

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8646 HOUSE • JUDICIARY

1

- 11.51.210, "vulnerable adult" has the meaning given in AS 47.24.900.

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

April 10, 1996

Representative Brian Porter, Chair
House Judiciary Committee
Capitol Building
Juneau AK 99801

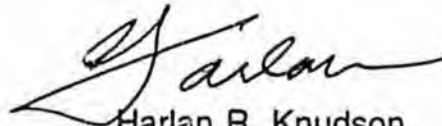
Re: Support w/Amendment SB 211
Vulnerable adults

Dear Representative Porter:

ASHNHA, representing community hospital and nursing homes support SB 211, but would like to offer the ~~following~~ amendment.

attached

Sincerely,



Harlan R. Knudson
President/CEO

cc: Senator Johnny Ellis

ALASKA STATE HOSPITAL AND NURSING HOME ASSOCIATION
PROPOSED AMENDMENTS TO CSSB 211 (RLS)

Page 3, line 1: Subsection (a) of proposed new As 11,51.200 should be amended to read as follows:

(a) A person commits the crime of endangering the welfare of a vulnerable adult in the first degree if the [PERSON] vulnerable adult is in the person's care and the person is a nurse, a certified nursing assistant, a home health aide, a personal care attendant, or any other caregiver; and

(1) the person intentionally abandons the vulnerable adult in any place under circumstances creating a substantial risk of physical injury to the vulnerable adult [AND THE VULNERABLE ADULT IS IN THE PERSON'S CARE

(A) BY AUTHORITY OF LAW; OR

(B) IN A FACILITY OR PROGRAM THAT IS REQUIRED BY LAW TO BE LICENSED BY THE STATE]; or

(2) the person violates AS 11.51.210 and , as a result of the violation, the vulnerable adult suffers serious physical injury.

Page 3, line 14: Subsection (a) of proposed new AS 11.5.210 should be amended to read as follows:

(a) A person commits the crime of endangering the welfare of a vulnerable adult in the second degree if the person fails without lawful excuse to provide support for the vulnerable adult and the vulnerable adult is in the person's care and the person is a nurse, a certified nursing assistant, a home health aide, a personal care attendant, or any other caregiver

[(1) BY AUTHORITY OF LAW; OR

(2) IN A FACILITY OR PROGRAM THAT IS REQUIRED BY LAW TO BE LICENSED BY THE STATE].

Page 3, line 31: Proposed new AS 11.51.220 should be amended to read as follows:

Sec. 11.51.220 DEFINITIONS.[OF VULNERABLE ADULT] In AS 11.51.200-11.51.210

(1) "caregiver" has the meaning in AS 47.24.900:

(2) "vulnerable adult" has the meaning given in AS 47 24.900.

COMMENT: Under the language in CSSB 211 (RLS), the location where the prohibited conduct took place would determine whether the conduct constituted a crime. This approach results in significant gaps in the coverage of the new statutes. For example, under this approach, if a person engaged in the prohibited conduct while caring for a vulnerable adult in the following locations, the conduct would not be a crime;

- * In an adult foster home with the capacity to care for only one or two people (because small homes such as this are not required to be licensed); or
- * In the vulnerable adult's home, if the care were being rendered by a nurse, a home health aide, a personal care attendant, or the caregiver who was not associated with a licensed agency (such as a family member or an independent contractor).

The amendments proposed by ASHNHA are intended to change the determining factor from the location to the relationship the offending person has with the vulnerable adult. In essence, under ASHNHA's proposed amendments, the prohibited conduct would be a crime any time it was engaged in by a person who was caring for a vulnerable person. The criminal statute would apply to nurses, certified nursing assistants, home health aides, personal care attendants, and other "caregivers." The proposed amendments incorporate the definition of "caregiver" that is now used in AS 47.24.900(3) (the statute relating to protective services for vulnerable adults):

"[C]aregiver means

(A) a person who is providing care to a vulnerable adult as a result of a family relationship, or who has assumed responsibility for the care of a vulnerable adult voluntarily, by contract, or by court order; or

(B) an employee of an out-of-home care facility who provides care to one or more vulnerable adults[.]

####

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSSB 211(RLS)am

Revision Date: _____
Title: "An Act relating to sexual assault and sexual abuse..."

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

Sponsor: Senator Ellis
Requestor: Senate Rules Committee

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact on the Public Defender Agency.

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

Phone: (907) 264-4412
Date: _____

Approved by Commissioner: Mark Boyer *MB*
Agency: Department of Administration

Date: 4/9/96

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STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION DIVISION OF SENIOR SERVICES

Adult Protective Services
Information & Referral
Assisted Living Licensing
Longevity Bonus

Alaska Commission on Aging
CHOICE for the Elderly Home Care
Long Term Care Ombudsman
Pioneers' Homes & Advisory Board

Tony Knowles, Governor

Adult Protective Services
3601 C Street, Suite 310
Anchorage, AK 99503-5984
Phone (907) 563-5654
FAX (907) 562-3040

1995 Calendar Year Statewide Annual Report for the Division of Senior Services Central Intake and Adult Protective Services for Clients who are Fifty (50) years of age or older

During calendar year 1995 the Division of Senior Services Statewide Central Intake received 472 intakes regarding adults age fifty (50) and older. Of these 472 intakes, 175 were requests for information and referral, 176 were requests for adult protective services investigations, 31 were requests for assisted living licensing investigations, and 104 were requests for general relief assistance for assisted living. An additional 128 intakes were received regarding adults under the age of fifty (50) making the total number for adults of all ages equal to 600.

(The total number of intakes received by the Division of Family and Youth Services for fiscal year 1994 (7/1/93 thru 6/30/94) regarding adults age fifty (50) and older equalled 249. An additional 129 intakes involved adults under fifty (50) years of age.

<u>Age of Clients</u>	85+	82	17%
	75 - 85	150	32%
	65 - 75	118	25%
	60 - 65	61	13%
	50 - 60	61	13%
		472	
<u>Race of Clients</u>	Alaskan Native	116	25%
	Afro American	8	2%
	Asian	7	1%
	Caucasian	167	35%
	Unknown or other	174	37%
	Total	472	
<u>Type of Referral</u> (can be multiple per client)	Neglect	194	41%
	Self Neglect	107	23%
	Physical Abuse	59	13%
	Financial Exploitation	57	12%
	Mental Abuse	48	10%
	Other Exploitation	22	5%
	Sexual Abuse	2	%
Total	472		

1995 Calender Year Adult Protective Services Data
Page 2

<u>Sex of Client</u>	Females	297	63%
	Males	176	37%

Type of Case (Certain Adult Protection Cases are referred according to Statute)

Adult Protection Cases		
Cases requiring Adult Protection Investigation		176
Cases referred to the Long Term Care Ombudsman for Investigation		62
Cases referred to the Division of Medical Assistance for Investigation		10
Cases referred to Assisted Living Licensing for Investigation		31
Adult Supportive Cases		
Case Requiring General Relief Placement in Assisted Living		104
Case Requiring Information and Referral		175

Mental Competency of Clients

Competency was <u>definitely not an issue</u>	45	
Competency <u>did not appear to be an issue</u>	82	
Subtotal	127	27%
Competency was <u>questionable</u>	99	
Competency <u>did appear to be an issue</u>	140	
Competency was <u>definitely an issue</u>	85	
Client had been ruled incompetent by Court	18	
A petition regarding competency was pending	3	
Subtotal	345	73%
Total	472	100%

Relationship of Alleged Perpetrator to Client in Adult Protection Investigation Cases and Referrals to Licensing and Long Term Care Ombudsman office

Immediate Family Member	66%
Licensed Care Provider	21%
Other Family Member	10%

76% Family members



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ALASKA STATE LEGISLATIVE COMMITTEE

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Juneau, AK 99801
(907) 789-7422

March 20, 1996

Senator Robin Taylor
Chair, Senate Judiciary Committee
Alaska State Legislature
Nineteenth Legislature- Second Session

Dear Senator Taylor:

The American Association of Retired Persons (AARP) in Alaska support Senate Bill 211, an act that if adopted by the Legislature, would increase the protection of vulnerable adults in Alaska. AARP has a long record of research into the problem of abuse of vulnerable adults. I am attaching a copy of AARP findings and model legislation to assist your committee and individual legislators in understanding this problem and what might be accomplished legislatively in Alaska to bring it under control.

If there are any questions or further information that the Judiciary Committee might require I can be contacted at (907) 789-7422 or FAX (907) 789-1846.

We hope the attached material proves helpful in your deliberations.

Sincerely,

Rupe Andrews, CCTF Cordinator, AARP



OLDER PERSONS ACTION GROUP, Inc.

325 E. 3rd. Ave., #300
Anchorage, AK 99501-2606
(907) 276-1059 (Toll free 800-478-1059)
FAX (907) 278-6724

March 26, 1996

Senator Johnny Ellis
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Ellis:

The Older Persons Action Group, Inc. urges you to support SB 211. This bill makes it a crime for an individual to abuse or otherwise endanger vulnerable adults entrusted to their care. When law enforcement and judicial officials refuse to prosecute perpetrators of abuse because there is no specific law against these acts, we must take action to preclude repetition of these crimes. SB 211 fulfills this need and we strongly urge you to support this legislation

OPAG also endorses SB 296 which requires a fingerprint background check before certain persons may be employed in a nursing home or assisted living facility. Elderly living in these facilities are particularly vulnerable to criminals who find ready employment in these facilities. The requirement for a fingerprint background check is a prudent management practice to prohibit persons with violent or criminal backgrounds from caring for the elderly. I urge you to support SB 296.

Sincerely,

Sara L. McCullough
President
Board of Directors

*Be sure hope your/these bills get moved out of
Committee - sara*



2211-A Arca Drive, Anchorage, Alaska 99508 (907) 277-6677 Fax (907) 272-2161

March 25, 1996

The Honorable Johnny Ellis
Alaska State Legislature
State Capitol
Juneau, AK

Dear Senator Ellis:

I would like to commend you on SB 211 and SB 296. I feel that these bills are extremely important to the welfare and protection of senior citizens within the state of Alaska.

After reviewing both bills, there is only one comment that I would like to make regarding these bills. I feel that nursing homes, assisted living homes, and foster care placements should be required to post the numbers that a person can call anonmously if they have been witness to acts of abuse or neglect. These numbers should be posted so both the consumers and the staff have access to the numbers. I have been in some nursing homes recently and have yet to see these numbers. When I asked the staff, I was told that they aren't required to post these numbers. I have noticed that at API the number for Disability Law Center was posted for the consumers. I am not sure if your legislation could "add" this into the language under "Reporting of Abuse" or whether another piece of legislation needs to be drafted. This legislation could then include all of the special needs population.

Again, on behalf of the Arc of Anchorage, I would like to commend you on pursuing this much needed legislation. If you have any questions, please feel free to contact me at 277-6677.

Sincerely,

A handwritten signature in cursive script that reads "John Thomas".

John Thomas, Deputy Director



March 29, 1996

Senator Johnny Ellis
State Capital, Rm. 9
Juneau, Alaska 99801

Dear Senator Ellis:

The Disability Law Center of Alaska is in complete support of Senate Bill 211 which criminalizes conduct endangering the welfare of a vulnerable adult. The creation of legislation enabling vulnerable adults to pursue criminal action against those who knowingly abuse or neglect them is long overdue.

It is a critical step in moving towards protecting a population with limited power. Thank you for your tremendous efforts on behalf of vulnerable adults.

Sincerely,

Rick Tessandore
Executive Director

clb/rt

MEMBER OF THE
NATIONAL
ASSOCIATION OF
PROTECTION &
ADVOCACY
SYSTEMS

ALASKA STATE LEGISLATURE

Senate Health, Education and
Social Services Committee

•
Senate Judiciary Committee

•
Department of Health and Social
Services Budget Subcommittee

•
Department of Law
Budget Subcommittee

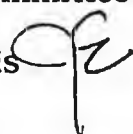
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(907) 258-8182
fax: (907) 258-5571

SENATOR JOHNNY ELLIS

-MEMORANDUM-

TO: Representative Brian Porter, Chair
House Judiciary Committee

FROM: Senator Johnny Ellis 

DATE: March 28, 1996

RE: Senat' Bills 211 & 296 - Vulnerable Adults

I wanted to provide you with information regarding the above referenced bills, as we previously discussed. These bills are directed primarily at assisted living homes, which are becoming a major growth industry in Alaska.

Senate Bill #211 creates two new offenses; endangering the welfare of a vulnerable adult in the first degree and in the second degree. Endangering the welfare of a vulnerable adult in the first degree prohibits intentionally deserting a vulnerable adult in circumstances where there is a substantial risk of harm, and would be a class C felony.

Endangering the welfare in the second degree prohibits a person from providing essential support for a vulnerable adult, and would be a class A misdemeanor. If the person violates this statute and, as a result of the violation, the vulnerable adult suffers serious physical injury, it would become endangering in the first degree, a class C felony.

SB 211 was heard in the Senate State Affairs Committee on March 14, and moved from committee unanimously. Senators Sharp and Leman expressed strong support for the bill, and all testimony indicated there is no opposition to the bill. Senate Judiciary heard the bill on March 20, where it received five do-pass votes. It then passed out of Rules Wednesday, March 27. I expect it to be headed your way soon.

Senate Bill #296 received a single referral to the Judiciary Committee, but has not had a hearing as yet. SB 296 would require a criminal background investigation that would include a fingerprint check of the records of the FBI as a condition of employment in a nursing home or assisted living facility. I look at this bill as being a crime prevention bill, as those most likely to perpetuate abuse will not be permitted to work in these facilities.

Thanks in advance for your support. Please let me know if I can answer any questions you might have.

Enclosures

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

March 7, 1996

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

- CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-4043
- OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 269-6270

The Honorable Johnny Ellis
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: SB 211

Dear Senator Ellis:

You have asked for a legal analysis of SB 211, relating to sexual assault and to endangering the welfare of vulnerable adults and neglect of vulnerable adults.

Sections one and two of the bill amend the statutes addressing sexual assault in the first and second degree by providing that a person may not engage in prohibited sexual conduct with a person entrusted to the person's care in a program or facility license by the state, rather than the Department of Health and Social Services. This allows the application of the sexual assault statutes to protect people in facilities or programs licensed by state agencies which are not within the Department of Health and Social Services.

