shall request
3 a hearing within 20 days after the date of mailing or personal service of notice of the
4 registration. The nonregistering party may seek to vacate the registration, to assert a
5 defense to an allegation of noncompliance with the registered order, or to contest the
6 remedies being sought or the amount of alleged arrearages under AS 25.25.607.

7 (b) If the nonregistering party fails to contest the validity or enforcement of
8 the registered order in a timely manner, the order is confirmed by operation of law.

9 (c) If a nonregistering party requests a hearing to contest the validity or
10 enforcement of the registered order, the registering tribunal shall schedule the matter
11 for hearing and give notice to the parties by first class mail of the date, time, and place
12 of the hearing.

13 Sec. 25.25.607. CONTEST OF REGISTRATION OR ENFORCEMENT. (a)
14 A party contesting the validity or enforcement of a registered order or seeking to
15 vacate the registration has the burden of proving one or more of the following
16 defenses:

- 17 (1) the issuing tribunal lacked personal jurisdiction over the contesting
18 party;
- 19 (2) the order was obtained by fraud;
- 20 (3) the order has been vacated, suspended, or modified by a later order;
- 21 (4) the issuing tribunal has stayed the order pending appeal;
- 22 ~~5~~ (5) there is a defense under the law of this state to the remedy sought;
- 23 (6) full or partial payment has been made; or
- 24 (7) the statute of limitation under AS 25.25.604 precludes enforcement
25 of some or all of the arrearages.

26 (b) If a party presents evidence establishing a full or partial defense under (a)
27 of this section, the tribunal may stay enforcement of the registered order, continue the
28 proceeding to permit production of additional relevant evidence, and issue other
29 appropriate orders. An uncontested portion of the registered order may be enforced
30 by all remedies available under the law of this state.

31 (c) If the contesting party does not establish a defense under (a) of this section

1 to the validity or enforcement of the order, the registering tribunal shall issue an order
2 confirming the order.

3 Sec. 25.25.608. CONFIRMED ORDER. Confirmation of a registered order,
4 whether by operation of law or after notice and hearing, precludes further contest of
5 the order with respect to a matter that could have been asserted at the time of
6 registration.

7 Sec. 25.25.609. PROCEDURE TO REGISTER CHILD SUPPORT ORDER OF
8 ANOTHER STATE FOR MODIFICATION. If a party or the child support
9 enforcement agency seeks to modify, or to modify and enforce, a child support order
10 issued in another state but not registered in this state, the party or agency shall register
11 that order in this state in the same manner provided in AS 25.25.601 - 25.25.604. A
12 complaint for modification may be filed at the same time as a request for registration,
13 or later. The pleading must specify the grounds for modification.

14 Sec. 25.25.610. EFFECT OF REGISTRATION FOR MODIFICATION. A
15 tribunal of this state may enforce a child support order of another state registered for
16 purposes of modification in the same manner as if the order had been issued by a
17 tribunal of this state, but the registered order may be modified only if the requirements
18 of AS 25.25.611 have been met.

19 Sec. 25.25.611. MODIFICATION OF CHILD SUPPORT ORDER OF ~~ANOTHER STATE~~
20 ANOTHER STATE. (a) After a child support order issued in another state has been
21 registered in this state, the responding tribunal of this state may modify that order only
22 if, after notice and an opportunity for hearing, it finds that

23 (1) the following requirements are met:

24 (A) the child, the individual obligee, and the obligor do not
25 reside in the issuing state;

26 (B) a petitioner who is not a resident of this state seeks
27 modification and

28 (C) the respondent is subject to the personal jurisdiction of the
29 tribunal of this state; or

30 (2) an individual party or the child is subject to the personal jurisdiction
31 of the tribunal and all of the individual parties have filed a written consent in the

1 issuing tribunal providing that a tribunal of this state may modify the support order and
2 assume continuing, exclusive jurisdiction over the order.

3 (b) Modification of a registered child support order is subject to the same
4 requirements, procedures, and defenses that apply to the modification of an order
5 issued by a tribunal of this state and the order may be enforced and satisfied in the
6 same manner.

7 (c) A tribunal of this state may not modify any aspect of a child support order
8 that may not be modified under the law of the issuing state.

9 (d) On issuance of an order modifying a child support order issued in another
10 state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

11 (e) Within 30 days after issuance of a modified child support order, the party
12 obtaining the modification shall file a certified copy of the order with the issuing
13 tribunal that had continuing, exclusive jurisdiction over the earlier order and in each
14 tribunal in which the party knows that an earlier order has been registered.

15 Sec. 25.25.612. RECOGNITION OF ORDER MODIFIED IN ANOTHER
16 STATE. A tribunal of this state shall recognize a modification of its earlier child
17 support order by a tribunal of another state that assumed jurisdiction under a law
18 substantially similar to this chapter and, upon request, except as otherwise provided
19 in this chapter, shall

20 (1) enforce the order that was modified only as to amounts accruing
21 before the modification;

22 (2) enforce only nonmodifiable aspects of that order;

23 (3) provide other appropriate relief only for violations of that order that
24 occurred before the effective date of the modification; and

25 (4) recognize the modifying order of the other state, upon registration,
26 for the purpose of enforcement.

27 ARTICLE 7. DETERMINATION OF PARENTAGE.

28 Sec. 25.25.701. PROCEEDING TO DETERMINE PARENTAGE. (a) A
29 tribunal of this state may serve as an initiating or responding tribunal in a proceeding
30 brought under this chapter or a law substantially similar to this chapter, the former
31 provisions of this chapter, the Uniform Reciprocal Enforcement of Support Act, or the

1 Revised Uniform Reciprocal Enforcement of Support Act to determine whether the
2 petitioner is a parent of a particular child or to determine whether a respondent is a
3 parent of that child.

