

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8606 HOUSE • JUDICIARY •

HB

244

HOUSE BILL NO. 244

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/8/95

Referred: Health, Education and Social Services, Judiciary Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative establishment of paternity and establishing
2 paternity by affidavit; relating to child support enforcement; and providing for
3 an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 18.50.160(d) is repealed and reenacted to read:

Utah Statutes Act: Art. 3 Registration, etc new

6 (d) If the mother was married at conception, during the pregnancy, or at birth,
7 the name of the husband shall be entered on the certificate as the father of the child
8 unless

9 (1) paternity has been lawfully determined otherwise by a tribunal, in
10 which case the name of the father, if determined by a tribunal, shall be entered; or

11 (2) both the mother and the mother's husband execute affidavits
12 attesting that the husband is not the father and that another man is the father, and the
13 mother and the other man execute affidavits attesting that the other man is the father.
14 so long as the affidavits meet the requirements of (g) of this section.

new

Utah State Act: Art. 3- Registration etc

new

1 * Sec. 2. AS 18.50.160(e) is repealed and reenacted to read:

2 (e) If the mother was not married at conception, during the pregnancy, or at
3 birth, the name of the father may not be entered on the certificate of birth, unless

4 (1) paternity has been lawfully determined by a tribunal, in which case
5 the name of the father, if determined by the tribunal, shall be entered;

6 (2) both the mother and the man to be named as the father have
7 executed affidavits attesting that that man is the father, so long as the affidavits meet
8 the requirements of (g) of this section; or

9 (3) as otherwise specified by statute.

10 * Sec. 3. AS 18.50.160 is amended by adding new subsections to read:

11 (g) An affidavit under (d) or (e) of this section must meet the following
12 requirements:

13 (1) the affidavit must be executed by all required individuals; an
14 affidavit may be executed jointly, individually, or in combination of jointly and
15 individually; and

16 (2) if an affidavit is executed by more than one individual, the
17 signature of each individual must be individually notarized.

18 (h) in this section, unless the context requires otherwise, "tribunal" means a
19 court, administrative agency, or quasi-judicial entity authorized by law to determine
20 parentage.

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

Duty & Responsibility

22 (a) The agency shall

CSEA Child support enforcement Agency Chapter

CSEA

23 (1) seek enforcement of child support orders [OF THE SUPERIOR
24 COURTS] of the state in other jurisdictions and shall obtain, enforce, and administer
25 the orders in this state;

26 (2) adopt regulations to carry out the purposes of this chapter, including
27 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
30 42 U.S.C. 651 - 669 (Title IV-D, Social Security Act);

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

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[AND]

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

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

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

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

*Regulatory
New for
CSEA*

(D) procedures for establishing paternity, including procedures for hearings;

(3) administer and enforce AS 25.25 (Uniform Reciprocal Enforcement of Support Act);

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

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

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

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

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

1 (9) obtain a medical support order as part of a child support order if
2 health care coverage is available to the obligor at a reasonable cost; the agency shall
3 consider whether adequate health care is available to the child through the Indian
4 Health Service or other insurance coverage before it orders an obligor to provide health
5 care coverage through insurance or other means; the medical support order must meet
6 the requirements of AS 25.27.063; [AND]

7 (10) act on behalf of the Department of Health and Social Services in
8 the enforcement of AS 47.07.025(b);

9 (11) establish, administratively or through court action, the
10 paternity of a child;

11 (12) promptly provide to the Bureau of Vital Statistics, in a format
12 approved by the bureau, any final agency decision administratively establishing
13 the paternity of a child born in this state; and

14 (13) act as the central registry for all child support orders.

15 * Sec. 5. AS 25.27.022 is amended to read:

16 Sec. 25.27.022. ESTABLISHMENT AND ENFORCEMENT REQUESTS
17 FROM OTHER STATES. (a) The agency may act, under the laws of this state, upon
18 requests from similar state agencies in other states that operate child support
19 enforcement programs under 42 U.S.C. 651 - 669 (Title IV-D Social Security Act) to
20 establish paternity and to establish and enforce against obligors within this state
21 support obligations determined in other states.

22 (b) Requests from child support enforcement agencies in other states shall be
23 made by application containing the information that this state's agency requires and
24 including written authorization from the requesting state agency and the obligee for
25 this state's agency to initiate necessary action [NECESSARY TO ESTABLISH,
26 ENFORCE, AND COLLECT THE SUPPORT OBLIGATION ON THEIR BEHALF].

27 * Sec. 6. AS 25.27.040(a) is amended to read:

28 (a) The agency may [SHALL] appear on behalf of minor children or their
29 mother or legal custodian or the state and initiate efforts to have the paternity of
30 children born out of wedlock determined by the court. When the agency is a party to
31 a court [IN AN] action in which paternity is contested, it shall request and pay for

Determination of Paternity (in court)

1 genetic testing [TESTS] and procedures under AS 25.20.050(f). The agency may
2 recover the costs of the tests as a cost of the court action, except that costs may not
3 be recovered from a person who is a recipient of aid under AS 47.25.310 - 47.25.420
4 (Aid to Families with Dependent Children).

5 * Sec. 7. AS 25.27.040(c) is amended to read:

6 (c) When the agency is a party in a court [AN] action in which paternity is
7 contested, the agency shall move for a default judgment in a case that meets the
8 conditions specified in AS 25.20.050(g).

*Determination
of paternity*

9 * Sec. 8. AS 25.27.075(f) is amended to read:

Employment Information

10 (f) The agency shall retain the information received under (a), (d), and (e) of
11 this section for a particular employee only if the agency is responsible for establishing,
12 enforcing, or collecting a support obligation of the employee or if the employee is
13 a party to an administrative or judicial proceeding to determine the paternity of
14 a child. If the employee does not owe a support obligation or is not a party to a
15 paternity proceeding, the agency may not create a record regarding the employee, and
16 the information contained in the notice shall be promptly destroyed.

17 * Sec. 9. AS 25.27.085 is amended to read:

18 Sec. 25.27.085. SUBPOENAS. The agency, with the concurrence of the
19 commissioner of revenue, may subpoena persons, books, records, and documents

20 (1) to determine the extent and location of assets of any obligor who
21 is more than 45 days in arrears in a child support obligation established either by court
22 or administrative order; or

23 (2) to determine the paternity of a child under AS 25.27.165.

24 * Sec. 10. AS 25.27.140(a) is amended to read:

25 (a) If no support order has been entered, the agency may establish paternity
26 and a duty of support utilizing the procedures prescribed in AS 25.27.160 - 25.27.220
27 and may enforce a duty of support utilizing the procedure prescribed in AS 25.27.230 -
28 25.27.270. Action under this subsection may be undertaken upon application of an
29 obligee, or at the agency's own discretion if the obligor is liable to the state under
30 AS 25.27.120(a) or (b).

31 * Sec. 11. AS 25.27 is amended by adding a new section to read:

New

1 Sec. 25.27.165. DETERMINATION OF PATERNITY IN AN
2 ADMINISTRATIVE PROCEEDING. (a) Upon application from a mother, custodian,
3 or legal custodian of a child, or from a state, the agency may institute administrative
4 proceedings to determine the paternity of a child born out of wedlock.

5 (b) In order to initiate a paternity proceeding administratively, the agency shall
6 serve a mother and putative father, as appropriate, with a notice of paternity and
7 financial responsibility. The notice shall be served personally as set out in Alaska
8 Rule of Civil Procedure 4(d) or by registered, certified, or insured mail, return receipt
9 requested, for restricted delivery only to the person to whom the notice is directed or
10 to the person authorized under federal law to receive that person's restricted delivery
11 mail. The notice must be accompanied by

12 (1) an administrative order requiring that the mother, child, and putative
13 father submit to genetic testing to be arranged by the agency;

14 (2) an administrative order requiring the putative father to provide
15 financial information, as defined by the agency in regulation, within 20 days after
16 service of the notice; all financial information provided to the agency under an order
17 under this paragraph shall be held confidential by the agency, according to any
18 applicable regulations; and

19 (3) a notice of right to informal conference, to be held within 20 days
20 after receipt of an admission of paternity or service upon the parties of genetic test
21 results.

22 (c) A person served with a notice of paternity and financial responsibility shall
23 file a response, admitting or denying paternity and providing the required financial
24 information, within 20 days after the date of service of the notice of paternity and
25 financial responsibility. If the putative father admits paternity, the agency shall issue,
26 within 20 days after the admission of paternity, a decision establishing paternity. If
27 the putative father denies paternity, the putative father shall submit to genetic testing,
28 as provided in (b) of this section, within 30 days after the date of service of the notice
29 of paternity and financial responsibility.

30 (d) Upon receipt of genetic test results, the agency shall serve on the putative
31 father notice of the test results and of the date for the informal conference. Service

1 of the notice shall be made by first class mail. If the genetic test results are negative
2 under the standard set in AS 25.20.050(d), the agency shall issue a finding of
3 nonpaternity within 20 days after the agency's receipt of the test results. If the genetic
4 test results are positive under the standard set in AS 25.20.050(d), the agency shall
5 issue an informal conference decision within 20 days after the agency's receipt of the
6 test results.

7 (e) If the agency issues a decision establishing paternity under (d) of this
8 section, the putative father is entitled to a formal hearing if a written request for
9 hearing is served on the agency by certified mail, return receipt requested, within 30
10 days after the date of service of the agency's decision.

11 (f) If a request for a formal hearing is made under (e) of this section, an
12 execution under AS 25.27.062 and 25.27.230 - 25.27.270 may not be stayed unless the
13 putative father posts security or a bond in the amount of child support that would have
14 been due under the informal conference decision pending the decision on the formal
15 hearing. If no request for a formal hearing is made under (e) of this section, the
16 informal conference decision establishing paternity is final.

17 (g) If a request for a formal hearing is made under (e) of this section, the
18 hearing officer shall consider the evidence applying the standards set in
19 AS 25.20.050(d).

20 (h) If a putative father who requests a formal hearing under (e) of this section
21 fails to appear at the formal hearing, the hearing officer shall enter a final decision
22 establishing paternity.

23 (i) The agency may recover any costs it pays for genetic tests required by this
24 section, except that costs may not be recovered from a person who is a recipient of aid
25 under AS 47.25.310 - 47.25.420 (Aid to Families with Dependent Children).

26 (j) After a child's paternity has been established under the law, the agency may
27 not issue a decision or finding under this section that changes the child's paternity. } ?

28 * Sec. 12. AS 25.27.180(a) is amended to read:

29 (a) Within 20 days after [OF] the date of the hearing, the hearing officer shall
30 adopt findings and a decision determining whether paternity is established and
31 whether a duty of support exists and, if a duty of support is found, the amount of

1 periodic payments or sum for which the alleged obligor is found to be responsible.

2 * Sec. 13. AS 25.27.180(c) is amended to read:

3 (c) A decision regarding support rendered under (a) of this section is
4 modified to the extent that a subsequent order, judgment, or decree of a superior court
5 is inconsistent with the decision entered under (a) of this section.

6 * Sec. 14. AS 25.27.210(a) is amended to read:

7 (a) Judicial review by the superior court of a final administrative [AN
8 AGENCY] decision establishing paternity and establishing or modifying a duty of
9 support or amounts of support due may be obtained by filing a notice of appeal in
10 accordance with the applicable rules of court governing appeals in civil matters. A
11 notice of appeal shall be filed within 30 days after [OF] of the decision.

*Judicial
Review*

12 * Sec. 15. AS 25.27.210(c) is amended to read:

13 (c) The complete record includes

14 (1) the notice and finding of financial responsibility or the notice of
15 paternity and financial responsibility;

16 (2) the request for a hearing;

17 (3) the decision of the hearing officer;

18 (4) the exhibits admitted or rejected;

19 (5) the written evidence;

20 (6) all other documents in the case, including decisions of the agency.

21 * Sec. 16. AS 25.27.230(a) is amended to read:

22 (a) At the expiration of 30 days after [FROM EITHER] (1) the date of
23 distribution of an income withholding order under as 25.27.062, [OR] (2) the date of
24 service of a notice and finding of financial responsibility under AS 25.27.160, or (3)
25 the date of service of a decision establishing paternity under AS 25.27.165(c) or
26 (d), the agency may assert a lien upon the real or personal property of the obligor, in
27 the amount of the obligor's liability.

28 * Sec. 17. AS 25.27.250(a) is amended to read:

29 (a) At the expiration of [EITHER] (1) 15 days after [FROM] the date of
30 service of an income withholding order under AS 25.27.062 or notice under
31 AS 25.27.150, or (2) 30 days after [FROM] the date of service of a notice and finding

1 of financial responsibility under AS 25.27.160, or (3) 30 days after service of a
2 decision establishing paternity under AS 25.27.165(c) or (d), the agency may issue
3 to any person, political subdivision, or department of the state an order to withhold and
4 deliver property.

5 * Sec. 18. TRANSITION: REGULATIONS. The Department of Revenue, child support
6 enforcement agency, may immediately proceed to adopt regulations to implement the changes
7 made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act),
8 but not before January 1, 1996.

9 * Sec. 19. Section 18 of this Act takes effect immediately under AS 01.10.070(c).

