

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8608 HOUSE JUDICIARY



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name
committee on HB 293, dated February 9, 1996.
bill/ subject

I don't agree with legislative actions trying to take away rights already given to the people under the united States Constitution and making it a privilege.

Are you not aware that a Force Officer could be construed as a criminal and a person reacting to it would be within their rights to protect themselves and their property - it would be self-defense.

Do you not understand united States Constitution is the Supreme Law of the Land.

How many of you Legislators have read the Constitution of the united States of America (for the Republic) not a Democracy and the Alaska State Constitution and do you understand it?

I don't believe these laws you keep making to take control of peoples lives are in the We the PEOPLE'S best interest. The State is still working hand in hand with U.N. Tactics being played out.

Signed:

Jeanni Marie Phipps

Testifier

Concerned Sovereigns Constitutional Citizens

Representing (Optional)

Fourth Judicial District % P.O. Box 544

Address

Delta Junction Alaska Republic

Phone No.

907-895-4805



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee on #B 293, dated 2-9-96
bill/ subject committee name

As A SOVERN CITIZEN I cannot go along
with this bill or any like them. This bill takes
away my Rights under the Constitutions and
replaces my Rights with A privilege.

I shall not now or any time in the future
give up any of my Rights in the
Constitution or the Bill of Rights

Its time our so called legislators stand up for
we The People and not just for the
funds available

Signed: Gore Ottenstroer

Concerned Sovern Citizen
Testifier

Fourth District
Representing (Optional)

40 PO Box 1459
Delt Address JUNIOR Alaska Republic

Phone No. 895 4805



Alaska State Legislature

Please enter into the record my testimony to the JUDICIARY
committee name
committee on HB 293, dated 2-9-96
bill/ subject

I ASK THAT YOU SUPPORT AND PASS
HB 293

THANK YOU
Rep C Rouhe

Signed:

Rep C Rouhe

Testifier

SENF

Representing (Optional)

Rep. Ron L. Wilton JUNIOR, AK 99737

Address

907-895-4448

Phone No.

Alaska State Legislature

House of Representatives

Official Business



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3718

House Majority Leader

SPONSOR STATEMENT

HB-293, "An Act relating to the use of force in defense of persons or property", provides that citizens may use force including deadly force to protect themselves in their homes.

Court cases throughout other jurisdictions affirm the principle that in his or her own home, a person does not have to retreat from a real or imagined threat to their safety.

In the realm of a self-defense plea of "Crime Prevention" to justify the use of force and deadly force the Court of Appeals of the State of Arizona has written;

In 162 ARIZ. 363, 783 P.2D 809, State of Arizona v Larry Vernon, The court of appeals, Brooks, J., held that "crime prevention" defense is available only when home, its contents, or residents therein are being protected by use or threatened use of physical force or deadly physical force against another.

In 22 CAL.3D 12, *20, 582 P.2D 1000, **1004, 148 CAL.RPTR. 409, ***413, CALJIC No. 551 the court said.. "Actual danger is not necessary to justify self-defense. If one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer death or great bodily harm, and if a reasonable man in a like situation seeing and knowing the same facts, would be justified in believing himself in like danger, and if the person so confronted acts in self-defense upon such appearances and from such fear and honest convictions, his right of self-defense is the same whether the danger is real or merely apparent."

In CALJIC No. 5.50" " A person who is threatened with an attack that justifies the exercise of the right of SELF-DEFENSE, need not RETREAT. In the exercise of his right of self-defense, he may stand his ground and defend himself by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge; and he may pursue his assailant until he has secured himself from danger if that course likewise appears reasonably necessary. This law applies even though the assailed person might more easily have gained safety by flight or by withdrawing from the scene.

The precedents are clear, a person may use deadly force in defense of their home

The Alaska Supreme Court requires the trial judge to instruct on self-defense even when the evidence supporting the defendant's self-defense claim was weak or implausible. Houston v. State, 602 P.2d 1124, 1126 n.6 (Alaska 1978). See, e.g., Willett v. State, 836 P.2d 955, 958 (Alaska App. 1992); Carson v. State, 736 P.2d 356,359 (Alaska App. 1987)

On the surface, the present statutes seem to allow this defense at this time.

Alaska Statute 11.81.335(2)(b) states " A person may not use deadly force under this section if the person knows that, with complete personal safety and with complete safety to others, the person can avoid the necessity of using deadly force by retreating, except their is no duty to retreat if the person is

(1) on premises which the person owns or leases and the person is not the initial aggressor.

Contrary to these decisions and in accord with AS 11. 81.330 and AS 11.81.900(b)(23) the Court of Appeals of the State of Alaska in Van Ha v. State of Alaska No. A-4818, opinion No. 1400 - March 31, 1995, stated that .."a defendant claiming self-defense as justification for the use of force must prove that he or she acted to avoid what he or she reasonably perceived to be a threat of imminent harm. A defendant's reasonable belief that harm will come at some future time is not sufficient to support a claim of self-defense or defense of others." To continue.." The defendant's use of force against his enemy is authorized only when the defendant actually and reasonably believes that the enemy's threatened attack is imminent." AS 11.81.900(b)(23); Paul v. State, 655 at 777, 778 n.8.

In this decision, the court furthers elaborates upon how the determination of reasonableness is defined.

"[T]he determination of reasonableness must be based on the "circumstances" facing a defendant or his "situation"[.] Such terms encompass more than the physical movements of the potential assailant. ... [T]hese terms include any relevant knowledge the defendant had about the person. They also necessarily bring in the physical attributes of all persons involved, including the defendant. Furthermore, the defendant's circumstances encompass any prior experiences he had which could provide a reasonable basis for a belief that another person's intentions were to injure [or commit a crime upon] him or that the use of deadly force was necessary under the circumstances."

This bill is intended to clarify the intent of the legislature, that a person has a right to be secure in their person and property, in their own home.

FISCAL NOTE

STATE OF ALASKA

B. NO: HB 293

1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety
 Title: Use of force defending person or property Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Al Vezev
 Requestor: (H) Judiciary COMPONENT SERIAL NO. 0799

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

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-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

FUNDING: (Thousands of Dollars)

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

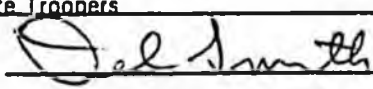
Estimate of current year (FY 95) impact: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Insufficient statistical and other information is available to adequately project the impact of this legislation. If its implementation significantly effects Alaska State Troopers operations, future budget requests will address this need.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 04/14/95
 Approved by Commissioner:  Date: 4/17/95
 Agency: Ronald L. Otte, Dept. of Public Safety

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HB

295

Alaska State Legislature

Representative Brian S. Porter

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Sponsor Statement

For

HB 295 Property Held By Law Enforcement Agencies

This legislation authorizes municipalities which have specific code provisions regarding seizure and disposal of property by municipal law enforcement agencies to follow those ordinances rather than the state law.

Currently, municipalities are required to follow the procedures outlined in AS 12.36 and AS 34.45. A municipal law enforcement agency coming into possession of property for which the owner is unknown must hold that property for up to five years. If the property was not seized as part of a criminal investigation the property is required to be held and then turned over to the Commissioner of Revenue.

In Anchorage, the municipal provisions for disposal of abandoned, stolen, or found property are set forth in AMC 7.25 (see attached materials). The provisions in this section require notification to property owners and, if the property remains unclaimed 15 days after the last date of notice, the property may be sold, destroyed, auctioned, or retained for municipal use. Specific provisions allow authorizing dedication of abandoned, stolen or found bicycles for public use and donation to non-profit organizations.

Bicycles are just one example of the property handled by the Anchorage Police Department. Over 20,000 items of property were handled in 1994. Imposing a five year storage requirement would backlog municipal property sections.

If municipalities are required to follow the provisions of the state statutes, substantial storage burdens and property handling expenses would be created.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BOJ. NO. 10229

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to the custody and disposition of BRU: Prosecution
property in the custody of municipal law enforcement agencies." Component: All
 Sponsor: Representative Porter
 Requester: Representative Porter COMPONENT SERIAL NO. 0085-0090

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 ()						
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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	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 4/18/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 4/18/95
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: HR 295

Revision Date: _____ Dept. Affected: Public Safety
 Title: Property held by law enforcement agencies BRU: Fish and Wildlife Protection
 _____ Component: Enforcement & I.S.U.
 Sponsor: Representative Porter
 Requestor: (H) Judiciary COMPONENT SERIAL NO. 490

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

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-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 95) impact: \$ 0.00

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: HB 295 if enacted would provide municipalities authority to enact ordinances for disposing of property seized by law enforcement agencies.
 Since this act would grant an exemption for municipalities only, it does not appear to impact the Division of Fish and Wildlife Protection.
 This bill if enacted would not affect this Division's programs or budget.

Prepared By: Captain Ted L. Ruddell, Operations Commander Phone: (907) 269-5509
 Division: Fish and Wildlife Protection Date: April 14, 1995
 Approved by Commissioner: *Ronald L. Otte* Date: 4/17/95
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: HB 295

Revision Date: _____ Dept. Affected: Public Safety
 Title: Property held by law enforcement agencies BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Brian Porter
 Requestor: (H) Judiciary COMPONENT SERIAL NO. 0799

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

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-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () <small>Revenue Code</small>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 95) impact: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 04/17/95
 Approved by Commissioner: *Ronald L. Otte* Date: 4/17/95
 Agency: Ronald L. Otte, Dept. of Public Safety


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217 Second Street, Suite 201 • Juneau, Alaska 99801 • Tel (907) 586-1325 Fax (907) 463-5480

April 19, 1995

TO: Representative Brian Porter
FROM: 
Executive Director

RE: HB 295 - Custody and disposition of property in the custody of municipal law enforcement agencies

The Alaska Municipal League supports HB 295 - custody and disposition of property in the custody of municipal law enforcement agencies, which allows municipalities to establish a local ordinance to handle the disposition of property that is in the custody municipalities.

When property comes into the custody of a law enforcement agency of a municipality, they should have the ability to decide how to dispose of that property by local ordinance.

According to the 1995 AML Policy Statement, "the League supports legislation that promotes effective and independent local government in all organized and unorganized boroughs and cities and opposes any legislation that unduly restricts local government operations."

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

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

MEMORANDUM

April 19, 1995

SUBJECT: Sectional Summary of HB 295 (Work Order No. 9-LS0950\A)

TO: Representative Brian Porter
Attn: Daniella

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 conforms the section to the new provisions in sec. 2 of the bill.

Section 2 exempts from AS 12.36 municipalities that have adopted ordinances providing for the custody and disposition of property collected for children's proceedings, criminal proceedings, and criminal investigations.

Section 3 conforms the section to the new provisions in sec. 4 of the bill.

Section 4 provides that the provisions otherwise governing the disposition of certain abandoned property do not apply to the listed property turned over to or recovered by a municipality's law enforcement agency if the municipality has adopted an ordinance providing for the custody and disposition of the property.

If I may be of further assistance, please advise.

TLB:klb
95-275.klb

FISCAL NOTE

Revision Date: _____ Dept. Affected: Revenue
 Title: Property Held by Law Enforcement Agencies BRU: Audit Operations
 Component: Income and Excise Audit
 Sponsor: Rep. Porter
 Requestor: (H) JUD COMPONENT SERIAL NO. 113

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						
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REVENUE FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY95) Impact \$ 0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would exempt checks, drafts, currency and tangible property that are found and turned over to, or found and recovered by a law enforcement agency of a municipality from being subject to the state's unclaimed property statutes. In order to be exempt, a municipality would be required to adopt an ordinance providing for custody and disposition of the property. This bill would not impact Department of Revenue since property turned over to the state by law enforcement agencies is immaterial in comparison to all other properties reported under the unclaimed property program.

Prepared by: Robert N. Bartholomew, Deputy Director *Robert N. Bartholomew* Phone: 465-2320

Division: Income and Excise Audit Date: 4/13/95

Approved by Commissioner: *[Signature]* Date: 4/13/95

Agency: Department of Revenue

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*Rick Mystrum,
Mayor*

ANCHORAGE POLICE DEPARTMENT

4701 C Street • Anchorage, Alaska 99507-1599

Telephone (907) 786-8500



Service since 1921

April 13, 1995

Daniella Loper, Legislative Aide
Representative Brian Porter
State Capitol
Juneau, AK 99808

Re: HB 295 Regarding Disposal of Property

Dear Ms. Loper:

The Anchorage Police Department supports passage of HB 295 to authorize municipalities which have specific code provisions regarding disposal of property by municipal law enforcement agencies to follow those ordinances rather than the state statues in Titles 12 and 34.

Following the procedures outlined in AS 12.36 and AS 34.45, a municipal law enforcement agency coming into possession of property for which the owner is unknown must hold that property for up to two years. If the property was not seized as part of a criminal investigation (e.g. found property voluntarily turned in by citizens) the property is required to be held two years and is then turned over to the Commissioner of Revenue.