Section three of the bill creates two new offenses, endangering the welfare of a vulnerable adult and criminal neglect of a vulnerable adult. Endangering the welfare of a vulnerable adult prohibits intentionally deserting a vulnerable adult in circumstances where there is a substantial risk of harm to the person. It is a class C felony. Criminal neglect of a vulnerable adult prohibits a person from providing essential support for a vulnerable adult. It is a class A misdemeanor. Support is defined as including food, care, clothing, shelter, and medical attention.

The definition of vulnerable adult is referenced from AS 47.24.900, and means a person 18 years of age or older who, because of physical or mental impairment, is unable to meet the person's own needs or to seek help without assistance.

The Hon. Johnny Ellis
Alaska State Legislature

March 7, 1996
Page 2

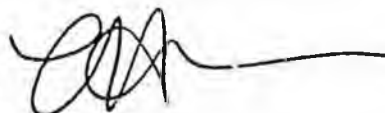
While the new provisions in the bill are clear and present no legal problem, I recommend that they be amended to a format which fits into our criminal code more easily. Attached is a proposal that describes the new offenses as endangering the welfare of a vulnerable adult in the first and second degrees. It makes minor drafting changes in the bill. Further, it adds a provision to the first degree offense - committing the second degree offense and causing serious physical injury.

The Department of Law supports SB 211, and will be happy to assist you in any way as it moves through the legislative process.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Laurie H. Otto
Deputy Attorney General

LHO:jf

ALASKA STATE LEGISLATURE

Senate Health, Education and
Social Services Committee

•
Senate Judiciary Committee

•
Department of Health and Social
Services Budget Subcommittee

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Department of Law
Budget Subcommittee



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SENATOR JOHNNY ELLIS

SPONSOR STATEMENT CS SENATE BILL 211 (RLS)

Elder abuse has been called the hidden crime. While its extent is not completely defined, it is widely agreed that the problem affects a significant number of older persons. The National Center of Elder Abuse reports that the 241,000 reported cases of domestic elder abuse in 1994 represents a 106% increase over the number of reported cases in 1986. I don't believe that the problem in Alaska has escalated at that rate; however, a December news article about the abuse that took place at the Friendship Home in Anchorage prompted me to get to the root of this disturbing problem. I have introduced Senate Bill 211 to amend Alaska's abuse and neglect laws to better protect seniors.

As people live longer, frailty and vulnerability increase, along with the potential to become victims of abuse, fraud, and exploitation. Many Seniors have fewer options for resolving or avoiding the abusive situation due to their age, health, or limited resources. They may be more vulnerable to and harmed by physical abuse because of their existing physical condition.

Like most states, Alaska does require elder mistreatment be reported to the authorities when it is discovered. Unlike some states, Alaska does not specifically make abuse or neglect of the elderly a crime. We are correcting that oversight with this legislation.

In Senate Bill 211, endangering the welfare of a vulnerable adult in the first degree would become a Class C felony, punishable by a jail term of up to five years and a \$50,000 fine. Endangering the welfare of a vulnerable adult in the second degree would become a Class A misdemeanor, punishable by a jail term of up to a year and a \$5,000 fine.

Assisted-living facilities are a growth business nationwide and in Alaska. If the Friendship Home is any indication, we must provide the tools to make certain that oversight of such facilities matches industry growth and deals firmly with unacceptable behavior toward Alaska's Seniors.

CS FOR SENATE BILL NO. 211(RLS)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR ELLIS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sexual assault; and relating to endangering the welfare of
2 vulnerable adults."

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

4 * Section 1. AS 11.41.410(a) is amended to read:

- 5 (a) An offender commits the crime of sexual assault in the first degree if
 - 6 (1) the offender engages in sexual penetration with another person
 - 7 without consent of that person;
 - 8 (2) the offender attempts to engage in sexual penetration with another
 - 9 person without consent of that person and causes serious physical injury to that person;
 - 10 (3) the offender engages in sexual penetration with another person
 - 11 (A) who the offender knows is mentally incapable; and
 - 12 (B) who is in [ENTRUSTED TO] the offender's care
 - 13 (i) by authority of law; or
 - 14 (ii) in a facility or program that is required by law to be

1 licensed by the state [DEPARTMENT OF HEALTH AND SOCIAL
2 SERVICES]; or

3 (4) the offender engages in sexual penetration with a person who the
4 offender knows is unaware that a sexual act is being committed and

5 (A) the offender is a health care worker; and

6 (B) the offense takes place during the course of professional
7 treatment of the victim.

8 * Sec. 2. AS 11.41.420(a) is amended to read:

9 (a) An offender commits the crime of sexual assault in the second degree if

10 (1) the offender engages in sexual contact with another person without
11 consent of that person;

12 (2) the offender engages in sexual contact with a person

13 (A) who the offender knows is mentally incapable; and

14 (B) who is in [ENTRUSTED TO] the offender's care

15 (i) by authority of law; or

16 (ii) in a facility or program that is required by law to be

17 licensed by the state [DEPARTMENT OF HEALTH AND SOCIAL
18 SERVICES];

19 (3) the offender engages in sexual penetration with a person who the
20 offender knows is

21 (A) mentally incapable;

22 (B) incapacitated; or

23 (C) unaware that a sexual act is being committed; or

24 (4) the offender engages in sexual contact with a person who the
25 offender knows is unaware that a sexual act is being committed and

26 (A) the offender is a health care worker; and

27 (B) the offense takes place during the course of professional
28 treatment of the victim.

29 * Sec. 3. AS 11.51 is amended by adding new sections to read:

30 ARTICLE 2. VULNERABLE ADULTS.

31 Sec. 11.51.200. ENDANGERING THE WELFARE OF A VULNERABLE

1 ADULT IN THE FIRST DEGREE. (a) A person commits the crime of endangering
2 the welfare of a vulnerable adult in the first degree if the person

3 (1) intentionally abandons the vulnerable adult in any place under
4 circumstances creating a substantial risk of physical injury to the vulnerable adult and
5 the vulnerable adult is in the person's care

6 (A) by authority of law; or

7 (B) in a facility or program that is required by law to be
8 licensed by the state; or

9 (2) violates AS 11.51.210 and, as a result of the violation, the
10 vulnerable adult suffers serious physical injury.

11 (b) Endangering the welfare of a vulnerable adult in the first degree is a class
12 C felony.

13 Sec. 11.51.210. ENDANGERING THE WELFARE OF A VULNERABLE
14 ADULT IN THE SECOND DEGREE. (a) A person commits the crime of
15 endangering the welfare of a vulnerable adult in the second degree if the person fails
16 without lawful excuse to provide support for the vulnerable adult and the vulnerable
17 adult is in the person's care

18 (1) by authority of law; or

19 (2) in a facility or program that is required by law to be licensed by the
20 state.

21 (b) As used in this section "support" includes necessary food, care, clothing,
22 shelter, and medical attention. There is no failure to provide medical attention to a
23 vulnerable adult if the vulnerable adult is provided treatment solely by spiritual means
24 through prayer in accordance with the tenets and practices of a recognized church or
25 religious denomination of which the vulnerable adult is a member or adherent,
26 provided the vulnerable adult consents to the treatment through spiritual means only,
27 and the treatment is administered by an accredited practitioner of the church or
28 denomination.

29 (c) Endangering the welfare of a vulnerable adult in the second degree is a
30 class A misdemeanor.

31 Sec. 11.51.220. DEFINITION OF VULNERABLE ADULT. In AS 11.51.200

1

- 11.51.210, "vulnerable adult" has the meaning given in AS 47.24.900.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM

March 28, 1996

SUBJECT: Sectional Summary of CSSB 211(RLS) (Work Order 9-LS1296K)

TO: Senator Johnny Ellis
Attn: Lynn Kenney

FROM: Gerald P. Luckhaupt *JEL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Sections 1 and 2 of the bill make two changes to AS 11.41.410 and 11.46.420, sexual assault in the first and second degrees. The first change relates to sexual assaults committed against an incapacitated victim that is "entrusted to" the care of the offender by authority of law or in a facility or program licensed by the state. The bill deletes "entrusted to" and replaces it with "in." The use of "in the offender's care" instead of "entrusted to the offender's care" is consistent with the approach taken in section 3 of the bill to criminalize the abandonment and neglect of vulnerable adults who are "in" another person's care by authority of law or in a facility or program licensed by the state. The second change is the recognition that state agencies other than the Department of Health and Social Services license facilities and programs that mentally incapable persons may be residents of or participants in. Existing law would not allow the prosecution of a sexual assault committed while the victim was in the care of an offender in a facility licensed by the Department of Administration. The second change corrects this oversight.

Section 3 of the bill creates new crimes of endangering the welfare of a vulnerable adult in the first degree,¹ committed by intentionally deserting a vulnerable adult, and endangering the welfare of a vulnerable adult in the second degree,² committed by failing to provide support to a vulnerable adult.

GPL:plm
96-094.plm

¹Punishable as a class C felony. See AS 12.55.125(e).

²Punishable as a class A misdemeanor. See AS 12.55.135.

SENATE RULES COMMITTEE REPORT

DATE: 3/22/96

DATE TURNED INTO OFFICE: _____

The Rules Committee considered SB 211

Relating to sexual assault; and relating to endangering the welfare of vulnerable adults and neglect of vulnerable adults.

and recommends it be placed on the calendar:

replace with _____ CS _____ (RULES)

attaches amendment(s)

adopts _____ Letter of Intent

same title
 new title
 technical title change
 (HB only)

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

MEMBERS SIGNING FOR PLACEMENT ON THE CALENDAR

Bess _____
Duncan _____
Salvo _____
A. Deane _____
Mike Miller _____

Chair: Signature and Recommendation

OTHER RECOMMENDATIONS:

Calendar on: _____

Approved by: _____

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/10/96

FURTHER: Judiciary

Date of 5-Day Notice: 2/29/96
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/8/96

The State Affairs Committee considered SB 211

"An Act relating to sexual assault; and relating to endangering the welfare of vulnerable adults and neglect of vulnerable adults."

and recommends:

- be replaced with _____ CS SB 211 (STA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
 same title
 new title
House Bill:
 same title
 technical title
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
CHAIR: <i>[Signature]</i>	✓				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Administration	3/7	0	
Corrections	3/1	0	
Law	3/6	0	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

SENATE COMMITTEE REPORT

DATE: 3/11/96

DATE TURNED INTO OFFICE: 3/20/96

The Judiciary Committee considered SB 211

Relating to sexual assault; and relating to endangering the welfare of vulnerable adults and neglect of vulnerable adults.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS SB211 (STB)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 same title
 technical change
 new: SCR*

SIGNING/DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Ellis</i>	<input checked="" type="checkbox"/>				
<i>Lyle Green</i>	<input checked="" type="checkbox"/>				
<i>Col. Lar</i>	<input checked="" type="checkbox"/>				
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>John Taylor</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>CS</i> Public Safety	7/14	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Administration	3/1/96	X	
Corrections	3/1/96	X	
Dept. of Law	3/6/96	X	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

BRANCH OFFICE:
3601 C ST., STE. 260
FRONTIER BLDG.
ANCHORAGE, AK 99503
(907) 563-5654
FAX: 562-3040



MAIN OFFICE:
P.O. BOX 1102
JUNEAU, AK 99811-02
(907) 465-32
FAX: 465-47

Alaska Commission on Aging

ALASKA COMMISSION ON AGING

Position paper on SB 211: An Act relating to sexual assault; and relating to endangering the welfare of vulnerable adults.

March 13, 1996

The Alaska Commission on Aging supports SB 211, and urges its enactment. The purpose of SB 211 is to increase the legal protections for vulnerable adults. Specifically, SB 211 establishes that the acts of intentional abandonment, and of neglect of the vulnerable adult, are criminal acts when they are committed in a facility or program licensed by the State, or are committed by an individual who has legally assumed responsibility for the care of such an adult. The mission of the Alaska Commission on Aging is to ensure the honor, dignity, security, and independence of older Alaskans, and to assist older Alaskans in maintaining quality and meaning in their lives. Thus we support SB 211, and the positive contribution it makes to increase the legal protections for seniors in long-term care across our State.

A handwritten signature in cursive script that reads "Donald M. Hoover".

Donald Hoover, Chairman
Alaska Commission on Aging

FORUM / LETTERS

'I went to Juneau': Diary of a citizen lobbyist

By BOBBIE WATTS
Part 2 of 2

Tuesday, Feb. 20

11:30 a.m. I meet Matt Zencey of the Daily News, and we head to the State Capitol so he can show me around. We turn a corner and he sees Gov. Knowles going into a coffee shop. We go in and meet the governor and his press secretary, Bob King. Both are very polite, and Gov. Knowles remarks that he hopes we will have a chance to meet about my issues. Wow — what a start!

I spend the rest of the day papering the Capitol building with my background information, meeting Lynn Kenney, who works for Sen. Johnny Ellis (D-Anchorage), and practicing my presentation on Rep. Ramona Barnes (R-Anchorage). I'm afraid that I didn't present very well my first time out. Hopefully, with practice, I will become more confident about speaking to these very important persons about an equally important issue.

Wednesday, Feb. 21

I finish delivering background information and check in with Lynn Kenney. Sen. Ellis has introduced Senate Bill 211, which makes it a criminal offense to neglect a vulnerable adult.

Finally someone in the Legislature recognizes the need for such legislation.

Lynn mentions that the bill is opposed by the Division of Senior Services. I am honestly puzzled at why the division, which is supposed to protect the elderly, is opposing this bill.

3 p.m. Sen. Lyda Green (R-Wasilla) cannot keep her appointment with me. So I meet with Mike (Sen. Green's staffer). He offers to do research from other states regarding abuse and neglect.

3:30 p.m. I meet with Sen. Johnny Ellis. Sen. Ellis is concerned that his bill will not be considered because of the Division of Senior Services is opposed to it. He states that he would be more comfortable if someone from the majority were to co-sponsor it. He offers to remove his name as sponsor if it means the bill would progress.

Sen. Ellis states that this is a people issue and not a political issue and that this is not a political grandstand on his part. I find him to be very honorable and desirous of seeing a bill that passes to protect the elderly no matter who sponsors it.

4:30 p.m. I arrive at the office of Rep. Cynthia Toohey (R-Anchorage) where Ben Brown, her staffer, greets me. Ben immediately states that he has spoken with Connie Sipe, Director of Senior Services, and relays the opinion that there is no need for a specific law to punish people who abuse and neglect the elderly. He also states that Alaska has laws that adequately deal with the problem.