10 * Sec. 20. Except as provided in sec. 19 of this Act, this Act takes effect January 1, 1996.



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 99801-8881

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the administrative determination of paternity by the Department of Revenue, child support enforcement division (CSED) and addressing the establishment of paternity based on voluntary acknowledgement of paternity by appropriate parties.

The bill would amend relevant portions of the laws currently found in AS 25.27 to allow CSED to administratively determine the paternity of children. The bill also amends AS 18.50.160, relating to the identification of parents on birth certificates by voluntary acknowledgement. The bill does not affect any existing court rules.

Under recent federal regulations adopted in December 1994, time frames for the establishment of paternity and support orders have been significantly shortened. In order to determine how best to meet these deadlines, CSED has reviewed the relevant Alaska statutes and its administrative procedures to identify areas that could be handled more efficiently than under the current state statutes and regulations. One such area is the determination of paternity. Under current state law, such determinations may only be made by a court.

This bill establishes a procedure by which CSED may determine paternity administratively, without resort to the courts. Under the proposed statute changes, CSED may initiate an administrative proceeding to determine paternity upon application of the child's mother or guardian or upon application of the State of Alaska or of another state. The proceeding is initiated through service of a Notice of Paternity and Financial Responsibility, together with an administrative order requiring the parties to submit to

The Honorable Gail Phillips

March 6, 1995

Page 2

genetic testing. Unless paternity is admitted or the alleged father fails to respond to the notice, CSED's determination of paternity will be based upon the results of the genetic testing and other evidence. In conjunction with the paternity proceeding, CSED also may establish the amount of the support obligation, which CSED is already permitted to do under existing law.

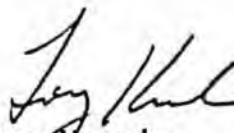
Through an appeal process, the bill safeguards the alleged father's rights with respect to the determination of paternity. Once CSED has issued its finding of paternity, the alleged father may request a formal hearing, after which the alleged father also will be entitled to judicial review if a timely appeal is filed with the superior court.

The bill amends the state law relating to the identification of parents on a child's birth certificate. The bill would allow the Bureau of Vital Statistics to enter a father's name on a child's birth certificate based on voluntary acknowledgements of paternity by the appropriate parties. If the child was born in wedlock (and, thus, the mother's husband is the legally presumed father), affidavits must be provided by the mother, her husband, and the alleged father, attesting that the husband is not the child's father and that the alleged father is the father of the child. If the child was born out of wedlock, affidavits are needed only from the mother and the alleged father, attesting that the alleged father is the child's father.

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 changes proposed in the bill are intended to increase the efficiency of the child support enforcement process by allowing CSED and, in certain cases the parties themselves, to determine the paternity of children.

I urge prompt consideration and passage of this bill.

Sincerely,


Tony Knowles
Governor

HB 244 - SB 116

This bill provides for the administrative establishment of paternity, and for paternity to be established based upon the affidavits of the child's mother, her husband, and another man who is the child's father. The benefits and important features of the bill include the following:

- Paternity cases are currently handled only by Alaska's courts. Providing for establishment of paternity by CSED will speed up the establishment and enforcement of child support orders.
- The statute allows for paternity establishment through the courts or the agency. More complicated cases will generally be referred to court.
- Administrative establishment of paternity will allow CSED to meet federal deadlines for support order establishment, assuring continued federal funding.
- Paternity may be established administratively based on the putative father's acknowledgement of paternity or based on genetic test results according to the standard set forth in AS 25.20.050.
- The administrative paternity procedures are designed to give full due process, including service of the notice of paternity and financial responsibility by formal service rules; opportunity to object to genetic test results; and availability of full administrative hearing procedures followed by opportunity for court review.
- In the case of a child born in wedlock who is not the natural child of the husband, paternity may be established by affidavit of the mother, the husband and the other man who is the father of the child. This will avoid the expense and delay of filing a paternity action where all relevant parties agree.

(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 244

HOUSE BILL NO. 244

PATERNITY; CHILD SUPPORT ENFORCEMENT

"An Act relating to administrative establishment of paternity and establishing paternity by affidavit; relating to child support enforcement; 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) _____

[x] fiscal note(s) Revenue, H+SS

[] zero fiscal note(s) _____

[x] zero fiscal note(s) H+SS, Law

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>W. J. Kelly</i>	✓			
<i>Tom Blum</i>			✓	
<i>Car Blendre</i>	✓			
<i>Stina</i>	✓			
<i>Car Blendre</i>	✓		✓	
<i>Tom Blum</i>	✓			

CHAIR'S SIGNATURE *[Signature]*

FISCAL NOTE

NC _____
 Bill Version: HB 244
 (H) Publish Date: 3/3/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date _____
 Title: Administrative Establishment of Paternity
 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	189.1	351.7	365.8	380.4	395.6	411.5
TRAVEL						
CONTRACTUAL	86.2	180.2	188.3	196.8	206.0	215.4
SUPPLIES	3.2	6.4	8.4	6.4	6.4	8.4
EQUIPMENT	83.1	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	341.6	538.3	560.5	583.7	608.0	633.3

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	425.0	850.0	850.0	850.0	850.0	850.0
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FUND SOURCE: (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts	225.4	355.3	369.9	385.3	401.3	418.0
1003 GF Match	46.1	72.7	75.7	78.7	82.1	85.4
1004 GF						
1005 GF/Program Receipts						
1008 GF/MHTIA						
OTHER	70.0	110.3	114.9	119.7	124.8	129.9
TOTAL	341.6	538.3	560.5	583.7	608.0	633.3

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

POSITIONS:

FULL-TIME	8	8	8	8	8	8
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The administrative establishment of paternity, in cases where the putative father has acknowledged paternity or a genetic test indicates a 96% or better probability that the putative father is the father, will decrease the time required to establish paternity. This decreased time will help CSED meet the new Federal time frame for establishment which require that an order must be established in 75% of the cases within 6 months of location of the obligor including establishing paternity if required. The previous requirement was that paternity had to be established within one year of serving the paternity complaint on the putative father. Once paternity was established CSED had an additional 3 months to establish an order. By establishing paternity more quickly, obligors will not accumulate large arrearage prior to being adjudicated the father. Obligor will be more likely to pay and will begin paying earlier. This will increase AFDC collections approximately \$1,700,000 per year of which the state will retain \$850,000. FY 96 revenues will be \$425,000 for half a year.

Prepared by: Glenda Straube
 Division: Child Support Enforcement Division

Phone: 269-6801
 Date: _____

Approved by Commissioner: Wilson L. Condon
 Agency: Department of Revenue

Date: 3/6/95

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No. of Pos	Position Title	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
1	CEO	13,274	12,517	148,742	151,771	169,701	201,411

Personal Services are estimated using Step 'A'
 * Program is effective 1/1/86. Plus the cost necessary 1/2 of total cost from fiscal year 86.
 ** Comments: based on 4% increase cost after fiscal year

# of Positions	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
	Est Supply \$ Cost Per Pos	Est Supply \$ Cost Per Pos	Est Supply \$ Cost Per Pos	Est Supply \$ Cost Per Pos	Est Supply \$ Cost Per Pos	Est Supply \$ Cost Per Pos
1	400	870	470	870	870	870
TOTAL SUPPLY COSTS		2,200	6,400	6,400	6,400	6,400

Supply costs were estimated at \$100 per year per employee. The number is based on FY 85 operating budget total divided by 171 employees.
 * Program is effective 1/1/86. Plus the cost necessary 1/2 of subsequent years fiscal year 86.

# of Positions	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
	Workstation Est \$ Cost Per Pos	Workstation Est \$ Cost Per Pos	Workstation Est \$ Cost Per Pos	Workstation Est \$ Cost Per Pos	Workstation Est \$ Cost Per Pos	Workstation Est \$ Cost Per Pos
1	10,500	-	-	-	-	-
TOTAL EQUIPMENT COSTS		10,500				

Workstation costs are based on a computer used in FY 85 operating budget and include \$2,500 for technical workstation/printer, \$600 for chairs and \$425 for the cabinet. 1,436
 Computer costs are based on estimates used in FY 85 operating budget and include all installation costs. (See attachment) 2,700
 Phone costs are based on estimates used in FY 85 operating budget and include all installation costs. (See attachment) 1,101
 10,296

# of Positions	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
	Contractual Est \$ Cost Per Pos	Contractual Est \$ Cost Per Pos	Contractual Est \$ Cost Per Pos	Contractual Est \$ Cost Per Pos	Contractual Est \$ Cost Per Pos	Contractual Est \$ Cost Per Pos
1	9,472	21,471	21,613	22,576	23,707	24,847
TOTAL CONTRACTUAL COSTS		78,478	182,354	172,228	180,877	188,678

Estimated long distance costs were calculated by taking FY 95 budgeted contract (AC 7300) - \$3,627,000 and dividing by average number of employees (189.5).
 FY 87 thru 91 were projected at 5% increase a year. 19,404
 ** Program is effective 1/1/86. Plus the cost necessary 1/2 of subsequent years fiscal year 86.

# of Positions	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
	Contractual Est \$ Cost Per Pos	Contractual Est \$ Cost Per Pos	Contractual Est \$ Cost Per Pos	Contractual Est \$ Cost Per Pos	Contractual Est \$ Cost Per Pos	Contractual Est \$ Cost Per Pos
1	1,628	2,040	2,040	2,040	2,040	2,040
TOTAL SPACE RENTAL COSTS		8,100	14,210	14,270	14,270	14,270

Rent is no projections are based on current space rates of \$1.28 sq. ft. for 12 months at 173 sq. ft. per employee. No increases are incorporated in fiscal years projected above. 2,041
 ** Program is effective 1/1/86. Plus the cost necessary 1/2 of subsequent years fiscal year 86.

**ADMINISTRATIVE PATERNITY ESTABLISHMENT
COST PROJECTIONS**

	FY 96 Projected Cost \$	FY 97 Projected Cost \$	FY 98 Projected Cost \$	FY 99 Projected Cost \$	FY 00 Projected Cost \$	FY 01 Projected Cost \$
Personnel Services	189,099	151,711	365,790	390,411	395,827	411,453
Supplies	3,200	6,400	6,400	6,400	6,400	6,400
Equipment	83,088					
Contractual	78,016	153,834	172,025	180,697	189,859	199,141
Space	8,160	16,320	16,320	16,320	16,320	16,320
Total	341,556	538,265	660,525	583,758	608,005	633,313
Projected Funding Sources						
Federal Match (66%)	225,427	355,255	368,947	385,280	401,294	417,987
Federal Incentives (20.5%)	70,019	110,344	114,808	119,870	124,841	129,829
State General Fund (13.6%)	46,110	72,666	75,671	78,607	82,081	85,497
Total	341,556	538,265	660,525	583,758	608,005	633,313

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Bill Version: HB 244
(H) Publish Date: 3/8/95

Revision Date: _____
Title: Determination of Paternity
Sponsor: _____
Requestor: Governor's Office

Dept. Affected: Health and Social Services
BRU: State Health Services
Component: Bureau of Vital Statistics
COMPONENT SERIAL NO. 961
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
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						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

This bill has no impact on the Division of Public Health

Prepared by: Peter M. Nakamura, MD, MPH
Division: Public Health

Phone: (907) 465-3090
Date: 03/06/95

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Date: 3.6.95

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STATE OF ALASKA
1995 LEGISLATIVE SESSION

FISCAL NOTE

No. _____
Version: HB 244
(H) Publish Date: 3/8/95

Revision Date: _____ Dept. Affected: Health and Social Services
Title: An Act relating to the administrative establishment of paternity BRU: Assistance Payments
Sponsor: Rules Component: AFDC
Requestor: Governor COMPONENT SERIAL NO. 120

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	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	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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	(425.0)	(850.0)	(850.0)	(850.0)	(850.0)	(850.0)
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	425.0	850.0	850.0	850.0	850.0	850.0
1006 GF/MHTA	0.0	0.0	0.0	0.0	0.0	0.0
Other 1007 I/A Receipts	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)

This bill establishes authority for the Child Support Enforcement Division of the Department of Revenue to establish paternity by an administrative process. CSED expects child support collections on behalf of AFDC children to increase as a result of this legislation.

AFDC applicants assign to the State the right to collect child support on behalf of AFDC children. When CSED collects child support on behalf of an AFDC child, the first \$50 per month is paid to the AFDC family. Fifty percent of the amount collected is transferred as GF Program Receipts to the AFDC component of the Assistance Payments BRU. The remainder is paid to the federal government to offset federal AFDC costs.

Prepared by: Jim Nordlund, Director *Loe Polymon, Subdirector* Phone: 465-2680
 Division: Division of Public Assistance Date: 3/6/95

Approved by Com: Karen Perdue, Commissioner *Perdue* Date: 3/6/95
 Agency: Department of Health & Social Services

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ANALYSIS (cont.):

The GF Program Receipts transferred to the AFDC component are used in place of GF Match funds.

Assumptions:

We assume that the GF Program Receipt funds transferred from CSED to the AFDC program offset AFDC GF Match funds dollar-for-dollar.