The Anchorage Police Department converted over 700 bicycles in 1994 to the YMCA for auction by the YMCA to raise funds for youth programs. Mandating the department store each bicycle for two years would result in an overwhelming storage problem for the department and deprive the YMCA of this funding source.

Bicycles are just one example of the property handled by the Anchorage Police Department, over 20,000 items of property were handled in 1994. Imposing a two year storage requirement would backlog our Property and Evidence Section and delay processing items of evidence vital to prosecuting criminals.

Sincerely,

Bruce H. Richter
Captain, Technical Services

**Municipality
of
Anchorage**



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4545

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL ATTORNEY

April 13, 1995

VIA FACSIMILE 465-3834

Daniella Loper, Legislative Aide
Representative Brian Porter
State Capitol
Juneau, Alaska 99808

Re: HB 295 Regarding Disposal of Property

Dear Ms. Loper:

The Municipality of Anchorage has requested that a bill along the lines of HB 295 be enacted to authorize municipalities which have specific code provisions regarding seizure and disposal of property by municipal law enforcement agencies to follow those ordinances rather than the state statutes in Titles 12 and 34.

Following the procedures outlined in AS 12.36 and AS 34.45 a municipal law enforcement agency coming into possession of property for which the owner is unknown must hold that property for up to two years. If the owner is known, the property must be held for one year. If the property was not seized as part of a criminal investigation (e.g. found property voluntarily turned in by citizens) the property is required to be held two years and is then turned over to the Commissioner of Revenue. Additionally, periodic reports listing all property in this category must be made to the Commissioner of Revenue.

Current Municipal Code provisions for disposal of abandoned, stolen, or found property are set forth in AMC 7.25, a copy of which is attached. The provisions in this section require notification to property owners and, if the property remains unclaimed 15 days after the last date of notice, the property may be sold, destroyed, auctioned, or retained for municipal use. AMC 7.25.040 sets out specific provisions authorizing dedication of abandoned, stolen or found bicycles for public use and donation to non-profit organizations. Pursuant to this section the Municipality has donated hundreds of bicycles per year to the local YMCA.

Daniella Loper
April 13, 1995
Page 2 of 2

HB 295 would authorize municipal law enforcement personnel to follow the provisions of the municipal code rather than the state statutes. If the Municipality of Anchorage is required to follow the provisions of the state statutes, it would create a substantial storage burden and property handling expense. The Anchorage Police Department has not previously incurred the expense of this burden. The Municipality of Anchorage, Anchorage Police Department, seeks relief from the state mandated holding of property for such a lengthy period.

Sincerely,



Scott A. Brandt-Erichsen
Assistant Municipal Attorney

cc: Chief Kevin O'Leary
Deputy Chief Duane Udland
Tim Rogers

matter\legis\loper.sbe/kam

Chapter 7.25

DISPOSAL OF ABANDONED, STOLEN OR FOUND PROPERTY

Sections:

7.25.010	Disposable property.
7.25.020	Notice of possession.
7.25.030	Disposition.
7.25.040	Auction sale.
7.25.045	Dedication of abandoned, stolen or found bicycles for public use or benefit.
7.25.050	Publication and sale costs--Reimbursement.
7.25.060	Dangerous or perishable property--Immediate disposal.

7.25.010 Disposable property.

Except as otherwise required by law, the following property in possession of the Police Department may be disposed of as provided in this chapter:

- A. Property collected as evidence and not claimed by the owner within 15 days after final disposition of the criminal case to which it pertains; or
- B. Property voluntarily tendered to the Police Department and not claimed by the owner within 15 days thereafter; or
- C. Property found and delivered to the Police Department and not claimed by the owner within 15 days thereafter; or
- D. Stolen property recovered by the Police Department and not claimed by the owner within 30 days after such recovery.

"Disposable property," as used in this chapter, does not include a vehicle which has been impounded for a violation of Title 9 of this code. "Disposable property" is any property in possession of the Police Department which cannot be identified to an owner. (Adapted from CAC 2.76.010, am AO 79-203, AO 88-79).

7.25.020 Notice of possession.

- A. The Chief of Police shall notify the Purchasing Officer that he is in possession of disposable property. The Purchasing Officer shall publish in a newspaper of general circulation in the municipality twice a week for two consecutive weeks a notice of possession of disposable property. At approximately the same time as the first publication, the Purchasing Officer shall send copies of the notice by certified mail (return receipt requested) to the last known owner and to the finder, if any, at their respective last known addresses if any,
- B. Every notice of possession mailed or published pursuant to this section shall contain:
1. a general description of the property;
 2. the date the Police Department first obtained possession of the property;
 3. the provision that unclaimed property will be sold at public auction and the proceeds will be forfeited to the Police Service Area Fund;
 4. the provision that unclaimed property, if money, will be paid into the municipal treasury for deposit to the Police Service Area Fund;
 5. the provision that the property must be claimed by the owner within 15 days after the last date on which the notice is published; and
 6. the provision that the finder will forfeit all of his right, title, interest and claim in and to found property or money unclaimed by the owner unless the finder files a written request with the Chief of Police for return of the unclaimed property within 15 days after the last date on which the notice is published. (CAC 2.76.020, am AO 79-203, AO 80-97, AO 88-79).

7.25.030 Disposition.

If the property is unclaimed by the owner after the publication and mailing of the notice of possession and the expiration of the time periods as required by section 7.25.020, the property shall be disposed of as follows:

- A. Found property, including money, shall be returned to the finder, if any, upon condition that a timely request for such has been received by the Police Department.
- B. All property, other than money, which is not addressed by subsection A of the section shall be subject to a claim by the Chief of Police that retention of such property for use by the Municipality of Anchorage will serve the public interest. In conjunction with the Purchasing Officer, weapons so claimed by the Chief of Police may be used for trading or bartering in order to acquire them for police use. If the Chief of Police does not make such a claim the Purchasing Officer shall sell and not destroy the property, that is legal for private ownership and not precluded by court order, at a public auction to be held pursuant to the notice required by Section 7.25.020. The proceeds from that sale, together with any unclaimed or unreturned money, shall be forfeited to the Police Service Area Fund, subject to the fee provisions of Section 7.25.050.
- C. The Municipal Auditor will certify the proper disposal under all above provisions.
- D. Notwithstanding any other provision of law, a finder of a motor vehicle shall have no right to possession or any ownership interest in that property except as may be acquired pursuant to a disposition method provided by the Purchasing Officer. (CAC 2.76.030, am AO 79-203, effective January 1, 1980, AO 88-79).

7.25.040 Auction sale.

The Purchasing Officer shall sell the property to be disposed of to the highest bidder at the public auction sale, for cash or upon such terms as the auctioneer shall announce. The auction sale may be continued by the auctioneer to another time or times. The Purchasing Officer shall certify as to the disposal of property and shall execute the bill of sale to the property sold. Upon acceptance of the highest bid, the sale shall be final and not subject to redemption. Property unsold shall become the property of the municipality and may be disposed of by the municipality according to law (Adapted from CAC 2.76.040, am AO 79-203).

7.25.045 Dedication of abandoned, stolen or found bicycles for public use or benefit.

Notwithstanding any other provision of this chapter, any bicycle in the possession of the Police Department not claimed for 10 days, and for which the owner is not known, may be dedicated to public use or benefit in the following manner:

- A. The Assembly shall declare by resolution its desire to dedicate to public use or benefit abandoned, stolen or found bicycles which have been in the possession of the Police Department for more than 10 days.
- B. As soon as practicable after such declaration, the Purchasing Officer or his designee shall publish for two consecutive weeks, twice weekly, in a newspaper of general circulation, a notice describing the bicycles and stating the time, place and manner by which the bicycles may be identified and claimed by the owners. The notice shall include a statement that bicycles not so identified and claimed may be dedicated irrevocably to public use or benefit, or sold at auction.
- C. Within the first week of the two-week publication period, the purchasing officer or his designee shall also attempt to notify by certified letter the owners of the bicycles proposed for dedication who can be identified with reasonable certainty. The letter shall contain substantially the same information specified in subsection B for public notice.
- D. At the end of the first week following the two-week period of public notice, bicycles which have not been identified and claimed by the owners may be utilized for public purposes in any manner prescribed by the Assembly by resolution, or may be sold in accordance with the provisions of this chapter. If the bicycles have remained in the custody of the Police Department, the sale shall be conducted in accordance with AMC 7.25.030. If possession of the bicycles has been tendered to a third party pursuant to a contract, then that third party shall sell the bicycles at a public auction to be conducted pursuant to a notice which will contain the following information:

1. a general description of the bicycles;
2. the date on which the Police Department obtained possession of the bicycles;
3. that unclaimed bicycles will be sold at public auction or dedicated to public use or benefit and the proceeds forfeited to the Police Service Area Fund or otherwise used for the public benefit;
4. that the owners must claim the bicycles within 30 days after the last date of publication of the notice. (AO 77-210, am AO 79-203, AO 81-118, AO 88-79).

7.25.050 Notification and sale costs fee.

Before returning property to a finder or owner, and before delivering money to the treasury, the Chief of Police shall require a reasonable fee from the person receiving the property or money delivered for the costs of notice, publication and sale attributable to the property or money delivered. The proceeds from that fee shall be deposited into the Police Service Area Fund. The Chief may waive this requirement for a good cause. (CAC 2.76.050, am AO 79-203, AO 88-79).

7.25.060 Dangerous or perishable property--Immediate disposal.

Property in the possession of the Police Department and determined by the Chief of Police to be perishable or to constitute an immediate danger to the public may be disposed of immediately in any manner without notice of sale. Proceeds of any such disposition shall be subject to this chapter. (CAC 2.76.060 and law, am AO 79-203).

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 295

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to the custody and disposition of BRU: Prosecution
property in the custody of municipal law enforcement agencies." Component: All
 Sponsor: Representative Porter
 Requester: Representative Porter COMPONENT SERIAL NO. 0085-0090

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)

No fiscal impact.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 4/18/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 4/18/95
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: HB 295

Revision Date: _____ Dept. Affected: Public Safety
 Title: Property held by law enforcement agencies BRU: Fish and Wildlife Protection
 Component: Enforcement & I.S.U.
 Sponsor: Representative Porter
 Requestor: (H) Judiciary COMPONENT SERIAL NO. 490

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

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-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
<small>Revenue Code</small>						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 95) impact: \$ 0.00

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: HB 295 if enacted would provide municipalities authority to enact ordinances for disposing of property seized by law enforcement agencies.
 Since this act would grant an exemption for municipalities only, it does not appear to impact the Division of Fish and Wildlife Protection.
 This bill if enacted would not affect this Division's programs or budget.

Prepared By: Captain Ted L. Ruddell, Operations Commander Phone: (907) 269-5509
 Division: Fish and Wildlife Protection Date: April 14, 1995
 Approved by Commissioner: *Ronald L. Otte* Date: 4/17/95
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: HB 295

Revision Date: _____ Dept. Affected: Public Safety
 Title: Property held by law enforcement agencies BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Brian Porter
 Requestor: (H) Judiciary COMPONENT SERIAL NO. 0799

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

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-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () <small>Revenue Code</small>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 95) impact: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 04/17/95
 Approved by Commissioner: *Ronald L. Otte* Date: 4/17/95
 Agency: Ronald L. Otte, Dept. of Public Safety

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

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Revision Date: _____ Dept. Affected: Revenue
 Title: Property Held by Law Enforcement Agencies BRU: Audit Operations
 Component: Income and Excise Audit
 Sponsor: Rep. Porter
 Requestor: (H) JUD COMPONENT SERIAL NO. 113

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						
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REVENUE FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY95) impact \$ 0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would exempt checks, drafts, currency and tangible property that are found and turned over to, or found and recovered by a law enforcement agency of a municipality from being subject to the state's unclaimed property statutes. In order to be exempt, a municipality would be required to adopt an ordinance providing for custody and disposition of the property. This bill would not impact Department of Revenue since property turned over to the state by law enforcement agencies is immaterial in comparison to all other properties reported under the unclaimed property program.

Prepared by: Robert N. Bartholomew, Deputy Director *Rob. N. Bartholomew* Phone: 465-2320
 Division: Income and Excise Audit Date: 4/13/95
 Approved by Commissioner: *[Signature]* Date: 4/13/95
 Agency: Department of Revenue

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CS FOR HOUSE BILL NO. 295(2d JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES PORTER, Toohy

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to forfeitures of property; and relating to the custody and
2 disposition of property in the custody of municipal law enforcement agencies."