I feel shoved into a corner. I try my best to debate with Brown and Rep. Toohey, but am truly concerned at how misinformed they are. I wouldn't be



BOBBIE WATTS / Anchorage Daily News file photo

EDITOR'S NOTE: Bobbie Watts is the winner of the Daily News "Send Me to Juneau" contest. This is her report on her experience.

here in Juneau if Alaska had adequate laws to prosecute persons who abuse and neglect. This is a fact that somehow escapes Rep. Toohey and her staff.

Rep. Toohey closes our meeting by telling me to "get a life" and "get over the gull." She also suggests that I enroll at the University of Alaska nursing program and become a nurse. I am shocked and upset at so cavalier an attitude toward my mission and my experience.

5 p.m. I head to House Speaker Gall Phillips' (R-Homer) office. I meet staffer Judy Jordan, who is very kind. I am brought into Gall Phillips' inner office. I find Rep. Phillips very attentive and concerned. As it happens, her own parents are in a long-term care home in Alaska. I hope she will take a close look at SB 211 and agree it needs to be passed this session.

As I am leaving the Capitol Building, I run into Lynn Kenney, Sen. Ellis' aide. Lynn asks if I would like to attend a birthday party in honor of Pat Pourchot, legislative liaison for Gov. Knowles. I agree and later meet some very wonderful and concerned people — Patrick Lounsbury of Rep. Brian Porter's staff; Donna, assistant to Pat Pourchot; Pat Pourchot, himself; and lobbyist Fate Putman. This was quite a group! After a man named Jim Ayers leaves our company, I turn to Lynn and ask, "Was that an important person?" Everyone within hearing distance giggles, and I am informed that Mr. Ayers is the governor's right-hand man! Innocence is a fresh and somewhat comical idea in Juneau this time of year.

Thursday, Feb. 22

Back-to-back appointments. Very busy day ahead.

9:30 a.m. Sen. Robin Taylor (R-Wrangell). Fifteen minutes of chatting about families in general. He is quite pleasant. We are interrupted, and we reschedule for 3 p.m.

11 a.m. Sen. President Drue Pearce (R-Anchorage) is too busy to meet with me right away so I meet with Laura Williams, her staffer. Laura has done research and cannot find any laws regarding abuse or neglect of the elderly. She is quite concerned for elder Alaskans. She gives me some tips, and she reassures me that I am doing the right thing and to keep going. I get to chat with Sen. Pearce on my way out of her office. She is very pleasant.

1:30 p.m. What a nightmare! This appointment is with Sen. Randy Phillips (R-Eagle River), and I am dismayed as soon as his staffer Jerry starts quoting Connie Sipe, the Senior Services official who opposes SB 211.

Here we go again. Opposing SB 211 is such an amazing stance to me. Sen. Phillips' bigger issue seems to be that I must be a constituent of Sen. Ellis. He implies that only a constituent of the bill's sponsor would be here today to argue for it! As a matter of fact, I mention that I am a constituent of Sen. Phillips but what difference does it make? Sen. Phillips then looks at my current address and continues to argue whose constituent I am. (I own a home in Eagle River and still vote there, even though I'm temporarily living in East Anchorage because I need to be near my doctors for medical treatment.) If your loved one is a victim of abuse and neglect, what is the difference whose constituent is whose?

2:30 p.m. Appointment with Sen. Bert Sharp (R-Fairbanks) is canceled. I am disappointed because Sen. Sharp is the committee chairman who will decide whether SB 211 will get its first hearing. Since there is no way to reschedule, I will need to get in touch with his office when I return to Anchorage. I feel that

After a man named Jim Ayers leaves our company, I turn to Lynn and ask, "Was that an important person?" Everyone within hearing distance giggles, and I am informed that Mr. Ayers is the governor's right-hand man!

when he finally hears what a compelling need we have for such legislation, he will schedule a committee hearing as soon as possible.

3 p.m. Back to Sen. Robin Taylor's office. He tells me I am doing a great job. Thank you! But will he support SB 211?

3:15 p.m. I run into Lynn Kenney and invites me to the office of Sen. Georgianna Lincoln (R-Interior), to help celebrate the senator's birthday. Sen. Lincoln says she hopes I have time to return to her office and talk about my experience. I also meet Rep. Tom Brice (D-Fairbanks).

3:45 p.m. I meet with Pat Pourchot, legislative liaison for Gov. Knowles. He is understanding and kind. I believe he is open to SB 211. Good!

4:15 p.m. I meet with Laurie Otto, deputy attorney general, Criminal Division. She mentions a case of gross abuse and neglect that happened in the summer of 1995 in Anchorage. She states that if SB 211 had been in place, the Department of Law could have prosecuted the case more fully. Instead, the perpetrator received a suspended sentence. She likes SB 211 and states that she will return a telephone call placed to her from Connie Sipe, the bill's chief opponent. Thanks, Laurie!

I am determined to keep my mission alive! Protect Alaskan elders.

5 p.m. Time to meet Gov. Knowles! This meeting makes me the most nervous. I meet Lynn Kenney outside the governor's office. Lynn has been so supportive. We are greeted by Bruce Scandling, special assistant to the governor. We go into the inner office where I shake hands with Gov. Knowles. Gov. Knowles tells me that my issue is very important and that he is pleased with my accomplishments.

Bruce mentions a discussion he had with Connie Sipe. He surprises me by asking about my desire to volunteer for the Long Term Care Ombudsman. (I wanted to volunteer, but some people apparently think I have a conflict of interest because of my work to expose the abuses at Friendship Home.)

Bruce asks what I expected to accomplish volunteering for the program. Did I want to go into nursing homes and investigate? I answer that it was not my goal to investigate — I would have been happy to volunteer to answer telephones and do filing all day. The governor cannot understand why such a small program

was unable to accept my help.

This prompts me to mention that the Long Term Care Ombudsman's Office is located in the very agency it often has to investigate (the Division of Senior Services, which manages Pioneer Homes and licenses assisted living homes). The Long Term Care Ombudsman investigated Friendship Home Inc., where my father-in-law had lived, and had identified a need for criminal abuse laws early on. Yet, the Division of Senior Services is opposing SB 211. How does this affect the position of Long Term Care Ombudsman? How can the Long Term Care Ombudsman investigate Pioneer Homes when it is in the same division? The governor looks quite puzzled and says he will investigate that concern.

The governor says that he had read the December article in the Anchorage Daily News about the Friendship Home case and that he was appalled at the gross neglect and abuse that had taken place there. The governor says he will take a close look at SB 211. He says he does not know of a bad bill coming from Sen. Ellis. The governor and I shake hands and have our picture taken together. I'm so glad that I voted for him.

6 p.m. I head out with Lynn Kenney to unwind from my long, tiring day. I am very touched when I meet others who have dealt personally with loved ones being abused and neglected. They understand the urgency to get laws on our books immediately.

Friday, Feb. 23

10:15 a.m. I head back to Anchorage with mixed emotions. I have reached a number of compassionate, caring professionals who heard my story and pledged to do something about it. I did not reach everyone. For whatever reason, their ears and hearts were closed. I feel a stronger sense of purpose after having spent almost four days with the very persons who we elect to run our state and protect its citizens.

On a lighter note, I am looking forward to getting back to my life in Anchorage — a husband, four children and three dogs, not to mention my mission to advocate for the senior citizens of Alaska and, perhaps, start a non-profit organization that advocates for the elderly. Rep. Toohey told me to "get a life." Today, I can smile about that. I have a life; I have a mission.

□ Bobbie Watts lives in Anchorage.

Dear Senator Ellis,

Betty S Ohae
118 E 3rd Ave
Anchorage AK 99501

On reading the article of
Bobbie Watts in March 9 Anchorage Daily
News. Brought to mind the heart breaking
cries of abuse I saw over the years of
visitation as a friend to the shut-ins
and at the mercy of others to care for
them. The abuse and cruelty plus
thief you name it. I saw it all and
was told there is no law to protect
them or nothing could be done?

Please Senator Ellis help this
bill (SB 211) to pass as there is a
great need for it to pass to protect
the elderly ^{from} of abuse making it
a crime when abuse does take place.

Thanking you for caring

Betty S Ohae

3/20/96

To Senator Johnny Ellis

I support the legislation contained
in SB 41 to protect vulnerable
adults, as I feel it is more of
a problem than people realize,
and these people need protection.

Marie Darlin
415 Willoughby
Juneau AK #506
99801

March 12, 1996

Honorable Johnny Ellis
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Ellis:

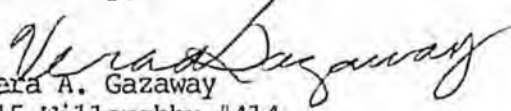
Thank you for introducing Senate Bill 211 legislation to protect vulnerable adults from abuse and neglect.

We have acknowledged that some adults, such as the elderly and the handicapped, are more vulnerable than others. SB 211 identifies and defines acts which endanger the welfare of vulnerable adults. This clarification is needed.

Senate Bill 296 is of equal importance. Legislation requiring fingerprint criminal background checks for persons seeking employment in a nursing home or assisted living facility is badly needed. Many residents in nursing home or assisted living facilities lack the ability to communicate their needs or follow the instructions of their caregiver. While it is true that background checks will not insure competent care, they will do much to eliminate some potential risks.

I strongly support both Senate Bill 211 and Senate Bill 296.

Sincerely,


Vera A. Gazaway
415 Willoughby #414
Juneau, AK 99801

2363 Captain Cook Drive
Anchorage, Alaska 99517
March 21, 1996

Senator Johnny Ellis
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Ellis:

Johnny,

RE: SB 211 and SB 296

As a senior citizen who has spend many years in Alaska advocating for vulnerable individuals- children, younger adults and now the senior population, I was stunned to learn that we had no laws that made abuse or neglect of the elderly a crime. My father spent seven and a half years at Providence Extended Care Facility and I was ignorant all that time of this fact!!

I was heartened to learn that you had introduced SB 211 and SB 296 and pleased that these bills have passed through the Senate Committees. I trust that the House will view them as the very important bills that they are and that we will see them signed into law this session. I would hate to think that as our senior population continues to grow, incidences of abuse and neglect are allowed to continue without some safeguards on those so inclined to abuse, neglect and exploit the elderly.

I want you to know how very much I appreciate your caring and concern around important 'people' issues in our very complex world--our children, vulnerable families and adults of all ages. I applaud your efforts and willingness to work on behalf of some of the issues that are not all that popular at this time. I thank you for all that you have done through the years. I know that many of the good things that have happened have happened because you were there.

Sincerely,

Thelma P. Langdon

Thelma P. Langdon

1416 Birchwood
Anchorage, Alaska 99578
March 20, 1996

Senator Jeremy Ellis
Juneau, Alaska

Dear Senator Ellis,

As you know, I am fully supportive of Senate Bill 296 and Senate Bill 211 and want to thank you for your response to a recent request. Since our last discussion of these bills I have talked about them with many individuals and groups and there appears to be tremendous support. Thank you again for your concern regarding older Alaskans' needs. Please keep me advised and let me know if or how I may be helpful in your efforts.

Sincerely,
Ella H. Craig - LESW

Senator Johnny Ellis:

For two prominate reasons I strongly support passage of your two bills, SB211 & SB296.

Number one, my 42 year old daughter, disabled with schizophrenia, will likely be in need of supervised care the rest of her life. She and the others in her situation need the protection your two bills propose.

I have a number of friends who have recently gone into various types of "retirement" living, many in need of assisted care. There is an ever increasing need for adult care-takers in Alaska and elsewhere and the potential for abuse from unqualified people is great.

Thanks for putting these bills forward. Their passage will assure greater supervision in all adult assisted living facilities.

Lola J. Reed, President

AAMI (Anchorage Alliance for the Mentally Ill)
and, President

CARTA (Central Alaska Retired Teachers

831 W. 19th Ave., Anchorage, AK 99503 (907) 279-3006

Distribution:

To: Johnny Ellis > FAX:19074652529

March 12, 1996

Honorable Johnny Ellis
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Ellis:

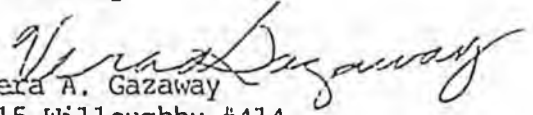
Thank you for introducing Senate Bill 211 legislation to protect vulnerable adults from abuse and neglect.

We have acknowledged that some adults, such as the elderly and the handicapped, are more vulnerable than others. SB 211 identifies and defines acts which endanger the welfare of vulnerable adults. This clarification is needed.

Senate Bill 296 is of equal importance. Legislation requiring fingerprint criminal background checks for persons seeking employment in a nursing home or assisted living facility is badly needed. Many residents in nursing home or assisted living facilities lack the ability to communicate their needs or follow the instructions of their caregiver. While it is true that background checks will not insure competent care, they will do much to eliminate some potential risks.

I strongly support both Senate Bill 211 and Senate Bill 296.

Sincerely,


Vera A. Gazaway
415 Willoughby #414
Juneau, AK 99801

Senator Taylor:

I cannot be at the 1:30PM hearing today for SB211 but want to express my support of it as well as for SB296. As the mother of a 42 year old mentally ill daughter who will likely need to be in an assisted living facility for the rest of her life, and as one in that age bracket where I see close friends going into a variety of retirement homes, I see the need for close supervision of employees in assisted living facilities. The potential for abuse is great and, as the population in Alaska increasingly "greys," it is urgent that we develop strict guide-lines and maintain proper supervision of all employees in both retirement facilities and facilities housing the mentally ill.

As President of both AAMI (The ANCHORAGE Alliance for the Mentally Ill) and CARTA (Central Alaska Retired Teachers) I urge passage of both SB211 and SB296.

Lola J. Reed, 831 W. 19th Ave., Anchorage, AK 99503, (907) 279-3006.

Distribution:

To: Robin Taylor > FAX:19074653922

Ms. Luisa A Conrad
12457 Crested Butte Dr
Eagle River AK 99577 Phone: 696-6018
Affiliation: Reg. Voter: Y Date POM Sent: 03/15/96 Constituent: N
Bill Number: SB 211 Response: Supports Distribution: 60
Subject:
Message: I SUPPORT SB 211. IT IS LONG OVERDUE.