Calculations:

CSED projects the following amounts of increased GF Program Receipts to be transferred to the AFDC Component as a result of this legislation:

FY 96: 425.0

FY 97- FY 01: 850.0 per year

FISCAL NOTE

No. 1
 Bill Version: HB 244
 (H) Publish Date: 3/8/95

**STATE OF ALASKA
 1995 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Department of Law
 Title: administrative establishment of paternity and BRU: Legal Services
establishing paternity affidavit... child support enforcement... Component: Operations
 Sponsor: Rules by Request of the Governor
 Requester: Governor's Office/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 would allow the Child Support Enforcement Division to administratively determine the paternity of children. The bill also amends AS 18.50.160, relating to the identification of parents on birth certificates by voluntary acknowledgement.

The bill establishes a procedure by which CSED may determine paternity administratively, without resort to the courts. Under the proposed statute changes, CSED may initiate an administrative proceeding to determine paternity upon application of the child's mother or guardian or upon application of the State of Alaska or of another state. The proceeding is initiated through service of a Notice of Paternity and Financial Responsibility, together with an administrative order requiring the parties to submit to genetic testing. Unless paternity is admitted or the alleged father fails to respond to the notice, CSED's determination of paternity will be based upon the results of the genetic testing and other evidence. In conjunction with the paternity proceeding, CSED also may establish the amount of the support obligation, which CSED is already permitted to

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3/6/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 3/6/95
 Agency: Department of Law

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ANALYSIS CONTINUATION:

do under existing law.

Through an appeal process, the bill safeguards the alleged father's rights with respect to the determination of paternity. Once CSED has issued its findings of paternity, the alleged father may request a formal hearing, after which the alleged father also will be entitled to judicial review if a timely appeal is filed with the superior court.

CSED does not require the Department of Law's assistance in CSED's administrative proceedings, except in extreme circumstances. Consequently, the bill will not have a fiscal impact for the Department of Law.

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 244

HOUSE BILL NO. 244

PATERNITY; CHILD SUPPORT ENFORCEMENT

"An Act relating to administrative establishment of paternity and establishing paternity by affidavit; relating to child support enforcement; 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) Revenue, H+SS
 zero fiscal note(s) _____ zero fiscal note(s) H+SS, Law

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>W. J. Kelly</i>	<input checked="" type="checkbox"/>			
<i>Long</i>			<input checked="" type="checkbox"/>	
<i>Car Blend</i>	<input checked="" type="checkbox"/>			
<i>Stia</i>	<input checked="" type="checkbox"/>			
<i>Car Blend</i>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
<i>Tom</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE *[Signature]*

HB

255

HOUSE BILL NO. 255
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES OGAN, Kohring, Bunde

Introduced: 3/15/95

Referred: Judiciary, Finance

A BILL
FOR AN ACT ENTITLED

1 "An Act creating the crime of negligent vehicular homicide."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 09.55.580(f) is amended to read:

4 (f) A person whose act or omission constitutes the felonious killing of another
5 person may not recover damages for the death of that person either directly or as a
6 personal representative of that person's estate. In this subsection, a "felonious killing"
7 means a crime defined by AS 11.41.100 - 11.41.140, other than AS 11.41.133.

8 * **Sec. 2.** AS 11.41 is amended by adding a new section to read:

9 Sec. 11.41.133. **NEGLIGENT VEHICULAR HOMICIDE.** (a) A person
10 commits the crime of negligent vehicular homicide if, with negligence, the person
11 operates a propelled vehicle in a manner that causes the death of another person.

12 (b) In this section, a person acts with "negligence" when the person fails to
13 perceive an unjustifiable risk of harm to a person; the risk must be of such a nature
14 and degree that the failure to perceive it constitutes a deviation from the standard of
15 care that a reasonable person would observe in the situation.

1 (c) Negligent vehicular homicide is a class A misdemeanor.

2 * Sec. 3. AS 13.11.305(g) is amended to read:


3 (g) In this section, a "felonious killing" means a crime defined under
4 AS 11.41.100 - 11.41.140, other than AS 11.41.133.

*Effect of felonious
Killing on interstate
Succession*



Representative Scott Ogan
House District 27

SPONSOR STATEMENT

To: House Committees of Referral for HB 255
From: Representative Scott Ogan 
Re: HB 255
Date: March 17, 1995

HB 255, "An Act creating the crime of negligent vehicular homicide", is a bill designed to fill an existing gap in Alaska's criminal code. Unfortunately, it has taken the recent loss of several lives to illustrate the need for this legislation.

Under current Alaska law, drivers are not held accountable when their careless and irresponsible use of a motor vehicle takes a human life. Unless a prosecutor can prove that the driver at fault acted with "criminal negligence," which is an extremely difficult standard to meet, there is no penalty available greater than a traffic ticket. The offender typically does not even lose his or her driver's license. While no one wishes to be vindictive towards someone who is responsible for a fatal accident, the lack of any criminal sanctions means that dangerous drivers are free to continue placing others at risk.

HB 255 simply states that if a driver operates his or her vehicle negligently, and takes someone's life in the process, society is no longer prepared to brush it off with a simple offering of condolences. The bill makes taking the life of another while driving a vehicle negligently a class A misdemeanor. Negligence is defined as failing to use the type of care or caution that a reasonable person would use under the circumstances. A class A misdemeanor is an appropriate classification for the proposed crime, as it gives a judge sufficient flexibility in sentencing to impose jail terms for repeat offenders, or a more moderate sentence of, perhaps, a driver's license revocation and fine or suspended imposition of sentence where the offender has no prior criminal history.

I urge you to support this much needed bill.

MEMO

To: Brian Porter, Chair

From: Anne Carpeneti *adc*
Committee Counsel

Subject: HB 255

Date: April 12, 1995

I am writing a brief memo on the referenced bill, because the more I read it and think about it, the more troubling it becomes to me.

The bill creates Negligent Vehicular Homicide as an A misdemeanor. The troublesome part is that it uses a tort standard of conduct as the negligence standard. Although there are often similarities between tort and criminal law, the general rule has been that for negligent conduct to be criminal, it must constitute a greater leap from ordinary care than mere civil negligence.

Attached are some pages from LaFave and Scott, Substantive Criminal Law, 1986 edition. Section 3.7 discusses some of these ideas. Title 11 of the Alaska Statutes defines criminal negligence in terms of a gross deviation from the standard of reasonable care. AS 11/81/900 (a)(4) (also attached).

This bill would be a significant change in our criminal law, and one which would in an important way change the philosophical underpinnings of our criminal code.

Sec. 11.81.640. Application of Article 11.81

NOTES TO DECISIONS

Cited in *Cole v. State*, 828 P.2d 175
(Alaska Ct. App. 1992)

Article 6. Definitions.

Section
900. Definitions

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

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P.2d 1137

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in the defense of self-defense.¹³ But for the most part, as we have seen, something more than negligence is required for criminal liability. To progress from ordinary negligence to some greater fault (greater than negligence though less than intention or knowledge) which the criminal law ordinarily requires, the components of ordinary negligence which may be varied are the above two—(1) the unreasonable-risk component and (2) the objective-standard component. To repeat: (1) we may require that the defendant's conduct create a risk greater than simply an unreasonable risk, or (2) while requiring only an unreasonable risk, we may require that the defendant have a subjective awareness of the unreasonable risk he creates, or (3) we may require both the higher risk and an awareness of that higher risk.

Law

Before leaving negligence as a basis for criminal liability, it should be noted that there is something of a dispute as to whether criminal liability should, on principle, ever be based upon objective negligence. It has been suggested that the threat of punishment for negligence cannot serve to deter people from negligent conduct; one who is unaware of the risk he is creating cannot be deterred from creating it by thoughts of punishment if he creates it.¹⁴ But others have argued that the threat of punishment for risk-creating does tend to make people think harder about the risks created by their conduct, thus tending to reduce risky conduct and so to promote public safety, the great object of the criminal law.¹⁵



WESTLAW REFERENCES

risk /3 tak! creat! /s harm injury /s criminal crime punishment

(b) **Criminal Negligence.** Though the legislatures and the courts have often made it clear that criminal liability¹⁶ generally requires more fault than the ordinary negligence which will do for tort liability, they have not so often made it plain just what is required in addition to tort negligence—greater risk, subjective awareness of the risk, or both. Statutes are sometimes worded in terms of "gross negligence" or "culpable negligence" or "criminal negligence," without any further

13. Thus an intended homicide or battery may be justified on the ground of self-defense, a matter of "affirmative defense" which depends on whether the defendant was free from negligence in believing that his adversary was about to attack him and that he had to kill or wound the adversary in order to protect himself. See § 5.7.

14. J. Hall, *General Principles of Criminal Law* 137 (2d ed. 1960); G. Williams, *supra* note 8, at § 43.

15. Holmes, J., in *Commonwealth v. Pierce*, 138 Mass. 165, 52 Am.Rep. 264 (1884) (the leading case on applying an objective standard of negligence for manslaughter); Model Penal Code § 2.02, Comment at 243 (1985).

16. The principal crimes which may be committed by some type of negligence greater than tort negligence, though less than intention, are (1) voluntary manslaughter and (2) battery, discussed at §§ 7.12, 7.13. However, there are types of involuntary manslaughter and battery other than the type committed by conduct amounting to criminal negligence. Thus for manslaughter there is (1) intended-bodily-harm-causing-unintended-death manslaughter, and (2) misdemeanor-manslaughter; and for battery there is (1) intended-bodily-harm battery, and (2) misdemeanor-battery.

realize the risk for criminal law, though he need not for tort law.²⁰ In applying this subjective test for criminal negligence, it would seem that a person can be said to realize the risk which his conduct entails not only (a) when he directly knows it to be risky but also (b) when he knows that he does not know whether it is risky or not, and in fact it is risky.²¹

(3) Lastly, a few cases quite clearly spell out that criminal liability requires both greater risk and subjective realization of that risk. Thus in a case wherein the defendant, having previously suffered blackouts and having been warned by his doctor not to drive alone, was driving alone when he suffered another blackout, so that his car went out of control and killed another motorist, the defendant was held guilty of a statutory crime punishing one who causes death while driving a car "in wilful and wanton disregard for the rights or safety of others." The court stated that one is guilty of "wilful and wanton disregard" where, knowing of the existing conditions "and conscious from such knowledge that injury will likely or probably result from his conduct, and with reckless indifference to the consequences," he goes ahead with his conduct.²²

Much of the source of the confusion in the law lies in the criminal statutes, which have used expressions like "gross" and "culpable" negligence and "wilful and wanton" disregard of safety without defining these terms. The courts thus have had to do their best with little guidance from the legislature, with varying results.²³ The Model Penal

20. *Trujillo v. People*, 133 Colo. 186, 292 P.2d 980 (1956) (manslaughter), noted in 28 *Mt.L.Rev.* 409 (1956).

Some cases clearly spell out a subjective test without making it clear whether in addition the degree of risk must be higher than for ordinary negligence. Thus in two manslaughter cases where the defendant, practicing as a physician, prescribed a fatal treatment or medicine for his sick patient, it was held that the defendant could not be guilty of manslaughter if he honestly believed that his treatment or medicine would cure; a subjective standard was thus required. *State v. Schulz*, 55 Iowa 628, 8 N.W. 469 (1881); *Rice v. State*, 8 Mo. 561 (1844). Cf. *Commonwealth v. Pierce*, supra.

21. Thus Hart, *The Aims of the Criminal Law*, 23 *Law & Contemp.Prob.* 401, 416 (1958), suggests that the defendant in *Commonwealth v. Pierce*, supra note 15, who wrapped kerosene rags about his patient's body may have been subjectively negligent even though he thought his treatment would cure. Though he did not directly realize the possibility of harm, he did realize (1) his own deficiency in appraising the

possibility of harm (not having had the special training and knowledge of a doctor) and (2) the risk which such a deficiency created.

22. *State v. Gooze*, 14 N.J.Super. 277, 81 A.2d 811 (1951) (subjective standard is apparent from word "conscious"; high risk from the expression "injury will likely or probably result"). Another such case is *Bussard v. State*, 233 Wis. 11, 288 N.W. 187 (1939) (though defendant was "negligent in a high degree" he is not guilty of "gross negligence" manslaughter without subjectively realizing the high degree of risk his conduct entailed), noted at 1941 *Wis.L.Rev.* 25, 27.

23. See, e.g., *Lupro v. State*, 603 P.2d 468 (Alaska 1979) (crime of negligent homicide requires "reckless disregard of consequences"); *McCreary v. State*, 371 So.2d 1024 (Fla.1979) (manslaughter statute requiring "culpable negligence" means "reckless disregard," but statute using recklessness standard means a degree of negligence "more than a mere failure to use ordinary care"); *Thompson v. State*, 554 P.2d 105 (Okla.Crim.App.1976) (homicide in "reckless disregard of the safety of

Code, however, sets forth definitions for the terms "recklessness"²⁴ and "negligence,"²⁵ and in most recent recodifications the Model Penal Code approach has been substantially followed.²⁶

others" is established by "want of the usual and ordinary care").

24. "A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation." Model Penal Code § 2.02(2)(c). Thus, the Code defines recklessly in terms of both greater risk and subjective awareness. For a detailed assessment of this formulation, see Treiman, *Recklessness and the Model Penal Code*, 9 *Am.J.Crim.L.* 281 (1981), which also notes at 375-86 the extent to which the Code formula has been adopted in modern codes.