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

4 * Section 1. AS 12.36.020(a) is amended to read:

5 (a) A law enforcement agency may

6 (1) not return property in its custody to the owner or the agent of the
7 owner if

8 (A) [(1)] the property is [NOT] in custody in connection with
9 a children's court proceeding, a criminal proceeding, or an official investigation
10 of a crime; or

11 (B) [AND (2)] the property in custody is [NOT] subject to
12 forfeiture under the laws of the

13 (i) state; or

14 (ii) United States, and the United States has

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

Revision Date: _____ Dept. Affected: Revenue
 Title: Property Held by Law Enforcement Agencies BRU: Audit Operations
 Component: Income and Excise Audit
 Sponsor: Rep. Porter
 Requestor: (H) JUD COMPONENT SERIAL NO. 113

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

REVENUE FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY95) impact \$ 0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would exempt checks, drafts, currency and tangible property that are found and turned over to, or found and recovered by a law enforcement agency of a municipality from being subject to the state's unclaimed property statutes. In order to be exempt, a municipality would be required to adopt an ordinance providing for custody and disposition of the property. This bill would not impact Department of Revenue since property turned over to the state by law enforcement agencies is immaterial in comparison to all other properties reported under the unclaimed property program.

Prepared by: Robert N. Bartholomew, Deputy Director *Robert N. Bartholomew* Phone: 465-2320
 Division: Income and Excise Audit Date: 4/13/95
 Approved by Commissioner: *[Signature]* Date: 4/13/95
 Agency: Department of Revenue

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CS FOR HOUSE BILL NO. 295(2d JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES PORTER, Toohey

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to forfeitures of property; and relating to the custody and
 2 disposition of property in the custody of municipal law enforcement agencies."

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

4 * Section 1. AS 12.36.020(a) is amended to read:

5 (a) A law enforcement agency may

6 (1) not return property in its custody to the owner or the agent of the
 7 owner if

8 (A) [(1)] the property is [NOT] in custody in connection with
 9 a children's court proceeding, a criminal proceeding, or an official investigation
 10 of a crime; or

11 (B) [AND (2)] the property in custody is [NOT] subject to
 12 forfeiture under the laws of the

13 (i) state; or

14 (ii) United States, and the United States has

1 commenced forfeiture proceedings against the property or has
2 requested the transfer of the property for the commencement of
3 forfeiture proceedings; and

4 (2) with the approval of the court, transfer the property to another
5 state or federal law enforcement agency for forfeiture proceedings by that agency;
6 the court having jurisdiction shall grant the approval under this paragraph if the
7 property

8 (A) will be retained within the jurisdiction of the court by
9 the agency to which the property is being transferred; or

10 (B) is

11 (i) not needed as evidence; or

12 (ii) needed as evidence, and the property is fungible
13 or the property's evidentiary value can otherwise be preserved
14 without retaining the property within the jurisdiction of the court.

15 * Sec. 2. AS 12.36.030 is amended by adding a new subsection to read:

16 (c) This section does not apply to property that comes into the custody of a
17 law enforcement agency of a municipality if the municipality has adopted an ordinance
18 providing for the custody and disposition of the property and if the ordinance requires
19 that

20 (1) property held or collected as evidence in a children's court
21 proceeding, a criminal proceeding, or an official investigation of a crime is to be held
22 until at least 30 days after final disposition of the case to which the evidence pertains;
23 and

24 (2) the municipality make reasonable attempts to identify and locate the
25 owner of the property that is unclaimed.

26 * Sec. 3. AS 12.36.040 is amended by adding a new subsection to read:

27 (b) This section does not apply to property that comes into the custody of a
28 law enforcement agency of a municipality that has adopted an ordinance providing for
29 the custody and disposition of property that meets the requirements specified in
30 AS 12.36.030(c).

31 * Sec. 4. AS 12.36.060(a) is amended to read:

1 (a) A deadly weapon forfeited to the state under AS 12.55.015(a)(9), unless
2 remitted under AS 12.36.050, shall be disposed of by the commissioner of public
3 safety under this section. The commissioner of public safety may declare a weapon
4 surplus and transfer it to the commissioner of administration. A weapon suitable for
5 law enforcement purposes, ballistics testing, training, or identification may be retained
6 by the Department of Public Safety or transferred to the municipal law enforcement
7 agency making the arrest that led to the forfeiture. A weapon that is unsafe or
8 unlawful shall be destroyed.

9 * Sec. 5. AS 12.55.015(a) is amended to read:

10 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
11 sentence on a defendant convicted of an offense, may singly or in combination

12 (1) impose a

13 (A) fine when authorized by law and as provided in
14 AS 12.55.035; or

15 (B) [A] day fine when authorized by law and as provided in
16 AS 12.55.036, if the court does not impose a term of periodic or continuous
17 imprisonment or place the defendant on probation;

18 (2) order the defendant to be placed on probation under conditions
19 specified by the court that may include provision for active supervision;

20 (3) impose a definite term of periodic imprisonment;

21 (4) impose a definite term of continuous imprisonment;

22 (5) order the defendant to make restitution under AS 12.55.045;

23 (6) order the defendant to carry out a continuous or periodic program of
24 community work under AS 12.55.055;

25 (7) suspend execution of all or a portion of the sentence imposed under
26 AS 12.55.080;

27 (8) suspend imposition of sentence under AS 12.55.085;

28 (9) order the forfeiture to the commissioner of public safety or a
29 municipal law enforcement agency of a deadly weapon that was in the actual
30 possession of or used by the defendant during the commission of an offense described
31 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

32 (10) order the defendant, while incarcerated, to participate in or comply

1 with the treatment plan of a rehabilitation program that is related to the defendant's
2 offense or to the defendant's rehabilitation if the program is made available to the
3 defendant by the Department of Corrections.

4 * Sec. 6. AS 12.55.015(c) is amended to read:

5 (c) In addition to the penalties authorized by this section, the court may invoke
6 any authority conferred by law to order a forfeiture of property, suspend or revoke a
7 license, remove a person from office, or impose any other civil penalty. When
8 forfeiting property under this subsection, a court may award to a municipal law
9 enforcement agency that participated in the arrest or conviction of the defendant,
10 the seizure of property, or the identification of property for seizure, (1) the property
11 if the property is worth \$5,000 or less and is not money or some other thing that
12 is divisible, (2) up to 75 percent of the property or the value of the property if the
13 property is worth more than \$5,000 or is money or some other thing that is
14 divisible. In determining the percentage a municipal law enforcement agency may
15 receive under this subsection, the court shall consider the municipal law
16 enforcement agency's total involvement in the case relative to the involvement of the
17 state.

18 * Sec. 7. AS 17.30.112 is amended by adding a new subsection to read:

19 (c) When forfeiting property under (a) of this section, a court may award to a
20 municipal law enforcement agency that participated in the arrest or conviction of the
21 defendant, the seizure of property, or the identification of property for seizure, (1) the
22 property if the property is worth \$5,000 or less and is not money or some other thing
23 that is divisible, (2) up to 75 percent of the property or the value of the property if the
24 property is worth more than \$5,000 or is money or some other thing that is divisible.
25 In determining the percentage a municipal law enforcement agency may receive under
26 this subsection, the court shall consider the municipal law enforcement agency's total
27 involvement in the case relative to the involvement of the state.

28 * Sec. 8. AS 17.30.114(b) is amended to read:

29 (b) Property taken or detained under (a) of this section shall be held in the
30 custody of either the commissioner of public safety or a municipal law enforcement
31 agency authorized by the commissioner of public safety to retain custody of property
32 listed in AS 17.30.110 subject only to the orders and decrees of the court having



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
 committee name
 committee on CS for HB295, Forfeitures of property dated 2/28/96
 bill/subject

I strongly support legislation that will allow municipalities to participate in forfeitures of property. Throughout Alaska, and particularly in Southeast, law enforcement works jointly in many cases. Each participating agency puts resources into the effort. In these joint efforts, the participating agencies should be allowed to share the forfeitures that may result.

In a somewhat different situation, many municipal agencies carry an investigation from beginning to end which result in arrest, prosecution, conviction and forfeiture of property. Serious crime is charged under state law and prosecuted in state court even when the case is brought forwarded by a municipal law enforcement agency. In these cases it is fair and just that any forfeiture of property be granted to the municipality that worked the case.

I urge the members of the legislature to pass HB 295.

Signed: _____

John H. Newell 

Testifier

President of the Alaska Association Chiefs of Police
 Chief of Police, Sitka

Representing (Optional)

304 Lake St, Sitka, AK 99835

Address

907-747-3349

Phone No.

Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN
HOUSE JUDICIARY COMMITTEE

MEMBER
HOUSE LABOR & COMMERCE COMMITTEE
HOUSE STATE AFFAIRS COMMITTEE
INTERNATIONAL TRADE & TOURISM
COMMITTEE

MEMBER
FINANCE SUBCOMMITTEES
DEPARTMENT OF LAW
DEPARTMENT OF EDUCATION
COURTS



DISTRICT 20

CSHB ~~259~~ (2d JUD)

Sponsor Statement

SESSION:
STATE CAPITOL, ROOM 116
JUNEAU, ALASKA 99801-1192
PHONE: (907) 485-4930
FAX: (907) 485-3834

INTERIM:
716 W. 4TH AVE., SUITE 640
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-5510

Purpose:

To promote cooperative law enforcement efforts in drug trafficking and other investigations. The bill ensures equitable transfer of forfeited property to the appropriate state or local law enforcement agency so as to reflect the agency's contribution of participating directly in any of the acts which led to seizure or forfeiture of such property.

Implementation:

HB 259 is designed to implement certain asset forfeiture provisions pertaining to the disposition of forfeited property and the discontinuance of federal forfeiture actions to permit forfeiture by state or local procedures.

HB 259 allows the state or local law enforcement agency, by court approval, to dispose of criminal forfeited property by: (1) retaining the property for official use; (2) transferring custody or ownership of the property to any federal, state, or local agency; (3) placing the forfeited cash or proceeds of sale of forfeited property in an appropriation to any State or local law enforcement agency.

HB 259 authorizes municipalities which have specific code provisions regarding disposal of property by municipal law enforcement agencies to follow those ordinances rather than the state statutes.

Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN
HOUSE JUDICIARY COMMITTEE

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HOUSE LABOR & COMMERCE COMMITTEE
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DISTRICT 20

SESSION:
STATE CAPITOL, ROOM 118
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PHONE: (907) 465-4930
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FAX: (907) 258-5510

Sectional Analysis CSHB 259 (2d JUD)

“An Act relating to forfeitures of property; and relating to the custody and disposition of property in the custody of municipal law enforcement agencies.”

Chapter 36 Disposition of Recovered or Seized Property

Section 1. AS 12.36.020. Return of property.

Provides that a state or municipal law enforcement agency may not return property to the owner if the property is used for evidence in a criminal proceeding or subject to a forfeiture proceeding. If the property is subject to forfeiture proceedings a law enforcement agency may transfer the property, with court approval, to another state or federal law enforcement agency. When granting approval, the court shall consider the elements set forth in section 1(a)(2).

Section 2. AS 12.36.030. Disposal of unclaimed property used as evidence.

Exempts from AS 12.36 municipalities that have adopted ordinances providing for the custody and disposition of property that is held by the municipality's law enforcement agency, if the ordinances meet two conditions. The conditions require (1) certain evidentiary property to be held a certain time, and (2) the municipality to make reasonable attempts to identify and locate the owner of unclaimed property.

Section 3. AS 12.36.040 Disposal of property when owner unknown.

Conforms the section to the new provisions in sec 2. of the bill.

Section 4. AS 12.36.060 Disposal of forfeited deadly weapons.

Clarifies existing law, that when a deadly weapon is forfeited to the state, it shall be disposed of by the commissioner of public safety.

Section 5. AS 12.55.015 Authorized sentences.

When a deadly weapon is used in the commission of a crime the court shall order the forfeiture to the commissioner of public safety or municipal law enforcement agency.

Section 6. AS 12.55.015 Authorized sentences.

Provides that when the court sentences a defendant, the court may in combination with the sentence order a forfeiture of property to a municipal law enforcement agency that participated in the arrest or conviction of the defendant. The court may grant the property to the municipal law enforcement agency if the property is valued at \$5,000.00 (five thousand dollars) or less and is not money or something that is divisible (i.e., a vehicle with a value less than \$5,000).

However, if the property is valued above \$5,000.00 or is money or some thing that is divisible, the court may grant up to 75 per cent of the property value to the municipal enforcement agency. This section also outlines provisions for the court to consider when establishing the percentage of the value of the property granted to the municipal agency.

Chapter 30 Controlled Substances

Section 7. AS 17.30.112 Proceedings resulting in forfeiture.

Conforms the section to the new provisions in sec. 6 in the bill.

Section 8. AS 17.30.114(b) Seizure and custody of property.

Conforms the section to the new provisions in sec. 1 in the bill. Provides, upon court approval, that when the state or municipal agency has taken or detained property, they may transfer the property to another state or federal law enforcement agency.

Chapter 45. Unclaimed Property

Section 9 and 10. AS 34.45.230. Property held by courts and public agencies.

Provides that the provisions otherwise governing the disposition of certain abandoned property do not apply to the listed property turned over to or recovered by a municipality's law enforcement agency if the municipality has adopted an ordinance providing for the custody and disposition of the property.

HB

306

9-LS0913\G ✓
Ford
4/25/95

CS FOR HOUSE BILL NO. 306()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE TOOHEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a lien for services provided by a hospital, nurse, or
2 physician."