4 (b) In a proceeding to determine parentage, a responding tribunal of this state
5 shall apply the procedural and substantive law of this state and the rules of this state
6 on choice of law. } *Choice of Law*

7 ARTICLE 8. INTERSTATE RENDITION.

8 Sec. 25.25.801. GROUNDS FOR RENDITION. (a) The governor or a
9 designee of the governor may

10 (1) demand that the governor of another state surrender an individual
11 found in the other state who is charged criminally in this state with having failed to
12 provide for the support of an obligee; or

13 (2) on the demand by the governor of another state, surrender an
14 individual found in this state who is charged criminally in the other state with having
15 failed to provide for the support of an obligee.

16 (b) A provision for extradition of individuals not inconsistent with this chapter
17 applies to the demand even if the individual whose surrender is demanded was not in
18 the demanding state when the crime was allegedly committed and has not fled from
19 that state.

20 Sec. 25.25.802. CONDITIONS OF RENDITION. (a) Before making demand
21 that the governor of another state surrender an individual charged criminally in this
22 state with having failed to provide for the support of an obligee, the governor of this
23 state or the designee of the governor may require a prosecutor of this state to
24 demonstrate that the obligee had initiated proceedings for support under this chapter
25 at least 60 days previously or that the proceeding would be of no avail.

26 (b) If, under this chapter or a law substantially similar to this chapter, the
27 former provisions of this chapter, the Uniform Reciprocal Enforcement of Support Act,
28 or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of
29 another state makes a demand that the governor of this state surrender an individual
30 charged criminally in that state with having failed to provide for the support of a child
31 or other individual to whom a duty of support is owed, the governor or a designee of

1 the governor may require a prosecutor to investigate the demand and report whether
2 a proceeding for support has been initiated or would be effective. If it appears that a
3 proceeding would be effective but has not been initiated, the governor or designee may
4 delay honoring the demand for a reasonable time to permit the initiation of a
5 proceeding.

6 (c) If a proceeding for support has been initiated and the individual whose
7 rendition is demanded prevails, the governor or the designee of the governor may
8 decline to honor the demand. If the petitioner prevails and the individual whose
9 rendition is demanded is subject to a support order, the governor or designee may
10 decline to honor the demand if the individual is complying with the support order.

11 ARTICLE 9. MISCELLANEOUS PROVISIONS.

12 Sec. 25.25.901. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
13 This chapter shall be applied and construed to effectuate its general purpose to make
14 uniform the law with respect to the subject of this chapter among states enacting it.

15 Sec. 25.25.902. SEVERABILITY CLAUSE. Under AS 01.10.030, if a
16 provision of this chapter or its application to a person or circumstance is held invalid,
17 the invalidity does not affect other provisions or applications of this chapter that can
18 be given effect without the invalid provision or application.

19 Sec. 25.25.903. SHORT TITLE. This chapter may be cited as the Uniform
20 Interstate Family Support Act.

21 * Sec. 4. AS 25.27.020(a) is amended to read: CSEA

22 (a) The agency shall

23 (1) seek enforcement of child support orders of the superior courts of
24 the state in other jurisdictions and shall obtain, enforce, and administer the orders in
25 this state;

26 (2) adopt regulations to carry out the purposes of this chapter and
27 AS 25.25, including regulations that establish

28 (A) schedules for determining the amount an obligor is liable
29 to contribute toward the support of an obligee under this chapter and under 42
30 U.S.C. 651 - 669 (Title IV-D, Social Security Act);

31 (B) procedures for hearings conducted under AS 25.27.170; and

1 (C) subject to AS 25.27.025 and to federal law, a uniform rate
2 of interest on arrearages of support that shall be charged the obligor upon
3 notice if child support payments are 10 or more days overdue or if payment is
4 made by a check backed by insufficient funds; however, an obligor may not be
5 charged interest on late payment of a child support obligation, other than a
6 payment on arrearages, if the obligor is

7 (i) employed and income is being withheld from the
8 obligor's wages under an income withholding order;

9 (ii) receiving unemployment compensation and child
10 support obligations are being withheld from the obligor's unemployment
11 payments under AS 23.20.401; or

12 (iii) receiving compensation for disabilities under
13 AS 23.30 and child support obligations are being withheld from the
14 obligor's compensation payments;

15 (3) administer and enforce AS 25.25 (Uniform Interstate Family
16 [RECIPROCAL ENFORCEMENT OF] Support Act);

17 (4) establish, enforce, and administer child support obligations
18 administratively under this chapter;

19 (5) administer the state plan required under 42 U.S.C. 651 - 669 (Title
20 IV-D, Social Security Act) as amended;

21 (6) disburse support payments collected by the agency to the obligee,
22 together with interest charged under (2)(C) of this subsection;

23 (7) establish and enforce administratively under this chapter, or through
24 the superior courts of the state, child support orders from other jurisdictions pertaining
25 to obligors within the state;

26 (8) enforce and administer spousal support orders if a spousal support
27 obligation has been established with respect to the spouse and if the support obligation
28 established with respect to the child of that spouse is also being administered; and

29 (9) obtain a medical support order as part of a child support order if
30 health care coverage is available to the obligor at a reasonable cost; the agency shall
31 consider whether adequate health care is available to the child through the Indian

1 Health Service or other insurance coverage before it orders an obligor to provide health
2 care coverage through insurance or other means; the medical support order must meet
3 the requirements of AS 25.27.063; and

4 (10) act on behalf of the Department of Health and Social Services in
5 the enforcement of AS 47.07.025(b).