25. "A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation." Model Penal Code § 2.02(2)(d). Thus, the Code defines negligence in terms of greater risk and the objective standard.

26. Ala.Code 1975, § 13A-2-2; Alaska Stat. 11.81.900; Ariz.Rev.Stat. § 13-105; Ark.Stats. § 41-203; Colo.Rev.Stat. 18-1-501; Conn.Gen.Stat. Ann. § 53a-3; Del. Code tit. 11, § 231; Hawaii Rev.Stat. § 702-206; Ill.—S.H.A. ch. 38, §§ 4-6, 4-7; Ky.Rev.Stat. 501.020; Me.Rev.Stat. Ann. tit. 17-A, § 35; Vernon's Ann.Mo.Stat. § 562.016; Mont.Code Ann. 45-2-101; Neb.Rev.Stat. § 28-109; N.H.Rev.Stat. Ann. 629:2; N.J.Stat. Ann. 2C:2-2; N.Y.—McKinney's Penal Law § 15.05; N.D.Cent. Code 12.1-02-02; Or.Rev.Stat. 161.085; Pa. Cons.Stat. Ann. tit. 18, § 302; S.D.Cod. Laws 22-1-2; Vernon's Tex.Code Ann., Penal Code § 6.03; Utah Code Ann. 1953, 76-2-103; West's Rev.Code Wash. Ann. 9A.08.010. The Ala., Alaska, Ariz., Colo., Conn., Del., Me., Mo., Tex., Utah and

Wash. negligence standards are labelled "criminal negligence"; the Ky. statute is labelled "recklessness"; the Ky. negligence standard is labelled "recklessness"; the Ky. recklessness standard is labelled "wantonly"; and the Mont. recklessness standard is labelled "negligence."


Some of the modern codes, however, use quite different definitions. As to recklessness, there is West's Ann.Ind.Code 35-41-2-2 ("engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct"); Kan.Stat. Ann. 21-3201 ("under circumstances that show a realization of the imminence of danger to the person of another and a reckless disregard or complete indifference and unconcern for the probable consequences of such conduct"); La.Stat. Ann.—Rev.Stat. 14:12 ("there is such disregard of the interest of others that the offender's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances"); and Ohio Rev.Code § 2901.22 ("when with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist"). As to negligence, there is Ohio Rev.Code § 2901.22 ("when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that his conduct may cause a certain result or may be of a certain nature"); S.D.Cod.Laws 22-1-2 ("a want of attention to the nature or probable consequences of an act or omission which a prudent man ordinarily bestows in acting in his own concerns"); and Wyo.Stat. 1977, § 6-1-104 ("a great or excessive deviation from that standard of care which a reasonable, prudent person would exercise under the same or similar circumstances to avoid a substantial and unjustifiable risk of harm").

Compare *People v. Calvaresi*, 188 Colo. 277, 534 P.2d 316 (1975) (where legislature departed from Model Penal Code formulation by adding "reasonably should be aware" to definition of recklessness, so



Representative Scott Ogan
House District 27

SPONSOR STATEMENT

To: House Committees of Referral for HB 255
From: Representative Scott Ogan 
Re: HB 255
Date: March 17, 1995

HB 255, "An Act creating the crime of negligent vehicular homicide", is a bill designed to fill an existing gap in Alaska's criminal code. Unfortunately, it has taken the recent loss of several lives to illustrate the need for this legislation.

Under current Alaska law, drivers are not held accountable when their careless and irresponsible use of a motor vehicle takes a human life. Unless a prosecutor can prove that the driver at fault acted with "criminal negligence," which is an extremely difficult standard to meet, there is no penalty available greater than a traffic ticket. The offender typically does not even lose his or her driver's license. While no one wishes to be vindictive towards someone who is responsible for a fatal accident, the lack of any criminal sanctions means that dangerous drivers are free to continue placing others at risk.

HB 255 simply states that if a driver operates his or her vehicle negligently, and takes someone's life in the process, society is no longer prepared to brush it off with a simple offering of condolences. The bill makes taking the life of another while driving a vehicle negligently a class A misdemeanor. Negligence is defined as failing to use the type of care or caution that a reasonable person would use under the circumstances. A class A misdemeanor is an appropriate classification for the proposed crime, as it gives a judge sufficient flexibility in sentencing to impose jail terms for repeat offenders, or a more moderate sentence of, perhaps, a driver's license revocation and fine or suspended imposition of sentence where the offender has no prior criminal history.

I urge you to support this much needed bill.



Alaska State Legislature

HOUSE OF REPRESENTATIVES


Official Business

State Capitol
Juneau, AK 99801-1182

Representative Scott Ogan

House District 27

SECTIONAL ANALYSIS

To: House Committees of Referral for HB 255
From: Representative Scott Ogan 
Re: Sectional Analysis of HB 255
Date: March 17, 1995

The following is a sectional analysis of HB 255, "An Act creating the crime of negligent vehicular homicide."

Section 1: Section 1 adds a provision to AS 09.55.580(f), which is the statute that prohibits someone who has committed a felonious killing of another from obtaining a damage award for the victim's death. The provision currently defines "felonious killing" as any crime numbered AS 11.41.100 - 11.41.140. Negligent Vehicular Homicide, however, would fall within this numerical range, and is only a misdemeanor; Section 1 therefore AS modifies 09.55.580(f) to avoid classifying a misdemeanor as a felony in that section.

Section 2: Section 2 adds a new crime against the person to AS 11.41 called "Negligent Vehicular Homicide". The elements of the crime are causing the death of another while operating a motor vehicle with negligence. Negligence is defined as a failure to perceive an unjustifiable risk of harm to a person, when that failure is a deviation from the standard of care that a reasonable person would observe in the circumstances. This new crime would be a class A felony.

The Madison Forum

17 East Glenwood Lane - St. Louis, Missouri 63122

February 8, 1994

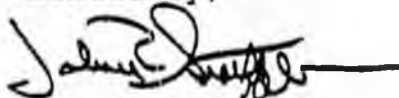
Mandates! Directives! That's all we seem to hear from our federal brethren in Washington, D.C. States have recognized the burden these mandates and directives have created at the state level. Unlike the feds the states can't print money to cover their debts. Patrick Henry put it this way, "(Y)our rich, smug, fine, fat, federal officers - the number of collectors of taxes and excises - will outnumber anything from the states. Who can cope with the excise man and the tax man?"

But when an order to levy taxes is mandated by a federal court, how are you to respond to such an order? How do states begin to question or even reject the orders of the federal courts when even the United States Supreme Court upholds as constitutional a lower federal court order to levy a direct tax increase upon the citizens of a city? How do you respond to what we believe is a violation of not only the Constitution of that state, but as we also believe the Constitution of the United States?

With this in mind Missouri State Senator Walt Mueller and I visited a federal judge in his office, and in the capacity of an elected state official and as a private citizen posed that very question. We were notified that such action was part of an ongoing case and as such, he would not discuss it. We were then directed to leave. This action by the judge was not unexpected, but it was felt that his orders needed to be questioned. We felt it was a legitimate question to pose inasmuch as the Constitution of the United States is quite clear in that the judiciary has never been granted the power to tax.

When a federal judge claims that he cannot discuss judicial directives which violate the constitution of a state with a member of the legislative branch of government, something is drastically wrong. So what does one do when the judiciary mandates direct taxes and Congress refuses to challenge the federal court's usurpation of Article I powers as they pertain to taxation? Our answer is to rein in the power that the judiciary has usurped by asking other states to join our call for an amendment to the Constitution that will put a stop to this judicial grab for power. Action must be taken now. We need your help and active support of this proposed amendment.

Sincerely,



John R. Stoeffler
Chairman, The Madison Forum

The Madison Forum

17 East Glenwood Lane - St. Louis, Missouri 63122

March 1995

As each of you consider our request to join the growing number of states which are calling upon Congress to submit to the states an amendment to the United States Constitution that would limit the power of the federal judiciary to levy or increase taxes, we ask you to consider the implications of federal court intervention in state budgets should a balanced budget amendment become a reality. A number of individuals have.

Former United States Senator John C. Danforth stated in February of 1994, "A balanced-budget amendment would be a disaster if federal courts were able to increase taxes or cut spending."

United States Senator Paul Simon stated these same concerns as early as 1992 when he noted that the Supreme Court could issue a court order requiring Congress to bring the budget into balance. "I don't think that will happen in the immediate future. I'm not sure but that 30 or 40 years from now the court might not be in a position to order Congress to comply." Suppose the courts themselves did in fact become the agents of enforcement.

Judge Robert H. Bork did not feel that such an initiative is impossible. Judge Bork cited *Missouri vs. Jenkins* which affirmed the power of the court to oversee fiscal policy calling such actions "a dismal prospect."

United States Senator Robert Byrd shared his concern over the potential for federal court mischief in determining fiscal policy. "It would . . . bring the judicial branch into the equation, and to that extent our representative democracy would become less of a representative democracy."

Syndicated columnist James J. Kilpatrick stated his concern over the federal courts propensity to usurp Congress' power of the purse. "In recent years federal judges have not hesitated to order states and localities to raise taxes in order to carry out judicial decrees. Judges have turned themselves into school superintendents, prison wardens and state legislatures. Who or what would restrain them in the matter of declaring ways to achieve a balanced budget? My own distrust is massive."

Former United States Senator Tom Eagleton stated in a commentary which appeared in the St. Louis Post Dispatch on February 2, 1994 "The proposed (balanced budget amendment) means either too much or too little -- take your pick. Only the

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 255

BY REPRESENTATIVE FINKELSTEIN

Page 2, line 1
Delete "A"
Insert "B"

Alaska State Legislature



House of Representatives House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

January 23, 1996

TO: Members of the House Judiciary Committee

FROM: Tom Meyer, committee aide

RE: Materials for HB 255 for 1/24/96 meeting

Attached are update materials to be included in your bill packets already in your possession from last session.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 255

Revision Date:

Dept. Affected: Alaska Court System

Title: Negligent homicide by automobile

BRU: Trial Courts

Component:

Sponsor: Rep. Ogan

Requestor: House Judiciary

COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: None

Positions

Full-Time					
Part-Time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact. See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel

Agency: Alaska Court System

Phone: 264-8228

Date: 01/23/96

Approved by: Arthur H. Snowden, II, Administrative Director

Agency: Alaska Court System

Date: 01/23/96

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Alaska Court System
Fiscal Analysis
HB 255

HB 255 establishes the crime of negligent vehicular homicide as a class A misdemeanor. This crime uses the civil negligence standard of conduct, rather than the stricter criminal standards of conduct currently used when prosecuting a vehicular homicide.

According to the Department of Law, in 1994 there were 70 fatal vehicular accidents resulting in 85 fatalities. Approximately 25 of those fatalities resulted in a person being charged with some form of felony homicide. If this bill were to become law, the Department of Law estimates that approximately two-thirds of the remaining cases (37 cases) would result in misdemeanor vehicular homicide charges. Most of these cases are currently being prosecuted as another misdemeanor, such as Assault 4, Reckless Endangerment or Reckless Driving. However, the different standards of conduct for this new charge will probably result in a different trial rate and trial length, affecting both judicial time and jury costs. The differences cannot reasonably be predicted at this time.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSHB 255(JUD)

Revision Date: 1/11/96 Dept. Affected: Public Safety
 Title: Negligent Homicide by Automobile BRU: Motor Vehicles
 Sponsor: Representative Ogan Component: Driver Services
 Requestor: H. Jud. COMPONENT SERIAL NO. 0500

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
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-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 96) impact: \$ _____

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.)

It is anticipated that passage of this bill will not have significant impact on the Division of Motor Vehicles.

Prepared By: Juanita Hensley Phone: 465-2650
 Division: Motor Vehicles Date: 1/11/96
 Approved by Commissioner: *Ronald L. Otte* Date: 1/11/96
 Agency: Ronald L. Otte, Dept. of Public Safety

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM

January 16, 1996

SUBJECT: Criminally negligent Homicide - CSHB 255(JUD),
Draft, Dated 1/12/96 (Work Order No. 9-LS0694\F)

TO: Representative Brian Porter
Attn: Tom Meyer

FROM: Gerald P. Luckhaupt *JGL*
Legislative Counsel

Enclosed is the CS(JUD) you requested. As I told Tom on the phone I have two comments about the bill draft.

1. The Judiciary Committee amended a part of the title to "An Act raising the penalties for negligent vehicular homicide ...". The trouble with this amendment is that the bill draft raises the penalties for the crime of "criminally negligent homicide" which can be committed in any number of ways not involving the use of a vehicle and which requires the defendant to act with criminal negligence, not mere negligence. Therefore, it is my opinion that the subject of the bill is not adequately expressed in the title of the bill as required by Art. II, § 13 of the Alaska Constitution. To remedy this problem, I recommend that the committee delete the words "negligent vehicular homicide" appearing on page 1, line 1 of the bill draft and insert the words "criminally negligent homicide" in their place.