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

4 * **Section 1.** AS 34.35.450(a) is amended to read:

5 (a) An operator of a hospital in the state, [OR] a licensed special nurse in a
6 hospital in the state, or a physician who furnishes service to a person who has a
7 traumatic injury has a lien upon any sum awarded to the injured person or the personal
8 representative of the injured person by judgment or obtained by a settlement or
9 compromise to the extent of the amount due the hospital, [OR] nurse, or physician for
10 the reasonable value of the service furnished before the date of judgment, settlement,
11 or compromise, together with costs and reasonable attorney fees that the court allows,
12 incurred in the enforcement of the lien. AS 34.35.450 - 34.35.480 do not apply to a
13 claim, right of action, or money accruing under AS 23.30 (Workers' Compensation
14 Act).

1 * Sec. 2. AS 34.35.455 is amended to read:

2 Sec. 34.35.455. LIMITATION ON EXTENT OF LIEN. Except as otherwise
3 provided, a lien under AS 34.35.450 - 34.35.480 may not be allowed for
4 hospitalization or the services of a physician or licensed special nurse furnished after
5 a settlement is made by or on behalf of the person causing the injury unless the
6 settlement is made within 20 days from the date of the injury. A lien is not allowed
7 for necessary attorney fees, costs, and expenses incurred by the injured person in
8 securing a settlement, compromise, or judgment.

9 * Sec. 3. AS 34.35.460 is amended to read:

10 Sec. 34.35.460. NOTICE OF LIEN. To perfect the lien described in
11 AS 34.35.450 - 34.35.480, the hospital or the owner or operator of the hospital, or the
12 physician or licensed special nurse, shall, not later than ~~90~~ [20] days after the date of
13 injury, or in no event later than ~~90~~ [15] days after the discharge of the injured person
14 from the hospital or the provision of the physician's services, file a notice of lien
15 substantially in the form prescribed in AS 34.35.465, containing a general description
16 of the services rendered and a [AN ITEMIZED] statement of the amount claimed,
17 with the recording ~~officer~~ ^{office} of the recording district or borough in which the injury
18 occurred, and shall, after the ~~90-day~~ [20-DAY] period, before the date of judgment,
19 settlement, or compromise, serve a [CERTIFIED] copy of the notice of lien by
20 registered mail, at the last known address, upon the person alleged to be responsible
21 for causing the injury and from whom damages are claimed, and upon the insurance
22 carrier that has insured against the liability, if the insurance carrier is known.

23 * Sec. 4. AS 34.35.465 is amended to read:

24 Sec. 34.35.465. FORM OF NOTICE. The form of notice required by
25 AS 34.35.450 - 34.35.480 shall be substantially as follows:

26 NOTICE is hereby given that _____ has rendered services for
27 hospitalization, physician services, or special nurses' services for _____,
28 a person who was injured on the _____ day of _____ at _____ in the
29 state, and the _____ (claimant) hereby claims a lien upon any
30 money due or owing or any claim for compensation, damages, contribution, settlement,
31 or judgment from _____ alleged to have caused the

new to draft

new to draft

new to draft

1 injuries and any other person liable for the injury or obligated to compensate the
 2 injured person on account of the injuries; the hospitalization, physician services. [(
 3 or special nurses' services)] were [WAS] rendered to the injured person between the
 4 _____ day of _____ and _____:

5 General Description of Services Rendered and
 6 Statement of Amount Due
 7 [(ITEMIZED STATEMENT)]

new to Draft

new Draft

8 _____
 9 and that 90 [15] days have not elapsed since that time; that the claimant's demands for
 10 care and service is in the sum of \$ _____ and that no part of the demands has
 11 been paid, except \$ _____, and that there is now due and owing and remaining
 12 unpaid thereof, after deducting all credits and offsets, the sum of \$ _____, in which
 13 amount lien is hereby claimed.

14 United States of America

15 State of Alaska ss.

16 _____ Judicial District

17 I, _____, being first duly sworn on oath say: That
 18 I am _____ named in the foregoing claim of lien; that I have
 19 read the same and know the contents thereof and believe the same to be true.

20 _____
 21 Subscribed and sworn to before me this _____ day of _____
 22 19____.

23 _____
 24 Notary Public for Alaska

25 * Sec. 5. AS 34.35.470 is amended to read:

26 Sec. 34.35.470. LIEN DOCKET. Each recording officer shall maintain a
 27 hospital, physician, and nurses' lien docket in which, upon filing of a notice of lien,
 28 the officer shall enter the name of the injured person, the approximate date of the
 29 injury, the name and address of the hospital, physician, or nurse filing the notice, and
 30 the amount claimed. The recorder shall make an index in the name of the injured
 31 person. Notwithstanding any other provision of AS 34.35.450 - 34.35.480, the

Should be repealed

inserted in AS 40.17.040

New Text Underlined [DELETED TEXT BRACKETED]

1 docketing of the lien is sufficient notice to a tortfeasor or the tortfeasor's insurer.

2 * Sec. 6. AS 34.35.475 is amended to read:

3 Sec. 34.35.475. SETTLEMENT AFTER NOTICE. (a) A person or insurer
4 is liable to a hospital, physician, or nurse, in the amount that the hospital, physician,
5 or nurse is entitled to receive, for 180 days after the date of a payment to the injured
6 person, the heirs of the injured person, personal representatives, or the attorney of
7 them, when the person or insurer

8 (1) receives a [THE CERTIFIED] copy of notice of lien, or the lien is
9 recorded as provided in AS 34.35.460 and 34.35.465;

10 (2) makes the payment after receipt of notice or the recording of the
11 lien as compensation for the injury suffered; and

12 (3) does not pay the hospital, physician, or the licensed special nurse
13 for the reasonable value of the services rendered to the injured person and claimed in
14 the notice of lien, or so much of the value of the services as can be satisfied out of a
15 judgment, settlement, or compromise, after paying the attorney fees, costs, and
16 expenses incurred in connection with it.

17 (b) The hospital, physician, or nurse has a cause of action, during the 180
18 days, against the person or insurer.

19 * Sec. 7. AS 34.35 is amended by adding a new section to read:

20 Sec. 34.35.482. DEFINITION. In AS 34.35.450 - 34.35.482, "physician"
21 means a person licensed as a chiropractor under AS 08.20 or a person licensed as a
22 doctor of medicine under AS 08.64.

*New
to Draft*

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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

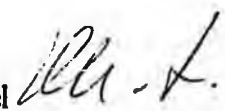
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 26, 1995

SUBJECT: Sectional Summary of HB 306(). (Work Order No. 9LS0913\G)

TO: Representative Cynthia Toohey
Attn: Marveen

FROM: Michael F. Ford 
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. Adds physician's to an existing provision of law creating a lien against any sum awarded to an injured person by judgment or settlement. The lien is equal to the reasonable value of the services provided by the physician.

Section 2. Provides that the physician's lien does not apply to services provided after settlement with the person who caused the injury, unless the settlement is made within 20 days from the date of injury.

Section 3. Requires that notice of the lien be filed with the recorders office, in order to perfect the lien. Requires that notice be filed not later than 90 days after injury, discharge from the hospital, or provision of the physician's services. Requires the notice contain a general description of the services rendered.

Section 4. Adds physician services to the statutory notice form established under AS 34.35.465 - 34.35.480.

Section 5. Adds physicians to those entities that are required to be included in the recorders lien docket.

Section 6. Adds physicians as a profession that receives the protection of AS 34.35.475. This provision makes a person or insurer liable for payments made to an injured person, when the

Representative Cynthia Toohey

April 26, 1995

Page 2

person or insurer has received notice of a physician's lien, or the lien is recorded, the payment is made after notice of the lien is given, and the lien is unsatisfied. Deletes a requirement that a certified copy of the lien be provided.

Section 7. Adds a definition of "physician".

MFF:glc

95-304.glc



Yukon-Kuskokwim Health Corporation

Fostering Native Self-Determination in Primary Care, Prevention and Health Promotion

VIA FAX TRANSMISSION

April 21, 1995

Memorandum

To: Harlan Knudson

From: Frank Williams

A handwritten signature in cursive script, appearing to read 'Frank Williams', is written over the printed name.

Subject: Lien Law

Enclosed is a copy of the Hospital Lien Law from Texas. I found that it worked very well in the cases where it was applicable.

This is forwarded to you for information only.

CHAPTER 55. HOSPITAL LIEN

Section

- 55.001. Definitions.
- 55.002. Lien.
- 55.003. Property to Which Lien Attaches.
- 55.004. Amount of Lien.
- 55.005. Securing Lien.
- 55.006. Discharge of Lien.
- 55.007. Validity of Release.
- 55.008. Hospital Records.

Law Review Commentaries

Hospital lien. 20 Baylor L.Rev. 365 (1968).

Library References

Hospitals 5.
 WESTLAW Topic No. 204.
 C.J.S. Hospitals §§ 11. 13 to 15.

§ 55.001. Definitions

In this chapter:

- (1) "Hospital" means a person or institution maintaining a facility that provides hospital services in this state.
- (2) "Person" does not include a county, common, or independent school district.

Acts 1983, 68th Leg., p. 3562, ch. 576, § 1, eff. Jan. 1, 1984.

Revisor's Note

"Person" as defined by Section 1.04(2) of the Code Construction Act (V.A.C.S. Article 5429b-2) includes the following entities listed in the source law definition: association, individual, corporation, firm, agent, servant, employee, municipal corporation, public corporation, and quasi-public corporation.

Historical and Statutory Notes

Prior Laws: Acts 1937, 43rd Leg., p. 182, ch. 85. Acts 1953, 53rd Leg., p. 443, ch. 131, § 1. Vernon's Ann.Civ.St. art. 5506a. §§ 1, 4.

Notes of Decisions

Purpose of law 1

1. Purpose of law

Purpose of Vernon's Ann.Civ.St. art. 5506a (repealed; now §§ 55.001 to 55.008) was to

induce hospitals to receive patient, injured by negligence of others, by giving hospital lien on the claims, suit or settlement of the patient against the negligent third party. Baylor University Medical Center v. Travelers Ins. Co. (Civ. App.1979) 587 S.W.2d 501, rel. n.r.s.

§ 55.002

LIENS AND EXEMPT PROPERTY
Title 5

§ 55.002. Lien

(a) A hospital has a lien on a cause of action or claim of an individual who receives hospital services for injuries caused by an accident that is attributed to the negligence of another person. For the lien to attach, the individual must be admitted to a hospital not later than 72 hours after the accident.

(b) The lien extends to both the admitting hospital and a hospital to which the individual is transferred for treatment of the same injury.

Acts 1983, 68th Leg., p. 3562, ch. 576, § 1, eff. Jan. 1, 1984.

Historical and Statutory Notes

Prior Laws:

Acts 1933, 43rd Leg., p. 182, ch. 85.

Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.
Vernon's Ann.Civ.St. art. 5506a, § 1.

Notes of Decisions

- In general 1
- Judgment 3
- Subsequent admissions 2

1. In general

Hospital lien filed by hospital which had treated individual defendant for injuries sustained in automobile accident applied only to services rendered on account of injuries received in accident. Republic Ins. Co. v. Shottwell (Civ.App.1966) 407 S.W.2d 864, ref. n.r.e.

Injured party's attorney could not force a quantum meruit claim against hospital, thereby reducing amount otherwise recoverable by virtue of hospital lien, and could not recover attorney fees from sum recovered in settlement with tort-feasor's insurer and allocated to payment of hospital lien, notwithstanding that attorney's efforts in bringing about settlement, proceeds of which were used to discharge lien, were beneficial to hospital, where benefits were only incidental and did not relate to efforts made on hospital's behalf by attorney. Bashara v. Baptist Memorial Hosp. System (Sup.1985) 685 S.W.2d 307.

2. Subsequent admissions

Seventy-two-hour requirement for initial admission of patient under Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter)

concerned initial hospital admission and not subsequent admissions for treatment of injuries received in same accident; thus, hospital was entitled to liens for second, third and fourth admissions of patient where initial admission occurred within 72 hours of accident in which injuries were sustained. Baylor University Medical Center v. Travelers Ins. Co. (Civ.App. 1979) 587 S.W.2d 501, ref. n.r.e.

Where first hospital admission was within 72 hours of accident and all subsequent admissions were necessary due to treatment of injuries sustained in such accident, payment of hospital charges was secured by hospital's liens for services under Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter). Baylor University Medical Center v. Travelers Ins. Co. (Civ. App.1979) 587 S.W.2d 501, ref. n.r.e.

3. Judgment

Court's overruling of motion of manufacturers, sellers, and servicers of anesthesia gas machine to reform judgment against them to provide for hospital lien was proper in products liability and medical malpractice action; hospital, which had been defendant in action until instructed verdict was entered in its favor, made no claim for lien, and lien's absence did not affect validity of judgment against other defendants. Ohio Medical Products, Inc. v. Suber (App. 14 Dist.1988) 758 S.W.2d 870.