Mrs. Kathleen H Emmons
16617 Davis St
Eagle River AK 99577 Phone: 694-2184
Affiliation: Reg. Voter: U Date POM Sent: 03/15/96 Constituent: N
Bill Number: SB 211 Response: Supports Distribution: 60
Subject:
Message: PLEASE PASS THIS BILL TO PROTECT ASSISTED LIVING RESIDENTS FROM ABUSE AND
NEGLECT.

Mr. Kim M Hobbs
SRA Box 6525 E
Wasilla AK 99654 Phone: 000-0000
Affiliation: Reg. Voter: Y Date POM Sent: 03/15/96 Constituent: N
Bill Number: SB 211 Response: Supports Distribution: 60
Subject:
Message: PLEASE PASS THIS BILL TO PROTECT ASSISTED LIVING RESIDENTS FROM ABUSE AND
NEGLECT.

Mr. Edmaund R Lear
4301 Merrill Cir
Wasilla AK 99654 Phone: 000-0000
Affiliation: Reg. Voter: U Date POM Sent: 03/15/96 Constituent: N
Bill Number: SB 211 Response: Supports Distribution: 60
Subject:
Message: I STRONGLY AGREE ON THIS BILL TO PROTECT OUR VULNERABLE ADULTS.

Ms. Maureen A O'Neill
3550 Alamosa Dr
Anchorage AK 99502 Phone: 248-4450
Affiliation: Reg. Voter: Y Date POM Sent: 03/04/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 09

Subject:

Message: I ENCOURAGE YOU TO VOTE FOR SB 211 WHICH ADDRESSES ISSUES OF ABUSE AND NEGLECT OF VULNERABLE ALASKANS WHO ARE RESIDENTS OF CARE FACILITIES IN ALASKA. THANK YOU.

Mr. Eldred J Harris
10201 Tartan Cir
Anchorage AK 99507 Phone: 248-1717
Affiliation: Reg. Voter: Y Date POM Sent: 03/14/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 20

Subject:

Message: THE PIONEERS' HOMES PLAN TO PROVIDE CARE AND MEDICAL ATTENTION WITHOUT SIGNIFICANT TRAINING CIRCUMVENTS STANDARDS JUST TO REDUCE OVERHEAD AND IS CONTRARY TO SB 211. VULNERABLE ADULT CARE WON'T BE ENHANCED; RESIDENTS WILL HAVE TO PAY MORE FOR LESS. PLEASE VOTE IN FAVOR OF SB 211.

Ms. Angela M Deutsch
3110 Dos Cir
Anchorage AK 99507 Phone: 343-7218
Affiliation: Reg. Voter: U Date POM Sent: 03/15/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 60

Subject:

Message: I SUPPORT SB 211.

Ms. Violeta D Cho
3480 Harrier Cir
Anchorage AK 99504 Phone: 333-4319
Affiliation: Reg. Voter: Y Date POM Sent: 03/15/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 60

Subject:

Message: I SUPPORT SB 211.

Mrs. Harriet Z McRae
PO Box 771
Palmer AK 99645 Phone: 745-4695
Affiliation: Reg. Voter: Y Date POM Sent: 03/21/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 05
Subject:
Message: I SUPPORT SB211. PLEASE GIVE IT YOUR CONSIDERATION. THANK YOU.

Mrs. Helen L Dolenc
825 S Diomede
Palmer AK 99645 Phone: 745-3932
Affiliation: Reg. Voter: Y Date POM Sent: 03/21/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 05
Subject:
Message: PLEASE, PLEASE PASS THIS BILL NOW.

Mr. Horace J Woodworth
PO Box 3556
Palmer AK 99645 Phone: 745-4800
Affiliation: Reg. Voter: Y Date POM Sent: 03/21/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 05
Subject:
Message: I SUPPORT SB211.

Mrs. Wanda P Marrs
PO Box 520
Palmer AK 99645 Phone: 745-3313
Affiliation: Reg. Voter: Y Date POM Sent: 03/21/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 05
Subject:
Message: I SUPPORT BILL NUMBER 211.

Mrs. Marta E Marin
12110 Buttermilk Wy
Eagle River AK 99577 Phone: 694-2309
Affiliation: Reg. Voter: Y Date POM Sent: 03/15/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 60
Subject:
Message: I SUPPORT SB 211.

Mrs. Linda L Howard
8803 Hamlet Cir
Anchorage AK 99502 Phone: 243-7673
Affiliation: Reg. Voter: Y Date POM Sent: 03/15/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 60
Subject:
Message: I SUPPORT SB 211.

Ms. Connie M Reimers
PO Box 111356
Anchorage AK 99511 Phone: 333-8119
Affiliation: APH Reg. Voter: U Date POM Sent: 03/15/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 60
Subject:
Message: I SUPPORT SB 211.

Mr. Homer J Enrigues
PO Box 104136
Anchorage AK 99501 Phone: 258-3511
Affiliation: Reg. Voter: U Date POM Sent: 03/15/96 Consituent: C
Bill Number: SB 211 Response: Supports Distribution: 60
Subject:
Message: I SUPPORT SB 211.

Mrs. Kathryn M Riesz
20200 Constitution Dr
Eagle River AK 99577 Phone: 696-7149
Affiliation: Reg. Voter: U Date POM Sent: 03/15/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 60
Subject:
Message: I STRONGLY SUPPORT SB 211.

Mr. William H Riesz
20200 Constitution Dr
Eagle River AK 99577 Phone: 696-7149
Affiliation: Reg. Voter: Y Date POM Sent: 03/15/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 60
Subject:
Message: I STRONGLY SUPPORT SB 211. IT IS LONG OVERDUE.

Mrs. Dawn L Lear
4301 Merrill Cir
Wasilla AK 99654 Phone: 373-6214
Affiliation: Reg. Voter: Y Date POM Sent: 03/15/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 60
Subject:
Message: I SUPPORT SB 211. IT IS LONG OVERDUE.

Mrs. Molly P Hobbs
HC32 6525 E
Wasilla AK 99654 Phone: 745-3629
Affiliation: Reg. Voter: U Date POM Sent: 03/15/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 60
Subject:
Message: I SUPPORT SB 211. IT IS LONG OVERDUE.

Mrs. Elouise M Smith
PO Box 765
Palmer AK 99645 Phone: 745-3877
Affiliation: Reg. Voter: Y Date POM Sent: 03/21/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 05

Subject:

Message: I STRONGLY SUPPORT SB211. THANK YOU FOR YOUR CONSIDERATION.

Mr. Orville C Wertzbaugher
HC02 Box 7826-A2
Palmer AK 99645 Phone: 745-2963
Affiliation: Reg. Voter: Y Date POM Sent: 03/21/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 05

Subject:

Message: I SUPPORT THIS BILL 100%.

Ms. Jean Williams
HC02 Box 7470
Palmer AK 99645 Phone: 745-4000
Affiliation: Reg. Voter: U Date POM Sent: 03/15/96 Consituent: N
Bill Number: SB 211 Response: Supports Distribution: 19
Subject:
Message: I AM IN FAVOR OF THE BILLS TO PROTECT ELDERLY FOLKS.

Ms. Kathleen L Fitzgerald

4521 Southpark Bluff Dr

Anchorage AK 99516

Phone: 272-8270

Affiliation: Reg. Voter: Y

Date POM Sent: 03/18/96

Constituent: N

Bill Number: SB 211

Response: Supports

Distribution: 01

Subject:

Message: KUDOS! THANK YOU FOR SPONSORING SB 211. I STRONGLY SUPPORT.

January 29, 1996

"Send Me to Juneau"
Attention: Matt Zencey
Anchorage Daily News
1001 Northway Drive
Anchorage, AK 99514

Dear Mr. Zencey:

My name is Bobbie Watts and my reason for needing to go to Juneau is to contact as many lawmakers as possible regarding an issue of greatest importance: Our senior citizens need laws on our state books punishing those who abuse, neglect, or exploit them. Also, mandatory fingerprinting for all employees of assisted living facilities and nursing home facilities is imperative

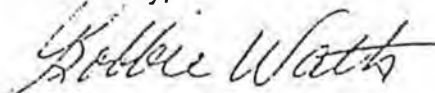
I placed my father-in-law, Paul Watts, in Friendship Home, Inc., an assisted living facility, on March 10, 1995. In May 1995 I sent a complaint to the Office of the Long Term Care Ombudsman because I realized Paul was being abused and neglected by those we paid to care for him. Many other elderly residents of Friendship Home, Inc, were also being abused and neglected.

The owners/managers of Friendship Home, Inc., Debi and Tracy Batchelder, and other staff had committed horrendous abuses towards the residents. The Batchelders left the state most likely never to be charged for what they did. There are no laws for abuse, neglect, or exploitation of our senior citizens. Mr. Zencey, our parents, grandparents, other relatives, and you or I may need to be placed in a facility one day, and it would be a little reassuring to know that our caretaker is not a criminal and that Alaska laws protect us when they are.

Statistics show that by the year 2010, 14 years from now, our senior population will triple. We have the fastest growing, per-capita, senior population in the nation, according to the Alaska Commission on Aging. The fast-growing senior population in Alaska will require more long-term care facilities and homes that are staffed with trained, compassionate people to care for them. I have come forward with my story to cry out to our legislature to create state laws that will prevent what happened at Friendship Home, Inc., from ever happening to one elder Alaskan again.

My goal is to get a bill passed this session that makes abuse, neglect, and exploitation of the elderly a crime. I also hope to support legislation that would require fingerprint background checks for all employees of nursing facilities and assisted living homes. In the past, the legislature has examined the need for abuse, neglect, and exploitation laws. For reasons unknown to me, this endeavor was discarded. I would like to bring to Juneau my experience as a concerned family member and citizen in order to enlist legislative support for crucial protections for the elderly. I'll never know if I can't try.

Sincerely,



Bobbie Watts
1527 Columbine
Anchorage, AK 99508 ph: 277-1696

Elder abuse bills create tougher caregiver standards

by David Washburn

Senior Voice staff

Two new bills in the state Senate would clarify what kinds of elder abuse are subject to criminal penalties and prohibit convicted felons from working in assisted living and other long-term care centers.

Sen. Johnny Ellis, D-Anchorage, said he introduced SB 211 and SB 296 in response to recent media reports of abuse in nursing homes and assisted living facilities. Ellis cited an expose' of abuse of frail elders in nursing homes on the

'Criminals in nursing homes preying on senior citizens outrages everybody.'

- Sen. Johnny Ellis

national television program "20/20", and an investigation last fall of an Anchorage facility, as the particular cases that caused him to act.

The TV program featured hidden-camera footage of nursing home attendants hitting and otherwise abusing residents. The Anchorage investigation, conducted by the state Attorney General and

Long-Term Care Ombudsman offices, uncovered ongoing neglect and abuse of frail elders by the operators of a nursing home. Incidents ranged from cruel tricks played on Alzheimer's patients, to failure to administer prescribed medications.

"Criminals in nursing homes preying on senior citizens outrages everybody," Ellis said.

Defining and punishing abuse

SB 211 is meant to close loopholes in current laws that can allow offenders in abuse cases to go

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unpunished.

The first two sections of the bill expand the definition of sexual assault to include people who are entrusted with the care of their victim in institutions licensed by the state. The measure is needed to keep up with recent changes in state licensing, Division of Senior Services director Connie Sipe said.

Currently, the law only addresses institutions licensed by the Department of Health and Social Services. Until recently, that department was the only one allowed to issue licenses. But assisted living licensing is now handled by the Department of Administration, Sipe said.

Outlining the bill in a February teleconference of the Alaska Commission on Aging, Sipe said the change should have been made a couple of years ago when the state passed laws concerning elder abuse and Adult Protective Services.

"Quite a few other criminal sections were amended to comply, and this one was not."

Although she endorsed the first two sections, Sipe said the third section of the bill might not work. Section 3 creates two new crimes: "endangering the welfare of a vulnerable adult," and "criminal neglect of a vulnerable adult."

Current law defines vulnerable adults as people over age 18 who, because of physical or mental disabilities, cannot direct their own affairs or provide for their own needs.

The first new crime pro-

posed in the bill, endangerment, would be a Class C felony, punishable by jail time. A person would commit the crime by intentionally deserting a vulnerable adult entrusted to the person's care, causing a substantial risk of physical injury.

The law would only apply when the person has been legally appointed as the person's guardian by a court, which may create problems, Sipe said.

"This bill still wouldn't get the adult child, for instance, who abandons dad at the race track or drops mom off at the door of the nursing home and then goes back to Anchorage and gets on the plane and moves to Texas. We've had a couple of those cases."

Sipe also said the bill fails to acknowledge the difference between being a legally-appointed guardian, and being the person who is entrusted with someone's care.

"Even though the guardian is given legal duty to manage the affairs and make certain decisions, guardians are not usually actual care givers."

These types of ambiguities could make successful prosecutions very difficult, Sipe said.

The other crime defined in the bill, criminal neglect, would be a misdemeanor. It would apply to people who fail "without lawful excuse to provide support for the vulnerable adult."

The bill defines "support" as providing "necessary food, care, clothing, shelter, and medical attention."

Sipe said the word "neces-

'I don't see why anybody would complain unless they have something to hide.'

- Nancy Steuer
Assisted living provider

sary" is too vague.

"In so many cases involving elders and their families or care givers, there's a lot of debate between every member of the family about what mom 'should' have, what mom 'needs,' what is 'necessary.'"

Sipe and Ellis are consulting with the Department of Law to strengthen the bill.

Fingerprints and background checks

SB 296 is meant to keep criminals from working their way into Alaska's expanding home health and assisted living industries.

The bill would prohibit nursing homes and assisted living facilities from hiring employees without conducting a criminal background check.

CONTINUED...

Elder abuse bills create tougher standards . . .

Elder abuse bills create tougher standards . . .

... CONTINUED

Prospective workers would have to report to the Department of Public Safety to have their fingerprints taken. The fingerprints would be given to the FBI for computer analysis. If FBI records turn up a past felony conviction, the person could not be hired.

The bill also prohibits hiring people who have been convicted of misdemeanors involving drugs, alcohol, or physical or sexual abuse.

Ellis said that in some nursing homes in the Lower-48, attendants sometimes steal or otherwise take advantage of their patients until they are caught. Then they simply move to another state and a different nursing home.

"I'm not saying that Alaska has the kind of bad operators that you might find in other states," Ellis said. However, Alaska's home care and assisted living industries are relatively new and growing quickly following recent changes in regulations, he said.