2. In sec. 2 of the bill draft the revocation of an operator's license is authorized for negligent driving. Negligent driving is codified at AS 28.35.045 and is an infraction punishable as provided in AS 28.40.050. AS 28.40.050 provides that an infraction is a non-criminal offense with a fine of not more than \$300 and not resulting in loss of an operator's license. Since sec. 2 of the bill authorizes the loss of an operator's license for negligent driving, the committee added a bill section 3, which provides that while an infraction does not usually result in a loss of an operator's license, in cases of negligent driving it will. The trouble here is that if a person can lose an operator's license for negligent driving, an infraction, that offense probably can no longer be considered a minor offense that does not give rise to a right to a jury trial, right to counsel, and other procedural rights. Classifying negligent driving as an infraction while providing for the revocation of operators' licenses for its violation, is inconsistent with the statutory scheme of AS 28.35 and the specific explanation of the effects of an infraction in AS 28.40.050(d). Therefore, you may want to reconsider the exception we are providing in AS 28.40.050(d) and instead amend the negligent driving

Representative Brian Porter

January 16, 1996

Page 2

section, AS 28.35.045 to make the violation of that section a misdemeanor, and set forth a specific penalty that could, if you so choose, mimic the penalty currently provided for negligent driving that merely provides a fine and does not include a jail term. This would still not be a minor offense and would require a jury trial, but at least this new offense would be consistent with the statutory scheme of AS 28.35 and no longer be inconsistent with AS 28.40.050(d).

You may also want to consider the rather significant fiscal effects that may result from this change due to the required provision of jury trials and other procedural protections.

GPL:pl:klb

96-017.plm

9-LS0694F
Luckhaupt
1/16/96

CS FOR HOUSE BILL NO. 255(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES OGAN, Kohring, Bunde

A BILL

FOR AN ACT ENTITLED

1 "An Act raising the penalties for negligent vehicular homicide; and relating to the
2 revocation of drivers' licenses for negligent driving."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * Section 1. AS 11.41.130(b) is amended to read:

5 (b) Criminally negligent homicide is a class B [CLASS C] felony.

6 * Sec. 2. AS 28.15.181(a) is amended to read:

7 (a) Conviction of any of the following offenses is grounds for the immediate
8 revocation of a driver's license, privilege to drive, or privilege to obtain a license:

9 (1) manslaughter or negligent homicide resulting from driving a motor
10 vehicle;

11 (2) a felony in the commission of which a motor vehicle is used;

12 (3) failure to stop and give aid as required by law when a motor
13 vehicle accident results in the death or personal injury of another;

14 (4) perjury or making a false affidavit or statement under oath to the

- 1 department under a law relating to motor vehicles;
- 2 (5) operating a motor vehicle or aircraft while intoxicated;
- 3 (6) reckless driving;
- 4 (7) using a motor vehicle in unlawful flight to avoid arrest by a peace
- 5 officer;
- 6 (8) refusal to submit to a chemical test authorized under
- 7 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
- 8 commercial motor vehicle, or aircraft while intoxicated, or authorized under
- 9 AS 28.35.031(g);
- 10 (9) driving while license, privilege to drive, or privilege to obtain a
- 11 license, canceled, suspended, or revoked, or in violation of a limitation;
- 12 (10) negligent driving.

13 * Sec. 3. AS 28.40.050(d) is amended to read:

14 (d) An infraction, as provided for in (c) of this section, is not considered a

15 criminal offense and may not result in imprisonment, nor is a fine imposed for the

16 commission of an infraction considered a penal or criminal punishment; nor may the

17 commission of a single infraction result in the loss of a driver's license or privilege to

18 drive or register vehicles in this state, except as may result under AS 28.15.181(a) or

19 from the accumulation of points under AS 28.15.221 - 28.15.261 [, OR THE

20 REGISTRATION OF VEHICLES]; nor does a person cited with an infraction have a

21 right to trial by jury or to court-appointed counsel.

HB

274

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE TOOHEY

TO: HB 274

1 Page 1, lines 1 - 2:

2 Delete ", including provisions for certain penalties"

3 Page 7, line 3:

4 Delete "and"

5 Page 7, line 6. after "provided":

6 Insert "; and

7 (5) advice to the person being detained that the person has the right
8 to elect whether a proceeding providing court review is open or closed to the public"

9 Page 8, after line 15:

10 Insert a new subsection to read:

11 "(d) A person who is the subject of a court proceeding initiated under
12 AS 18.15.136 or 18.15.137 may elect to have the hearing open or closed to the
13 public."

14 Page 9, lines 15 - 16:

15 Delete all material.

Revision Date: _____
Title: Tuberculosis Control Program
Sponsor: Governor's Bill
Requestor: Governor's Office

Dept. Affected: Health and Social Services
BRU: State Health Services
Component: Epidemiology
COMPONENT SERIAL NO. 296
See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
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						
CHANGES IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Division of Public Health.

Prepared by: Peter M. Nakamura, MD, MPH *PMA* Phone: (907) 465-3090
 Division: Public Health Date: 03/16/95
 Approved by Commissioner: Karen Perdue, Commissioner Date: 3/16/95
 Agency: Department of Health & Social Services

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FISCAL NOTE

No. 23
 Bill Version: HB 274
 (1) Publish Date: 1/28/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to the state's tuberculosis control program..."
 Sponsor: Rules Committee
 Requestor: Governor

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

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	00	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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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						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The Public Defender (PD) has no information regarding the extent to which tuberculosis is a problem in this state, or the frequency with which this bill would be used in a way which would trigger PD representation. Assuming that involuntary detention for tuberculosis diagnosis/treatment will be infrequent, the PD anticipates no fiscal impact.

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

Phone: (907) 264-4412
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Department of Administration

Date: 3/16/95

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FISCAL NOTE

No. 2
 Bill Version: HB 274
 (H) Publish Date: 3/22/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to the state's general tuberculosis control program ..."
 Sponsor: Rules
 Requestor: _____

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

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
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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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						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Office of Public Advocacy.

Prepared by: Brant McGee, Director
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/16/95

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FISCAL NOTE

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: ...relating to the state's tuberculosis control BRU: Legal Services
program including provisions for certain penalties... Component: Operations
 Sponsor: Rules by Request of the Governor
 Requester: Governor's Office/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)

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

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 would update the state's general tuberculosis control program and the involuntary detention laws for those persons who have infectious tuberculosis but are unable or unwilling to seek treatment or take safeguards to protect the public against infections. The bill seeks to correct deficiencies in the existing law in respect to recognizing due process requirements of the United States and Alaska constitutions. The bill will allow the court to address the merits of the decision of confinement in these cases rather than focus its review on arguments regarding alleged constitutional deficiencies in the process to support a detention decision. This is corrective legislation that does not have an effect on the existing caseload, and there will not be a fiscal impact.

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

Phone: 465-3672
 Date: 3/15/95
 Date: 3/15/95

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 21, 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 to update the state's tuberculosis control program to ensure that our statutes expressly recognize constitutional requirements when the state must order a person involuntarily detained or confined for essential medical testing or treatment or to protect the public health. The bill also makes miscellaneous amendments to recognize new developments in the field and to improve the reporting requirements for a case involving a person with tuberculosis.

Tuberculosis is still a serious public health problem in Alaska. Tuberculosis is a disease that can be spread through fairly routine contact such as coughing in a confined, crowded area. In 1994, tuberculosis was diagnosed in several outbreaks in rural villages in Alaska. Tuberculosis can be successfully treated, but the treatment requires a patient to take medication for six months to 24 months. Since some patients face lifestyle problems that make it difficult for that patient to voluntarily successfully complete the entire course of treatment or to isolate themselves from the public to protect the public health, it is sometimes necessary for orders to be issued and enforced to ensure that the patient is following the treatment plan or is isolated from the public. If treatment is prematurely abandoned, a patient's tuberculosis can become more resistant to treatment and place the public at risk of catching an even more difficult form of this disease in the future.

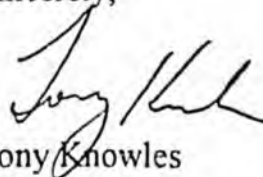
The state's tuberculosis control program and involuntary detention laws should be revised to explicitly recognize constitutional safeguards required in order to quickly respond to tuberculosis incidents and to detain or confine a person if that person is unable or unwilling to undergo treatment and is a threat to the public health. While the Department

The Honorable Gail Phillips
March 21, 1995
Page 2

of Health and Social Services anticipates that the involuntary detention and commitment provisions in the bill will be used only rarely because most people will voluntarily take treatment and use safeguards when advised by a medical professional, the bill is necessary to allow a system to be in place to respond quickly in a crisis situation.

I urge your support of this bill in response to an important public health issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tony Knowles".

Tony Knowles
Governor

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 22, 1995

FURTHER REFERRALS

Judiciary

Date of Committee Action: 3/28/95

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 274

HOUSE BILL NO. 274 TUBERCULOSIS CONTROL

"An Act relating to the state's tuberculosis control program, including provisions for certain penalties; and providing for an effective date."

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

zero fiscal note(s) _____ zero fiscal note(s) H+SS, Law
(2) Admin

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>				✓
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>Caren Holmson</i>	✓			✓
<i>Tom Bruce</i>			✓	

CHAIR'S SIGNATURE *[Signature]*

HB

285

Alaska State Legislature
Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE
VICE-CHAIRMAN
HOUSE SPECIAL COMMITTEE ON FISHERIES

SESSION:
STATE CAPITAL BUILDING
JUNEAU, ALASKA 99801-1182
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SPONSOR STATEMENT

Sponsor Substitute House Bill 285

An Act relating to the amount of the homestead exemption and to the method of changing amounts of exemptions.

Alaska State Statute 09.38.010 (a) currently allows a homestead exemption value up to \$54,000. This amount has not been challenged since 1982 when it was increased from \$27,000.

Additional adjustments are triggered by calculations administered by AS 09.38.115. This mechanism (formula) is triggered to increase the exemption amounts when the Consumer Price Index (CPI) has increased at least 10%. Currently, this calculation has raised the exemption amount to \$62,100.

Sponsor Substitute House Bill 285 would allow homeowners under bankruptcy proceedings to maintain the equity of their homes by increasing the *homestead exemption* amount to \$150,000. Increasing the exemption amount to \$150,000 protects the homeowners equity from creditors upon liquidation of their assets.

Additionally, SSHB 285 clarifies the method of processing the bankruptcy exemption amounts and requires the Department of Labor adopt a regulation announcing the changes in the dollar amounts. Sections 3 and 4 of SSHB 285 amend AS 09.38.115 of the Exemptions Act to reference the appropriate Consumer Price Index (CPI) and base index used in the calculation specified in statute.

In accordance with the statutes, the department has amended the bankruptcy exemption amounts twice by regulation. This was done in 1984 and again in 1992. The legislature amended the dollar amounts once in 1987, but inadvertently did not update reference to the 1982 base dollar amounts in AS 09.38.115. During the 1992 adjustment process, a number of problems were identified that related to the CPI and base index specified in statute, SSHB 285 addresses these issues.

Changing the definition of the reference base index to the *most recent year that the legislature sets exemption amounts* and inserting the *preceding calendar year* in place of the reference to January addresses the technical corrections. These corrections allow for the adjustments to be made in compliance with the timing of the Anchorage CPI and also clarifies the adjustments being made using the CPI index for the most recent year. In addition, the dollar amounts for the most recent year that the legislature sets exemption amounts is to be used as the base.

The reason for the homestead laws is the preservation of the family farm, home, or other assets in the face of severe economic conditions. In each case, the property that may be homesteaded is designed to perpetuate the family's estate and improve its chances for survival in hard times. The homestead provides a back-up and a form of insurance against unexpected catastrophe.

According to the *Alaska Housing Market Indicators 3rd Quarter 1994*, the average statewide single-family home sales price is \$137, 242. With today's higher interest rates, the average single-family homebuyer has curtailed last year's demand for larger and more expensive housing and, instead, is shopping for affordable homes. Increasing the homestead exemption amount \$150,000 will hopefully reverse the trend toward lower-priced home purchases and encourage prospective homebuyers to buy homes without the risk of leveraging their family investment. The average sales price for a single-family home in Anchorage is \$145,460 and varies considerably statewide.

In addition, with the cost of living increasing in Alaska and programs such as longevity bonus being phased out, increasing the homestead exemption to \$150,000 will allow for those who own \$150,000 homes (primarily the elderly) to maintain their primary residence.

I would appreciate your support for this legislation.

DIVISION OF LEGAL SERVICE
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

APR 12 1995

(907) 465-3867 or 465-2450
FAX (907) 465-3029
Mail Stop 3101

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

MEMORANDUM

April 12, 1995

SUBJECT: Sectional Summary of SSHB 285
(Work Order No. 9-LS0956\G)

TO: Representative Carl Moses
Attn: Rosetta

FROM: *TB*
Theresa Bannister
Legislative Counsel

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

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 increases the homestead exemption to \$150,000 from \$54,000.

Section 2 changes the subsection to conform it to the change in sec. 1 of the bill. Under the first change the total value of homestead exemptions in one living unit may not exceed the new amount, \$150,000. Under the second change, if there are several owners, one owner's exemption may not be greater than that owner's pro rata portion of the \$150,000.

Sections 3 and 4 change the way exemptions are changed over the years.

AS 09.38.115(a) states that an exemption amount changes according to the change in the particular consumer price index identified in the subsection.