§ 55.003. Property to Which Lien Attaches

(a) The lien attaches to:

(1) a cause of action for damages arising from an injury for which the injured individual is admitted to the hospital;

(2) a judgment of a court in this state or the decision of a public agency in a proceeding brought by the injured individual or by another person entitled

HOSPITAL LIEN

Ch. 55

§ 55.003
Note 2

to bring the suit in case of the death of the individual to recover damages arising from an injury for which the injured individual is admitted to the hospital; and

(3) the proceeds of a settlement of a cause of action or a claim by the injured individual or another person entitled to make the claim, arising from an injury for which the injured individual is admitted to the hospital.

(b) The lien does not attach to:

(1) a claim under the workers' compensation law of this state,¹ the Federal Employees Liability Act,² or the Federal Longshoremen's or Harbor Workers' Compensation Act;³

(2) a claim against the owner or operator of a railroad company that maintains or whose employees maintain a hospital in which the injured individual is receiving hospital services; or

(3) the proceeds of an insurance policy in favor of the injured individual or the injured individual's beneficiary or legal representative, except public liability insurance carried by the insured that protects the insured against loss caused by an accident or collision.

Acts 1983, 68th Leg., p. 3562, ch. 576, § 1, eff. Jan. 1, 1984.

¹ V.T.C.A., Labor Code § 401.001 et seq.

² 45 U.S.C.A. § 51 et seq.

³ 33 U.S.C.A. § 901 et seq.

Revisor's Note

(1) "Person" as defined by Section 1.04(2) of the Code Construction Act (V.A.C.S. Article 5429b-2) includes corporation, association, and firm which was referred to in the source law.

(2) The citations of the two federal compensation acts have been changed to the correct popular names of the acts.

Historical and Statutory Notes

Prior Laws:

Acts 1933, 43rd Leg., p. 182, ch. 85.

Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.

Acts 1971, 62nd Leg., p. 2420, ch. 769, § 1.

Acts 1981, 67th Leg., p. 953, ch. 359, § 1.

Vernon's Ann.Civ.St. art. 5506a, §§ 1 to 3, 4c.

Notes of Decisions

In general 1
Instructed verdict 3
Venue 2

1. In general

Hospital was entitled to security interest in settlement proceeds received by debtor in personal injury action to secure its reasonable and necessary claim based upon hospital lien provided under Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter). In re Estate of Sholian (Bkrcty.1984) 40 B.R. 608.

Hospital, which had rendered treatment to individual defendant for injuries sustained in

automobile accident, and which had filed hospital lien as required by this article was entitled to lien on any and all rights or actions, suits, claims or demands of individual defendant against owner and driver of other automobile involved, and such lien extended to proceeds of settlement made between insurers of other automobile and individual defendant. Republic Ins. Co. v. Shotwell (Civ.App.1966) 407 S.W.2d 864, *ref. n.r.e.*

2. Venue

Hospital which knew that insurer could not pay hospital bills without consent of patient's

§ 55.003**Note 2**

father unless hospital filed its lien but failed to file such lien did not exercise ordinary care to protect insurer and did not prove a cause of action and overruling insurer's plea of privilege to be sued in county of its residence was reversible error. *Trinity Universal Ins. Co. v. Plainview Hospital and Clinic Foundation* (Civ.App. 1965) 385 S.W.2d 732.

3. Instructed verdict

Defendant liability insurers, in suit by hospital to recover amount of hospital bill incurred by one defendant as result of treatment for injuries sustained in automobile accident, were not entitled to instructed verdict on theory that there was no showing that individual defendant had any claim against insurers for their alleged negligence, in view of fact that action was not against insurers to recover because of their negligence but to recover on ground that, after filing of hospital lien, insurers paid money to

LIENS AND EXEMPT PROPERTY**Title 5**

individual defendant in settlement of her claim against them without hospital bills having been paid. *Republic Ins. Co. v. Shotwell* (Civ.App. 1966) 407 S.W.2d 864, ref. n.r.e.

Defendant automobile liability insurers, in suit by hospital to recover amount of hospital bill incurred by individual defendant as result of treatment for injuries sustained in automobile accident, were not entitled to instructed verdict on theory that there was no showing of negligence, proximate cause or liability on part of defendant's insured or his driver-wife, in view of fact that defendant insurers had paid to individual defendant amount in settlement of her claim against insured and his wife and presumably would not have done so without determining question of their liability. *Republic Ins. Co. v. Shotwell* (Civ.App. 1966) 407 S.W.2d 864, ref. n.r.e.

§ 55.004. Amount of Lien

(a) The lien is for the amount of the hospital's charges for services provided to the injured individual during the first 100 days of the injured individual's hospitalization, except that the lien does not cover:

(1) charges for operating costs that exceed the cost limits established under Section 405.460, 42 Code of Federal Regulations; or

(2) charges for other services that exceed a reasonable and regular rate for the services.

(b) The lien is not affected by a hospital's use of a method of classifying patients according to their ability to pay that is solely intended to obtain a lien for services provided to an indigent injured individual.

Acts 1983, 68th Leg., p. 3563, ch. 576, § 1, eff. Jan. 1, 1984.

Historical and Statutory Notes**Prior Laws:**

Acts 1933, 43rd Leg., p. 182, ch. 85.

Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.

Acts 1971, 62nd Leg., p. 2420, ch. 769, § 1.

Acts 1981, 67th Leg., p. 953, ch. 359, § 1.

Vernon's Ann.Civ.St. art. 5506a, §§ 1, 3.

Notes of Decisions

Admissibility of evidence 7

Burden of proof 5

Classification of patients 3

Indigents, reasonable and regular rate 2

Interest 10

Judicial notice 6

Pleadings 4

Reasonable and regular rate 1, 2

In general 1

Indigents 2

Sufficiency of evidence 8

Summary judgment 9

1. Reasonable and regular rate—In general Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter), providing lien for reasonable and "regular charges" for hospital services, used quoted phrase as meaning charges usually and customarily made. *Garner v. City of Houston* (Civ.App. 1959) 323 S.W.2d 659.

Hospital is entitled to statutory lien for services only for reasonable charges customarily

HOSPITAL LIEN Ch. 55

\$ 55.004
Note 10

made for such services. *Garner v. City of Houston (Civ.App.1959) 323 S.W.2d 659.*

For purpose of Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter), showing of "reasonable and regular rate" required only showing that patient's charges did not exceed the comparable rates for the same services to other patients in the same hospital. *Baylor University Medical Center v. Travelers Ins. Co. (Civ.App.1979) 587 S.W.2d 501, ref. n.r.e.*

2. — Indigent, reasonable and regular rate

Hospital, maintained jointly by city and county as a charity hospital, would not be entitled to statutory lien for services furnished a patient in such financial condition that usually and customarily no charge would be made for such services, even though charges were to be paid by liability insurer out of proceeds of settlement of patient's cause of action against insured for negligence. *Garner v. City of Houston (Civ. App.1959) 323 S.W.2d 659.*

3. Classification of patients

The policy of city-county hospital in classifying indigent person receiving treatment for injury resulting from automobile accident as pay patient, while classifying indigent person receiving treatment for illness not necessitating emergency treatment as charity patient, is not harsh and unreasonable and does not constitute such discrimination as will bar hospital from asserting lien on pay patient's cause of action for personal injuries. *City of Houston v. Bullard (Civ.App.1962) 354 S.W.2d 224.*

4. Pleadings

In suit to cancel debt and statutory lien for hospital services on ground that charges for such services were exorbitant and that hospital did not regularly or customarily make any charge for services to patients in plaintiff's financial condition, plaintiff would be entitled to cancellation of so much of debt as was in excess of reasonable charges for such services, notwithstanding specific prayer for cancellation of entire debt and lien. *Garner v. City of Houston (Civ.App.1959) 323 S.W.2d 659.*

5. Burden of proof

Hospital which treated patient's injuries, then attempted to obtain lien on patient's cause of action against allegedly negligent third party, had burden of proving that its charge was not more than a reasonable and regular rate for services billed to patient. *Dallas County Hosp. Dist. v. Perrin (App. 5 Dist.1985) 694 S.W.2d 257, ref. n.r.e.*

6. Judicial notice

In suit to cancel debt and statutory lien for hospital services, trial court could not take judi-

cial notice of the reasonableness of charges for such services. *Garner v. City of Houston (Civ. App.1959) 323 S.W.2d 659.*

7. Admissibility of evidence

Qualification to give opinion as to reasonable and regular rates for hospital charges is not necessarily limited to witnesses with medical training. *Baylor University Medical Center v. Travelers Ins. Co. (Civ.App.1979) 587 S.W.2d 501, ref. n.r.e.*

8. Sufficiency of evidence

Trial court's finding that city-county hospital claiming lien on patient's cause of action for personal injuries had charged patient an unreasonable rate which was not the rate ordinarily charged to person in patient's indigent circumstances must be set aside as contrary to undisputed testimony that patient, having been injured in automobile accident, was admitted, in accordance with usual hospital practice, for emergency treatment as pay patient subject to usual charges which would be written off if there were no insurance for payment of such charges. *City of Houston v. Bullard (Civ.App. 1962) 354 S.W.2d 224.*

Testimony by hospital administrator and physician as to experience with hospital rates was sufficient to permit trial court to deem them qualified to express opinion of hospital's rates to patient as being reasonable and regular rates contemplated by Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter). *Baylor University Medical Center v. Travelers Ins. Co. (Civ.App.1979) 587 S.W.2d 501, ref. n.r.e.*

Hospital was not entitled to lien on patient's cause of action against allegedly negligent party absent evidence that amounts charged patient were regular and customary charges for like or similar services. *Dallas County Hosp. Dist. v. Perrin (App. 5 Dist.1985) 694 S.W.2d 257, ref. n.r.e.*

9. Summary judgment

In suit against hospital operators to cancel debt and statutory lien for hospital care, genuine issues of fact raised by pleadings as to whether hospital charges were reasonable and whether hospital regularly and customarily made any charge for services to patients in plaintiff's financial condition precluded summary judgment for defendants. *Garner v. City of Houston (Civ.App.1959) 323 S.W.2d 659.*

10. Interest

Hospital intervenor with lien on settlement proceeds was not entitled to prejudgment interest. *Hermann Hosp. v. Vardeman (App. 1 Dist. 1989) 775 S.W.2d 866.*

§ 55.005

LIENS AND EXEMPT PROPERTY
Title 5

§ 55.005. Securing Lien

(a) To secure the lien, a hospital must file written notice of the lien with the county clerk of the county in which the injury occurred. The notice must be filed before money is paid to an entitled person because of the injury.

(b) The notice must contain:

- (1) the injured individual's name and address;
- (2) the date of the accident;
- (3) the name and location of the hospital; and
- (4) the name of the person alleged to be liable for damages arising from the injury, if known.

(c) The county clerk shall record the name of the injured individual, the date of the accident, and the name and address of the hospital and shall index the record in the name of the injured individual.

Acts 1983, 68th Leg., p. 3563, ch. 576, § 1, eff. Jan. 1, 1984.

Revisor's Note

(1) "Person" as defined by Section 1.04(2) of the Code Construction Act (V.A.C.S. Article 5429b-2) includes a firm or corporation to which the source law referred.

(2) The source law requirement that the county clerk keep this record in a well-bound book provided for that purpose has been repealed by V.A.C.S. Article 1941(a), which authorizes microfilm recordkeeping.

(3) The fee provision of the source law was repealed by V.A.C.S. Article 3930, which sets fees collected by county clerks.

Historical and Statutory Notes

Prior Laws:	Acts 1971, 62nd Leg., p. 2420, ch. 769, § 1.
Acts 1933, 43rd Leg., p. 182, ch. 85.	Acts 1981, 67th Leg., p. 953, ch. 359, § 1.
Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.	Vernon's Ann.Civ.St. art. 5506a, §§ 3, 4.

Notes of Decisions

Actions and proceedings 1	cause of action independent of patient's obligation to pay the bill, and the hospital's cause of action accrued only when judgment or settlement proceeds were actually paid, rather than when the patient became obligated to pay the bill. <i>Baylor University Medical Center v. Borders</i> (Civ.App.1979) 581 S.W.2d 731, ref. n.r.s.
1. Actions and proceedings	
Vernon's Ann.Civ.St. art. 5506a (repealed; see, now, this chapter) established a separate	

§ 55.006. Discharge of Lien

(a) To discharge the lien, the hospital authorities or the person in charge of the finances of the hospital must execute and file with the county clerk of the county in which the lien notice was filed a certificate stating that the debt covered by the lien has been paid or released and authorizing the clerk to discharge the lien.

HOSPITAL LIEN
Ch. 55

§ 55.008

(b) The county clerk shall record a memorandum of the certificate and the date it was filed.

(c) The filing of the certificate and recording of the memorandum discharge the lien.

Acts 1983, 68th Leg., p. 3564, ch. 576, § 1, eff. Jan. 1, 1984.

Revisor's Note

The source law method of recording the certificate is provided by V.A.C.S. Article 1941(a), and the source law fee provision has been repealed by V.A.C.S. Article 3930. See the revisor's note under Section 55.005.