The state has licensed over 60 assisted living facilities, according to Dwight Becker, assisted living supervisor for

the Division of Senior Services. The businesses range in size from homes caring for one person, to larger facilities serving 50.

Many of these businesses are already conducting background checks.

"I was fingerprinted two years ago and TB tested," said Dell Jensen, manager at Debbie's Fireside Home in Fairbanks. Jensen said fingerprint checks are done on all employees at the Fireside Home, which houses five residents. She strongly supports the idea.

"You don't want alcoholics caring for your people," Jensen said.

Nancy Steuer was recently granted an assisted living license for her home in Anchorage. She said that background checks are already required by the state in order to participate in Medicaid waivers and other programs.

"I don't see why anybody would complain unless they have something to hide."

Steuer said her fingerprint check cost her about \$40.



Pioneers to pay more for learner care

By JEANNE ENRIGHT
Alaska Star Reporter

Some seniors living in the state's Pioneers' Homes may soon be cared for by lesser trained personnel and pay more for it.

In Alaska, approximately 1,800 beds are devoted to patients receiving skilled nursing care. According to Connie Sipe, director of the Division of Senior Services (DSS), 600 of those will be affected by pro-

posed changes at the state's six Pioneers' Homes.

Soon, all Pioneers' Homes will change their status from skilled nursing facilities to enhanced assisted living facilities.

The decision has several serious ramifications.

First of all, as skilled nursing facilities, Pioneers' Homes have been required to comply with certain federal regulations. The Department of Social Services (DSS) has been actively enforcing the

homes' compliance.

As enhanced assisted living facilities, the Pioneers' Homes will no longer be under stringent federal guidelines. The licensing unit of the DSS will enforce its own enhanced assisted living regulations once the change takes place.

Secondly, for Pioneers' Home residents who require total care, the change to enhanced assisted living means that their care will no longer be provided by highly-trained registered nurses (RN). Instead, most

of their care, including the distribution of medications, will be provided by lesser-trained certified nurses' aides (CNA).

And lastly, by changing patients' status to "enhanced assisted living," the elders who weren't eligible for longevity bonuses will once again receive their \$200-250 per month.

However, patients who cannot afford to pay the charge for their care — about \$1,000 per month, according to Division of Senior Services Director Connie Sipe —

must turn over their bonuses to the homes to help pay their bills.

Meanwhile, rates charged to Pioneers' Homes residents are on their way up. However, Sipe said that even though rates charged to the patients will be increasing some time in the near future, the homes will not realize an increase in profit.

"When we increase the fees, we aren't going to get extra money. The legislature is going to take away the general fund to the tune of what- (Please see PIONEERS, Page 2)

PIONEERS: Bills address issues

(Continued from Page 1)

ever we collect," Sipe said.

"The numbers (of residents) are staying the same, because we only have so many spaces in the buildings.

"We have been able to avoid cuts to direct care, but we've had to lay off gardeners and assistant cooks and other things, and we have spread the staff to taking care of 85 percent of the people.

"So the homes' whole operation is costing about the same ... but we've taken the staff and the staffing and we have spread it out over twice as many people, every day, getting care."

"And remember, we did not fire or lay off a single nurse ... and as we (received) budget cuts, we have, so far, never laid off a direct care position." Positions would be reduced through attrition, with some RN positions being replaced with CNA positions.

"So there is a balance here, but it's a national trend. It's not just us. There are lots more people who are sick and frail everywhere in the country, and a huge new majority of them are being taken care of in assisted living settings instead of all in skilled nursing homes."

Sipe said that she isn't sure when the Pioneers' Homes change to enhanced assisted living or the price increase would take effect.

Bobbie Watts, who became interested in senior issues when her father-in-law was allegedly neglected by a local nursing home, is keeping a close eye on the decisions being made by legislators and officials regarding senior issues.

The citizen-turned-senior advocate just returned from Juneau, where she spoke with legislators about senior issues. She made the following statement about her experience:

"The Division of Senior Services, while responsible for administrative action when dealing with abuse and neglect of the elderly, are not in a position to pursue criminal sanctions against those people who would victimize our loved ones. The Department of Law is responsible for pursuing criminal action against abusers."

Watts is in favor of Senate Bill 211, which was introduced by Sen. Johnny Ellis (D-Anchorage) to address the issues of abuse and neglect of "vulnerable" Alaskans, since these citizens often can't defend themselves, physically or legally.

Ellis also sponsored Senate Bill 296, which mandates fingerprinting and background checks for people seeking employment in institutional settings.

Sipe said that DSS has not decided whether to support the bills.

"Another concern that I brought up," Watts said, "is that the Long-Term Care Ombudsman is definitely in the wrong department, you see. She's in the same department of those that run the Pioneers' Homes and license the adult assistance (enhanced assisted living) homes.

"And you see, that's, like, a big conflict and it makes me nervous when they don't want to come up with a law to protect (people from) those (crimes) that the staff or owners may commit — the charge of neglect."

When asked whose signature is necessary for the final decision to change the homes to enhanced assisted care facilities, Sipe said, "Jim Kohn, the deputy director of the Division of Senior Services ..." unless she or someone else in authority over Kohn decided to contradict the decision, she said.

Kohn was unavailable for comment by presstime.

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HOME: Ombudsman finds abuse and neglect

Continued from Page A-1

cruel and malicious teasing ... in the form of coming up behind him and grabbing him by the trunk and lifting him up, squirting him in the face for long periods of time, or verbally poking fun at his limited mental faculties."

Two residents, including the Alzheimer's victim, died at the home this summer after managers neglected to obtain medical attention for them, the report says, but investigators did not link the deaths to the alleged neglect.

The ombudsman would have recommended the Batchelders' license be revoked, the report says, but they got out of the business in the middle of the investigation and left the state. The home is now operated by a new owner under a different name.

Acting ombudsman Susan Armstrong also has asked the U.S. Postal Service to investigate the Batchelders for obstructing the mails by allegedly intercepting mail addressed to a resident. Her report accuses the Batchelders of interfering in the ombudsman's investigation by attempting to intimidate people cooperating with the probe.

The investigation was precipitated in May by two complaints, including one from Bobbie Watts, whose father-in-law lived at Friendship Home from March to June. A double amputee with diabetes, lupus and heart disease, he died June 12, six days after Watts moved him to another home.

Watts said she was referred to Friendship Home by Alaska Regional Hospital. She visited her father-in-law, Paul Watts, 69, almost daily during designated visiting hours. She "shook off" her early concerns about prescriptions not being picked up and

complaints about not getting enough food because she knew he wanted to come home.

"They tried to convince me it wasn't true, that he had Alzheimer's," Watts said in an interview.

Assisted-living homes are intended to be a less restrictive, less expensive environment for people who can't live on their own or with relatives, but who don't require a full-blown nursing home. Watts said she and her husband paid \$3,000 a month for her father-in-law to stay at Friendship Home.

The home was intended to be transitional, Watts said, a place where Paul Watts would learn how to move from his bed to a wheelchair and the bathroom on his own. Watts had cared for her father-in-law for about two years before his second leg was amputated. She says no one told her she could have gotten therapists and public health nurses to work with Paul at his Airport Heights home instead.

Alaska Regional Hospital declined to discuss specifics of the Watts case, but Gail McGill, director of quality management, said all available resources for post-hospital care are discussed with all families.

The hospital did not make any recommendation, but merely provided the Wattses with a list of state-licensed facilities, McGill said. "We explain to them we don't make recommendations because ... we don't have the opportunity to visit places and check them out."

Virginia Smiley, licensing coordinator for the state Division of Senior Services, said having a state license means only that the facility is available and meets minimum standards, not that a home is recommended. Smiley's agency assumed oversight of the state's 66 assisted-living homes for old people

on July 1 from the Division of Family and Youth Services, which licensed the Batchelders in the 1980s.

Before the current investigation, state records show investigators confirmed other complaints against the Batchelders, including neglect of a patient who was found to be dirty, dehydrated, malnourished and with bed sores in 1991; and in 1993 for having more residents than allowed by their license.

Smiley and Armstrong, the acting ombudsman, said that Friendship Home still could be legally operating if the Batchelders hadn't gotten out voluntarily, because the state declined to revoke their license until the investigation was completed.

Armstrong said her office suggested to people inquiring about Friendship Home during the investigation that they not use the facility.

Watts' complaint, filed May 19 while her father-in-law was still a Friendship Home resident, generated the most extensive multiagency investigation in the history of the Long Term Care Ombudsman's Office, Armstrong said.

The Medicaid Fraud Unit in the Attorney General's Office got a search warrant in June to examine conditions at the home and seize records, said assistant attorney general Peter Gamache. His office got involved because several of the home's 16 residents received Medicaid.

The ombudsman and the Board of Nursing recommended Friendship Home be closed, Armstrong said. But DFYS decided it could safely remain open with monitoring, which was done for about two weeks at the end of June and beginning of July, she said. DFYS also required the Batchelders to hire a nurse to oversee patient care and dispense medicines.

The ombudsman's office helped one resident, Idesta Green, 82, move out of Friendship Home in August, concerned about her condition and possible retaliation for her cooperation, Armstrong said.

"They took my mail," Green said in an interview Friday at an assistant-living home run by Providence Hospital, where she now is apparently flourishing. "It was dark and you didn't get any care. ... They would put you on the pot and you would sit there for a couple of hours because you couldn't get off."

Gamache said his office is investigating possible criminal violations based on the complaints against the Batchelders, but Alaska doesn't have patient-neglect or abuse laws, he said. "If you have a straight case of a vulnerable adult not being fed or bathed or generally cared for properly, that's wrong but it's not unlawful."

Gamache said he's not sure conditions at Friendship Home "were qualitatively much worse than other places. ... It was a difference in degree, not in specie," he said. "Let's face it, living in an institution's a drag."

During the course of the four-month investigation, the ombudsman's office interviewed 24 people, including cooperative current and past employees, Armstrong said.

"What cannot be amply stated," said the ombudsman's report, "is the sadness and frustration expressed by former employees and residents at the living conditions present at Friendship Home, Inc. It appears that the residents ... were provided only minimal tools for existence; food enough to survive, medical attention only when withholding of such might clearly result in catastrophe, and a place to sit in idleness."



Friendship Home

Owners, caregivers mistreated elderly

The Friendship Home, a boarding facility licensed by the state to care for ailing old people, was sorely misnamed. Judging from a recent state ombudsman's report, the Anchorage business should have been named the Home for the Abuse, Neglect and Exploitation of Old People.

Treating the elderly in an inhumane manner in any setting, particularly a state-licensed facility that should meet certain standards, is galling.

Old people's infirmities should inspire compassion in caregivers.

But while food was in short supply at Friendship Home, ample doses of contempt were fed to old people. The facility residents were willfully, intentionally and recklessly abused and neglected, according to the long-term care ombudsman's report. In the midst of a multiagency investigation, Friendship owners Debi and Tracy Batchelder sold the business and left for the Lower 48.

Like most states, Alaska does require that such elder mistreatment be reported to the authorities when it is discovered. Unlike some states, Alaska does not specifically make abuse, neglect or exploitation of the elderly a crime, as it does the mistreatment of vulnerable and defenseless children.

What happens, then, when an investigation uncovers abuses, as is the case of the Friendship Home? State officials are of differing opinions. Assistant attorney general Peter Gamache says that, "If you have a straight case of a vulnerable adult not being fed or bathed or generally cared for properly, that's wrong but it's not unlawful." James Kohn, deputy director of the Division of Senior Services, says he believes there is room within current state law to prosecute those who commit such offenses.

In any case, while allegations of abuse and neglect were substantiated in the Friendship Home investigation, the state attorney general's office is largely focusing on possible criminal charges relating to misuse of Medicaid funds and supplies. Apparently it's easier to prosecute someone for Medicaid fraud than to prosecute a caregiver for withholding treatment from a sick, old person.

Assisted-living facilities are a growth business nationwide and in Alaska. If the Friendship Home is any indication, state government must make sure oversight of such facilities matches that growth.

Witness tells of abuse at boarding home



ANNE RAUP / Anchorage Daily News

Idesta Green, 82, helped state investigators in their examination of conditions at Friendship Home, an Anchorage boarding home licensed to care for infirm elderly people. She was moved from the home during the investigation.

State says home abused elderly

Report cites neglect, withholding medication, tormenting Alzheimer's victims

By SHEILA TOOMEY
Daily News reporter

The owners and staff of a private adult boarding home, licensed by the state to care for 16 infirm old people, neglected and abused residents, failed to get medical care for gravely ill patients, withheld necessary medication and tormented Alzheimer's victims, according to a state ombudsman's investigation.

The long-term care ombudsman, responsible for monitoring such homes, has asked the attorney general to consider criminal charges against Debi and Tracy Batchelder, former owners of Friendship Home, and Autumn Tucker, the former manager.

An investigative report dated Nov. 30 says people running the home, on West 69th Avenue in the Sand Lake area, sometimes failed to fill patients' prescriptions or seek emergency medical

Father-in-law's fate creates a crusader

By SHEILA TOOMEY
Daily News reporter

Guilt and its cousin anger pulled Bobbie Watts out of her safe life into a world where ugly things happen. But tenacity and a talent for constructive troublemaking are keeping her there.

Watts' father-in-law died in June after three months in a local convalescent home. A diabetic double amputee with lupus and bad kidneys, Paul Watts, 69, needed heavy lifting and trained,



BOB HALLINEN / Anchorage Daily News

Please see Back Page, **WATTS** Bobbie Watts

care, failed to take patients to scheduled doctor appointments, failed to keep patients clean and dress their wounds, failed to provide diabetics with proper blood tests and diet, left old people sitting on toilets or in wet diapers, borrowed money from old people in their

care, and in general "willfully, intentionally, or recklessly inflicted physical pain, injury or mental distress to residents of the facility."

Efforts to reach the Batchelders over three days, through their local attorney, Roger Beaty, and by leaving a message

with a woman who answered the phone at their new location in Bangor, Maine, were unsuccessful.

According to investigators, "One male resident, who was diagnosed with Alzheimer's disease, was repeatedly subjected to

Please see Back Page, **HOME**

WATTS: On a mission

Continued from Page A-1

watchful eyes as he recuperated from surgery and learned to live without legs.