6 * Sec. 5. AS 25.25.010, 25.25.020, 25.25.030, 25.25.040, 25.25.050, 25.25.060, 25.25.070,
7 25.25.080, 25.25.090, 25.25.100, 25.25.110, 25.25.120, 25.25.130, 25.25.140, 25.25.150,
8 25.25.160, 25.25.170, 25.25.171, 25.25.173, 25.25.175, 25.25.180, 25.25.190, 25.25.200,
9 25.25.210, 25.25.220, 25.25.230, 25.25.240, 25.25.250, 25.25.252, 25.25.254, 25.25.256,
10 25.25.258, 25.25.260, and 25.25.270 are repealed.

11 * Sec. 6. AS 25.25.313(c), added by sec. 3 of this Act, has the effect of amending Alaska
12 Rules of Civil Procedure 79 and 82, by requiring the court to award costs and attorney fees
13 under certain circumstances.

14 * Sec. 7. AS 25.25.313(c), added by sec. 3 of this Act, takes effect January 1, 1996, only
15 if AS 25.25.313(c) receives the two-thirds majority vote of each house required by art. IV,
16 sec. 15, Constitution of the State of Alaska.

17 * Sec. 8. Except as provided in sec. 7 of this Act, this Act takes effect January 1, 1996.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

- 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697
- KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846
- P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

March 8, 1995

Honorable Brian Porter, Chair
House Judiciary
Alaska House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

RECEIVED

APR 24 1995

Rep. Brian Porter

Re: HB 242

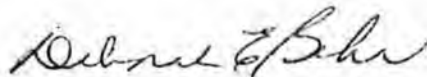
Dear Representative Porter:

We note that HB 242 (Uniform Interstate Family Support Act) is scheduled for hearing this week. Marilyn May from our Anchorage office will be available to provide testimony. She will be recommending a technical change to the bill as discussed in the attached letter.

We appreciate your scheduling this important bill for hearing.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:cl

cc: All Alaska Uniform Law Commissioners

Hon. Brian Porter, Chair
House Judiciary Committee

April 24, 1995
Page 2

Pat Pourchot, Legislative Director
Office of the Governor

Bob Baratko, Legislative Liaison
Department of Revenue

Elmer Lindstrom, Legislative Liaison
Department of Health and Social Services

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 21, 1995

The Honorable Lyda Green
Alaska State Senate
Chairman, Senate Health, Education and Social Services Committee
P. O. Box V
Juneau, Alaska 99811

Re: SB 115 An endment

Dear Senator Green:

I am the assistant attorney general who was charged with drafting the Uniform Interstate Family Support Act introduced as Senate Bill 115 (and House Bill 242). In reviewing the bill, we have determined that it would be preferable to allow the Supreme Court the opportunity to amend its own administrative rules, in order to avoid any potential separation of powers issue. Therefore we recommend deleting the reference to Alaska Rule of Administration 9 in the title of the bill, and deleting sec. 6 of the bill in its entirety. The change also would require conforming amendments in sec. 8 of the bill and the renumbering of bill sections.

Please contact me if you have any questions about this proposed amendment.

Sincerely,

BRUCE BOTELHO
ATTORNEY GENERAL

By: Marilyn May
Marilyn May
Assistant Attorney General

MM:bld

cc: Bruce M. Botelho, Attorney General
Karen Perdue, Commissioner, Department of Health and Social Services
Wilson Condon, Commissioner, Department of Revenue
Pat Pourchot, Legislative Director
Deborah Behr, Assistant Attorney General

file
TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

- 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697
- KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846
- P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6135



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 6, 1995

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Uniform Interstate Family Support Act and the repeal of the Uniform Reciprocal Enforcement of Support Act.

The bill would repeal the laws currently found in AS 25.25, the Uniform Reciprocal Enforcement of Support Act (URESAs), and replace them with a new Uniform Act, the Uniform Interstate Family Support Act (UIFSA), with minor modifications. The bill also has the effect of amending Alaska Rules of Civil Procedure 79 and 82, and Alaska Rule of Administration 9. See secs. 6 and 7 of the bill. Under art. IV, sec. 15, of the Alaska Constitution, the legislature may change a court rule governing "practice and procedure." Although the bill has the effect of amending a court rule relating to filing fees that is designated as an "administrative" rule, I believe that the rule affects individuals' substantive rights regarding access to our justice system and, therefore, is one that the legislature is authorized to change. Additionally, the provision that has the effect of amending the administrative rule is an integral part of UIFSA.

The Uniform Interstate Family Support Act was drafted to update URESAs. The bill, like URESAs, applies to those actions relating to the establishment, modification, and enforcement of support orders and the determination of parentage in situations in which the parties reside in more than one state.

* A major feature of UIFSA is that it does not require reciprocity of laws between states in order to take action under its provisions. In order to ease the transition between URESAs and UIFSA, the bill recognizes substantially similar state laws as equivalent to UIFSA for

TONY KNOWLES
GOVERNOR

The Honorable Gail Phillips

March 6, 1995

Page 2



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P O Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

purposes of interstate actions. See proposed AS 25.25.101(7) and (16) in sec. 1 of the bill. The bill also contains its own long-arm jurisdiction provision providing the home state of a supported family the maximum possible opportunity to secure personal jurisdiction over an absent parent.