Historical and Statutory Notes

Prior Laws:
Acts 1933, 43rd Leg., p. 182, ch. 85.

Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.
Vernon's Ann.Civ.St. art. 5506a, § 4b.

§ 55.007. Validity of Release

(a) A release of a cause of action or judgment to which the lien may attach is not valid unless:

(1) the hospital's charges were paid in full before the execution and delivery of the release;

(2) the hospital's charges were paid before the execution and delivery of the release to the extent of any full and true consideration paid to the injured individual by or on behalf of the other parties to the release; or

(3) the hospital is a party to the release.

(b) A judgment to which the lien has attached remains in effect until the hospital's charges are paid in full or to the extent set out in the judgment.

Acts 1983, 68th Leg., p. 3564, ch. 576, § 1, eff. Jan. 1, 1984.

Historical and Statutory Notes

Prior Laws:
Acts 1933, 43rd Leg., p. 182, ch. 85.
Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.

Acts 1971, 62nd Leg., p. 2420, ch. 769, § 1.
Acts 1981, 67th Leg., p. 953, ch. 359, § 1.
Vernon's Ann.Civ.St. art. 5506a, § 3.

§ 55.008. Hospital Records

(a) On request by an attorney for a party by, for, or against whom a claim is asserted for damages arising from an injury, a hospital shall as promptly as possible make available for the attorney's examination its records concerning the services provided to the injured individual.

(b) The hospital may issue reasonable rules for granting access to its records under this section, but it may not deny access because a record is incomplete.

(c) The records are admissible, subject to applicable rules of evidence, in a civil suit arising from the injury.

Acts 1983, 68th Leg., p. 3564, ch. 576, § 1, eff. Jan. 1, 1984.

§ 55.008

LIENS AND EXEMPT PROPERTY
Title 5

Historical and Statutory Notes

Prior Laws:

Acts 1933, 43rd Leg., p. 182, ch. 85.
Acts 1953, 53rd Leg., p. 443, ch. 131, § 1.

Acts 1979, 66th Leg., p. 1080, ch. 509, § 1.
Vernon's Ann.Civ.St. art. 5506a, § 4a.



OFFICIAL BUSINESS

Alaska State Legislature

House of Representatives

REPRESENTATIVE
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DISTRICT 13

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(907) 485-4919

716 WEST 4TH AVENUE, SUITE 330
ANCHORAGE, ALASKA 99501-2173
(907) 258-8195

SPONSOR STATEMENT

House Bill 306 "An Act relating to a lien for services provided by a physician"

Current Alaska Statute allows a hospital or nurse who gives medical care to a patient for a traumatic injury to place a lien on any sum awarded to the injured person or the personal representative of the injured person by judgment or obtained by a settlement or compromise to the extent of the amount due the hospital or nurse. However, physicians in Alaska do not have the same statutory right. House Bill 306 would amend existing statute to include physicians.

A physician, as well as a hospital or nurse, gives medical care for a traumatic injury. If the patient later receives monies through judgment, settlement or compromise to cover medical costs, the patient sometimes uses the monies for other purposes and the hospital, nurse, and physician remain unpaid. This bill will enable physicians to also use the lien process to help assure payment for services they have rendered for traumatic injuries.

The proposed committee substitute also makes changes to update the lien law which has been in place since territorial days. Three changes are proposed. They include an extension of time in which to file the lien, a general description of services rendered instead of an itemized statement, and deletion of the requirement that a copy of the notice of lien which is sent by registered mail to the responsible party and insurance carrier be a "certified" copy.

There is a zero fiscal note from the Department of Natural Resources. Your support would be appreciated.

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB306

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: "An Act relating to a loan for services provided by a physician." BRU: Management and Administration
 Component: Recorder's Office
 Sponsor: Representative Toohy
 Requestor: _____ Component Serial No. 802

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	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	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY96	FY97	FY98	FY99	FY00	FY01
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: \$ None

POSITIONS

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

(Attach a separate page if necessary)

There is no anticipated fiscal impact associated with implementation of this legislation.

Prepared by: Nico Bus, Acting Director Phone: 465-2406
 Division: Support Services Date: 25-Apr-95
 Approved by Commissioner: *Nico Bus* Date: 4-26-95
 Agency: Natural Resources

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MEMORANDUM

TO: HARLAN KNUDSON

FROM: PETER J. ASCHENBRENNER, ESQ.
ASCHENBRENNER LAW OFFICES

DATE: April 11, 1995

RE: PROPOSED AMENDMENTS TO AS 34.35.450-480

AS 34.35.450-475 were adopted at Statehood and have never been amended. In 1975 AS 34.35.480 was adopted which provided for an action foreclosing liens and recovery of certain court costs. Generally AS 34.35.450-480 provides a mechanism whereby a hospital or nurse can file a lien and obtain the following protections:

A. The hospital has a lien for the "reasonable value of the [hospital] service" ... " upon any sum awarded to the injured person ... or obtained by settlement or compromise" plus "costs and reasonable attorneys fees that the court allows ..." . AS 34.35.450. As a legal matter, a hospital acting diligently has the right to participate as a lienholder in any personal injury action and to be paid from the settlement proceeds. AS 34.35.450 (a).

B. The hospital has a lien on first party insurance coverage whether or not an assignment of benefits is signed. AS 34.35.450 (b). Notice of the lien filing should be given to the carrier if known.

C. Most importantly, the hospital has a direct action against a personal injury plaintiff or the defendant's insurance carrier for failure to satisfy a perfected lien *after* settlement if the hospital sues within 180 days after date of payment. AS 34.35.375.

These liens must be filed in an extremely short time frame: the lien "window" period is only 15 days after discharge of the patient from the hospital. This makes a prompt lien filing after traumatic accidents difficult. The hospital's or nurse's situation is made worse by the regulations of the Department of Health and Social Services: For example, hospitals are allowed only 15 days to prepare a discharge summary. 7 AAC 12.780 (e) ["inpatient medical record to be "completed within 15 days of discharge"]. Furthermore, the "medical chart" must state the source of repayment. 7 AAC 12.770 (c)(1)(M). The hospital is put in the position of keeping the chart up-to-date in the case of a potential lien case *and* preparing the necessary discharge summary within the same time frame.

Basically, hospital staff must screen for patients victimized by "traumatic injury" (other

Memorandum Re Amendments to AS 34.35.450-480
April 11, 1995
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than industrial accidents) and then identify the place of injury (for recording purposes) and file the lien in 15 days. Because AS 34.35.450-480 protects licensed special nurses, they will also be required to do this research.

Turning to the specific problems which involve the effect of the recording acts, AS 40.17, on AS 34.35.450-480.

To set the stage: it is very important that hospitals and nurses, as creditors, get their lien filings right. The Supreme Court has noted that "a mechanic's lien claim or notice cannot be materially amended or reformed, even in equity, after the expiration of the time prescribed by statute for the filing of the claim." See *H.A.M.S. Co. v. Electrical Contractors of Alaska, Inc.* 563 P.2d 258 (Alaska 1977) quoting *Sullens & Hoss, Inc. v. Farvour*, 117 F.Supp. 535, 538, 14 Alaska 492 (D. Alaska 1954). The court also noted that: "Courts do not permit amendment where the lien is fatally defective, as where it is defective in substance and not in form, or where, for some reason, the amendment sought would be in effect the filing of a new claim. Nor will amendment be allowed after the time for filing so as to affect the rights of a bona fide purchaser or encumbrancer, or intervening rights of other third parties." (*Id.*)

In *HAMS I, supra*, the party signing the lien stated that he was authorized to sign the lien on behalf of the corporation but didn't state that he believed the contents of the lien to be true. A foreclosure judgment in favor of the lien claimant for over \$45,000 was reversed by the Supreme Court because the "purported ... liens ... are void and of no legal effect due to the omission of verifications of the respective lien claims ..." (at 264)

The bottom line is that a notary block *outside the body of the lien claim* was in error. But the courts wouldn't allow the creditor to amend this offending notary block even after the creditor had won a lien judgment! The hyper-technical reasoning of the decision touched off a fire-storm of protest; the Supreme Court had to issue a highly unusual second decision grandfathering in all of the acknowledged (and unverified) liens filed before the date of *HAMS I. H.A.M.S. Co. v. Electrical Contractors of Alaska, Inc.* 566 P.2d 1012 (Alaska 1977).

We now approach the technical amendments:

- Present law calls for the lien to be filed "in the recording district or borough in which the injury occurred... ." AS 34.35.460.

The reference to "borough" should be deleted. Boroughs are units of local government, not recording districts. The two are not co-terminous. The boundaries of boroughs are approved by the Local Boundary Commission; the boundaries of recording districts are established by the DNR under authority of AS 44.37.025. Boroughs aren't referred to in AS 40.17.

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● The filing of the lien in the recording district in which the accident site is located should be re-examined. Some accidents will be easy to place; a car crash at 36th & C Street is easy to identify on the maps at the recorder's office on the 11th floor of the Frontier Building.

Official maps, however, will not give any guidance to a hospital or nurse attempting to locate the recording district in which an off-shore accident occurred. Lines dividing the state into recording districts, for example, are not extended into the territorial waters of the United States; victims of a JAL turbulence accident over the North Pacific were brought to Anchorage in a 1982 incident. Did the hospital lose its lien rights if it was unable to protract on Coast Guard charts the exact location of the 747's sudden dive, with reference to the nearest recording district?

There are other, less unusual, examples in which the exact site of the incident, be it a drowning or shooting, a plane or boat accident, are not necessarily available to the hospital without a concerted effort. Health care professionals should not be pestering the EMTs at the emergency room (or at the helipad) with queries about the exact location of the injury, unless it is really relevant to the victim's treatment.

Why have recording districts for these lien filings in the first place?

Under current law you can run the index under grantor(victim) or grantee(hospital) provided that you select the proper one of Alaska's 34 recording districts. An insurance carrier (having insured either the tortfeasor or the victim) must now diligently search the grantor/grantee index in the recorders' office (having first located what it believed to be the site of the accident). It has no obligation to search the recording district index in the place the hospital is located, unless that is also where the accident occurred.

However, there is no need to have accident-based choices for filing the lien, followed by accident-based lien searches. The requirement that the recording be in the district in which the accident occurred arises from a misguided adherence to the "cause and effect" logic which assumes that the parties, insurers and health care providers, involved in an accident should file and search documents according to the site where the accident was "caused".

Finally, a more general comment: UCC filings are afforded Central Filing status for perfection of "general intangibles" and other similar interests. There is no central "file" for documents listed under AS 40.17.110 (b)(1)-(60). However, the list of what is recordable under this code provision is quite lengthy and includes many types of documents which have nothing to do with real estate, including servicemen's records, for example.

DNR has the authority to establish such a central index system. Indeed, AS 40.17.040 calls for "an index system for recorded documents"; the only statutory direction as to the structure of this database is that it be structured so that the public "may find documents by

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names of grantors and grantees". *Id.* "Other means for locating ... documents" are merely options to be considered by DNR. There is no statutory requirement that "place of injury" trigger 34 indices for searching hospitals/nurses and victims.

AS 44.37.025 (a) provides that:

The Department of Natural Resources shall adopt regulations establishing, modifying, or discontinuing recording districts or precincts and prescribing the records to be maintained and the instruments to be recorded, consistent with AS 40.17. A regulation may not impose a restriction on document recording unless the restriction is required by statute or furthers a legitimate administrative need of the recorder; a "legitimate administrative need" includes ensuring the legibility of the documents and identifying the parties, the capacity of each party, and the affected property.

Nevertheless, it appears from AS 40.17.035 (2)(C) that the recorder may reject a document which does not state a recording district. Thus, at present, hospital and nurses lien claimants are required to guess as best they can which would be the legally correct site for lien recording. It is a dangerous tactic for the lienor to state "unknown" as the place of injury and file its lien in the recording district in which it does business since such a lien would not be properly recorded as required by current law. Of course, it is the language of AS 34.35.475 (a)(1) which requires the claimant to play recording district "roulette". That code provision gives constructive notice effect to only those liens recorded in the recording district which is eventually determined to be the place of the accident.

A close reading of AS 40.17 discloses that only "conveyances" (defined in AS 40.17.900 (3)) must be recorded in the recording district "in which the land affected by the conveyance is located". AS 40.17.020. Furthermore, AS 40.17.070 (b) specifically provides for a "daily log and index for recorded documents" which is to be kept in the "central recording office"; since each public office operated by DNR can provide access to the central filing, there is no need for a limited reading of AS 40.17.010 (a)(1) which literally requires that, under current law, hospital and nurse lienors guess as to the recording district in which to record. The present statutory scheme, seemingly dictated by AS 34.35.450-480, with multiple recording districts and multiple indices for these liens, is hopelessly out of date and, as I have argued, is not required by a reading of AS 40.17.