An investigation by the state long-term care ombudsman concluded Watts was neglected by the owners and staff of Friendship Home, one of more than 60 "assisted-living" boarding homes licensed by the state to care for three or more elders or infirm adults.

Although the ombudsman did not conclude that Watts died of neglect, Bobbie Watts believes he did, and that she should have known something was wrong and gotten him out of Friendship Home earlier.

She moved him after he told her the staff was charging him for water. He died six days later.

"When he passed away, there was that guilt," she said, "being that I placed him there. . . . I have all the what-ifs and all this guilt eating at me."

Instead of letting it eat her up, Watts is turning the guilt into action on behalf of Alaska's "elders," as she calls them. First on her to-do list, now that the investigation she initiated is done, is to fax a copy of the Friendship Home report to licensing officials in every state. The former owners of Friendship Home "should never, ever again be allowed to take care of one elderly person," she said.

Paul Watts, a retired track-repair supervisor for the Alaska Railroad, was more like a beloved father than a father-in-law, Bobbie said. "He was a real good guy. He made you feel important, you know. He gave a damn."

Raised in Las Vegas in a dysfunctional family, Bobbie Watts left home at 14. "There was a lack of compassion and caring in my environment when I grew up, and I always wanted to be different."

She survived a "wild" period and came to Alaska in 1980 — "for the great adventure, and to get as far away from my family as I could." Now 35, Watts has spent the last decade raising children and dogs, caring for a husband of 13 years, doing volunteer work and making the kind of home she always wanted. Now she wonders if her personal barricades against life's rougher edges left her more gullible than she should have been.

Although she saw her

father-in-law almost daily during regulated visiting hours, brought food and made cookies for him and other residents, Watts said, it took her a long time to figure out that residents might be treated differently when she wasn't around.

"I could not conceive that someone would do this," Watts said. "It took me a little while to catch on. . . . To think I had the poor man there since March. It gives me the creeps."

When she finally figured out something was wrong, Watts filed a complaint with the long-term care ombudsman, a monitor required by the federal government. More determined than ever after Paul Watts died, she followed every twist of the investigation. Weeks turned into months, but she stuck to it, calling regulators and politicians, writing letters, checking repeatedly on what progress was being made. Somewhere along the way, Bobbie Watts, "stay-at-home mom," evolved into Bobbie Watts, unstoppable activist for the elderly.

She even went to work briefly for the people who took over Friendship Home after Paul died, and helped clean it up.

Watts said she's lost 25 pounds since filing her complaint in May. But after months of give and take, acting long-term care ombudsman Suzan Armstrong considers Watts "a real valuable find" for her office.

"She's a very effective communicator, very compassionate, very driven," Armstrong said. "I was constantly being inspired by her, being fueled by her energy."

The ombudsman's office has plans for a program in which volunteers make unannounced visits to state-licensed homes — 380 beds in "assisted-living homes" and 750 nursing home beds around the state.

Armstrong hopes to entice Watts to help organize it. Watts can hardly wait.

"I want those owners to be scared of me when I walk in the door," she said. "I want them people shaking in their boots."

"I never knew I could cause so much trouble," Watts said with grim satisfaction after the report condemning practices she complained of at Friendship Home was released last week. "I was never a troublemaker anywhere until here."

"I've got it. I can take 'em on and then some."

FORUM / LETTERS

State should make abuse, neglect of elderly a crime

By BOBBIE WATTS
Part 1 of 2

I placed my father-in-law, Paul Watts, in Friendship Home Inc., an assisted living home, on March 10, 1995. Two months later, I sent a complaint to the Office of the Long Term Care Ombudsman, because I realized Paul was being abused and neglected by those we paid to care for him.

Paul had kidney disease and was allowed to go for six days without his medication to prevent fluid buildup. He gained 52 pounds, putting added strain on his already weakened heart.

Friendship Home's staff did not properly treat Paul's wounds or turn him in his bed. He was literally being eaten alive by gangrene. They even charged him for water.

One day after I moved him to a new home, he was so swollen he could not fit in a wheelchair and had to be taken on a stretcher to see a doctor. He died four days later.

Many other elderly residents of Friendship Home Inc. also were being abused and neglected. A long list of incidents is documented in a 25-page investigation by the state's Long Term Care Ombudsman.

The owners/managers of Friendship Home Inc., Debi and Tracy Batchelder, sold the home and left the state, most likely never to be charged for what



BOBBIE WATTS
BOB HALLINEN / Daily News file photo

they did. This kind of abuse, neglect or exploitation of our senior citizens is not a crime.

Statistics show that by the year 2010, 14 years from now, our senior population will triple. We have the fastest growing, per capita, senior population in the nation, according to the Alaska Commission on Aging. The fast-growing senior population in Alaska will require more long-term-care facilities and homes that are staffed with trained, compassionate people to care for

I have come forward with my story to cry out to our Legislature to create state laws that will prevent what happened at Friendship Home Inc. from ever happening to one elder Alaskan again.

My goal is to get a bill passed this session that makes abuse, neglect and exploitation of the elderly a crime. I also hope to support legislation that would require fingerprint background checks for all employees of nursing facilities and assisted living homes. Right now, it's possible for someone convicted of assault or sex abuse or drug abuse to walk straight into a job caring for the elderly.

In the past, the Legislature has considered abuse, neglect and exploitation laws but failed to pass anything. I hope to persuade them to pass such a law.

While in Juneau Feb. 20-23, my concerns, and my support of Sen. Johnny Ellis' bill criminalizing neglect of the elderly (SB 211), got mixed reactions, and I was surprised at the opposition that I heard about while there. Many legislators and their staff are relying on the position of the Division of Senior Services in echoing their own opposition to SB 211.

How can anyone who ever heard or read the report of the investigation on Friendship Home Inc. sit there and tell me that we have adequate criminal

My goal is to get a bill passed this session that makes abuse, neglect and exploitation of the elderly a crime. . . . Right now, it's possible for someone convicted of assault or sex abuse or drug abuse to walk straight into a job caring for the elderly.

laws on the books? Debi and Tracy Batchelder, former owners of Friendship Home, are sitting in Bangor, Maine, happy that Alaska does not have laws holding them criminally responsible for such horrible abuses.

The Division of Senior Services can take administrative action when dealing with abuse and neglect of the elderly, but it cannot pursue criminal sanctions against those who would victimize our loved ones. The Department of Law has stated, more than once, that the criminal code as it exists is inadequate to fight this problem.

What more do legislators need to hear? How many more "Friendship Homes" need to be brought to light before the Legislature takes action to protect thousands of elderly citizens in Alaska from the kind of gross abuse and neglect that we have

already seen?

I am encouraged by and proud of the people in Juneau who spent the time to really listen to my experience and my call for help. They committed themselves to researching and learning about the laws that we currently have and the ones that we need.

I ask lawmakers not to rely on secondhand opinions. Ask the people who have personally experienced elder abuse and neglect. Ask the people responsible for investigating and prosecuting the perpetrators. They will tell you what you need to know. They will tell you how to protect our older Alaskans.

Bobbie Watts lives in Anchorage. She was the winner of the Daily News "Send Me to Juneau" contest. Sunday, Part 2: A journal of her experience as a citizen lobbyist.

Bill offers protection for vulnerable adults

By JEANNE ENRIGHT
Alaska Star Reporter

A helpless elderly woman screams in pain for eight days before getting medical attention at an assisted living home. At the same home, another elderly woman develops a cough, becomes weak, listless and congested, and loses her appetite. Caregivers become concerned and want to take her to a doctor, but the manager of the home forbids it. The resident dies two days later.

Suzanne Armstrong, acting Long-Term Care Ombudsman for the state, said these are two very real examples of neglect that recently occurred in Alaska.

On Thursday, a public hearing will be held in the Senate State Affairs Committee for a bill that would make it a criminal offense to commit such acts.

Senate Bill 211, which is sponsored by Sen. Johnny Ellis (D-Anchorage), is referred to as the "Vulnerable Adults' Bill."

The bill, which also covers crimes of sexual abuse and desertion of vulnerable adults, could be a first step in putting legislation on the books for people and issues not covered by current laws.

Ellis said two incidents prompted him to sponsor a bill protecting older or vulnerable people.

First he watched a spot on ABC's popular television news show, "20/20," which showed repeated cases of abuse and neglect in assisted living homes.

But it was Bobbie Watts' story of her neglected father-in-law that proved to be the last straw for Ellis.

Watts had placed her father-in-law in the Friendship Home in Anchorage. According to a Long-Term Care Ombudsman's report, the home had been negligent in his care, as well as that of other patients.

"I want to make it very clear that Alaska has cleaner, better, more modern facilities for nursing care and Pioneers' Homes than many other places," Ellis said.

"But you know, budget cutbacks have precipitated changes in Pio-

(Please see ELDERLY, Page 2)

ELDERLY: Abuse not covered under laws

(Continued from Page 1)
neers' Homes over the last three to four years that a number of people think are moving in the wrong direction.

"We need to make sure that (experts) look at that and say, 'Are we compromising the care of these senior citizens for some ulterior motive or for some reason that's ... not justifiable?'" he said.

Armstrong said that abuse and neglect of the elderly is not all that uncommon — even in Alaska.

"We found, time and time again, that frail elderly residents were not given adequate medical attention, nutrition and personal care. SB211 would address this portion of our investigations," Armstrong said.

However, Armstrong said, neither this bill nor current laws protect seniors from physical abuse such as slapping, mental abuse such as teasing or financial exploitation.

"The numerous findings of abuse, both physical and mental, that we found at Friendship Home Inc. would not be covered under SB211, nor are they covered under current assault laws," Armstrong said.

"What I'm hearing (from a lot of people) is that criminal laws cover abuse, and they do not. If they did, the Batchelders (former owners of the Friendship Home), would be here in Alaska answering for crimes. They're not. They're sitting somewhere in Maine," Armstrong said.

"This may be for another day,

but at some point, I believe it should be addressed. Criminal laws on assault often don't address cases of abuse."

What Armstrong said is true, said Assistant District Attorney Peter Gamache. Certain types of abuse do not fall under any current statutes.

Assault generally refers to using bodily force that causes someone physical pain. Harassment deals with touching someone in an "offensive" way. Reckless endangerment deals with recklessly placing another at risk of serious bodily harm. Theft statutes protect the elderly from having their property stolen.

But none of these statutes may apply to vulnerable adults, because these people, by definition, cannot defend themselves.

Gamache said a vulnerable adult is defined as a person 18 years old or older who because of physical or mental impairment is unable to meet their own needs or seek help without assistance.

Gamache thinks these people need more legal protection because they can't call for help if they are being abused or neglected. They can't name their perpetrators in a courtroom.

Lynn Kenney, legislative aide to Ellis, said that the senator wanted to address these issues, but was advised by the Department of Law that such a bill would be harder to get through.

"We worked with the Depart-

ment of Law; in fact, we had drafted a (version) of the bill that went further, but we were advised (not to pursue mental abuse) because it is difficult to prove in court," she said.

Watts, who just returned from Juneau where she lobbied for the bill, said that some lawmakers said they were opposed to SB211.

When Kenney was asked who opposes the bill and why, she said, "I don't know. I've been baffled by it myself."

Kenney said that she doesn't know how much the bill, if passed, would cost taxpayers. She said she requested fiscal notes from various administrative offices, but hasn't received them yet.

Ellis has another piece of legislation in the works to help protect the elderly.

Senate Bill 296 would mandate fingerprinting and background checks for people seeking employment in nursing homes or assisted living facilities.

The bill also calls for prohibiting the hiring or retention of certain nursing home and assisted living employees convicted of specified offenses, such as drug use and sexual abuse.

Kenney said concerned citizens can go to the Legislative Information Office in Anchorage to testify, via telephone, at a Senate State Affairs hearing on SB211. The hearing is set to begin at 3:30 p.m., but Kenney advises people to get to the office by 3:15 p.m.

SB

257

Date of Committee Action: 5.2.96

The JUDICIARY Committee considered:

SB 257 am

SENATE BILL NO. 257 am

TAKING FISH OR GAME FOR PUBLIC SAFETY

"An Act relating to the taking of game or fish for public safety purposes."

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

additional referral to _____ Committee attached amendment(s)

ADOPTS: _____ Letter of Intent

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

fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) P.S. (2) (3.25.96)
FIG (2.21.96)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Richard Porter</i>	✓			
<i>John H. ...</i>			✓	
<i>Bernard ...</i>	✓			
<i>John ...</i>	✓			
<i>[Signature]</i>				

CHAIR'S SIGNATURE *Richard Porter*



Senator Fred F. Zharoff
Alaska State Legislature

In Kodiak: P.O. Box 405, Kodiak, Alaska 99615 (907) 486-5259 (Fax also)

In Juneau: State Capitol, Room 121, Juneau, Alaska 99801-1182

Phone: (907) 465-3473 • Fax: (907) 463-3043

State Senate District C

Kodiak Island & Rural Southeast Alaska

To: Representative Brian Porter
Chairman, House Judiciary Committee

From: Senator Fred Zharoff *FZ*

Date: May 1, 1996

Re: Hearing request for SB 257

I would appreciate the scheduling of a hearing on SB 257, "An Act relating to the taking of game or fish for public safety purposes." The bill passed the Senate on April 10 on a unanimous 20 - 0 vote, and moved out of House Resources on May 1 with 9 DP recommendations.

Enclosed is my sponsor statement, a letter of support from ADF&G, a letter of support from the Alaska Board of Game, and zero fiscal notes from ADF&G and the Department of Public Safety.

Thank you for your consideration of this request.

Attachment



Senator Fred F. Zharoff
Alaska State Legislature

In Kodiak: P.O. Box 405, Kodiak, Alaska 99615 (907) 486-5259 (Fax also)

In Juneau: State Capitol, Room 121, Juneau, Alaska 99801-1182

Phone: (907) 465-3473 • Fax: (907) 463-3043

State Senate District C

Kodiak Island & Rural Southeast Alaska

Sponsor Statement
SB 257

"An Act relating to the taking of game or fish for public safety purposes"

I have introduced SB 257 to clarify the powers of the Department of Fish and Game and the Alaska Board of Game with regard to matters of public safety. The need for this legislation arose from meetings with ADF&G and the Board of Game concerning chronic bear/human conflicts in communities throughout my district.

Section 1 provides the commissioner of fish and game with the power to authorize the taking of fish and game for public safety purposes. This will allow the department to work with remote communities on dealing with true "problem" wildlife that are causing unacceptable threats to public safety. The department and the Board of Game can establish the criteria and procedures to be followed in resolving serious conflicts.