The bill promotes, to the extent possible, the premise of continuing exclusive jurisdiction over support orders. Under the law as it exists under URESA, multiple orders for child support often result. UIFSA seeks to limit the existence of multiple support orders by limiting the circumstances under which subsequent support orders may be entered in states other than the initiating state.

The bill also recognizes the growing use of administrative procedures in addition to or in place of judicial proceedings in the establishment of paternity and the establishment and enforcement of support orders.

UIFSA was prepared by the National Conference of Commissioners on Uniform State Laws, which has approved and recommended it for enactment in all the states. Although it was first adopted by that conference in the summer of 1992, it has already been enacted in 21 states. There are indications that it will be introduced in as many as eight states this year. It has been endorsed by the United States Commission on Interstate Child Support, the American Bar Association, and the Conference of Chief Justices, and the bill has the support of Alaska's child support enforcement agency. Additional information from the National Conference of Commissioners on Uniform State Laws is available from my staff.

I urge your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in cursive script that reads "Tony Knowles".

Tony Knowles
Governor

LAW OFFICES
DILLON & FINDLEY

A PROFESSIONAL CORPORATION

JUNEAU

Dennis C. Bailey
Caroline Crenna
Paul L. Dillon
Thomas W. Findley
Richard D. Monkman
Arthur H. Peterson
Peter K. Puetzer

The Ebner Building
350 North Franklin Street
Juneau, Alaska 99801
Telephone (907) 586-4000
Facsimile (907) 586-3777

ANCHORAGE

Ray R. Brown
Mauri Long

510 L Street, Suite 603
Anchorage, Alaska 99501
Telephone (907) 277-5400
Facsimile (907) 277-9896

April 25, 1995

Hon. Cynthia Toohey, Co-chair
Hon. Con Bunde, Co-chair
House Health, Education, and
Social Services Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

HAND-DELIVERED

Re: HB 242, Uniform Interstate Family Support Act

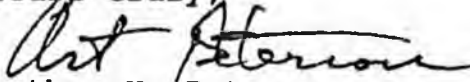
Dear Representatives Toohey and Bunde:

In connection with the hearing on HB 242, scheduled for later today in your committee, you will find attached an amendment sheet containing the technical amendments for this bill.

These amendments merely address the fact that the Alaska Supreme Court has recently amended its Administrative Rule 9 in the manner proposed by this bill. The bill should not include the references to that rule.

As mentioned in my March 10, 1995 letter to you, HB 242 is designed to achieve a more efficient, fairer system for all concerned -- the obligee, the obligor, the courts, and the agency. I urge your committee's "Do Pass" recommendation.

Yours truly,


Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Hon. Wilson Condon, Commissioner
Department of Revenue

Hon. Karen Perdue, Commissioner
Department of Health & Social Services

Patrick Pourchot, Legis. Director
Governor's Office

Rest of Alaska's ULC Delegation

A M E N D M E N T

OFFERED IN THE HOUSE

BY THE HESS COMMITTEE

TO: HB 242

1 Page 1, line 3:

2 Delete "amending Alaska Rule of Administration 9;".

3 Page 26, lines 13 -- 15:

4 Delete all of Section 6.

5 Page 26, line 16:

6 Change "* Sec. 7" to read "* Sec. 6."

7 Page 26, line 19:

8 Change "* Sec. 8" to read "* Sec. 7."

9 Delete "25.25.313(a) and" and change "take" to read "takes."

10 Page 26, line 20:

11 Delete "25.25.313(a) and" and change "receive" to read
12 "receives."

13 Page 26, line 22:

14 Change "* Sec. 9" to read "* Sec. 8," and change "sec. 8" to
15 read "sec. 7."

16

#

Uniform Interstate Family Support Act (UIFSA)
HB 242 - SB 115

UIFSA provides improved procedures for establishing, modifying and enforcing child support orders where the obligor and the obligee reside in different states. Interstate cases represent about 44% of Alaska's child support caseload. UIFSA has already been enacted by at least 21 states and may soon be required for continued federal funding.

This bill promotes efficiency and minimizes confusion, and should therefore result in additional child support collections. UIFSA:

- Eliminates the multiple-order system existing under current law, whereby two or more states may each establish and enforce different child support judgments. UIFSA instead provides for one state to have "continuing, exclusive jurisdiction" and sets out the means for determining which state has that jurisdiction.
- Recognizes the speed and efficiency of administrative action by allowing the support enforcement agency to establish paternity and to establish, modify or enforce a child support order without having to go through a court.
- Provides broad long arm jurisdiction to reach out-of-state obligors to allow the forum state to obtain as much jurisdiction as is constitutionally permissible.
- Promotes efficiency by providing for use of federal forms in all interstate cases; exchange of child support information through an interstate computer network; taking of testimony by telephone; electronic transmission of documentary evidence; and special evidentiary rules to speed the introduction of evidence in support cases.
- Allows direct income withholding -- a support order may be mailed directly to an obligor's employer in another state, requiring immediate wage withholding, without first having a support hearing in that state (the obligor has the right to object and request a hearing).

UIFSA represents a dramatic improvement over the sometimes haphazard or even chaotic circumstances surrounding child support orders under Alaska's current interstate support law, the Uniform Reciprocal Enforcement of Support Act (URESA). The elimination of the multiple-order scenario alone justifies passage of UIFSA; that along with the many other benefits should assure widespread support among both obligees and obligors.