(While we are on the recording acts, AS 40.17.080 (a) states that the recording of a document imparts "constructive notice" to "subsequent purchasers, etc." (that is, parties to real estate transactions). It may be time to consider adding a phrase so that constructive notice *also* has the effect "otherwise prescribed by law" to cover the many situations in which code

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provisions outside the recording acts define the parties affected by constructive notice.)

Other technical amendments follow from these points.

- As we discussed on the phone, the recorder's office is not keeping lien docket as required by AS 34.35.470. This calls for both hospital and victim indices. I suggest that this code provision be repealed in its entirety. At present any party wishing to find a lien claimant, once he has determined which of the recording district grantor-grantee indexes to search, need only run the grantor index. Furthermore, since the victim will appear as the grantor, a party having the name of the victim and the place of injury can determine the identity and existence of any lien claimant.

- AS 34.35.465 now requires the lienor to state the site of the accident ("at ..."); in the event that central filing for these liens is created, this would become unnecessary.

- AS 34.35.460 and AS 34.35.475 (1) provide for service of a *certified* copy of the lien notice on the tortfeasor and/or his insurer as additional protection to the lienor. (A properly filed lien triggers the 180 day direct liability of AS 34.35.475, so service by mail is optional.) However, there is no practical reason as to why this copy should be certified. By comparison, a notice of right to lien -- an announcement that a contractor or materialman may have lien rights -- need not be certified. AS 34.35.064 simply provides that the claimant of an NRL "give a notice of right to lien" to the owner/lender.

If there has been no abuse of NRL's (such as NRL's prepared and served by mail, but not recorded) since their inception, it is hard to believe that tortfeasors and victims will be barraged with hospital and nurses' liens which are not recorded. Certification creates a trap for the lienor and provides no additional protection for the tortfeasor/insurer. Even if hospitals and nurses "paper" the state by mailing out copies of unrecorded lien claims, these documents also have the binding effect provided under AS 34.35.475 (a)(1).

As an aside, in a series of decisions, the Supreme Court has addressed the precise form of verification for lien filings. *H.A.M.S. Co. v. Electrical Contractors of Alaska, Inc.*, 563 P.2d 258 (Alaska 1977); *H.A.M.S. Co. v. Electrical Contractors of Alaska, Inc.*, 566 P.2d 1012 (Alaska 1977); *Brooks v. R & M Consultants, Inc.*, 613 P.2d 268 (Alaska 1980); *Anchorage Sand & Gravel Company, Inc. v. Woolridge*, 619 P.2d 1014 (Alaska 1980). Since the statutory form is in compliance with *HAMS I*, I have not changed the verification.

Brooks v. R & M Consultants, Inc., *supra*, holds that a corporate officer must show his authority to act for the corporation as a lien claimant. The exact form of lien set forth in the AS 34.35.465 could be used, word for word, by a nurse, but would require some "tinkering" to get it right for a hospital. Such corporate lien claimants should be confident that the "substantially as follows" introduction of §465 will protect their lien efforts by triggering AS

Memorandum Re Amendments to AS 34.35.450-480

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34.35.020 which provides that:

Substantial compliance with the law relating to the contents of the lien notice is considered sufficient, if the notice satisfactorily shows the name of the claimant, the amount of his demand, the time of his employment, the property sought to be charged with the lien sufficient for identification and the name of the owner or reputed owner of the property.

There is no reason why the exact wording of nurses' and hospitals' liens couldn't *both* be spelled out in the code. As I said, with the *Brooks* case, there is a "substantial compliance" safety net for an incorrectly stated authority to sign; fine tuning the authority to sign is really the only creative effort that the hospital needs to apply to generating the lien.

● The present statutory form of lien requires an "itemized statement" of the charges but does not define what would qualify for such a statement. I have recommended that the language be changed to require a "general description of the services rendered". This conforms the nurses and hospital lien to the NRL which requires a "general description of the labor, materials, services or equipment provided or to be provided." AS 34.35.064 (a)(5).

Attaching a hospital billing, as Providence Hospital did (Inst. No. 86-24180, Anch. Rec. Dist.) in one case, is actually less informative than stating in a few words what treatment was rendered; the billings are not particularly legible, are multi-paged, and don't necessarily shed light on who "Michael Brown" was. This lien filing argues for repeal of accident-site filings: Providence Hospital filed a statement in the Anchorage Recording District with a filing that the place of injury was "unknown" (as was the day and month of injury). I have included a copy of the lien and the first page of the hospital billing.

I believe the Providence Hospital/Brown lien filing points up the practical problem with the overtechnical (and grossly out-of-date) approach of AS 34.35.450-480. By requiring information which is not readily obtainable (place of accident) and by appearing to require filing of the hospital billing (instead of a general description of the services rendered), *less* information was filed of record, rather than more.

There are two other points which touch this issue:

First, filing of hospital billings may be contrasted with a case in which a lawyer, whose client has prevailed in a suit, is required to file an "itemized billing" in support of his Civil Rule 82 fee application. *Hayes v. Xerox*, 718 P.2d 929, 939 (Alaska 1986)[accurate records of the hours expended and a brief description of the services reflected by those hours should be submitted on fee motions]. However, even a fleeting consideration of this comparison shows that there is little tangible result gained when the public record contains a professional billing on a matter *which is not yet in dispute*. Yes, the judge is proper arbiter of how much of the

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legal effort of a prevailing party should be passed to the loser after the termination of the litigation in which the legal effort is expended. But requiring this level of documentation on the public record as a condition of filing a lien requires an effort which is more appropriate to litigation or negotiation than perfection of rights through the recorder's office.

Second, recording hospital billings as a matter of compliance should be discouraged because there are obvious privacy considerations at stake: the patient's entire course of treatment is laid out, permanently, in the public record.

AS 18.20.085 (a) provides for hospital record retention: "Unless specified otherwise by the department a hospital shall retain and preserve records that relate directly to the care and treatment of a patient for a period of seven years following the discharge of the patient." The Department of Health and Social Services has fulfilled its mandate to "define the types of records and the information required to be included in the records retained and preserved under [AS 18.20.085 (a)]" by defining patient confidentiality rights so that a "patient or nursing facility resident has rights that include ... [the right] to confidentiality of the patient's or resident's medical records and treatment." 7 AAC 12.890 (a)(7).

DHSS has not defined what a "billing record" or "itemized statement" is; but it is clear that much of the information in the typical itemized billing (such as Michael Brown's) is also information that "[e]ach in-patient medical record must include[...]" under 7 AAC 12.770 and might be considered protected. In other words, as a matter of policy, if a billing record contains information (like name, physician's name, date of discharge, etc.) which is also information that appears in the patient's medical chart, then to that extent perhaps the billing record should be afforded the same privacy status as the chart.

I suggest that there is little need to resolve this issue as a matter of hospital record retention/privacy legislation/regulation because it is so obvious that these professional billings do not belong in the hard copy filings of a public record database maintained for perfection purposes.

(By comparison, the confidentiality rights of patients of licensed special nurses under 7 AAC 12 are unclear; for example, a "physician's general medical practice" is excluded. 7 AAC 12.350. Presumably, there is no regulatory coverage on this issue for nurses and other individual health care practitioners. Literally, 7 AAC may not stop special nurses from publicly distributing the medical charts of their patients via the recorder's office.)

Back to the big picture:

A modest solution would be to amend the code to provide for a field by which hospital and nurses' liens would be indexed/recorded by the place in which the services were rendered. This solution would protect the rights of all parties by guiding them to a recording district which

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is more readily accessible than the site of the accident. A bolder solution would eliminate the place of accident as a field for indexing. Simply create a central filing "file" for specific types of documents, including hospital and nurses' liens: this would fulfill the mandate of AS 40.17.040. The fields for searches would be the name of the claimant and the name of the victim.

In general, there is an opportunity for review of hospital and nurses' liens and the serious impediments to proper utilization of these liens by the health care professionals involved.

Draft legislation follows.

AN ACT

Relating to recording of hospital and nurses' liens; relating to the time for filing of such liens; and providing for an effective date.

Section 1. AS 34.35.460 is amended to read:

AS 34.35.460. Notice of Lien. To perfect the lien described in AS 34.35.40 -- 34.35.480, the hospital or the owner or operator of the hospital, or the licensed special nurse, shall, not later than 90 [15] days after the date of injury, or in no event later than 90 [15] days after the discharge of the injured person from the hospital, file a notice of lien substantially in the form prescribed in AS 34.35.465, containing a general description of the services rendered and a statement [an itemized statement] of the amount claimed, with a [the] recording officer [of the recording district or borough in which the injury occurred], and shall, after the 90 [20]-day period, before the date of judgment, settlement, or compromise, serve a [certified] copy of the notice of lien by registered mail, at the last known address, upon the person alleged to be responsible for causing the injury and from whom damages are claimed, and upon the insurance carrier that has insured against the liability, if the insurance carrier is known.

Sec. 2. AS 34.35.465 is amended to read:

AS 34.35.465. Form of notice. The form of notice required by AS 34.35.450 -
- 34.35.480 shall be substantially as follows:

NOTICE is hereby give that has rendered services for hospitalization, or
special nurses' services for, a person who was injured on the ... day of [at]
in the state, and the(claimant) hereby claims a lien upon any money due or owing
or any claim for compensation, damages, contribution, settlement, or judgment from
..... alleged to have caused the injuries and any other person liable for the injury or
obligated to compensate the injured person on account of the injuries; the hospitalization (or
special nurses' services) was rendered to the injured person between the day of and
..... at :

**(GENERAL DESCRIPTION OF SERVICES RENDERED
AND STATEMENT OF AMOUNT DUE)**

[(ITEMIZED STATEMENT)]

..... and that 90 [15] days have not elapsed since that time;
that the claimant's demands for care and service is in the sum of \$..... and that no part of the
demands has been paid, except \$....., and that there is now due and owing and remaining
unpaid thereof, after deducting all credits and offsets, the sum of \$....., in which amount lien
is hereby claimed.

[United States of America]
State of Alaska ss.
.....Judicial District

I, being first duly sworn on oath say: That I am named in the
foregoing claim of lien; that I have read the same and know the contents thereof and believe the
same to be true.

Subscribed and sworn to before me this day of, 19.....

.....
Notary Public for Alaska

Sec. 3. AS 34.35.475 is amended to read:

AS 34.35.475. Settlement after notice. (a) A person or insurer is liable to a hospital or nurse, in the amount that the hospital or nurse is entitled to receive, for 180 days after the date of a payment to the injured person, the heirs of the injured person, personal representatives, or the attorney of them, when the person or insurer

(1) receives a [the certified] copy of notice of lien, or the lien is recorded as provided in AS 34.35.460 and 34.35.465;

(2) makes the payment after receipt of notice or the recording of the lien as compensation for the injury suffered; and

(3) does not pay the hospital or the licensed special nurse for the reasonable value of the services rendered to the injured person and claimed in the notice of lien, or so much of the value of the services as can be satisfied out of a judgment, settlement, or compromise, after paying the attorney fees, costs, and expenses incurred in connection with it.

(b) The hospital or nurse has a cause of action, during the 180 days, against the person or insurer.

NOTICE is hereby given that Providence Hospital has rendered services for hospitalization for Michael Brown who was injured on the unknown day of unknown at unknown in the state and the Providence Hospital (Claimant) hereby claims a lien upon any money due or owing or any claim for compensation, damages, contribution, settlement or judgment from unknown alleged to have caused the injuries and any other person liable for the injury or obligated to compensate the injured person on account of the injury. The hospitalization was rendered to the injured person between the 3/17/86 day of 3/26/86, and that 15 days have not elapsed since that time; that the claimants demands for care and service is in the sum of \$ 16,411.08 and that no part of the demands has been paid, except \$ none, and that there is now due and owing and remaining unpaid thereof, after deducting all credits and offsets, the sum of \$ 16,411.08, in which amount lien is hereby claimed. Per attached copies.

United States of America
 State of Alaska
 Third Judicial District
 (Precinct or Borough) } ss.

I, Donna L Lorenzen being first duly sworn on oath That I am Patient Acct. Rep. named in the foregoing claim of lien: that I have read the same and know the contents thereof and believe the same to be true.

Donna L Lorenzen

Subscribed and sworn to before me this 9 day of April 1986.

Kon P. Smith
 Notary Public for Alaska
 My Commission expires June 29, 1986



RECORDED - FILED
 APR 11 1986
 REC. DIST.
 TIME 1:49 PM
 DATE 4/17 1986
 Requested by: Providence Hospital

86-24180

15-

PROVIDENCE HOSPITAL

3300 PROVIDENCE DRIVE - P.O. BOX 6604
ANCHORAGE, ALASKA 99502
PHONE: (907) 562-2211



SISTERS OF PROVIDENCE

SERVING IN THE WEST SINCE 1856

OCT 28 1 13 PM '87
RECEIVED
ADDRESS
Providence Hosp.