Section 2 provides clarity to the Board of Game with regard to their powers to adopt regulations regarding public safety and welfare. The Department of Law has informed the board that they currently lack clear authority in this area, and asked them to defer the adoption of further regulations until the statutes are amended. Many current regulations are also in question with this interpretation by the Department of Law. These regulations range from authorizing the taking of wildlife in defense of life and property to the requirement of hunter safety training for juveniles prior to hunting in certain game refuges.

The passage of SB 257 will provide necessary tools to the Department of Fish and Game and the Board of Game to aid in public safety and welfare.

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 26528
JUNEAU, ALASKA 99802-6528
PHONE: (907) 485-4100
FACSIMILE: (907) 485-2332

January 16, 1996

The Honorable Fred Zharoff
Alaska State Senate
State Capitol, Room 121
Juneau, AK 99801-1182

Dear Senator Zharoff:

At the fall Board of Game meeting, you asked the board to consider how wildlife/human interactions, and particularly bear/human conflicts, could be better resolved in those communities and areas of the state where department personnel are unavailable. As a first step in addressing this problem, I have invited Commissioner Otte of Public Safety to discuss ways of authorizing Village Public Safety Officers and other enforcement personnel to handle wildlife problems within their jurisdictions.

As was discussed at the board meeting, the department and board may lack statutory authority to issue permits (or otherwise delegate authority) on matters related to public safety. At the fall 1994 board meeting, the board adopted a regulation authorizing the department to issue "permits to control nuisance wildlife." The purpose of the regulation was to clarify the department's authority to issue permits for such purposes as controlling nuisance beavers and taking migratory birds at airports to safeguard arriving and departing aircraft. The board also adopted a regulation that would require commercial wildlife exhibitors to carry liability insurance. The Department of Law questioned the authority of the board to regulate solely on the basis of public safety, and recommended that those regulations be deferred and reconsidered.

The authority for other public safety regulations has also been questioned. Those regulations include the requirement for persons under 16 to have hunter safety training before hunting without an adult on the Mendenhall State Game Refuge, the taking of wildlife in defense of life or property, and provisions for taking nuisance beavers under a permit. The department also issues "depredation" permits to airports around the state. The need to take birds and other game at airports to ensure public safety was underscored by the tragic loss of an AWACS plane at Elmendorf AFB last fall.

I agree with the board that statutory clarification is preferable to inventing a rationale on which to base public safety regulations that deal with wildlife. Not only would a statutory amendment support our existing public safety/property damage regulations, but it could provide the basis for empowering VPSOs to help resolve human/wildlife conflicts in remote communities.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

BOARD OF GAME

TONY KNOWLES, GOVERNOR

P.O. BOX 25526
JUNEAU, ALASKA 99802-5526
PHONE: (907) 485-4110
FAX: (907) 485-6094

March 23, 1996

The Honorable Robin Taylor
Chair, Senate Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801


Dear Senator Taylor:

The Board of Game wishes to formally endorse SB257, "An act relating to the taking of game or fish for public safety purposes." This bill is currently in the Senate Judiciary Committee.

Over the years the board has received numerous requests to deal with issues of public safety as they relate to human/animal interactions. Those requests have dealt with circumstances ranging from problem bears to methods and means of harvest in urban areas. In addition, the Department of Law has informed us that there is no clear statutory authority for action by the Department of Fish and Game, and no statutory guidelines for action by the Department of Public Safety.

SB 257 provides a valuable, practical, and prudent tool for the board and the aforementioned agencies. We urge action by the legislature to pass this bill into law.

Sincerely,



Larry Holmes, Chair
Alaska Board of Game

cc: Senator Fred Zharoff
President Drue Pearce
Commissioner, Alaska Department of Fish and Game

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: SB 257

Revision Date: _____ Dept. Affected: Public Safety
 Title: Taking fish or game for public safety. BRU: Alaska State Troopers
 Component: Detachments and VPSO
 Sponsor: Senator Zharoff
 Requestor: S. Judiciary COMPONENT SERIAL NO. 0799 and 0517

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1008 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden Phone: 465-5505
 Division: Alaska State Troopers Date: March 20, 1996
 Approved by Commissioner: *Ronald L. Otte* Date: 3/21/96
 Agency: Ronald L. Otte, Department of Public Safety

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1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to the taking of game or fish BRU: Fish & Wildlife Protection
for public safety purposes. Component: Enforcement & ISU
 Sponsor: Senator Zharoff
 Requestor: S. Judiciary COMPONENT SERIAL NO. 0490

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Code Revenue						

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 96) impact: \$ 0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared By: Captain Richard Graham, Operations Commander Phone: 269-5589
 Division: Fish & Wildlife Protection Date: 03/19/96
 Approved by Commissioner: *Ronald L. Otte* Date: 3/21/96
 Agency: Ronald L. Otte, Department of Public Safety

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SB

262

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TELECOPIER TRANSMITTAL LETTER

TONY KNIP -S, GOVERNOR

PLEASE REPLY TO:

1031 WEST 3111 AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1034
PHONE: (907) 269-5100
FAX: (907) 276-3097

KEY BANK BUILDING
1000 CUSHMAN ST., SUITE 100
FAIRBANKS, ALASKA 99701-4070
PHONE: (907) 451-2811
FAX: (907) 451-2848

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

PLEASE DELIVER THE FOLLOWING PAGES TO:

TO: Tony Meyer

RE: House Judiciary

TELECOPIER NUMBER: 3834

REMARKS: SB 262
Amendments to allow trophy/pearl trophy management.
These amendments do not eliminate other problems in the bill.

TOTAL NUMBER OF PAGES 4 INCLUDING COVER LETTER.

DATE: 5/3/96 TIME: _____ A.M./P.M.

FROM: Steven Dargher AGO-JUNEAU
SB 262

IF ANY PROBLEMS, PLEASE CALL: Steven AT (907) 465-⁶⁷²⁵~~3600~~

PLEASE READ: THIS TRANSMITTAL IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR OFFICE TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS TRANSMITTAL IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY REPRODUCTION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THIS AND ALL PAGES FOLLOWING TO THE ADDRESS ABOVE VIA U.S. POSTAL SERVICE. THANK YOU FOR YOUR COOPERATION.

D R A F TA M E N D M E N T

OFFERED IN THE HOUSE

BY THE HOUSE JUDICIARY COMMITTEE

JUDICIARY COMMITTEE

TO: HCSCSSB 262 (RES)

Page 1, line 1-2:

Delete: "for maximum sustained yield for human harvest"

Page 2, following line 12:

Insert a new subsection to read:

(d) Notwithstanding (a) - (c) of this section, a game population may be managed to produce animals of trophy or near trophy size.

Page 2, lines 13 - 22:

Delete all material.

Page 3, following line 22:

Insert a new subsection to read:

(e) Notwithstanding (a) - (d) of this section, a game or fish population may be managed to produce animals or fish of trophy or near trophy size.

Page 3, lines 23 - 31:

Delete all material.

Page 4, lines 1 - 2:

Delete all material.

Page 4, line 9:

Following "with"

Delete "maximum"

Page 4, line 15:

Following "continued"

Delete "consumptive"

Page 4, line 20:

Delete "maximum"

Page 4, line 26:

Following "with"

Delete "maximum"

Page 5, line 4:

Following "with"

Delete "maximum"

Page 5, lines 5-8:

Delete all material.

Alaska State Legislature



Senate

Sponsor Statement SB 262

SENATOR

MIKE MILLER

Mailing Address:

119 N. Cushman, Suite 101

Fairbanks, Alaska 99701

Ph: (907) 488-0862

Fax: (907) 488-4271

Write in Juneau

State Capitol

Juneau, Alaska

99801-1182

Ph: (907) 465-4976

Fax: (907) 465-3883

Senate District 0

Since Statehood, Alaskans, whose sustenance and livelihood relies upon our wildlife resources, have lost over 100 million acres to consumptive uses in one form or another. This land mass is larger than the State of Wyoming. Additionally, Alaskan hunters have lost effective utilization of some of the most productive areas in the State through ever increasing restrictions on access. These restrictions are being adopted in lands which sportsmen themselves have helped set aside and whom exclusively pay for the maintenance, management and administration of these lands.

Because of increasing restrictions and the loss of available areas to hunt, Alaskans are currently taking less than 2% of the annual harvestable surplus of moose, caribou and sheep--compared to other states who routinely harvest 30-60% of their big game each year. Additionally, Alaskan hunters harvest of moose, caribou and sheep has declined over 30% between 1989 and 1993.

The Department of Fish and Game is funded 100% by sportsmen's dollars generated through license fees and self imposed taxes. This legislation recognizes that public trust and would allow for no net loss of land for Alaska's consumptive users. Additionally, it requires remediation of 5 acres for every acre lost in the future.

The legislation will also eliminate the spending of Fish and Game fund monies paid by consumptive users for any activity on lands where consumptive uses have been eliminated or restricted. By passing this legislation, the legislature will recognize the special public trust created by the use of license monies and will reverse the trend of restrictions on consumptive uses throughout Alaska.



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366
Fax: 907-463-3312

SENATE BILL 262

"relating to management of game populations for maximum sustained yield for human harvest"

Rifle hunters **suing** the State of Alaska when an area is limited to bow hunting; fishermen **suing** when a river is posted for catch and release to enhance trophy specimens; streamside anglers **suing** to keep the banks of the Kenai River open no matter what the long-term cost to king salmon spawning habitat: **This is the future contemplated by Senate Bill 262.**

Senate Bill 262 is a fatally flawed attempt to coerce the Alaska Department of Fish and Game into managing resources that belong to all Alaskans for the benefit of the disgruntled few. The Alaska Environmental Lobby opposes SB 262.

Senate Bill 262 hangs a "SUE ME" sign around the necks of public officials

SB 262 exposes the public officials who manage Alaska's resources to lawsuits brought by the disgruntled few who feel they've been harmed by official actions. The bill exempts only members of the Board of Game, not members of the Board of Fisheries, employees of the Department of Fish and Game, or anyone else who administers public lands and resources.

Current law allows the public to bring suit against officials acting *ultra vires* (outside their scope of duty). SB 262 drastically expands the public's right to sue government officials. Public officials could be sued in the following cases, among others:

For managing fish and game for social reasons, such as administering trophy hunting areas by permit or implementing catch and release fishing;

For managing fish and game for economic reasons, for instance at the request of local communities interested in promoting tourism;

For managing fish and game for biological reasons other than "maximum sustained yield" in areas where human harvest has been found to be an "important" use of game;

For actions taken in the best interest of the State of Alaska, where these conflicted with the provisions of SB 262;

For actions mandated by the Board of Game but applied by other public officials. The Board of Game is protected from suit, but a resource manager could be sued for carrying out the directives of the Board of Game, even when that official has no power to alter Board of Game decisions.

Public servants should base their decisions on sound science and public input, not on fear of legal reprisal from those who dislike their actions. Do we really want public officials to face lawsuits when they manage public resources for the benefit of all Alaskans, instead of the angry few?

Angered by an official decision? Sue the government -- free!

The Assistant Attorney General representing the Board of Game, Kevin Saxby, testified that SB 262 would invite a legion of expensive lawsuits paid for by state government. People bringing such lawsuits could be considered public interest litigants, so they would not be responsible for the costs of litigation. State government would pay the public to sue its officials. Who wouldn't sue, if there were no costs associated with bringing action?

Senate Bill 262 is based on fiction, not fact

SB 262 requires the state to open one acre of land for every acre "closed" to hunting. The bill is predicated on the mistaken belief that huge areas of state land are closed to hunting. Over and over we've heard the refrain,

"Since statehood, Alaska's consumptive users have lost the right to do as they wish on millions and millions of acres." This refers to federal, not state land. Wayne Regelin, Director of the Division of Wildlife Conservation, has testified that "almost all state-owned lands are open to hunters." The "no net loss" provision would be nearly impossible for Alaska's resource managers to implement, because no large areas of state land are presently closed to hunting.

Because of the lack of available closed land and the fact that reasonable management procedures would be considered "closures," SB 262 would, in effect, prohibit the management of any area for trophy hunting, catch and release fishing, or tourism (one of the state's growing industries). These are reasonable goals of fish and game management, and they benefit many Alaskans, including hunters and fishermen.

Senate Bill 262 will have unknown effects on Alaska's fisheries

SB 262 refers to "fish" in the title, to "sport fish" "fishing" "fish" and the "consumptive use of fish" in Section 2, to "fishing" in Sections 3 and 5, to "fish" and "fishing" in Section 6. But the ramifications of the bill for sport and commercial fisheries haven't been adequately explored. The Assistant Attorney General representing the Board of Fisheries, Steven Daugherty, testified that SB 262 has "negative implications" for fisheries. Examples he gave included catch and release fishing and trophy fishing.

Still unanswered is this question: How does SB 262 apply to commercial set-netting which occur on public tidelands? Will this result in lawsuits limiting the ability of managers to enact permit systems or regulate set-net sites? **Nowhere does this bill exclude commercial fishing from its provisions.** If commercial fishing is not excluded from the provisions of this bill, how could the state of Alaska enforce fishing openings and closings or in any way protect Alaska's priceless commercial fish resource?

Notably, SB 262 provides immunity from lawsuit to the Board of Game, but not to the Board of Fisheries. Why not? How could we get qualified

people to serve on the Board, if they could be sued by anyone who disliked their decisions?

SB 262 creates a new "public trust" that harms the public

SB 262 creates a new public trust for "special fish and game management areas" where none existed before. In doing so, it extends the public trust doctrine far beyond its traditional interpretation. The bill states that this trust would be broken by restricting public access or by restricting activities and opportunities for fishing, hunting and trapping. The penalties for breaching this so-called trust are enforcement of the "no net loss" provision and the possibility of punitive litigation against public officials.

Who is calling for this trust to be created? Not the vast majority of hunters and fishermen, who like to participate in the healthy processes of a fully functioning ecosystem. Only the fringe, who take any restriction of method of harvest or access as a personal insult.

By calling for "unrestricted fishing, hunting, and trapping activities," SB 262 steals many tools from the wildlife manager's bag of options. Regulating or limiting hunting and fishing seasons, controlling the method of hunting allowed or the type of access used, or setting bag limits, could all be considered "closures" under SB 262, triggering the "no net loss" provision. These methods are used by wildlife managers where appropriate to protect the state's fish and game resources. Although it calls for management based on biology, SB 262 would rob managers of these scientific management options.