Establishes a baseline index for each exemption. Sets the baseline index at the index for the most recent year when the exemption is established or changed by legislation (other than by AS 09.38.115).

AS 09.38.115(b) provides that an exemption amount changes October 1 of each even-numbered year. This occurs only if the change between index for the preceding year and the baseline index is 10 percent or more.

Representative Carl Moses

April 12, 1995

Page 2

The dollar amount of the exemption changes only in multiples of 10 percent of the dollar amount of the exemption. The dollar amount does not change if the dollar amount reached by an earlier application of this section already equals the dollar amount that would be reached by a current application of this section.

If I may be of further assistance, please advise.

TLB:glc:klb

95-283.glc

APR 18 1995

BILL NO: SSHB 285

DATE: April 17, 1995

TITLE: Amount of Homestead and
Other Exemptions

CONTACT: Dwight Perkins
465-2700

AS 09.38.115 provides for the adjustment of the exemption amounts specified in other sections of the Exemptions Act. AS 09.38.115 also describes the process for adjusting the bankruptcy exemption amounts and requires that the Department of Labor adopt a regulation announcing the changes in the dollar amounts. **Sections 3 and 4 of Sponsor Substitute for House Bill No. 285** amend AS 09.38.115 of the Exemptions Act to reference the appropriate Consumer Price Index (CPI) and base index used in the calculation specified in statute.

In accordance with the statutes, the department has amended the bankruptcy exemption amounts twice by regulation, in 1984 and again in 1992. The legislature amended the dollar amounts once, in 1987, but did not update reference to the 1982 base dollar amounts in Section 09.38.115. During the 1992 adjustment process, a number of problems were identified that related to the CPI and base index specified in statute.

It is our understanding that Section 09.38.115 was added by the legislature to maintain the value of the dollar amounts as set in statute. The section worked well as long as the legislature did not change the original dollar amounts. However, when the exemption amounts were changed by regulation in 1992, and because the statute specified the use of the original 1982 base dollar amounts to calculate the amount of the increase, the 1987 dollar amounts, as set in statute, were not used in the calculation. The increase in 1982 dollars was added to the 1987 dollar amounts to arrive at the new exemption amounts.

Though the department has implemented the requirements of the statute based on the explicit terms of the statute, it may have resulted in an effect that may not have been intended by the legislature. The Department of Labor supports the amendments in sections 3 and 4 to clarify legislative intent.

APPROVED:



Tom Cashen, Commissioner

DATE:

4-17-95

POSITION PAPER/Department of Labor

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SSHB 285

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Act relating to the homestead BRU: Trial Courts
exemption Components: _____
 Sponsor: Rep. Moses
 Requestor: _____ COMPONENT SERIAL NO. 768

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 95) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 284-8228
 Agency: Alaska Court System Date: 04/13/95

Approved by: Arthur H. Snowden, II, Administrative Director *AS* Date: 04/13/95
 Agency: Alaska Court System

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APR 18 1995

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SSHB 285

Revision Date: _____
Title: Amount of homestead and other exemptions
Sponsor: Representative Moses
Requestor: House Judiciary

Department Affected: Labor
BRU: Administrative Services
Component: Labor Market Information
COMPONENT SERIAL NO. 336

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)

Sections 3 and 4 of Sponsor Substitute for House Bill No. 285 amend AS 09.38.115 of the Exemptions Act to reference the appropriate Consumer Price Index and base index used in the calculation specified in statute.

Prepared by: Arbe Williams, Director Phone: 465-2720
Division: Administrative Services Date: 4/14/95

Approved by Commissioner: Tom Cashen, Commissioner
Agency: Department of Labor Tom Cashen Date: 4/14/95

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Revisor's notes. — Several sections in this chapter were redrafted in 1982 to remove personal pronouns in conformity with AS 01.05.031.

Cross references. — For general provisions concerning execution, see AS 09.35 and Civ. R. 69; for legislative intent, see § 1 ch 62 SLA 1982; for transition provisions, see § 15 ch 62 SLA 1982. For limitations on the applicability of this chapter, see AS 25.27.062 and 25.27.250 (child support); AS 43.20.270 (unpaid taxes); and AS 43.23.067 (scholarship loans).

Collateral references. — 31 Am. Jur. 2d, Exemptions, § 1 et seq.

35 C.J.S., Exemptions, § 1 et seq.

Joint bank account as subject to attachment, garnishment, or execution by creditor of one of the joint depositors, 11 ALR3d 1465.

Family allowance from decedent's estate as exempt from attachment, garnishment, execution, and foreclosure, 27 ALR3d 863.

What is "necessary" furniture entitled to exemption from seizure for debt, 41 ALR3d 607.

Injury to credit standing, reputation, solvency, or profit potential as elements of damage resulting from wrongful execution against business property, 55 ALR3d 911.

Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings, 93 ALR3d 711.

Choice of law as to exemption of property from execution, 100 ALR3d 1235.

Sec. 09.38.010. Homestead exemption. (a) An individual is entitled to an exemption as a homestead of the individual's interest in property in this state used as the principal residence of the individual or the dependents of the individual, but the value of the homestead exemption may not exceed \$54,000.

(b) If property owned by the entirety or in common is used by one or more individual owners or their dependents as their principal residence, each owner is entitled to a homestead exemption of that owner's interest in the property as provided in (a) of this section. The aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed \$54,000. If there are multiple owners of property exempt as a homestead, the value of the exemption of each individual owner may not exceed the individual owner's pro rata portion of \$54,000.

(c) If property that includes a homestead is sold under an execution, the sale becomes effective upon confirmation by order of the court. The court shall enter the order of confirmation unless, within 60 days after the sale, the individual repurchases the property under this section or the court extends the time for confirmation upon the filing of a timely motion by a party in interest. The individual may repurchase property, including that individual's homestead, at a sale on execution before confirmation by paying into court the costs of the sale plus the lesser of either (1) the difference between the highest bid and the amount of the exemption in the property, or (2) the amount of the creditor's claim. If the individual does not exercise the repurchase right under this subsection, the clerk of the court shall first remit an amount determined to be exempt to the individual from the proceeds

of sale and the balance less the cost of the sale to the creditor. For the purpose of collecting an amount remaining unpaid on a judgment after repurchase of property by an individual under this subsection, the creditor or the creditor's assignee may not make another levy on the property repurchased.

(d) Upon entry of the order of confirmation under (c) of this section and expiration of the time period for repurchase, the clerk may execute a deed to the property and when delivered it shall be sufficient to convey all title of the individual in the premises sold to the purchaser at the sale. (§ 2 ch 62 SLA 1982; am §§ 1, 2 ch 135 SLA 1988)

Cross references. — For current exemption amounts, see 8 AAC 95.030.

NOTES TO DECISIONS

Cases construing former statutes. — See *Seagreen v. Wendler*, 5 Alaska 715 (1917); *Wendler v. Brenneman*, 7 Alaska 13 (1923); *Williams v. Thompson*, 7 Alaska 601 (1927); *In re Bocash*, 10 Alaska 206 (1942); *Dalton v. Interior Credit Bureau, Inc.*, 615 P.2d 631 (Alaska 1980).

Avoidance of judicial lien to extent of impairment of homestead exemption. — Section 522(f) of the Bankruptcy Code [11 U.S.C.] provides that ". . . the debtor may avoid the fixing of a [judicial] lien on . . . property to the extent that such lien impairs an exemption . . ." To determine whether there is such an im-

pairment of a homestead exemption, the following steps are taken by the court: (1) all liens are ranked in order of priority (and equity, if any) to the extent of the value of the property; (2) the gross amount of the homestead exemption is subtracted from the value of the property; and (3) from the remainder left, each lien is subtracted, one at a time, beginning with the most senior lien, until a judicial lien is reached. Then the judicial lien is subtracted. To the extent that all or any portion of the judicial lien exceeds the remainder derived in (2), above, it is voidable. *In re Duncan*, 43 Bankr. 833 (Bankr. D. Alaska 1984).

Sec. 09.38.015. Property exempt without limitation. (a) An individual is entitled to exemption of the following property:

- (1) a burial plot for the individual and the individual's family;
- (2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;
- (3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;
- (4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations act of another jurisdiction;
- (5) benefits paid or payable as a longevity bonus under AS 47.45;
- (6) compensation or benefits paid or payable and exempt under federal law;
- (7) liquor licenses granted under AS 04;
- (8) limited entry permits granted under AS 16.43, except as provided in that chapter;
- (9) tuition credits under an advance college tuition payment contract authorized under AS 14.40.809(a);

Sec. 09.38.105. Waiver of exemption. A waiver of exemption executed in favor of an unsecured creditor before levy on an individual's property is unenforceable, but a valid security interest may be given in exempt property. (§ 2 ch 62 SLA 1982)

Sec. 09.38.110. Federal requirements. If a federal department or agency issues a formal ruling that a section of this chapter relating to public assistance will cause a state plan for the delivery of services or benefits to be out of conformity with federal requirements, the section will not apply to the extent that it causes the program to be out of conformity with federal requirements. (§ 2 ch 62 SLA 1982)

Sec. 09.38.115. Adjustment of dollar amounts. (a) The dollar amounts in this chapter change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all Urban Consumers for the Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January of 1982 is the reference base index.

~~(b) The dollar amounts change on October 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index for January of that year and the most recent index used to change the exemption amount, is 10 percent or more, but~~

~~(1) the portion of the percentage change in the index in excess of a multiple of 10 percent is disregarded and the dollar amounts change only in multiples of 10 percent of the amounts appearing in this chapter on August 26, 1982; and~~

(2) the dollar amounts do not change if the amounts required by this section are those currently in effect as a result of earlier application of this section.

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The Department of Labor shall adopt a regulation announcing

(1) on or before June 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by (b) of this section; and

(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(e) The Department of Labor shall also provide notification of a change in exemption amounts required under (c) of this section to the clerks of court in each judicial district of the state. (§ 2 ch 62 SLA 1982; am § 37 ch 6 SLA 1984; am §§ 18, 19 ch 14 SLA 1987)

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

Sec. 09.38.120. Protection of property of residents and non-residents. (a) Residents of this state are entitled to the exemptions provided under this chapter. Nonresidents are entitled to the exemptions provided by the law of the jurisdiction of their residence.

(b) The term "resident" means an individual who is physically present in the state and who intends to maintain a permanent home in Alaska. (§ 2 ch 62 SLA 1982)

NOTES TO DECISIONS

Garnishment against non-resident. — Superior court's order allowing garnishment of 50 percent of a California resident's workers' compensation and social security benefits, in order to satisfy unpaid child support, was proper, since the Alaska Exemptions Act and the Workers' Compensation Act both clearly favor the compelling public policy of enforcing child support obligations. *Cameron v. Hughes*, 825 P.2d 882 (Alaska 1992).

Sec. 09.38.500. Definitions. In this chapter, unless the context otherwise requires,

(1) "burial plot" means a parcel of real estate used for burial of human remains and which is located within an area designated for cemetery purposes by the state or a general law or home rule municipality;

(2) "debt" means a legally enforceable monetary obligation or liability of an individual, whether arising out of contract, tort, or otherwise;

(3) "dependent" means an individual who derives support primarily from another individual;

(4) "earnings" means money received by an individual for personal services and denominated as wages, salary, commissions, or otherwise;

(5) "exempt" means protected, and "exemption" means protection, from subjection to process or a proceeding to collect an unsecured debt;

(6) "household goods" includes those items that make a residence habitable according to modern standards;

(7) "judicial lien" means a lien on property obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding instituted for the purpose of collecting an unsecured debt;

PART 7. ADMINISTRATIVE SERVICES DIVISION.

Chapter

95. Adjustments to Alaska Exemptions Act (8 AAC 95.020 — 8 AAC 95.030)

CHAPTER 95. ADJUSTMENTS TO ALASKA EXEMPTIONS ACT.

Section

20. Determination of changes in the Consumer Price Index

Section

30. Adjustments to exemptions

8 AAC 95.020. **DETERMINATION OF CHANGES IN THE CONSUMER PRICE INDEX.** The department has determined that the December 1991 Consumer Price Index is 32 percent above the January 1982 base index. Under AS 09.38.115(b)(1), this percent increase is rounded to 30 percent. For the purpose of adjusting the dollar amounts set out in AS 09.38 Alaska Exemptions Act the 30 percent increase is applied to the dollar amounts that appeared in AS 09.38 on August 26, 1982. (Eff. 7/1/86. Register 98: am 10/1/92, Register 123)

Authority: AS 09.38.115

8 AAC 95.030. **ADJUSTMENTS TO EXEMPTIONS.** (a) The \$54,000 homestead exemption provided in AS 09.38.010(a) and (b) is increased to \$62,100.

(b) The personal property exemptions provided in AS 09.38.020 are increased as follows:

(1) the \$3,000 aggregate exemption for personal property, set out in AS 09.38.020(a), is increased to \$3,450;

(2) the \$1,000 exemption for jewelry, set out in AS 09.38.020(b), is increased to \$1,150;

(3) the \$2,800 exemption for implements, professional books, and tools of the trade, set out in AS 09.38.020(c), is increased to \$3,220;

(4) the \$1,000 exemption for pets, set out in AS 09.38.020(d), is increased to \$1,150; and

(5) the \$3,000 exemption for a motor vehicle, set out in AS 09.38.020(e), is increased to \$3,450 and the \$20,000 value limitation for the motor vehicle, set out in AS 09.30.020(e), is increased to \$23,000.