LAW OFFICES
DILLON & FINDLEY

A PROFESSIONAL CORPORATION

The Ebner Building
350 North Franklin Street
Juneau, Alaska 99801
Telephone (907) 586-4000
Facsimile (907) 586-3777

ANCHORAGE

Ray R. Brown
Mauri Long

510 L Street, Suite 603
Anchorage, Alaska 99501
Telephone (907) 277-5400
Facsimile (907) 277-9996

JUNEAU

Dennis C. Bailey
Caroline Crenna
Paul L. Dillon
Thomas W. Findley
Richard D. Monkman
Arthur H. Peterson
Peter K. Puttier

March 10, 1995

Hon. Cynthia Toohey, Co-chair
Hon. Con Bunde, Co-chair
House Health, Education, and
Social Services Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

HAND-DELIVERED

Re: HB 242, Uniform Interstate Family Support Act

Dear Representatives Toohey and Bunde:

HB 242 has been referred to your committee, and I request that you schedule an early hearing on it. I urge a "Do Pass" report.

This bill proposes the Uniform Interstate Family Support Act (UIFSA), which is a product of the National Conference of Commissioners on Uniform State Laws (NCCUSL). It was promulgated in 1992 for the purpose of updating and replacing the Uniform Reciprocal Enforcement of Support Act (URESA) -- also a NCCUSL product.

All 50 states plus the District of Columbia, Puerto Rico, and the U. S. Virgin Islands enacted URESA. Already, at least 21 of those jurisdictions have repealed it and enacted UIFSA.

Eventually, for the protection of its people, especially its children, Alaska will have to enact UIFSA. We gain nothing by delay.

The most significant single point of this bill is its virtual elimination of the possibility of multi-state jurisdiction and conflicting support orders. That current flaw in URESA has been the bane of both obligees and obligors, as well as of the state agencies and courts charged with administering the old Act. The expected result of the new Act is a system that is more efficient and cheaper to operate, and more easily understood and fairer to the parties involved in the process, thus producing a much higher level of meeting family support obligations.

UIFSA addresses other URESA problems too, generally updating

SUPPORT

Reps. Toohy & Bunde, Co-chairs, House HESS Com.
Uniform Interstate Family Support Act
March 10, 1995

Page 2

and improving the law. For example, it adapts the traditional "long arm" jurisdiction concept to this family support context.

Thank you for your consideration of this bill and this request.

Let me know if you want additional material on UIFSA.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Hon. Wilson Condon, Commissioner
Department of Revenue

Hon. Karen Perdue, Commissioner
Department of Health & Social Services

Patrick Pourchot, Legis. Director
Governor's Office

Rest of Alaska's ULC Delegation:

Hon. Jay A. Rabinowitz
W. Grant Callow, Esq.
Tamara Brandt Cook, Esq.
L. S. Kurtz, Jr., Esq.
Deborah E. Behr, Esq.

Revision Date: _____
Title: Uniform Interstate Support Act (UIFSA)
Sponsor: Rules
Requestor: Governor

Department Affected: Revenue
BRU: Child Support Enforcement Division
Component: Child Support Enforcement Division
COMPONENT SERIAL NO. 111

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	170.0	340.0	340.0	340.0	340.0	340.0
------------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE: (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 any current year (FY 95) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary):

UIFSA applies to those actions relating to establishment, modification, and enforcement of support orders and the determining of parentage in situations where the parties reside in more than one state. The passage of this bill will improve service to case parties involved in interstate enforcement of child support orders by clarifying which state has jurisdiction. It authorizes the movement to a one order system for child support obligations that is honored by all states which pass UIFSA. UIFSA reduces agency response time in some areas in an effort to provide support collections sooner. AFDC collections will be increased by \$680,000 per year of which the state retains 50% or \$340,000. Since the effective date of the legislation in January, 1996 it would provide only \$170,000 for that fiscal year.

Prepared by: Glenda Straube
Division: Child Support Enforcement

Phone: 269-6801
Date: March 3, 1995

Approved by Commissioner: Deborah Voigt
Agency: Department of Revenue

Date: March 3, 1995

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

STATE OF ALASKA
1995 LEGISLATIVE SESSION

FISCAL NOTE

Bill Version: HB 242
(H) Publish Date: 3/8/95

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Uniform Interstate Family Support Act BRU: Assistance Payments
 Sponsor: Rules Component: AFDC
 Requestor: Governor COMPONENT SERIAL NO. 228

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
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						
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
CHANGES IN REVENUES	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	(170.0)	(340.0)	(340.0)	(340.0)	(340.0)	(340.0)
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	170.0	340.0	340.0	340.0	340.0	340.0
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

POSITIONS:

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

Estimate of any current year (FY95) cost: \$ NONE

ANALYSIS: (Attach a separate page if necessary)

The Child Support Enforcement Division projects increased collections on behalf of AFDC children to result from this legislation. This analysis is based on CSED's projections in their fiscal note on this legislation.

Fifty percent of child support collected on behalf of AFDC children is retained by the state. These revenues are transferred as GF Program Receipts to the AFDC component of the Assistance Payments bill. These GF Program Receipts are used in place of GF Match funds.