AS...
PROVIDENCE

12

State of Alaska
District Recorders Office
1001 West 4th Avenue
Anchorage, Alaska 99501

Clark of the Court:

Providence Hospital requests that you release
our lien against MICHAEL BROWN
as of 10/14/87

Your Number is 86-24180

Sincerely,

Beverly Schwegler

Credit Dept.
564-9651

Subscribed and sworn to before me this 14th day of
OCTOBER, 19 87

Arnette M. Zwickel
Notary Public for Alaska
MY COMMISSION EXPIRES APRIL 23, 1990



Return to: Providence Hospital
Box 19-6604
Anchorage, AK. 99519-6604

1-12 (7/83)

ASCHENBRENNER LAW OFFICES, INC.

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April 11, 1995

RECEIVED
APR 14 1995
AK
NURSING HOSPITAL &
NURSING HOME ASSOC.

Harlan Knudson
Executive Director
Alaska Hospital and Nursing Home Association
319 Seward St
Juneau, AK 99801

Re: Deficiencies in Alaska's Hospital and Nurses' Lien Laws

Dear Mr. Knudson:

It was a pleasure speaking with on the phone today.

I am taking the liberty of enclosing a memorandum addressing the desirability of amending AS 34.35.450-480, Alaska's hospital and nurses' lien laws. My proposal is enclosed and has been prepared at the request of Recovery Management, Inc.

As explained in the Memorandum, the Department of Natural Resources will be considering technical amendments to Alaska's recording and lien laws, according to Sharon Young, the State Recorder. It does not appear that these housekeeping amendments will be ready for submission this session. The Department has no draft legislation of its own on the "housekeeping" topics that Ms. Young expects to be addressed; there is no one in the Department of Law or the Governor's office who is aware of any specific proposals that the Department wants to see on the agenda this year.

Here are the main features of the proposed legislation:

- Hospital liens must now be filed in an extremely short time frame: The lien "window" period is only 15 days after discharge of the patient from the hospital. AS 34.35.460. This makes a prompt lien filing after traumatic accidents difficult. The proposal expands the filing period to 90 days.
- Present law calls for the lien to be filed "in the recording district or borough in which the injury occurred..." AS 34.35.460. The proposal calls for central filing of liens.
- AS 34.35.460 and AS 34.35.475 (1) requires service of a *certified* copy of the lien

Mr. Harlan Knudson
April 11, 1995
Page 2


notice on the tortfeasor and/or his insurer as additional protection to the lienor. (A properly filed lien triggers the 180 day direct liability of AS 34.35.475, so service by mail is optional.) However, there is no practical reason as to why this copy should be certified. By comparison, a notice of right to lien (NRL) -- an announcement that a construction contractor or materialman may have lien rights -- need not be certified. AS 34.35.064 simply provides that the claimant of an NRL "give a notice of right to lien" to the owner/lender.

● The present statutory form of lien requires an "itemized statement" of the charges but does not define what would qualify for such a statement. The proposal recommends that the language be changed to require a "general description of the services rendered". This conforms the nurses and hospital lien to the NRL which requires a "general description of the labor, materials, services or equipment provided or to be provided." AS 34.35.064 (a)(5). In addition, it renders unnecessary the questionable practice of filing in the public record the itemized billing statement.

My office is pursuing amendments to the lien laws on behalf of Recovery Management which represents, in turn, Petersburg Medical Center, Seward General Hospital and Cordova Community Hospital. Recovery Management is a licensed and bonded collection agency with offices in Anchorage and Fairbanks. My office is providing these materials free of obligation. Recovery Management is interested in addressing impediments to recovery of bad debt by hospitals and health care professionals, generally.

If there are any other questions, please call.

Sincerely yours,
ASCHENBRENNER LAW OFFICES, INC.



Peter J. Aschenbrenner

PJA:taf

HB

307

9-LS1070\F
Luckhaupt
4/24/95

CS FOR HOUSE BILL NO. 307()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES TOOHEY, Phillips, James, Martin

A BILL

FOR AN ACT ENTITLED

1 "An Act providing that a political use is not an authorized use of charitable
2 gaming proceeds; prohibiting the contribution of charitable gaming proceeds, other
3 than proceeds from raffles to candidates for certain public offices, their campaign
4 organizations, or to political groups; providing that a political group is not a
5 qualified organization for purposes of charitable gaming, other than raffles;
6 relating to raffles; and providing for an effective date."

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

8 * Section 1. AS 05.15.100 is amended by adding a new subsection to read:

9 (e) The department may issue a permit to a political organization for activities
10 conducted under AS 05.15.155. A permit issued under this subsection gives the
11 political organization the privilege of conducting raffles but no other forms of
12 charitable gaming. A political organization receiving a permit under this subsection
13 must satisfy all the requirements of this chapter relating to permittees. A political

1 organization may not hold or otherwise participate in a multiple-beneficiary permit.

2 * Sec. 2. AS 05.15.115 is amended by adding a new subsection to read:

3 (e) A political organization holding a permit to conduct raffles under
4 AS 05.15.100(e) may not enter into a contract with an operator to conduct, on behalf
5 of the political organization, the raffles permitted under the authority of the permit.

6 * Sec. 3. AS 05.15.150 is amended to read:

7 Sec. 05.15.150. LIMITATION ON USE OF PROCEEDS. (a) The authority
8 to conduct the activity authorized by this chapter is contingent upon the dedication of
9 the net proceeds of the charitable gaming activity to the awarding of prizes to
10 contestants or participants and to [POLITICAL,] educational, civic, public, charitable,
11 patriotic, or religious uses in the state. "Educational [POLITICAL, EDUCATIONAL],
12 civic, public, charitable, patriotic, or religious uses" means uses benefiting persons
13 either by bringing them under the influence of education or religion or relieving them
14 from disease, suffering, or constraint, or by assisting them in establishing themselves
15 in life, or by providing for the promotion of the welfare and well-being of the
16 membership of the organization within their own community, [OR THROUGH
17 AIDING CANDIDATES FOR PUBLIC OFFICE OR GROUPS THAT SUPPORT
18 CANDIDATES FOR PUBLIC OFFICE,] or by erecting or maintaining public
19 buildings or works, or lessening the burden on government, but does not include

20 (1) the direct or indirect

21 (A) payment of any portion of the net proceeds of a bingo or
22 pull-tab game to a lobbyist registered under AS 24.45;

23 (B) contribution of any portion of the net proceeds of a
24 charitable gaming activity to

25 (i) a candidate for a public office of the state or a
26 political subdivision of the state or to the candidate's campaign
27 organization;

28 (ii) a political party as defined under AS 15.60;

29 (iii) an organization or club organized under or
30 formally affiliated with a political party;

31 (iv) a political group as defined under AS 15.60; or

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(v) a group as defined under AS 15.13.130, including a group that seeks to influence the opinions of voters concerning the election of a candidate for public office, a constitutional amendment, an initiative, or another ballot measure; or

(2) the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property unless it is used exclusively for one or more of the permitted uses.

(b) The net proceeds derived from the activity must be devoted within one year to one or more of the uses stated in (a) of this section. If the net proceeds are derived from raffles, the proceeds must be devoted within one year to one or more of the uses stated in (a) of this section or to political uses as provided in (c) of this section. A municipality or qualified organization desiring to hold the net proceeds for a period longer than one year must apply to the department for special permission and upon good cause shown the department may grant the request.

* Sec. 4. AS 05.15.150 is amended by adding a new subsection to read:

(c) In addition to the uses specified in (a) of this section, a permittee may dedicate the net proceeds of raffles to political uses within the state. In this subsection, "political uses" means uses benefiting persons through aiding candidates for public office or groups that support candidates for public office.

* Sec. 5. AS 05.15 is amended by adding a new section to read:

Sec. 05.15.155. POLITICAL ORGANIZATION RAFFLES. A political organization that holds a permit under AS 05.15.100(e) may conduct raffles. Notwithstanding AS 05.15.150, the authority to conduct the raffles under this section is contingent upon the dedication of the net proceeds of the raffles to political, educational, civic, public, charitable, patriotic, or religious uses in the state and to the awarding of prizes to contestants or participants. "Educational, civic, public, charitable, patriotic, or religious uses" means those uses described in AS 05.15.150(a). "Political uses" has the meaning given in AS 05.15.150(c). The net proceeds derived from raffles under this subsection must be devoted within one year to one or more of the uses described in this section. A political organization desiring to hold the net proceeds for a period longer than one year must apply to the department for special permission

1 and upon good cause shown the department may grant the request.

2 * Sec. 6. AS 05.15.690(32) is amended to read:

3 (32) "political organization" means an organization or club organized
4 under or formally affiliated with a political party as defined in AS 15.60.010, that
5 operates without profits to its members, and that has been in existence for a
6 period of three years immediately before applying for a license; the organization
7 may be a firm, corporation, company, association, or partnership;

8 * Sec. 7. AS 05.15.690(34) is amended to read:

9 (34) "qualified organization" means a bona fide civic or service
10 organization or a bona fide religious, charitable, fraternal, veterans, labor,
11 [POLITICAL,] or educational organization, police or fire department and company,
12 dog mushers' association, outboard motor association, or fishing derby or nonprofit
13 trade association in the state, that operates without profits to its members and that has
14 been in existence continually for a period of three years immediately before applying
15 for a license; the organization may be a firm, corporation, company, association, or
16 partnership;

17 * Sec. 8. This Act takes effect January 1, 1996.

AMENDMENT #2

TO CSHB 307 ()

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

Page 4, after line 1

Insert a new subsection to read

The department shall adopt regulations to identify all accounts that charitable gaming proceeds are transferred into by permittees and providing for access by the department to those accounts to ensure that proceeds are not diverted or transferred to any purpose or use not permitted by this chapter.

CSHB 307 (Draft F)
Sectional

The work draft prohibits charitable gaming as a method of raising funds for political purposes, except that the proceeds from raffles may be used for political purposes.

Section 1: Provides that the department may issue permits to political organizations to conduct raffles only. Provides that a political organization may not participate in a multiple beneficiary permit.

Section 2: Prohibits a political organization from contracting with an operator to conduct raffles.

Section 3: Revises AS 05.15.105 to clarify that political organizations may not receive proceeds from any type of gaming activities except raffles. It prohibits any part of the proceeds of other gaming activities to be given to a candidate for public office (state, subdivision of the state, or the candidate's campaign organization); a political party; a group organized under or affiliated with a political party, a political group, or a group defined in AS 15.30.130(4). Proceeds from all raffles for political purposes must be used within one year of their collection.

Section 4: Amends AS 05.15.150 to state that net proceeds from raffles may be dedicated to political uses. It defines political uses as those aiding candidates for public office or groups that support candidates.

Section 5: This adds a new section that states that political organizations may hold raffles for political purposes or for the other purposes allowed in the statutory scheme of charitable gaming. It again states that the proceeds must be used within a year unless the organization applies for

and obtains special permission from the department for good cause to hold the proceeds more than a year.

Section 6: Modifies the definition of political organization for the charitable gaming chapter to require that the organization have been in existence three years before it may apply for a license.

Section 7: Conforming amendment.

Section 8: Effective date of January 1, 1996

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 307

Revision Date: _____ Dept. Affected: Revenue
 Title: Pull-Tabs Prohibited BRU: Revenue Operations
 Component: Charitable Gaming Division

Sponsor: Representative Toohey
 Requester: House 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				(323.8)	(323.8)	(323.8)
TRAVEL				(20.0)	(20.0)	(20.0)
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	(343.8)	(343.8)	(343.8)

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()				(1,875.9)	(1,875.9)	(1,875.9)
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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				-6	-6	-6
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The effects of this bill if passed include a \$16,270.0 effective net proceeds loss to charities, \$1875.9 decrease in State tax receipts and the layoff of six Charitable Gaming Division employees (two Investigators, two Revenue Auditors, one Tax Examiner and an Administrative Assistant).

Prepared by: Dennis Poshard, Director Phone: 465-2279
 Division: Charitable Gaming Division Date: 4/24/95
 Approved by: _____
 Commissioner: Wilson L. Condon Date: 4/24/95
 Agency: Department of Revenue

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SPONSOR STATEMENT

Proposed CS for House Bill 307 (JUD)

"An Act providing that a political use is not an authorized use of charitable gaming proceeds; prohibiting the contribution of charitable gaming proceeds, other than proceeds from raffles to candidates for certain public offices, their campaign organizations, or to political groups; providing that a political group is not a qualified organization for purposes of charitable gaming, other than raffles; relating to raffles; and providing for an effective date."

This bill would directly prohibit the misdirection of gambling proceeds from being funneled to political uses. I do not believe anyone can legitimately consider politicians, or their attempts to influence the electoral process, a legitimate use of charity money.

Raffles are exempted from this prohibition. When raffle tickets are sold, the purchaser has full knowledge of the cause that the raffle represents.

There is a zero fiscal note from the Department of Revenue. Your support would be appreciated.

#2

AMENDMENT

TO CSHB 307 ()

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

Page 4, after line 1

Insert a new subsection to read

The department shall adopt regulations to identify all accounts that charitable gaming proceeds are transferred into by permittees and providing for access by the department to those accounts to ensure that proceeds are not diverted or transferred to any purpose or use not permitted by this chapter.