The new "trust" created by SB 262 would penalize the State of Alaska's fish and wildlife managers for doing their job: conserving these resources for present and future use. The penalties would be the "no net loss" provision of SB 262, and the potential for a multitude of lawsuits against public officials doing their jobs to protect Alaska's fish and game resources for the benefit of all users. The results for Alaska's fish and wildlife would be calamitous. All Alaskans who like to view or consume fish and wildlife would be harmed by the creation of this new trust.

5/2/96

Alaska State Legislature

SENATOR

MIKE MILLER

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Fairbanks, Alaska 99701

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Senate

Sponsor Statement SB 262

Write in Juneau

State Capitol

Juneau, Alaska

99801-1182

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Senate District 0

Since Statehood, Alaskans, whose sustenance and livelihood relies upon our wildlife resources, have lost over 100 million acres to consumptive uses in one form or another. This land mass is larger than the State of Wyoming. Additionally, Alaskan hunters have lost effective utilization of some of the most productive areas in the State through ever increasing restrictions on access. These restrictions are being adopted in lands which sportsmen themselves have helped set aside and whom exclusively pay for the maintenance, management and administration of these lands.

Because of increasing restrictions and the loss of available areas to hunt, Alaskans are currently taking less than 2% of the annual harvestable surplus of moose, caribou and sheep--compared to other states who routinely harvest 30-60% of their big game each year. Additionally, Alaskan hunters harvest of moose, caribou and sheep has declined over 30% between 1989 and 1993.

The Department of Fish and Game is funded 100% by sportsmen's dollars generated through license fees and self imposed taxes. This legislation recognizes that public trust and would allow for no net loss of land for Alaska's consumptive users. Additionally, it requires remediation of 5 acres for every acre lost in the future.

The legislation will also eliminate the spending of Fish and Game fund monies paid by consumptive users for any activity on lands where consumptive uses have been eliminated or restricted. By passing this legislation, the legislature will recognize the special public trust created by the use of license monies and will reverse the trend of restrictions on consumptive uses throughout Alaska.

Alaska State Legislature



House of Representatives House Judiciary Committee

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

May 1, 1996

TO: House Judiciary Committee members

FROM: Tom Meyer

RE: May 2, 1996, calendar

The committee will be meeting tomorrow, Thursday, at 1:00 pm to hear SB 262. The bill passed from Resources this morning and is now version "R".

I've included the "O" version. This version received two amendments today in Resources. One is in hard copy from and is included. Another, from R. Ogan, deleted "emergency" and inserted "basis" on page 2, line 7.



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

The Alaska Environmental Lobby Says: Vote NO to SB 262

- SB 262 mandates the Board of Game to open new areas to consumptive use three times larger than lands closed to consumptive use by the department, Board of Game, or other state agency. Allowing openings three times as large to areas that have only a healthy game population is not a comprehensive view of managing Alaska's resources.
- SB 262 neglects social and economic interests by managing solely on a biological basis.
- This management scheme does not provide biologically sound management for Alaska's game. This bill attempts to manage Alaska's wildlife on land measurement and human consumption scales.
- SB 262 does not take into account the overall status of the ecosystem in which these mandatory consumptive uses are imposed. Only a healthy ecosystem can adequately sustain both consumptive and non consumptive uses of the land and its wildlife, and this fails to address that concern.
- Assuming that consumptive use of game is the best use is inconsistent with the response of the majority of Alaskan citizens. We must also realize the magnitude of revenue that could potentially be lost by supporting this assumption.
- SB 262's vindictive and threatening language encourages individuals to pursue civil action and holds liability over the heads of public officials and state agencies.

We urge the Senate to consider these negative forces driving the management of Alaska's wildlife populations down a dead end street. Alaskans and Alaska's resources deserve more thoughtful governing than SB 262.

4/10/96

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • ALASKA FRIENDS OF THE EARTH
 ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY • CLEAN AIR COALITION • DENALI CITIZENS' COUNCIL
 DENALI GROUP, SIERRA CLUB • JUNEAU AUDUBON SOCIETY • JUNEAU GROUP, SIERRA CLUB
 KACHEMAK BAY CONSERVATION SOCIETY • KENAI PENINSULA AUDUBON SOCIETY • KNIK CANOERS AND KAYAKERS
 KUSKOOKWIM SIERRA CLUB • KUSKOOKWIM AUDUBON SOCIETY • LYNN CANAL CONSERVATION • NORTHERN ALASKA ENVIRONMENTAL CENTER
 SOUTHERN ALASKA ENVIRONMENTAL CENTER

Alaska State Legislature

SENATOR

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Senate

Sponsor Statement SB 262

While in Juneau

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Juneau, Alaska

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Ph. (907) 465-4376

Fax. (907) 465-3533

Senate District 5

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FISCAL NOTE

No. 1
 Bill Version: CS SB 26.2(KCS)
 (S) Publish Date: 3-12-96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Fish and Game
 Title: Management of Fish/Game Population & Area BRU: Wildlife Conservation
 Component: Wildlife Conservation
 Sponsor: Senator Miller
 Requester: Senate Resources COMPONENT SERIAL NO. 473

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (1024)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,025.7	1,025.7	1,025.7	1,025.7	1,025.7	1,025.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (1024 Fish & Game Fund)	(1,025.7)	(1,025.7)	(1,025.7)	(1,025.7)	(1,025.7)	(1,025.7)
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Assumptions: (1) The legislation will become effective at the beginning of FY97. (2) To maintain department services and programs at existing levels, General Funds will be provided to offset Fish & Game Fund and Federal Aid spending reductions for programs such as, nongame, wildlife education, watchable wildlife, endangered species, marine mammals, and the McNeil River, Stan Price and Walrus Islands State Game Sanctuaries.

Sec. 2 of the bill restricts utilization of federal aid and license/tag revenue in areas where game populations are subject to preferences among consumptive uses that are not valid under the state constitution or state law. Virtually all big game populations trespass on federal lands that are "subject" to subsistence preferences not valid under state law. Accordingly, a strict interpretation of this bill would preclude expending nearly all Fish & Game Fund and Federal Aid revenues on wildlife management programs. To maintain existing programs and services using that interpretation would require annual General Fund appropriations of approximately \$15,000.0.

Prepared by: Diana Ground, Administrative Officer Phone: 465-6194
 Division: Wildlife Conservation Date: 2/9/96
 Approved by Commissioner: [Signature] Date: 2.12.96
 Agency: Alaska Department of Fish and Game

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Juneau, Alaska 99801-2105

MEMORANDUM

February 10, 1996

SUBJECT: Sectional Summary of SB 262; An Act relating to management of game populations for maximum sustained yield for human harvest and providing for the replacement of areas closed to consumptive uses of game and relating to management of fish and game areas.

TO: Senator Mike Miller

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of SB 262; An Act relating to management of game populations for maximum sustained yield for human harvest and providing for the replacement of areas closed to consumptive uses of game and relating to management of fish and game areas.

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

Section 1 of the bill amends AS 16.05 by adding a new section (AS 16.05.005), relating to management of game. On most land in the state, game populations are to be managed solely on a biological basis for maximum sustained yield for human harvest. Consumptive use of game is the highest and best use of game. If the Department of Fish and Game, the Board of Game, or another state agency closes an area of the state for consumptive use of game for sport or subsistence use or closes an area of the state to taking of game for consumptive use by a method, manner, or means that was permitted in the area before the closure, the Board of Game shall open new areas where the consumptive uses that were prohibited can occur, unless the closure was due to a biological emergency. A person may bring an action to compel compliance with the provisions of this section or to remedy a violation of this section. If the person prevails in the action, the person is entitled to recover the full costs of the litigation. Key terms in this section are defined.

Section 2 of the bill amends AS 16.05 by adding a new section (AS 16.05.145), creating a public trust for fish and game management areas. The public trust is violated by restricting public access to fish and game management areas, restricting sport fishing, hunting, or trapping in fish and game management areas, or using license fees paid by sportsmen or certain federal funds in certain areas or for certain purposes. If the public trust is violated,

Senator Mike Miller
February 12, 1996
Page 2

the state must provide five times the amount of land for unrestricted sport fishing, hunting, or trapping activities to replace the land on which the trust was violated. A person may bring an action to compel compliance with the provisions of this section or to remedy a violation of this section. If the person prevails in the action, the person is entitled to recover the full costs of the litigation. Key terms in this section are defined.

Section 3 of the bill amends the purposes for which state game refuges are established.

Section 4 of the bill amends AS 16.20.075 to require the Board of Game to adopt regulations guaranteeing access to state game refuges and continued opportunities for sport fishing, hunting, and trapping on state game refuges.

Section 5 of the bill adds a new section to AS 16.20 relating the purposes for which state range areas are established.

Section 6 of the bill amends AS 16.20.500 to amend the purposes for which fish and game critical habitat areas are established.

Section 7 of the bill amends AS 16.20.510 to require the Board of Fisheries and Board of Game to adopt regulations guaranteeing access to fish and game critical habitat areas and continued opportunities for sport fishing, hunting, and trapping on critical habitat areas.

Section 8 of the bill amends AS 16.20 by adding a new section containing a definition of "maximum sustained yield" for purposes of AS 16.20.

Section 9 of the bill states that certain provisions added by secs. 1 and 2 of the bill have the effect of amending certain rules of civil procedure adopted by the Alaska Supreme Court by allowing a person to recover the full, true, and actual costs of bringing and prosecuting an action authorized under those sections of the bill.

Section 10 of the bill provides that the provisions (amending court rules) described in sec. 9 of the bill do not take effect if they are not approved by two-thirds majority vote of each house as required by the Constitution of the State of Alaska.

If I may be of further assistance, please advise.

GU:klb:glc
96-094.klb

9-LS143110
Utermohle
4/29/96

HOUSE CS FOR CS FOR SENATE BILL NO. 262(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS MILLER, Sharp, Pearce, Halford, Green, Frank, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to management of game populations for maximum sustained
2 yield for human harvest and providing for the replacement of areas closed to
3 consumptive uses of game; relating to management of fish and game areas."

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

5 * Section 1. AS 16.05 is amended by adding a new section to read:

6 Sec. 16.05.005. MANAGEMENT OF GAME. (a) Notwithstanding any other
7 law to the contrary, game populations shall be managed solely on a biological basis.
8 In areas where human harvest has been found to be an important use of game, game
9 populations in those areas shall be managed for maximum sustained yield by human
10 harvest. Consumptive use of game is the highest and best use of game. This section
11 does not apply on land designated as a park or a state game sanctuary where
12 consumptive use of game is prohibited.

13 (b) If the department, the Board of Game, or other agency of the state, closes
14 an area to the taking of a game species for consumptive use for subsistence or sport

1 uses, or closes an area to the taking of a game species for consumptive use by a
2 method, manner, or means that was permitted in the area before the closure, the Board
3 of Game at its next regularly scheduled meeting after the closure shall open a new area
4 or areas where the consumptive uses that were prohibited can occur and where healthy
5 populations of the affected game species are present. The new area or areas opened
6 by the board shall be at least equal in size to the area that was closed. This subsection
7 does not apply to a temporary closure based upon a biological emergency.

8 (c) A person may bring a civil action in a court of competent jurisdiction
9 against a state agency or a public official, other than a member of the Board of Game,
10 for an injunction to compel compliance with this section or to compel remedial action
11 to correct a violation of this section. A public official, other than a member of the
12 Board of Game, is not immune from suit under this section.

13 (d) In this section,

14 (1) "harvestable surplus" means the estimated number of animals that
15 is equal to the number of offspring born in a game population during a year less the
16 number of animals in the population that die during the year from all causes other than
17 predation or human harvest;

18 (2) "highest levels of human harvest" means the harvest of greater than
19 one-third or more of the harvestable surplus of a game population by humans;

20 (3) "maximum sustained yield" means the achievement and
21 maintenance in perpetuity of the highest levels of human harvest on an annual basis
22 of game, other than mammalian predators.

23 * Sec. 2. AS 16.05 is amended by adding a new section to read:

24 Sec. 16.05.145. PUBLIC TRUST FOR SPECIAL FISH AND GAME
25 MANAGEMENT AREAS. (a) The state has created a public trust by the use of
26 revenue generated from taxes, license fees, and other fees paid by sportsmen, by the
27 acceptance and use of funds received from federal aid in sport fish and wildlife
28 restoration programs, and by the establishment of state game refuges, range areas,
29 special management areas, critical habitat areas, and similar areas established by law.

30 (b) This public trust would be breached by

31 (1) restricting public access to state game refuges, range areas,

1 sanctuaries, special management areas, critical habitat areas, and similar areas
2 established by law, except when the restriction on access is necessary solely for the
3 purpose of protecting habitat from damage due to the method of access;

4 (2) restricting fishing, hunting, and trapping activities and opportunities
5 on state game refuges, range areas, special management areas, critical habitat areas,
6 and similar areas established by law in a manner that is inconsistent with maximum
7 sustained yield of fish and game; or

8 (3) utilization of the revenue generated from taxes, license fees, and
9 other fees paid by sportsmen or funds received from federal aid in sport fish and
10 wildlife restoration programs

11 (A) in an area where consumptive use of fish and game is not
12 permitted; or

13 (B) for management of nongame species.

14 (c) If the state breaches this public trust, the state shall either acquire an area
15 of land or designate an area of state land equal in size to the area of land on which the
16 public trust was breached in order to provide a location in the same geographic area
17 where unrestricted fishing, hunting, or trapping activities can occur.

18 (d) A person may bring a civil action in a court of competent jurisdiction
19 against a state agency or a public official, ~~who is not a member of the Board of Game,~~
20 for an injunction to compel compliance with this section or to compel remedial action
21 to correct a violation of this section. A public official, ~~who is not a member of the~~
22 **Board of Game**, is not immune from suit under this section.

23 (e) In this section,

24 (1) "harvestable surplus" means the estimated number of animals that
25 is equal to the number of offspring born in a game population during a year less the
26 number of animals in the population that die during the year from all causes other than
27 predation or human harvest;

28 (2) "highest levels of human harvest" means the harvest of greater than
29 one-third or more of the harvestable surplus of a fish stock or game population by
30 humans;

31 (3) "maximum sustained yield" means the achievement and