Prepared by: Jim Nordlund, Director *for Ralynn, acting dir* Phone: 465-2680
 Division: Division of Public Assistance Date: 3/2/95
 Approved by Com: Karen Perdue Date: _____
 Agency: Department of Health & Social Services

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

COMMITTEE COPY

FISCAL NOTE

Revision Date: 3/3/95 Dept. Affected: Community & Regional Affairs
 Title: An Act relating to the establishment, modification, and enforcement of support orders... BRU: none
 Component: none
 Sponsor: Governor
 Requestor: Governor COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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

POSITIONS:

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

Estimate of current (FY94) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact on DCRA from this bill.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 3/3/95
 Approved by Commissioner: *Thibault* Date: 3/3/95
 Agency: Community & Regional Affairs

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

FISCAL NOTE

No. 1
 Bill Version: HB 242
 (H) Publish Date: 3/8/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: ... establishment, modification, and enforcement BRU: Legal Services
of support orders in situations involving more than one state... Component: Operations
 Sponsor: Rules by Request of the Governor
 Requester: Office of the Governor: OMB COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill repeals the Uniform Reciprocal Enforcement of Support Act (URESAs), under AS 25.25, and replaces it with a new uniform Act known as the Uniform Interstate Family Support Act (UIFSA). First adopted by the National Conference of Commissioners on Uniform State Laws in 1992, the new Act has already been enacted by 21 states, and it may be introduced in as many as eight states this year, including Alaska.

The Uniform Interstate Family Support Act was drafted to update USERA. UIFSA, like USERA, applies to those actions relating to the establishment, modification, and enforcement of support orders and the determination of parentage in situations in which the parties reside in more than one state.

A major feature of UIFSA is that it does not require reciprocity of laws between states in order to take action under its provisions. The new Act also contains its own long-arm jurisdiction provision providing the home state of a supported family the maximum possible opportunity to secure personal jurisdiction over an absent parent.

The bill promotes, to the extent possible, the premise of continuing exclusive jurisdiction over support orders. Under the law as it exists under URESAs, multiple orders for child support often result. UIFSA seeks

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3/3/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 3/3/95
 Agency: Department of Law

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

FISCAL NOTE

HR 402

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION:

to limit the existence of multiple support orders by limiting the circumstances under which subsequent support orders may be entered in states other than the initiating state.

The bill also recognizes the growing use of administrative procedures in addition to or in place of judicial proceedings in the establishment of paternity and the establishment and enforcement of support orders.

The Uniform Interstate Family Support Act has been endorsed by the United States Commission on Interstate Child Support, the American Bar Association, and the Conference of Chief Justices.

The Department of Law is substantially involved in child support matters on behalf of the Child Support Enforcement Division, and the department provides all of the legal assistance required by the division. It is anticipated the department will have to provide additional legal advice and guidance to the division in implementing the provisions of UIFSA at the early stage. However, because the new Act provides several new efficiencies, this additional work will be easily offset by those efficiencies. Consequently, no fiscal impact is expected for the Department of Law.

LAW OFFICES

DILLON & FINDLEY

A PROFESSIONAL CORPORATION

JUNEAU

Dennis C. Bailey
Caroline Crenna
Paul L. Dillon
Thomas W. Findley
Richard D. Monkman
Arthur H. Peterson
Peter K. Putner

The Ebner Building
350 North Franklin Street
Juneau, Alaska 99801
Telephone (907) 586-4000
Facsimile (907) 586-3777

ANCHORAGE

Ray R. Brown
Maori Long
510 L Street, Suite 603
Anchorage, Alaska 99501
Telephone (907) 277-5400
Facsimile (907) 277-9596

April 25, 1995

Hon. Cynthia Toohey, Co-chair
Hon. Con Bunde, Co-chair
House Health, Education, and
Social Services Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

HAND-DELIVERED

Re: HB 242, Uniform Interstate Family Support Act

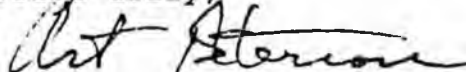
Dear Representatives Toohey and Bunde:

In connection with the hearing on HB 242, scheduled for later today in your committee, you will find attached an amendment sheet containing the technical amendments for this bill.

These amendments merely address the fact that the Alaska Supreme Court has recently amended its Administrative Rule 9 in the manner proposed by this bill. The bill should not include the references to that rule.

As mentioned in my March 10, 1995 letter to you, HB 242 is designed to achieve a more efficient, fairer system for all concerned -- the obligee, the obligor, the courts, and the agency. I urge your committee's "Do Pass" recommendation.

Yours truly,


Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Hon. Wilson Condon, Commissioner
Department of Revenue

Hon. Karen Perdue, Commissioner
Department of Health & Social Services

Patrick Pourchot, Legis. Director
Governor's Office

Rest of Alaska's ULC Delegation

(7)

Date Referred: March 8, 1995

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 4/27/95

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 242

HOUSE BILL NO. 242

UNIFORM INTERSTATE FAMILY SUPPORT ACT

"An Act relating to the establishment, modification, and enforcement of support orders and the determination of parentage in situations involving more than one state; amending Alaska Rule of Administration 9; amending Alaska Rules of Civil Procedure 79 and 82; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 242 (HES) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____

fiscal note(s) Revenue, H+SS

zero fiscal note(s) _____

zero fiscal note(s) C+R A, Law

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Wendy P. Kelly</i>	✓			
<i>Tommy D. Day</i>			✓	
<i>Alan Bunde</i>	✓			
<i>Robert A. Anderson</i>	✓			
<i>Tom Bruce</i>	✓			