(c) The \$10,000 exemption for accrued dividends and loan values on life insurance and annuity contracts, in AS 09.38.025(a), is increased to \$11,500.

(d) The exemptions for earnings and liquid assets, in AS 09.38.030, are increased as follows:

(1) the \$350 exemption for weekly net earnings, set out in AS 09.38.030(a), is increased to \$402.50; and

(2) the \$1,400 exemption for cash and other liquid assets, set out in AS 09.38.030(b), is increased to \$1,610.

(e) The increased exemption amounts provided in AS 09.38.050(b) are increased as follows:

(1) the \$550 amount regarding weekly disposable earnings is increased to \$632.50; and

(2) the \$2,200 maximum monthly exemption for cash and other liquid assets is increased to \$2,530. (Eff. 7/1/86, Register 98; am 10/1/92, Register 123)

Authority: AS 09.38.115

Legislative Research Agency

130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Alaska State Legislature



Phone: (907) 465-3991
Fax: (907) 463-3351

April 4, 1995

MEMORANDUM

TO: Representative Carl Moses

FROM: Patricia Young *P. Young*
Legislative Analyst

RE: State Exemption Acts--Homestead Exemptions
Research Request 95.184

State Exemption acts provide protection to persons being sued by creditors or facing bankruptcy so that they and their families are not left destitute. Such laws guarantee that insolvent individuals will continue to have the basic necessities. Among the usual exemptions is an allowance for a person's residence; this allowance is referred to as a *homestead exemption*. You wished to know which states provide exemptions for homesteads among their statutes and the value of those homestead exemptions.

Bankruptcy proceedings are governed primarily by federal law, and federal law contains a list of property that a debtor is allowed to keep to make a fresh start. The property that a debtor is allowed to keep is *exempt* from the bankruptcy and may not be liquidated to pay creditors. Under federal law, however, states may determine what property a debtor may keep as exempt. States may opt-out of the federal exemption scheme by passage of a law specifically providing that state exemptions shall be used. State exemptions may be more or less generous than federal exemptions, and they need not be identical or even comparable to the exemptions established under federal law. Debtors filing bankruptcy in states which do not pass such laws may elect exemptions under either the state or the federal scheme. In Alaska, a debtor may choose exemptions under either the state or the federal scheme.¹

¹Alaska Statute 09.38.055 of the Alaska Exemptions Act has sometimes been thought to prohibit a debtor from using the federal exemptions (see, for example, William C. Hillman, *Personal Bankruptcy: What Every Debtor and Creditor Needs to Know* [New York: Practising Law Institute, 1993] pp. 92-93, 185, and 189); however, such interpretations are mistaken. Alaska Statute 09.38.055 does not preclude a debtor from using the federal exemptions; it identifies available state exemptions.

Representative Moses

April 4, 1995

Page 2

I have attached a table showing the value of the homestead exemption under each state's law, as well as the value of the homestead exemption available under federal law. Information in the table is compiled from William C. Hillman's *Personal Bankruptcy: What Every Debtor and Creditor Needs to Know* (New York: Practising Law Institute, 1993). You may note the following from the table:

- Six states—Connecticut, Delaware, Maryland, New Jersey, Pennsylvania, and Rhode Island—and the District of Columbia do not provide for homestead exemptions. In Maryland, Pennsylvania, and the District of Columbia, however, property that is held as *tenancy by the entirety* (ownership status available only to married couples) may be exempt where the debt is owed by only one spouse.
- Eight states provide for homestead exemptions to unlimited value under some conditions. Those states are Arkansas, Florida, Iowa, Kansas, Minnesota, Oklahoma, South Dakota, and Texas. In Arkansas the unlimited homestead exemption is for heads of families; in each of the other states, acreage limitations apply.

I have also attached a chart comparing the federal exemptions to the comparable Alaska exemptions. I hope this information is useful. If you have questions or need more information, please let me know.

Attachments

State and Federal Homestead Exemptions

State	Federal Exemption Available	Homestead Exemption
Alabama	no	Real property or mobile home value to 27,000 , maximum 160 acres; double for married couple.
Alaska	yes	Value to 100,000 maximum for married couple filing jointly.
Arizona	no	Real property, apartment, or mobile home in which debtor resides to a value of 100,000 . Sale proceeds exempt until earlier of purchase of new home or 18 months after sale. No doubling for married couple.
Arkansas	no	(No. 1 or No.2) No.1—head of family: real or personal property used as residence, value not limited, but acreage and value limitations apply depending upon location of homestead. No. 2—real or personal property used as residence: maximum 20,000
California	no	(No.1 or No. 2) No.1—real or personal property occupied as residence at the time of filing bankruptcy, including mobile home, boat, cooperative stock, community apartment, planned development or condo, and proceeds (including homeowner's insurance proceeds) of any of the above for 6 months after receipt. 150,000 single and not disabled; 325,000 for severely disabled (one per family), 340,000 65 or older; or physically or mentally disabled; 55 or older, single and earn less than \$15,000; or 55 or older, married and earn less than \$20,000. (In last two cases creditors must be seeking to force sale of home.) No.2—real or personal property, including cooperative, used as residence, or burial plot, value not over 7,500 . If not used for homestead, can be applied to any property.
Colorado	no	Real property occupied when file bankruptcy to 100,000 . Same for mobile or manufactured home if debt incurred after 1/1/83. Sale proceeds exempt one year after received if kept separately or used for new residence.
Connecticut	yes	
Delaware	no	100,000 Overall value—single person not more than 50,000 , married couple not more than 100,000 .
DC	yes	100,000 —may be exempt where debt only of one spouse.
Florida	no	Real property, mobile or modular home or condo to unlimited value ; property cannot exceed one-half acre in municipality or 160 contiguous acres in other places. Property held as tenants by the entirety may be exempt against debts owed by only one spouse.
Georgia	no	Real or personal property, including cooperative, used as a residence to 50,000 per debtor. Unused portion may be applied to any other property.
Hawaii	yes	Real property to 200,000 , except for head of family or debtor over 65 to 200,000 ; property cannot exceed 1 acre; sale proceeds exempt for six months after sale; property held as tenancy by the entirety may be exempt against debts owed by only one spouse.
Idaho	no	Real property or mobile home to \$30,000; sale proceeds are exempt for six months.
Illinois	no	Real or personal property, including a farm, lot and buildings, condo, cooperative or mobile home to 7,500 ; sale proceeds are exempt for one year; spouse or child of deceased owner may claim homestead; husband and wife may double.
Indiana	no	Real or personal property used as a residence to 7,500 . Homestead plus personal property, excluding health aids cannot exceed 10,000 ; property held as tenants by the entirety may be exempt against debts incurred by only one spouse.
Iowa	no	Real property or an apartment to an unlimited value; property cannot exceed one-half acre in town or city or forty acres elsewhere, except that the amount may be increased to obtain a value of 3,000 .
Kansas	no	Real property or mobile home to unlimited value ; property cannot exceed one acre in incorporated town or 160 acres on farm; property must be occupied or intended to be occupied at time of filing.
Kentucky	no	Real or personal property used as a residence up to 20,000 in debt incurred after purchase; sale proceeds are exempt. An additional \$1,000 can be applied to the homestead, if not used for personalty.
Louisiana	no	Real property 100,000 ; property cannot exceed 160 acres on one tract or on 2 or more tracts if there is a home on 1 tract and a field, garden, or pasture on the others; husband and wife may not double; spouse or child of a deceased owner may claim the exemption; spouse given home in a divorce proceeding gets the exemption; homestead must be occupied when the exemption is claimed.
Maine	no	Real or personal property, including cooperative, used as a residence to \$7,500; if the debtor is over 60 or physically or mentally disabled to \$60,000; joint debtors may double.
Maryland	no	None, except that property held as tenancy by the entirety may be exempt against debts owed by only one spouse.

State and Federal Homestead Exemptions

State	Federal Exemption Available	Homestead Exemption
Massachusetts	yes	Exemption amount is \$100,000 (200% of value over 65 or disabled), except with respect to debts arising prior to or for the purchase of the homestead and support; property held as tenants by the entirety may be exempt against non-necessity debts; joint owners may not double; homestead must be occupied or intended to be occupied at the time of filing for bankruptcy; homestead declaration must be recorded prior to filing for bankruptcy; spouse or child of a deceased owner may claim the exemption.
Michigan	yes	Real property, including condo to \$100,000; property cannot exceed one lot in town, village, or city or 40 acres elsewhere; property held as tenancy by the entirety may be exempt against debts owed by only one spouse; spouse or child of deceased owner may claim exemption.
Minnesota	yes	Real property, mobile home, or manufactured home to unlimited value; property cannot exceed one-half acre in city or 160 acres elsewhere; proceeds from sale are exempt for one year.
Mississippi	no	Property to \$30,000; property cannot exceed 160 acres; sale proceeds are exempt; property must be occupied unless claimant is over sixty and married or widowed.
Missouri	yes	Real property to \$10,000 or mobile home to \$5,000; property held as tenancy by the entireties may be exempt from debts owed by only one spouse; joint owners may not double.
Montana	no	Real property or mobile home to \$40,000; sale, condemnation, or insurance proceeds exempt for 18 months; property must be occupied at the time of bankruptcy filing; homestead declaration must be recorded prior to filing.
Nebraska	no	Property to \$20,000; property cannot exceed two lots in city or village or 160 acres elsewhere; sale proceeds are exempt for six months after sale.
Nevada	no	Real property or mobile home to \$20,000; husband and wife may not double; homestead must be recorded before bankruptcy filing; land held in spendthrift trust is exempt.
New Hampshire	no	Real property or manufactured housing owned and occupied by the same person to \$30,000.
New Jersey	yes	None.
New Mexico	yes	Real property to \$20,000 if married, widowed or supporting another; joint owners may double.
New York	no	Real property including cooperative, condominium, or mobile home to \$40,000; proceeds from sale are exempt for one year; husband and wife may double.
North Carolina	no	Real or personal property, including a cooperative, used as a residence to \$7,500; property held as tenancy by the entireties may be exempt against debts owed by only one spouse; up to 20% of unused portion of homestead may be applied to any property.
North Dakota	yes	Real property, house trailer, or mobile home to \$80,000.
Ohio	no	Real or personal property used as a residence to \$5,000; property held by tenancy by the entireties may be exempt against debts owed by only one spouse.
Oklahoma	no	Real property or manufactured home to unlimited value; property cannot exceed one-quarter acre; if property exceeds one-quarter acre, exemption is \$5,000 or one acre in city, town or village or 160 acres elsewhere; homestead need not be occupied so long as another is not acquired.
Oregon	no	Real property, mobile home, or house boat to \$45,000 (\$20,000 for joint owners); \$15,000 for mobile home if land is not owned (\$18,000 for joint owners); property cannot exceed one lot in town or city or 160 acres elsewhere; sale proceeds are exempt for one year from sale if owner intends to purchase another home; homestead must be occupied or intended to be occupied at the time of filing.
Pennsylvania	yes	None except that property held by tenant by the entirety may be exempt against debtors owed by only one spouse.
Rhode Island	yes	None.

State and Federal Homestead Exemptions

State	Federal Exemption Available	Homestead Exemption
South Carolina	yes	Real property including a cooperative to \$5,000; joint owners may double.
South Dakota	no	Real property or mobile home larger than 240 square feet at its base and registered in state at least six months before filing ; in an unimproved value ; property cannot exceed one acre in town or 160 acres elsewhere; sale proceeds to \$30,000 are exempt for one year after sale unless debts is over 70, in which case the exemption amount is unlimited; spouse or child of a deceased owner may claim the the homestead exemption; the acreage is limited if the homestead is mineral or mining land.
Tennessee	no	Value to \$5,000 \$7,500 for joint owners; property held by tenants by the entirety may be exempt against debts owed by only one spouse; exemptions may be claimed for life estates and leases; spouse or child of deceased owner may claim the exemption.
Texas	yes	Unlimited ; property cannot exceed one acre in town, village, or city or 100 acres elsewhere (200 acres for families); sale proceeds are exempt for six months after sale.
Utah	no	Real property, mobile home, or water rights to \$5,000 ; \$2,000 added for spouse and \$500 per dependent; homestead declaration must be filed before bankruptcy filing.
Vermont	yes	Real property or mobile home to \$50,000 ; rents, issues, profits and outbuildings may be claimed; property held by tenants by the entirety may be exempt against debts owed by only one spouse; spouse of deceased owner may claim homestead exemption.
Virginia	no	Property to \$5,000 , plus \$500 for each dependent; rents and profits may also be claimed; property held as tenancy by the entirety may be exempt against debts owed by only one spouse; homestead declaration must be filed prior to bankruptcy filing; unused portion of homestead may be applied to any personal property.
Washington	yes	Real property or mobile home to \$50,000 ; homestead declaration must be recorded prior to sale if the property is unimproved or unoccupied.
West Virginia	no	Real or personal property used as a residence to \$5,000 ; unused portion of homestead may be applied to any property.
Wisconsin	yes	Value to \$20,000 ; sale proceeds are exempt for two years from sale if debtor plans to purchase another home; homestead must be occupied or intended to be occupied at the time of filing; husband and wife may not double.
Wyoming	no	Real property to \$40,000 or house trailer to \$6,000; property held as tenancy by the entirety may be exempt against debts owed by only one spouse; joint owners may double; homestead must be occupied at the time of bankruptcy filing; spouse or child of deceased owner may claim homestead exemption.