CHAIR'S SIGNATURE *[Signature]*

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 8, 1995

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 4/27/95

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 242

HOUSE BILL NO. 242

UNIFORM INTERSTATE FAMILY SUPPORT ACT

"An Act relating to the establishment, modification, and enforcement of support orders and the determination of parentage in situations involving more than one state; amending Alaska Rule of Administration 9; amending Alaska Rules of Civil Procedure 79 and 82; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 242 (HES) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____

fiscal note(s) Revenue, H+SS

zero fiscal note(s) _____

zero fiscal note(s) C+R A, Law

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>W. J. Pataly</i>	✓			
<i>Tommy Dargatzis</i>			✓	
<i>Alan Burdick</i>	✓			
<i>Robert J. ...</i>	✓			
<i>Robert ...</i>	✓			
<i>Tom Bruce</i>	✓			

CHAIR'S SIGNATURE *[Signature]*

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 21, 1995

The Honorable Cynthia Toohey
The Honorable Con Bunde
Alaska House of Representatives
Co-Chairmen, Health, Education and Social Services Committee
P. O. Box V
Juneau, Alaska 99811

Re: HB 242 Amendment

Dear Representatives Toohey and Bunde:

I am the assistant attorney general who was charged with drafting the Uniform Interstate Family Support Act introduced as House Bill 242 (and Senate Bill 115). In reviewing the bill, we have determined that it would be preferable to allow the Supreme Court the opportunity to amend its own administrative rules, in order to avoid any potential separation of powers issue. Therefore we recommend deleting the reference to Alaska Rule of Administration 9 in the title of the bill, and deleting sec. 6 of the bill in its entirety. The change also would require conforming amendments in sec. 8 of the bill and the renumbering of bill sections.

Please contact me if you have any questions about this proposed amendment.

Sincerely,

BRUCE BOTELHO
ATTORNEY GENERAL

By: Marilyn May
Marilyn May
Assistant Attorney General

MM:bld

cc: Bruce M. Botelho, Attorney General
Karen Perdue, Commissioner, Department of Health and Social Services
Wilson Condon, Commissioner, Department of Revenue
Pat Pourchot, Legislative Director
Deborah Behr, Assistant Attorney General

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT H.C.
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

RECEIVED
Department of Law

MAR 22 1995
AM 8 9 10 11 12 1 2 3 4 5 6 PM

Following is a sectional analysis of HB 242, the 1992 Uniform Interstate Family Support Act (UIFSA). This bill replaces the old uniform law, known as the Uniform Reciprocal Enforcement of Support Act (URESAs), found at AS 25.25.010 - 25.25.270. This bill provides improved procedures for establishing, modifying and enforcing child support orders where the obligor and the obligee reside in different states. Interstate cases represent about 44% of Alaska's child support caseload. Twenty-three states have adopted the new uniform law.

① single state juris
 ② means to determine juris

Perhaps the most important feature of UIFSA is that it does away with the current system allowing multiple child support orders in various jurisdictions, opting instead for a single order system. Under UIFSA, one state maintains "continuing, exclusive jurisdiction" over the child support order; the bill provides the means to determine which state has that jurisdiction (sec. 2). Other changes include: allowing the support enforcement agency to establish paternity and to establish, modify or enforce a child support order administratively (sec. 3); allowing direct income withholding so that a support order may be mailed directly to the obligor's employer in another state (sec. 3); providing broad long arm jurisdiction to reach out-of-state obligors (sec. 2); allowing testimony to be taken by telephone (sec. 3); allowing electronic transmission of documentary evidence (sec. 3); and providing special evidentiary rules to speed the introduction of evidence in support cases (sec. 3). A section-by-section analysis of the bill follows:

③ agency determination of paternity
 ④ direct w/holding from obligor
 ⑤ long arm juris

Sec. 1. This section contains the definitions used in UIFSA, and provides that remedies provided by UIFSA are cumulative to other remedies available under other law. It is important to note that the definition for "tribunal" includes the child support enforcement agency as well as the courts.

Sec. 2. The long arm jurisdiction provided by this section is intended to be as broad as is constitutionally permissible. When exercising long arm jurisdiction, Alaska's tribunal may apply UIFSA's evidence and discovery rules, but in all other respects, the tribunal applies the procedural and substantive law of Alaska. When simultaneous proceedings have begun in Alaska and in another state, the child's home state generally will be allowed to exercise jurisdiction to establish a support order. Once Alaska enters a child support order, it is the only body entitled to modify it so long as it retains "continuing, exclusive jurisdiction," i.e., so long as the obligor, the obligee, or the child remains a resident of this state, or if all parties file written consent to have another state modify the order and assume continuing, exclusive jurisdiction. An Alaskan tribunal must recognize the continuing, exclusive jurisdiction of another UIFSA state and may not modify its own order if a tribunal of another UIFSA state has acquired continuing, exclusive jurisdiction. This section sets out the means to determine which of two or more child support orders issued in other states should be recognized. When two or more request to enforce child support orders for the same obligor with multiple obligees are received, a tribunal is to enforce them in the same manner as if all orders were issued by an Alaskan tribunal. Amounts collected under another state's order are credited against amounts accrued for the same period under an Alaskan tribunal's order.

* Sec. 3. Orders for spousal support and child support are generally dealt with identically, although only child support orders may be modified by a state which did not issue it. This section sets out the requirements and procedure for a request that another state enforce an Alaskan order, as well as the powers and procedure of an Alaskan tribunal responding to another state's request

Post-it® Fax Note	7671	Date	4/28	# of pages	2
To	Halloran	From	Man		
Co./Dept		Co			
Phone #		Phone #	769-5228		
Fax #		Fax #			

that it enforce the other state's order. When acting as a responding tribunal, Alaska law applies. The duties of the child support enforcement agency (CSED) are specified, in connection with assisting a petitioner, and in acting as the state information and locator agency. The agency may not disclose identifying information if the health, safety, or liberty of a party or child would be put at risk by disclosure and as provided in existing law. Special rules of evidence are set out which allow documentary evidence to be admitted more easily and allow transmission of such evidence by electronic means. Telephonic participation in proceedings is expressly allowed. Refusal to answer on the grounds the testimony might be self-incriminating may be given an adverse inference, and there is no spousal communication privilege, or spousal or parent-child immunity in these proceedings. An Alaskan tribunal may cooperate in providing discovery to another state or by compelling a resident to respond to a discovery request of another state's tribunal.

An income withholding order from another state may be sent directly to an Alaskan employer, who must treat it as if it had been issued by a tribunal of this state. Child support orders from other states' tribunals may be enforced administratively. If the obligor contests administrative enforcement, the order must be registered. This section sets out the procedures for and effect of registration. Notice of the registration must be sent to the nonregistering party, who has an opportunity to contest the validity or enforcement of the order. Choice of law is determined under this section.

An interstate proceeding to determine paternity may be handled administratively or by a court. A state may demand the extradition of a person who is charged with criminal nonsupport.

Sec. 4. Technical amendments.

Sec. 5. Repeals the old uniform act.

Sec. 6. Amends Alaska Administrative Rule 9 regarding filing fees. *out*

Sec. 7. Amends Civil Rules 79 and 82 by requiring the court to award costs and attorney's fees under certain circumstances.

Sec. 8. Requires a supermajority vote to amend a court rule.

Sec. 9. Effective date of January 1, 1996 is set to allow sufficient time for adoption of implementing regulations.



State of Alaska
ombudsman
A Legislative Service Agency

Reply to:

- P.O. Box 102636
Anchorage, AK 99510-2636
(907) 269-5290
(800) 478-2624
(FAX) 269-5291
- P.O. Box 113000
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970
(FAX) 465-3330
- P.O. Box 74358
Fairbanks, AK 99707-4358
(907) 451-2880
(800) 478-3257
(FAX) 451-2957

R E C E I V E D
APR 17 1995

April 14, 1995

Rep. Brian Porter

The Honorable Brian Porter, Chairman
House Committee on Judiciary
Alaska Legislature
State Capitol, Room 118
Juneau, Alaska 99811

Re: Uniform Interstate Family Support Act (UIFSA)

Dear Chairman Porter:

The Office of the Ombudsman supports legislation to enact the Uniform Interstate Family Support Act (UIFSA). Two bills currently before the legislature, Senate Bill 115 and House Bill 242, as introduced, would accomplish that objective. Senate Bill 115 was approved by the Senate Health, Education & Social Services Committee at a hearing April 12, 1995. In the House, its companion, HB 242 has a first referral to the Health, Education & Social Services Committee, and a second referral to the House Judiciary Committee.

The National Conference of Commissioners on Uniform State Laws drafted UIFSA to update the Uniform Reciprocal Enforcement of Support Act (URESA). UIFSA would allow Alaska maximum flexibility in securing personal jurisdiction over an absent parent and would apply to all actions relating to establishment, modification and enforcement of support orders and the determination of parentage in cases in which the parties reside in different states. This simplified process could mean more money for Alaskan parents to raise their children.

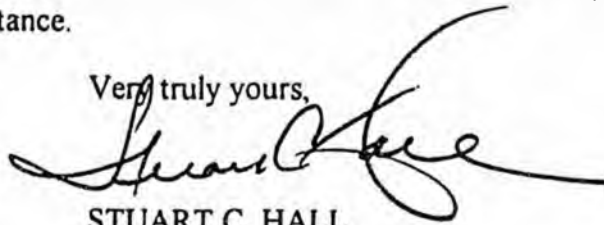
Enactment of UIFSA would assist many who have sought the Ombudsman's help with the Alaska Child Support Enforcement Division (CSED). In Fiscal Year 1994 and FY 1995, to date, the Ombudsman has assisted 1661 individuals with complaints against CSED, many of whom were custodial parents who depend upon CSED to collect child support from an out-of-state parent. A large number of those complaints came from single parents concerned about the slow pace of case establishment and child support collection. Enactment of UIFSA would streamline the establishment process which should, in turn, prompt speedier collections.

Both the state and custodial parents would benefit from enactment of UIFSA: the State of Alaska, because it could collect public assistance debts from absent parents, and custodial parents, because easier collection means money to raise their children. Perhaps more important, increased collections may help reduce the number of custodial parents forced to go on public assistance when there is no other source of support.

April 14, 1995

We urge your and your committee's favorable consideration of legislation that would codify UIFSA into Alaska law this session. Please feel free to call me at 465-4970 if my staff and I can be of further assistance.

Very truly yours,



STUART C. HALL
Ombudsman

cc: The Honorable Tony Knowles, Governor of Alaska
Att'n: Pat Pourchot, Legislative Director
Bruce M. Bothclo, Esq., Attorney General
Wilson L. Condon, Esq., Commissioner, Department of Revenue
Glenda Straube, Director, Child Support Enforcement Division, Department of Revenue
Marilyn May, Esq., Assistant Attorney General, Department of Law, Anchorage
Deborah Behr, Esq., Assistant Attorney General, Legislation/Regulations, Department of Law, Juneau; and, Commissioner for Alaska, National Conference of Commissioners on Uniform State Laws
Arthur H. Peterson, Esq., Commissioner for Alaska, National Conference of Commissioners on Uniform State Laws