Federal Value to \$15,000.

Source: William C. Hillman, *Personal Bankruptcy: What Every Debtor and Creditor Needs to Know*, (New York: Practising Law Institute, 1993)

TABLE OF MOST COMMON EXEMPTIONS ALLOWED BY LAW

(See AS 09.38.010 et seq. & 11 USC § 522(d) for complete listing)

PROPERTY	STATE STAT.	AMOUNT*	FED. STAT.	AMOUNT*
	AS 09.38.010	\$ 62,100	§ 522(d)(1)	\$ 15,000
HOUSEHOLD GOODS	AS 09.38.020(a)	\$ 3,450	§ 522(d)(3)	\$ 8,000
JEWELRY	AS 09.38.020(b)	\$ 1,150	§ 522(d)(4)	\$ 1,000
AUTOMOBILES (1 EA DEBTOR)	AS 09.38.020(e)	\$ 3,450	§ 522(d)(2)	\$ 2,400
PETS	AS 09.38.020(d)	\$ 1,150	See (d)(3) above: Household Goods	N/A
RETIREMENT PLANS	AS 09.38.017(a)**	See note below	§ 522(d)(10)(A)	Payments for ongoing support only
IRA's	AS 09.38.017(a)	Deposits made at least 120 days before petition	Not protected	N/A
SOC. SEC & UNEMPLOYMT	AS 09.38.015(a)(6)	ALL	§ 522(d)(10)	ALL
LIQUOR LICENSE	AS 09.38.015(a)(7)	ALL***	Not protected	N/A
FISHING PERMITS	AS 09.38.015(a)(8)	ALL****	Not protected	N/A
PFDs	AS 43.23.065(a) AS 09.38.015(a)(10)	45%	May be protected under § 522(d)(5)	
WAGES or LIQUID ASSETS	AS 09.38.030(a) AS 09.38.030(b)	\$ 1,610	No specific provision; see § 522(d)(5) below	N/A
LIFE INS.	AS 09.38.025	\$ 11,500 (Cash value)	§ 522(d)(8)	\$ 8,000 (Cash value)
TOOLS OF TRADE	AS 09.38.020(c)	\$ 3,220	§ 522(d)(6)	\$ 1,500
ALIMONY & CHILD SUPPORT	AS 09.38.015(b)	ALL	§ 522(d)(10)(D)	ALL
CATCH-ALL	None	N/A	§ 522(d)(5)	Up to \$7,500 of unused (d)(1) plus \$800

* All property, even if protected by exemption, subject to tax liens to extent of debtor equity.

** If plan ERISA qualified, not property of estate; no need to exempt. *Patterson v. Shumate*, 112 S.Ct. 2242 (1992). If not ERISA qualified, may still not be property of estate, if plan qualifies as spendthrift trust. *In re Foster*, 2 ABR 224 (1991).

*** Subject to tax liens and holds.

**** Not protected from child support obligations; subject to tax liens.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

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April 10, 1995

The Honorable Carl Moses
Representative
Room 204
State Capitol
Juneau, AK 99801

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Rep. Brian Porter

Re: HB 285

Dear Mr. Moses:

I am writing to inform you of the Department of Law's concerns regarding HB 285, which would amend the statute exempting from execution part of a debtor's interest in a personal residence, by removing the limitation on the exempt amount. I am the supervisor of the Collections & Support Section of the Attorney General's Office. As you can imagine, I am deeply interested in legislation which affects the collectibility of debts owed to the state. I have also consulted with other Assistant Attorneys General handling various collection matters for the state, who unanimously expressed the same concern that the bill creates an unfair advantage for certain debtors.

Alaska's current homestead exemption is very generous. The federal bankruptcy law exempts only \$15,000 of equity in a home. 11 U.S.C. § 522(d)(1). Pursuant to Alaska law, however, an individual is entitled to an exemption of \$62,100 for property used as a principal residence. AS 09.38.010 and 8 AAC 95.030. This means that even a person who owes substantial sums (to the state or to a private creditor) may, with few exceptions, keep his or her home even though it has a very large equity value.

Presumably the purpose of the homestead exemption is to avoid having debtors be forced from their homes in most cases. The current limitation furthers this goal without allowing substantial exploitation. There are undoubtedly few debtors in Alaska who have more than \$62,100 equity in their homes; thus the vast majority of debtors are protected by the current statute. Removing the limitation on the exempt amount would

The Honorable Carl Moses
Representative

April 10, 1995
Page 2

mean a debtor owing \$250,000 who lives in a home with an equity value of \$500,000 might not ever be required to pay his or her debts. This would not advance the policy of keeping debtors in their homes but would instead promote abuse.

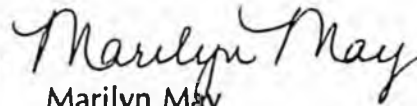
We can envision a debtor selling non-exempt assets or using them as collateral to borrow money to pay down or pay off a mortgage, thus shielding him- or herself from liability for a valid debt. This provides a considerable advantage to the wealthy, who could safely protect their wealth from creditors by pouring it into equity in an expensive home. This is unfair to innocent creditors, and unfair to poorer debtors who can raise no such shield.

For these reasons, we do not favor the amendment of AS 09.38.030 set forth in HB 285. If you would like to discuss this further, please do not hesitate to call.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Marilyn May

Assistant Attorney General

MM:jv

cc: Rep. Brian Porter

HB

286

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 286

Revision Date: _____ Dept. Affected: Revenue
 Title: Cruise Ship Gambling & Promotions BRU: Revenue Operations
 Component: Charitable Gaming Division
 Sponsor: Representative Williams
 Requester: Judiciary COMPONENT SERIAL NO. 1883

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						
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CHANGE IN REVENUES ()	500.0	600.0	600.0	600.0	600.0	600.0
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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 (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Under current law, only certain non-profit organizations and municipalities can conduct gaming in Alaska. The type of gaming that is authorized is generally limited to pull-tabs, bingo, raffles, Monte Carlos and contests of skill. This bill would exempt cruise ships from the States gambling laws and allow for-profit organizations (cruise ships) to conduct casino gambling in the offshore water of the state.

One of the statues administered by the Department of Revenue, Charitable Gaming Division is Title 43, Chapter 35 "Coin-Operated Devices and Punchboards" [AS43.35]. Article one of the statute imposes a tax on all class I, class II, and class III amusement and gaming devices in operation within Alaska. Seventy-five percent of the taxes collected are shared with the local government where the devices are held out for play. This bill would provide an immediate exemption from the coin-operated device tax for cruise ships exempted from the gambling laws.

Prepared by: Dennis R. Poshard, Director Phone: 465-2279
 Division: Charitable Gaming Division Date: 04/05/95
 Approved by: _____ Date: 4/15/95
 Commissioner: Wilson L. Condon
 Agency: Department of Revenue

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April 5, 1995

The Honorable Brian Porter
Chair, House
Judiciary Committee
Capitol Building
Juneau, Alaska 99801

Dear Representative Porter

This letter is offered in support of House Bill 286. This legislation would allow gambling aboard cruise ships within Alaskan waters for ticketed cruise passengers. Cruise ships would be required to pay a fee to the State for an exemption prior to conducting gambling under this legislation.

The definition of cruise ships insures against "gambling cruises to nowhere". The legislation prohibits gambling aboard cruise ships within three miles of ports of call. We estimate that revenues to the State could exceed \$500,000 in 1995 and reach \$575,000 in 1996. Ships offering Alaskan cruises in the next two years would pay either \$20,000 or \$30,000 each per year for the exemptions. Larger ships are scheduled to sail in Alaska in 1996, and several would pay \$40,000 each year.

A provision was added last session to require disclosure of on-board promotion of gift shops in Alaskan ports of call during "port lectures" conducted by cruise directors. Princess does not approve of such promotions in Alaska, and we believe that other long-term cruise line operators agree with us. We have added language to clarify that on-board sale of shore excursion activities would not require the same disclosure as gift shop promotions.

Cruise ships have offered gambling as an ancillary entertainment activity for their passengers in Alaska for over twenty years. Alaska competes in the international marketplace. On-board gambling has become generally accepted as one of the variety of activities offered by cruise lines in all the major cruising destinations.

Over the past twenty years Alaska has become one of the premier cruising destinations in the world, currently ranking number two. During this period of growth and development, there is no evidence that these onboard activities have ever had any impact whatsoever on Alaskan communities or Alaskan residents.

The Honorable Brian Porter

- 2 -

April 5, 1995

This absence of impact is a direct result of the way in which cruise ships operate onboard casinos. For over twenty years cruise ships coming to Alaska have operated casinos only while underway. Casinos are closed while ships are in port.

The public policy concerns related to gambling are not compromised by the passage of HB 286. There is no impact to Alaskan families or communities or to the "peace and tranquillity" of any area of Alaska as a result of these activities aboard cruise ships.

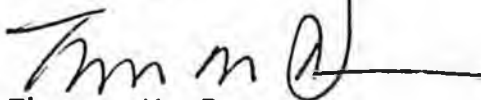
Research clearly shows that Alaskans appreciate the importance of tourism to the economy of the state. It also shows that Alaskans don't favor prohibiting the traditional operation of casinos aboard cruiseships because these operations are not causing any problems and never have.

Although gambling has never been a primary reason to choose an Alaskan cruise, both passengers and travel agents have come to expect gambling as a part of the package of activities which they would find in a world class cruise vacation. Eliminating gambling within Alaskan waters would mean that an Alaskan cruise vacation would offer something less than available to passengers on the same ships when they are sailing in other locations.

We believe that there is no public policy reason to prohibit this activity. There is public support to allow it to continue. And with the provision of an exemption fee, there is a simple method for the State to secure revenues from cruise lines who wish to continue to offer this entertainment option to their passengers. There is very little administrative expense or burden placed on the State for the collection of these revenues.

Thank you for your consideration.

Sincerely,



Thomas M. Dow
Vice President

Alaska State Legislature

Committees:
House Resources
Co-Chairman
World Trade &
State Federal Relations
Transportation
Rules
Oil & Gas



Representative William K. Williams

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Juneau, AK 99801-1182
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Fax (907) 465-3793

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Ketchikan, AK 99901
(907) 247-4672
Fax (907) 225-8546

Sponsor Statement

House Bill 286

House Bill 286 gives the state authorization to offer an exemption from gambling statutes to cruise ships. This exemption would allow cruise ships to operate their casinos in Alaska waters.

Casino gambling aboard cruise ships is an amenity needed to keep Alaska on a par with other cruise destinations. While gambling is not the main attraction of cruises to other parts of the world, it is an accepted and expected part of the experience.

The communities of Alaska will not be negatively affected by this legislation. Casino operations will be prohibited within three miles of a vessel's port of call. While in port the casino will remain closed, therefore removing the opportunity for non-ticketed people to participate in the activities.

In these times of strict budget discipline it is important to find new sources of income. Ships that take advantage of this exemption will pay the State of Alaska fees ranging from \$10,000 to \$40,000 per year. Initial projections suggest this could add an additional \$500,000 per year to state coffers.

This bill supports the tourism industry and raises state revenues. I ask you to support House Bill 286.

A BRIEF SECTIONAL ANALYSIS

HOUSE BILL 286

- Section 1: Allows agents or employees to serve alcohol to patrons.
- Section 2: A) Lists guidelines cruise ships must comply with in order to offer gambling on board.
B) Specifies exemption fees
C) Describes reasons an exemption can be revoked
D) Defines "cruise ship"
E) Defines "offshore waters of the state"
- Section 3: Includes exemption into statute covering unsworn falsification
- Section 4: Exempts cruise ships from state gambling laws
- Section 5: Exempts cruise ships from state tax on coin operated devices
- Section 6: Allows cruise ships to sell excursions on the ship and not disclose they are receiving compensation
- Section 7: Enactment date

House Bill 286 (cruise ship gambling)

Related Statutes

AS 01.10.079 - Time statutes become law and take effect

AS 04.16.175 - Furnishing alcoholic beverages in aid of gambling enterprise

AS 05.15 - Games of Chance and Contests of Skill

AS 05.15.195 (05.15.610) - Order prohibiting action in violation of this chapter

AS 05.15.200 (05.15.680) - Penalties

AS 05.15.210 (05.15.690) - Chapter definitions

AS 05.15.250 - Exemption of Cruise Ships

AS 11.66 - Offenses Against Public Health and Decency

AS 11.66.200 - 11.66.280 - Gambling offenses

AS 11.66.275 - Cruise ship exemption

AS 43.35 - Coin operated devices and punchboards

AS 43.35.010 - Amount of tax

AS 45.50 - Competitive Practices and Regulation of Competition

AS 45.50.471 - Unlawful Acts and Practices

AS 45.50.474 - Required disclosures in promotions on board cruise ships